

MR01

Particulars of a charge

laserform

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


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

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

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

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

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

 You must enclose a certified copy of the instrument with this form. This will  
be scanned and placed on the public record. **Do not send the original.**

FRIDAY



\*S54G27Y3\*  
SCT 08/04/2016 #80  
COMPANIES HOUSE

**1** Company details

Company number 0 9 8 4 6 4 3 0

Company name in full MER Manor Operations Limited

For official use  
2  
→ Filing in this form  
Please complete in typescript or in  
bold black capitals  
All fields are mandatory unless  
specified or indicated by \*

**2** Charge creation date

Charge creation date d3 d1 m0 m3 y2 y0 y1 y6

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

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

Name U.S. Bank Trustees Limited  
(the "Common Security Agent")

Name

Name

Name

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

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

MR01

## Particulars of a charge

4

## Brief description

Please give a short description of any land, ship, aircraft or intellectual property registered or required to be registered in the UK subject to a charge (which is not a floating charge) or fixed security included in the instrument

Brief description

n/a

Please submit only a short description. If there are a number of plots of land, aircraft and/or ships, you should simply describe some of them in the text field and add a statement along the lines of, "for more details please refer to the instrument"

Please limit the description to the available space

5

## Other charge or fixed security

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

☐ Yes

☒ No

6

## Floating charge

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

☒ Yes Continue

☐ No Go to Section 7

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

☐ Yes

7

## Negative Pledge

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

☒ Yes

☐ No

8

Trustee statement <sup>1</sup>

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

☐

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

9

## Signature

Please sign the form here

Signature

Signature

X

For and on behalf of Shepherd and Wedderburn LLP (acting for the Common Security Agent)

X

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

# MR01

## Particulars of a charge



### Presenter information

You do not have to give any contact information, but if you do, it will help Companies House if there is a query on the form. The contact information you give will be visible to searchers of the public record.

Contact name B01780 1017/ACD/IAW

Company name Shepherd & Wedderburn

Address 1 Exchange Crescent

Conference Square

Post town Edinburgh

County/Region

Postcode 

E	H	3		8	U	L
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Country Scotland

DX

Telephone 0131 473 5369



### Certificate

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



### Checklist

We may return forms completed incorrectly or with information missing.

Please make sure you have remembered the following.

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



### Important information

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



### How to pay

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

Make cheques or postal orders payable to 'Companies House'



### Where to send

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

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

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

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



### Further information

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

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



**FILE COPY**

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

Company number: 9846430

Charge code: 0984 6430 0002

The Registrar of Companies for England and Wales hereby certifies that a charge dated 31st March 2016 and created by MER MANOR OPERATIONS LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 8th April 2016

A handwritten signature, possibly 'P', in black ink.

Given at Companies House, Cardiff on 19th April 2016



**Companies House**



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

We hereby certify that save for material redacted pursuant to s 859G of the Companies Act 2006, this is a true copy of the original



SHEPHERD+ WEDDERBURN

Signed                     *MW*                    

Date                     8/4/16                    

For and on behalf of Shepherd and Wedderburn LLP

SCOTTISH FLOATING CHARGE  
by  
MER MANOR OPERATIONS LIMITED  
in favour of  
U S BANK TRUSTEES LIMITED  
as Common Security Agent

2016

Shepherd and Wedderburn LLP  
5th Floor, 1 Exchange Crescent  
Conference Square  
Edinburgh  
EH3 8UL  
DX 651970 Edinburgh 53  
T +44 (0)131 228 9900  
F +44 (0)131 228 1222  
[www.shepwed.co.uk](http://www.shepwed.co.uk)

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THIS SCOTTISH FLOATING CHARGE is made by

- (1) **MER MANOR OPERATIONS LIMITED**, a company incorporated under the Companies Acts in England and Wales (registered number 9846430) whose registered office is at 245 Broad Street, Birmingham B1 2HQ (the "Chargor")  
in favour of
- (2) **U.S BANK TRUSTEES LIMITED**, a company incorporated under the Companies Acts in England and Wales (registered number 02379632) whose registered office is at 125 Old Broad Street, Fifth Floor, London EC2N 1AR, as security trustee in terms of the Intercreditor Agreement for each of the Secured Parties (the "Common Security Agent")

IT IS DECLARED and AGREED as follows

## **1 Definitions and interpretation**

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### **1.1 Definitions**

In this Scottish Floating Charge

"**Acceleration Event**" means a Senior Acceleration Event and/or a Mezzanine Acceleration Event

