



**Registration of a Charge**

Company name: **WESTWAY HOLDINGS LIMITED**

Company number: **09761309**



X74RRBY1

Received for Electronic Filing: **27/04/2018**

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**Details of Charge**

Date of creation: **26/04/2018**

Charge code: **0976 1309 0002**

Persons entitled: **MORE GROUP CAPITAL SERVICES LIMITED**

Brief description: **146 WELLESLEY ROAD, CLACTON-ON -SEA, CO15 3QD REGISTERED AT HM LAND REGISTRY WITH TITLE NUMBER EX740367**

**Contains fixed charge(s).**

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

**Contains negative pledge.**

**Chargor acting as a bare trustee for the property.**

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**Authentication of Form**

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

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**Authentication of Instrument**

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

Certified by: **STIRLING ACKROYD LEGAL, SOLICITORS**



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

Company number: 9761309

Charge code: 0976 1309 0002

The Registrar of Companies for England and Wales hereby certifies that a charge dated 26th April 2018 and created by WESTWAY HOLDINGS LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 27th April 2018 .

Given at Companies House, Cardiff on 1st May 2018

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



**Companies House**



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES

Dated

26<sup>th</sup> April 2018

**Debenture**

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Westway Holdings Limited

and

More Group Capital Services Limited

This Deed is made the 26 day of April 2018

Between

- (1) **WESTWAY HOLDINGS LIMITED** incorporated and registered in England and Wales with company number 9761309 whose registered office is c/o Baptiste & Co, 23 Austin Friars, London, EC2N 2QP (the Company); and
- (2) **MORE GROUP CAPITAL SERVICES LIMITED** incorporated and registered in England and Wales with company number 08341972 whose registered office is at 65 Compton Street, London, EC1V 0BN (the Security Trustee).

Whereas:

- (A) The Company issued secured Bonds on or around 14 October 2016.
- (B) Under this deed, the Company provides security to the Security Trustee for the Company's obligations under the Bond Instrument.
- (C) The Bonds are to be secured on the terms set out in this deed and are agreed to be the Fixed and Floating Charge referred to in the Security Trust Deed.

Now it is hereby agreed as follows:-

1. Definitions and interpretation

1.1 Definitions

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

"Administrator"	an administrator appointed to manage the affairs, business and property of the Company pursuant to clause 7.6.
"Business Day"	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
"Charged Property"	the property known as 146 Wellesley Road, Clacton-on-Sea, C015 3QD registered at H M Land Registry with title number EX740367 and references to "Charged Property" shall include references to the whole or any part or part of it.
"Delegate"	any person appointed by the Security Trustee or any Receiver pursuant to clause 11 and any person appointed as attorney of the Security Trustee, Receiver or Delegate.

"Excluded Property"	each leasehold property held by the Company under a lease that either precludes absolutely, or requires consent of a third party to, the creation of Security over the Company's leasehold interest in that property.
"LPA 1925"	the Law of Property Act 1925.
"Receiver"	a receiver, receiver and manager or administrative receiver appointed by the Security Trustee under clause 10.
"Secured Assets"	all the assets, property and undertaking for the time being of the Company which are, or are intended to be, subject to the Security created by, or pursuant to, clause 3.1 and clause 3.2 of this deed (and references to the Secured Assets shall include references to any part of them).
"Security"	any mortgage, charge (whether fixed or floating, legal or equitable), pledge, lien, assignment by way of security or other security interest securing any obligation of any person, or any other agreement or arrangement having a similar effect.
"Security Period"	the period starting on the 14 October 2016 and ending on the date on which the Security Trustee is satisfied that all the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full and no further Secured Liabilities are capable of being outstanding.
"Security Trust Deed"	the security trust deed between the Company and the Security Trustee dated 14 October 2016.
"VAT"	value added tax or any equivalent tax chargeable in the UK or elsewhere.

## 1.2 Interpretation

- 1.2.1 a reference to a **person** shall include a reference to an individual, firm, company, corporation, partnership, unincorporated body of persons, government, state or agency of a state or any association, trust, joint venture or consortium (whether or not having separate legal personality);
- 1.2.2 unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;

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

governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation.

