



Registration of a Charge

Company name: **OTRO CLUB LIMITED**

Company number: **10393204**

Received for Electronic Filing: **20/03/2019**



X81MM2AA

Details of Charge

Date of creation: **13/03/2019**

Charge code: **1039 3204 0003**

Persons entitled: **XXIII CAPITAL C LIMITED**

Brief description:

Contains fixed charge(s).

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

Contains negative pledge.

Authentication of Form

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

Authentication of Instrument

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

**FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL
INSTRUMENT.**

Certified by:

PINSENT MASONS LLP



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 10393204

Charge code: 1039 3204 0003

The Registrar of Companies for England and Wales hereby certifies that a charge dated 13th March 2019 and created by OTRO CLUB LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 20th March 2019 .

Given at Companies House, Cardiff on 21st March 2019

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



Companies House



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

DATED 13 March **2019**

EXECUTION COPY

(1) OTRO CLUB LIMITED
(as Chargor)

(2) XXIII CAPITAL C LIMITED
(as Lender)

DEBENTURE



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THIS DEED is made on 13 March 2019

BETWEEN:-

- (1) **OTRO CLUB LIMITED** (No 10393204) whose registered office is at Second Floor, 45 Whitfield Street, London, United Kingdom, W1T 4HD (the "**Chargor**"); and
- (2) **XXIII CAPITAL C LIMITED**, (No 11233417) whose registered office is at 4th Floor Welbeck Works, 33 Welbeck Street, London, United Kingdom, W1G 8EX (the "**Lender**").

INTRODUCTION

- (A) The Lender has agreed to make credit facilities available to the Chargor on the terms and conditions set out in the Facility Agreement (as is defined below).
- (B) The Chargor has agreed to enter into this Debenture to provide Security over its assets to the Lender.

THIS DEED WITNESSES as follows:-

1. **INTERPRETATION**

1.1 **Definitions**

In this Debenture:-

"Account"	means any account opened or maintained by the Chargor at any bank or financial institution
"Amendment and Restatement Deed"	means the amendment and restatement deed entered into on or around the date of this Debenture by, among others, (1) OTRO Club Limited as borrower, (2) the companies listed in schedule 1 thereto as guarantors, and (3) XXIII Capital C Limited as Lender, pursuant to the terms of which the Facility Agreement are amended and restated
"Charged Property"	means all the assets and undertaking of the Chargor which from time to time are, or purport to be, the subject of the security created in favour of the Lender by or pursuant to this Debenture
"Default Rate"	means the rate specified in clause 6.4 (<i>Interest</i>) of the Facility Agreement
"Enforcement Action"	means:- (a) the acceleration of any Secured Liabilities including any action taken by the Lender pursuant to clause 16.15 (<i>Acceleration</i>) of the Facility Agreement (b) the taking of any steps to enforce or require the enforcement of this Debenture (including the crystallisation of any floating charge) (c) the making of any demand against the Chargor in relation to any guarantee, indemnity or other assurance against loss in respect of any Secured Liabilities

	(d) the suing for, commencing or joining of any legal or arbitration proceedings against the Chargor to recover any Secured Liabilities or
	(e) the petitioning, applying or voting for, or the taking of any steps which may lead to any administration, winding-up, insolvency or dissolution of or in relation to the Chargor
"Enforcement Date"	means the date on which the Lender first takes Enforcement Action
"Excluded Land"	means any licence or lease for a term of 12 Months or less and with a market or book value of less than £10,000
"Existing Debenture"	means the debenture dated 28 March 2018 between (1) the Chargor and (2) the Lender
"Facility Agreement"	means the facility agreement dated 28 March 2018 and made between (1) OTRO Club Limited (as the borrower), (2) OTRO Global Limited (as original guarantor), (3) OTRO Media Limited and OTRO Technology Limited (as additional guarantors) and (4) the Lender as amended and restated on 10 August 2018, as amended on 31 October 2018, as amended and restated on 30 November 2018 and as amended and restated on or around the date of this Debenture
"Finance Documents"	has the meaning given to that term in the Facility Agreement
"Fixed Plant and Equipment"	means all plant, machinery or equipment of the Chargor of any kind which does not for any reason constitute a Fixture, but is now or at any time directly or indirectly attached by any means and for any purpose to any land or building, whether or not it is removable or intended to form part of the land or building
"Fixtures"	means all things of any kind now or at any time affixed to the Land for any purpose, including, without limitation, trade and tenants fixtures
"Guarantor"	means:- (a) OTRO Global Limited (No 11234419) whose registered office is at Second Floor, 45 Whitfield Street, London, United Kingdom, W1T 4HD (b) OTRO Media Limited (No 11313049) whose registered office is at Second Floor, 45 Whitfield Street, London, United Kingdom, W1T 4HD and (c) OTRO Technology Limited (No 11313156) whose registered office is at Second Floor, 45 Whitfield Street, London, United Kingdom, W1T 4HD

