



**Registration of a Charge**

Company Name: **BALLYCLARE DEVELOPMENTS LIMITED**

Company Number: **NI633645**



Received for filing in Electronic Format on the: **19/11/2021**

XAHMDW4H

**Details of Charge**

Date of creation: **16/11/2021**

Charge code: **NI63 3645 0001**

Persons entitled: **COLLINBRIDGE FINANCE LTD**

Brief description:

**Contains fixed charge(s).**

**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: **JOHN FINNEGAN**



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

Company number: NI633645

Charge code: NI63 3645 0001

The Registrar of Companies for Northern Ireland hereby certifies that a charge dated 16th November 2021 and created by BALLYCLARE DEVELOPMENTS LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 19th November 2021 .

Given at Companies House, Belfast on 22nd November 2021

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 16th November 2021

- (1) BALLYCLARE DEVELOPMENTS LIMITED
- (2) COLLINBRIDGE FINANCE LTD
- (3) RAMORE INVESTMENTS LIMITED

**SECURITY ASSIGNMENT OF CONTRACTUAL RIGHTS**  
(incorporating step-in rights)



THIS DEED is dated 16th November

## Parties

- (1) **BALLYCLARE DEVELOPMENTS LIMITED** a company incorporated in Northern Ireland with company number NI633645 and whose registered office is at Unit 2 Channel Wharf, 21 Old Channel Road, Belfast BT3 9DE (the "**Chargor**");
- (2) **COLLINBRIDGE FINANCE LTD**, a company incorporated in Northern Ireland with company number NI609207 and having its registered office at 19 Clarendon Road, Belfast BT1 3BG (the "**Lender**"); and
- (3) **RAMORE INVESTMENTS LIMITED** a company incorporated in Northern Ireland with company number NI643416 and whose registered office is at The Factory, 184 Newry Road, Banbridge BT32 3NB (the "**Counterparty**").

## Agreed terms

### 1. Definitions and interpretation

#### 1.1 Definitions

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

**Authorisation:** an authorisation, approval, licence, filing, consent, resolution, exemption, notarisation or registration;

**Business Day:** a day (other than a Saturday, Sunday or public holiday) on which banks are open for general business in Belfast and London.

**Conveyancing Act:** the Conveyancing and Law of Property Act 1881.

**Delegate:** any person appointed by the Lender or any Receiver pursuant to clause 11, and any person appointed as attorney of the Lender, Receiver or Delegate.

**Event of Default:** means the occurrence of any one of more of the following:

- (a) the happening of an event which constitutes an event of default (howsoever described) in any Finance Document or the happening of any event under any Finance Document or other arrangement with the Secured Creditor whereby the Secured Obligations become immediately due and payable;
- (b) if any of the Secured Obligations are not paid or otherwise discharged in the manner and on the due date for same;

**Facility Agreement:** the facility agreement dated on or around the date of this agreement between the Chargor and the Lender for the provision of the loan facilities secured by this deed.

**Material Contract:** the Transfer Deed dated 14<sup>th</sup> October 2019 and made between (1) the Chargor and (2) the Counterparty in relation to the lands comprised in folios

AN179795, AN180000, AN10253, AN179797, AN193926, AN14414, AN14364 and AN241145 all County Antrim, and in particular the provisions of Schedule 3 of the said Transfer Deed.

**Receiver:** a receiver, receiver and manager or administrative receiver appointed by the Lender under clause 9.

**Secured Assets:** all the assets, property and undertaking of the Chargor which are, or are expressed to be, subject to the Security created by, or pursuant to, this deed (and references to the Secured Assets shall include references to any part of them).

**Secured Obligations:** all present and future obligations and liabilities of the Chargor to the Lender, whether actual or contingent and whether owed jointly or severally, as principal or surety or in any other capacity, under or in connection with the Facility Agreement or this deed, together with all interest (including, without limitation, default interest) accruing in respect of those obligations or liabilities.

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

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

## **1.2 Interpretation**

The provisions of clause 1.2 of the Facility Agreement apply to this deed as if they were set out in full in this deed, except that each reference in that clause to the Facility Agreement shall be read as a reference to this deed.

## **1.3 Clawback**

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

## **1.4 Schedules**

The Schedules form part of this deed and shall have effect as if set out in full in the body of this deed. Any reference to this deed includes the Schedules.