"**Administration Event**" means

- (a) the presentation of an application or petition to the court for the making of an administration order in relation to the Chargor, or
- (b) any person (who is entitled to do so) gives notice of its intention to appoint an administrator to the Chargor or files such a notice with the court

"**Event of Default**" means a Senior Event of Default and/or a Mezzanine Event of Default

"**Facility Agreement**" means each of the Senior Facility Agreement and the Mezzanine Facility Agreement

"**Finance Document**" means each Senior Finance Document and each Mezzanine Finance Document

"**Intercreditor Agreement**" means the intercreditor agreement originally dated 28 February 2015 as amended and restated on 4 March 2016 between, amongst others, the Senior Finance Parties and the Mezzanine Finance Parties as further amended, varied, novated or supplemented from time to time,

"**Investment**" means all Shares, securities, certificates of deposit and other investments, all interests in collective investment schemes and partnerships and all warrants, options and rights to subscribe for any investment whether held directly by or to the order of the Chargor or by any trustee, nominee, custodian, fiduciary or clearance system on its behalf (including all rights against any such trustee, nominee, custodian, fiduciary or clearance system)

"**Mezzanine Acceleration Event**" means the giving of notice pursuant to clause 27.21 (*Acceleration*) of the Mezzanine Facility Agreement

"**Mezzanine Event of Default**" has the meaning given to the term "Event of Default" in the Mezzanine Facility Agreement

"**Mezzanine Facility Agreement**" means a facility agreement originally dated 28 February 2015 as amended and restated on 4 March 2016 between, amongst others LSREF III Malin Mezzco Limited (formerly known as LSF Irish Holdings 58 Limited) as Mezzanine Borrower, Bank of America Merrill Lynch International Limited as Mezzanine Arranger and Original Mezzanine Lender, Elavon Financial Services Limited as Mezzanine Agent and U.S. Bank Trustees Limited as Mezzanine Security Agent (each as defined therein) as further amended, varied, novated or supplemented from time to time,

"**Mezzanine Finance Documents**" has the meaning given to it in the Intercreditor Agreement

"**Mezzanine Finance Parties**" has the meaning given to the term "Finance Parties" in the Mezzanine Facility Agreement

"**Mezzanine Obligor**" has the meaning given to the term "Obligor" in the Mezzanine Facility Agreement

"**Obligor**" means each of the Mezzanine Obligors and the Senior Obligors

"**Receiver**" means a receiver, receiver and manager or, where permitted by law, an administrative receiver of the whole or any part of the Security Assets and that term will include any appointee made under a joint or separate appointment

"**Secured Liabilities**" has the meaning given to it in the Intercreditor Agreement

"**Secured Parties**" has the meaning given to it in the Intercreditor Agreement

"**Security Assets**" means each of the assets and undertaking of the Chargor which from time to time are, or are expressed to be, the subject of any Security created or expressed to be created by it in favour of the Common Security Agent by or pursuant to this Scottish Floating Charge

"**Security Period**" means the period beginning on the date of this Scottish Floating Charge and ending on the date on which the Secured Liabilities have been irrevocably and unconditionally paid or discharged in full

"**Senior Acceleration Event**" means the giving of notice pursuant to clause 27.21 (*Acceleration*) of the Senior Facility Agreement

"**Senior Event of Default**" has the meaning given to the term "Event of Default" in the Senior Facility Agreement

"**Senior Facility Agreement**" means a facility agreement originally dated 28 February 2015 as amended and restated on 4 March 2016 between, amongst others, LSREF III Malin Investments Limited (formerly LSF Insh Holdings XLIV Limited) as the Original Borrower, the Guarantors (as defined therein), Bank of America Merrill Lynch International Limited as Arranger, Elavon Financial Services Limited as Agent, the Common Security Agent and the Lenders (each as defined therein) as further amended, varied, novated or supplemented from time to time,

"**Senior Finance Documents**" has the meaning given to it in the Intercreditor Agreement

"**Senior Finance Parties**" has the meaning given to the term "Finance Parties" in the Senior Facility Agreement

"**Senior Obligor**" has the meaning given to the term "Obligor" in the Senior Facility Agreement

