



**Registration of a Charge**

Company Name: **WELLESLEY FINANCE LIMITED**

Company Number: **08331511**



Received for filing in Electronic Format on the: **22/03/2022**

XB0BCWIZ

**Details of Charge**

Date of creation: **17/03/2022**

Charge code: **0833 1511 0007**

Persons entitled: **FERN TRADING GROUP LIMITED**

Brief description:

**Contains fixed charge(s).**

**Contains negative pledge.**

**Authentication of Form**

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

**Authentication of Instrument**

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

Certified by: **CHARLES RUSSELL SPEECHLYS LLP**



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

Company number: 8331511

Charge code: 0833 1511 0007

The Registrar of Companies for England and Wales hereby certifies that a charge dated 17th March 2022 and created by WELLESLEY FINANCE LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 22nd March 2022 .

Given at Companies House, Cardiff on 24th March 2022

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**



I certify that save for material redacted pursuant to section 859G of the Companies Act 2006, this copy is a correct copy of the electronic original instrument.

Signed: *Charles Russell Speechlys LLP*

Dated: 21 March 2022

DATED 17 March 2022

(1) **THE PERSONS LISTED IN SCHEDULE 1**  
(as Chargors)

and

(2) **FERN TRADING GROUP LIMITED**  
(as Lender)

---

**SUBORDINATED CREDITORS' SECURITY AGREEMENT**

---

**CONTENTS**

1	DEFINITIONS AND INTERPRETATION	1
2	COVENANT TO PAY	4
3	GRANT OF SECURITY	5
4	LIABILITY OF THE CHARGOR	5
5	REPRESENTATIONS AND WARRANTIES	5
6	COVENANTS	8
7	POWERS OF THE LENDER	11
8	WHEN SECURITY BECOMES ENFORCEABLE	12
9	ENFORCEMENT OF SECURITY	12
10	RECEIVER	14
11	POWERS OF RECEIVER	14
12	DELEGATION	16
13	APPLICATION OF PROCEEDS	17
14	COSTS AND INDEMNITY	17
15	FURTHER ASSURANCE	18
16	POWER OF ATTORNEY	19
17	RELEASE	19
18	ASSIGNMENT AND TRANSFER	19
19	SET-OFF	19
20	AMENDMENTS, WAIVERS AND CONSENTS	20
21	PARTIAL INVALIDITY	20
22	COUNTERPARTS	21
23	THIRD PARTY RIGHTS	21
24	FURTHER PROVISIONS	21
25	NOTICES	22
26	GOVERNING LAW AND JURISDICTION	23
	SCHEDULE 1 THE CHARGORS	24
	SCHEDULE 2 NOTICE AND ACKNOWLEDGEMENT – JUNIOR DEBT DOCUMENT	25
	Part 1 Form of notice of assignment	25
	Part 2 Form of acknowledgement of assignment	27

**THIS AGREEMENT** is made the 17 day of March 2022

## **PARTIES**

- (1) **THE PERSONS LISTED IN SCHEDULE 1** (the **Chargor**); and
- (2) **FERN TRADING GROUP LIMITED** incorporated and registered in England and Wales (registration number 06447318) whose registered office is at 6th Floor 33 Holborn, London, England, EC1N 2HT (the **Lender**).

## **BACKGROUND**

- (A) The Lender has agreed, pursuant to the Facility Agreement, to provide the Borrower with loan facilities on a secured basis.
- (B) Under this deed, the Chargor provides security to the Lender for the loan facilities made available under the Facility Agreement.

**IT IS AGREED** as follows:

## **1 DEFINITIONS AND INTERPRETATION**

### **1.1 Definitions**

Terms defined in the Facility Agreement shall, unless otherwise defined in this deed, have the same meaning in this deed. In addition, the following definitions apply in this deed:

<b>Authorisation</b>	shall have the meaning given to that expression in the Facility Agreement;
<b>Borrower</b>	Generator (Chocolate Factory) LLP (a limited liability partnership incorporated and registered in England and Wales with registration number OC385309);
<b>Debt</b>	all Liabilities payable, owing, due or incurred by the Borrower to the Chargor;
<b>Delegate</b>	any person appointed by the Lender or any Receiver pursuant to clause 12, and any person appointed as attorney of the Lender, Receiver or Delegate;
<b>Event of Default</b>	shall have the meaning given to that expression in the Facility Agreement;
<b>Facility Agreement</b>	the facility agreement dated on or around the date of this deed between, amongst others, the Borrower (as borrower) and the Lender (as lender);
<b>Junior Debt Documents</b>	any agreement evidencing Liabilities owed by the Borrower to the Chargor;
<b>Legal Reservations</b>	shall have the meaning given to that expression in the Facility Agreement;

<b>Liabilities</b>	all present or future monies, obligations or liabilities, whether actual or contingent and whether owed jointly or severally, as principal or surety and/or in any other capacity;
<b>LPA 1925</b>	the Law of Property Act 1925;
<b>Rate</b>	the interest rate chargeable, or which would be chargeable in relation to any outstanding monies due, under the Facility Agreement from time to time;
<b>Receiver</b>	a receiver, receiver and manager or administrative receiver appointed by the Lender under clause 10;
<b>Relevant Jurisdiction</b>	in relation to the Chargor: <ul style="list-style-type: none"> <li>(a) its jurisdiction of incorporation;</li> <li>(b) any jurisdiction where any asset subject to or intended to be subject to the Transaction Security to be created by it is situated;</li> <li>(c) any jurisdiction where it conducts its business; and</li> <li>(d) the jurisdiction whose laws govern the perfection of this deed;</li> </ul>
<b>Secured Assets</b>	all the assets, property and undertaking of the Chargor which are, or are expressed to be, subject to the Security created by, or pursuant to, this deed (and references to the Secured Assets shall include references to any part of them);
<b>Secured Liabilities</b>	shall have the meaning given to that expression in the Facility Agreement;
<b>Security</b>	shall have the meaning given to that expression in the Facility Agreement;
<b>Security Period</b>	the period starting on the date of this deed and ending on the date on which all the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full and no further Secured Liabilities are capable of being outstanding; and
<b>Transaction Security</b>	shall have the meaning given to that expression in the Facility Agreement.

## 1.2 Interpretation

In this deed:

- 1.2.1 clause and Schedule headings shall not affect the interpretation of this deed;
- 1.2.2 a **person** includes an individual, firm, company, corporation, partnership, unincorporated body of persons, government, state or agency of a state or any association, trust, joint venture or consortium (whether or not having separate legal personality);

- 1.2.3 unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;
- 1.2.4 unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;
- 1.2.5 references to a party shall include that party's successors, permitted assigns and permitted transferees and this deed shall be binding on, and enure to the benefit of, the parties to this deed and their respective successors, permitted assigns and permitted transferees;
- 1.2.6 a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;
- 1.2.7 a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision;
- 1.2.8 a reference to **writing** or **written** includes fax and email;
- 1.2.9 an obligation on a party not to do something includes an obligation not to allow that thing to be done;
- 1.2.10 a reference to **this deed** (or any provision of it) or to any other agreement or document referred to in this deed is a reference to this deed, that provision or such other agreement or document as amended (in each case, other than in breach of the provisions of this deed) from time to time;
- 1.2.11 unless the context otherwise requires, a reference to a clause or Schedule is to a clause of, or Schedule to, this deed;
- 1.2.12 any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;
- 1.2.13 a reference to an **amendment** includes a novation, supplement or variation (and amended shall be construed accordingly);
- 1.2.14 a reference to **assets** includes present and future properties, undertakings, revenues, rights and benefits of every description;
- 1.2.15 a reference to an **authorisation** includes an approval, authorisation, consent, exemption, filing, licence, notarisation, registration or resolution;
- 1.2.16 a reference to **continuing** in relation to an Event of Default means an Event of Default that has not been waived;
- 1.2.17 a reference to **determines** or **determined** means, unless the contrary is indicated, a determination made at the absolute discretion of the person making it;
- 1.2.18 a reference to a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation; and
- 1.2.19 Where more than one person is named as the Chargor in this Deed:

- (a) the liabilities and obligations of such persons under this Deed shall be joint and several; and
- (b) references to the "Chargor" in this Deed shall be construed as references to all such persons or any of them, as the context admits.

### 1.3 **Clawback**

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

### 1.4 **Schedules**

The Schedules form part of this deed and shall have effect as if set out in full in the body of this deed. Any reference to this deed includes the Schedules.

### 1.5 **Limited recourse**

1.1.1 Notwithstanding clause 2.1 (*Covenant to pay*), the liability of the Chargor to the Lender under clause 2.1 (*Covenant to pay*) shall be:

- (a) limited to an amount equal to that recovered by the Lender as a result of the enforcement of this deed with respect to the Secured Assets; and
- (b) satisfied only from the proceeds of sale or other disposal or realisation of the Secured Assets pursuant to this deed.

1.5.1 Nothing in this clause 1.5 (*Limited recourse*) shall limit the recourse of the Lender to the Chargor in respect of a breach of any of the provisions of clause 5 (*Representations and warranties*) or any costs, loss or liabilities arising pursuant to clause 14.1 (*Costs*) or clause 14.2 (*Indemnity*), or claims arising as a result of fraud or wilful deceit.

## 2 **COVENANT TO PAY**

### 2.1 **Covenant to pay**

The Chargor shall, on demand, pay to the Lender and discharge the Secured Liabilities when they become due.

### 2.2 **Default interest**

2.2.1 If the Chargor fails to pay any amount under this deed when it is due then such amount shall bear interest (after as well as before judgment and payable on demand) at the Rate from the due date until the date such amount is irrevocably and unconditionally paid in full to the Lender.

2.2.2 Default interest will accrue from day to day and will be compounded in the manner provided for in the Facility Agreement.



### **3 GRANT OF SECURITY**

#### **3.1 Fixed charge**

3.1.1 As a continuing security for the payment and discharge of the Secured Liabilities, the Chargor with full title guarantee charges to the Lender by way of fixed charge:

- (a) the Debt; and
- (b) (to the extent not effectively assigned under clause 3.2), all of its rights under each Junior Debt Document.

#### **3.2 Assignment**

As a continuing security for the payment and discharge of the Secured Liabilities, the Chargor with full title guarantee assigns to the Lender absolutely, subject to a proviso for reassignment on irrevocable discharge in full of the Secured Liabilities, the benefit of each Junior Debt Document, provided that nothing in this clause 3.2 shall constitute the Lender as a mortgagee in possession.

#### **3.3 Chargor entitled to exercise rights**

Until the Security constituted by this deed has become enforceable, the Chargor shall be entitled to exercise all its rights in the Secured Assets, subject to the other provisions of this deed.

### **4 LIABILITY OF THE CHARGOR**

#### **4.1 Liability not discharged**

The Chargor's liability under this deed in respect of any of the Secured Liabilities shall not be discharged, prejudiced or affected by:

- 4.1.1 any Security, guarantee, indemnity, remedy or other right held by, or available to, the Lender that is or becomes wholly or partially illegal, void or unenforceable on any ground;
- 4.1.2 the Lender renewing, determining, varying or increasing any facility or other transaction in any manner or concurring in, accepting or varying any compromise, arrangement or settlement, or omitting to claim or enforce payment from any other person; or
- 4.1.3 any other act or omission that, but for this clause 4.1, would or might reasonably be expected to have discharged, or otherwise prejudiced or affected, the liability of the Chargor.

#### **4.2 Immediate recourse**

The Chargor waives any right it may have to require the Lender to enforce any Security or other right, or claim any payment from, or otherwise proceed against, any other person before enforcing this deed against the Chargor.

### **5 REPRESENTATIONS AND WARRANTIES**

#### **5.1 Representations and warranties**

The Chargor makes the representations and warranties set out in this clause 5 to the Lender.

## **5.2 Status**

5.2.1 It is a limited liability company, duly incorporated and validly existing under the law of its jurisdiction of incorporation.

5.2.2 It has the power to own its assets and carry on its business as it is being conducted.

## **5.3 Binding obligations**

Subject to the Legal Reservations, the obligations expressed to be assumed by the Chargor in this deed are legal, valid, binding and enforceable obligations.

## **5.4 Non-conflict with other obligations**

5.4.1 The entry into and performance by the Chargor of, and the transactions contemplated by, this deed do not and will not conflict with:

- (a) any law or regulation applicable to it;
- (b) its constitutional documents; or
- (c) any agreement or instrument binding upon it or any of its assets (or constitute a default or termination event (as defined under any such agreement or instrument)).

