



Registration of a Charge

Company name: **STONEBASE CONSTRUCTION LIMITED**

Company number: **08517356**



X76YTBQX

Received for Electronic Filing: **29/05/2018**

Details of Charge

Date of creation: **22/05/2018**

Charge code: **0851 7356 0001**

Persons entitled: **ESQUILINE FINANCE LTD**

Brief description: **ALL PROPERTIES ACQUIRED BY THE COMPANY IN THE FUTURE. FOR MORE DETAILS, PLEASE REFER TO CLAUSE 3 OF THE DEBENTURE AGREEMENT.**

Contains fixed charge(s).

Contains floating charge(s) (floating charge covers all the property or undertaking of the company).

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 THE ELECTRONIC COPY INSTRUMENT
DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION
IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by: **ZULEYHA TOHTAYEVA**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 8517356

Charge code: 0851 7356 0001

The Registrar of Companies for England and Wales hereby certifies that a charge dated 22nd May 2018 and created by STONEBASE CONSTRUCTION LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 29th May 2018 .

Given at Companies House, Cardiff on 31st May 2018

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



Companies House



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

DATED: 22nd May 2018

ESQUILINE FINANCE LTD (1)
(as the Lender)

-and-

STONEBASE CONSTRUCTION LIMITED (2)
(as the Borrower)

DEBENTURE

CERTIFIED AS A TRUE COPY
AND A TRUE LIKENESS OF THE ORIGINAL

SIGNED

DATED

ZULEYHA TOHTAYEVA, SOLICITOR



JIREHOUSE

7 JOHN STREET
LONDON WC1N 2ES
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DEBENTURE

DATED: 22nd May, 2018

PARTIES:

- (1) **ESQUILINE FINANCE LTD**, a private company limited by shares incorporated in England and Wales under registration number 08570643, whose registered office is at 7 John Street, London, WC1N 2ES (the **Lender**).
- (2) **STONEBASE CONSTRUCTION LIMITED** a private company limited by shares incorporated in England and Wales under registration number 08517356, whose registered office is at 31 Kelso Road, Liverpool, England, L6 3AQ (the **Borrower**).

BACKGROUND:

- (A) The Lender has agreed, pursuant to an on demand loan facility (the **Loan Facility**) entered into on even date between the Lender and Borrower, to provide the Borrower with a loan on a secured basis pending full repayment of the Loan (as defined in the Loan Facility) due under the terms and subject to the conditions of the Loan Facility.
- (B) Under this Agreement, the Borrower wishes to provide a security to the Lender for all its present and future obligations and liabilities to the Lender.

OPERATIVE TERMS:

1. INTERPRETATION

- 1.1 In this Agreement, in addition to the words and expressions defined in the Loan Facility, the Background to this Agreement and elsewhere in this Agreement in bold lower case font, the following words and expressions shall have the respective meanings when used in this Agreement:

Administrator: an administrator appointed to manage the affairs, business and property of any of the Borrower pursuant to **clause 10.6**.

Borrowed Money: any Indebtedness of the Borrower for or in respect of:

- (a) borrowing or raising money (with or without security), including any premium and any capitalised interest on that money;
- (b) any bond, note, loan stock, debenture, commercial paper or similar instrument;
- (c) any acceptances under any acceptance credit or bill discounting facility (or dematerialised equivalent) or any note purchase or documentary credit facilities;



- (d) monies raised by selling, assigning or discounting receivables or other financial assets on terms that recourse may be had to the Borrower if those receivables or financial assets are not paid when due;
- (e) any deferred payment for assets or services acquired, other than trade credit that is given in the ordinary course of trading and which does not involve any deferred payment of any amount for more than 60 days;
- (f) any rental or hire charges under any finance lease (whether for land, machinery, equipment or otherwise);
- (g) any counter-indemnity obligation in respect of any guarantee, bond, indemnity, standby loan facility of credit or other instrument issued by a third party in connection with the Borrower's performance of a contract;
- (h) any other transaction that has the commercial effect of borrowing (including any forward sale or purchase agreement and any liabilities which are not shown as borrowed money on the Borrower's balance sheet because they are contingent, conditional or otherwise);
- (i) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and when calculating the value of any derivative transaction, only the mark to market value shall be taken into account); and
- (j) any guarantee, counter-indemnity or other assurance against financial loss given by the Borrower for any indebtedness of the type referred to in any other paragraph of this definition incurred by any person,

and when calculating Borrowed Money, no liability shall be taken into account more than once.

Book Debts: all present and future book and other debts, and monetary claims due or owing to the Borrower, and the benefit of all security, guarantees and other rights of any nature enjoyed or held by the Borrower in relation to any of them.

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Default Rate: 5% per annum above the Lender's base rate from time to time.

Delegate: any person appointed by the Lender or any Receiver pursuant to **clause 15** and any person appointed as attorney of the Lender, Receiver or Delegate.

Designated Account: any account of the Borrower nominated by the Lender as a designated account for the purposes of this Agreement.

Environment: the natural and man-made environment including all or any of the following media, namely air, water and land (including air within buildings and other



natural or man-made structures above or below the ground) and any living organisms (including man) or systems supported by those media.

Environmental Law: all applicable laws, statutes, regulations, secondary legislation, bye-laws, common law, directives, treaties and other measures, judgments and decisions of any court or tribunal, codes of practice and guidance notes in so far as they relate to or apply to the Environment.

Event of Default: any of the following events:

- (a) the Borrower fails to pay any of the Secured Liabilities when due, unless its failure to pay is caused solely by an administrative error or technical problem and payment is made within three (3) Business Days of its due date;
- (b) the Borrower fails (other than a failure to pay referred to in paragraph (a) of this definition) to comply with any provision of this deed or any document under which the Borrower owes obligations to the Lender and (if the Lender considers, acting reasonably, that the default is capable of remedy) such default is not remedied within fourteen (14) days of the earlier of the Lender notifying the Borrower of the default and the remedy required and the Borrower becoming aware of the default;
- (c) any representation, warranty or statement made, repeated or deemed made by the Borrower to the Lender is (or proves to have been) incomplete, untrue, incorrect or misleading when made, repeated or deemed made;
- (d) the Borrower suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a substantial part of its business;
- (e) any Borrowed Money is not paid when due or within any originally applicable grace period;
- (f) any Borrowed Money becomes due, or capable of being declared due and payable prior to its stated maturity by reason of an event of default (however described);
- (g) any commitment for Borrowed Money is cancelled or suspended by a creditor of the Borrower by reason of an event of default (however described);
- (h) any creditor of the Borrower becomes entitled to declare any Borrowed Money due and payable prior to its stated maturity by reason of an event of default (however described);
- (i) the Borrower stops or suspends payment of any of its debts or is unable to, or admits its inability to, pay its debts as they fall due;
- (j) the Borrower commences negotiations, or enters into any composition, compromise, assignment or arrangement, with one or more of its creditors with a view to rescheduling any of its Indebtedness (because of actual or anticipated financial difficulties);