"**Share**" means any stock, share, debenture or other security

## 12 **Terms defined in other Finance Documents**

Unless defined in this Scottish Floating Charge, or the context otherwise requires, a term defined in the Intercreditor Agreement or the Senior Facility Agreement has the same meaning in this Scottish Floating Charge or any notice given under or in connection with this Scottish Floating Charge, as if all references in those defined terms to the Intercreditor Agreement, the Senior Facility Agreement or the Finance Documents were a reference to this Scottish Floating Charge or that notice

## 13 **Construction**

Clause 1.2 (*Construction*) of the Intercreditor Agreement and clause 1.3 (*Currency symbols and definitions*) of the Senior Facility Agreement will apply as if incorporated in this Scottish Floating Charge or in any notice given under or in connection with this Scottish Floating Charge, as if all references in that Clause to the Intercreditor Agreement or the Senior Facility Agreement (as applicable) were a reference to this Scottish Floating Charge or that notice

## 14 **Application of provisions in Intercreditor Agreement**

The Chargor hereby acknowledges that in acting under this Scottish Floating Charge the Common Security Agent is entitled to the benefit of all protections and other provisions expressed to be in its favour as Common Security Agent as set out in the Intercreditor Agreement and that



1 4 1 clauses 1 4 (*Third party rights*), 10 3 (*Default interest*), 12 4 (*Break costs*), 14 (*Tax gross up and indemnities*), 15 (*Increased Costs*), 16 (*Other indemnities*), 18 (*Costs and expenses*), 28 1 (*Assignments and transfers by Lenders*), 30 1 (*Assignment and transfers by Obligors*), 34 (*Payment mechanics*), 35 (*Set-Off*), 37 1 (*Accounts*), 37 2 (*Certificates and determinations*) and 40 (*Amendments and waivers*) of the Senior Facility Agreement are deemed to form part of this Scottish Floating Charge as if expressly incorporated into it and as if all references in those clauses to the Senior Facility Agreement were references to this Scottish Floating Charge, and

1 4 2 clauses 23 1 (*Trust*), 23 23 (*Power supplemental*) and 30 (*Notices*) of the Intercreditor Agreement are deemed to form part of this Scottish Floating Charge as if expressly incorporated into it and as if all references in those clauses to the Intercreditor Agreement were references to this Scottish Floating Charge

## 1 5 Present and future assets

A reference in this Scottish Floating Charge to any Security Asset or other asset includes, unless the contrary intention appears, present and future Security Assets and other assets

## 1 6 No obligation

The Common Security Agent shall not be under any obligation in relation to the Security Assets as a consequence of this Scottish Floating Charge and the Chargor shall at all times remain liable to perform all obligations expressed to be assumed by it in respect of the Security Assets

## 1 7 Approvals, consents and rights of the Common Security Agent

References in this Scottish Floating Charge to the cooperation of, or to an approval, opinion, consent, discretion or requirement of the Common Security Agent means the cooperation of, or an approval, opinion, consent, direction or requirement of the Common Security Agent acting on the instructions of the Instructing Group pursuant to the Intercreditor Agreement, or as otherwise required by the Intercreditor Agreement

## 2 Undertaking to pay

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The Chargor undertakes to and covenants with the Common Security Agent (as trustee for the Secured Parties) that it shall, on demand of the Common Security Agent pay, discharge and satisfy the Secured Liabilities in accordance with their respective terms and indemnify the Secured Parties against any losses, costs, charges, expenses and liabilities arising from any breach or failure to pay, discharge and satisfy the Secured Liabilities in accordance with their respective terms (which indemnified sums shall be treated as Secured Liabilities for the purposes of this Scottish Floating Charge)

## 3. Common provisions

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### 3 1 Common provisions as to all Security

All the Security constituted by or pursuant to this Scottish Floating Charge is

3 1 1 created with absolute warrandice,

3 1 2 created in favour of the Common Security Agent as trustee for the Secured Parties and the Common Security Agent shall hold the benefit of this Scottish Floating Charge and the Security created by or pursuant to it on trust for the Secured Parties, and

3 1 3 continuing security for the payment and discharge of all the Secured Liabilities

## 4 Floating charge

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### 4 1 Floating charge

4 1 1 As continuing security for the payment and discharge of all the Secured Liabilities, the Chargor hereby grants in favour of the Common Security Agent as trustee for the Secured Parties a floating charge over all of its present and future assets and

undertaking to the extent that the same are situated in or otherwise subject to the laws of Scotland