"Insurances"	means any policy of insurance or assurance in which the Chargor has an interest and all claims and rebates of premium under any such policy
"Intellectual Property"	means any of the following in which the Chargor has an interest:- (a) any registered intellectual property right in any territory or jurisdiction, including, without limitation, patents, trade marks, service marks, registered designs, and any similar right in any territory or jurisdiction and any applications or right to apply for any of the above (b) any invention, copyright, design right or performance right (c) any trade secrets, know-how and confidential information and (d) the benefit of any agreement or licence for the use of any such right
"Land"	means any estate, right or interest in or over land, whether legal or equitable, and wherever the land is situated including, without limitation, any buildings and Fixtures on the Land, and the benefit of any covenants or rights owed to any person or enforceable by him by virtue of the ownership possession or occupation of land but for these purposes "Land" excludes (i) heritable property situated in Scotland and (ii) the Excluded Land
"Loose Plant and Equipment"	means, in relation to the Chargor, all plant, machinery, equipment and motor vehicles now or at any time owned by the Chargor as a capital asset which is not Fixed Plant and Equipment
"LPA"	means the Law of Property Act 1925
"Monetary Claims"	means all book and other debts and monetary claims now or in the future owing to the Chargor (whether alone or jointly with any other person), whenever payable and whether liquidated or unliquidated, certain or contingent including, without limitation, credit balances on any Account, and together with all cheques, bills of exchange, negotiable instruments, credits and securities at any time given in relation to, or to secure payment of, any such debt
"Notice of Charge"	means a notice of charge in such form as may be specified by the Lender
"Receiver"	means any receiver, receiver and manager or administrative receiver of the whole or any part of the Charged Property
"Related Rights"	means in relation to any Charged Property (a) the proceeds of sale of any part of that

Charged Property

- (b) all rights under any licence, agreement for sale or agreement for lease in respect of that Charged Property
- (c) all rights, benefits, claims, contracts, warranties, remedies, security, indemnities or covenants for title in respect of that Charged Property and
- (d) any moneys and proceeds paid or payable in respect of that Charged Property

"Secured Liabilities"

means all present and future obligations and liabilities expressed to be due, owing or payable by the Chargor or the Guarantor to the Lender (whether present or future, actual or contingent and whether incurred solely or jointly (or jointly and severally) with any other person) under the Finance Documents including without limitation interest, commission, costs, charges and expenses charged by the Lender at rates agreed between it and the Chargor

"Securities"

means all the right, title and interest of the Chargor, now or in the future, in any:-

- (a) stocks, shares, bonds, debentures, loan stocks, or other securities issued by any person
- (b) warrants, options or other rights to subscribe, purchase or otherwise acquire any stocks, shares, bonds, debentures, loan stocks or other securities or investments issued by any person and
- (c) units or other interests in any unit trust or collective investment scheme

"Security"

means a mortgage, charge, pledge, lien or any other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect

"Specific Contracts"

means:-

- (a) the Sponsorship Agreements; and
- (b) the Licence and Participation Agreements.

1.2 Incorporation of terms

Unless the context otherwise requires or unless defined in this Debenture, all words and expressions defined or whose interpretation is provided for in the Facility Agreement shall have the same meanings in this Debenture.

1.3 Interpretation

1.3.1 In this Debenture, unless the context otherwise requires:-

- (a) all references to documents include all variations and replacements of such documents and supplements to such documents;
 - (b) all references to a party include references to its personal representatives, permitted assigns and transferees and its successors in title; and
 - (c) words and phrases defined in the Companies Act 2006 have the same meanings in this Debenture but the word "**company**" includes any body corporate.
- 1.3.2 Clauses 1.2 (other than clause 1.2.4) to 1.4 (inclusive) of the Facility Agreement shall be incorporated into this Debenture as if they were set out herein and any reference in such clause to "this Agreement" shall be read as a reference to "this Debenture".

1.4 **Existing Debenture**

- 1.4.1 On or around the date of this Debenture, the Facility Agreement will be amended and restated pursuant to the terms of the Amendment and Restatement Deed.
- 1.4.1 It is a condition precedent of the Amendment and Restatement Deed that the Chargor enters into this Debenture.
- 1.4.1 Notwithstanding any other provision of this Debenture, the parties acknowledge and agree that the Chargor enters into this Deed in addition to, and without prejudice to, the Existing Debenture and that any references in this Debenture to the Security created hereunder being first ranking are subject to any prior ranking Security created under the Existing Debenture.

2. **COVENANT TO PAY**

2.1 **Secured Liabilities**

The Chargor covenants that it will on demand of the Lender pay and discharge any or all of the Secured Liabilities when due.

2.2 **Interest**

The Chargor covenants to pay interest to the Lender upon any sum demanded in accordance with Clause 2.1 (*Secured Liabilities*) until payment (both before and after any judgment) at the Default Rate.

3. **CHARGES**

3.1 **Mortgages and Fixed Charges**

As a continuing security for payment of the Secured Liabilities, the Chargor with full title guarantee charges to the Lender all its right, title and interest from time to time in each of the following assets:-

- 3.1.1 by way of first legal mortgage all Land which is described in Schedule 1 (if any) and all other Land now vested in the Chargor;
- 3.1.2 by way of first fixed charge all other Land now vested in the Chargor (to the extent not effectively charged by Clause 3.1.1) and all Land acquired by the Chargor after the date of this Debenture;

3.1.3 by way of first fixed charge:-

- (a) the Specific Contracts;
- (b) the Securities;
- (c) the Intellectual Property;
- (d) the Monetary Claims;
- (e) the Fixed Plant and Equipment;
- (f) the Loose Plant and Equipment;
- (g) the Accounts;
- (h) the Insurances;
- (i) the Related Rights under or in connection with the Specific Contracts, the Securities, the Accounts, the Insurances, the Intellectual Property, the Monetary Claims, the Fixed Plant and Equipment and the Loose Plant and Equipment; and
- (j) its present and future goodwill and uncalled capital.

3.2 **Floating Charge**

As continuing security for payment of the Secured Liabilities, the Chargor with full title guarantee charges by way of first floating charge the whole of the Chargor's undertaking and assets, present and future and wherever situated, which are not for any reason effectively charged (whether in law or equity) by way of fixed security by this Debenture, including, without limitation, any heritable property of the Chargor situated in Scotland.