- (k) a moratorium is declared in respect of any Indebtedness of the Borrower;
- (l) any action, proceedings, procedure or step is taken for the suspension of payments, a moratorium of any Indebtedness, winding up, dissolution, administration or reorganisation (using a voluntary arrangement, scheme of arrangement or otherwise) of the Borrower;
- (m) any action, proceedings, procedure or step is taken for a composition, compromise, assignment or arrangement with any creditor of the Borrower;
- (n) any action, proceedings, procedure or step is taken for the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of the Borrower or any of its assets;
- (o) the value of the Borrower's assets is less than its liabilities (taking into account contingent and prospective liabilities);
- (p) any event occurs in relation to the Borrower similar to those set out in paragraphs (i) to (o) (inclusive) under the laws of any applicable jurisdiction;
- (q) a distress, attachment, execution, expropriation, sequestration or other analogous legal process in any jurisdiction is levied, enforced or sued out on, or against, the Borrower's assets (or its equivalent in other currencies) and is not discharged or stayed within twenty-one (21) days;
- (r) any Security on or over the assets of the Borrower becomes enforceable;
- (s) any provision of this deed or any document under which the Borrower owes obligations to the Lender is or becomes invalid, unlawful, unenforceable, terminated, disputed or ceases to be effective or to have full force and effect;
- (t) the Borrower repudiates or shows an intention to repudiate this deed or any document under which the Borrower owes obligations to the Lender; or
- (u) any event occurs (or circumstances exist) which, in the reasonable opinion of the Lender, has or is likely to materially and adversely affect the Borrower's ability to perform all or any of its obligations under, or otherwise comply with the terms of, this deed or any document under which the Borrower owes obligations to the Lender.

Equipment: all present and future equipment, plant, machinery, tools, vehicles, furniture, fittings, installations and apparatus and other tangible moveable property for the time being owned by the Borrower, including any part of it and all spare parts, replacements, modifications and additions.

Indebtedness: any obligation to pay or repay money, present or future, whether actual or contingent, sole or joint and any guarantee or indemnity of any of those obligations.



Insurance Policy: each contract and policy of insurance effected or maintained by the Borrower from time to time in respect of its assets or business (including, without limitation, any insurances relating to the Properties (if any)).

Intellectual Property: the Borrower's present and future patents, inventions, registered designs, trademarks, domain names, applications for the registration of any of the foregoing and the right to apply therefor in any part of the world; design rights including community designs, database rights, topography rights, copyrights and rights in the nature of copyright; trade names, logos and get-up; know-how and trade secrets; software; and any similar or equivalent rights arising or subsisting anywhere in the world.

Investments: all present and future certificated stocks, shares, loan capital, securities, bonds and investments (whether or not marketable) for the time being owned (at law or in equity) by the Borrower, including any:

- (a) dividend, interest or other distribution paid or payable in relation to any of the Investments; and
- (b) right, money, shares or property accruing, offered or issued at any time in relation to any of the Investments by way of redemption, substitution, exchange, conversion, bonus, preference or otherwise, under option rights or otherwise.

Loan: has the meaning given to that expression in the Loan Facility.

Loan Facility: has the meaning given to that expression in **Background (A)** of this Agreement.

LPA 1925: Law of Property Act 1925.

Properties: all freehold and leasehold properties and all commonhold properties, now or in the future (and from time to time) owned by the Borrower, or in which the Borrower holds an interest, and **Property** means any of them.

Receiver: a receiver, receiver and manager or administrative receiver of any or all of the Secured Assets appointed by the Lender under **clause 13**.

Secured Assets: all the assets, property and undertaking for the time being subject to the Security created by, or pursuant to, this Agreement.

Secured Liabilities: all present and future monies, obligations and liabilities of the Borrower to the Lender, whether actual or contingent and whether owed jointly or severally, as principal or surety or in any other capacity and whether or not the Lender was an original party to the relevant transaction and in whatever name or style, together with all interest (including, without limitation, default interest) accruing in respect of those monies, obligations or liabilities.

Security: any mortgage, charge (whether fixed or floating, legal or equitable), pledge, lien, assignment by way of security or other security interest securing any obligation of any person, or any other agreement or arrangement having a similar effect.



Security Period: the period starting on the date of this Agreement and ending on the date on which the Lender is satisfied that all the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full and no further Secured Liabilities are capable of being outstanding.

- 1.2 The headings of any clause shall not affect the interpretation of this Agreement.
- 1.3 A reference to a **person** shall include a reference to 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) and that person's personal representatives, successors, permitted assigns and permitted transferees.
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.5 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.6 A reference to a party shall include that party's successors, permitted assigns and permitted transferees.
- 1.7 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.8 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.9 A reference to **writing** or **written** includes fax but not e-mail.
- 1.10 An obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.11 Unless the context otherwise requires, a reference to a clause is to a clause of this Agreement.
- 1.12 **The Exhibits** shall form an integral part of this Agreement.
- 1.13 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.
- 1.14 A reference to an **amendment** includes a novation, re-enactment, supplement or variation (and amended shall be construed accordingly).
- 1.15 A reference to **assets** includes present and future properties, undertakings, revenues, rights and benefits of every description.
- 1.16 A reference to an **authorisation** includes an approval, authorisation, consent, exemption, filing, licence, notarisation, registration and resolution.



1.17 A reference to **continuing** in relation to an Event of Default means an Event of Default that has not been remedied or waived.

1.18 A reference to **determines** or **determined** means, unless the contrary is indicated, a determination made at the absolute discretion of the person making it.

1.19 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.

1.20 **Clawback**

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

1.21 **Nature of security over real property**

A reference in this Agreement to a charge or mortgage of or over any Property includes:

- (a) all buildings and fixtures and fittings (including trade and tenant's fixtures and fittings) that are situated on or form part of that Property at any time;
- (b) the proceeds of the sale of any part of that Property and any other monies paid or payable in respect of or in connection with that Property;
- (c) the benefit of any covenants for title given, or entered into, by any predecessor in title of the Borrower in respect of that Property, and any monies paid or payable in respect of those covenants; and
- (d) all rights under any licence, agreement for sale or agreement for lease in respect of that Property.