4 1 2 The floating charge created by paragraph 4 1 1 above shall be ranked and preferred on the Security Assets as follows

(i) it shall be deferred in point of priority to all fixed Security validly and effectively created by the Chargor from time to time under the Finance Documents in favour of the Common Security Agent (as security trustee for the Secured Parties) as security for the Secured Liabilities, and

(ii) it shall rank prior and preferably to any other fixed or floating Security created by the Chargor from time to time

4 1 3 Paragraph 14 of Schedule B1 to the Insolvency Act 1986 applies to the floating charge created by paragraph 4 1 1 above

## **5 Provisions as to security and perfection**

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### **5 1 Negative pledge and restriction on dealings**

Except where agreed in writing by the Common Security Agent or as permitted under the Finance Documents, the Chargor will not at any time during the Security Period create or permit to subsist any Security over all or any part of the Security Assets or dispose of or otherwise deal with any part of the Security Assets

## **6. Further assurance**

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### **6 1 Further assurance**

The Chargor shall promptly, at its own cost, do all such acts or execute all such documents (including assignments, assignations, transfers, mortgages, standard securities, charges, notarisations, registrations, notices and instructions) as the Common Security Agent may reasonably specify (and in such form as the Common Security Agent may reasonably require) in favour of the Common Security Agent or its nominee(s) to

6 1 1 create, perfect and/or protect the Security created or intended to be created in respect of the Security Assets in accordance with the rights vested in it under this Agreement (which may include the execution by the Chargor of a mortgage, standard security, charge, assignment or assignation over all or any of the assets constituting, or intended to constitute, Security Assets) or for the exercise of any of the rights, powers and remedies of the Common Security Agent provided by or pursuant to this Scottish Floating Charge or by law,

6 1 2 confer on the Common Security Agent Security over any asset or undertaking of the Chargor located in any jurisdiction outside Scotland equivalent or similar to the security intended to be conferred by or pursuant to this Scottish Floating Charge, and/or

6 1 3 while an Event of Default is continuing, facilitate the realisation of the Security Assets

### **6 2 Necessary action**

The Chargor shall take all such action as is available to it (including making all filings and registrations and applying for relief against forfeiture or protection from irritancy) as may be necessary or as may reasonably be requested by the Common Security Agent for the purpose of the creation, perfection, protection or maintenance of any security conferred or intended to be conferred on the Common Security Agent by or pursuant to this Scottish Floating Charge

## **7 Enforcement of security**

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### **7 1 Enforcement**

On and at any time after the occurrence of

- 7 1 1 an Acceleration Event, or
- 7 1 2 an Administration Event, or
- 7 1 3 a request from the Chargor to the Common Security Agent that it exercise any of its powers under this Scottish Floating Charge,

the Security created by or pursuant to this Scottish Floating Charge is immediately enforceable and the Common Security Agent may, without notice to the Chargor or prior authorisation from any court, in its absolute discretion

- (i) 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 Security Assets (at the times, in the manner and on the terms it thinks fit (including whether for cash or non-cash consideration)), and
- (ii) whether or not it has appointed a Receiver, exercise all or any of the rights, powers, authorities and discretions conferred by this Scottish Floating Charge on any Receiver or otherwise conferred by law on Receivers

## 7 2 Effect of Moratorium

The Common Security Agent shall not be entitled to exercise its rights under Clause 7 1 (*Enforcement*) where the right arises as a result of an Event of Default occurring solely due to any person obtaining or taking steps to obtain a moratorium pursuant to Schedule A1 of the Insolvency Act 1986

## 8 Right of appropriation

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### 8 1 Right of appropriation

To the extent that the provisions of the Financial Collateral Arrangements (No 2) Regulations 2003 (the "Regulations") apply to a Security Asset, the Common Security Agent shall have the right to appropriate all or any part of that Security Asset in or towards the payment or discharge of the Secured Liabilities and may exercise such right to appropriate upon giving written notice to the Chargor. For this purpose, a commercially reasonable method of valuing a Security Asset shall be

- 8 1 1 in the case of cash, the amount standing to the credit of each Account or to the credit of any other account with any bank, building society, financial institution or otherwise, together with any accrued but unposted interest, at the time of appropriation, and
- 8 1 2 in the case of any Investments or Shares, their market value determined by the Common Security Agent by reference to a public index, independent valuation or by such other process as the Common Security Agent may select