### **1.3 Clawback**

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

### **1.4 Nature of security over real property**

The reference in this deed to a charge or mortgage of or over the Charged Property includes:

- 1.4.1 all buildings and fixtures and fittings (including trade and tenant's fixtures and fittings) and fixed plant and machinery that are situated on or form part of the Charged Property at any time;
- 1.4.2 the proceeds of the sale of any part of the Charged Property and any other monies paid or payable in respect of or in connection with the Charged Property;
- 1.4.3 the benefit of any covenants for title given, or entered into, by any predecessor in title of the Company in respect of the Charged Property, and any monies paid or payable in respect of those covenants; and
- 1.4.4 all rights under any licence, agreement for sale or agreement for lease in respect of the Charged Property.

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

For the purposes of section 2 of the Law of Property (Miscellaneous Provisions) Act 1989, the terms of the Bond Instrument and of any side letters between any parties in relation to the Bond Instrument are incorporated into this deed.

### **1.6 Perpetuity period**

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

## **2. Covenant to pay**

The Company shall, on demand, pay to the Security Trustee and discharge the Secured Liabilities when they become due.



### **3. Grant of security**

#### **3.1 Legal mortgage**

As a continuing security for the payment and discharge of the Secured Liabilities, the Company with full title guarantee charges to the Security Trustee, by way of a first legal mortgage, all estates or interests in the Charged Property.

#### **3.2 Floating charge**

As a continuing security for the payment and discharge of the Secured Liabilities, the Company with full title guarantee charges to the Security Trustee, by way of first floating charge, all its undertaking, property, assets and rights not otherwise effectively mortgaged, charged or assigned under clause 3.1. but only insofar as such undertaking, property, assets and rights relate exclusively and directly to the Charged Property.

#### **3.3 Qualifying floating charge**

Paragraph 14 of Schedule B1 to the Insolvency Act 1986 applies to the floating charge created by clause 3.2.

#### **3.4 Automatic crystallisation of floating charge**

The floating charge created by clause 3.2 shall automatically and immediately (without notice) convert into a fixed charge over the assets subject to that floating charge if:

##### **3.4.1 the Company:**

- (a) creates, or attempts to create, without the prior written consent of the Security Trustee, Security or a trust in favour of another person over all or any part of the Secured Assets (except as expressly permitted by the terms of this deed or the Bond Instrument); or
- (b) disposes, or attempts to dispose of, all or any part of the Secured Assets (other than Secured Assets that are only subject to the floating charge while it remains uncrystallised);

##### **3.4.2 any person levies (or attempts to levy) any distress, attachment, execution or other process against all or any part of the Secured Assets; or**

##### **3.4.3 a resolution is passed or an order is made for the winding-up, dissolution, administration or re-organisation of the Company.**

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

The Security Trustee may, in its reasonable discretion, at any time and by written notice to the Company, convert the floating charge created under this deed into a fixed charge as regards any part of the Secured Assets specified by the Security Trustee in that notice.

### **3.6 The Security Trust Deed**

References to "Fixed and Floating Charge" in the Security Trust Deed shall be deemed amended and replaced from the date of this deed to this debenture.

## **4. Liability of the Company**

### **4.1 Liability not discharged**

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

4.1.1 any security, guarantee, indemnity, remedy or other right held by, or available to, the Security Trustee that is, or becomes, wholly or partially illegal, void or unenforceable on any ground;

4.1.2 the Security Trustee renewing, determining, varying or increasing any facility or other transaction in any manner or concurring in, accepting or varying any compromise, arrangement or settlement, or omitting to claim or enforce payment from any other person; or

4.1.3 any other act or omission that, but for this clause 4.1, might have discharged, or otherwise prejudiced or affected, the liability of the Company.

### **4.2 Immediate recourse**

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

## **5. Representations and warranties**

### **5.1 Times for making representations and warranties**

The Company makes the representations and warranties set out in this clause 5 to the Security Trustee on the date of this deed.

### **5.2 Ownership of Secured Assets**

The Company is the sole legal and beneficial owner of, and has good, valid and marketable title to, the Charged Property.