1.22 **Perpetuity period**

If the rule against perpetuities applies to any trust created by this Agreement, the perpetuity period shall be 125 years (as specified by section 5(1) of the Perpetuities and Accumulations Act 2009).

2. **COVENANT TO PAY**

2.1 **Covenant to Pay**

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

2.2 **Interest**



The Borrower covenants with the Lender to pay interest on any amounts due under **clause 2.1** from day to day until full discharge (whether before or after judgment, liquidation, winding-up or administration of the Borrower) at the Default Rate, provided that, in the case of any cost or expense, such interest shall accrue and be payable as from the date on which the relevant cost or expense arose without the necessity for any demand being made for payment.

3. GRANT OF SECURITY

3.1 Legal mortgage

As a continuing security for the payment and discharge of the Secured Liabilities, the Borrower with full title guarantee charges to the Lender, by way of first legal mortgage, each Property.

3.2 Fixed charges

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

- (a) all Properties acquired by the Borrower in the future;
- (b) all present and future interests of the Borrower not effectively mortgaged or charged under the preceding provisions of this **clause 3** in, or over, freehold or leasehold property;
- (c) all present and future rights, licences, guarantees, rents, deposits, contracts, covenants and warranties relating to each Property (if any), all licences, consents and authorisations (statutory or otherwise) held or required in connection with the Borrower's business or the use of any Secured Asset, and all rights in connection with them;
- (d) all Intellectual Property;
- (e) all Investments;
- (f) all its present and future goodwill;
- (g) all its uncalled capital;
- (h) all the Equipment;
- (i) all the Book Debts;
- (j) all monies from time to time standing to the credit of its accounts with any bank, financial institution or other person (including each Designated Account); and



- (k) all its rights in each Insurance Policy, including all claims, the proceeds of all claims and all returns of premium in connection with each Insurance Policy, to the extent not effectively assigned under **clause 3.3**.

3.3 Assignment

As a continuing security for the payment and discharge of the Secured Liabilities, the Borrower with full title guarantee assigns to the Lender absolutely, subject to a proviso for reassignment on irrevocable discharge in full of the Secured Liabilities, all rights to each Insurance Policy, including all claims, the proceeds of all claims and all returns of premium in connection with each Insurance Policy.

3.4 Floating Charge

As a continuing security for the payment and discharge of the Secured Liabilities, the Borrower with full title guarantee charges to the Lender, by way of first floating charge, all the undertaking, property, assets and rights of the Borrower at any time not effectively mortgaged, charged or assigned pursuant to **clause 3.1 to 3.3 inclusive**.

3.5 Qualifying Floating Charge

Paragraph 14 of Schedule B1 to the Insolvency Act 1986 applies to the floating charge created by **clause 3.4**.

3.6 Automatic Crystallisation of Floating Charge

The floating charge created by **clause 3.4** shall automatically and immediately (without notice) be converted into a fixed charge over the assets subject to that floating charge if:

- (a) the Borrower:
 - (i) creates, or attempts to create, without the prior written consent of the Lender, a Security or a trust in favour of another person over all or any part of the Secured Assets; or
 - (ii) disposes, or attempts to dispose of, all or any part of the Secured Assets (other than Secured Assets that are only subject to the floating charge while it remains uncrystallised);
- (b) any person levies (or attempts to levy) any distress, attachment, execution or other process against all or any part of the Secured Assets; or
- (c) a resolution is passed or an order is made for the winding-up, dissolution, administration or re-organisation of the Borrower.

3.7 Crystallisation of Floating Charge by Notice



The Lender may, in its sole discretion, by written notice to the Borrower, convert the floating charge created under this Agreement into a fixed charge as regards any part of the Secured Assets specified by the Lender in that notice if:

- (a) an Event of Default occurs and is continuing; or
- (b) the Lender considers those assets to be in danger of being seized or sold under any form of distress, attachment, execution or other legal process or to be otherwise in jeopardy.

3.8 Assets Acquired After Any Floating Charge Has Crystallised

Any asset acquired by the Borrower after any crystallisation of the floating charge created under this Agreement that, but for that crystallisation, would be subject to a floating charge under this Agreement, shall (unless the Lender confirms otherwise to the Borrower in writing) be charged to the Lender by way of first fixed charge.

4. LIABILITY OF THE BORROWER

4.1 Liability Not Discharged

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

- (a) 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;
- (b) 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
- (c) any other act or omission that, but for this **clause 4.1**, might have discharged, or otherwise prejudiced or affected, the liability of the Borrower.

4.2 Immediate recourse

The Borrower 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 Agreement against the Borrower.

5. REPRESENTATIONS AND WARRANTIES

5.1 Representations and warranties

The Borrower make the representations and warranties set out in this **clause 5.1** to the Lender.

5.2 Ownership of Secured Assets



The Borrower are the legal and beneficial owner of the Secured Assets.

5.3 No Security

The Secured Assets are free from any Security other than the Security created by this Agreement

5.4 No adverse claims

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

5.5 No adverse covenants

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

5.6 No breach of laws

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

5.7 No interference in enjoyment

No facility necessary for the enjoyment and use of the Secured Assets is subject to terms entitling any person to terminate or curtail its use.

5.8 No overriding interests

Nothing has arisen, has been created or is subsisting, that would be an overriding interest in any Property.

5.9 Avoidance of security

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

5.10 No Prohibition or Breaches

There is no prohibition on assignment in any Insurance Policy and the entry into this Agreement by the Borrower does not, and will not, constitute a breach of any Insurance Policy or any other agreement or instrument binding on the Borrower or its assets.

5.11 Environmental compliance

The Borrower has, at all times, complied in all material respects with all applicable Environmental Law.

5.12 Enforceable security



This Agreement constitutes and will constitute the legal, valid, binding and enforceable obligations of the Borrower, and is and will continue to be effective security over all and every part of the Secured Assets in accordance with its terms.

5.13 Times for making representations and warranties

The representations and warranties set out in **clause 5.2 to clause 5.12** (inclusive) are made by the Borrower on the date of this Agreement and the representations and warranties contained in **clause 5.2 to clause 5.12** (inclusive) 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. GENERAL COVENANTS

6.1 Negative pledge and disposal restrictions

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

- (a) create, purport to create or permit to subsist any Security on, or in relation to, any Secured Asset other than any Security created by this Agreement;
- (b) 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 (except, in the ordinary course of business, Secured Assets that are only subject to an uncrystallised floating charge); or
- (c) create or grant (or purport to create or grant) any interest in the Secured Assets in favour of a third party.

