



**Registration of a Charge**

Company name: **BAM PROPCO (JOHNSTONE) LIMITED**

Company number: **08861063**



X8058V0W

Received for Electronic Filing: **26/02/2019**

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**Details of Charge**

Date of creation: **19/02/2019**

Charge code: **0886 1063 0006**

Persons entitled: **INVESTEC BANK PLC**

Brief description:

**Contains fixed charge(s).**

**Contains floating charge(s) .**

**Contains negative pledge.**

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**Authentication of Form**

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

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**Authentication of Instrument**

Certification statement: **I CERTIFY THAT 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:

**MORTON FRASER LLP**



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

Company number: 8861063

Charge code: 0886 1063 0006

The Registrar of Companies for England and Wales hereby certifies that a charge dated 19th February 2019 and created by BAM PROPCO (JOHNSTONE) LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 26th February 2019 .

Given at Companies House, Cardiff on 27th February 2019

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



**Companies House**



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES

**Dated: 19 FEBRUARY 2019**

- (1) BAM PROPCO (JOHNSTONE) LIMITED**
- (2) INVESTEC BANK PLC**

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## **DEBENTURE**

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**IMPORTANCE NOTICE – WE RECOMMEND THAT YOU CONSULT YOUR SOLICITOR OR OTHER INDEPENDENT LEGAL ADVISER BEFORE EXECUTING THIS DOCUMENT**

**THIS DEBENTURE** is made as a Deed on 19 FEBRUARY 2019

**BETWEEN:**

- (1) **BAM PROPCO (JOHNSTONE) LIMITED**, a company incorporated in England and Wales (Company Number: 08861063) whose registered office is at 383a Euston Road, London NW1 3AU (the "**Chargor**"); and
- (2) **INVESTEC BANK PLC**, a company incorporated in England and Wales (Company Number: 00489604) whose registered office is at 30 Gresham Street, London EC2V 7QP, United Kingdom (the "**Bank**").

**WITNESSES** as follows:

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Debenture, unless the context otherwise requires:

"**Account Bank**" means each bank with which an Account is held set out under the heading "Account Bank" in Schedule 6.

"**Accounts**" means:

- (a) the accounts of the Chargor specified in Schedule 6; and
- (b) all other present and future accounts of the Chargor with any bank (including the Bank), financial institution or other person.

"**Borrowers**" has the meaning given to it in the Facility Letter.

"**Acquisition Agreement**" means the sale agreement dated 13 March 2014 relating to the sale and purchase of the Target Assets and made between, amongst others, the Chargor and the Vendors.

"**Collateral Instruments**" means notes, bills of exchange, certificates of deposit and other negotiable and non-negotiable instruments, guarantees, indemnities and any other documents or instruments which contain or evidence an obligation (with or without security) to pay, discharge or be responsible directly or indirectly for, any liabilities of any person and includes any document or instrument creating or evidencing an Encumbrance.

"**Companies**" means the Subsidiaries of the Chargor specified under the heading "Issuer" in Schedule 4.

"**Debts**" means the assets of the Chargor described in Clause 3.1.2.5.

"**Default Rate**" means:

- (a) the Default Rate specified in the Facility Letter; or

- (b) if no such rate is specified in the Facility Letter or other Facility Document, 5.50% per annum over the base rate of the Bank from time to time.

**"disposal"** includes any sale, lease, sub-lease, assignment, assignation, disposition, conveyance or transfer, the grant of an option or similar right, the grant of any easement, right or privilege, the grant of a licence or permission to assign or sublet, the creation of a trust or other equitable interest or any other proprietary right in favour of a third party, a sharing or parting with possession or occupation whether by way of licence or otherwise and the granting of access to any other person over any intellectual property, and **"dispose"** and **"disposition"** shall be construed accordingly.

**"Dividends"** means all dividends, interest and other money payable in respect of the Investments.

**"Encumbrance"** means any mortgage, charge, standard security, right in security, security, pledge, lien, assignment, assignation, guarantee, indemnity, right of set-off, right to retention of title or other encumbrance, whether fixed or floating, over any present or future property, assets or undertaking.

**"English Loan Note Documents"** has the meaning given to that term in the Facility Letter.

**"Enforcement Event"** means:

- (a) the Bank making demand for payment or discharge of all or any of the Secured Obligations at any time; and/or
- (b) the occurrence of an Event of Default which is continuing.

**"Environment"** means humans, animals, plants and all other living organisms including the ecological systems of which they form part and the following media:

- (a) air (including, without limitation, air within natural or man-made structures, whether above or below ground);
- (b) water (including, without limitation, territorial, coastal and inland waters, water under or within land and water in drains and sewers); and
- (c) land (including, without limitation, land under water).

**"Environmental Law"** means any applicable law or regulation which relates to:

- (a) the pollution or protection of the Environment;
- (b) the conditions of the workplace; or
- (c) the generation, handling, storage, use, release or spillage of any substance which, alone or in combination with any other, is capable of causing harm to the Environment, including, without limitation, any waste.

**"Environmental Claim"** means any claim, proceeding, formal notice or investigation by any person in respect of any Environmental Law.

**"Event of Default"** means the occurrence of an event of default (howsoever described) under any Facility Document.

**"Facility Documents"** means:



- (a) the Facility Letter and the English Loan Note documents; and/or
- (b) any other past, present or future letter, document, agreement or security (including this Debenture) comprising or constituting the Secured Obligations from time to time.

**"Facility Letter"** means the facility letter from the Bank dated on or around the date of this Debenture and addressed to, *inter alios*, the Chargor and all terms and conditions expressly incorporated therein, pursuant to which the Bank makes an uncommitted on-demand term loan and revolving facility of up to £3,031,548.72 available to the Borrowers.

**"Financial Collateral"** has the meaning given to that term in the Financial Collateral Regulations.

**"Financial Collateral Regulations"** means the Financial Collateral Arrangements (No. 2) Regulations 2003 (S.I. 2003 No. 3226).

**"Fixtures"** means, in relation to a property, all fixtures and fittings (including trade fixtures and fittings), fixed plant and machinery and other items attached to that property, whether or not constituting a fixture at law.

**"Floating Charge Assets"** means the assets of the Chargor from time to time charged by this Debenture by way of floating charge.

**"Incapacity"** means, in relation to a person, the insolvency, liquidation, dissolution, winding-up, administration, receivership, amalgamation, reconstruction or other incapacity of that person whatsoever (and, in the case of a partnership, includes the termination or change in the composition of the partnership).

**"Insolvency Act"** means the Insolvency Act 1986.

**"Insurances"** means:

- (a) each policy of insurance specified in Schedule 5; and
- (b) all other present and future contracts or policies of insurance (including life assurance policies) taken out by the Chargor or in which the Chargor from time to time has an interest,

excluding, in each case, contracts and policies of insurance which relate to liabilities of third parties.

**"Insurers"** means the insurance companies which have provided the Insurances to the Chargor.

**"Investments"** means:

- (a) all of the stocks, shares and other investments issued by the Companies and as specified in Schedule 4; and
- (b) all other stocks, shares and other securities of the Companies now or at any time after the date of the deed owned by the Chargor including any offered by way of redemption, bonus, preference or option or otherwise in respect of any of the shares referred to in (a) above,

and all rights and benefits in respect of the assets referred to in (a) and (b) above other than the right to receive Dividends.

**"ITA"** means the Income Tax Act 2007.

**"Obligors"** means the Chargor and the other Obligors (as that term is defined in the Facility Letter).

**"Receiver"** has the meaning given to that term in Clause 10 (Receivers).

**"Repeating Representation"** shall have the meaning given to that term in the Facility Documents.

**"Secured Obligations"** means all or any money and liabilities which shall from time to time (and whether on or at any time after demand) be due, owing or incurred in whatsoever manner to the Bank by the Obligors, whether actually or contingently, solely or jointly and whether as principal or surety (or guarantor or cautioner), including any money and liabilities of any Obligor to a third party which have been assigned or novated to or otherwise vested in the Bank and including interest, discounts, commission and other lawful charges or expenses which the Bank may in the course of its business charge or incur in respect of any of those matters or for keeping any Obligor's account, and so that interest shall be computed and compounded according to the Bank's usual rates and practice (or otherwise agreed in writing) after as well as before any demand made or judgment or decree obtained under or in relation to this Debenture.

**"Securities"** means the assets of the Chargor described in Clause 3.1.2.4.

**"Security Assets"** means all assets, property and rights of the Chargor described in Clauses 3.1 (Fixed Charges), 3.2 (Security Assignments) and 3.3 (Floating Charge).

**"Security Financial Collateral Arrangement"** has the meaning given to that term in the Financial Collateral Regulations.

**"Security Period"** means the period beginning on the date of this Deed and ending on the date on which:

- (a) all the Secured Obligations have been unconditionally and irrevocably paid and discharged in full; and
- (b) the Bank has no further commitment, obligation or liability (actual or contingent) to make advances or provide other financial accommodation to any Obligor pursuant to the Facility Documents.

**"Subsidiary"** and **"Subsidiary Undertaking"** means in relation to any person, any entity which is controlled directly or indirectly by that person and any entity (whether or not so controlled) treated as a subsidiary or a subsidiary undertaking in the latest financial statements of that person from time to time; and **"control"** for this purpose means:

- (a) the direct or indirect holding or ownership of the majority of the voting share capital or voting rights of such entity or the direct or indirect control of the majority of the voting share capital or voting rights of such entity;
- (b) the right or ability to direct the management of such entity or to determine the composition of a majority of the board of directors (or like board) of such entity; or
- (c) the right to exercise a dominant influence over such entity,

in each case whether by virtue of ownership of share capital, ownership of rights to share in the capital of such entity, ownership of interest conferring any right to share in the profits or liability to contribute to the losses of such entity or giving rise to an obligation to contribute to the debts of or expenses of such entity in a winding up, or by virtue of contract, the constitutional documents of such entity or otherwise.

**"Target Assets"** means the Assets as that term is defined in the Acquisition Agreement.

**"Vendors"** means each of the following companies (each in administration and each acting by its administrator, BDO LLP):

- (a) RZ Homes Limited;
- (b) RZ Healthcare Limited;
- (c) Moorpark Propco Limited; and
- (d) Dunan Healthcare UK Limited.