## **5.5 Power and authority**

5.5.1 It has the power to enter into and perform, and has taken all necessary action to authorise its entry into and performance of, this deed and the transactions contemplated by this deed.

5.5.2 No limit on the Chargor's powers will be exceeded as a result of the borrowing, grant of Security or giving of guarantees or indemnities contemplated by this deed.

## **5.6 Validity and admissibility in evidence**

5.6.1 Subject to the Legal Reservations, all Authorisations required:

- (a) to enable it lawfully to enter into, exercise its rights and comply with its obligations in this deed; and
  - (b) to make this deed admissible in evidence in its Relevant Jurisdictions,
- have been obtained or effected and are in full force and effect.

5.6.2 All Authorisations necessary for the conduct of the business, trade and ordinary activities of the Chargor have been obtained or effected and are in full force and effect.

## **5.7 Governing law and enforcement**

5.7.1 Subject to the Legal Reservations, the choice of the governing law of this deed will be recognised and enforced in the Relevant Jurisdictions of the Chargor.

5.7.2 Subject to the Legal Reservations, any judgment obtained in relation to this deed in the jurisdiction of the governing law of this deed will be recognised and enforced in the Relevant Jurisdictions of the Chargor.

#### 5.8 **No filing or stamp taxes**

Under the laws of the Chargor's Relevant Jurisdictions it is not necessary that this deed be registered, filed, recorded, notarised or enrolled with any court or other authority in that jurisdiction or that any stamp, registration, notarial or similar taxes or fees be paid on or in relation to this deed or the transactions contemplated by this deed, save for registration of the Security created by this deed at Companies House under the Companies Act 2006 and payment of associated fees which registration, filing and fees will be made and paid promptly after the date of this deed.

#### 5.9 **Ownership of Secured Assets**

The Chargor is the sole legal and beneficial owner of, and has good, valid and marketable title to its Secured Assets.

#### 5.10 **Secured Assets**

5.10.1 The counterparts and instruments comprising the Junior Debt Documents, as provided to the Lender before the date of this deed, evidence all terms of the relevant Secured Assets, and there are no other documents, agreements or arrangements that may affect the operation or enforceability of any Secured Assets.

5.10.2 No Junior Debt Document is void, voidable or otherwise unenforceable.

5.10.3 The Chargor is not in breach of its obligations under any Junior Debt Document and nothing has occurred:

- (a) which is, or would constitute (with the giving of notice or passage of time or both), an event of default as defined under any Junior Debt Document; or
- (b) which would entitle a person to terminate or rescind a Junior Debt Document.

#### 5.11 **No Security**

The Secured Assets are free from any Security other than the Security created by the Transaction Security.

#### 5.12 **No adverse claims**

The Chargor has not received, or acknowledged notice of, any adverse claim by any person in respect of the Secured Assets or any interest in them.

#### 5.13 **No adverse covenants**

There are no covenants, agreements, reservations, conditions, interests, rights or other matters whatsoever that materially and adversely affect the Secured Assets.

#### 5.14 **No breach of laws**

There is no breach of any relevant applicable law or regulation that materially and adversely affects the Secured Assets.

**5.15 Avoidance of security**

No Security expressed to be created under this deed is liable to be avoided, or otherwise set aside, on the liquidation or administration of the Chargor or otherwise.

**5.16 Enforceable security**

Subject to the Legal Reservations and the Perfection Requirements, this deed constitutes and will constitute the legal, valid, binding and enforceable obligations of the Chargor, and is and will continue to be effective security over all and every part of the Secured Assets in accordance with its terms.

**5.17 No default**

No event or circumstance is outstanding which constitutes (or, with the expiry of a grace period, the giving of notice, the making of any determination or any combination of any of the foregoing, would constitute) a default or a termination event (however described) under any other agreement or instrument which is binding on the Chargor or to which any of its assets are subject which has or is reasonably likely to have a material adverse effect on its ability to perform its obligations under this deed.

**5.18 Pari passu ranking**

Subject to the Legal Reservations, the Chargor's payment obligations under this deed rank at least pari passu with the claims of all the Chargor's other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law.

**5.19 No proceeding pending or threatened**

No litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency which, if adversely determined, are reasonably likely to have a material adverse effect on its ability to perform its obligations under this deed, have (to the best of its knowledge and belief (having made due and careful enquiries)) been started or threatened against the Chargor (including but not limited to any winding-up proceedings or any other insolvency procedure).

**5.20 No prohibitions**

There is no prohibition on assignment in any Junior Debt Document and the entry into this deed by the Chargor does not, and will not, constitute a breach of any Junior Debt Document or any other policy, agreement, document, instrument or obligation binding on the Chargor or its assets.

**5.21 Times for making representations and warranties**

The Chargor makes the representations and warranties set out in clause 5.2 to clause 0 to the Lender on the date of this deed and which are deemed to be repeated on each day of the Security Period with reference to the facts and circumstances existing at the time of repetition.

**6 COVENANTS****6.1 Negative pledge and disposal restrictions**

The Chargor shall not at any time, except with the prior written consent of the Lender:

- 6.1.1 create, purport to create or permit to subsist any Security on, or in relation to, any Secured Asset other than the Transaction Security;

6.1.2 sell, assign, transfer, part with possession of or otherwise dispose of in any manner (or purport to do so) all or any part of, or any interest in, the Secured Assets; or

6.1.3 create or grant (or purport to create or grant) any interest in any Secured Asset in favour of a third party.

## **6.2 Preservation of Secured Assets**

The Chargor shall not do, or permit to be done, any act or thing that would or might reasonably be expected to depreciate, jeopardise or otherwise prejudice the Security held by the Lender or materially diminish the value of any of the Secured Assets or the effectiveness of the Security created by this deed.

## **6.3 Junior Debt Documents**

6.3.1 The Chargor shall, unless the Lender agrees otherwise in writing, comply with the terms of any Junior Debt Document.

6.3.2 The Chargor shall not, unless the Lender agrees otherwise in writing:

- (a) amend or vary or agree to any change in, or waive any requirement of or its rights under;
- (b) settle, compromise, terminate, rescind or discharge (except by performance); or
- (c) abandon, waive, dismiss, release or discharge any action, claim or proceedings against the Borrower or other person in connection with, any Junior Debt Document.

## **6.4 Rights**

The Chargor shall:

6.4.1 not, unless expressly permitted by the Finance Documents, waive any of its rights or release any person from its obligations in connection with the Secured Assets; and

6.4.2 take all necessary or appropriate action against any person (including as reasonably required by the Lender) to protect and enforce its rights, and recover money or receive other property, in connection with the Secured Assets.

## **6.5 Payment of money**

The Chargor shall, if the Lender directs, ensure that all money payable to, or other property receivable by, the Chargor under or in relation to any Secured Assets is paid or delivered to the Lender (or that the Chargor pays over or delivers such amounts to the Lender) to be applied in accordance with the Finance Documents.

## **6.6 Compliance with laws and regulations**

6.6.1 The Chargor shall not, without the Lender's prior written consent, use or permit the Secured Assets to be used in any way contrary to any applicable relevant law.

6.6.2 The Chargor shall:

- (a) comply with the requirements of any relevant applicable law and regulation relating to or affecting the Secured Assets or the use of them or any part of them; and
- (b) obtain, and promptly renew from time to time, and comply with the terms of all authorisations that are required in connection with the Secured Assets or their use or that are necessary to preserve, maintain or renew any Secured Asset.

#### **6.7 Enforcement of rights**

The Chargor shall use all reasonable endeavours to:

- 6.7.1 procure the prompt observance and performance by the Borrower of the covenants and other obligations imposed on the Borrower under a Junior Debt Document; and
- 6.7.2 enforce any rights and institute, continue or defend any proceedings relating to any of the Secured Assets that the Lender may require from time to time.

#### **6.8 Notice of misrepresentations and breaches**

The Chargor shall, promptly on becoming aware of any of the same, notify the Lender in writing of:

- 6.8.1 any representation or warranty set out in this deed that is incorrect or misleading in any material respect when made or deemed to be repeated; and
- 6.8.2 any breach of any covenant set out in this deed.

#### **6.9 Notices to be given by Chargor**

The Chargor shall:

- 6.9.1 promptly (but in any event within 5 Business Days) on the execution of a Junior Debt Document and as so requested by the Lender from time to time:
  - (a) give notice to the Borrower, in the form set out in Part 1 of Schedule 2, of the assignment of the Chargor's rights and interest in and under each Junior Debt Document pursuant to clause 3.2; and
  - (b) procure that the Borrower provides to the Lender promptly an acknowledgement of that notice, in the form set out in Part 2 of Schedule 2, of the Lender's interest.

#### **6.10 Information**

The Chargor shall:

- 6.10.1 give the Lender such information concerning the Secured Assets as the Lender may require from time to time; and
- 6.10.2 promptly notify the Lender in writing of any action, claim, notice or demand made by or against it in connection with all or any part of a Secured Asset or of any fact, matter or circumstance which may, with the passage of time, give rise to such an action, claim, notice or demand, together with, in each case, the Chargor's proposals for

settling, liquidating, compounding or contesting any such action, claim, notice or demand and shall, subject to the Lender's prior approval, implement those proposals at its own expense.

## **7 POWERS OF THE LENDER**

### **7.1 Power to remedy**

- 7.1.1 The Lender shall be entitled (but shall not be obliged) to remedy, at any time, a breach by the Chargor of any of its obligations contained in this deed.
- 7.1.2 The Chargor irrevocably authorises the Lender and its agents to do all things that are necessary for that purpose.
- 7.1.3 Any monies expended by the Lender in remedying a breach by the Chargor of its obligations contained in this deed, shall be reimbursed by the Chargor to the Lender on a full indemnity basis and shall carry interest in accordance with clause 14.1.

### **7.2 Exercise of rights**

- 7.2.1 The rights of the Lender under clause 7.1 are without prejudice to any other rights of the Lender under this deed.
- 7.2.2 The exercise of any rights of the Lender under this deed shall not make the Lender liable to account as a mortgagee in possession.

### **7.3 Lender has Receiver's powers**

To the extent permitted by law, any right, power or discretion conferred by this deed (either expressly or impliedly) or by law on a Receiver may, after the Security constituted by this deed has become enforceable, be exercised by the Lender in relation to any of the Secured Assets whether or not it has taken possession of any Secured Assets and without first appointing a Receiver or notwithstanding the appointment of a Receiver.

### **7.4 Conversion of currency**

- 7.4.1 For the purpose of, or pending the discharge of, any of the Secured Liabilities, the Lender may convert any monies received, recovered or realised by it under this deed (including the proceeds of any previous conversion under this clause 7.4) from their existing currencies of denomination into any other currencies of denomination that the Lender may think fit.
- 7.4.2 Any such conversion shall be effected at Barclays Bank plc's then prevailing spot selling rate of exchange for such other currency against the existing currency.
- 7.4.3 Each reference in this clause 7.4 to a currency extends to funds of that currency and, for the avoidance of doubt, funds of one currency may be converted into different funds of the same currency.

### **7.5 New accounts**

- 7.5.1 If the Lender receives, or is deemed to have received, notice of any subsequent Security, or other interest, affecting all or part of the Secured Assets, the Lender may open a new account for the Chargor in the Lender's books. Without prejudice to the Lender's right to combine accounts, no money paid to the credit of the Chargor in

any such new account shall be appropriated towards, or have the effect of discharging, any part of the Secured Liabilities.

- 7.5.2 If the Lender does not open a new account immediately on receipt of the notice, or deemed notice, under clause 7.5.1, then, unless the Lender gives express written notice to the contrary to the Chargor, all payments made by the Chargor to the Lender shall be treated as having been credited to a new account of the Chargor and not as having been applied in reduction of the Secured Liabilities, as from the time of receipt, or deemed receipt, of the relevant notice by the Lender.

## **7.6 Indulgence**

The Lender may, at its discretion, grant time or other indulgence or make any other arrangement, variation or release with any person not being a party to this deed (whether or not any such person is jointly liable with the Chargor) in respect of any of the Secured Liabilities or of any other Security for them without prejudice either to this deed or to the liability of the Chargor for the Secured Liabilities.

## **8 WHEN SECURITY BECOMES ENFORCEABLE**

### **8.1 Security becomes enforceable on Event of Default**

The Security constituted by this deed shall become immediately enforceable upon the occurrence of an Event of Default which is continuing.

### **8.2 Discretion**

After the Security constituted by this deed has become enforceable, the Lender may, in its absolute discretion, enforce all or any part of that Security at the times, in the manner and on the terms it thinks fit, and take possession of and hold or dispose of all or any part of the Secured Assets.