6.2 Preservation of Secured Assets

The Borrower shall not do, or permit to be done, any act or thing that would or might 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 Agreement.

6.3 Borrower's waiver of set-off

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

6.4 Compliance with laws and regulations

- (a) The Borrower shall not, without the Lender's prior written consent, use or permit the Secured Assets to be used in any way contrary to law.
- (b) The Borrower shall:
 - (i) comply with the requirements of any law and regulation relating to or affecting the Secured Assets or the use of it or any part of them;



- (ii) 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 its use or that are necessary to preserve, maintain or renew any Secured Asset; and
- (iii) promptly effect any maintenance, modifications, alterations or repairs that are required by any law or regulation to be effected on or in connection with the Secured Assets.

6.5 Enforcement of rights

The Borrower shall use its best endeavours to:

- (a) procure the prompt observance and performance of the covenants and other obligations imposed on the Borrower's counterparties (including each insurer in respect of an Insurance Policy); and
- (b) enforce any rights and institute, continue or defend any proceedings relating to any of the Secured Assets which the Lender may require from time to time.

6.6 Notice of misrepresentation and breaches

The Borrower shall, promptly on becoming aware of any of the same, give the Lender notice in writing of:

- (a) any representation or warranty set out in this Agreement that is incorrect or misleading in any material respect when made or deemed to be repeated; and
- (b) any breach of any covenant set out in this Agreement.

6.7 Title Documents

The Borrower shall, as so required by the Lender, deposit with the Lender and the Lender shall, for the duration of this Agreement be entitled to hold:

- (a) all deeds and documents of title relating to the Secured Assets that are in the possession or control of the Borrower (and if these are not within the possession or control of the Borrower, the Borrower undertakes to obtain possession of all these deeds and documents of title);
- (b) all Insurance Policies and any other insurance policies relating to any of the Secured Assets that the Borrower is entitled to possess; and
- (c) all deeds and documents of title (if any) relating to the Book Debts as the Lender may specify from time to time.

6.8 Insurance



- (a) The Borrower shall insure and keep insured (or where, in the case of any leasehold property, insurance is the responsibility of the landlord under the terms of the lease, either procure that the landlord insures and keeps insured or, if and to the extent that the landlord does not do so, itself insure and keep insured) the Secured Assets against:
- (i) loss or damage by fire or terrorist acts;
 - (ii) other risks, perils and contingencies that would be insured against by reasonably prudent persons carrying on the same class of business as the Borrower; and
 - (iii) any other risk, perils and contingencies as the Lender may reasonably require.

Any such insurance must be with an insurance company or underwriters, and on such terms, as are reasonably acceptable to the Lender, and must be for not less than the replacement value of the Secured Assets.

- (b) The Borrower shall, if requested by the Lender, produce to the Lender the policy, certificate or cover note relating to the insurance required by **clause 6.8(a)** (or where, in the case of any leasehold property, that insurance is effected by the landlord, such evidence of insurance as the Borrower is entitled to obtain from the landlord under the terms of the relevant lease).
- (c) The Borrower shall, if requested by the Lender, procure that a note of the Lender's interest is endorsed upon each insurance policy maintained by it or any person on its behalf in accordance with **clause 6.8(a)** and that the terms of each insurance policy require the insurer not to invalidate the policy as against the Lender by reason of the act or default of any other joint or named insured and not to cancel it without giving at least 30 days' prior written notice to the Lender.

6.9 Insurance premiums

The Borrower shall:

- (a) promptly pay all premiums in respect of each insurance policy maintained by it in accordance with **clause 6.8(a)** and do all other things necessary to keep that policy in full force and effect; and
- (b) (if the Lender so requires) produce to, or deposit with, the Lender the receipts for all premiums and other payments necessary for effecting and keeping up each insurance policy maintained by it in accordance with **clause 6.8(a)**.

6.10 No invalidation of insurance

The Borrower shall not do or omit to do, or permit to be done or omitted, any act or thing that may invalidate or otherwise prejudice any insurance policy maintained by it in accordance with **clause 6.8(a)**.

6.11 Proceeds of insurance policies



All monies received or receivable by the Borrower under any insurance policy maintained by it in accordance with **clause 6.8(a)** (including all monies received or receivable by it under any Insurance Policy) at any time (whether or not the security constituted by this Agreement has become enforceable) shall:

- (a) immediately be paid to the Lender;
- (b) if they are not paid directly to the Lender by the insurers, be held by the Borrower as trustee of the same for the benefit of the Lender (and the Borrower shall account for it to the Lender); and
- (c) at the option of the Lender, be applied in making good or recouping expenditure in respect of the loss or damage for which those monies are received or in, or towards, discharge or reduction of the Secured Liabilities.

6.12 Notices to be given by the Borrower

The Borrower shall immediately on the execution of this Agreement (or, if later, the date of acquisition of the relevant Secured Asset) give notice to each insurer, in the agreed form, that it has charged or assigned its rights and interest in and under each Insurance Policy under **clause 3**.

6.13 Information

The Borrower shall:

- (a) give the Lender such information concerning the location, condition, use and operation of the Secured Assets as the Lenders may require;
- (b) permit any persons designated by the Lender and any Receiver to enter on its premises and inspect and examine any Secured Asset, and the records relating to that Secured Asset, at all reasonable times and on reasonable prior notice; and
- (c) promptly notify the Lender in writing of any action, claim or demand made by or against it in connection with any Secured Asset or of any fact, matter or circumstance which may, with the passage of time, give rise to such an action, claim or demand, together with, in each case, the Borrower's proposals for settling, liquidating, compounding or contesting any such action, claim or demand and shall, subject to the Lender's prior approval, implement those proposals at its own expense.

6.14 Payment of outgoings

The Borrower shall promptly pay all taxes, fees, licence duties, registration charges, insurance premiums and other outgoings in respect of the Secured Assets and, on demand, produce evidence of payment to the Lender.

6.15 Notification of Delay



The Borrower shall notify the Lender of any Event of Default or event or circumstance which would, on the expiry of any grace period, the giving of notice, the making of any determination, satisfaction of any other condition or any combination thereof, constitute an Event of Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence.

6.16 Change of Business

The Borrower shall not make any substantial change to the general nature or scope of its business as carried on at the date of this Agreement.

7. PROPERTY COVENANTS

7.1 Maintenance

The Borrower shall keep all buildings and all fixtures on each Property in good and substantial repair and condition.