## **2. Covenant to pay**

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

## **3. Grant of Security**

### **3.1 Assignment**

As a continuing security for the payment and discharge of the Secured Obligations, the Chargor as beneficial owner assigns to the Lender absolutely, subject to a proviso for reassignment on irrevocable discharge in full of the Secured Obligations:

- (a) the benefit of the Material Contract (including for the avoidance of doubt the right to receive payment of any monies due thereunder);
- (b) all Authorisations (statutory or otherwise) held or required in connection with the use of any Secured Assets, and all rights in connection with them,

provided that nothing in this clause 3.1 shall constitute the Lender as a mortgagee in possession.

### **3.2 Chargor entitled to exercise rights**

Until the security constituted by this deed has become enforceable, the Chargor shall be entitled to exercise all its rights in the Secured Assets, subject to the other provisions of this deed.

## **4. Representations and warranties**

### **4.1 Representations and warranties**

The Chargor makes the representations and warranties set out in this clause 4 to the Lender.

### **4.2 Ownership of Secured Assets**

The Chargor is the sole legal and beneficial owner of, and has good, valid and marketable title to the Secured Assets.

### **4.3 Secured Assets**

- (a) The counterparts and instruments comprising the Material Contract, or other document, agreement or arrangement comprising the Secured Assets as provided to the Lender before the date of this deed, evidence all terms of the relevant Secured Assets, and there are no other documents, agreements or arrangements that may affect the operation or enforceability of any Secured Assets.
- (b) Neither the Material Contract nor any other document, agreement or arrangement comprising the Secured Assets is void, voidable or otherwise unenforceable.
- (c) No variation of the Material Contract or other document, agreement or arrangement comprising the Secured Assets is contemplated.
- (d) The Chargor is not in breach of its obligations under the Material Contract or other document, agreement or arrangement comprising the Secured Assets and nothing has occurred:
  - (i) which is, or would constitute (with the giving of notice or passage of time or both), an event of default (however described) under the Material Contract or other document, agreement or arrangement comprising the Secured Assets; or

- (ii) which would entitle a person to terminate or rescind the Material Contract or other document, agreement or arrangement comprising the Secured Assets.

#### **4.4 No Security**

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

#### **4.5 No adverse claims**

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

#### **4.6 No adverse covenants**

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

#### **4.7 No breach of laws**

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

#### **4.8 Avoidance of security**

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

#### **4.9 No prohibitions**

There is no prohibition on assignment in the Material Contract, and the entry into this deed by the Chargor does not, and will not, constitute a breach of the Material Contract or any other policy, agreement, document, instrument or obligation binding on the Chargor or its assets.

#### **4.10 Enforceable security**

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

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

The Chargor makes the representations and warranties set out in clause 4.2 to clause 4.10 to the Lender on the date of this deed and are deemed to be repeated on each day of the Security Period with reference to the facts and circumstances existing at the time of repetition.

### **5. Covenants**

#### **5.1 Negative pledge and disposal restrictions**

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

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

## **5.2 Preservation of Secured Assets**

The Chargor shall not do, or permit to be done, any act or thing that would or might depreciate, jeopardise or otherwise prejudice the security held by the Lender or materially diminish the value of any of the Secured Assets or the effectiveness of the security created by this deed.

## **5.3 Material Contract**

- (a) The Chargor shall, unless the Lender agrees otherwise in writing, comply with the terms of the Material Contract and any other document, agreement or arrangement comprising the Secured Assets.
- (b) The Chargor shall not, unless the Lender agrees otherwise in writing:
  - (i) amend or vary or agree to any change in, or waive any requirement of or its rights under;
  - (ii) settle, compromise, terminate, rescind or discharge (except by performance); or
  - (iii) abandon, waive, dismiss, release or discharge any action, claim or proceedings against any Counterparty or other person in connection with,

the Material Contract and any other document, agreement or arrangement comprising the Secured Assets.

## **5.4 Rights**

The Chargor shall:

- (a) not waive any of the Lender's rights or release any person from its obligations in connection with the Secured Assets; and
- (b) take all necessary or appropriate action against any person (including as reasonably required by the Lender) to protect and enforce its rights, and recover money or receive other property in connection with, the Secured Assets.

## **5.5 Payment of money**

The Chargor shall, if the security constituted by this Deed has become enforceable ensure that all money payable to, or other property receivable by, the Chargor under or in relation to any Secured Assets is paid or delivered to the Lender (or that the Chargor pays over or delivers such amounts to the Lender).