## 1.2 Interpretation

In this Debenture (unless the context otherwise requires):

- 1.2.1 any reference to statutes, statutory provisions and other legislation shall include all amendments, substitutions, modifications and re-enactments for the time being in force and shall include any orders, regulations, instruments or other subordinate legislation made under the relevant legislation;
- 1.2.2 any reference to a **"regulation"** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
- 1.2.3 any reference to **"control"** of any company shall be interpreted in accordance with Section 995 of the ITA;
- 1.2.4 any reference to any Clause, paragraph or Schedule shall be construed as a reference to the clauses in this Debenture, the schedules to this Debenture and the paragraphs in such schedules;
- 1.2.5 any reference to any term or phrase defined in the Companies Act 2006 (as amended from time to time) shall (whether or not it is capitalised) bear the same meaning in this Debenture;
- 1.2.6 any reference to words importing the singular shall include the plural and vice versa and words denoting any gender shall include all genders;
- 1.2.7 any reference to this Debenture and to any provisions of it or to any other document referred to in this Debenture shall be construed as references to it in force for the time being and as amended, varied, supplemented, restated, substituted or novated from time to time including, for the avoidance of doubt and without prejudice to the generality of the foregoing, any amendment, variation, supplement, restatement or substitution that increases the amount of any loan or credit facility made available under any Facility Document or increases the amount of any interest, fees, costs

or expenses or any other sums due or to become due under the Facility Documents or pushes back the date for full and final repayment of the facility made available under the Facility Documents;

- 1.2.8 any reference to a "**person**" is to be construed to include references to a natural person, corporation, firm, company, partnership, limited partnership, limited liability partnership, joint venture, unincorporated body of persons, individual or any state or any agency of a state, whether or not a separate legal entity;
- 1.2.9 any reference to any person is to be construed to include that person's assignees or transferees or successors in title, whether direct or indirect;
- 1.2.10 any reference to any word or phrase includes all derivations thereof;
- 1.2.11 any reference to "**assets**" includes present and future properties, revenues and rights of every description;
- 1.2.12 any reference to "**guarantee**" means any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets of any person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness;
- 1.2.13 any reference to "**indebtedness**" or "**borrowings**" includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
- 1.2.14 any reference to any "**associated person**" means, in relation to a person, a person who is either acting in concert (as defined in the City Code on Takeovers and Mergers) with that person or is a connected person (as defined in section 993 (as supplemented by section 994) of the ITA) of that person;
- 1.2.15 any reference to a time of day is a reference to London time; and
- 1.2.16 clause headings are for ease of reference only and shall not affect the interpretation of this Debenture.

### 1.3 **Effect as a deed**

It is intended that this Debenture takes effect as a deed notwithstanding that any party may only execute it under hand.

### 1.4 **Appointment of administrator / Receiver**

Any appointment of an administrator or a Receiver under Clauses 9 (Appointment of Administrator) and 10 (Receivers) hereof may be made by any successor or assignee or transferee of the Bank, and the Chargor hereby irrevocably appoints each such successor or assignee or transferee to be its attorney in the terms and for the purposes stated in Clause 15 (Power of Attorney) hereof.

## **1.5 Facility Documents definitions**

Unless the context otherwise requires or unless otherwise defined in this Debenture, words and expressions defined in the Facility Documents shall have the same meaning when used in this Debenture.

## **1.6 Land Registration Rules**

For the purposes of Rule 103 of the Land Registration Rules 2003 only, the parties to this Debenture agree that the Facility Documents and any other document relating to the Secured Obligations and/or referred to in this Debenture (but excluding, for the avoidance of doubt, this Debenture) do not form part of the terms and conditions of the security created by this Debenture.

## **2. COVENANT TO PAY**

### **2.1 Covenant to pay**

The Chargor covenants with the Bank that it will on demand pay and discharge the Secured Obligations to the Bank in the manner provided for in the Facility Documents when they fall due pursuant to the terms of the Facility Documents.

### **2.2 Interest**

2.2.1 The Chargor shall pay interest (as well after as before any judgment) at the rate or rates applicable under the agreements or arrangements giving rise to the relevant liabilities or, if no such rate or rates are specified, at the Default Rate.

2.2.2 Interest shall be compounded in the event of it not being punctually paid in accordance with the usual practice of the Bank but without prejudice to the rights of the Bank to require payment of such interest.

### **2.3 Appropriation of money/assets**

At any time after the occurrence of an Enforcement Event, the Bank shall be entitled to appropriate moneys and/or assets to satisfy the Secured Obligations in such manner or order as it sees fit and any such appropriation shall override any appropriation by any other person.

### **2.4 Statements of account conclusive**

Any statement of account of the Chargor, signed as correct by an officer of the Bank, showing the amount of the Secured Obligations, shall, in the absence of manifest error, be binding and conclusive on and against the Chargor.

## **3. SECURITY**

### **3.1 Fixed Charges**

The Chargor, with full title guarantee and as a continuing security for the payment and discharge of the Secured Obligations, hereby charges to the Bank:

3.1.1 by way of first legal mortgage, any freehold or leasehold or other immovable property now vested in the Chargor (including without limitation the property(ies) specified in Schedule 1 (Real Estate)) together with all

buildings, trade and other fixtures, fixed plant and machinery of the Chargor from time to time thereon and the proceeds of sale thereof;

3.1.2 by way of first fixed charge:

- 3.1.2.1 all other freehold or leasehold and other immovable property at any time in the future belonging or charged to the Chargor together with all buildings, trade and other fixtures, fixed plant and machinery of the Chargor from time to time thereon and the proceeds of sale thereof;
- 3.1.2.2 the plant and machinery, computers, office and other equipment (if any) specified in Schedule 2 (Plant, Machinery and Equipment) and the benefit of all contracts and warranties relating to the same;
- 3.1.2.3 all plant and machinery, computers, office and other equipment (other than any property specified in Schedule 2 (Plant, Machinery and Equipment)) now or from time to time hereafter owned by the Chargor or in which the Chargor has an interest and the benefit of all contracts and warranties relating to the same that do not contain any restrictions on charging;
- 3.1.2.4 the Investments and the Dividends and all other stocks, shares, notes, bonds and other securities of any kind whatsoever (including warrants and options to acquire or subscribe any of the same) whether marketable or otherwise and all other interests (including but not limited to loan capital) in any person, now or from time to time hereafter owned by the Chargor or in which the Chargor has an interest, including all allotments, rights, benefits and advantages whatsoever at any time accruing, offered or arising in respect of or incidental to the same and all money or property accruing or offered at any time by way of conversion, redemption, bonus, preference, option, dividend, distribution, interest or otherwise in respect thereof;
- 3.1.2.5 all book and other debts, revenues and claims, whether actual or contingent, whether arising under contracts or in any other manner whatsoever now or from time to time hereafter owned by the Chargor or in which the Chargor has an interest (whether originally owing to the Chargor or purchased or otherwise acquired by it) and all things or choses in action which may give rise to any debt, revenue or claim, together with the full benefit of any Encumbrances, Collateral Instruments and any other rights relating thereto (whether as creditor or beneficiary) including, without limitation, reservations of proprietary rights, rights of tracing and unpaid vendor's liens and associated rights, but excluding any assets the subject of Clauses 3.1.2.6, 3.1.2.7 and 3.1.2.8 below;
- 3.1.2.6 the proceeds of collection of all Debts;
- 3.1.2.7 the Accounts and all amounts from time to time standing to the credit of all such Accounts;

- 3.1.2.8 to the extent not effectively assigned in security to the Bank pursuant to Clause 3.2 (Security Assignments) below, all Insurances and all moneys from time to time payable to the Chargor under or pursuant to the Insurances including without limitation the right to the refund of any premiums;
- 3.1.2.9 to the extent not effectively assigned in security to the Bank pursuant to Clause 3.2 (Security Assignments) below, the Acquisition Agreement and all moneys from time to time payable to the Chargor under or pursuant to the Acquisition Agreement;
- 3.1.2.10 to the extent they are capable of being charged, the goodwill of the Chargor and its uncalled capital for the time being;
- 3.1.2.11 the patents, trade marks, service marks and registered designs (if any) and application for any of the foregoing in each case as specified in Schedule 3 (Intellectual Property Rights);
- 3.1.2.12 all present and future patents, trade marks, service marks and registered designs including applications therefor (other than any property specified in Schedule 3 (Intellectual Property Rights)) now or from time to time hereafter owned by the Chargor or in which the Chargor may have an interest; and
- 3.1.2.13 all patents (including applications for and rights to apply for patents), trade marks and service marks (whether registered or not) and applications for the same, trade names, registered designs, design rights, semi-conductor topography rights, database rights, copyrights, computer programmes, know-how and trade secrets and all other intellectual or intangible property or rights and all licences, agreements and ancillary and connected rights relating to, intellectual and intangible property, in each case now or from time to time hereafter owned by the Chargor including any renewals, revivals or extensions thereof and wherever in the world subsisting, excluding the property specified in Clauses 3.1.2.11 and 3.1.2.12.

## 3.2 Security Assignments

- 3.2.1 The Chargor, with full title guarantee and as a continuing security for the payment and discharge of the Secured Obligations, hereby assigns to the Bank (subject to a proviso for re-assignment on redemption and to the required consent of any third party being obtained):
  - 3.2.1.1 all the right, title, benefit and interest of the Chargor in and to the Insurances;
  - 3.2.1.2 all the right, title, benefit and interest of the Chargor in and to the Acquisition Agreement;
  - 3.2.1.3 all the right, title, benefit and interest of the Chargor in and to any interest rate hedging agreements now or in the future entered into with any person; and

3.2.1.4 (insofar as they are capable of being assigned by way of security) all the right, title and interest of the Chargor in and to any agreement to which the Chargor is a party except to the extent that it is subject to any fixed charge created under any other provisions of this Debenture.

3.2.2 To the extent that any such right, title and interest as referred to in Clause 3.2.1 above is not assignable or capable of assignment, the assignment of it purported to be effected by such clause shall operate as an assignment of any and all compensation, damages, income, profit or rent which the Chargor may derive from it or be awarded or entitled to in respect of it, in each case as a continuing security for the payment or discharge in full of the Secured Obligations.

### **3.3 Floating Charge**

The Chargor, with full title guarantee and as a continuing security for the payment and discharge of the Secured Obligations, hereby charges to the Bank by way of first floating charge the whole of the Chargor's undertaking and all its property and assets whatsoever and wheresoever present and future other than the property and assets from time to time effectively charged to the Bank by way of legal mortgage, fixed charge or security assignment by this Debenture, but including (without limitation and whether or not so effectively charged) any of its property and assets situated in Scotland and/or governed by Scots law.