7.2 Preservation of Property, fixtures and Equipment

The Borrower shall not, without the prior written consent of the Lender:

- (a) pull down or remove the whole, or any part of, any building forming part of any Property or permit the same to occur;
- (b) make or permit any material alterations to any Property, or sever or remove, or permit to be severed or removed, any of its fixtures;
- (c) remove or make any material alterations to any of the Equipment belonging to, or in use by, the Borrower on any Property (except to effect necessary repairs or replace them with new or improved models or substitutes).

7.3 Conduct of business on Properties

The Borrower shall carry on its trade and business on those parts (if any) of the Properties as are used for the purposes of trade or business in accordance with the standards of good management from time to time current in that trade or business.

7.4 Planning information

The Borrower shall:

- (a) give full particulars to the Lender of any notice, order, direction, designation, resolution or proposal given or made by any planning authority or other public body or authority (**Planning Notice**) that specifically applies to any Property, or to the locality in which it is situated, within seven days after becoming aware of the relevant Planning Notice; and



- (b) (if the Lender so requires) immediately, and at the cost of the Borrower, take all reasonable and necessary steps to comply with any Planning Notice, and make, or join with the Lender in making, any objections or representations in respect of that Planning Notice that the Lender may desire.

7.5 Compliance with covenants and payment of rent

The Borrower shall:

- (a) observe and perform all covenants, stipulations and conditions to which each Property, or the use of it, is or may be subjected, and (if the Lender so requires) produce evidence sufficient to satisfy the Lender that those covenants, stipulations and conditions have been observed and performed;
- (b) diligently enforce all covenants, stipulations and conditions benefiting each Property and shall not (and shall not agree to) waive release or vary any of the same; and
- (c) (without prejudice to the generality of the foregoing) where a Property, or part of it, is held under a lease, duly and punctually pay all rents due from time to time, and perform and observe all the tenant's covenants and conditions.

7.6 Payment of rent and outgoings

The Borrower shall:

- (a) where a Property, or part of it, is held under a lease, duly and punctually pay all rents due from time to time; and
- (b) pay (or procure payment of the same) when due all charges, rates, taxes, duties, assessments and other outgoings relating to or imposed on each Property or on its occupier.

7.7 Maintenance of interests in Properties

The Borrower shall not, without the prior written consent of the Lender:

- (a) grant, or agree to grant, any licence or tenancy affecting the whole or any part of any Property, or exercise, or agree to exercise, the statutory powers of leasing or of accepting surrenders under sections 99 or 100 of the Law of Property Act 1925; or
- (b) in any other way dispose of, surrender or create, or agree to dispose of surrender or create, any legal or equitable estate or interest in the whole or any part of any Property.

7.8 Development restrictions

The Borrower shall not, without the prior written consent of the Lender:



- (a) make or, insofar as it is able, permit others to make any application for planning permission or development consent in respect of the Property; or
- (b) carry out, or permit, or suffer to be carried out on any Property any development as defined in the Town and Country Planning Act 1990 and the Planning Act 2008, or change or permit or suffer to be changed the use of any Property.

7.9 Environment

The Borrower shall:

- (a) comply with all the requirements of Environmental Law both in the conduct of its general business and in the management, possession or occupation of each Property; and
- (b) obtain and comply with all authorisations, permits and other types of licences necessary under Environmental Law.

7.10 No restrictive obligations

The Borrower shall not, without the prior written consent of the Lender, enter into any onerous or restrictive obligations affecting the whole or any part of any Property, or create or permit to arise any overriding interest, easement or right whatever in or over the whole or any part of any Property.

7.11 Proprietary rights

The Borrower shall procure that no person shall become entitled to assert any proprietary or other like right or interest over the whole or any part of any Property without the prior written consent of the Lender.

7.12 Inspection

The Borrower shall permit the Lender, any Receiver and any person appointed by either of them to enter on and inspect any Property on reasonable prior notice.

7.13 Property information

The Borrower shall inform the Lender promptly of any acquisition by the Borrower of, or contract made by the Borrower to acquire, any freehold, leasehold or other interest in any property.

7.14 VAT option to tax

The Borrower shall not, without the prior written consent of the Lender:

- (a) exercise any VAT option to tax in relation to any Property; or
- (b) revoke any VAT option to tax exercised, and disclosed to the Lender, before the date of this Agreement.



7.15 Registration at the Land Registry

The Borrower consent to an application being made by the Lender to the Land Registrar for the following restriction in Form P to be registered against its title to each Property:

"No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction is to be registered without a written consent signed by the proprietor for the time being of the charge dated [DATE] in favour of Esquiline Finance Ltd referred to in the charges register."

8. EQUIPMENT COVENANTS

8.1 Maintenance of Equipment

The Borrower shall:

- (a) maintain the Equipment in good and serviceable condition (except for expected fair wear and tear) in compliance with all relevant manuals, handbooks, manufacturer's instructions and recommendations and maintenance or servicing schedules;
- (b) at its own expense, renew and replace any parts of the Equipment when they become obsolete, worn out or damaged with parts of a similar quality and of equal or greater value; and
- (c) not permit any Equipment to be:
 - (i) used or handled other than by properly qualified and trained persons; or
 - (ii) overloaded or used for any purpose for which it is not designed or reasonably suitable.

8.2 Payment of Equipment taxes

The Borrower shall promptly pay all taxes, fees, licence duties, registration charges, insurance premiums and other outgoings in respect of the Equipment and, on demand, produce evidence of such payment to the Lender.

8.3 Notice of charge

The Borrower:

- (a) shall, if so requested by the Lenders, affix to and maintain on each item of Equipment in a conspicuous place, a clearly legible identification plate containing the following wording:

"NOTICE OF CHARGE



This [DESCRIBE ITEM] and all additions to it [and ancillary equipment] are subject to a fixed charge dated [DATE] in favour of Esquiline Finance Ltd."

- (b) shall not, and shall not permit any person to, conceal, obscure, alter or remove any plate affixed in accordance with **clause 8.3(a)**.

9. BOOK DEBTS COVENANTS

9.1 Realising Book Debts

The Borrower shall:

- (a) as an agent for the Lender, collect in and realise all Book Debts, pay the proceeds into a Designated Account immediately on receipt and, pending that payment, hold those proceeds in trust for the Lender;
- (b) not, without the prior written consent of the Lender, withdraw any amounts standing to the credit of any Designated Account; and
- (c) if called on to do so by the Lender, execute a legal assignment of the Book Debts to the Lender on such terms as the Lender may require and give notice of that assignment to the debtors from whom the Book Debts are due, owing or incurred.