### **5.3 No Security**

The Charged Property is free from any Security other than the Security created by this deed.

### **5.4 No adverse claims**

The Company has not received, or acknowledged notice of, any adverse claim by any person in respect of the Charged Property or any interest in it.

## **5.5 Avoidance of security**

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

## **5.6 Enforceable security**

This deed constitutes and will constitute the legal, valid, binding and enforceable obligations of the Company, and is, and will continue to be, effective security over in accordance with its terms.

## **6. General covenants**

### **6.1 Negative pledge and disposal restrictions**

The Company shall not at any time, except with the prior written consent of the Security Trustee:

- 6.1.1 create, purport to create or permit to subsist any Security on, or in relation to, the Charged Property other than any Security created by this deed;
- 6.1.2 sell, assign, transfer, part with possession of, or otherwise dispose of in any manner (or purport to do so), all or any part of, or any interest in, the Charged Property; or
- 6.1.3 create or grant (or purport to create or grant) any interest in the Charged Property in favour of a third party.

### **6.2 Preservation of Secured Assets**

The Company shall not do, or permit to be done, any act or thing that would or might depreciate, jeopardise or otherwise prejudice the security held by the Security Trustee, or materially diminish the value of any of the Charged Property or the effectiveness of the security created by this deed.

### **6.3 Payment of outgoings**

The Company shall promptly pay all taxes, fees, licence duties, registration charges, insurance premiums and other outgoings in respect of the Charged Property.

## **7. Powers of the Security Trustee**

### **7.1 Power to remedy**

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

## **7.2 Exercise of rights**

7.2.1 The rights of the Security Trustee under clause 7.1 are without prejudice to any other rights of the Security Trustee under this deed.

7.2.2 The exercise of any rights of the Security Trustee under this deed shall not make the Security Trustee liable to account as a mortgagee in possession.

## **7.3 Power to dispose of chattels**

7.3.1 At any time after the security constituted by this deed has become enforceable, the Security Trustee or any Receiver may, as agent for the Company, dispose of any chattels or produce found on the Charged Property.

7.3.2 Without prejudice to any obligation to account for the proceeds of any disposal made under clause 7.3.1, the Company shall indemnify the Security Trustee and any Receiver against any liability arising from any disposal made under clause 7.3.1.

## **7.4 Security Trustee has Receiver's powers**

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

## **7.5 Indulgence**

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

## **7.6 Appointment of an Administrator**

7.6.1 The Security Trustee may, without notice to the Company, appoint any one or more persons to be an Administrator of the Company pursuant to Paragraph 14 of Schedule B1 of the Insolvency Act 1986 if the security constituted by this deed becomes enforceable.

7.6.2 Any appointment under this clause 7.6.1 shall:

- (a) be in writing signed by a duly authorised signatory of the Security Trustee; and
- (b) take effect, in accordance with paragraph 19 of Schedule B1 of the Insolvency Act 1986.

7.6.3 The Security Trustee may apply to the court for an order removing an Administrator from office and may by notice in writing in accordance with this clause 7.6 appoint a replacement for any Administrator who has died, resigned, been removed or who has vacated office upon ceasing to be qualified.

## **8. When security becomes enforceable**

### **8.1 Security becomes enforceable on breach of Bond Instrument**

The security constituted by this deed shall become immediately enforceable if the Company is in breach of its obligations under the Bond Instrument and such breach is not remedied to the reasonable satisfaction of the Security Trustee within 25 Business Days' prior written notice to the Company.

### **8.2 Discretion**

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

## **9. Enforcement of security**

### **9.1 Enforcement powers**

9.1.1 For the purposes of all powers implied by statute, the Secured Liabilities are deemed to have become due and payable on the date of this deed.

9.1.2 The power of sale and other powers conferred by section 101 of the LPA 1925 (as varied or extended by this deed) shall be immediately exercisable at any time after the security constituted by this deed has become enforceable under clause 8.1.