### **3.4 Automatic conversion of floating charge**

Notwithstanding anything expressed or implied in this Debenture:

- 3.4.1 if an Enforcement Event occurs;
- 3.4.2 if the Chargor creates or attempts to create any Encumbrance over all or any of the Floating Charge Assets without the prior written consent of the Bank;
- 3.4.3 if an order is made for the compulsory winding-up of the Chargor;
- 3.4.4 if a meeting is convened for the passing of a resolution for the voluntary winding-up of the Chargor;
- 3.4.5 if any step is taken (including, without limitation, the making of an application or the giving of any notice) by the Chargor or any other person for the appointment of an administrator and/or a receiver in respect of the Chargor; and/or
- 3.4.6 if any person levies or attempts to levy any distress, diligence, arrestment, inhibition, execution, sequestration or other process or does or attempts to do any diligence in execution against any of the Floating Charge Assets,

then any floating charge created by this Debenture over any property or asset shall thereupon automatically without notice be converted into a fixed charge.

### **3.5 Conversion of floating charge by notice**

The Bank may convert any floating charge created by this Debenture by notice in writing to the Chargor into a fixed charge as regards all the property and assets which for the time being are the subject of such floating charge or, as the case may be, such of the property and assets as are specified by such notice if:



- 3.5.1 an Enforcement Event occurs;
- 3.5.2 in the opinion of the Bank any Floating Charge Asset is:
  - 3.5.2.1 in danger of being seized or any legal process or execution is being enforced against any such Floating Charge Asset; or
  - 3.5.2.2 at risk of becoming subject to any Encumbrance (other than an Encumbrance created by this Deed) or is otherwise at risk of ceasing to be within the ownership or control of the Chargor.

### **3.6 Restrictions on conversion of floating charge**

Clauses 3.4 (Automatic conversion of floating charge) and 3.5 (Conversion of floating charge by notice) above will not apply:

- 3.6.1 to any Security Assets situated in Scotland and/or governed by Scots law if, and to the extent that, a Receiver would not be capable of exercising his powers in Scotland pursuant to Section 72 of the Insolvency Act 1986 by reason of such automatic conversion or conversion by notice; and/or
- 3.6.2 solely by reason of the Chargor obtaining a moratorium or anything done with a view to obtaining a moratorium under Schedule A1 of the Insolvency Act 2000.

### **3.7 Extent of security**

- 3.7.1 The security created by this Debenture shall be in addition to and shall not prejudice determine or affect any other security which the Bank may from time to time hold for or in respect of all or any part of the monies, obligations and liabilities hereby secured.
- 3.7.2 No prior security held by the Bank over the property charged by this Debenture or any part of it shall merge in the security created by this Debenture which will remain in force and effect as a continuing security until discharged by the Bank.

### **3.8 Land Registry**

- 3.8.1 The Chargor consents to the Bank's application to the Land Registry for the registration against each of the registered titles specified in Schedule 1 (Real Estate) (and against any title to any unregistered property specified in Schedule 1 (Real Estate) which is or ought to be the subject of a first registration of title at the Land Registry at the date of this Charge) of:
  - 3.8.1.1 the following restriction:
 

"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 [ ] in favour of Investec Bank plc referred to in the charges register."; and
  - 3.8.1.2 a note to the effect that the Bank is under an obligation to make further advances.

3.8.2 In respect of any part of the Security Assets charged pursuant to Clauses 3.1 (Fixed Charges), 3.2 (Security Assignments) and 3.3 (Floating Charge) title to which is registered at the Land Registry, the Chargor hereby represents and warrants that the security created by this Debenture does not contravene any of the provisions of the memorandum and articles of association or any other constitutional documents of the Chargor.

### **3.9 The Facility Documents**

The obligations on the part of the Bank to make further advances to the Chargor under the Facility Documents shall be deemed to be incorporated in this Debenture for the purposes of section 94(1)(c) Law of Property Act 1925 and the Chargor hereby consents to the Bank's application to the Land Registry for the registration of a notice of such obligation on the register of each of the titles referred to in Clause 3.8 (Land Registry).

### **3.10 Qualifying floating charge**

Paragraph 14 of Schedule B1 to the Insolvency Act 1986 (incorporated by Schedule 16 to the Enterprise Act 2002) shall apply to any floating charge created pursuant to this Debenture.

## **4. NOTICES**

### **4.1 Notices re Accounts**

The Chargor shall give notice of the charge of each of the Accounts in the form set out in Part I of Schedule 7 to each of the Account Banks (other than the Bank) and shall procure that each such Account Bank executes and delivers to the Bank an acknowledgement of such notice in the form set out in Part II of Schedule 7.

### **4.2 Notices re Insurances**

The Chargor shall give notice of the assignment and charge of each of the Insurances in the form set out in Part I of Schedule 8 to each of the Insurers and shall use reasonable endeavours to procure that each such Insurer executes and delivers to the Bank an acknowledgement of such notice in the form substantially set out in Part II of Schedule 8.

### **4.3 Notices re Acquisition Agreement**

The Chargor shall give notice of the assignment and charge of the Acquisition Agreement in the form set out in Part I of Schedule 9 to each of the Vendors and shall use reasonable endeavours to ensure that each such Vendor executes and delivers to the Bank an acknowledgement of such notice in the form set out in Part II of Schedule 9.

## **5. RESTRICTIONS ON DEALING**

During the Security Period, the Chargor shall not without the prior written consent of the Bank:

**5.1.1 No Encumbrances**

create or attempt to create or permit to subsist in favour of any person other than the Bank any Encumbrance on or affecting the Security Assets or any part thereof;

**5.1.2 No disposals – fixed charge assets**

sell, transfer or otherwise dispose of or deal with any of the property or assets which are charged by way of legal mortgage or fixed charge under this Debenture or by way of a Scots law standard security in favour of the Bank or enter into any agreement or grant any option for any such sale, transfer or other disposal or dealing;

**5.1.3 No disposals – Floating Charge Assets**

sell, transfer or otherwise dispose of or deal with any of the Floating Charge Assets under this Debenture other than disposals for full market value in the ordinary course of business; and/or

**5.1.4 Maintain possession**

part with possession of any freehold, heritable or leasehold property grant or agree to grant any option or any licence, tenancy or other right of occupation to any person or exercise the powers of leasing or agreeing to lease or of accepting or agreeing to accept renunciations or surrenders conferred by Sections 99 and 100 of the Law of Property Act 1925 (or otherwise) provided that such restrictions shall not be construed as a limitation on the powers of any receiver appointed under this Debenture and being an agent of the Chargor and the Bank may grant or accept renunciations or surrenders of leases without restriction.

**6. REPRESENTATIONS AND WARRANTIES**

**6.1 Representations and Warranties**

The Chargor represents and warrants to the Bank on the date of this Debenture that:

**6.1.1 Title to Security Assets**

the Chargor is the beneficial owner of and has full right and title to the Security Assets and that the Security Assets are free from any Encumbrance of any kind (other than the Encumbrances created by this Debenture or any other Facility Document);

**6.1.2 Due incorporation**

the Chargor is duly incorporated or established and validly existing under the laws of the country of its incorporation or establishment and has power to carry on its business as it is now being conducted and to own its property and other assets;

**6.1.3 Corporate power**

the Chargor has power to execute, deliver and perform its obligations under this Debenture and all necessary corporate, shareholder and other

action has been taken to authorise the execution, delivery and performance of the same;

**6.1.4 Binding obligations**

this Debenture constitutes the valid, legal, binding and enforceable obligations of the Chargor and creates valid first priority Encumbrances of the type described over the assets to which they relate;

**6.1.5 No conflict with other obligations**

the execution and delivery of, the performance of its obligations under, and the compliance by the Chargor with the provisions of this Debenture will not:

6.1.5.1 contravene any existing applicable law, statute, rule or regulation or any judgment, decree or permit to which the Chargor is subject; or

6.1.5.2 conflict with, or result in any breach of any of the terms of, or constitute a default under, any agreement or other instrument to which the Chargor is a party or is subject or by which it or any of its property is bound; or

6.1.5.3 contravene or conflict with any provision of the Chargor's constitutional documents;

**6.1.6 Consents obtained**

every authorisation, or registration with, or declaration to, governmental or public bodies or authorities or courts required by the Chargor to authorise, or required by the Chargor in connection with, the execution, delivery, validity, enforceability or admissibility in evidence of this Debenture or the performance by the Chargor of its obligations hereunder or thereunder has been obtained or made and is in full force and effect and there has been no default in the observance of any of the conditions or restrictions imposed in or in connection with any of the same;

**6.1.7 No litigation**

no litigation, arbitration or administrative proceeding is taking place, pending or, to the knowledge of the officers of the Chargor (but without personal liability), threatened against the Chargor which could have a material adverse effect on the business, assets or financial condition of the Chargor;

**6.1.8 No filings required**

other than registration of this deed under the Companies Act 2006 and, where appropriate, the Land Registration Act 2002, it is not necessary to ensure the legality, validity, enforceability or admissibility in evidence of this Debenture that it or any other instrument be notarised, filed, recorded, registered or enrolled in any court, public office or elsewhere in any relevant jurisdiction or that any stamp, registration or similar tax or charge be paid in any relevant jurisdiction on or in relation to this Debenture and this Debenture is in proper form for its enforcement in the courts of any relevant jurisdiction; and

#### **6.1.9 No immunity**

neither the Chargor nor any of its assets are entitled to immunity on the grounds of sovereignty or otherwise from any legal action or proceeding (which shall include, without limitation, suit, attachment prior to judgment, execution or other enforcement).

### **6.2 Repetition**

The representations and warranties in Clause 6.1 (Representations and Warranties) shall be repeated by the Chargor on each date on which a Repeating Representation is made under the Facility Documents in each case, as if made with reference to the facts and circumstances existing on each such day.