In each case, the Chargor agrees that the method of valuation provided for this Scottish Floating Charge shall constitute a commercially reasonable method of valuation for the purposes of the Regulations

## 9 Appointment of receiver or administrator

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### 9 1 Appointment and removal

After the Security created by or pursuant to this Scottish Floating Charge has become enforceable in accordance with Clause 7 (*Enforcement of security*), the Common Security Agent may by deed or otherwise (acting through an authorised officer of the Common Security Agent)

- 9 1 1 without prior notice to the Chargor
  - (i) appoint one or more persons to be a Receiver of the whole or any part of the Security Assets, or

- (ii) appoint two or more Receivers of separate parts of the Security Assets, or
- (iii) remove (so far as it is lawfully able) any Receiver so appointed, or
- (iv) appoint another person(s) as an additional or replacement Receiver(s), or
- (v) appoint one or more persons to be an administrator of the Chargor pursuant to paragraph 14 of Schedule B1 of the Insolvency Act 1986, and

9 1 2 following notice to the Chargor, appoint one or more persons to be an administrator of the Chargor pursuant to paragraph 12 of Schedule B1 of the Insolvency Act 1986

## 9 2 Capacity of Receivers

Each person appointed to be a Receiver pursuant to Clause 9 1 (*Appointment and removal*) shall be

- 9 2 1 entitled to act individually or together with any other person appointed or substituted as Receiver;
- 9 2 2 for all purposes deemed to be the agent of the Chargor which shall be solely responsible for his acts, defaults and liabilities and for the payment of his remuneration and no Receiver shall at any time act as agent for the Common Security Agent, and
- 9 2 3 entitled to remuneration for his services at a rate to be fixed by the Common Security Agent from time to time

## 10. Powers of receivers

10 1 Every Receiver shall (subject to any restrictions in the instrument appointing him but notwithstanding any winding-up, liquidation or dissolution of the Chargor) have and be entitled to exercise, in relation to the Security Assets (and any assets which, when got in, would be Security Assets in respect of which he was appointed), and as varied and extended by the provisions of this Scottish Floating Charge (in the name of or on behalf of the Chargor or in his own name and, in each case, at the cost of the Chargor)

- 10 1 1 all the powers of an administrative receiver and a Scottish receiver set out in Schedule 1 and Schedule 2 to the Insolvency Act 1986 (whether or not the Receiver is an administrative receiver or a Scottish receiver),
- 10 1 2 all the powers and rights of an absolute owner and power to do or omit to do anything which the Chargor itself could do or omit to do, and
- 10 1 3 the power to do all things (including bringing or defending proceedings in the name or on behalf of the Chargor) which seem to the Receiver to be incidental or conducive to
  - (i) any of the functions, powers, authorities or discretions conferred on or vested in him,
  - (ii) the exercise of any rights, powers and remedies of the Common Security Agent provided by or pursuant to this Scottish Floating Charge or by law (including realisation of all or any part of the assets in respect of which that Receiver was appointed), or
  - (iii) bringing to his hands any assets of the Chargor forming part of, or which when got in would be, Security Assets

## 11 Application of moneys

All moneys received or recovered and any non-cash recoveries made or received by the Common Security Agent or any Receiver pursuant to this Scottish Floating Charge or the powers conferred by it shall (subject to the claims of any person having prior rights thereto) be

applied first in the payment or other discharge of the costs, charges and expenses incurred and payments made by the Receiver, the payment or other discharge of his remuneration and the discharge of any liabilities incurred by the Receiver in, or incidental to, the exercise of any of his powers, and thereafter shall be applied by the Common Security Agent (notwithstanding any purported appropriation by the Chargor) in accordance with the terms of Clause 22 (*Application of proceeds*) the Intercreditor Agreement

## **12 Protection of purchasers**

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### **12.1 Consideration**

The receipt of the Common Security Agent or any Receiver shall be conclusive discharge to a purchaser and, in making any sale or disposal of any of the Security Assets or making any acquisition, the Common Security Agent or any Receiver may do so for such consideration (whether cash or non-cash), in such manner and on such terms as it thinks fit

### **12.2 Protection of purchasers**

No purchaser or other person dealing with the Common Security Agent, any Receiver or any of the Common Security Agent's or Receiver's delegates shall be bound to inquire whether the right of the Common Security Agent, such Receiver or such delegates to exercise any of its powers has arisen or become exercisable or be concerned with any propriety or regularity on the part of the Common Security Agent, such Receiver or such delegates in such dealings. No purchaser or other person dealing with any such delegate shall be concerned as to whether the delegation by the Common Security Agent or the Receiver (as applicable) pursuant to the terms of this Scottish Floating Charge shall have lapsed for any reason or been revoked