9.1.3 Section 103 of the LPA 1925 does not apply to the security constituted by this deed.

### **9.2 Extension of statutory powers of leasing**

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

9.2.1 grant a lease or agreement to lease;

9.2.2 accept surrenders of leases; or

- 9.2.3 grant any option of the whole or any part of the Secured Assets with whatever rights relating to other parts of it,

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

### 9.3 Access on enforcement

- 9.3.1 At any time after the Security Trustee has demanded payment of the Secured Liabilities or if the Company defaults in the performance of its obligations under this deed or the Bond Instrument, the Company will allow the Security Trustee or its Receiver, without further notice or demand, immediately to exercise all its rights, powers and remedies in particular (and without limitation) to take possession of any Secured Asset and for that purpose to enter on any premises where a Secured Asset is situated (or where the Security Trustee or a Receiver reasonably believes a Secured Asset to be situated) without incurring any liability to the Company for, or by any reason of, that entry.

- 9.3.2 At all times, the Company must use its best endeavours to allow the Security Trustee or its Receiver access to any premises for the purpose of clause 9.3.1 (including obtaining any necessary consents or permits of other persons) and ensure that its employees and officers do the same.

### 9.4 Redemption of prior Security

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

- (a) redeem any prior Security over any Secured Asset; and
- (b) procure the transfer of that Security to itself;

- 9.4.2 The Company shall

- 9.4.3 pay to the Security Trustee immediately on demand all principal, interest, costs, charges and expenses of, and incidental to, any such redemption or transfer, and such amounts shall be secured by this deed as part of the Secured Liabilities.

### 9.5 Protection of third parties

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

- 9.5.1 whether any of the Secured Liabilities have become due or payable, or remain unpaid or undischarged;

9.5.2 whether any power the Security Trustee, a Receiver or Delegate is purporting to exercise has become exercisable or is being properly exercised; or

9.5.3 how any money paid to the Security Trustee, any Receiver or any Delegate is to be applied.

## **9.6 Privileges**

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

## **9.7 No liability as mortgagee in possession**

Neither the Security Trustee nor any Receiver or Delegate shall be liable, by reason of entering into possession of a Secured Asset or for any other reason, to account as mortgagee in possession in respect of all or any of the Secured Assets, nor shall any of them be liable for any loss on realisation of, or for any act, default or omission for which a mortgagee in possession might be liable.

## **9.8 Conclusive discharge to purchasers**

The receipt of the Security Trustee, or any Receiver or Delegate shall be a conclusive discharge to a purchaser and, in making any sale or other disposal of any of the Secured Assets or in making any acquisition in the exercise of their respective powers, the Security Trustee, and every Receiver and Delegate may do so for any consideration, in any manner and on any terms that it thinks fit.

# **10. Receiver**

## **10.1 Appointment**

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

## **10.2 Removal**

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

## **10.3 Remuneration**

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

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

The power to appoint a Receiver conferred by this deed shall be in addition to all statutory and other powers of the Security Trustee under the Insolvency Act 1986, the LPA 1925 or otherwise,

and shall be exercisable without the restrictions contained in sections 103 and 109 of the LPA 1925 or otherwise.

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

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

#### **10.6 Agent of the Company**

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

### **11. Powers of Receiver**

#### **11.1 General**

11.1.1 Any Receiver appointed by the Security Trustee under this deed shall, in addition to the powers conferred on it by statute, have the rights, powers and discretions set out in clause 11.2 to clause 11.21.

11.1.2 A Receiver has all the rights, powers and discretions conferred on a receiver (or a receiver and manager) under the LPA 1925, and shall have those rights, powers and discretions conferred on an administrative receiver under the Insolvency Act 1986 whether it is an administrative receiver or not.

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

11.1.4 Any exercise by a Receiver of any of the powers given by clause 11 may be on behalf of the Company, the directors of the Company (in the case of the power contained in clause 11.16) or itself.

#### **11.2 Repair and develop Charged Properties**

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

#### **11.3 Grant or accept surrenders of leases**

A Receiver may grant, or accept, surrenders of any leases or tenancies affecting any Secured Asset on any terms, and subject to any conditions, that it thinks fit.



#### **11.4 Employ personnel and advisers**

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

11.4.2 A Receiver may discharge any such person or any such person appointed by the Company.

#### **11.5 Make and revoke VAT options to tax**

A Receiver may make, exercise or revoke any VAT option to tax as it thinks fit.