## **7. COVENANTS BY THE CHARGOR**

### **7.1 Covenants**

The Chargor hereby covenants and undertakes with the Bank that during the continuance of this Debenture, the Chargor shall:

#### **7.1.1 Consents and Licences**

obtain or cause to be obtained, maintain in full force and effect and comply in all material respects with the conditions and restrictions (if any) imposed in, or in connection with, every consent, authorisation, licence or approval of governmental or public bodies or authorities or courts and do, or cause to be done, all other acts and things which may from time to time be necessary or desirable under applicable law for the continued due performance of all its obligations under this Debenture;

#### **7.1.2 Deposit of Deeds**

deposit with the Bank (to be held at the risk of the Chargor):

7.1.2.1 all deeds and documents of title relating to the Security Assets and to any subordinate interest in any of them and the insurance policies relating thereto;

7.1.2.2 all such other documents relating to its assets as the Bank may from time to time require;

#### **7.1.3 Conduct of business**

conduct and carry on its business, and procure that each of its Subsidiaries conducts and carries on its business, in a proper and efficient manner and keep or cause or procure to be kept proper books of account relating to such business and not make any material alteration in the nature or mode of conduct of any such business;

#### **7.1.4 Debts**

collect in the ordinary course of its business as agent for the Bank in a proper and efficient manner and pay into its account with the Bank or such other account as the Bank may from time to time specify all moneys which it may receive in respect of the Debts forthwith on receipt, the Chargor acknowledging that it may not, without the prior written consent of the

Bank, withdraw any such moneys from such account or compromise, compound, vary, discharge, postpone or release any of the Debts or waive its right of action in connection therewith or do or omit to do anything which may delay or prejudice the full recovery thereof, other than granting extensions to normal trade credit in accordance with the Chargor's reasonable and prudent management of its debtors on a normal commercial basis and the Chargor shall if called upon to do so by the Bank, execute a legal assignment or assignation of all or any of the Debts to the Bank;

#### **7.1.5 Securities**

immediately upon execution of this Debenture and during the continuance of the security created by this Debenture:

- 7.1.5.1 deposit with the Bank, and the Bank shall be entitled to hold, all share certificates relating to the Securities together with such signed and stamped stock transfer forms (left blank as to the date of the transfer and the transferee) and other documents as the Bank may from time to time require for perfecting the title of the Bank to the Securities (duly executed by or signed by the registered holder) or for vesting or enabling it to vest the same in itself or its nominees or in any purchaser; and
- 7.1.5.2 if required by the Bank on or following the occurrence of an Enforcement Event, transfer to the Bank or its nominee, title to the Securities by delivering the share certificates and stock transfer forms, duly completed (with the Bank or its nominee named as transferee), stamped and executed, to the issuing companies (or their registrars) for registration and the Chargor shall procure that the Bank (or its nominee) is entered on the register of members of each issuing company as holder of the Securities and that share certificates in the name of the Bank or its nominee are delivered to the Bank together with certified true copies of the register of members and the register of transfers of each issuing company showing the Bank or its nominee as the registered holder of the Securities;

#### **7.1.6 Acquisition of further shares etc.**

forthwith notify the Bank of any acquisition or receipt by the Chargor of any other shares or securities, or charges or securities convertible into, or accompanied by subscription rights for, shares, or any other rights, options or warrants to purchase or subscribe for shares or such other securities in any Company and, if so required in writing by the Bank, the Chargor shall:

- 7.1.6.1 immediately execute and deliver (or procure the execution and delivery of) such Encumbrances over such shares, securities, rights, options or warrants in favour of the Bank to secure the Secured Obligations as the Bank shall require;
- 7.1.6.2 sign, seal, execute and deliver all such deeds, instruments, transfers, renunciations, proxies, notices and documents in such form as the Bank may from time to time require in respect of any such Encumbrances; and

7.1.6.3 do all such things, take all such actions and give all such instructions, notices or directions as the Bank may deem necessary or desirable in respect of any such Encumbrances;

**7.1.7 Memorandum and Articles of Association**

procure that no Company shall make any alteration to the memorandum and articles of association of that Company including without limitation any modification or variation of the rights attaching to the Securities;

**7.1.8 Additional Share Capital**

procure that no Company shall allot or issue any further shares or any securities convertible into, or accompanied by subscription rights for, shares, other than additional ordinary shares ranking pari passu with the Investments in respect of which Clause 7.1.6 (Acquisition of further shares etc.) is complied with;

**7.1.9 Communications**

provide a copy of any report, accounts, circular, notice or other communication received in respect of or in connection with any of the Securities to the Bank forthwith upon request by the Bank;

**7.1.10 Prompt payment**

promptly pay all calls or other payments due and will discharge all other obligations in respect of any part of the Securities and if the Chargor fails to fulfil any such obligations the Bank may, but shall not be obliged to, make such payments on behalf of the Chargor in which event any sums so paid shall be reimbursed on demand by the Chargor to the Bank, together with interest at the rate specified in Clause 2.2 (Interest);

**7.1.11 Statutes**

comply with the provisions of all present or future statutes and directives and every notice, order or direction made under any of the foregoing;

**7.1.12 Financial information**

provide the Bank with all financial and other information with respect to the assets, liabilities and affairs of the Chargor and its subsidiaries and associated companies (if any) that the Bank may from time to time require;

**7.1.13 Jeopardy**

not do or cause or permit to be done anything which may in any way depreciate, jeopardise or otherwise prejudice the value or marketability of any of its assets;

**7.1.14 Insolvency**

notify the Bank immediately:

7.1.14.1 in the event of any creditor executing diligence against the Chargor or any distress or execution is levied or enforced against the Chargor or any garnishee order, arrestment or

inhibition is made and served in respect of any of its assets;  
and/or

- 7.1.14.2 if any steps (including, without limitation, the making of an application or the giving of any notice) are taken by any person (including, without limitation, the Chargor) in relation to the administration, receivership, winding-up or dissolution of the Chargor.

## **7.2 Power to Remedy**

If the Chargor defaults at any time in complying with any of its material obligations contained in this Debenture, the Bank shall, without prejudice to any other rights arising as a consequence of such default, be entitled (but not bound) to make good such default and the Chargor hereby irrevocably authorises the Bank and its employees and agents by way of security to do all such things (including, without limitation, entering the Chargor's property) necessary in connection therewith. Any monies so expended by the Bank shall be repayable by the Chargor to the Bank on demand together with interest at the Default Rate from the date of demand by the Bank until such repayment, both before and after judgment. No exercise by the Bank of its powers under this Clause 7.2 (Power to Remedy) shall make the Bank liable to account as a mortgagee in possession.

## **8. ENFORCEMENT**

### **8.1 Enforcement Event**

Upon and at any time after the occurrence of an Enforcement Event, the Bank shall be entitled to enforce the security (in whole or in part) created by this Debenture.

### **8.2 The Securities**

- 8.2.1 The Bank and its nominees at the discretion of the Bank may exercise in the name of the Chargor or otherwise at any time whether before or after demand for payment and without any further consent or authority on the part of the Chargor any voting rights and all powers given to trustees by section 10(3) and (4) Trustee Act, 1925 (as amended by section 9 Trustee Investments Act, 1961) in respect of securities or property subject to a trust and any powers or rights which may be exercisable by the person in whose name any of the Securities is registered or by the bearer thereof.
- 8.2.2 The Chargor will if so requested by the Bank transfer all or any of the Securities to such nominees or agents as the Bank may select.
- 8.2.3 Upon and at any time after the occurrence of an Enforcement Event, the Bank shall be entitled to:
  - 8.2.3.1 hold all dividends, distributions, interest and other moneys paid on and received by it in respect of the Securities for the account of the Bank or otherwise as the Bank may direct; and
  - 8.2.3.2 exercise all voting and other rights and powers attached to the Securities in such manner as the Bank deems fit.



### **8.3 Powers on enforcement**

At any time on or after the occurrence of an Enforcement Event or if requested by the Chargor, the Bank may, without further notice, exercise all the powers conferred upon mortgagees by the Law of Property Act 1925, without the restrictions contained in section 103 of the Law of Property Act 1925 and do all or any of the following and/or delegate such powers or any of them to any person on such terms as it may think fit:

- 8.3.1 sell or otherwise dispose of all or any of the Security Assets or otherwise exercise and do (or permit the Chargor or any nominee of it to exercise and do) all such powers and things as the Bank would be capable of exercising or doing if the Bank were the absolute beneficial owner of the Security Assets;
- 8.3.2 settle, adjust, refer to arbitration, compromise and arrange any claims, accounts, disputes, questions and demands with or by any person relating in any way to the Security Assets;
- 8.3.3 bring, prosecute, enforce, defend and abandon actions, suits and proceedings in relation to the Security Assets;
- 8.3.4 redeem any Encumbrance (whether or not having priority to this Debenture) over the Security Assets and settle the accounts of encumbrancers;
- 8.3.5 do, and concur in the doing of, all such other acts and things, either alone or jointly with any other person, which the Bank may consider necessary or expedient for the realisation of the Security Assets or incidental to the exercise of any of the rights and powers conferred on the Bank under or by virtue of this Debenture, the Law of Property Act 1925 or the Insolvency Act 1986.

### **8.4 Additional powers**

The Bank shall be entitled to permit the sale of the Security Assets or any part thereof at such time and on such terms as the Bank may consider expedient and without being under any obligation to have regard in that respect of the effect (if any) which a disposal at such time or on such terms may have on the price likely to be realised. The Bank shall not in any circumstances, either by reason of any dealing with the Security Assets or any part thereof or for any other reason whatsoever be liable to account to the Chargor for anything except in respect of the Bank's own actual receipts or be liable to the Chargor for any loss or damage arising from any realisation by the Bank of the Security Assets or any part thereof or from any act, default or omission of the Bank in relation to the Security Assets or any part thereof or from any exercise or non-exercise by the Bank of any power, authority or discretion conferred upon it in relation to the Security Assets or any part thereof by or pursuant to this Debenture or otherwise by any applicable law.

### **8.5 Law of Property Act 1925**

The powers of sale or other disposal in Clauses 8.3 (Powers on enforcement) and 8.4 (Additional powers) shall operate as a variation and extension of the statutory power of sale under Section 101 of the Law of Property Act 1925 and such power shall arise (and the Secured Obligations shall be deemed due and payable for that purpose) on execution of this Debenture. The restrictions contained in Sections 93 and 103 of the Law of Property Act 1925 shall not apply to this Debenture or to any exercise by the Bank of its right to consolidate mortgages or its power of sale on or at any time after an Enforcement Event.

#### **8.6 Certificate in writing**

A certificate in writing by an officer or agent of the Bank that the power of sale or disposal has arisen and is exercisable shall be conclusive evidence of that fact in favour of a purchaser of all or any part of the Security Assets.

#### **8.7 Subsequent Encumbrances**

If the Bank receives notice of any subsequent Encumbrance affecting the Security Assets or any part thereof, the Bank may open a new account for the Chargor. If it does not do so then, unless the Bank gives express written notice to the contrary to the Chargor, it shall nevertheless be treated as if it had opened a new account at the time when it received such notice and as from that time all payments made by or on behalf of the Chargor to the Bank shall be credited or be treated as having been credited to the new account and shall not operate to reduce the amount due from the Chargor to the Bank at the time when it received such notice.

#### **8.8 Redemption of prior Encumbrances**

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

8.8.1 redeem such or any other prior Encumbrance, or procure its transfer to itself; and

8.8.2 settle any account of that encumbrancer.

The settlement of any such account shall be conclusive and binding on the Chargor. All monies paid by the Bank to such encumbrancer in settlement of such an account shall, as from its payment by the Bank, be due from the Chargor to the Bank on current account and shall bear interest and be secured as part of the Secured Obligations.

#### **8.9 Extension of statutory powers of leasing**

The Bank shall have the power to lease and make agreements for leases at a premium or otherwise, to accept surrenders of leases and to grant options on such terms as the Bank shall consider expedient and without the need to observe any of the provisions of sections 99 and 100 Law of Property Act 1925.