## **9 ENFORCEMENT OF SECURITY**

### **9.1 Enforcement powers**

- 9.1.1 For the purposes of all powers implied by statute, the Secured Liabilities are deemed to have become due and payable on the date of this deed.
- 9.1.2 The power of sale and other powers conferred by section 101 of the LPA 1925 (as varied or extended by this deed) shall be immediately exercisable at any time after the Security constituted by this deed has become enforceable under clause 8.1.
- 9.1.3 Section 103 of the LPA 1925 does not apply to the Security constituted by this deed.

### **9.2 Prior Security**

- 9.2.1 At any time after the Security constituted by this deed has become enforceable, or after any powers conferred by any Security having priority to this deed shall have become exercisable, the Lender may:
- (a) redeem any prior Security over any Secured Asset;
  - (b) procure the transfer of that Security to itself; and



- (c) settle and pass the accounts of the holder of any prior Security (and any accounts so settled and passed shall, in the absence of any manifest error, be conclusive and binding on the Chargor).

9.2.2 The Chargor shall pay to the Lender promptly on demand all principal, interest, costs, charges and expenses of, and incidental to, any such redemption or transfer, and such amounts shall be secured by this deed as part of the Secured Liabilities.

### 9.3 **Protection of third parties**

No purchaser, mortgagee or other person dealing with the Lender, any Receiver or any Delegate shall be concerned to enquire:

- 9.3.1 whether any of the Secured Liabilities have become due or payable, or remain unpaid or undischarged;
- 9.3.2 whether any power the Lender, a Receiver or Delegate is purporting to exercise has become exercisable or is being properly exercised; or
- 9.3.3 how any money paid to the Lender, any Receiver or any Delegate is to be applied.

### 9.4 **Privileges**

Each Receiver and the Lender is entitled to all the rights, powers, privileges and immunities conferred by the LPA 1925 on mortgagees and receivers.

### 9.5 **Exclusion of liability**

Neither the Lender, nor any Receiver or any Delegate shall be liable to the Chargor or any other person:

- 9.5.1 (by reason of entering into possession of a Secured Asset, or for any other reason) to account as mortgagee in possession in respect of all or any of the Secured Assets;
- 9.5.2 for any loss on realisation, or for any act, default or omission for which a mortgagee in possession might be liable; or
- 9.5.3 for any expense, loss or liability:
  - (a) relating to the enforcement of, or any failure to enforce or delay in enforcing, any Security constituted by or pursuant to this deed;
  - (b) relating to an exercise of rights, or by any failure to exercise or delay in exercising, rights under this deed; or
  - (c) arising in any other way in connection with this deed,

except that this does not exempt the Lender or any Receiver or Delegate from liability for losses caused by the gross negligence, fraud or wilful misconduct of the Lender or the relevant Receiver or Delegate.

### 9.6 **Conclusive discharge to purchasers**

The receipt of the Lender, or any Receiver or Delegate shall be a conclusive discharge to a purchaser and, in making any sale or other disposal of any of the Secured Assets or in making any acquisition in the exercise of their respective powers, the Lender, and every Receiver and

Delegate may do so for any consideration, in any manner and on any terms that the Lender, Receiver or Delegate thinks fit.

## 10 RECEIVER

### 10.1 Appointment

At any time after the Security constituted by this deed has become enforceable, or at the request of the Chargor, the Lender may, without further notice, appoint by way of deed, or otherwise in writing, any one or more persons to be a Receiver of all or any part of the Secured Assets.

### 10.2 Removal

The Lender may, without further notice (subject to section 45 of the Insolvency Act 1986 in the case of an administrative receiver), from time to time, by way of deed, or otherwise in writing, remove any Receiver appointed by it and may, whenever it thinks fit, appoint a new Receiver in the place of any Receiver whose appointment may for any reason have terminated.

### 10.3 Remuneration

The Lender may fix the remuneration of any Receiver appointed by it without the restrictions contained in section 109 of the LPA 1925, and the remuneration of the Receiver shall be a debt secured by this deed, to the extent not otherwise discharged.

### 10.4 Power of appointment additional to statutory powers

The power to appoint a Receiver conferred by this deed shall be in addition to all statutory and other powers of the Lender under the Insolvency Act 1986, the LPA 1925 or otherwise, and shall be exercisable without the restrictions contained in sections 103 and 109 of the LPA 1925 or otherwise.

### 10.5 Power of appointment exercisable despite prior appointments

The power to appoint a Receiver (whether conferred by this deed or by statute) shall be, and remain, exercisable by the Lender despite any prior appointment in respect of all or any part of the Secured Assets.

### 10.6 Agent of the Chargor

Any Receiver appointed by the Lender under this deed shall be the agent of the Chargor and the Chargor shall be solely responsible for the contracts, engagements, acts, omissions, defaults, losses and remuneration of that Receiver and for liabilities incurred by that Receiver. The agency of each Receiver shall continue until the Chargor goes into liquidation and after that, the Receiver shall act as principal and shall not become the agent of the Lender.

## 11 POWERS OF RECEIVER

### 11.1 General

11.1.1 Any Receiver appointed by the Lender under this deed shall, in addition to the powers conferred on it by statute, have the powers set out in clause 11.2 to clause 11.13.

11.1.2 A Receiver has all the rights, powers and discretions conferred on a receiver (or a receiver and manager) under the LPA 1925, and shall have those rights, powers and

discretions conferred on an administrative receiver under the Insolvency Act 1986 whether it is an administrative receiver or not.

11.1.3 If there is more than one Receiver holding office at the same time, each Receiver may (unless the document appointing it states otherwise) exercise all of the powers conferred on a Receiver under this deed individually and to the exclusion of any other Receiver.

11.1.4 Any exercise by a Receiver of any of the powers given by this clause 11 may be on behalf of the Chargor, the directors of the Chargor or itself.

## **11.2 Employ personnel and advisers**

A Receiver may provide services and employ or engage any managers, officers, servants, contractors, workmen, agents, other personnel and professional advisers on any terms, and subject to any conditions, that it thinks fit.

## **11.3 Remuneration**

A Receiver may charge and receive any sum by way of remuneration (in addition to all costs, charges and expenses incurred by it) that the Lender may prescribe or agree with it.

## **11.4 Realise Secured Assets**

A Receiver may collect and get in the Secured Assets or any part of them in respect of which it is appointed, and make any demands and take any proceedings as may seem expedient for that purpose, and take possession of the Secured Assets with like rights.

## **11.5 Dispose of Secured Assets**

A Receiver may sell, exchange, convert into money and assign all or any of the Secured Assets in respect of which it is appointed in any manner (including, without limitation, by public auction or private sale) and generally on any terms and conditions as it thinks fit. Any sale may be for any consideration that the Receiver thinks fit and a Receiver may promote, or concur in promoting, a company to purchase the Secured Assets to be sold.

## **11.6 Valid receipts**

A Receiver may give a valid receipt for all monies and execute all assurances and things that may be proper for realising any of the Secured Assets.

## **11.7 Make settlements**

A Receiver may settle, adjust, refer to arbitration, compromise and arrange any claim, account, dispute, question or demand with or by any person who claims to be a creditor of the Chargor or relating in any way to any Secured Asset.

## **11.8 Bring proceedings**

A Receiver may bring, prosecute, enforce, defend and abandon all actions, suits and proceedings in relation to any of the Secured Assets as it thinks fit.

**11.9 Borrow**

A Receiver may, for whatever purpose it thinks fit, raise and borrow money either unsecured or on the security of all or any of the Secured Assets in respect of which it is appointed on any terms that it thinks fit (including, if the Lender consents, terms under which that security ranks in priority to this deed).

**11.10 Redeem prior Security**

A Receiver may redeem any prior Security and settle and pass the accounts to which the Security relates. Any accounts so settled and passed shall be, in the absence of any manifest error, conclusive and binding on the Chargor, and the monies so paid shall be deemed to be an expense properly incurred by the Receiver.

**11.11 Delegation**

A Receiver may delegate its powers in accordance with this deed.

**11.12 Absolute beneficial owner**

A Receiver may, in relation to any of the Secured Assets, exercise all powers, authorisations and rights the Receiver would be capable of exercising, and do all those acts and things, as an absolute beneficial owner could exercise or do in the ownership and management of the Secured Assets or any part of the Secured Assets.

**11.13 Incidental powers**

A Receiver may do any other acts and things that it:

11.13.1 may consider necessary for realising any of the Secured Assets;

11.13.2 may consider incidental or conducive to any of the rights or powers conferred on a Receiver under or by virtue of this deed or law; or

11.13.3 lawfully may or can do as agent for the Chargor.

**12 DELEGATION****12.1 Delegation**

The Lender or any Receiver may delegate (either generally or specifically) by power of attorney or in any other manner to any person any right, power, authority or discretion conferred on it by this deed (including the power of attorney granted under clause 16.1).

**12.2 Terms**

The Lender and each Receiver may make a delegation on the terms and conditions (including the power to sub-delegate) that it thinks fit.

**12.3 Liability**

Neither the Lender nor any Receiver shall be in any way liable or responsible to the Chargor for any loss or liability of any nature arising from any act, default, omission or misconduct on the part of any Delegate.

### 13 APPLICATION OF PROCEEDS

#### 13.1 Order of application of proceeds

All monies received or recovered by the Lender, a Receiver or a Delegate under this deed or in connection with the realisation or enforcement of all or part of the security constituted by this deed, shall (subject to the claims of any person having prior rights and by way of variation of the LPA 1925) be applied in the following order of priority (but without prejudice to the Lender's rights to recover any shortfall from the Chargor):

- 13.1.1 in or towards payment of all costs, liabilities, charges and expenses incurred by or on behalf of the Lender (and any Receiver, Delegate, attorney or agent appointed by it) under or in connection with this deed, and of all remuneration due to any Receiver under or in connection with this deed;
- 13.1.2 in or towards payment of the Secured Liabilities in any order and manner that the Lender determines; and
- 13.1.3 in payment of the surplus (if any) to the Chargor or other person entitled to it.

#### 13.2 Appropriation

Neither the Lender, any Receiver nor any Delegate shall be bound (whether by virtue of section 109(8) of the LPA 1925, which is varied accordingly, or otherwise) to pay or appropriate any receipt or payment first towards interest rather than principal or otherwise in any particular order between any of the Secured Liabilities.

#### 13.3 Suspense account

All monies received by the Lender, a Receiver or a Delegate under this deed:

- 13.3.1 may, at the discretion of the Lender, Receiver or Delegate, be credited to a suspense account;
- 13.3.2 shall bear interest, if any, at the rate agreed in writing between the Lender and the Chargor; and
- 13.3.3 may be held in that account for so long as the Lender, Receiver or Delegate thinks fit.

### 14 COSTS AND INDEMNITY

#### 14.1 Costs

The Chargor shall, promptly on demand, pay to, or reimburse, the Lender and any Receiver, on a full indemnity basis, all costs, charges, expenses, taxes and liabilities of any kind (including, without limitation, legal, printing and out-of-pocket expenses) incurred by the Lender, any Receiver or any Delegate in connection with:

- 14.1.1 the negotiation, preparation, execution and delivery of this deed;
- 14.1.2 the Secured Assets;
- 14.1.3 taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) any of the Lender's, a Receiver's or a Delegate's rights under this deed;

- 14.1.4 any amendment, extension, waiver, consent or suspension of rights (or any proposal for any of these) under or in connection with this deed;
- 14.1.5 any release of any Security constituted by this deed; or
- 14.1.6 taking proceedings for, or recovering, any of the Secured Liabilities,

together with interest, which shall accrue and be payable (without the need for any demand for payment being made) from the date on which the relevant cost, charge, expense, tax or liability arose until full discharge of that cost, charge, expense, tax or liability (whether before or after judgment) at the Rate.

## 14.2 Indemnity

The Chargor shall, within three Business Days of demand, indemnify the Lender, each Receiver and each Delegate, and their respective employees and agents against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by any of them arising out of or in connection with:

- 14.2.1 the exercise or purported exercise of any of the rights, powers, authorities or discretions vested in them under this deed or by law in respect of the Secured Assets;
- 14.2.2 taking, holding, protecting, perfecting, preserving, releasing or enforcing (or attempting to do so) the Security constituted by this deed; or
- 14.2.3 any default or delay by the Chargor in performing any of its obligations under this deed.

Any past or present employee or agent may enforce the terms of this clause 14.2 subject to and in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999.