9.2 Preservation of Book Debts

The Borrower shall not (except as provided by **clause 9.1** or with the prior written consent of the Lender) release, exchange, compound, set-off, grant time or indulgence in respect of, or in any other manner deal with, all or any of the Book Debts.

10. POWERS OF THE LENDER

10.1 Power to remedy

- (a) The Lender shall be entitled (but shall not be obliged) to remedy, at any time, a breach by the Borrower of any of its obligations contained in this Agreement.
- (b) The Borrower irrevocably authorise the Lender and its agents to do all things that are necessary or desirable for that purpose.
- (c) Any monies expended by the Lender in remedying a breach by the Borrower of its obligations contained in this Agreement shall be reimbursed by the Borrower to the Lender on a full indemnity basis and shall carry interest in accordance with **clause 17.1**.

10.2 Exercise of rights

The rights of the Lender under **clause 10.1** are without prejudice to any other rights of the Lender under this Agreement. The exercise of any rights of the Lender under this Agreement shall not make the Lender liable to account as a mortgagee in possession.



10.3 Power to dispose of chattels

- (a) At any time after the security constituted by this Agreement has become enforceable, the Lender or any Receiver may, as agent for the Borrower, dispose of any chattels or produce found on any Property.
- (b) Without prejudice to any obligation to account for the proceeds of any disposal made under **clause 10.3(a)**, the Borrower shall indemnify the Lender and any Receiver against any liability arising from any disposal made under **clause 10.3(a)**.

10.4 Lender has Receiver's powers

To the extent permitted by law, any right, power or discretion conferred by this Agreement on a Receiver may, after the security constituted by this Agreement 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.

10.5 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 Agreement (whether or not any such person is jointly liable with the Borrower) in respect of any of the Secured Liabilities, or of any other security for them without prejudice either to this Agreement or to the liability of the Borrower for the Secured Liabilities.

10.6 Appointment of an Administrator

- (a) The Lender may, if there has been an Event of Default which, if curable or remediable, has not been cured or remedied to the satisfaction of the Lender, appoint any one or more persons to be an Administrator of the Borrower pursuant to Paragraph 14 of Schedule B1 of the Insolvency Act 1986 if the security constituted by this Agreement becomes enforceable.
- (b) Any appointment under this **clause 10.6** shall:
 - (i) be in writing signed by a duly authorised signatory of the Lender; and
 - (ii) take effect, in accordance with paragraph 19 of Schedule B1 of the Insolvency Act 1986.
- (c) The Lender may apply to the court for an order removing an Administrator from office and may by notice in writing in accordance with this **clause 10.6** appoint a replacement for any Administrator who has died, resigned, been removed or who has vacated office upon ceasing to be qualified.

11. WHEN SECURITY BECOMES ENFORCEABLE

11.1 Security becomes enforceable on Event of Default



The security constituted by this Agreement shall be immediately enforceable if an Event of Default occurs.

11.2 Discretion

After the security constituted by this Agreement 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.

12. ENFORCEMENT OF SECURITY

12.1 Enforcement powers

- (a) The power of sale and other powers conferred by section 101 of the LPA 1925 (as varied or extended by this Agreement) shall, as between the Lender and a purchaser from the Lender, arise on and be exercisable at any time after the execution of this Agreement, but the Lender shall not exercise such power of sale or other powers until the security constituted by this Agreement has become enforceable under **clause 11.1**.
- (b) Section 103 of the LPA 1925 does not apply to the security constituted by this Agreement.

12.2 Extension of statutory powers of leasing

The statutory powers of leasing and accepting surrenders conferred on mortgagees under the LPA 1925 and by any other statute are extended so as to authorise the Lender and any Receiver, at any time after the security constituted by this Agreement has become enforceable, whether in its own name or in that of the Borrower, to:

- (a) grant a lease or agreement to lease;
- (b) accept surrenders of leases; or
- (c) grant any option of the whole or any part of the Secured Assets with whatever rights relating to other parts of it,

whether or not at a premium and containing such covenants on the part of the Borrower, and on such terms and conditions (including the payment of money to a lessee or tenant on a surrender) as the Lender or Receiver thinks fit without the need to comply with any of the restrictions imposed by sections 99 and 100 of the LPA 1925.

12.3 Access on enforcement

- (a) At any time after the Lender has demanded payment of the Secured Liabilities or if any of the Borrower defaults in the performance of its obligations under this Agreement or an Event of Default, the Borrower will allow the Lender or its Receiver, without further notice or demand, immediately to exercise all its rights,



powers and remedies in particular (and without limitation) to take possession of any Secured Asset and for that purpose to enter on any premises where a Secured Asset is situated (or where the Lender or a Receiver reasonably believes a Secured Asset to be situated) without incurring any liability to the Borrower for, or by any reason of, that entry.

- (b) At all times, the Borrower must use its best endeavours to allow the Lender or its Receiver access to any premises for the purpose of **clause 12.3(a)** (including obtaining any necessary consents or permits of other persons) and ensure that its employees and officers do the same.

12.4 Prior Security

At any time after the security constituted by this Agreement has become enforceable, or after any powers conferred by any Security having priority to this Agreement shall have become exercisable, the Lender may:

- (a) redeem that or any other prior Security;
- (b) procure the transfer of that Security to it; and
- (c) settle and pass any account of the holder of any prior Security.

Any accounts so settled and passed shall be, in the absence of any manifest error, conclusive and binding on the Borrower. All monies paid by the Lender to an encumbrancer in settlement of any of those accounts shall, as from its payment by the Lender, be due from the Borrower to the Lender on current account and shall bear interest at the Default Rate and be secured as part of the Secured Liabilities.

12.5 Protection of third parties

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

- (a) whether any of the Secured Liabilities have become due or payable, or remain unpaid or undischarged;
- (b) whether any power the Lender, a Receiver or Delegate is purporting to exercise has become exercisable or is properly exercisable; or
- (c) how any money paid to the Lender, any Receiver or any Delegate is to be applied.

12.6 Privileges

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

12.7 No liability as mortgagee in possession



Neither the Lender, any Receiver, any Delegate nor any Administrator shall be liable to account as mortgagee in possession in respect of all or any of the Secured Assets, nor shall any of them be liable for any loss on realisation of, or for any neglect or default of any nature in connection with, all or any of the Secured Assets for which a mortgagee in possession might be liable as such.

12.8 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, every Receiver and Delegate may do so for any consideration, in any manner and on any terms that they, it or he thinks fit.