#### **8.10 Fixtures**

At any time on or after the occurrence of an Enforcement Event or if requested by the Chargor, the Bank may sever any Fixtures from the property to which they are attached and sell them separately from that property.

#### **8.11 Financial Collateral**

To the extent that any Security Asset constitutes Financial Collateral and is subject to a Security Financial Collateral Arrangement created by or pursuant to this Debenture, the Bank shall have the right, at any time after this Debenture becomes enforceable, to appropriate all or any part of the Security Assets in or towards the payment or discharge of the Secured Obligations. The value of any Security Assets appropriated in accordance with this Clause 8.11 (Financial Collateral) shall be the price of such Security Assets at the time the right of appropriation is exercised as listed on any recognised market index, or determined by such other method as the Bank may select (including independent valuation). The Chargor agrees that the methods of valuation provided for in this Clause 8.11 (Financial Collateral) are commercially reasonable for

the purpose of Regulation 18 of the Financial Collateral Regulations. To the extent that Security Assets constitute Financial Collateral, the Chargor agrees that such Security Assets shall be held or redesignated so as to be under the control of the Bank for all purposes of the Financial Collateral Regulations.

## **9. APPOINTMENT OF ADMINISTRATOR**

At any time on or after the occurrence of an Enforcement Event or if the Chargor so requests in writing, the Bank may appoint an administrator of the Chargor under the Insolvency Act.

## **10. RECEIVERS**

### **10.1 Appointment of receiver(s)**

At any time on or after the occurrence of an Enforcement Event or if the Chargor so requests in writing, the Bank may without further notice to the Chargor appoint by writing under hand or under seal any one or more persons either singly, jointly, severally or jointly and severally to be a receiver (each a "**Receiver**") in respect of all or any part of the property charged by this Debenture and either at the time of appointment or any time thereafter may fix his or their remuneration and except as otherwise required by statute may remove any such Receiver and appoint another or others in his or their place.

### **10.2 Agent of Chargor**

Any Receiver shall be the agent of the Chargor which shall be solely responsible for his acts and defaults and the payment of his remuneration.

### **10.3 Powers of Receiver**

10.3.1 Any Receiver shall, subject to any restrictions specified in the deed or instrument appointing him, have all the powers conferred by statute on mortgagees in possession (but without liability as such) and receivers which in the case of joint receivers may be exercised either jointly or severally (including, without limitation, all the rights, powers and discretions conferred on a receiver under the Law of Property Act 1925 and a receiver or administrative receiver under the Insolvency Act). In addition, but without prejudice to the generality of the foregoing the Receiver shall have power (in the name of the Chargor or otherwise and in such manner and on such terms and conditions as he shall think fit) to:

10.3.1.1 take possession of, collect and get in all or any part of the property in respect of which he is appointed and for that purpose to take any proceedings;

10.3.1.2 carry on or concur in carrying on the business of the Chargor and to raise money from the Bank or others on the security of any property charged by this Debenture;

10.3.1.3 purchase or acquire any land and purchase, acquire and grant any interest in or right over land;

10.3.1.4 sell or concur in selling, let or concur in letting and terminate or accept surrenders of leases or tenancies of any of the

property charged by this Debenture and to carry any such transactions into effect;

- 10.3.1.5 sell, assign, let or otherwise dispose of or concur in selling, assigning, letting or otherwise disposing of all or any of the debts and any other property in respect of which he is appointed;
- 10.3.1.6 make any arrangement or compromise between the Chargor and any other person which he may think expedient;
- 10.3.1.7 make and effect all repairs, improvements and insurances;
- 10.3.1.8 purchase materials, tools, equipment, goods or supplies;
- 10.3.1.9 call up any uncalled capital of the Chargor with all the powers conferred by the Articles of Association of the Chargor in relation to calls;
- 10.3.1.10 employ, engage and appoint managers and other employees and professional advisers; and
- 10.3.1.11 do all such other acts and things as may be considered to be incidental or conducive to any other matters or powers aforesaid or to the realisation of the security constituted by this Debenture and which he lawfully may or can do.

10.3.2 The powers of a Receiver may be limited by the terms of his appointment.

#### **10.4 Remuneration**

The Bank may from time to time determine the remuneration of any Receiver and section 109(6) Law of Property Act 1925 shall be varied accordingly. A Receiver shall be entitled to remuneration appropriate to the work and responsibilities involved upon the basis of charging from time to time adopted by the Receiver in accordance with the current practice of his firm.

#### **10.5 Insurance moneys**

Any insurance moneys received by a Receiver shall be applied in accordance with Clause 11 (Application of Proceeds) and accordingly section 109(8) of the Law of Property Act 1925 shall not apply.

### **11. APPLICATION OF PROCEEDS**

#### **11.1 Order of application**

Any monies received by the Bank or any Receiver under this Debenture shall, subject to the payment of any claims having priority to the charges created by this Debenture, be applied in the following order but without prejudice to the right of the Bank to recover any shortfall from the Chargor:

- 11.1.1 in the payment of all costs, charges and expenses of and incidental to the appointment of the Receiver and the exercise of all or any of his powers and of all outgoings paid by him;
- 11.1.2 in the payment of the Receiver's remuneration;

11.1.3 in or towards the satisfaction of the Secured Obligations in such order as the Bank in its absolute discretion thinks fit; and

11.1.4 in payment of the surplus (if any) to the person or persons entitled to it.

## **11.2 Insurance proceeds**

All insurance moneys deriving from any of the Insurances (whether before or after an Enforcement Event) shall be paid to the Bank (or if paid by the insurers directly to the Chargor shall be held by the Chargor on trust for the Bank) and shall be applied:

11.2.1 unless an Enforcement Event has occurred, in replacing, restoring or reinstating the property or assets destroyed, damaged or lost (any deficiency being made good by the Chargor); or

11.2.2 if an Enforcement Event has occurred, in reduction of the Secured Obligations in such manner and order as the Bank may determine.

## **11.3 Suspense accounts**

All monies received, recovered or realised by the Bank under this Debenture may be credited at the discretion of the Bank to any suspense or impersonal account and may be held in such account for so long as the Bank shall think fit pending its application from time to time in or towards the discharge of any of the monies and liabilities secured by this Debenture.

## **12. PROTECTION OF THIRD PARTIES**

### **12.1 No enquiry**

No person dealing with a Receiver or the Bank shall be concerned to enquire whether any power which he or it is purporting to exercise has become exercisable or whether any money is due under this Debenture or as to the application of any money paid, raised or borrowed or as to the propriety or regularity of any sale by or other dealing with such Receiver or the Bank.

### **12.2 Law of Property Act**

All the protections to purchasers contained in Sections 104 and 107 of the Law of Property Act 1925 shall apply to any person purchasing from or dealing with a Receiver or the Bank as if the liabilities secured by this Debenture had become due and the statutory powers of sale in relation the Security Assets had arisen on the date of this Debenture.

## **13. ENTRY INTO POSSESSION**

### **13.1 Possession**

If the Bank or any Receiver shall enter into possession of the property charged under this Debenture or any part thereof, it or he may from time to time and at any time go out of or part with such possession.

### **13.2 No liability**

Neither the Bank nor any Receiver shall in any circumstances (either by reason of any entry into or taking of possession of any such property or for any other reason and

whether as mortgagee in possession or on any other basis) be liable to account to the Chargor for anything except its or his actual receipts or be liable to the Chargor for any loss or damage arising from any realisation of the property charged under this Debenture or from any act, default or omission in relation thereto.

## **14. PAYMENTS**

### **14.1 No set-off or withholding**

All sums payable by the Chargor under this Debenture shall be paid to the Bank in full without any set-off, condition or counterclaim whatsoever and free and clear of any deduction or withholding whatsoever save only as may be required by law which is binding on it.

### **14.2 Gross-up**

If any deduction or withholding is required by law in respect of any payment due from the Chargor under this Debenture, the relevant sum payable by the Chargor shall be increased so that, after making the minimum deduction or withholding so required, the Chargor shall pay to the Bank and the Bank shall receive and be entitled to retain on the due date for payment a net sum at least equal to the sum which it would have received had no such deduction or withholding been required to be made.

## **15. POWER OF ATTORNEY**

### **15.1 Power of Attorney**

Subject to Clause 15.3 (When enforceable), the Chargor by way of security hereby irrevocably appoints each of the Bank, any person appointed by the Bank and any Receiver severally to be its attorney in its name and on its behalf:

- 15.1.1 to execute and complete any documents or instruments and to do all acts and things which the Bank or such Receiver may require for perfecting the title of the Bank to the Security Assets or for vesting the same in the Bank, its nominees or any purchaser;
- 15.1.2 to sign, execute, seal and deliver and otherwise perfect any further security document referred to in Clause 20 (Further Assurance); and
- 15.1.3 otherwise generally to sign, seal, execute and deliver all deeds, assurances, agreements and documents and to do all acts and things which may be required for the full exercise of all or any of the powers conferred on the Bank or a Receiver under this Debenture or which may be deemed expedient by the Bank or a Receiver in connection with any disposition, realisation or getting in by the Bank or such Receiver of the Security Assets or any part thereof or in connection with any other exercise of any power under this Debenture.

### **15.2 Ratification**

The Chargor hereby ratifies and confirms and agrees to ratify and confirm whatever any such attorney shall reasonably do in the exercise or purported exercise of all or any of the powers, authorities and discretions referred to in this Clause 15 (Power of Attorney).

### **15.3 When enforceable**

Whilst the power of attorney created under Clause 15.1 takes immediate effect, each attorney thereunder may only exercise its right and powers under such power of attorney on or following the occurrence of an Enforcement Event.

## **16. GENERAL INDEMNITY**

The Chargor hereby undertakes to indemnify and keep indemnified the Bank, any Receiver and any attorney, agent or other person appointed by the Bank under this Debenture and the Bank's and any Receiver's officers and employees (each an "**Indemnified Party**") in respect of all costs, losses, actions, claims, expenses, demands or liabilities whether in contract, tort or otherwise and whether arising at common law, in equity or by statute which may be incurred by, or made against, any of the Indemnified Parties (or by or against any manager, agent, officer or employee for whose liability, act or omission any of them may be answerable) at any time relating to or arising directly or indirectly out of or as a consequence of:

- 16.1.1 anything done or omitted in the exercise or purported exercise of the powers contained in this Debenture; or
- 16.1.2 any breach by the Chargor of any of its obligations under this Debenture; or
- 16.1.3 an Environmental Claim made or asserted against an Indemnified Party which would not have arisen if this Debenture had not been executed and which was not caused by the gross negligence or wilful default of the relevant Indemnified Party.