3.3 **Trust**

If or to the extent that for any reason the assignment or charging of any Charged Property is prohibited, the Chargor shall hold it on trust for the Lender.

3.4 **Qualifying floating charge**

Paragraph 14 of Schedule B1 to the Insolvency Act 1986 will apply to any floating charge created by this Debenture.

3.5 **Excluded Contracts**

A Specific Contract shall be excluded from the Security created by this Debenture if, under the terms of that Specific Contract, the Chargor is not permitted to charge or assign its interest in such Specific Contract or otherwise grant Security over any of its interests or rights to such Specific Contract (either absolutely or without the consent of the relevant counterparty).

4. **CRYSTALLISATION OF FLOATING CHARGE**

4.1 **Crystallisation: By Notice**

The Lender may at any time by notice in writing to the Chargor convert the floating charge created by Clause 3.2 (*Floating Charge*) with immediate effect into a fixed charge as regards any property or assets specified in the notice if:-

- 4.1.1 the Enforcement Date has occurred;
- 4.1.2 the Lender considers (acting reasonably) that any of the Charged Property may be in jeopardy or in danger of being seized or sold pursuant to any form of legal process; or
- 4.1.3 the Lender (acting reasonably) considers that it is necessary in order to protect the priority of the Security created by or pursuant to this Debenture.

4.2 **Crystallisation: Automatic**

The floating charge created by Clause 3.2 (*Floating Charge*) will automatically be converted (without notice) with immediate effect into a fixed charge as regards all of the undertaking and assets subject to the floating charge if:-

- 4.2.1 the Chargor creates or attempts to create any Security (other than as permitted pursuant to the terms of the Finance Documents) over any of the Charged Property; or
- 4.2.2 any person levies or attempts to levy any distress, execution or other process against any of the Charged Property (which is not discharged within 3 Business Days); or
- 4.2.3 any step is taken (including the presentation of a petition, the passing of a resolution or the making of an application) to appoint a liquidator, provisional liquidator, administrator or Receiver in respect of the Chargor, over all or any part of its assets, or if such person is appointed.

4.3 **Crystallisation: Moratorium where directors propose voluntary arrangement**

The floating charge created by Clause 3.2 (*Floating Charge*) may not be converted into a fixed charge solely by reason of:-

- 4.3.1 the obtaining of a moratorium; or
- 4.3.2 anything done with a view to obtaining a moratorium,

under Schedule A1 to the Insolvency Act 1986.

5. **PERFECTION OF SECURITY**

5.1 **Notices of Charge**

The Chargor shall deliver to the Lender (or procure delivery of) Notices of Charge duly executed by, or on behalf of, the Chargor:-

- 5.1.1 in respect of the Specific Contracts, on an Event of Default;
- 5.1.2 in respect of the Insurances, on an Event of Default;
- 5.1.3 in respect of each Account, on an Event of Default; and
- 5.1.4 in respect of any other asset which is the subject of a charge pursuant to Clause 3.1.3, promptly upon the request of the Lender (acting reasonably) from time to time (and, for the avoidance of doubt, on an Event of Default),

and in each case shall use all reasonable endeavours to procure that each notice is acknowledged by the party to whom such Notice of Charge is addressed upon the serving of the applicable notice.

5.2 **Delivery of Documents of Title**

The Chargor shall upon the execution of this Debenture (or, if later, upon receipt or entitlement thereof), deposit with the Lender and the Lender during the continuance of this security shall be entitled to hold all deeds, certificates and other documents of title relating to Land, the Securities and the Insurances. In the case of the Securities, the Chargor shall also deliver such stock transfer forms or other instruments of transfer (stamped and executed in blank by the Chargor) as the Lender may reasonably request.

5.3 **Application to the Land Registry**

The Chargor and the Lender apply to the Land Registry for the following to be entered into on the register of the title to any Land now or in the future owned by the Chargor:-

5.3.1 a restriction in the following terms:-

"No disposition of the registered estate by the proprietor of the registered estate [or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction,] is to be registered without a written consent signed by the proprietor for the time being of the charge dated *[insert date of charge]* in favour of *[insert name of Lender]* referred to in the charges register (Form P)".

5.3.2 a notice that the Lender is under an obligation to make further advances on the terms and subject to the conditions of the Finance Documents and the security created by the charge dated *[insert date]* in favour of *[insert name of Lender]* has been created for the purpose of securing such further advances.

6. **FURTHER ASSURANCE**

6.1 **General**

The Chargor shall, at its own expense, at any time when required by the Lender, execute and deliver to the Lender:-

6.1.1 a valid legal mortgage of any Land now or in the future owned by the Chargor;

6.1.2 a fixed charge over any interest, not capable of being charged by way of legal mortgage, in any Land now or in the future belonging to the Chargor;

6.1.3 a legal assignment or other fixed Security over all or any of the Charged Property;

6.1.4 where any of its assets are situated outside England and Wales, such fixed security (or such security in that jurisdiction most closely akin to fixed security) under the law of the place where the asset is situated as the Lender may require; and

6.1.5 on an Event of Default, a notice to any third party of any of the charges or assignments created by or pursuant to this Debenture,

in each case, in the Lender's standard form or such other form as the Lender may require acting reasonably.

6.2 **Other acts**

Without prejudice to Clause 6.1 (*General*), the Chargor shall, at its own expense, at any time when required by the Lender (acting reasonably), do and concur in all acts or

things as the Lender may deem necessary for the purpose of the creation, perfection, protection or maintenance of any of the Security intended to be created by this Debenture over all or any of the Charged Property or to facilitate the enforcement of that Security, or the exercise of any powers or discretions intended to be vested in the Lender or any Receiver by this Debenture.