## **5.6 Compliance with laws and regulations**



- (a) The Chargor shall not, without the Lender's prior written consent, use or permit the Secured Assets to be used in any way contrary to law.
- (b) The Chargor shall:
  - (i) comply with the requirements of any law and regulation relating to or affecting the Secured Assets or the use of them or any part of them; and
  - (ii) obtain, and promptly renew from time to time, and comply with the terms of all authorisations that are required in connection with the Secured Assets or their use or that are necessary to preserve, maintain or renew any Secured Asset.

#### **5.7 Enforcement of rights**

The Chargor shall use its best endeavours to:

- (a) procure the prompt observance and performance of the covenants and other obligations imposed on any other party to the Material Contract; and
- (b) enforce any rights and institute, continue or defend any proceedings relating to any of the Secured Assets that the Lender may require from time to time.

#### **5.8 Notice of misrepresentations and breaches**

The Chargor shall, promptly on becoming aware of any of the same, notify the Lender in writing of:

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

#### **5.9 Notices to be given by Chargor**

The Chargor shall:

- (a) Immediately on the execution of this deed:
  - (i) give notice to any other party to the Material Contract, in the form set out in Part 1 of Schedule 1, of the assignment of the Chargor's rights and interest in and under the Material Contract pursuant to clause 3.1(a); and
  - (ii) procure that the other parties to the Material Contract promptly provide to the Lender an acknowledgement of the notice, in the form set out in 0 of Schedule 1, of the Lender's interest;
- (b) in the case of any other document, agreement or arrangement designated as Secured Assets after the date of this deed, the Chargor shall give the relevant notices and procure each relevant acknowledgement referred to in clause 5.9(a) on the later of that document, agreement or arrangement coming into existence or being designated Secured Assets.

#### **5.10 Documents**

The Chargor shall, on the execution of this deed deposit with the Lender and the Lender shall, for the duration of this deed, be entitled to hold all the Chargor's original

counterparts of, and instruments comprising, the Material Contract and each other document, instrument or agreement comprising the Secured Assets.

#### **5.11 Information**

The Chargor shall:

- (a) give the Lender such information concerning the Secured Assets as the Lender may require; and
- (b) promptly notify the Lender in writing of any action, claim, notice or demand made by or against it in connection with all or any part of a Secured Asset or of any fact, matter or circumstance which may, with the passage of time, give rise to such an action, claim, notice or demand, together with, in each case, the Chargor's proposals for settling, liquidating, compounding or contesting any such action, claim, notice or demand and shall, subject to the Lender's prior approval, implement those proposals at its own expense.

#### **5.12 Payment of outgoings**

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

#### **5.13 Compliance with covenants**

The Chargor shall observe and perform all covenants, stipulations and conditions to which any Secured Assets, or the use of them, is or may be subjected and (if the Lender so requires) produce to the Lender evidence sufficient to satisfy the Lender that those covenants, stipulations and conditions have been observed and performed.

### **6. Powers of the Lender**

#### **6.1 Power to remedy**

- (a) The Lender shall be entitled (but shall not be obliged) to remedy, at any time, a breach by the Chargor of any of its obligations contained in this deed.
- (b) The Chargor irrevocably authorises the Lender and its agents to do all things that are necessary or desirable for that purpose.
- (c) Any monies expended by the Lender in remedying a breach by the Chargor of its obligations contained in this deed, shall be reimbursed by the Chargor to the Lender on a full indemnity basis and shall carry interest in accordance with clause 13.1.

#### **6.2 Exercise of rights**

- (a) The rights of the Lender under clause 6.1 are without prejudice to any other rights of the Lender under this deed.
- (b) The exercise of any rights of the Lender under this deed shall not make the Lender liable to account as a mortgagee in possession.

#### **6.3 Lender has Receiver's powers**

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

#### **6.4 New accounts**

- (a) If the Lender receives, or is deemed to have received, notice of any subsequent Security, or other interest, affecting all or part of the Secured Assets, the Lender may open a new account for the Chargor in the Lender's books. Without prejudice to the Lender's right to combine accounts, no money paid to the credit of the Chargor in any such new account shall be appropriated towards, or have the effect of discharging, any part of the Secured Obligations.
- (b) If the Lender does not open a new account immediately on receipt of the notice, or deemed notice, under clause 6.4(a), then, unless the Lender gives express written notice to the contrary to the Chargor, all payments made by the Chargor to the Lender shall be treated as having been credited to a new account of the Chargor and not as having been applied in reduction of the Secured Obligations, as from the time of receipt, or deemed receipt, of the relevant notice by the Lender.