#### **11.6 Remuneration**

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

#### **11.7 Possession**

A Receiver may take immediate possession of, get in and realise any Secured Asset.

#### **11.8 Manage or reconstruct the Company's business**

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

#### **11.9 Dispose of Secured Assets**

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

#### **11.10 Sever fixtures and fittings**

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

#### **11.11 Valid receipts**

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

#### **11.12 Make settlements**

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

#### **11.13 Legal action**

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

#### **11.14 Make calls on Company members**

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

#### **11.15 Insure**

A Receiver may, if it thinks fit, but without prejudice to the indemnity in clause 14, effect with any insurer any policy of insurance either in lieu or satisfaction of, or in addition to, the insurance required to be maintained by the Company under this deed.

#### **11.16 Subsidiaries**

A Receiver may form a subsidiary of the Company and transfer to that subsidiary any Secured Asset

#### **11.17 Borrow**

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

#### **11.18 Redeem prior Security**

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

#### **11.19 Delegation**

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

#### **11.20 Absolute beneficial owner**

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

#### **11.21 Incidental powers**

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

11.21.1 may consider desirable or necessary for realising any of the Secured Assets;

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

11.21.3 lawfully may or can do as agent for the Company.

## **12. Delegation**

### **12.1 Delegation**

The Security Trustee or any Receiver may delegate (either generally or specifically) by power of attorney or in any other manner to any person any right, power, authority or discretion conferred on it by this deed.

### **12.2 Terms**

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

### **12.3 Liability**

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

## **13. Application of proceeds**

### **13.1 Order of application of proceeds**

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

13.1.1 in or towards payment of all costs, liabilities, charges and expenses incurred by or on behalf of the Security Trustee (and any Receiver, Delegate, attorney or agent appointed by it) under or in connection with this deed, and of all remuneration due to any Receiver under or in connection with this deed;

13.1.2 in or towards payment of the Secured Liabilities in any order and manner that the Security Trustee determines; and

13.1.3 in payment of the surplus (if any) to the Company or other person entitled to it.

### **13.2 Appropriation**

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

#### 14. Costs and indemnity

##### 14.1 Costs

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

14.1.1 this deed or the Secured Assets;

14.1.2 taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) any of the Security Trustee's, a Receiver's or a Delegate's rights under this deed; or

14.1.3 taking proceedings for, or recovering, any of the Secured Liabilities,

together with interest, which shall accrue and be payable (without the need for any demand for payment being made) from the date on which the relevant cost, charge, expense, tax or liability arose until full discharge of that cost, charge, expense, tax or liability (whether before or after judgment, liquidation, winding up or administration of the Company) at the rate of 4% per annum.

##### 14.2 Indemnity

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

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

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

**15. Release**

**15.1** Subject to clause 21.3, at the end of the Security Period, the Security Trustee shall, at the request and cost of the Company, take whatever action is necessary to:

**15.1.1** release the Secured Assets from the security constituted by this deed; and

**15.1.2** reassign the Secured Assets to the Company.

**16. Assignment and transfer**

**16.1 Prohibition on Assignment**

Neither party may assign any of its rights, or transfer any of its rights or obligations, under this deed without the prior written consent of the other party.

**17. Amendments, waivers and consents**

**17.1 Amendments**

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

**17.2 Waivers and consents**

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

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

**17.3 Rights and remedies**

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

**18. Severance**

If any provision (or part of a provision) of this deed is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision (or part of a provision) shall

be deemed deleted. Any modification to or deletion of a provision (or part of a provision) under this clause shall not affect the legality, validity and enforceability of the rest of this deed.

## **19. Counterparts**

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

19.2 Transmission of the executed signature page of a counterpart of this deed] by fax or email (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this deed. If either method of delivery is adopted, without prejudice to the validity of the deed thus made, each party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.

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

## **20. Third party rights**

20.1 Except as expressly provided in clause 14.2, a person who is not a party to this deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce, or enjoy the benefit of, any term of this deed. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

20.2 The rights of the parties to rescind or agree any amendment or waiver under this deed are not subject to the consent of any other person.