## **17. CURRENCY CONVERSION AND INDEMNITY**

### **17.1 Conversion of currency**

For the purpose of or pending the discharge of any of the monies and liabilities secured by this Debenture, the Bank may convert any monies received, recovered or realised by the Bank under this Debenture (including the proceeds of any previous conversion) from their existing currency into such other currency as the Bank may think fit and any such conversion shall be effected at the Bank's then prevailing spot selling rate of exchange for such other currency against the existing currency.

### **17.2 Currency indemnity**

As a separate and independent obligation, the Chargor agrees to indemnify and hold harmless the Bank against any shortfall between any amount received or recovered by it in respect of any payment due under this Debenture and converted in accordance with Clause 17.1 (Conversion of currency) into the currency in which such amount was payable and the amount in such currency which was due and payable to the Bank under this Debenture.

## **18. NEW ACCOUNTS**

If the Bank shall at any time receive actual or constructive notice of any charge or other interest affecting any part of the property charged under this Debenture then the Bank may open a new account or accounts for the Chargor and if the Bank does not do so then the Bank shall be treated as if it had in fact done so at the time when it received or

was deemed to receive notice and as from that time all payments made by the Chargor to the Bank shall be credited or treated as having been credited to the new account and shall not operate to reduce the amount secured by this Debenture at the time when the Bank received or was deemed to have received such notice.

## **19. PRIOR CHARGES**

### **19.1 Redemption of prior security**

If there is any Encumbrance over any of the property charged by this Debenture which ranks in priority to this Debenture and any proceedings or steps are taken to exercise or enforce any powers or remedies conferred by such prior Encumbrance the Bank or any Receiver appointed under this Debenture in respect of such property may redeem such prior Encumbrance or procure its transfer to itself and may settle and pass the accounts of any prior mortgagee, chargee or encumbrancer.

### **19.2 Extension of powers and rights**

Any account so settled and passed shall be conclusive and binding on the Chargor and all the principal, interest, costs, charges and expenses of and incidental to such redemption or transfer shall be secured on the property charged by this Debenture and all the powers conferred by any prior Encumbrance upon the encumbrancer or any receiver thereunder shall be exercisable by the Bank or a Receiver in like manner as if the same were expressly included in this Debenture.

## **20. FURTHER ASSURANCE**

### **20.1 Further assurance**

The Chargor shall at its own cost whenever requested by the Bank immediately execute and sign all such Encumbrances, deeds, documents and assurances and do all such things as the Bank may require for the purpose of perfecting or more effectively providing security to the Bank for the payment and discharge of the Secured Obligations or to facilitate the realisation of the Security Assets or the exercise of any rights vested in the Bank or any Receiver.

### **20.2 Certain documentary requirements**

Such further Encumbrances, deeds, documents and assurances shall be prepared by or on behalf of the Bank at the expense of the Chargor and shall contain (a) an immediate power of sale without notice, (b) a clause excluding section 93 of the Law of Property Act 1925 and the restrictions contained in section 103 of the Law of Property Act 1925 and (c) such other clauses for the benefit of the Bank as the Bank may require.

## **21. SET-OFF**

### **21.1 Set-off**

The Chargor hereby agrees that the Bank may at any time without notice, notwithstanding any settlement of account or other matter whatsoever, combine or consolidate all or any of its then existing accounts wheresoever situate (including accounts in the name of the Bank or of the Chargor jointly with others), whether such accounts are current, deposit, loan or of any other nature whatsoever, whether they are subject to notice or not and whether they are denominated in sterling or in any



other currency, and set-off or transfer any sum standing to the credit of any one or more such accounts in or towards satisfaction of the Secured Obligations which are due and payable.

## **21.2 Purchase of currencies**

For the purpose of this Clause 21 (Set-off), the Chargor authorises the Bank to purchase with the moneys standing to the credit of such accounts such other currencies as may be necessary to effect such applications.

## **22. COSTS AND EXPENSES**

### **22.1 Costs and expenses**

22.1.1 All costs and expenses incurred by the Bank in relation to this Debenture or the monies and liabilities secured by this Debenture including for the avoidance of doubt all amounts the Bank may from time to time require to compensate it for its internal management and administrative costs and expenses shall be reimbursed by the Chargor to the Bank on demand on a full indemnity basis and until so reimbursed shall carry interest in accordance with the provisions set out in Clause 2.2 (Interest) from the date of payment to the date of reimbursement and be secured on the property charged by this Debenture.

22.1.2 A certificate signed by the Bank as to the amount of such costs and expenses shall be conclusive and binding upon the Chargor.

### **22.2 Enforcement etc.**

The Bank and every Receiver attorney or other person appointed by the Bank under this Debenture and their respective employees shall be entitled to be indemnified on a full indemnity basis out of the property charged by this Debenture in respect of all liabilities and expenses incurred by any of them in or directly or indirectly as a result of the exercise or purported exercise of any of the powers, authorities or discretions vested in them under this Debenture and against all actions, proceedings, losses, costs, claims and demands in respect of any matter or thing done or omitted in any way relating to the property charged by this Debenture and the Bank and any such Receiver may retain and pay all sums in respect of the same out of the monies received under the powers conferred by this Debenture.

## **23. MISCELLANEOUS**

### **23.1 Time, indulgence and other matters**

The Bank may without discharging or in any way affecting the security created by this Debenture or any remedy of the Bank grant time or other indulgence or abstain from exercising or enforcing any remedies, securities, guarantees or other rights which it may now or in the future have from or against the Chargor and may make any arrangement, variation or release with any person or persons without prejudice either to this Debenture or the liability of the Chargor for the monies and liabilities secured by this Debenture.

### **23.2 Severability**

Each of the provisions in this Debenture shall be severable and distinct from one another and if at any time any one or more of such provisions is or becomes or is

declared null and void, invalid, illegal or unenforceable in any respect under any law or otherwise howsoever the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

**23.3 Remedies cumulative**

No failure or delay on the part of the Bank to exercise any power, right or remedy shall operate as a waiver thereof nor shall any single or any partial exercise or waiver of any power, right or remedy preclude its further exercise or the exercise of any other power, right or remedy.

**23.4 No waiver**

No delay or omission on the part of the Bank in exercising any right or remedy under this Debenture shall impair that right or remedy or operate as or be taken to be a waiver of it nor shall any single, partial or defective exercise of any such right or remedy preclude any other or further exercise under this Debenture of that or any other right or remedy.

**23.5 Statutory references**

Any reference in this Debenture to any statute or any section of any statute shall be deemed to include reference to any statutory modification or re-enactment thereof for the time being in force.

**23.6 No liability as mortgagee in possession**

Neither the Bank nor any Receiver shall be liable to account as mortgagee in possession in respect of all or any of the Security Assets or be liable for any loss upon realisation or for any neglect or default of any nature whatsoever for which a mortgagee may be liable as such.

**23.7 Recovery of Debts**

Neither the Bank nor any Receiver shall have any liability or responsibility of any kind to the Chargor arising out of the exercise or non-exercise of the right to enforce recovery of the Debts or shall be obliged to make any enquiry as to the sufficiency of any sums received in respect of any Debts or to make any claims or take any other action to collect or enforce the same.

**23.8 Stamp taxes**

The Chargor shall pay all stamp, documentary, registration or other duties (including any duties payable by or assessed on the Bank) imposed on or in connection with this Debenture.

**23.9 Value Added Tax**

23.9.1 All fees, costs and expenses payable under or pursuant to this Debenture shall be paid together with an amount equal to any value added tax payable by the Bank in respect of the same to the extent that the Bank shall have certified (such certificate to be binding and conclusive on the Chargor) to the Chargor that it is not entitled to credit for such value added tax as input tax.

23.9.2 Any value added tax chargeable in respect of any services supplied by the Bank under this Debenture shall, on delivery of a value added tax invoice, be paid in addition to any sum agreed to be paid under this Debenture.

### **23.10 Continuing security, etc.**

This Debenture and the obligations of the Chargor under this Debenture shall:

- 23.10.1 secure the ultimate balance from time to time owing to the Bank in respect of the Secured Obligations and shall be a continuing security notwithstanding any intermediate payment, partial settlement or other matter whatsoever;
- 23.10.2 be in addition to, and not prejudice or affect, any present or future Collateral Instrument, Encumbrance, right or remedy held by or available to the Bank;
- 23.10.3 not merge with or be in any way prejudiced or affected by the existence of any such Collateral Instruments, Encumbrances, rights or remedies or by the same being or becoming wholly or in part void, voidable or unenforceable on any ground whatsoever or by the Bank dealing with, exchanging, releasing, varying or failing to perfect or enforce any of the same, or giving time for payment or indulgence or compounding with any other person liable; and
- 23.10.4 not in any way be prejudiced or affected by any amendment or supplement to, or novation of, any of the Facility Documents.

### **23.11 Liability unconditional**

The obligations of the Chargor under this Debenture and the security created or granted under this Debenture will not be affected by an act, omission, matter or thing which, but for this Clause 23.11 (Liability unconditional), would reduce, release or prejudice any of its obligations under this Debenture and/or any of the security created or granted under this Debenture (without limitation and whether or not known to it or the Bank) including:

- 23.11.1 any time, waiver or consent granted to, or composition with, the Chargor or other person;
- 23.11.2 the release of the Chargor or any other person under the terms of any composition or arrangement with any creditor of the Chargor or such other person;
- 23.11.3 the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, the Chargor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- 23.11.4 any Incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Chargor or any other person;
- 23.11.5 any amendment, novation, supplement, extension (whether of maturity or otherwise) or restatement (in each case, however fundamental and of whatsoever nature) or replacement of a Facility Document or any other document or security;
- 23.11.6 any unenforceability, illegality or invalidity of any obligation of any person under any Facility Document or any other document or security;

23.11.7 where the security created or purported to be created by the this Debenture secures the Chargor's obligations and liabilities as a guarantor and/or an indemnitor any act or omission which would not have discharged or affected the liability of the Chargor had the Chargor been a principal debtor in respect of those obligations and liabilities instead of guarantor or indemnitor or by anything done or omitted by any person which but for this provision might operate to exonerate or discharge the Chargor or otherwise reduce or extinguish the Chargor's liability under this Debenture; or

23.11.8 any insolvency or similar proceedings.

#### **23.12 Collateral Instruments**

The Bank shall not be obliged to make any claim or demand on the Chargor or any other person liable or to resort to any Collateral Instrument or other means of payment before enforcing this Debenture and no action taken or omitted in connection with any such Collateral Instrument or other means of payment shall discharge, reduce, prejudice or affect the liability of the Chargor. The Bank shall not be obliged to account for any money or other property received or recovered in consequence of any enforcement or realisation of any such Collateral Instrument or other means of payment.