## 15 FURTHER ASSURANCE

- 15.1 The Chargor shall promptly, at its own expense, take whatever action the Lender or any Receiver may reasonably require for:

- 15.1.1 creating, perfecting or protecting the Security intended to be created by this deed;
- 15.1.2 facilitating the realisation of any Secured Asset; or
- 15.1.3 facilitating the exercise of any right, power, authority or discretion exercisable by the Lender or any Receiver in respect of any Secured Asset,

including, without limitation the execution of any transfer, conveyance, assignment or assurance of all or any of the assets forming part of (or intended to form part of) the Secured Assets (whether to the Lender or to its nominee) and the giving of any notice, order or direction and the making of any registration.

## 16 **POWER OF ATTORNEY**

### 16.1 **Appointment of attorneys**

By way of security, the Chargor irrevocably appoints the Lender, every Receiver and every Delegate separately to be the attorney of the Chargor and, in its name, on its behalf and as its act and deed, to execute any documents and do any acts and things that:

16.1.1 the Chargor is required to execute and do under this deed; or

16.1.2 any attorney deems proper in exercising any of the rights, powers, authorities and discretions conferred by this deed or by law on the Lender, any Receiver or any Delegate.

### 16.2 **Ratification of acts of attorneys**

The Chargor ratifies and confirms, and agrees to ratify and confirm, anything that any of its attorneys may do in the proper and lawful exercise, or purported exercise, of all or any of the rights, powers, authorities and discretions referred to in clause 16.1.

## 17 **RELEASE**

17.1 Subject to clause 24.3, at the end of the Security Period, the Lender shall, at the request and cost of the Chargor, take whatever action is necessary to:

17.1.1 release the Secured Assets from the Security constituted by this deed; and

17.1.2 reassign the Secured Assets to the Chargor.

## 18 **ASSIGNMENT AND TRANSFER**

### 18.1 **Assignment by Lender**

18.1.1 At any time, without the consent of the Chargor, the Lender may assign any of its rights or transfer any of its rights and obligations under this deed.

18.1.2 The Lender may disclose to any actual or proposed assignee or transferee any information in its possession that relates to the Chargor, the Secured Assets and this deed that the Lender considers appropriate.

### 18.2 **Assignment by Chargor**

The Chargor may not assign any of its rights, or transfer any of its rights or obligations, under this deed or enter into any transaction which would result in any of those rights or obligations passing to another person.

## 19 **SET-OFF**

### 19.1 **Lender's right of set-off**

The Lender may at any time set off any liability of the Chargor to the Lender against any liability of the Lender to the Chargor, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this deed. If the liabilities to be set off are expressed in different currencies, the Lender may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the Lender of its rights under this clause

19 shall not limit or affect any other rights or remedies available to it under this deed or otherwise.

**19.2 No obligation to set off**

The Lender is not obliged to exercise its rights under clause 19.1. If it does exercise those rights it must promptly notify the Chargor of the set-off that has been made.

**19.3 Exclusion of Chargor's right of set-off**

All payments made by the Chargor to the Lender under this deed shall be made in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

**20 AMENDMENTS, WAIVERS AND CONSENTS**

**20.1 Amendments**

No amendment of this deed shall be effective unless it is in writing and signed by, or on behalf of, each party (or its authorised representative).

**20.2 Waivers and consents**

20.2.1 A waiver of any right or remedy under this deed or by law, or any consent given under this deed, is only effective if given in writing by the waiving or consenting party and shall not be deemed a waiver of any subsequent right or remedy. It only applies to the circumstances in relation to which it is given and shall not prevent the party giving it from subsequently relying on the relevant provision.

20.2.2 A failure by the Lender to exercise, or delay by it in exercising, any right or remedy provided under this deed or by law shall not constitute a waiver of that or any other right or remedy, prevent or restrict any further exercise of that or any other right or remedy or constitute an election to affirm this deed. No single or partial exercise of any right or remedy provided under this deed or by law shall prevent or restrict the further exercise of that or any other right or remedy. No election to affirm this deed by the Lender shall be effective unless it is in writing.

**20.3 Rights and remedies**

The rights and remedies provided under this deed are cumulative and are in addition to, and not exclusive of, any rights and remedies provided by law.

**21 PARTIAL INVALIDITY**

**21.1 Partial invalidity**

If, at any time, any provision of this deed is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability 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 COUNTERPARTS

### 22.1 Counterparts

22.1.1 This deed may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute one deed.

22.1.2 No counterpart shall be effective until each party has executed and delivered at least one counterpart.

## 23 THIRD PARTY RIGHTS

### 23.1 Third party rights

23.1.1 Save for the Secured Parties and except as expressly provided elsewhere in this deed, a person who is not a party to this deed has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce, or enjoy the benefit of, any term of this deed.

23.1.2 Notwithstanding any term of this deed, the consent of any person who is not a party to this deed is not required to rescind or vary this deed at any time.

## 24 FURTHER PROVISIONS

### 24.1 Independent security

The Security constituted by this deed shall be in addition to, and independent of, any other Security or guarantee that the Lender may hold for any of the Secured Liabilities at any time. No prior Security held by the Lender over the whole or any part of the Secured Assets shall merge in the Security created by this deed.

### 24.2 Continuing security

The Security constituted by this deed shall remain in full force and effect as a continuing security for the Secured Liabilities, despite any settlement of account, or intermediate payment, or other matter or thing, unless and until the Lender discharges this deed in writing.

### 24.3 Discharge conditional

Any release, discharge or settlement between the Chargor and the Lender shall be conditional on no payment or Security received by the Lender in respect of the Secured Liabilities being avoided, reduced, set aside or ordered to be refunded under any law relating to insolvency, bankruptcy, winding up, administration, receivership or for any other reason. Despite any such release, discharge or settlement:

24.3.1 the Lender or its nominee may retain this deed and the Security created by or under it, including all certificates and documents relating to the whole or any part of the Secured Assets, for any period that the Lender deems necessary to provide the Lender with security against any such avoidance, reduction or order for refund; and

24.3.2 the Lender may recover the value or amount of such security or payment from the Chargor subsequently as if the release, discharge or settlement had not occurred.

#### 24.4 **Certificates**

Any certification or determination by the Lender of a rate or amount under this deed is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

#### 24.5 **Consolidation**

The restriction on the right of consolidation contained in section 93 of the LPA 1925 shall not apply to this deed.

### 25 **NOTICES**

#### 25.1 **Delivery**

Any notice or other communication given to a party under or in connection with this deed shall be:

25.1.1 in writing;

25.1.2 delivered by hand, by pre-paid first-class post or other next working day delivery service or sent by email; and

25.1.3 sent to:

(a) the Chargor at:

Address: 483 Green Lanes, London, England, N13 4BS

Email address: aturnbull@wellesley.co.uk

Attention: Andrew Turnbull

(b) the Lender at:

Address: 6th Floor, 33 Holborn, London, EC1N 2HT

Email address: Matt.Foley@octopus-realestate.com

Attention: Matt Foley

or to any other address or email address notified in writing by one party to the other from time to time.

#### 25.2 **Receipt by Chargor**

Any notice or other communication that the Lender gives to the Chargor shall be deemed to have been received:

25.2.1 if delivered by hand, at the time it is left at the relevant address;

25.2.2 if posted by pre-paid first class post or other next working day delivery service, on the second Business Day after posting; and

25.2.3 if sent by email, when received in legible form.

A notice or other communication given as described in clause 25.2.1 or clause 25.2.3 on a day that is not a Business Day, or after normal business hours, in the place it is received shall be deemed to have been received on the next Business Day.

**25.3 Receipt by Lender**

Any notice or other communication given to the Lender shall be deemed to have been received only on actual receipt.

**25.4 Service of proceedings**

Subject to clause 26.3, this clause 25 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

**26 GOVERNING LAW AND JURISDICTION**

**26.1 Governing law**

This deed and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

**26.2 Jurisdiction**

Each party irrevocably agrees that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction over any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this deed or its subject matter or formation. Nothing in this clause shall limit the right of the Lender to take proceedings against the Chargor in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

**26.3 Other service**

The Chargor irrevocably consents to any process in any legal action or proceedings under clause 26.2 being served on it in accordance with the provisions of this deed relating to service of notices. Nothing contained in this deed shall affect the right to serve process in any other manner permitted by law.

This document has been executed as a deed and is delivered and takes effect on the day it is dated.

**SCHEDULE 1  
THE CHARGORS**

<b>Name</b>	<b>Registration number</b>	<b>Jurisdiction of incorporation</b>
Wellesley Finance Limited	08331511	England and Wales
Wellesley Group Limited	09811856	England and Wales

**SCHEDULE 2**  
**NOTICE AND ACKNOWLEDGEMENT – JUNIOR DEBT DOCUMENT**

**Part 1**  
**Form of notice of assignment**

*[On the letterhead of the Chargor]*

[NAME OF COUNTERPARTY]  
[ADDRESS LINE 1]  
[ADDRESS LINE 2]  
[POSTCODE]  
[DATE]

Dear [NAME OF ADDRESSEE],

**Subordinated Creditors' Security Agreement (Security Agreement) dated [DATE] between [CHARGOR] and [LENDER]**

We refer to the [DESCRIBE RELEVANT AGREEMENT] (Contract).

This letter constitutes notice to you that under the Security Agreement we have assigned to [LENDER] (Lender) absolutely, subject to a proviso for reassignment, all our rights, title and interest and benefit in and to the Contract.

We irrevocably instruct and authorise you to:

- Comply with the terms of any written instructions received by you from the Lender relating to the Contract, without notice or reference to, or further authority from, us and without enquiring as to the justification or the validity of those instructions.
- Hold all sums from time to time due and payable by you to us under the Contract to the order of the Lender.
- Pay, or release, all monies to which we are entitled under the Contract to the Lender, or to such persons as the Lender may direct.
- Disclose information in relation to the Contract to the Lender on request by the Lender.

Neither the Security Agreement nor this notice releases, discharges or otherwise affects your liability and obligations in respect of the Contract.

Subject to the foregoing, you may continue to deal with us in relation to the Contract until you receive written notice to the contrary from the Lender. Thereafter, we will cease to have any right to deal with you in relation to the Contract and you must deal only with the Lender.

Please note that we have agreed that we will not amend or waive any provision of or terminate the Contract without the prior written consent of the Lender.

The instructions in this notice may only be revoked or amended with the prior written consent of the Lender.

Please confirm that you agree to the terms of this notice, and to act in accordance with its provisions, by sending the attached acknowledgement to the Lender at [ADDRESS OF LENDER], with a copy to us.

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

Yours faithfully,

.....

[NAME OF CHARGOR]

**Part 2**  
**Form of acknowledgement of assignment**

*[On the letterhead of the Counterparty]*

[NAME OF LENDER]  
[ADDRESS LINE 1]  
[ADDRESS LINE 2]  
[POSTCODE]  
[DATE]

Dear [NAME OF ADDRESSEE],

**Subordinated Creditors' Security Agreement (Security Agreement) dated [DATE] between [CHARGOR] and [LENDER]**

We confirm receipt from [CHARGOR] (Chargor) of a notice (Notice) dated [DATE] of an absolute assignment, subject to a proviso for reassignment, of all the Chargor's rights under [DESCRIBE RELEVANT AGREEMENT] (Contract).

Terms defined in the Notice shall have the same meaning when used in this acknowledgement.

We confirm that:

- We accept the instructions and authorisations contained in the Notice and agree to comply with the Notice.
- There has been no amendment, waiver or release of any rights or interests in the Contract since the date of the Contract.
- We will not repudiate, rescind or cancel the Contract, treat it as avoided in whole or in part nor treat it as expired without giving the Lender at least 30 days' prior written notice.
- We have not, as at the date of this acknowledgement, received notice that the Chargor has assigned its rights under the Contract to a third party, or created any other interest (whether by way of security or otherwise) in the Contract in favour of a third party.
- The Lender will not in any circumstances have any liability in relation to the Contract.
- The Contract shall not be rendered void, voidable or unenforceable by reason of any non-disclosure by the Lender.

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

Yours faithfully,

.....

[COUNTERPARTY]

Execution pages

Chargor

EXECUTED as a DEED by **WELLESLEY )**  
**FINANCE LIMITED** acting by a director in the )  
presence of:

[Redacted Signature]

8124681BA5914A9...

Director

Signature of Witness:

[Redacted Signature]

961A8D3D16D3439...

Name:

Lizanne Shaw

Address

[Redacted Address]

Occupation:

Nanny

EXECUTED as a DEED by **WELLESLEY )**  
**GROUP LIMITED** acting by a director in the )  
presence of:

[Redacted Signature]

8124681BA5914A9...