#### **6.5 Indulgence**

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

### **7. When security becomes enforceable**

#### **7.1 Security becomes enforceable on Event of Default**

The security constituted by this deed shall become immediately enforceable and the power of sale shall be exercisable upon the occurrence of an Event of Default.

#### **7.2 Discretion**

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

### **8. Enforcement of security**

#### **8.1 Enforcement powers**

- (a) For the purposes of all powers implied by statute, the Secured Obligations are deemed to have become due and payable on the date of this deed.
- (b) The power of sale and other powers conferred by section 19 of the Conveyancing Act (as varied or extended by this deed) shall be immediately

exercisable at any time after the security constituted by this deed has become enforceable under clause 7.1.

- (c) Section 20 of the Conveyancing Act does not apply to the security constituted by this deed.

## **8.2 Prior Security**

- (a) At any time after the security constituted by this deed has become enforceable, or after any powers conferred by any Security having priority to this deed shall have become exercisable, the Lender may:
  - (i) redeem any prior Security over any Secured Asset;
  - (ii) procure the transfer of that Security to itself; and
  - (iii) settle and pass the accounts of the holder of any prior Security (and any accounts so settled and passed shall, in the absence of any manifest error, be conclusive and binding on the Chargor).
- (b) The Chargor shall pay to the Lender immediately on demand all principal, interest, costs, charges and expenses of, and incidental to, any such redemption or transfer, and such amounts shall be secured by this deed as part of the Secured Obligations.

## **8.3 Protection of third parties**

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

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

## **8.4 Privileges**

Each Receiver and the Lender is entitled to all the rights, powers, privileges and immunities conferred by the Conveyancing Act on mortgagees and receivers.

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

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

## **8.6 Conclusive discharge to purchasers**

The receipt of the Lender, or any Receiver or Delegate shall be a conclusive discharge to a purchaser and, in making any sale or other disposal of any of the Secured Assets or in making any acquisition in the exercise of their respective powers, the Lender, and

every Receiver and Delegate may do so for any consideration, in any manner and on any terms that the Lender, Receiver or Delegate thinks fit.

## **9. Receiver**

### **9.1 Appointment**

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

### **9.2 Removal**

The Lender may, without further notice (subject to section 55 of the Insolvency (Northern Ireland) Order 1989 in the case of an administrative receiver), from time to time, by way of deed, or otherwise in writing, remove any Receiver appointed by it and may, whenever it thinks fit, appoint a new Receiver in the place of any Receiver whose appointment may for any reason have terminated.

### **9.3 Remuneration**

The Lender may fix the remuneration of any Receiver appointed by it without the restrictions contained in section 24 of the Conveyancing Act, and the remuneration of the Receiver shall be a debt secured by this deed, to the extent not otherwise discharged.

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

The power to appoint a Receiver conferred by this deed shall be in addition to all statutory and other powers of the Lender under the Insolvency (Northern Ireland) Order 1989, the Conveyancing Act or otherwise, and shall be exercisable without the restrictions contained in sections 20 and 24 of the Conveyancing Act or otherwise.

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

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

### **9.6 Agent of the Chargor**

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

## **10. Powers of Receiver**

### **10.1 General**

- (a) Any Receiver appointed by the Lender under this deed shall, in addition to the powers conferred on it by statute, have the powers set out in clause 10.2 to clause 10.14.
- (b) A Receiver has all the rights, powers and discretions conferred on a receiver (or a receiver and manager) under the Conveyancing Act, and shall have those rights, powers and discretions conferred on an administrative receiver under the Insolvency (Northern Ireland) Order 1989 whether it is an administrative receiver or not.
- (c) If there is more than one Receiver holding office at the same time, each Receiver may (unless the document appointing it states otherwise) exercise all of the powers conferred on a Receiver under this deed individually and to the exclusion of any other Receiver.
- (d) Any exercise by a Receiver of any of the powers given by clause 10 may be on behalf of the Chargor, the directors of the Chargor or itself.

#### **10.2 Employ personnel and advisers**

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

#### **10.3 Remuneration**

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

#### **10.4 Realise Secured Assets**

A Receiver may collect and get in the Secured Assets or any part of them in respect of which it is appointed, and make any demands and take any proceedings as may seem expedient for that purpose, and take possession of the Secured Assets with like rights.