7. RESTRICTIONS ON DEALING

7.1 Negative Pledge

The Chargor undertakes that it shall not, at any time during the subsistence of this Debenture, create or permit to subsist any Security over all or any part of the Charged Property, except as expressly permitted under the terms of the Finance Documents.

7.2 Disposals

The Chargor undertakes that it shall not (and shall not agree to) at any time during the subsistence of this Debenture, except as expressly permitted under the terms of the Finance Documents, sell, transfer, assign, lease or hire out, factor, discount, licence, lend, part with its interest in or otherwise dispose of any of the Charged Property or permit the same to occur, or agree to do any of the foregoing, provided that, until:-

7.2.1 the floating charge created by Clause 3.2 (*Floating Charge*) is converted into a fixed charge; or

7.2.2 the occurrence of the Enforcement Date,

the Chargor may hold, enjoy and deal with, in accordance with the Finance Documents, the Charged Property which is not at the relevant time expressed to be subject to a fixed charge or mortgage.

8. SECURITIES

8.1 Securities: Before Enforcement Date

Prior to the Enforcement Date, the Chargor shall:-

8.1.1 pay all dividends, interest and other monies arising from the Securities into an Account; and

8.1.2 exercise all voting rights in relation to the Securities for any purpose in a manner which is consistent with the terms of the Finance Documents.

8.2 Securities: After Enforcement Date

After the occurrence of the Enforcement Date, the Lender may at its discretion (in the name of the Chargor or otherwise and without any further consent or authority from the Chargor):-

8.2.1 exercise (or refrain from exercising) any voting rights in respect of the Securities;

8.2.2 apply all dividends, interest and other monies arising from the Securities in accordance with Clause 16 (*Application of Moneys*);

8.2.3 transfer the Securities into the name of such nominee(s) of the Lender as it shall require; and

8.2.4 exercise (or refrain from exercising) the powers and rights conferred on or exercisable by the legal or beneficial owner of the Securities,

in each case, in such manner and on such terms as the Lender may think fit and the proceeds of any such action shall form part of the Charged Property.

8.3 **Securities: Payment of Calls**

The Chargor shall pay when due all calls or other payments which may be or become due in respect of any of the Securities which are not fully paid (unless reasonably contested), and in any case of default by the Chargor in such payment, the Lender may, if it thinks fit, make such payment on behalf of the Chargor in which case any sums paid by the Lender shall be reimbursed by the Chargor to the Lender on demand and shall carry interest from the date of payment by the Lender until reimbursed at the rate notified to the Chargor by the Lender.

8.4 **Securities: Exercise of Rights**

The Chargor shall not exercise any of its respective rights and powers in relation to any of the Securities in any manner which, in the opinion of the Lender, would prejudice the effectiveness of, or the ability of the Lender to realise, the security created by or pursuant to this Debenture.

9. **ACCOUNTS**

9.1 **Accounts: Notification and Variation**

The Chargor, during the subsistence of this Debenture:-

- 9.1.1 shall promptly deliver to the Lender on the date of this Debenture (and, if any change occurs after the date of this Debenture, on that date), details of each Account maintained by it with any bank or financial institution; and
- 9.1.2 shall not, without the Lender's prior written consent (such consent not to be unreasonably withheld or delayed), permit or agree to any variation of the rights attaching to any Account or close any Account unless such account closure is notified in advance to the Lender.

9.2 **Accounts: Operation Before Enforcement Date**

- 9.2.1 At any time (other than when an Event of Default has occurred and is continuing), the Chargor shall be entitled to receive, withdraw or otherwise transfer any credit balance from time to time on any Account.
- 9.2.2 If and to the extent necessary to enable, and for the sole purpose of enabling:
 - (a) the Chargor to comply with its obligation to make repayment of the Secured Liabilities arising under the Finance Documents; or
 - (b) the Lender to apply the proceeds thereof in or towards repayment of the Secured Liabilities in accordance with the terms of the Finance Documents,

the Lender shall release from the Security created by this Debenture the whole or any part of the sums standing to the credit of any Account.

9.3 **Accounts: Operation After Enforcement Date**

After the occurrence of an Event of Default which is continuing, the Chargor shall not be entitled to receive, withdraw or otherwise transfer any credit balance from time to time on any Account.

9.4 **Accounts: Application of Moneys**

After the occurrence of an Event of Default which is continuing, the Lender shall be entitled without notice to apply, transfer or set-off any or all of the credit balances from time to time on any Account in or towards the payment or other satisfaction of all or part of the Secured Liabilities in accordance with Clause 16 (*Application of Moneys*).

10. **MONETARY CLAIMS**

10.1 **No dealing with Monetary Claims**

The Chargor shall not at any time during the subsistence of this Debenture, without the prior written consent of the Lender (such consent not to be unreasonably withheld or delayed) or as permitted pursuant to the terms of the Finance Documents, sell, factor, discount, transfer, assign, lend or otherwise dispose of any of the Monetary Claims or enter into any agreement to do any of the foregoing.

10.2 **Proceeds of Monetary Claims**

The Chargor shall get in and realise the Monetary Claims in the ordinary course of business and pay the proceeds of those Monetary Claims into an Account.