13. RECEIVER

13.1 Appointment

At any time after the security constituted by this Agreement has become enforceable, or at the request of the Borrower, 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.

13.2 Removal

The Lender may, without further notice (subject to section 45 of the Insolvency Act 1986), 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.

13.3 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 Agreement, which shall be due and payable immediately on its being paid by the Lender.

13.4 Power of appointment additional to statutory powers

The power to appoint a Receiver conferred by this Agreement 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.

13.5 Power of appointment exercisable despite prior appointments

The power to appoint a Receiver (whether conferred by this Agreement 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.



13.6 Agent of the Borrower

Any Receiver appointed by the Lender under this Agreement shall be the agent of the Borrower and the Borrower 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 Borrower goes into liquidation and after that the Receiver shall act as principal and shall not become the agent of the Lender.

14. POWERS OF RECEIVER

14.1 General

- (a) Any Receiver appointed by the Lender under this Agreement shall, in addition to the powers conferred on him by statute, have the powers set out in **clause 14.2 to clause 14.23** (inclusive).
- (b) If there is more than one Receiver holding office at the same time, each Receiver may (unless the document appointing him states otherwise) exercise all of the powers conferred on a Receiver under this Agreement individually and to the exclusion of any other Receiver.
- (c) Any exercise by a Receiver of any of the powers given by **clause 14** may be on behalf of the Borrower, the directors of the Borrower (in the case of the power contained in **clause 14.15**) or himself.

14.2 Repair and develop Properties

A Receiver may undertake or complete any works of repair, building or development on the Properties and may apply for and maintain any planning permission, development consent, building regulation approval or any other permission, consent or licence to carry out any of the same.

14.3 Surrender leases

A Receiver may grant, or accept surrenders of, any leases or tenancies affecting any Property and may grant any other interest or right over any Property on any terms, and subject to any conditions, that he thinks fit.

14.4 Employ personnel and advisors

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 he thinks fit. A Receiver may discharge any such person or any such person appointed by the Borrower.

14.5 Make VAT elections

A Receiver may make, exercise or revoke any value added tax option to tax as he thinks fit.



14.6 Remuneration

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

14.7 Realise Secured Assets

A Receiver may collect and get in the Secured Assets or any part of them in respect of which he 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.

14.8 Manage or reconstruct the Borrower's business

A Receiver may carry on, manage, develop, reconstruct, amalgamate or diversify or concur in carrying on, managing, developing, reconstructing, amalgamating or diversifying the business of the Borrower.

14.9 Dispose of Secured Assets

A Receiver may sell, exchange, convert into money and realise all or any of the Secured Assets in respect of which he is appointed in any manner (including, without limitation, by public auction or private sale) and generally on any terms and conditions as he 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.

14.10 Sever fixtures and fittings

A Receiver may sever and sell separately any fixtures or fittings from any Property without the consent of the Borrower.

14.11 Sell Book Debts

A Receiver may sell and assign all or any of the Book Debts in respect of which he is appointed in any manner, and generally on any terms and conditions, that he thinks fit.

14.12 Valid receipts

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

14.13 Make settlements

A Receiver may make any arrangement, settlement or compromise between the Borrower and any other person that he may think expedient.

14.14 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 he thinks fit.

14.15 Improve the Equipment

A Receiver may make substitutions of, or improvements to, the Equipment as he may think expedient.

14.16 Make calls on the members of the Borrower

A Receiver may make calls conditionally or unconditionally on the members of the Borrower in respect of uncalled capital with (for that purpose and for the purpose of enforcing payments of any calls so made) the same powers as are conferred by the articles of association of the Borrower on its directors in respect of calls authorised to be made by them.

14.17 Insure

A Receiver may, if he thinks fit, but without prejudice to the indemnity in **clause 17.2**, effect with any insurer any policy of insurance either in lieu or satisfaction of, or in addition to, the insurance required to be maintained by the Borrower under this Agreement.

14.18 Powers under the LPA 1925

A Receiver may exercise all powers provided for in the LPA 1925 in the same way as if he had been duly appointed under the LPA 1925, and exercise all powers provided for an administrative receiver in Schedule 1 to the Insolvency Act 1986.

14.19 Borrow

A Receiver may, for any of the purposes authorised by this **clause 14**, raise money by borrowing from the Lender (or from any other person) either unsecured or on the security of all or any of the Secured Assets in respect of which he is appointed on any terms that he thinks fit (including, if the Lender consents, terms under which that security ranks in priority to this Agreement).

14.20 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 Borrower, and the monies so paid shall be deemed to be an expense properly incurred by the Receiver.

14.21 Delegation

A Receiver may delegate his powers in accordance with this Agreement.

14.22 Absolute beneficial owner



A Receiver may, in relation to any of the Secured Assets, exercise all powers, authorisations and rights he 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.

14.23 Incidental powers

A Receiver may do any other acts and things:

- (a) that he may consider desirable or necessary for realising any of the Secured Assets;
- (b) that he may consider incidental or conducive to any of the rights or powers conferred on a Receiver under or by virtue of this Agreement or law; or
- (c) that he lawfully may or can do as agent for the Borrower.

15. DELEGATION

15.1 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 Agreement (including the power of attorney granted under **clause 19.1**).

15.2 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.

15.3 Liability

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

16. APPLICATION OF PROCEEDS

16.1 Order of application of proceeds

All monies received by the Lender, a Receiver or a Delegate pursuant to this Agreement, after the security constituted by this Agreement has become enforceable, 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:

- (a) in or towards payment of or provision for all costs, 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 Agreement, and of all remuneration due to any Receiver under or in connection with this Agreement;



- (b) in or towards payment of or provision for the Secured Liabilities in any order and manner that the Lender determines; and
- (c) in payment of the surplus (if any) to the Borrower or other person entitled to it.

17. COSTS AND INDEMNITY

17.1 Costs

The Borrower shall, within five (5) Business Days of 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:

- (a) this Agreement or the Secured Assets;
- (b) 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 Agreement; or
- (c) 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 or expense arose until full discharge of that cost or expense (whether before or after judgment, liquidation, winding up or administration of the Borrower) at the Default Rate.

17.2 Indemnity

The Borrower shall 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:

- (a) the exercise or purported exercise of any of the rights, powers, authorities or discretions vested in them under this Agreement or by law in respect of the Secured Assets;
- (b) taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) the security constituted by this Agreement; or
- (c) any default or delay by the Borrower in performing any of its obligations under this Agreement.

Any past or present employee or agent may enforce the terms of this clause 17.2 subject to and in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999.