#### **10.5 Dispose of Secured Assets**

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

#### **10.6 Valid receipts**

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

#### **10.7 Make settlements**

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

#### **10.8 Bring proceedings**

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

#### **10.9 Insurance**

A Receiver may, if it thinks fit, but without prejudice to the indemnity in clause 13, effect with any insurer, any policy of insurance either in lieu or satisfaction of, or in addition to, the insurance required to be maintained by the Chargor.

#### **10.10 Borrow**

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

#### **10.11 Redeem prior Security**

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

#### **10.12 Delegation**

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

#### **10.13 Absolute beneficial owner**

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

#### **10.14 Incidental powers**

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

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

### **11. Delegation**

#### **11.1 Delegation**

The Lender or any Receiver may delegate (either generally or specifically) by power of attorney or in any other manner to any person any right, power, authority or discretion conferred on it by this deed (including the power of attorney granted under clause 15.1).

#### **11.2 Terms**

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

### **11.3 Liability**

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

## **12. Application of proceeds**

### **12.1 Order of application of proceeds**

All monies received or recovered by the Lender, a Receiver or a Delegate under this deed or in connection with the realisation or enforcement of all or part of the security constituted by this deed (other than sums received under any Relevant Policy), shall (subject to the claims of any person having prior rights and by way of variation of the Conveyancing Act) be applied in the following order of priority (but without prejudice to the Lender's rights to recover any shortfall from the Chargor):

- (a) in or towards payment of all costs, liabilities, charges and expenses incurred by or on behalf of the Lender (and any Receiver, Delegate, attorney or agent appointed by it) under or in connection with this deed, and of all remuneration due to any Receiver under or in connection with this deed;
- (b) in or towards payment of the Secured Obligations in any order and manner that the Lender determines; and
- (c) in payment of the surplus (if any) to the Chargor or other person entitled to it.

### **12.2 Appropriation**

Neither the Lender, any Receiver nor any Delegate shall be bound (whether by virtue of section 24(8) of the Conveyancing Act, which is varied accordingly, or otherwise) to pay or appropriate any receipt or payment first towards interest rather than principal or otherwise in any particular order between any of the Secured Obligations.

### **12.3 Suspense account**

The Lender may place (for such time as it thinks prudent with regard to applicable laws) any money received by it pursuant to this Deed to the credit of a suspense account (without liability to account for interest thereon) for so long and in such manner as the Lender may from time to time determine without having any obligation to apply that money or any part of it in or towards discharge of the Secured Obligations.

## **13. Costs and indemnity**

### **13.1 Costs**

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

- (a) this deed or the Secured Assets;



- (b) taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) any of the Lender's, a Receiver's or a Delegate's rights under this deed; or
- (c) taking proceedings for, or recovering, any of the Secured Obligations,

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

### **13.2 Indemnity**

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

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

Any past or present employee or agent may enforce the terms of this clause 13.2 subject to and in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999.

### **14. Further assurance**

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

- (a) creating, perfecting or protecting the security intended to be created by this deed;
- (b) facilitating the realisation of any Secured Asset; or
- (c) facilitating the exercise of any right, power, authority or discretion exercisable by the Lender or any Receiver in respect of any Secured Asset,

including, without limitation the execution of any transfer, conveyance, assignment or assurance of all or any of the assets forming part of (or intended to form part of) the Secured Assets (whether to the Lender or to its nominee) and the giving of any notice, order or direction and the making of any registration.

## **15. Power of attorney**

### **15.1 Appointment of attorneys**

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

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

### **15.2 Ratification of acts of attorneys**

The Chargor ratifies and confirms, and agrees to ratify and confirm, anything that any of its attorneys may do in the proper and lawful exercise, or purported exercise, of all or any of the rights, powers, authorities and discretions referred to in clause 15.1.

## **16. Release**

Subject to clause 29.3, at the end of the Security Period, the Lender shall, at the request and cost of the Chargor, take whatever action is necessary to:

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

## **17. Assignment and transfer**

### **17.1 Assignment by Lender**

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

### **17.2 Assignment by Chargor**

The Chargor may not assign any of its rights, or transfer any of its rights or obligations, under this deed.

## **18. Set-off**

### **18.1 Lender's right of set-off**

The Lender may at any time set off any liability of the Chargor to the Lender against any liability of the Lender to the Chargor, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this deed. If the liabilities to be set off are expressed in different currencies, the Lender may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the

Lender of its rights under this clause 18 shall not limit or affect any other rights or remedies available to it under this deed or otherwise.