Director

Signature of Witness:

[Redacted Signature]

961A8D3D16D3439...

Name:

Lizanne Shaw

Address

[Redacted Address]

Occupation:

Nanny



**Lender**

EXECUTED as a DEED by **FERN TRADING )**  
**GROUP LIMITED** acting by an authorised )  
attorney in the presence of:

.....  
Authorised attorney

Signature of Witness:

Name:

Address

Occupation:

.....

.....

.....

.....

.....

I certify that save for material redacted pursuant to section 859G of the Companies Act 2006, this copy is a correct copy of the electronic original instrument.

Signed: *Charles Russell Speechlys LLP*

Dated: 21 March 2022



DATED 17 March 2022

(1) **THE PERSONS LISTED IN SCHEDULE 1**  
(as Chargors)

and

(2) **FERN TRADING GROUP LIMITED**  
(as Lender)

---

**SUBORDINATED CREDITORS' SECURITY AGREEMENT**

---

## **CONTENTS**

1	DEFINITIONS AND INTERPRETATION	1
2	COVENANT TO PAY	4
3	GRANT OF SECURITY	5
4	LIABILITY OF THE CHARGOR	5
5	REPRESENTATIONS AND WARRANTIES	5
6	COVENANTS	8
7	POWERS OF THE LENDER	11
8	WHEN SECURITY BECOMES ENFORCEABLE	12
9	ENFORCEMENT OF SECURITY	12
10	RECEIVER	14
11	POWERS OF RECEIVER	14
12	DELEGATION	16
13	APPLICATION OF PROCEEDS	17
14	COSTS AND INDEMNITY	17
15	FURTHER ASSURANCE	18
16	POWER OF ATTORNEY	19
17	RELEASE	19
18	ASSIGNMENT AND TRANSFER	19
19	SET-OFF	19
20	AMENDMENTS, WAIVERS AND CONSENTS	20
21	PARTIAL INVALIDITY	20
22	COUNTERPARTS	21
23	THIRD PARTY RIGHTS	21
24	FURTHER PROVISIONS	21
25	NOTICES	22
26	GOVERNING LAW AND JURISDICTION	23
	SCHEDULE 1 THE CHARGORS	24
	SCHEDULE 2 NOTICE AND ACKNOWLEDGEMENT – JUNIOR DEBT DOCUMENT	25
	Part 1 Form of notice of assignment	25
	Part 2 Form of acknowledgement of assignment	27

17 March

**THIS AGREEMENT** is made the \_\_\_\_\_ day of \_\_\_\_\_ 2022**PARTIES**

- (1) **THE PERSONS LISTED IN SCHEDULE 1** (the **Chargor**); and
- (2) **FERN TRADING GROUP LIMITED** incorporated and registered in England and Wales (registration number 06447318) whose registered office is at 6th Floor 33 Holborn, London, England, EC1N 2HT (the **Lender**).

**BACKGROUND**

- (A) The Lender has agreed, pursuant to the Facility Agreement, to provide the Borrower with loan facilities on a secured basis.
- (B) Under this deed, the Chargor provides security to the Lender for the loan facilities made available under the Facility Agreement.

**IT IS AGREED** as follows:**1 DEFINITIONS AND INTERPRETATION****1.1 Definitions**

Terms defined in the Facility Agreement shall, unless otherwise defined in this deed, have the same meaning in this deed. In addition, the following definitions apply in this deed:

<b>Authorisation</b>	shall have the meaning given to that expression in the Facility Agreement;
<b>Borrower</b>	Generator (Chocolate Factory) LLP (a limited liability partnership incorporated and registered in England and Wales with registration number OC385309);
<b>Debt</b>	all Liabilities payable, owing, due or incurred by the Borrower to the Chargor;
<b>Delegate</b>	any person appointed by the Lender or any Receiver pursuant to clause 12, and any person appointed as attorney of the Lender, Receiver or Delegate;
<b>Event of Default</b>	shall have the meaning given to that expression in the Facility Agreement;
<b>Facility Agreement</b>	the facility agreement dated on or around the date of this deed between, amongst others, the Borrower (as borrower) and the Lender (as lender);
<b>Junior Debt Documents</b>	any agreement evidencing Liabilities owed by the Borrower to the Chargor;
<b>Legal Reservations</b>	shall have the meaning given to that expression in the Facility Agreement;

<b>Liabilities</b>	all present or future monies, obligations or liabilities, whether actual or contingent and whether owed jointly or severally, as principal or surety and/or in any other capacity;
<b>LPA 1925</b>	the Law of Property Act 1925;
<b>Rate</b>	the interest rate chargeable, or which would be chargeable in relation to any outstanding monies due, under the Facility Agreement from time to time;
<b>Receiver</b>	a receiver, receiver and manager or administrative receiver appointed by the Lender under clause 10;
<b>Relevant Jurisdiction</b>	in relation to the Chargor: <ul style="list-style-type: none"> <li>(a) its jurisdiction of incorporation;</li> <li>(b) any jurisdiction where any asset subject to or intended to be subject to the Transaction Security to be created by it is situated;</li> <li>(c) any jurisdiction where it conducts its business; and</li> <li>(d) the jurisdiction whose laws govern the perfection of this deed;</li> </ul>
<b>Secured Assets</b>	all the assets, property and undertaking of the Chargor which are, or are expressed to be, subject to the Security created by, or pursuant to, this deed (and references to the Secured Assets shall include references to any part of them);
<b>Secured Liabilities</b>	shall have the meaning given to that expression in the Facility Agreement;
<b>Security</b>	shall have the meaning given to that expression in the Facility Agreement;
<b>Security Period</b>	the period starting on the date of this deed and ending on the date on which all the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full and no further Secured Liabilities are capable of being outstanding; and
<b>Transaction Security</b>	shall have the meaning given to that expression in the Facility Agreement.

## 1.2 Interpretation

In this deed:

- 1.2.1 clause and Schedule headings shall not affect the interpretation of this deed;
- 1.2.2 a **person** includes an individual, firm, company, corporation, partnership, unincorporated body of persons, government, state or agency of a state or any association, trust, joint venture or consortium (whether or not having separate legal personality);

- 1.2.3 unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;
- 1.2.4 unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;
- 1.2.5 references to a party shall include that party's successors, permitted assigns and permitted transferees and this deed shall be binding on, and enure to the benefit of, the parties to this deed and their respective successors, permitted assigns and permitted transferees;
- 1.2.6 a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;
- 1.2.7 a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision;
- 1.2.8 a reference to **writing** or **written** includes fax and email;
- 1.2.9 an obligation on a party not to do something includes an obligation not to allow that thing to be done;
- 1.2.10 a reference to **this deed** (or any provision of it) or to any other agreement or document referred to in this deed is a reference to this deed, that provision or such other agreement or document as amended (in each case, other than in breach of the provisions of this deed) from time to time;
- 1.2.11 unless the context otherwise requires, a reference to a clause or Schedule is to a clause of, or Schedule to, this deed;
- 1.2.12 any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;
- 1.2.13 a reference to an **amendment** includes a novation, supplement or variation (and amended shall be construed accordingly);
- 1.2.14 a reference to **assets** includes present and future properties, undertakings, revenues, rights and benefits of every description;
- 1.2.15 a reference to an **authorisation** includes an approval, authorisation, consent, exemption, filing, licence, notarisation, registration or resolution;
- 1.2.16 a reference to **continuing** in relation to an Event of Default means an Event of Default that has not been waived;
- 1.2.17 a reference to **determines** or **determined** means, unless the contrary is indicated, a determination made at the absolute discretion of the person making it;
- 1.2.18 a reference to a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation; and
- 1.2.19 Where more than one person is named as the Chargor in this Deed:

- (a) the liabilities and obligations of such persons under this Deed shall be joint and several; and
- (b) references to the "Chargor" in this Deed shall be construed as references to all such persons or any of them, as the context admits.

### 1.3 **Clawback**

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

### 1.4 **Schedules**

The Schedules form part of this deed and shall have effect as if set out in full in the body of this deed. Any reference to this deed includes the Schedules.

### 1.5 **Limited recourse**

1.1.1 Notwithstanding clause 2.1 (*Covenant to pay*), the liability of the Chargor to the Lender under clause 2.1 (*Covenant to pay*) shall be:

- (a) limited to an amount equal to that recovered by the Lender as a result of the enforcement of this deed with respect to the Secured Assets; and
- (b) satisfied only from the proceeds of sale or other disposal or realisation of the Secured Assets pursuant to this deed.

1.5.1 Nothing in this clause 1.5 (*Limited recourse*) shall limit the recourse of the Lender to the Chargor in respect of a breach of any of the provisions of clause 5 (*Representations and warranties*) or any costs, loss or liabilities arising pursuant to clause 14.1 (*Costs*) or clause 14.2 (*Indemnity*), or claims arising as a result of fraud or wilful deceit.

## 2 **COVENANT TO PAY**

### 2.1 **Covenant to pay**

The Chargor shall, on demand, pay to the Lender and discharge the Secured Liabilities when they become due.

### 2.2 **Default interest**

- 2.2.1 If the Chargor fails to pay any amount under this deed when it is due then such amount shall bear interest (after as well as before judgment and payable on demand) at the Rate from the due date until the date such amount is irrevocably and unconditionally paid in full to the Lender.
- 2.2.2 Default interest will accrue from day to day and will be compounded in the manner provided for in the Facility Agreement.

### **3 GRANT OF SECURITY**

#### **3.1 Fixed charge**

3.1.1 As a continuing security for the payment and discharge of the Secured Liabilities, the Chargor with full title guarantee charges to the Lender by way of fixed charge:

- (a) the Debt; and
- (b) (to the extent not effectively assigned under clause 3.2), all of its rights under each Junior Debt Document.

#### **3.2 Assignment**

As a continuing security for the payment and discharge of the Secured Liabilities, the Chargor with full title guarantee assigns to the Lender absolutely, subject to a proviso for reassignment on irrevocable discharge in full of the Secured Liabilities, the benefit of each Junior Debt Document, provided that nothing in this clause 3.2 shall constitute the Lender as a mortgagee in possession.

#### **3.3 Chargor entitled to exercise rights**

Until the Security constituted by this deed has become enforceable, the Chargor shall be entitled to exercise all its rights in the Secured Assets, subject to the other provisions of this deed.

### **4 LIABILITY OF THE CHARGOR**

#### **4.1 Liability not discharged**

The Chargor's liability under this deed in respect of any of the Secured Liabilities shall not be discharged, prejudiced or affected by:

- 4.1.1 any Security, guarantee, indemnity, remedy or other right held by, or available to, the Lender that is or becomes wholly or partially illegal, void or unenforceable on any ground;
- 4.1.2 the Lender renewing, determining, varying or increasing any facility or other transaction in any manner or concurring in, accepting or varying any compromise, arrangement or settlement, or omitting to claim or enforce payment from any other person; or
- 4.1.3 any other act or omission that, but for this clause 4.1, would or might reasonably be expected to have discharged, or otherwise prejudiced or affected, the liability of the Chargor.

#### **4.2 Immediate recourse**

The Chargor waives any right it may have to require the Lender to enforce any Security or other right, or claim any payment from, or otherwise proceed against, any other person before enforcing this deed against the Chargor.

### **5 REPRESENTATIONS AND WARRANTIES**

#### **5.1 Representations and warranties**

The Chargor makes the representations and warranties set out in this clause 5 to the Lender.



## **5.2 Status**

5.2.1 It is a limited liability company, duly incorporated and validly existing under the law of its jurisdiction of incorporation.

5.2.2 It has the power to own its assets and carry on its business as it is being conducted.

## **5.3 Binding obligations**

Subject to the Legal Reservations, the obligations expressed to be assumed by the Chargor in this deed are legal, valid, binding and enforceable obligations.

## **5.4 Non-conflict with other obligations**

5.4.1 The entry into and performance by the Chargor of, and the transactions contemplated by, this deed do not and will not conflict with:

- (a) any law or regulation applicable to it;
- (b) its constitutional documents; or
- (c) any agreement or instrument binding upon it or any of its assets (or constitute a default or termination event (as defined under any such agreement or instrument)).

## **5.5 Power and authority**

5.5.1 It has the power to enter into and perform, and has taken all necessary action to authorise its entry into and performance of, this deed and the transactions contemplated by this deed.

5.5.2 No limit on the Chargor's powers will be exceeded as a result of the borrowing, grant of Security or giving of guarantees or indemnities contemplated by this deed.