## **13. Power of attorney**

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### **13.1 Appointment and powers**

The Chargor by way of security irrevocably appoints the Common Security Agent and any Receiver separately and independently to be its mandatory and attorney and in its name, on its behalf and as its act and deed to execute, deliver and perfect all documents and do all things which the mandatory and attorney may consider to be required or desirable for

13.1.1 carrying out any obligation imposed on the Chargor by or pursuant to this Scottish Floating Charge or any other agreement binding on the Chargor to which the Common Security Agent is party (including the execution and delivery of any deeds, charges, assignments, standard securities, assignations or other security and any transfers of the Security Assets and perfecting and/or releasing the security created or intended to be created in respect of the Security Assets), and

13.1.2 enabling the Common Security Agent and any Receiver to exercise or delegate the exercise of, any of the rights, powers and authorities conferred on them by or pursuant to this Scottish Floating Charge or by law (including, after this Scottish Floating Charge has become enforceable in accordance with Clause 7 (*Enforcement of security*), the exercise of any right of a heritable proprietor or legal or beneficial owner of the Security Assets)

### **13.2 Ratification**

The Chargor shall ratify and confirm all things done and all documents executed by any mandatory and attorney in the exercise or purported exercise of all or any of his powers

## **14. Effectiveness of security**

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### **14.1 Continuing security**

14.1.1 The Security created by or pursuant to this Scottish Floating Charge shall remain in full force and effect as a continuing security for the Secured Liabilities unless and until discharged by the Common Security Agent in writing

14.1.2 No part of the Security from time to time intended to be constituted by this Scottish Floating Charge will be considered satisfied or discharged by an intermediate

payment, discharge or satisfaction of the whole or any part of the Secured Liabilities

#### 14 2 Cumulative rights

The Security created by or pursuant to this Scottish Floating Charge shall be cumulative, in addition to and independent of every other Security which the Common Security Agent or any Secured Party may at any time hold for the Secured Liabilities or any other obligations or any rights, powers and remedies provided by law and shall operate as an independent security notwithstanding any receipt, release or discharge endorsed on or given in respect of or under any such other Security. No prior Security held by the Common Security Agent (whether in its capacity as trustee or otherwise) or any of the other Secured Parties over the whole or any part of the Security Assets shall merge into the Security constituted by this Scottish Floating Charge.

#### 14 3 No prejudice

The Security created by or pursuant to this Scottish Floating Charge shall not be prejudiced by any unenforceability or invalidity of any other agreement or document or by any time or indulgence granted to the Chargor or any other person, by the Common Security Agent (whether in its capacity as trustee or otherwise) or any of the other Secured Parties or by any variation of the terms of the trust upon which the Common Security Agent holds the security or by any other thing which might otherwise prejudice that Security.

#### 14 4 Remedies and Waivers

No failure on the part of the Common Security Agent to exercise, nor any delay on its part in exercising, any right, power or remedy under this Scottish Floating Charge, shall operate as a waiver of that right, power or remedy or, power constitute an election to affirm this Scottish Floating Charge. No election to affirm this Scottish Floating Charge on the part of the Common Security Agent shall be effective unless it is in writing. The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any provided by law. No single or partial exercise of any right, power or remedy shall preclude any further or other exercise of that or any other right or remedy.

#### 14 5 No liability

None of the Common Security Agent, its nominee(s) nor any Receiver shall be liable

14 5 1 to account as a heritable creditor in possession, or

14 5 2 for any loss arising by reason of taking any action permitted by this Scottish Floating Charge or any neglect, default or omission in connection with the Security Assets or taking possession of or realising all or any part of the Security Assets,

except in the case of gross negligence or wilful default upon its part

#### 14 6 Partial invalidity

If, at any time, any provision of this Scottish Floating Charge is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Scottish Floating Charge nor of such provision under the laws of any other jurisdiction shall in any way be affected or impaired thereby and, if any part of the security intended to be created by or pursuant to this Scottish Floating Charge is invalid, unenforceable or ineffective for any reason, that shall not affect or impair any other part of the security.