11. **INSURANCES**

11.1 **Insurances: Undertakings**

The Chargor shall at all times during the subsistence of this Debenture:-

11.1.1 keep the Charged Property insured with those insurances normally maintained by prudent companies carrying on a similar business and with an insurance office or underwriters to be approved by the Lender in writing from time to time and otherwise in accordance with the terms of the Finance Documents;

11.1.2 if required by the Lender, cause each Insurance relating to the Charged Property to contain (in form and substance satisfactory to the Lender) an endorsement naming the Lender as sole loss payee in respect of all claims;

11.1.3 promptly pay all premiums and other moneys payable under all its Insurances or procure that such is done and, promptly upon request, produce to the Lender a copy of each policy and evidence (acceptable to the Lender) of the payment of such sums (or procure that such is done) and not do or omit to do or permit or suffer to be done or omitted to be done, anything which might render any Insurance required by this clause void, voidable or unenforceable; and

11.1.4 if required by the Lender, provide a copy of all Insurances relating to the Charged Property to the Lender.

11.2 **Insurance: Default**

If the Chargor defaults in complying with Clause 11.1 (*Insurance: Undertakings*), the Lender may effect or renew any such Insurance on such terms, in such name(s) and in such amount(s) as it considers appropriate (acting reasonably), and all moneys expended by the Lender in doing so shall be reimbursed by the Chargor to the Lender on demand and shall carry interest from the date of payment by the Lender until reimbursed at the rate specified in Clause 2 (*Covenant to Pay*).

11.3 **Application of Insurance Proceeds**

All moneys received under any Insurance relating to the Charged Property shall, prior to the Enforcement Date, be applied in accordance with the terms of the Finance Documents. After the Enforcement Date, the Chargor shall hold such moneys upon trust for the Lender pending payment to the Lender for application in accordance with Clause 16 (*Application of Moneys*) (excluding any proceeds to make good any third party claims) and the Chargor waives any right it may have to require that any such moneys are applied in reinstatement of any part of the Charged Property.

12. **LAND**

The Chargor shall (with the intent that this Clause 12 (*Land*) shall apply in relation to all Land now vested in the Chargor or acquired by the Chargor after the date of this Debenture):-

12.1 **Repair and Alterations**

- 12.1.1 keep or cause to be kept all buildings and Fixtures from time to time on or in any of its Land and all other plant, machinery and equipment belonging to it in good and substantial repair and good working order;
- 12.1.2 not, without the prior written consent of the Lender (such consent not to be unreasonably withheld or delayed), make or permit the making of any alteration or addition to any of its Land (other than internal non-structural alterations) or commit or permit any person to commit any waste upon or injure or in any manner or by any means lessen the value of its Land or sever or permit to be severed from any of its Land any Fixtures except for the purpose of replacing them as soon as practicable with others of equal or greater value; and
- 12.1.3 permit any authorised representative of the Lender at any time to enter any of its Land for any purpose without becoming liable to account as a mortgagee in possession and to inspect and test any work being carried out and, where any breach of covenant, defect, disrepair or unauthorised alteration, improvement or addition shall be found, remedy all such breaches and execute all such repairs or removals as the Lender may require within 28 days after notice (or immediately, in case of emergency);

12.2 **Statutes**

- 12.2.1 comply with the provisions of all statutes and the requirement of any competent authority affecting any of its Land or the use of any of its Land or anything done on any Land; and
- 12.2.2 ensure that all consents and approvals under all statutes and the regulations and codes of practice of any competent authority affecting any of its Land have been obtained and are complied with, and produce on demand such evidence as the Lender may require to satisfy itself that such consents and approvals have been obtained and are complied with;

12.3 **Leases**

- 12.3.1 pay the rents and observe and perform all covenants, conditions, agreements or obligations on its part to be observed and performed contained in any lease under which any of its Land is held by the Chargor and any licence, consent or approval given under any lease, and use its reasonable endeavours to enforce observance and performance of the lessor's covenants in any lease;

- 12.3.2 not accelerate or defer payment of any moneys payable under any such lease and where any lease contains a provision for the review of rent promptly notify the Lender of any attempt by the lessor to implement a review but not agree the reviewed rent or appoint or agree to the appointment of a third party to determine a rent review without the prior written consent of the Lender;
- 12.3.3 not to apply for any licence, consent or approval under any such lease or any superior lease without the prior written consent of the Lender (such consent not to be unreasonably withheld or delayed); and
- 12.3.4 promptly give notice to the Lender if the Chargor receives notice under section 146 of the LPA or any proceedings are commenced for forfeiture of any such lease or any superior lease or the lessor or any superior lessor re-enters or attempts to re-enter thereunder and at the request of the Lender (acting reasonably) but at the cost of the Chargor take such steps as the Lender may require in relation thereto;

12.4 **Power of Leasing**

not, without the prior written consent of the Lender (such consent not to be unreasonably withheld or delayed), exercise any of the powers of leasing or agreeing to lease vested in or conferred on mortgagors by common law or by statute or create or suffer to be created a tenancy of any description of any of its Land or confer or permit to be conferred upon any person any contractual licence, right or interest to occupy or use or grant any licence or permission to assign, underlet or part with possession of the whole or any part of its Land or agree to do any of the foregoing, and sections 99 and 100 of the LPA shall not apply to this Debenture;

12.5 **Compulsory Acquisition**

not without the prior written consent of the Lender (such consent not to be unreasonably withheld or delayed) enter into any negotiations with any competent authority with regard to the compulsory acquisition of any of its Land or consent to the compulsory acquisition of any of its Land, and, if so requested by the Lender (acting reasonably), permit the Lender or its authorised representatives to conduct such negotiations or to give such consent on the Chargor's behalf;

12.6 **Outgoings**

pay as and when the same become due all rates, taxes, duties, charges, assessments and other outgoings payable in respect of its Land; and

12.7 **Encumbrances**

comply with:-

- 12.7.1 all obligations, covenants, exceptions, reservations, licences, approvals, consents, stipulations, restrictions and conditions to which it is subject including, but without limitation, those relating to any of its Land or the use or enjoyment of any of its Land or imposed upon the Chargor as owner, occupier or user, as the case may be, of any of its Land; and
- 12.7.2 its obligations under any Security having priority to the Security created by or pursuant to this Debenture.