## **21. Further provisions**

### **21.1 Independent security**

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

### **21.2 Continuing security**

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

### **21.3 Discharge conditional**

Any release, discharge or settlement between the Company and the Security Trustee shall be deemed conditional on no payment or security received by the Security Trustee in respect of the Secured Liabilities being avoided, reduced or ordered to be refunded under any law relating to

insolvency, bankruptcy, winding-up, administration, receivership or otherwise. Despite any such release, discharge or settlement:

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

21.3.2 the Security Trustee may recover the value or amount of such security or payment from the Company subsequently as if the release, discharge or settlement had not occurred.

#### **21.4 Consolidation**

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

#### **21.5 Small company moratorium**

Notwithstanding anything to the contrary in this deed, neither the obtaining of a moratorium by the Company under schedule A1 to the Insolvency Act 1986 nor the doing of anything by the Company with a view to obtaining such a moratorium (including any preliminary decision or investigation) shall be, or be construed as:

21.5.1 an event under this deed which causes any floating charge created by this deed to crystallise;

21.5.2 an event under this deed which causes any restriction which would not otherwise apply to be imposed on the disposal of any property by the Company; or

21.5.3 a ground under this deed for the appointment of a Receiver.

#### **22. Notices**

##### **22.1 Delivery**

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

22.1.1 in writing;

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

22.1.3 sent to:

- (a) the Company at: Westway Holdings Limited, c/o Baptiste & Co.  
23 Austin Friars, London, EC2N 2PQ  
Attention: Richard Birch

(b) the Security Trustee at:

More Group Capital Services Limited

65 Compton Street

London

EC1V 0BN

Attention: Ruairi Laughlin-McCann

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

## **22.2 Receipt by Company**

Any notice or other communication that the Security Trustee gives to the Company shall be deemed to have been received:

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

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

22.2.3 if sent by fax, when received in legible form.

A notice or other communication given as described in clause 22.2.1 or clause 22.2.3 on a day that is not a Business Day, or after normal business hours, in the place it is received, shall be deemed to have been received on the next Business Day.

## **22.3 Receipt by Security Trustee**

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

## **22.4 Service of proceedings**

This clause 22 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## **22.5 No notice by email**

A notice or other communication given under or in connection with this deed is not valid if sent by email.

## **23. Governing law and jurisdiction**

### **23.1 Governing law**

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



### 23.2 Jurisdiction

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

### 23.3 Other service

The Company irrevocably consents to any process in any legal action or proceedings under clause 23.2 being served on it in accordance with the provisions of this deed relating to service of notices. Nothing contained in this deed shall affect the right to serve process in any other manner permitted by law.

In witness whereof this document has been executed and delivered as a deed on the date first stated above.

Executed as a deed by  
**WESTWAY HOLDINGS LIMITED**  
in the presence of:

.....  
Director

Witness Signature:

Full Name:

Address:

Occupation:

Executed as a deed by **MORE  
GROUP CAPITAL SERVICES  
LIMITED** in the presence of:

  
.....  
Director

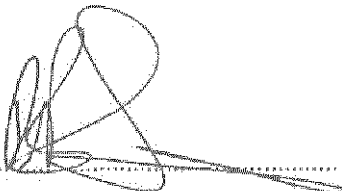
Witness Signature:

Full Name:

Address:

Occupation: **CORPORATE ADMINISTRATOR**

Executed as a deed by  
**WESTWAY HOLDINGS LIMITED**  
in the presence of:

  
Director

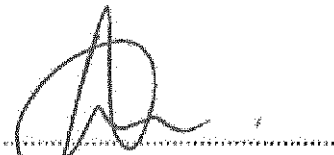
Witness Signature: J. McNamee

Full Name: JOHN MCNAMEE

Address: 7 IKERWICKS  
WETTERING  
NN15 7HP

Occupation: GP

Executed as a deed by **MORE**  
**GROUP CAPITAL SERVICES**  
**LIMITED** in the presence of:

  
Director

Witness Signature: ESRA KANBUR

Full Name: ESRA KANBUR

Address: 65 COMPTON ST  
LONDON  
EC4V 0BN

Occupation: CORPORATE ADMINISTRATOR