#### 14 7 Waiver of defences

The obligations of, and the Security created by, the Chargor under this Scottish Floating Charge and the rights and remedies provided by this Scottish Floating Charge will not be affected by any act, omission, matter or thing which, but for this Clause 14 7, would reduce, release or prejudice any of its obligations under, or the Security created by, this Scottish Floating Charge and whether or not known to the Chargor or any Secured Party including

14 7 1 any time, waiver or consent granted to, or composition with, any Obligor or other person,

- 14 7 2 the release of any other Obligor or any other person under the terms of any composition or arrangement with any creditor of any Obligor;
- 14 7 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, any Obligor 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,
- 14 7 4 any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of, any Obligor or any other person,
- 14 7 5 any amendment, novation, supplement, extension (whether of maturity or otherwise) or restatement (in each case however fundamental and of whatsoever nature, and whether or not more onerous) or replacement of a Finance Document or any other document or security or of the Secured Liabilities (including, without limitation, any change in the purpose of, any extension of, or any variation or increase in any facility or amount made available under any facility or the addition of any new facility under any Finance Document or other documents),
- 14 7 6 any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or Security or of the Secured Liabilities, and
- 14 7 7 any insolvency or similar proceedings

#### 14 8 **Chargor intent**

Without prejudice to the generality of Clause 14 7 (*Waiver of defences*), the Chargor expressly confirms that it intends that the Security created under this Scottish Floating Charge and the rights and remedies arising thereunder, shall extend from time to time to any (however fundamental and of whatsoever nature, and whether or not more onerous) variation, increase, extension or addition of or to any of the Finance Documents and/or any facility or amount made available under any of the Finance Documents for the purposes of or in connection with any of the following acquisitions of any nature, increasing working capital, enabling investor distributions to be made, carrying out restructurings, refinancing existing facilities, refinancing any other indebtedness, making facilities available to new borrowers, any other variation or extension of the purposes for which any such facility or amount might be made available from time to time, and any fees, costs and/or expenses associated with any of the foregoing

#### 14 9 **Immediate recourse**

The Chargor waives any right it may have of first requiring any Secured Party (or any trustee or agent on its behalf) to proceed against or enforce any other rights or Security or claim payment from any other person before claiming from the Chargor under this Scottish Floating Charge. This waiver applies irrespective of any law or any provision of this Scottish Floating Charge to the contrary.

#### 14 10 **Deferral of rights**

Until the end of the Security Period, the Chargor will not exercise any rights which it may have by reason of performance by it of its obligations under this Scottish Floating Charge

- 14 10 1 to be indemnified by an Obligor,
- 14 10 2 to claim any contribution from any guarantor of any Obligor's obligations under this Scottish Floating Charge,
- 14 10 3 to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any right of the Secured Parties under this Scottish Floating Charge or of any other guarantee or Security taken pursuant to, or in connection with, this Scottish Floating Charge by any Secured Party
- 14 10 4 to bring legal or other proceedings for an order requiring any Obligor to make any payment, or perform any obligation, in respect of which any Obligor has given a guarantee, undertaking or indemnity under any Finance Document,

14 10 5 to exercise any right of set-off against any Obligor, or

14 10 6 to claim, rank or prove as a creditor of any Obligor in competition with any Secured Party

If the Chargor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution on trust for the Common Security Agent to the extent necessary to enable all amounts which may be or become payable to any Secured Party by the Obligors under or in connection with this Scottish Floating Charge to be repaid in full and shall promptly pay or transfer the same to the Common Security Agent or as the Common Security Agent may direct for application in accordance with Clause 11 (*Application of Moneys*)

## **15. Prior security interests**

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15 1 In the event of any action, proceeding or step being taken to exercise any powers or remedies conferred by any prior ranking Security against any of the Security Assets or in case of exercise by the Common Security Agent or any Receiver of any power of sale under this Scottish Floating Charge, the Common Security Agent may redeem such prior Security or procure the transfer thereof to itself

15 2 The Common Security Agent may settle and agree the accounts of the prior Security and any accounts so settled and agreed will be conclusive and binding on the Chargor

15 3 All principal moneys, interest, costs, charges and expenses of and incidental to any redemption or transfer will be paid by the Chargor to the Common Security Agent (or as the Common Security Agent may direct in accordance with the Intercreditor Agreement) on demand together with accrued interest thereon as well as before judgment or decree at the rate from time to time applicable to unpaid sums specified in each Facility Agreement from the time or respective times of the same having been paid or incurred until payment thereof (as well as after as before judgment or decree)