13. DEMAND AND ENFORCEMENT

13.1 Enforcement

This Debenture shall become enforceable in respect of and against the Chargor:-

- 13.1.1 upon the Lender becoming entitled to take any Enforcement Action;
- 13.1.2 upon any request being made by the Chargor to the Lender for the appointment of a Receiver or for the Lender to exercise any other power or right available to it; or
- 13.1.3 upon the occurrence of any event causing, or purporting to cause, the floating charge created by this Debenture to become fixed in relation to any Charged Property.

13.2 Demand for payment

Any demand for payment, and any other notice to be given by the Lender under this Debenture, shall be in writing and may be signed by any authorised signatory on behalf of the Lender, and may be made or given to the Chargor at any place of business of the Chargor, or the registered office of the Chargor:-

- 13.2.1 by delivering it to any such place; or
- 13.2.2 by sending it by first class post to any such place (in which case it shall be deemed received at 10.00am on the next Business Day after posting, and proof of posting shall be proof of delivery); or
- 13.2.3 by sending it by fax to any fax number of the Chargor (in which case it shall be deemed received when sent, and proof of sending shall be proof of receipt).

13.3 Powers on enforcement

At any time after this Debenture has become enforceable, the Lender may (without prejudice to any other rights and remedies and without notice to the Chargor) do all or any of the following:-

- 13.3.1 exercise the power of sale under section 101 of the LPA together with all other powers and rights conferred on mortgagees by the LPA, as varied and extended by this Debenture, without the restrictions contained in sections 103 or 109(1) of the LPA; and
- 13.3.2 exercise the power of leasing, letting, entering into agreements for leases or lettings or accepting or agreeing to accept surrenders of leases in relation to any Charged Property, without the restrictions imposed by sections 99 and 100 of the LPA.

14. RECEIVERS

14.1 Appointment

At any time after this Debenture has become enforceable in respect of and against the Chargor, the Lender may appoint any person or persons to be a Receiver or Receivers of all or any part of the Charged Property of the Chargor charged under this Debenture or an administrator of the Chargor. An appointment over part only of such Charged Property shall not preclude the Lender from making any subsequent appointment over any other part of such Charged Property.

14.2 **Appointment in writing**

The appointment of a Receiver shall be in writing, and may be signed by any authorised signatory on behalf of the Lender. Where more than one person is acting at any time as Receiver, they shall have power to act severally as well as jointly.

14.3 **Remuneration**

The Lender may from time to time determine the remuneration of the Receiver (which shall not be subject to the limit in section 109(6) of the LPA) and may (subject to the application of section 45 of the Insolvency Act 1986) remove any person from office in relation to all or any part of the Charged Property of which he is the Receiver and at any time appoint a further or other Receiver or Receivers over all or any part of such Charged Property.

14.4 **Powers**

The Receiver shall be the agent of the Chargor (which shall be solely liable for his acts, defaults and remuneration) unless and until the Chargor goes into liquidation from which time he shall act as principal and shall not become the agent of the Lender, and the Receiver shall have and be entitled to exercise in relation to the Charged Property all the powers:-

- 14.4.1 conferred by the LPA on mortgagees in possession and on receivers appointed under the LPA;
- 14.4.2 of an administrative receiver set out in Schedule 1 to the Insolvency Act 1986, whether or not the Receiver is an administrative receiver;
- 14.4.3 and rights that an absolute owner would have in relation to any Charged Property; and
- 14.4.4 to do all things incidental or conducive to any functions, powers, authorities or discretions conferred or vested in the Receiver.

15. **POWER OF ATTORNEY**

15.1 **Appointment**

The Chargor hereby irrevocably and by way of security appoints:-

- 15.1.1 the Lender (whether or not a Receiver has been appointed); and also
- 15.1.2 (as a separate appointment) each Receiver,

severally as the attorney and attorneys of the Chargor with power to do any act, and execute and deliver any deed or other document, on behalf of and in the name of the Chargor, which the Chargor could be required to do or execute under any provision of this Debenture (and, prior to the Enforcement Date, has failed to do or execute within 3 Business Days of written demand by the Lender), or which the Lender in its sole opinion may consider necessary or (following the Enforcement Date) desirable for perfecting the Lender's title to any of the Charged Property of the Chargor or enabling the Lender or the Receiver to exercise any of its or his rights or powers under this Debenture.

15.2 **Ratification**

The Chargor ratifies and confirms and agrees to ratify and confirm whatever any such attorney as is mentioned in Clause 15.1 (*Appointment*) shall do or purport to do in the

exercise or purported exercise of all or any of the powers, acts or other matters referred to in Clause 15.1 (*Appointment*).

16. APPLICATION OF MONEYS

16.1 Application of moneys

All sums received by virtue of this Debenture by the Lender or the Receiver shall, subject to the payment of any claim having priority to this Debenture, be paid or applied in the following order of priority:-

16.1.1 first, in or towards satisfaction of all costs, charges and expenses incurred and payments made by the Lender, or the Receiver (including, without limitation, legal expenses) and of the remuneration of the Receiver;

16.1.2 secondly, in or towards payment of the Secured Liabilities in such order as the Lender may at its discretion require; and

16.1.3 thirdly, as to the balance (if any), to the Chargor,

and section 109(8) of the LPA shall not apply.