#### **23.13 Suspense accounts**

Any money received pursuant to the realisation of any security created pursuant to this Debenture (whether before or after any Incapacity of the Chargor or any other person liable) may be placed to the credit of an interest-bearing suspense account with a view to preserving the rights of the Bank to prove for the whole of its respective claims against the Chargor or any other person liable or may be applied in or towards satisfaction of the Secured Obligations.

#### **23.14 Settlements conditional**

Any release, discharge or settlement between the Chargor and the Bank shall be conditional upon no right, security, disposition or payment to the Bank by the Chargor or any other person being void, set aside or ordered to be refunded pursuant to any enactment or law relating to breach of duty of any person, bankruptcy, liquidation, administration, the protection of creditors or insolvency or for any other reason whatsoever and if such condition is not fulfilled the Bank shall be entitled to enforce this Debenture as if such release, discharge or settlement had not occurred and any such payment had not been made.

#### **23.15 Chargor bound**

The Chargor agrees to be bound by this Debenture notwithstanding that any person intended to execute or to be bound by this Debenture may not do so or may not be effectually bound and notwithstanding that any guarantees or charges contained in this Debenture may be terminated or released or may be or become invalid or unenforceable against the Chargor whether or not the deficiency is known to the Bank.

#### **23.16 Statutory powers of leasing**

During the continuance of this security the statutory and any other powers of leasing, letting, entering into agreements for leases or lettings and accepting or agreeing to accept surrenders of leases or tenancies shall not be exercisable by the Chargor in relation to the Security Assets or any part thereof.

#### **23.17 Section 93, LPA**

Section 93 Law of Property Act 1925 shall not apply to the security created by this Debenture or to any security given to the Bank pursuant to this Debenture.

#### **23.18 Reorganisation**

This Debenture shall remain binding on the Chargor notwithstanding any change in the constitution of the Bank or its absorption in, or amalgamation with, or the acquisition of all or part of its undertaking by, any other person, or any reconstruction or reorganisation of any kind. The security granted by this Debenture shall remain valid and effective in all respects in favour of the Bank and any assignee, transferee or other successor in title of the Bank in the same manner as if such assignee, transferee or other successor in title had been named in this Debenture as a party instead of, or in addition to the Bank.

#### **23.19 Unfettered discretion**

Any liability or power which may be exercised or any determination which may be made under this Debenture by the Bank may be exercised or made in its absolute and unfettered discretion and it shall not be obliged to give reasons therefor.

#### **23.20 Law of Property (Miscellaneous Provisions) Act 1989**

Any provisions of any Facility Document or any other document relating to any disposition of an interest in land shall be deemed to be incorporated in this Debenture to the extent required for any purported disposition of the Security Assets contained in this Debenture to constitute a valid disposition in accordance with section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989.

#### **23.21 Delegation of powers**

The Bank shall be entitled, at any time and as often as may be expedient, to delegate all or any of the powers and discretions vested in it by this Debenture in such manner, upon such terms, and to such person as the Bank in its absolute discretion may think fit and such person shall have the same rights and obligations as it would have had if such person had been a party to the Facility Documents in place of the Bank.

### **24. ASSIGNMENTS AND TRANSFERS**

#### **24.1 Bank's right to transfer**

24.1.1 The Bank may at any time (and without notice or consent) assign or transfer the benefit of this Debenture (or all or any of its rights under this Debenture) to any person and the expression "**the Bank**" shall include its successors and assigns.

24.1.2 The Bank shall be entitled to disclose any information to any actual or prospective assignee, successor or participant.

#### **24.2 Chargor may not transfer**

The Chargor may not assign or transfer the benefit or burden of this Debenture or all or any of its rights under this Debenture without the prior written consent of the Bank.

### **24.3 Receivers etc.**

Any appointment or removal of a Receiver under Clause 10 (Receivers) and any consents under this Debenture may be made or given in writing signed or sealed by any successors or assigns of the Bank and accordingly the Chargor hereby irrevocably appoints each successor and assign of the Bank to be its attorney in the terms and for the purposes set out in Clause 15 (Power of Attorney).

## **25. NOTICES**

- 25.1.1 Any demand or notice under this Debenture shall be in writing signed by an officer, manager or agent of the Bank and (without prejudice to any other effective means of serving it) may be served on the Chargor personally or by post and either by delivering it to the Chargor or any officer of the Chargor at any place or by despatching it addressed to the Chargor at the address stated in this document (or such other address as may from time to time be notified by the Chargor to the Bank for this purpose) or the Chargor's current registered office or the place of business or address last known to the Bank. Any such demand or notice delivered personally shall be deemed to have been received immediately upon delivery.
- 25.1.2 If such demand or notice is sent by post it shall be deemed to have been received on the day following the day on which it was posted and shall be effective notwithstanding that it was not in fact delivered or was returned undelivered. If sent by facsimile it shall be deemed to have been received (whether or not actually received) at the time of dispatch.

## **26. COUNTERPARTS**

- 26.1.1 This Debenture may be executed in any number of counterparts (manually or by facsimile) and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all which when taken together shall constitute one and the same instrument.
- 26.1.2 In the case of a virtual closing/signing, each party shall circulate to its lawyers or the lawyers co-ordinating the closing (as agreed) an electronic copy of the final execution version of this Debenture together with an electronic copy of the execution page signed by that party with the originals to follow as agreed.
- 26.1.3 Where this Debenture is to be executed as a deed, the parties shall stipulate in any email sent pursuant to Clause 25.1.2 above, when delivery of their respective counterpart is or shall be deemed to take place.
- 26.1.4 One or more additional originals of this Debenture may be created by printing off the final version of this Debenture and attaching it to the electronic copy of the signed execution page or the "wet ink" execution page as the case may be.

## **27. THIRD PARTIES**

A person who is not a party to this Debenture may not enforce any of its terms under The Contracts (Rights of Third Parties) Act 1999.

## **28. RELEASE AND REASSIGNMENT OF SECURITY ASSETS**

Upon the expiry of the Security Period (but not otherwise) the Bank shall, at the request and cost of the Chargor, take whatever action is necessary to release or re-assign (without recourse or warranty) the Security Assets from the security constituted by this Deed and return all deeds and documents of title delivered to the Bank pursuant to the terms of this Deed.

## **29. GOVERNING LAW AND ENFORCEMENT**

### **29.1 Governing law**

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

### **29.2 Jurisdiction of English courts**

29.2.1 The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Debenture (including a dispute relating to the existence, validity or termination of this Debenture or any non-contractual obligation arising out of or in connection with this Debenture) (a "**Dispute**").

29.2.2 The Chargor agrees that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly it will not argue to the contrary.

29.2.3 This Clause 29.2 (Jurisdiction of English courts) is for the benefit of the Bank only. As a result, the Bank shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Bank may take concurrent proceedings in any number of jurisdictions.

**IN WITNESS WHEREOF** this Debenture has been executed and delivered as a deed by the parties hereto on the date stated at the beginning of this Debenture.

**SCHEDULE 1  
REAL ESTATE**

N/A



**SCHEDULE 2**  
**PLANT, MACHINERY AND EQUIPMENT**

N/A

**SCHEDULE 3**  
**INTELLECTUAL PROPERTY RIGHTS**

N/A

**SCHEDULE 4  
THE INVESTMENTS**

<b>Issuer</b>	<b>Investments</b>	<b>Holder</b>
N/A	N/A	N/A

## **SCHEDULE 5 THE INSURANCES**

Policies of insurance in relation to each of the following properties, issued by Zurich Insurance plc and dated on or around the date of this Debenture:

- (a) Ranfurly Care Home, 69 Quarrelton Road, Johnstone, Scotland PA5 8LQ, as registered in the Land Register of Scotland under title number REN117830 and including the buildings thereon; and
- (b) Cochrane Care Home, Quarrelton Road, Johnstone, Scotland PA5 8LQ, as registered in the Land Register of Scotland under title number REN117430 and including the buildings thereon.

**SCHEDULE 6  
THE ACCOUNTS**

<b>Account Name</b>	<b>Account Bank</b>	<b>Sort Code</b>	<b>Account Number</b>	<b>Account Holder</b>
N/A	N/A	N/A	N/A	N/A

**SCHEDULE 7**  
**FORM OF NOTICE AND ACKNOWLEDGEMENT FOR ACCOUNT BANKS**

**Part I**

To: [Insert name of Account Bank]

[ ]

Dear Sirs,

We hereby give you notice that, by a Debenture dated [ ] (a copy of which is attached), we charged (by way of a first fixed charge) to Investec Bank plc (the **Bank**) all monies (including interest) from time to time standing to the credit of each of our present and future accounts with any bank, financial institution or other person, which includes the accounts numbered [ ] held with you (the **Accounts**) and the debt or debts represented thereby.

We may not withdraw any monies from the Accounts without first having obtained the written consent of the Bank and accordingly we hereby irrevocably authorise and instruct you:

- (1) to disclose to the Bank without any reference to, or further authority from, us and without any inquiry by you as to the justification for such disclosure, such information relating to any of the Accounts as the Bank may, at any time and from time to time, request you to disclose to it;
- (2) to hold to the order of the Bank all sums from time to time standing to the credit of the Accounts in our name with you;
- (3) to pay or release all or any part of the sums from time to time standing to the credit of the Accounts in accordance with the written instructions of the Bank at any time or times;
- (4) to comply with the terms of any written notice or instructions in any way relating to or purporting to relate to the charge specified above, the sums standing to the credit of the Accounts from time to time or the debts represented thereby which you receive at any time from the Bank without reference to, or further authority from, us and without any inquiry by you as to the justification for or validity of such notice or instructions.

Please also note that these instructions shall not be revoked or varied without the prior written consent of the Bank.

This letter shall be governed by and construed in accordance with English law.

Please confirm your agreement to the above by sending the enclosed acknowledgement to the Bank with a copy to ourselves.

Yours faithfully,

For and on behalf of [name of Chargor]

.....  
(Authorised Signatory)

## Part II

To: [name of Bank]

cc: [name of Chargor]

[Date]

Dear Sirs,

We confirm receipt from [ ] (the **Chargor**) of a notice dated [ ] of a charge upon the terms of a Debenture dated [ ] of all monies (including interest) from time to time standing to the credit of each of the Chargor's present and future accounts with us (the **Accounts**) and the debt or debts represented thereby.

We confirm that we have not received notice of the interest of any third party in any of the Accounts.

We confirm that we will not claim or exercise any right of set-off or counterclaim in relation to the Chargor and/or the Accounts and we hereby waive all such rights and powers during the continuance of the Encumbrance (as such term is defined in the Debenture referred to above).