## **5.6 Validity and admissibility in evidence**

5.6.1 Subject to the Legal Reservations, all Authorisations required:

- (a) to enable it lawfully to enter into, exercise its rights and comply with its obligations in this deed; and
  - (b) to make this deed admissible in evidence in its Relevant Jurisdictions,
- have been obtained or effected and are in full force and effect.

5.6.2 All Authorisations necessary for the conduct of the business, trade and ordinary activities of the Chargor have been obtained or effected and are in full force and effect.

## **5.7 Governing law and enforcement**

5.7.1 Subject to the Legal Reservations, the choice of the governing law of this deed will be recognised and enforced in the Relevant Jurisdictions of the Chargor.

5.7.2 Subject to the Legal Reservations, any judgment obtained in relation to this deed in the jurisdiction of the governing law of this deed will be recognised and enforced in the Relevant Jurisdictions of the Chargor.

**5.8 No filing or stamp taxes**

Under the laws of the Chargor's Relevant Jurisdictions it is not necessary that this deed be registered, filed, recorded, notarised or enrolled with any court or other authority in that jurisdiction or that any stamp, registration, notarial or similar taxes or fees be paid on or in relation to this deed or the transactions contemplated by this deed, save for registration of the Security created by this deed at Companies House under the Companies Act 2006 and payment of associated fees which registration, filing and fees will be made and paid promptly after the date of this deed.

**5.9 Ownership of Secured Assets**

The Chargor is the sole legal and beneficial owner of, and has good, valid and marketable title to its Secured Assets.

**5.10 Secured Assets**

5.10.1 The counterparts and instruments comprising the Junior Debt Documents, as provided to the Lender before the date of this deed, evidence all terms of the relevant Secured Assets, and there are no other documents, agreements or arrangements that may affect the operation or enforceability of any Secured Assets.

5.10.2 No Junior Debt Document is void, voidable or otherwise unenforceable.

5.10.3 The Chargor is not in breach of its obligations under any Junior Debt Document and nothing has occurred:

- (a) which is, or would constitute (with the giving of notice or passage of time or both), an event of default as defined under any Junior Debt Document; or
- (b) which would entitle a person to terminate or rescind a Junior Debt Document.

**5.11 No Security**

The Secured Assets are free from any Security other than the Security created by the Transaction Security.

**5.12 No adverse claims**

The Chargor has not received, or acknowledged notice of, any adverse claim by any person in respect of the Secured Assets or any interest in them.

**5.13 No adverse covenants**

There are no covenants, agreements, reservations, conditions, interests, rights or other matters whatsoever that materially and adversely affect the Secured Assets.

**5.14 No breach of laws**

There is no breach of any relevant applicable law or regulation that materially and adversely affects the Secured Assets.

**5.15 Avoidance of security**

No Security expressed to be created under this deed is liable to be avoided, or otherwise set aside, on the liquidation or administration of the Chargor or otherwise.

**5.16 Enforceable security**

Subject to the Legal Reservations and the Perfection Requirements, this deed constitutes and will constitute the legal, valid, binding and enforceable obligations of the Chargor, and is and will continue to be effective security over all and every part of the Secured Assets in accordance with its terms.

**5.17 No default**

No event or circumstance is outstanding which constitutes (or, with the expiry of a grace period, the giving of notice, the making of any determination or any combination of any of the foregoing, would constitute) a default or a termination event (however described) under any other agreement or instrument which is binding on the Chargor or to which any of its assets are subject which has or is reasonably likely to have a material adverse effect on its ability to perform its obligations under this deed.

**5.18 Pari passu ranking**

Subject to the Legal Reservations, the Chargor's payment obligations under this deed rank at least pari passu with the claims of all the Chargor's other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law.

**5.19 No proceeding pending or threatened**

No litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency which, if adversely determined, are reasonably likely to have a material adverse effect on its ability to perform its obligations under this deed, have (to the best of its knowledge and belief (having made due and careful enquiries)) been started or threatened against the Chargor (including but not limited to any winding-up proceedings or any other insolvency procedure).

**5.20 No prohibitions**

There is no prohibition on assignment in any Junior Debt Document and the entry into this deed by the Chargor does not, and will not, constitute a breach of any Junior Debt Document or any other policy, agreement, document, instrument or obligation binding on the Chargor or its assets.

**5.21 Times for making representations and warranties**

The Chargor makes the representations and warranties set out in clause 5.2 to clause 0 to the Lender on the date of this deed and which are deemed to be repeated on each day of the Security Period with reference to the facts and circumstances existing at the time of repetition.

**6 COVENANTS****6.1 Negative pledge and disposal restrictions**

The Chargor shall not at any time, except with the prior written consent of the Lender:

- 6.1.1 create, purport to create or permit to subsist any Security on, or in relation to, any Secured Asset other than the Transaction Security;

6.1.2 sell, assign, transfer, part with possession of or otherwise dispose of in any manner (or purport to do so) all or any part of, or any interest in, the Secured Assets; or

6.1.3 create or grant (or purport to create or grant) any interest in any Secured Asset in favour of a third party.

## **6.2 Preservation of Secured Assets**

The Chargor shall not do, or permit to be done, any act or thing that would or might reasonably be expected to depreciate, jeopardise or otherwise prejudice the Security held by the Lender or materially diminish the value of any of the Secured Assets or the effectiveness of the Security created by this deed.

## **6.3 Junior Debt Documents**

6.3.1 The Chargor shall, unless the Lender agrees otherwise in writing, comply with the terms of any Junior Debt Document.

6.3.2 The Chargor shall not, unless the Lender agrees otherwise in writing:

- (a) amend or vary or agree to any change in, or waive any requirement of or its rights under;
- (b) settle, compromise, terminate, rescind or discharge (except by performance); or
- (c) abandon, waive, dismiss, release or discharge any action, claim or proceedings against the Borrower or other person in connection with,  
  
any Junior Debt Document.

## **6.4 Rights**

The Chargor shall:

6.4.1 not, unless expressly permitted by the Finance Documents, waive any of its rights or release any person from its obligations in connection with the Secured Assets; and

6.4.2 take all necessary or appropriate action against any person (including as reasonably required by the Lender) to protect and enforce its rights, and recover money or receive other property, in connection with the Secured Assets.

## **6.5 Payment of money**

The Chargor shall, if the Lender directs, ensure that all money payable to, or other property receivable by, the Chargor under or in relation to any Secured Assets is paid or delivered to the Lender (or that the Chargor pays over or delivers such amounts to the Lender) to be applied in accordance with the Finance Documents.

## **6.6 Compliance with laws and regulations**

6.6.1 The Chargor shall not, without the Lender's prior written consent, use or permit the Secured Assets to be used in any way contrary to any applicable relevant law.

6.6.2 The Chargor shall:

- (a) comply with the requirements of any relevant applicable law and regulation relating to or affecting the Secured Assets or the use of them or any part of them; and
- (b) obtain, and promptly renew from time to time, and comply with the terms of all authorisations that are required in connection with the Secured Assets or their use or that are necessary to preserve, maintain or renew any Secured Asset.

#### **6.7 Enforcement of rights**

The Chargor shall use all reasonable endeavours to:

- 6.7.1 procure the prompt observance and performance by the Borrower of the covenants and other obligations imposed on the Borrower under a Junior Debt Document; and
- 6.7.2 enforce any rights and institute, continue or defend any proceedings relating to any of the Secured Assets that the Lender may require from time to time.

#### **6.8 Notice of misrepresentations and breaches**

The Chargor shall, promptly on becoming aware of any of the same, notify the Lender in writing of:

- 6.8.1 any representation or warranty set out in this deed that is incorrect or misleading in any material respect when made or deemed to be repeated; and
- 6.8.2 any breach of any covenant set out in this deed.

#### **6.9 Notices to be given by Chargor**

The Chargor shall:

- 6.9.1 promptly (but in any event within 5 Business Days) on the execution of a Junior Debt Document and as so requested by the Lender from time to time:
  - (a) give notice to the Borrower, in the form set out in Part 1 of Schedule 2, of the assignment of the Chargor's rights and interest in and under each Junior Debt Document pursuant to clause 3.2; and
  - (b) procure that the Borrower provides to the Lender promptly an acknowledgement of that notice, in the form set out in Part 2 of Schedule 2, of the Lender's interest.

#### **6.10 Information**

The Chargor shall:

- 6.10.1 give the Lender such information concerning the Secured Assets as the Lender may require from time to time; and
- 6.10.2 promptly notify the Lender in writing of any action, claim, notice or demand made by or against it in connection with all or any part of a Secured Asset or of any fact, matter or circumstance which may, with the passage of time, give rise to such an action, claim, notice or demand, together with, in each case, the Chargor's proposals for

settling, liquidating, compounding or contesting any such action, claim, notice or demand and shall, subject to the Lender's prior approval, implement those proposals at its own expense.

## **7 POWERS OF THE LENDER**

### **7.1 Power to remedy**

- 7.1.1 The Lender shall be entitled (but shall not be obliged) to remedy, at any time, a breach by the Chargor of any of its obligations contained in this deed.
- 7.1.2 The Chargor irrevocably authorises the Lender and its agents to do all things that are necessary for that purpose.
- 7.1.3 Any monies expended by the Lender in remedying a breach by the Chargor of its obligations contained in this deed, shall be reimbursed by the Chargor to the Lender on a full indemnity basis and shall carry interest in accordance with clause 14.1.

### **7.2 Exercise of rights**

- 7.2.1 The rights of the Lender under clause 7.1 are without prejudice to any other rights of the Lender under this deed.
- 7.2.2 The exercise of any rights of the Lender under this deed shall not make the Lender liable to account as a mortgagee in possession.

### **7.3 Lender has Receiver's powers**

To the extent permitted by law, any right, power or discretion conferred by this deed (either expressly or impliedly) or by law on a Receiver may, after the Security constituted by this deed has become enforceable, be exercised by the Lender in relation to any of the Secured Assets whether or not it has taken possession of any Secured Assets and without first appointing a Receiver or notwithstanding the appointment of a Receiver.

### **7.4 Conversion of currency**

- 7.4.1 For the purpose of, or pending the discharge of, any of the Secured Liabilities, the Lender may convert any monies received, recovered or realised by it under this deed (including the proceeds of any previous conversion under this clause 7.4) from their existing currencies of denomination into any other currencies of denomination that the Lender may think fit.
- 7.4.2 Any such conversion shall be effected at Barclays Bank plc's then prevailing spot selling rate of exchange for such other currency against the existing currency.
- 7.4.3 Each reference in this clause 7.4 to a currency extends to funds of that currency and, for the avoidance of doubt, funds of one currency may be converted into different funds of the same currency.

### **7.5 New accounts**

- 7.5.1 If the Lender receives, or is deemed to have received, notice of any subsequent Security, or other interest, affecting all or part of the Secured Assets, the Lender may open a new account for the Chargor in the Lender's books. Without prejudice to the Lender's right to combine accounts, no money paid to the credit of the Chargor in

any such new account shall be appropriated towards, or have the effect of discharging, any part of the Secured Liabilities.

- 7.5.2 If the Lender does not open a new account immediately on receipt of the notice, or deemed notice, under clause 7.5.1, then, unless the Lender gives express written notice to the contrary to the Chargor, all payments made by the Chargor to the Lender shall be treated as having been credited to a new account of the Chargor and not as having been applied in reduction of the Secured Liabilities, as from the time of receipt, or deemed receipt, of the relevant notice by the Lender.

## **7.6 Indulgence**

The Lender may, at its discretion, grant time or other indulgence or make any other arrangement, variation or release with any person not being a party to this deed (whether or not any such person is jointly liable with the Chargor) in respect of any of the Secured Liabilities or of any other Security for them without prejudice either to this deed or to the liability of the Chargor for the Secured Liabilities.

## **8 WHEN SECURITY BECOMES ENFORCEABLE**

### **8.1 Security becomes enforceable on Event of Default**

The Security constituted by this deed shall become immediately enforceable upon the occurrence of an Event of Default which is continuing.

### **8.2 Discretion**

After the Security constituted by this deed has become enforceable, the Lender may, in its absolute discretion, enforce all or any part of that Security at the times, in the manner and on the terms it thinks fit, and take possession of and hold or dispose of all or any part of the Secured Assets.

## **9 ENFORCEMENT OF SECURITY**

### **9.1 Enforcement powers**

- 9.1.1 For the purposes of all powers implied by statute, the Secured Liabilities are deemed to have become due and payable on the date of this deed.
- 9.1.2 The power of sale and other powers conferred by section 101 of the LPA 1925 (as varied or extended by this deed) shall be immediately exercisable at any time after the Security constituted by this deed has become enforceable under clause 8.1.
- 9.1.3 Section 103 of the LPA 1925 does not apply to the Security constituted by this deed.