17. PROTECTION OF THIRD PARTIES

17.1 Statutory powers

In favour of any purchaser, the statutory powers of sale and of appointing a Receiver which are conferred upon the Lender, as varied and extended by this Debenture, and all other powers of the Lender, shall be deemed to arise (and the Secured Liabilities shall be deemed due and payable for that purpose) immediately after the execution of this Debenture.

17.2 Purchasers

No purchaser from or other person dealing with the Lender, any person to whom it has delegated any of its powers, or the Receiver shall be concerned to enquire whether any of the powers which they have exercised has arisen or become exercisable, or whether the Secured Liabilities remain outstanding or whether any event has happened to authorise the Receiver to act or as to the propriety or validity of the exercise of any such power, and the title and position of a purchaser or such person shall not be impeachable by reference to any of those matters.

17.3 Receipts

The receipt of the Lender or the Receiver shall be an absolute and conclusive discharge to a purchaser or any other person dealing with the Lender.

18. PROTECTION OF THE LENDER AND ANY RECEIVER

18.1 No liability

The Lender and any Receiver shall not be liable in respect of any loss or damage which arises out of the exercise, or attempted or purported exercise of, or the failure to exercise any of their respective powers under this Debenture.

18.2 Not mortgagee in possession

Without prejudice to any other provision of this Debenture, entry into possession of any Charged Property shall not render the Lender or the Receiver liable:-

- 18.2.1 to account as mortgagee in possession;
- 18.2.2 for any loss on realisation; or
- 18.2.3 for any default or omission for which a mortgagee in possession might be liable,

and if and whenever the Lender or the Receiver enters into possession of any Charged Property it shall be entitled at any time it or he thinks fit to go out of such possession.

18.3 **Indemnity**

The Chargor shall indemnify and keep indemnified the Lender, every Receiver, and any person who acts as the agent, delegate or attorney of any of them, against all claims, costs, expenses and liabilities which they may suffer or incur arising in any way out of the taking or holding of this Debenture, the exercise or purported exercise of any right, power, authority or discretion given by it, or any other act or omission in relation to this Debenture or the Charged Property.

18.4 **Currency protection**

If any amount due to be paid to the Lender is, for any reason, paid in a currency (the "**currency of payment**") other than the currency in which it was expressed to be payable (the "**contractual currency**"), the Lender may wherever it thinks fit apply the amount of the currency of payment received by it in the purchase, in accordance with its normal practice, of the contractual currency, and if this results in any shortfall below the amount due in the contractual currency, after deducting all taxes, costs and commissions payable in connection with that purchase, the Chargor shall indemnify the Lender against the amount of the shortfall.

18.5 **Continuing protection**

The provisions of this Clause 18 shall continue in full force and effect notwithstanding any release or discharge of this Debenture, or the discharge of any Receiver from office.

19. **PROVISIONS RELATING TO THE LENDER**

19.1 **Powers and discretions**

The rights, powers and discretions given to the Lender in this Debenture:-

- 19.1.1 may be exercised as often as, and in such manner as, the Lender thinks fit;
- 19.1.2 are cumulative, and are not exclusive of any of its rights under the general law; and
- 19.1.3 may only be waived in writing and specifically, and any delay in exercising, or non-exercise of, any right, is not a waiver of it.

19.2 **Certificates**

A certificate by an authorised officer of the Lender as to any sums payable to the Lender under this Debenture shall (save in the case of manifest error) be conclusive and binding upon the Chargors for all purposes.

19.3 **Assignment**

The Lender may assign this Debenture to any successor in title to any of the Secured Liabilities and the Lender may disclose any information in its possession relating to the Chargor, its affairs or the Secured Liabilities to any actual or prospective assignee.

19.4 **Delegation**

The Lender may at any time and from time to time delegate by power of attorney or in any other manner to any person or persons all or any of the rights, powers and discretions which are for the time being exercisable by it under this Debenture.

20. **PRESERVATION OF SECURITY**

20.1 **Continuing Security**

This Debenture shall be a continuing security to the Lender and shall remain in force until expressly discharged in writing by the Lender notwithstanding any intermediate settlement of account or other matter or thing whatsoever and shall be without prejudice and in addition to any other right, remedy or Security of any kind which the Lender may have now or at any time in the future for or in respect of any of the Secured Liabilities.

20.2 **No Merger**

This Debenture is in addition to, without prejudice to, and shall not merge with, any other right, remedy, guarantee or Security which the Lender may at any time hold for any other Secured Liabilities.

20.3 **Waiver of Defences**

Neither the Security created by this Debenture nor the obligations of the Chargor under this Debenture will be affected by an act, omission, matter or thing which, but for this Clause, would reduce, release or prejudice that Security or any of those obligations (whether or not known to it or the Lender) including:-

- 20.3.1 any time, waiver or consent granted to, or composition with, the Chargor or other person;
- 20.3.2 the release of the Chargor or any other person under the terms of any composition or arrangement with any person;
- 20.3.3 the taking, variation, compromise, exchange, renewal, enforcement or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or Security over, assets of the Chargor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any Security;
- 20.3.4 any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Chargor or any other person;
- 20.3.5 any amendment (however fundamental), replacement, variation, novation, assignment or the avoidance or termination of a Finance Document or any other document or Security;
- 20.3.6 any unenforceability, illegality or invalidity of any obligation of, or any Security created by, any person under any Finance Document or any other document; or

20.3.7 an insolvency, liquidation, administration or similar procedure.

20.4 Order of Recourse

This Debenture may be enforced against the Chargor without the Lender first having recourse to any other right, remedy, guarantee or Security held by or available to any of them.