18. FURTHER ASSURANCE

18.1 Further assurance

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

- (a) creating, perfecting or protecting the security intended to be created by this Agreement;
- (b) facilitating the realisation of any Secured Asset; or
- (c) 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 (if the Lender or Receiver thinks it expedient) 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.

19. POWER OF ATTORNEY

19.1 Appointment of attorneys

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

- (a) the Borrower are required to execute and do under this Agreement; or
- (b) any attorney deems proper or desirable in exercising any of the rights, powers, authorities and discretions conferred by this Agreement or by law on the Lender, any Receiver or any Delegate.

19.2 Ratification of acts of attorneys

The Borrower 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 19.1**.

20. RELEASE

Subject to **clause 27.3**, on the expiry of the Security Period (but not otherwise), the Lender shall, at the request and cost of the Borrower, take whatever action is necessary to:



- (a) release the Secured Assets from the security constituted by this Agreement; and
- (b) reassign the Secured Assets to the Borrower.

21. ASSIGNMENT AND TRANSFER

21.1 Assignment by Lender

- (a) At any time, without the consent of the Borrower, the Lender may assign or transfer any or all of its rights and obligations under this Agreement.
- (b) The Lender may disclose to any actual or proposed assignee or transferee any information in its possession that relates to the Borrower, the Secured Assets and this Agreement that the Lender considers appropriate.

21.2 Assignment by Borrower

The Borrower may not assign any of its rights, or transfer any of its rights or obligations, under this Agreement.

22. SET-OFF

22.1 Lender's right of set-off

The Lender may at any time set off any liability of the Borrower to the Lender against any liability of the Lender to the Borrower, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this Agreement. 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 22** shall not limit or affect any other rights or remedies available to it under this Agreement or otherwise.

22.2 No obligation to set off

The Lender are not obliged to exercise its rights under **clause 22.1**. If, however, it does exercise those rights it must promptly notify the Borrower of the set-off that has been made.

23. AMENDMENTS, WAIVERS AND CONSENTS

23.1 Amendments

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

23.2 Waivers and consents

- (a) A waiver of any right or remedy under this Agreement or by law, or any consent given under this Agreement, is only effective if given in writing by the waiving



or consenting party and shall not be deemed a waiver of any other breach or default. It only applies in the circumstances for which it is given and shall not prevent the party giving it from subsequently relying on the relevant provision.

- (b) A failure or delay by a party to exercise any right or remedy provided under this Agreement 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 Agreement. No single or partial exercise of any right or remedy provided under this Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy. No election to affirm this Agreement by the Lender shall be effective unless it is in writing.

23.3 Rights and remedies

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

24. SEVERANCE

24.1 Severance

If any provision (or part of a provision) of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision (or part of a provision) shall be deemed deleted. Any modification to or deletion of a provision (or part of a provision) under this clause shall not affect the legality, validity and enforceability of the rest of this Agreement.

25. COUNTERPARTS

25.1 Counterparts

- (a) This Agreement 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 agreement.
- (b) If transmission of the executed signature page of a counterpart of this Agreement occurs by facsimile or e-mail (in PDF, JPEG or other agreed format) to the other parties, such transmission shall only take effect as delivery of an executed counterpart of this Agreement to create a legally binding agreement when all of the parties agree that it should so take effect; and, unless otherwise agreed in writing, each party shall provide the other(s) with the original of its counterpart as soon as reasonably possible but not later than five (5) Business Days after the date the legally binding agreement shall have come into effect. This Agreement shall become a legally binding agreement between the parties only when signed and delivered by each party to the other.



26. THIRD PARTY RIGHTS

26.1 Third party rights

Except as expressly provided elsewhere in this Agreement, a person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce, or enjoy the benefit of, any term of this Agreement. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

27. FURTHER PROVISIONS

27.1 Independent security

This Agreement 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 Agreement.

27.2 Continuing security

This Agreement 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 Agreement in writing.

27.3 Discharge conditional

Any release, discharge or settlement between the Borrower and the Lender shall be deemed conditional on no payment or security received by the Lender in respect of the Secured Liabilities being avoided, reduced or ordered to be refunded pursuant to any law relating to insolvency, bankruptcy, winding-up, administration, receivership or otherwise. Despite any such release, discharge or settlement:

- (a) the Lender or its nominee may retain this Agreement and the security created by or pursuant to 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
- (b) the Lender may recover the value or amount of such security or payment from the Borrower subsequently as if the release, discharge or settlement had not occurred.

27.4 Certificates

A certificate or determination by the Lender as to any amount for the time being due to them from the Borrower under this Agreement issued by the Borrower shall be, in the absence of any manifest error, conclusive evidence of the amount due.

27.5 Consolidation



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

28. NOTICES

28.1 Delivery

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

- (a) in writing;
- (b) delivered by hand, by pre-paid first-class post or other next working day delivery service or sent by fax; and
- (c) sent to:
 - (i) the Borrower at the respective addresses first mentioned at the beginning of this Agreement; and
 - (ii) the Lender at the address first mentioned at the beginning of this Agreement,

or to any other address or fax number as is notified in writing by one party to the other from time to time.

28.2 Receipt by Borrower

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

- (a) if delivered by hand, at the time it is left at the relevant address;
- (b) if posted by pre-paid first-class post or other next working day delivery service, on the second Business Day after posting; and
- (c) if sent by fax, when received in legible form.

A notice or other communication given as described in **clause 28.2(a)** or **clause 28.2(c)** 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.

28.3 Receipt by Lender

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

28.4 No notice by e-mail



A notice or other communication given under or in connection with this Agreement is not valid if sent by e-mail.

29. GOVERNING LAW AND JURISDICTION

29.1 Governing law

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

29.2 Jurisdiction

Each party irrevocably agrees that, subject as provided below, the courts of England and Wales shall have non-exclusive jurisdiction over any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims). Nothing in **this clause** shall limit the right of the Lender to take proceedings against the Borrower 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.



EXECUTION PROVISIONS:

IN WITNESS WHEREOF the parties hereto have executed and delivered this Agreement the day and year first above written.

The Lender

EXECUTED and DELIVERED as a)
deed by **ESQUILINE FINANCE LTD,**)
by it duly authorised director:)

In the presence of:

Name: John Martin Brodie Clark
Position: Director

Name:
Address:
Occupation:


The Borrower

EXECUTED and DELIVERED as a)
deed by **STONEBASE**)
CONSTRUCTION LIMITED, by it)
duly authorised director:

In the presence of:



Name: Howard Gwynn
Position: Director



Name: Mike Gwynn
Address: Telford
Occupation: CEO