## **16. Subsequent security interests**

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If the Common Security Agent acting in its capacity as trustee or otherwise or any of the other Secured Parties at any time receives or is deemed to have received notice of any subsequent Security, assignment or transfer affecting all the Security Assets or any part of the Security Assets which is prohibited by the terms of any Finance Document, all payments thereafter by or on behalf of the Chargor to the Common Security Agent (or as the Common Security Agent may direct in accordance with the Intercreditor Agreement) (whether in its capacity as trustee or otherwise) or any of the other Secured Parties will (in the absence of any express contrary appropriation by the Chargor) be credited or treated as having been credited to a new account of the Chargor and not as having been applied in reduction of the Secured Liabilities at the time that notice was received

## **17. Suspense accounts**

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All moneys received, recovered or realised by the Common Security Agent under this Scottish Floating Charge (including the proceeds of any conversion of currency) may in the discretion of the Common Security Agent be credited to any interest bearing suspense or impersonal account(s) maintained with a bank, building society, financial institution or other person as it considers appropriate (including itself) for so long as it may think fit (the interest being credited to the relevant account) pending their application from time to time at the Common Security Agent's discretion, in or towards the discharge of any of the Secured Liabilities and save as provided herein no party will be entitled to withdraw any amount at any time standing to the credit of any suspense or impersonal account referred to above

## **18. Release of security**

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### **18 1 Release of Security**

Upon the expiry of the Security Period, the Common Security Agent must, at the request and cost of the Chargor, promptly release and discharge the security constituted by this Scottish



Floating Charge without recourse to, or any representation or warranty by, the Common Security Agent or any of its nominees

**18 2 Clawback**

If the Common Security Agent reasonably considers (having taken legal advice) that any amount paid or credited to any Secured Party is capable of being avoided or reduced by virtue of any bankruptcy, insolvency, liquidation or similar laws, the liability of the Chargor under this Scottish Floating Charge and the Security constituted by that document will continue and such amount will not be considered to have been irrevocably discharged

**19. Discretion and delegation**

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**19 1 Discretion**

Any liberty or power which may be exercised or any determination which may be made under this Scottish Floating Charge by the Common Security Agent or any Receiver may, subject to the terms and conditions of each Facility Agreement, be exercised or made in its absolute and unfettered discretion without any obligation to give reasons

**19 2 Delegation**

Each of the Common Security Agent and any Receiver shall have full power to delegate (either generally or specifically) the powers, authorities and discretions conferred on it by this Scottish Floating Charge (including the mandate and power of attorney) on such terms and conditions as it shall see fit which delegation shall not preclude the subsequent exercise any subsequent delegation or any revocation of such power, authority or discretion by the Common Security Agent or the Receiver itself

**20 Governing law**

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This Scottish Floating Charge and all non-contractual obligations arising out of or in connection with it are governed by Scots law

**21 Jurisdiction**

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**21 1 Scottish courts**

The courts of Scotland have exclusive jurisdiction to settle any dispute (a "Dispute") arising out of, or in connection with this Scottish Floating Charge (including a dispute relating to the existence, validity or termination of this Scottish Floating Charge or the consequences of its nullity or any non-contractual obligations arising out of or in connection with this Scottish Floating Charge)

**21 2 Convenient Forum**

The parties agree that the courts of Scotland are the most appropriate and convenient courts to settle Disputes between them and, accordingly, that they will not argue to the contrary

### 21.3 Exclusive Jurisdiction

This Clause 21 (*Jurisdiction*) is for the benefit of the Common Security Agent only. As a result and notwithstanding Clause 21.1 (Scottish Courts), it does not prevent the Common Security Agent from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law the Common Security Agent may take concurrent proceedings in any number of jurisdictions.

**IN WITNESS WHEREOF** this Scottish Floating Charge consisting of this and the eleven preceding pages has been executed and delivered as follows

Subscribed for and on behalf of MER  
MANOR OPERATIONS LIMITED by

*Colman O'Leary*

at

*Dillon Eustace, Dublin*

on

*30 March 2016*

Director

in the presence of

*[Redacted]*

*EVA HULVE*

*33 SIR JOHN ROSEBURY*

*DUBLIN*

*DUBLIN 2*

Witness Signature

Name

Address

And delivered on *31 March 2016*