### **9.2 Prior Security**

- 9.2.1 At any time after the Security constituted by this deed has become enforceable, or after any powers conferred by any Security having priority to this deed shall have become exercisable, the Lender may:
- (a) redeem any prior Security over any Secured Asset;
  - (b) procure the transfer of that Security to itself; and

- (c) settle and pass the accounts of the holder of any prior Security (and any accounts so settled and passed shall, in the absence of any manifest error, be conclusive and binding on the Chargor).

9.2.2 The Chargor shall pay to the Lender promptly on demand all principal, interest, costs, charges and expenses of, and incidental to, any such redemption or transfer, and such amounts shall be secured by this deed as part of the Secured Liabilities.

### 9.3 **Protection of third parties**

No purchaser, mortgagee or other person dealing with the Lender, any Receiver or any Delegate shall be concerned to enquire:

- 9.3.1 whether any of the Secured Liabilities have become due or payable, or remain unpaid or undischarged;
- 9.3.2 whether any power the Lender, a Receiver or Delegate is purporting to exercise has become exercisable or is being properly exercised; or
- 9.3.3 how any money paid to the Lender, any Receiver or any Delegate is to be applied.

### 9.4 **Privileges**

Each Receiver and the Lender is entitled to all the rights, powers, privileges and immunities conferred by the LPA 1925 on mortgagees and receivers.

### 9.5 **Exclusion of liability**

Neither the Lender, nor any Receiver or any Delegate shall be liable to the Chargor or any other person:

- 9.5.1 (by reason of entering into possession of a Secured Asset, or for any other reason) to account as mortgagee in possession in respect of all or any of the Secured Assets;
- 9.5.2 for any loss on realisation, or for any act, default or omission for which a mortgagee in possession might be liable; or
- 9.5.3 for any expense, loss or liability:
  - (a) relating to the enforcement of, or any failure to enforce or delay in enforcing, any Security constituted by or pursuant to this deed;
  - (b) relating to an exercise of rights, or by any failure to exercise or delay in exercising, rights under this deed; or
  - (c) arising in any other way in connection with this deed,

except that this does not exempt the Lender or any Receiver or Delegate from liability for losses caused by the gross negligence, fraud or wilful misconduct of the Lender or the relevant Receiver or Delegate.

### 9.6 **Conclusive discharge to purchasers**

The receipt of the Lender, or any Receiver or Delegate shall be a conclusive discharge to a purchaser and, in making any sale or other disposal of any of the Secured Assets or in making any acquisition in the exercise of their respective powers, the Lender, and every Receiver and



Delegate may do so for any consideration, in any manner and on any terms that the Lender, Receiver or Delegate thinks fit.

## 10 **RECEIVER**

### 10.1 **Appointment**

At any time after the Security constituted by this deed has become enforceable, or at the request of the Chargor, the Lender may, without further notice, appoint by way of deed, or otherwise in writing, any one or more persons to be a Receiver of all or any part of the Secured Assets.

### 10.2 **Removal**

The Lender may, without further notice (subject to section 45 of the Insolvency Act 1986 in the case of an administrative receiver), from time to time, by way of deed, or otherwise in writing, remove any Receiver appointed by it and may, whenever it thinks fit, appoint a new Receiver in the place of any Receiver whose appointment may for any reason have terminated.

### 10.3 **Remuneration**

The Lender may fix the remuneration of any Receiver appointed by it without the restrictions contained in section 109 of the LPA 1925, and the remuneration of the Receiver shall be a debt secured by this deed, to the extent not otherwise discharged.

### 10.4 **Power of appointment additional to statutory powers**

The power to appoint a Receiver conferred by this deed shall be in addition to all statutory and other powers of the Lender under the Insolvency Act 1986, the LPA 1925 or otherwise, and shall be exercisable without the restrictions contained in sections 103 and 109 of the LPA 1925 or otherwise.

### 10.5 **Power of appointment exercisable despite prior appointments**

The power to appoint a Receiver (whether conferred by this deed or by statute) shall be, and remain, exercisable by the Lender despite any prior appointment in respect of all or any part of the Secured Assets.

### 10.6 **Agent of the Chargor**

Any Receiver appointed by the Lender under this deed shall be the agent of the Chargor and the Chargor shall be solely responsible for the contracts, engagements, acts, omissions, defaults, losses and remuneration of that Receiver and for liabilities incurred by that Receiver. The agency of each Receiver shall continue until the Chargor goes into liquidation and after that, the Receiver shall act as principal and shall not become the agent of the Lender.

## 11 **POWERS OF RECEIVER**

### 11.1 **General**

11.1.1 Any Receiver appointed by the Lender under this deed shall, in addition to the powers conferred on it by statute, have the powers set out in clause 11.2 to clause 11.13.

11.1.2 A Receiver has all the rights, powers and discretions conferred on a receiver (or a receiver and manager) under the LPA 1925, and shall have those rights, powers and

discretions conferred on an administrative receiver under the Insolvency Act 1986 whether it is an administrative receiver or not.

11.1.3 If there is more than one Receiver holding office at the same time, each Receiver may (unless the document appointing it states otherwise) exercise all of the powers conferred on a Receiver under this deed individually and to the exclusion of any other Receiver.

11.1.4 Any exercise by a Receiver of any of the powers given by this clause 11 may be on behalf of the Chargor, the directors of the Chargor or itself.

## **11.2 Employ personnel and advisers**

A Receiver may provide services and employ or engage any managers, officers, servants, contractors, workmen, agents, other personnel and professional advisers on any terms, and subject to any conditions, that it thinks fit.

## **11.3 Remuneration**

A Receiver may charge and receive any sum by way of remuneration (in addition to all costs, charges and expenses incurred by it) that the Lender may prescribe or agree with it.

## **11.4 Realise Secured Assets**

A Receiver may collect and get in the Secured Assets or any part of them in respect of which it is appointed, and make any demands and take any proceedings as may seem expedient for that purpose, and take possession of the Secured Assets with like rights.

## **11.5 Dispose of Secured Assets**

A Receiver may sell, exchange, convert into money and assign all or any of the Secured Assets in respect of which it is appointed in any manner (including, without limitation, by public auction or private sale) and generally on any terms and conditions as it thinks fit. Any sale may be for any consideration that the Receiver thinks fit and a Receiver may promote, or concur in promoting, a company to purchase the Secured Assets to be sold.

## **11.6 Valid receipts**

A Receiver may give a valid receipt for all monies and execute all assurances and things that may be proper for realising any of the Secured Assets.

## **11.7 Make settlements**

A Receiver may settle, adjust, refer to arbitration, compromise and arrange any claim, account, dispute, question or demand with or by any person who claims to be a creditor of the Chargor or relating in any way to any Secured Asset.

## **11.8 Bring proceedings**

A Receiver may bring, prosecute, enforce, defend and abandon all actions, suits and proceedings in relation to any of the Secured Assets as it thinks fit.

## 11.9 **Borrow**

A Receiver may, for whatever purpose it thinks fit, raise and borrow money either unsecured or on the security of all or any of the Secured Assets in respect of which it is appointed on any terms that it thinks fit (including, if the Lender consents, terms under which that security ranks in priority to this deed).

## 11.10 **Redeem prior Security**

A Receiver may redeem any prior Security and settle and pass the accounts to which the Security relates. Any accounts so settled and passed shall be, in the absence of any manifest error, conclusive and binding on the Chargor, and the monies so paid shall be deemed to be an expense properly incurred by the Receiver.

## 11.11 **Delegation**

A Receiver may delegate its powers in accordance with this deed.

## 11.12 **Absolute beneficial owner**

A Receiver may, in relation to any of the Secured Assets, exercise all powers, authorisations and rights the Receiver would be capable of exercising, and do all those acts and things, as an absolute beneficial owner could exercise or do in the ownership and management of the Secured Assets or any part of the Secured Assets.

## 11.13 **Incidental powers**

A Receiver may do any other acts and things that it:

11.13.1 may consider necessary for realising any of the Secured Assets;

11.13.2 may consider incidental or conducive to any of the rights or powers conferred on a Receiver under or by virtue of this deed or law; or

11.13.3 lawfully may or can do as agent for the Chargor.

## 12 **DELEGATION**

### 12.1 **Delegation**

The Lender or any Receiver may delegate (either generally or specifically) by power of attorney or in any other manner to any person any right, power, authority or discretion conferred on it by this deed (including the power of attorney granted under clause 16.1).

### 12.2 **Terms**

The Lender and each Receiver may make a delegation on the terms and conditions (including the power to sub-delegate) that it thinks fit.

### 12.3 **Liability**

Neither the Lender nor any Receiver shall be in any way liable or responsible to the Chargor for any loss or liability of any nature arising from any act, default, omission or misconduct on the part of any Delegate.

### 13 APPLICATION OF PROCEEDS

#### 13.1 Order of application of proceeds

All monies received or recovered by the Lender, a Receiver or a Delegate under this deed or in connection with the realisation or enforcement of all or part of the security constituted by this deed, shall (subject to the claims of any person having prior rights and by way of variation of the LPA 1925) be applied in the following order of priority (but without prejudice to the Lender's rights to recover any shortfall from the Chargor):

- 13.1.1 in or towards payment of all costs, liabilities, charges and expenses incurred by or on behalf of the Lender (and any Receiver, Delegate, attorney or agent appointed by it) under or in connection with this deed, and of all remuneration due to any Receiver under or in connection with this deed;
- 13.1.2 in or towards payment of the Secured Liabilities in any order and manner that the Lender determines; and
- 13.1.3 in payment of the surplus (if any) to the Chargor or other person entitled to it.

#### 13.2 Appropriation

Neither the Lender, any Receiver nor any Delegate shall be bound (whether by virtue of section 109(8) of the LPA 1925, which is varied accordingly, or otherwise) to pay or appropriate any receipt or payment first towards interest rather than principal or otherwise in any particular order between any of the Secured Liabilities.

#### 13.3 Suspense account

All monies received by the Lender, a Receiver or a Delegate under this deed:

- 13.3.1 may, at the discretion of the Lender, Receiver or Delegate, be credited to a suspense account;
- 13.3.2 shall bear interest, if any, at the rate agreed in writing between the Lender and the Chargor; and
- 13.3.3 may be held in that account for so long as the Lender, Receiver or Delegate thinks fit.

### 14 COSTS AND INDEMNITY

#### 14.1 Costs

The Chargor shall, promptly on demand, pay to, or reimburse, the Lender and any Receiver, on a full indemnity basis, all costs, charges, expenses, taxes and liabilities of any kind (including, without limitation, legal, printing and out-of-pocket expenses) incurred by the Lender, any Receiver or any Delegate in connection with:

- 14.1.1 the negotiation, preparation, execution and delivery of this deed;
- 14.1.2 the Secured Assets;
- 14.1.3 taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) any of the Lender's, a Receiver's or a Delegate's rights under this deed;

- 14.1.4 any amendment, extension, waiver, consent or suspension of rights (or any proposal for any of these) under or in connection with this deed;
- 14.1.5 any release of any Security constituted by this deed; or
- 14.1.6 taking proceedings for, or recovering, any of the Secured Liabilities,

together with interest, which shall accrue and be payable (without the need for any demand for payment being made) from the date on which the relevant cost, charge, expense, tax or liability arose until full discharge of that cost, charge, expense, tax or liability (whether before or after judgment) at the Rate.

## 14.2 Indemnity

The Chargor shall, within three Business Days of demand, indemnify the Lender, each Receiver and each Delegate, and their respective employees and agents against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by any of them arising out of or in connection with:

- 14.2.1 the exercise or purported exercise of any of the rights, powers, authorities or discretions vested in them under this deed or by law in respect of the Secured Assets;
- 14.2.2 taking, holding, protecting, perfecting, preserving, releasing or enforcing (or attempting to do so) the Security constituted by this deed; or
- 14.2.3 any default or delay by the Chargor in performing any of its obligations under this deed.

Any past or present employee or agent may enforce the terms of this clause 14.2 subject to and in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999.

## 15 FURTHER ASSURANCE

- 15.1 The Chargor shall promptly, at its own expense, take whatever action the Lender or any Receiver may reasonably require for:

- 15.1.1 creating, perfecting or protecting the Security intended to be created by this deed;
- 15.1.2 facilitating the realisation of any Secured Asset; or
- 15.1.3 facilitating the exercise of any right, power, authority or discretion exercisable by the Lender or any Receiver in respect of any Secured Asset,

including, without limitation the execution of any transfer, conveyance, assignment or assurance of all or any of the assets forming part of (or intended to form part of) the Secured Assets (whether to the Lender or to its nominee) and the giving of any notice, order or direction and the making of any registration.