This letter shall be governed by and construed in accordance with English law.

Yours faithfully,

For and on behalf of

[name of Account Bank]

.....  
(Authorised Signatory)



**SCHEDULE 8**  
**FORM OF NOTICE AND ACKNOWLEDGEMENT FOR INSURERS**

**Part I**

To: [Insert name and address of insurer]

Dated:

Dear Sirs

**[DESCRIBE INSURANCE POLICIES] DATED [ ] 2014 BETWEEN (1) YOU AND (2) [ ] (THE "CHARGOR")**

1. We give notice that, by a debenture dated [ ] (the "**Debenture**"), we have assigned and charged to Investec Bank plc (the "**Bank**") all our present and future right, title and interest in and to the policies described above (together with any other agreement supplementing or amending the same, the "**Policies**") including all rights and remedies in connection with the Policies and all proceeds and claims arising from the Policies.
2. We irrevocably authorise and instruct you from time to time:
  - (a) (to disclose to the Bank at our expense (without any reference to or further authority from us and without any enquiry by you as to the justification for such disclosure) such information relating to the Policies as the Bank may from time to time request;
  - (b) to hold all sums from time to time due and payable by you to us under the Policies to the order of the Bank;
  - (c) to pay or release all or any part of the sums from time to time due and payable by you to us under the Policies only in accordance with the written instructions given to you by the Bank from time to time;
  - (d) to comply with any written notice or instructions in any way relating to (or purporting to relate to) the Debenture, the sums payable to us from time to time under the Policies or the debts represented by them which you may receive from the Bank (without any reference to or further authority from us and without any enquiry by you as to the justification for or validity of such notice or instruction); and
  - (e) to send copies of all notices and other information given or received under the Policies to the Bank.
3. We irrevocably instruct you, with effect from the date of this notice, to note on the relevant Policies the Bank's interest as first loss payee and as first priority assignee of the Policies and the rights, remedies, proceeds and claims referred to above.
4. We are not permitted to receive from you, otherwise than through the Bank, any amount in respect of or on account of the sums payable to us from time to time under the Policies or to agree any amendment or supplement to, or waive any obligation under, the Policies without the prior written consent of the Bank.
5. This notice may only be revoked or amended with the prior written consent of the Bank.

6. Please confirm by completing and returning the acknowledgement of this notice and returning it to the Bank (with a copy to us) that you agree to the above and that:
- (a) you accept the instructions and authorisations contained in this notice and you undertake to comply with this notice;
  - (b) you have not, at the date this notice is returned to the Bank, received notice of the assignment or charge, the grant of any security or the existence of any other interest of any third party in or to the Policies or any proceeds of them or any breach of the terms of any Policy and you will notify the Bank promptly if you should do so in future;
  - (c) you will not permit any sums to be paid to us or any other person under or pursuant to the Policies without the prior written consent of the Bank; and
  - (d) you will not exercise any right to terminate, cancel, vary or waive the Policies or take any action to amend or supplement the Policies without the prior written consent of the Bank.
7. This notice, and any acknowledgement in connection with it, and any non-contractual obligations arising out of or in connection with any of them, shall be governed by English law.

Yours faithfully,

For and on behalf of [name of Chargor]

.....  
(Authorised Signatory)

## Part II

To: [name of Bank]

cc: [name of Chargor]

[Date]

Dear Sirs,

We confirm receipt from [ ] (the "**Chargor**") of a notice dated [ ] (the "**Notice**") of a charge upon the terms of a Debenture dated [ ] of the Policies. Terms and expressions defined in such notice have the same meaning where used herein

We confirm that:

- (a) we accept the instructions and authorisations contained in the Notice and we undertake to comply with the Notice;
- (b) we have not, at the date of this acknowledgement, received notice of the assignment or charge, the grant of any security or the existence of any other interest of any third party in or to the Policies or any proceeds of them or any breach of the terms of any Policy and we will notify the Bank promptly if we should do so in future;
- (c) we will not permit any sums to be paid to us or any other person under or pursuant to the Policies without the prior written consent of the Bank; and
- (d) we will not exercise any right to terminate, cancel, vary or waive the Policies or take any action to amend or supplement the Policies without the prior written consent of the Bank.

This letter shall be governed by and construed in accordance with English law.

Yours faithfully,

For and on behalf of

[name of Insurer]

**SCHEDULE 9**  
**FORM OF NOTICE AND ACKNOWLEDGEMENT FOR VENDORS**

**Part I**

**Notice**

To: [Insert name and address of Vendor]

Dated:

Dear Sirs

**SALE AGREEMENT DATED [ ] 2014 BETWEEN (1) YOU AND (2) [ ]**

We give notice that, by a debenture dated [ ] (the "**Debenture**"), we have assigned and charged to Investec Bank plc (the "**Bank**") all our present and future right, title and interest in and to the sale agreement described above (together with any other agreement supplementing or amending the same, the "**Assigned Agreement**") including all money now or at any time in the future due or owing to us under or in connection with the Assigned Agreement and all rights and remedies for enforcing the Assigned Agreement all rights and remedies in connection with the Agreement and all proceeds and claims arising from the Agreement (together, the "**Assigned Assets**").

We irrevocably and unconditionally instruct and authorise you (notwithstanding any previous instructions whatsoever which we may have given to you to the contrary):

- (i) to pay to the Bank at its account at [ ] (Account No. [ ]) under reference [ ] (or to such other account or accounts and/or bank or banks as may from time to time be notified to you by the Bank) all moneys forming part of the Assigned Assets and otherwise to act in accordance with the instructions of the Bank in connection with the Assigned Assets;
- (ii) to comply with the terms of any written notice, statement or instructions in any way relating or purporting to relate to the Debenture and/or the Assigned Assets which you receive at any time from the Bank; and
- (iii) to disclose to the Bank, such information relating to the Assigned Assets as the Bank may, at any time request,

in each case without any reference to or further authority from us and without any enquiry by you as to the justification for such instructions, notice, statement, instructions or disclosure.

The instructions and authorisations which are contained in this letter will remain in full force and effect until the Bank gives you notice in writing revoking them.

This letter and any non-contractual obligations arising out of or in connection with this letter are governed by the law of England.

Would you please acknowledge receipt of this letter and your acceptance of the instructions and authorisations contained in it by signing the attached form of acknowledgement and returning it to the Bank at [ ].

Yours faithfully,

[ ]

## Part II

### Acknowledgement

To: [ ]

[Date]

Dear Sirs,

We acknowledge receipt of a letter (a copy of which is attached) dated [ ] and addressed to us by [ ] (the "**Assignor**") with respect to an assignment and charge constituted under a Debenture dated [ ] (the "**Assignment**") entered into between you and the Assignor. Expressions defined in such letter have the same meanings in this acknowledgement.

We acknowledge and confirm that:

- (a) we consent to the Assignment and irrevocably waive any breach of the Assigned Agreement arising from the Assignment;
- (b) we will pay to you at your account at [ ] Account No. [ ] under reference [ ] (or to such other account or accounts and/or bank or banks as you may from time to time notify to us) all money payable by us forming part of the Assigned Assets and we will act otherwise in accordance with your instructions in connection with the Assigned Assets, without any reference to or further authority from the Assignor and without any inquiry by us as to the justification for such instructions or the validity of them;
- (c) the copy of the Assigned Agreement attached to the letter referred to above is a true and complete copy and there is no other agreement or arrangement which affects the terms of the Assigned Agreement;
- (d) we will not assign or transfer any of our rights and obligations under the Assigned Agreement or agree to any amendment, variation or extension of any term of the Assigned Agreement without having first obtained your written consent;
- (e) we will not request the Assignor to waive or release any of our obligations under the Assigned Agreement without first obtaining your written consent;
- (f) we will not make or exercise, any claim or demands, any rights of counterclaim, rights of set-off or any other equities against the Assignor in respect of the Assigned Assets;
- (g) we will not exercise any of our rights under clause [ ] of the Assigned Agreement to terminate the Assigned Agreement without giving to you at least [ ] days' prior written notice and an opportunity to remedy the default in question;
- (h) we have not, as at the date of this letter, received any notice that any third party has or will have any right or interest in or has made or will be making any claim or demand or taking any action against the Assigned Assets, and we undertake that, in the event of our becoming aware at any time that any person or entity other than yourselves or the Assignor has or will have any right or interest or has or will be making any such claim or demand or taking any such action, we will immediately give you written notice of the terms of such right or interest, claim or demand or action; and
- (i) we agree that you do not have any obligations, liabilities or responsibilities under or in respect of the Assigned Agreement.

This letter and any non-contractual obligations arising out of or in connection with this letter are governed by the law of England [and in connection with any proceedings with respect to this letter and any such non-contractual obligations we submit to the jurisdiction of the Courts of England for your exclusive benefit].

[ ]

EXECUTION

**The Chargor**

EXECUTED and DELIVERED as a DEED by )  
BAM PROPCO (JOHNSTONE) LIMITED )  
acting by..... )  
~~was one of its directors and in the~~ )  
~~presence of this witness:~~ )

[Redacted]  
Director DANIEL WULWICK  
[Redacted]  
[Redacted] MATHY JAMES BOLOT

..... Witness signature  
..... Witness name  
..... Occupation  
..... Address  
.....  
.....

**IMPORTANCE NOTICE – WE RECOMMEND THAT YOU CONSULT YOUR SOLICITOR OR  
OTHER INDEPENDENT LEGAL ADVISER BEFORE EXECUTING THIS DOCUMENT**

**The Bank**

EXECUTED and DELIVERED as a DEED by )  
INVESTEC BANK PLC )  
acting by ..... )  
and ..... )  
two of its authorised signatories )

..... Authorised Signatory

..... Authorised Signatory

## EXECUTION

### The Chargor

EXECUTED and DELIVERED as a DEED by )  
BAM PROPCO (JOHNSTONE) LIMITED )  
acting by..... )  
one of its directors and in the ) .....  
presence of this witness: ) Director

..... Witness signature

..... Witness name

..... Occupation

..... Address

.....

**IMPORTANCE NOTICE – WE RECOMMEND THAT YOU CONSULT YOUR SOLICITOR OR  
OTHER INDEPENDENT LEGAL ADVISER BEFORE EXECUTING THIS DOCUMENT**

### The Bank

EXECUTED and DELIVERED as a DEED by )  
INVESTEC BANK PLC )  
acting by COLIN ORR )  
and MICHAEL BOCKELMANN )  
two of its authorised signatories

..... Authorised Signatory

*BOTH SIGNATORIES WITNESSED BY*

*ELEANOR WISEMAN*

Investec Bank plc  
30 Gresham Street  
London EC2V 7QP

..... Authorised Signatory