20.5 Suspense Accounts

The Lender may, without prejudice to any other rights it may have, at any time and from time to time place (and keep for such time as it may think prudent) any moneys received, recovered or realised under or by virtue of this Debenture on a separate or suspense account to the credit either of the Chargor or, at the sole discretion of the Lender if an Event of Default has occurred and is continuing, of the Lender as the Lender shall think fit without any intermediate obligation on the Lender's part to apply the same or any part of it in or towards the discharge of the Secured Liabilities.

20.6 New Accounts

If the Lender receives notice of any subsequent charge or other security interest affecting any of the Charged Property, the Lender shall be entitled to close the Chargor's then current account or accounts and to open a new account or accounts for the Chargor. If the Lender does not open a new account or accounts immediately on receipt of such notice it shall nevertheless be treated as if it had done so at the time when it received such notice, and as from that time all payments made for the credit of the Chargor shall be credited or be treated as having been credited to such new account or accounts and shall not operate to reduce the amount due from the Chargor to the Lender at the time when it received such notice.

20.7 Tacking

For the purposes of section 94(1) of the LPA and section 49(3) of the Land Registration Act 2002 the Lender confirms that it shall make further advances to the Chargor on the terms and subject to the conditions of the Finance Documents.

20.8 Reinstatement

If any payment by the Chargor or discharge given by the Lender (whether in respect of the obligations of the Chargor or any Security for those obligations or otherwise) is avoided or reduced as a result of insolvency, liquidation, administration or any similar event:-

20.8.1 the liability of the Chargor and the Security created by this Debenture shall continue as if the payment, discharge, avoidance or reduction had not occurred; and

20.8.2 the Lender shall be entitled to recover the value or amount of that Security or payment from the Chargor, as if the payment, discharge, avoidance or reduction had not occurred.

21. RELEASE

21.1 Upon the irrevocable and unconditional payment and discharge in full of the Secured Liabilities, the Lender shall, or shall procure that its appointees will, as soon as reasonably practicable, at the cost of the Chargor:-

21.1.1 release the Charged Property from this Debenture; and

21.1.2 re-assign the Charged Property that has been assigned to the Lender under this Debenture.

21.2 Section 93 of the LPA dealing with the consolidation of mortgages shall not apply to this Debenture.

22. **MISCELLANEOUS PROVISIONS**

22.1 **Severability**

If any provision of this Debenture is illegal, invalid or unenforceable in any jurisdiction, that shall not affect:-

22.1.1 the validity or enforceability of any other provision, in any jurisdiction; or

22.1.2 the validity or enforceability of that particular provision, in any other jurisdiction.

22.2 **Costs, charges and expenses**

All costs, charges and expenses incurred or paid by the Lender or by the Receiver in the exercise of any power or right given by this Debenture or in relation to any consent requested by the Chargor, or in perfecting or otherwise in connection with this Debenture or the Charged Property, all sums recoverable under Clause 18 (*Protection of the Lender and any Receiver*) and all costs of the Lender (on an indemnity basis) of all proceedings for the enforcement of this Debenture or for obtaining payment of moneys by this Debenture secured, shall be recoverable from the Chargor as debts, may be debited by the Lender at any time from any Account and shall bear interest until payment at the rate or rates applicable to the account to which they are debited, or, if there is no such rate, at the Default Rate.

22.3 **Contracts (Rights of Third Parties) Act 1999**

The Lender, any Receiver and their respective officers, employees and agents may enforce any term of this Debenture which purports to confer a benefit on that person, but no other person who is not a party to this Debenture has any right under the Contracts (Rights of Third Parties) Act 1999 (the "**Third Parties Act**") to enforce or to enjoy the benefit of any term of this Debenture.

22.4 **Counterparts**

This Debenture may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Debenture.

23. **COMMUNICATIONS**

Clause 21 (*Communications*) of the Facility Agreement shall be incorporated into this Debenture as if it were set out herein and any reference in such clause to "this Agreement" shall be read as a reference to "this Debenture".

24. **GOVERNING LAW**

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

EXECUTED AND DELIVERED AS A DEED by the Chargor and executed by the Lender on the date set out at the beginning of this Debenture.

SCHEDULE 1
DETAILS OF LAND
REGISTERED LAND

The Chargor did not own any Land at the time the Debenture was executed.

The Chargor

Executed as a Deed (but not delivered until the date of this Deventure) by OTRO CLUB LIMITED acting by

JONATHAN NYE

Full Name (Director)

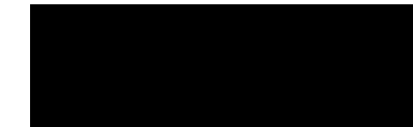
in the presence of:

XAVIER VILABECA LEONIS

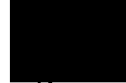
Full Name (Witness)



Address



Signature of Director





Signature of Witness

The Lender

SIGNED by _____)
a duly authorised signatory for and on)
behalf of XXIII CAPITAL C LIMITED in the)
presence of:-)

Signature of witness:

Name of witness:

Address:

The Chargor

Executed as a Deed (but not delivered until the date of this Debenture) by **OTRO CLUB LIMITED** acting by

.....
Full Name (Director)
in the presence of:

.....
Signature of Director

.....
Full Name (Witness)
.....
.....

.....
Address

.....
Signature of Witness

The Lender

SIGNED by Andy Bray)
a duly authorised signatory for and on)
behalf of **XXIII CAPITAL C LIMITED** in the)
presence of:-

Signature of witness:

Name of witness:

Address: Rose Harvey
33 Welbeck Street, London, W1G 8EX