## 16 **POWER OF ATTORNEY**

### 16.1 **Appointment of attorneys**

By way of security, the Chargor irrevocably appoints the Lender, every Receiver and every Delegate separately to be the attorney of the Chargor and, in its name, on its behalf and as its act and deed, to execute any documents and do any acts and things that:

16.1.1 the Chargor is required to execute and do under this deed; or

16.1.2 any attorney deems proper in exercising any of the rights, powers, authorities and discretions conferred by this deed or by law on the Lender, any Receiver or any Delegate.

### 16.2 **Ratification of acts of attorneys**

The Chargor ratifies and confirms, and agrees to ratify and confirm, anything that any of its attorneys may do in the proper and lawful exercise, or purported exercise, of all or any of the rights, powers, authorities and discretions referred to in clause 16.1.

## 17 **RELEASE**

17.1 Subject to clause 24.3, at the end of the Security Period, the Lender shall, at the request and cost of the Chargor, take whatever action is necessary to:

17.1.1 release the Secured Assets from the Security constituted by this deed; and

17.1.2 reassign the Secured Assets to the Chargor.

## 18 **ASSIGNMENT AND TRANSFER**

### 18.1 **Assignment by Lender**

18.1.1 At any time, without the consent of the Chargor, the Lender may assign any of its rights or transfer any of its rights and obligations under this deed.

18.1.2 The Lender may disclose to any actual or proposed assignee or transferee any information in its possession that relates to the Chargor, the Secured Assets and this deed that the Lender considers appropriate.

### 18.2 **Assignment by Chargor**

The Chargor may not assign any of its rights, or transfer any of its rights or obligations, under this deed or enter into any transaction which would result in any of those rights or obligations passing to another person.

## 19 **SET-OFF**

### 19.1 **Lender's right of set-off**

The Lender may at any time set off any liability of the Chargor to the Lender against any liability of the Lender to the Chargor, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this deed. If the liabilities to be set off are expressed in different currencies, the Lender may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the Lender of its rights under this clause

19 shall not limit or affect any other rights or remedies available to it under this deed or otherwise.

**19.2 No obligation to set off**

The Lender is not obliged to exercise its rights under clause 19.1. If it does exercise those rights it must promptly notify the Chargor of the set-off that has been made.

**19.3 Exclusion of Chargor's right of set-off**

All payments made by the Chargor to the Lender under this deed shall be made in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

**20 AMENDMENTS, WAIVERS AND CONSENTS**

**20.1 Amendments**

No amendment of this deed shall be effective unless it is in writing and signed by, or on behalf of, each party (or its authorised representative).

**20.2 Waivers and consents**

20.2.1 A waiver of any right or remedy under this deed or by law, or any consent given under this deed, is only effective if given in writing by the waiving or consenting party and shall not be deemed a waiver of any subsequent right or remedy. It only applies to the circumstances in relation to which it is given and shall not prevent the party giving it from subsequently relying on the relevant provision.

20.2.2 A failure by the Lender to exercise, or delay by it in exercising, any right or remedy provided under this deed or by law shall not constitute a waiver of that or any other right or remedy, prevent or restrict any further exercise of that or any other right or remedy or constitute an election to affirm this deed. No single or partial exercise of any right or remedy provided under this deed or by law shall prevent or restrict the further exercise of that or any other right or remedy. No election to affirm this deed by the Lender shall be effective unless it is in writing.

**20.3 Rights and remedies**

The rights and remedies provided under this deed are cumulative and are in addition to, and not exclusive of, any rights and remedies provided by law.

**21 PARTIAL INVALIDITY**

**21.1 Partial invalidity**

If, at any time, any provision of this deed is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability 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 COUNTERPARTS

### 22.1 Counterparts

22.1.1 This deed may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute one deed.

22.1.2 No counterpart shall be effective until each party has executed and delivered at least one counterpart.

## 23 THIRD PARTY RIGHTS

### 23.1 Third party rights

23.1.1 Save for the Secured Parties and except as expressly provided elsewhere in this deed, a person who is not a party to this deed has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce, or enjoy the benefit of, any term of this deed.

23.1.2 Notwithstanding any term of this deed, the consent of any person who is not a party to this deed is not required to rescind or vary this deed at any time.

## 24 FURTHER PROVISIONS

### 24.1 Independent security

The Security constituted by this deed shall be in addition to, and independent of, any other Security or guarantee that the Lender may hold for any of the Secured Liabilities at any time. No prior Security held by the Lender over the whole or any part of the Secured Assets shall merge in the Security created by this deed.

### 24.2 Continuing security

The Security constituted by this deed shall remain in full force and effect as a continuing security for the Secured Liabilities, despite any settlement of account, or intermediate payment, or other matter or thing, unless and until the Lender discharges this deed in writing.

### 24.3 Discharge conditional

Any release, discharge or settlement between the Chargor and the Lender shall be conditional on no payment or Security received by the Lender in respect of the Secured Liabilities being avoided, reduced, set aside or ordered to be refunded under any law relating to insolvency, bankruptcy, winding up, administration, receivership or for any other reason. Despite any such release, discharge or settlement:

24.3.1 the Lender or its nominee may retain this deed and the Security created by or under it, including all certificates and documents relating to the whole or any part of the Secured Assets, for any period that the Lender deems necessary to provide the Lender with security against any such avoidance, reduction or order for refund; and

24.3.2 the Lender may recover the value or amount of such security or payment from the Chargor subsequently as if the release, discharge or settlement had not occurred.



#### 24.4 **Certificates**

Any certification or determination by the Lender of a rate or amount under this deed is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

#### 24.5 **Consolidation**

The restriction on the right of consolidation contained in section 93 of the LPA 1925 shall not apply to this deed.

### 25 **NOTICES**

#### 25.1 **Delivery**

Any notice or other communication given to a party under or in connection with this deed shall be:

25.1.1 in writing;

25.1.2 delivered by hand, by pre-paid first-class post or other next working day delivery service or sent by email; and

25.1.3 sent to:

(a) the Chargor at:

Address: 483 Green Lanes, London, England, N13 4BS

Email address: aturnbull@wellesley.co.uk

Attention: Andrew Turnbull

(b) the Lender at:

Address: 6th Floor, 33 Holborn, London, EC1N 2HT

Email address: Matt.Foley@octopus-realestate.com

Attention: Matt Foley

or to any other address or email address notified in writing by one party to the other from time to time.

#### 25.2 **Receipt by Chargor**

Any notice or other communication that the Lender gives to the Chargor shall be deemed to have been received:

25.2.1 if delivered by hand, at the time it is left at the relevant address;

25.2.2 if posted by pre-paid first class post or other next working day delivery service, on the second Business Day after posting; and

25.2.3 if sent by email, when received in legible form.

A notice or other communication given as described in clause 25.2.1 or clause 25.2.3 on a day that is not a Business Day, or after normal business hours, in the place it is received shall be deemed to have been received on the next Business Day.

**25.3 Receipt by Lender**

Any notice or other communication given to the Lender shall be deemed to have been received only on actual receipt.

**25.4 Service of proceedings**

Subject to clause 26.3, this clause 25 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

**26 GOVERNING LAW AND JURISDICTION**

**26.1 Governing law**

This deed and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

**26.2 Jurisdiction**

Each party irrevocably agrees that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction over any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this deed or its subject matter or formation. Nothing in this clause shall limit the right of the Lender to take proceedings against the Chargor in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

**26.3 Other service**

The Chargor irrevocably consents to any process in any legal action or proceedings under clause 26.2 being served on it in accordance with the provisions of this deed relating to service of notices. Nothing contained in this deed shall affect the right to serve process in any other manner permitted by law.

This document has been executed as a deed and is delivered and takes effect on the day it is dated.

**SCHEDULE 1  
THE CHARGORS**

<b>Name</b>	<b>Registration number</b>	<b>Jurisdiction of incorporation</b>
Wellesley Finance Limited	08331511	England and Wales
Wellesley Group Limited	09811856	England and Wales

**SCHEDULE 2**  
**NOTICE AND ACKNOWLEDGEMENT – JUNIOR DEBT DOCUMENT**

**Part 1**  
**Form of notice of assignment**

*[On the letterhead of the Chargor]*

[NAME OF COUNTERPARTY]  
[ADDRESS LINE 1]  
[ADDRESS LINE 2]  
[POSTCODE]  
[DATE]

Dear [NAME OF ADDRESSEE],

**Subordinated Creditors' Security Agreement (Security Agreement) dated [DATE] between [CHARGOR] and [LENDER]**

We refer to the [DESCRIBE RELEVANT AGREEMENT] (Contract).

This letter constitutes notice to you that under the Security Agreement we have assigned to [LENDER] (Lender) absolutely, subject to a proviso for reassignment, all our rights, title and interest and benefit in and to the Contract.

We irrevocably instruct and authorise you to:

- Comply with the terms of any written instructions received by you from the Lender relating to the Contract, without notice or reference to, or further authority from, us and without enquiring as to the justification or the validity of those instructions.
- Hold all sums from time to time due and payable by you to us under the Contract to the order of the Lender.
- Pay, or release, all monies to which we are entitled under the Contract to the Lender, or to such persons as the Lender may direct.
- Disclose information in relation to the Contract to the Lender on request by the Lender.

Neither the Security Agreement nor this notice releases, discharges or otherwise affects your liability and obligations in respect of the Contract.

Subject to the foregoing, you may continue to deal with us in relation to the Contract until you receive written notice to the contrary from the Lender. Thereafter, we will cease to have any right to deal with you in relation to the Contract and you must deal only with the Lender.

Please note that we have agreed that we will not amend or waive any provision of or terminate the Contract without the prior written consent of the Lender.

The instructions in this notice may only be revoked or amended with the prior written consent of the Lender.

Please confirm that you agree to the terms of this notice, and to act in accordance with its provisions, by sending the attached acknowledgement to the Lender at [ADDRESS OF LENDER], with a copy to us.

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

Yours faithfully,

.....

[NAME OF CHARGOR]

**Part 2**  
**Form of acknowledgement of assignment**

*[On the letterhead of the Counterparty]*

[NAME OF LENDER]  
[ADDRESS LINE 1]  
[ADDRESS LINE 2]  
[POSTCODE]  
[DATE]

Dear [NAME OF ADDRESSEE],

**Subordinated Creditors' Security Agreement (Security Agreement) dated [DATE] between [CHARGOR] and [LENDER]**

We confirm receipt from [CHARGOR] (Chargor) of a notice (Notice) dated [DATE] of an absolute assignment, subject to a proviso for reassignment, of all the Chargor's rights under [DESCRIBE RELEVANT AGREEMENT] (Contract).

Terms defined in the Notice shall have the same meaning when used in this acknowledgement.

We confirm that:

- We accept the instructions and authorisations contained in the Notice and agree to comply with the Notice.
- There has been no amendment, waiver or release of any rights or interests in the Contract since the date of the Contract.
- We will not repudiate, rescind or cancel the Contract, treat it as avoided in whole or in part nor treat it as expired without giving the Lender at least 30 days' prior written notice.
- We have not, as at the date of this acknowledgement, received notice that the Chargor has assigned its rights under the Contract to a third party, or created any other interest (whether by way of security or otherwise) in the Contract in favour of a third party.
- The Lender will not in any circumstances have any liability in relation to the Contract.
- The Contract shall not be rendered void, voidable or unenforceable by reason of any non-disclosure by the Lender.

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

Yours faithfully,

.....

[COUNTERPARTY]

Execution pages

Chargor

EXECUTED as a DEED by **WELLESLEY** )  
**FINANCE LIMITED** acting by a director in the )  
presence of:

.....  
Director

Signature of Witness:

Name:

Address

Occupation:

EXECUTED as a DEED by **WELLESLEY** )  
**GROUP LIMITED** acting by a director in the )  
presence of:

.....  
Director

Signature of Witness:

Name:

Address

Occupation:

**Lender**

EXECUTED as a DEED by **FERN TRADING )**  
**GROUP LIMITED** acting by an authorised )  
attorney in the presence of:

[Redacted Signature]

54AEEF137B4CB4F4

Authorised attorney

Signature of Witness:

[Redacted Signature]

54B05999DE7409

Name:

NAHID MIAH

Address

[Redacted Address]

Occupation:

TRAINEE SOLICITOR