## **18.2 Exclusion of Chargor's right of set-off**

All payments made by the Chargor to the Lender under this deed shall be made in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## **19. Amendments, waivers and consents**

### **19.1 Amendments**

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

### **19.2 Waivers and consents**

- (a) A waiver of any right or remedy under this deed or by law, or any consent given under this deed, is only effective if given in writing by the waiving or consenting party and shall not be deemed a waiver of any other breach or default. It only applies in the circumstances for which it is given and shall not prevent the party giving it from subsequently relying on the relevant provision.
- (b) A failure or delay by a party to exercise any right or remedy provided under this deed or by law shall not constitute a waiver of that or any other right or remedy, prevent or restrict any further exercise of that or any other right or remedy or constitute an election to affirm this deed. No single or partial exercise of any right or remedy provided under this deed or by law shall prevent or restrict the further exercise of that or any other right or remedy. No election to affirm this deed by the Lender shall be effective unless it is in writing.

### **19.3 Rights and remedies**

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

## **20. Severance**

### **20.1 Severance**

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

## **21. Step-In Rights: Counterparty may not Terminate or Discontinue**

### **21.1 The Counterparty shall not exercise, or seek to exercise, any right to:**

- (a) terminate (or treat as terminated) the Material Contract; or

(b) discontinue the carrying out of and performance of its obligations under the Material Contract,

for any reason (including, without limitation, any breach on the part of the Chargor) without giving the Lender at least 20 Business Days' notice of its intention to do so. Any notice from the Counterparty shall specify the grounds for the Counterparty's proposed termination or discontinuance.

21.2 The Counterparty's right to terminate the Material Contract, or to discontinue the carrying out of and performance of its obligations under the Material Contract, shall cease if, within the period referred to in clause 21.1, the Lender gives notice to the Counterparty, copied to the Chargor:

(a) requiring the Counterparty not to terminate its employment under the Material Contract or not to discontinue the carrying out and performance of its obligations under the Material Contract; and

(b) acknowledging that the Lender (or its nominee) will assume all of the Chargor's obligations under the Material Contract.

21.3 if the Lender (or its nominee) serves notice on the Counterparty under clause 21.2 then, from the date of service of the notice, the Material Contract shall continue in full force and effect, as if it had been entered into between the Counterparty and the Lender (or its nominee) to the exclusion of the Chargor.

21.4 The Counterparty may exercise any right to terminate the Material Contract or to discontinue the performance of its obligations under the Material Contract, after the expiry of the notice period referred to in clause 21.1, unless the Counterparty's right to terminate or discontinue has ceased under clause 21.3.

## **22. Step-In Rights: Lender may Step-In Independently**

22.1 Without affecting clause 21.1, if the Lender serves a notice on the Counterparty, copied to the Chargor, that:

(a) confirms that the Lender (or its nominee) wishes to step-in to this agreement; and

(b) complies with the requirements for a Bank's notice under clause 21.2,

then, from the date of service of the notice, the Material Contract shall continue in full force and effect, as if it had been entered into between the Counterparty and the Lender (or its nominee) to the exclusion of the Chargor.

22.2 The Counterparty shall assume that, between the Chargor and the Lender, the Lender may give a notice under clause 22.1. The Counterparty shall not enquire whether the Lender may give that notice.

**23. Step-In Rights: Counterparty does not Incur Liability to Chargor**

The Counterparty shall not incur any liability to the Chargor by acting in accordance with clause 21 or clause 22.

**24. Step-In Rights: Lender's Guarantee**

If the Lender's notice under clause 21 or clause 22 refers to the Lender's nominee, that notice shall only be effective if:

- (a) the Lender notifies the Counterparty that it shall be liable to the Counterparty, as guarantor, for the payment of any sums due and payable from time to time to the Counterparty from the Bank's nominee; and
- (b) the Lender (or a person authorised by it to give guarantees) signs that notice.

The Counterparty shall pay the Lender £1, if demanded, in consideration for the Lender giving the guarantee set out in that notice.

**25. No Instructions to Counterparty by Lender**

Unless the Lender has stepped-in under clause 21 or clause 22, the Lender may not give instructions to the Counterparty under the Material Contract.

**26. Counterparty Consent**

For the avoidance of any doubt the Counterparty has joined into this Deed, inter alia, in order to evidence its consent to the terms hereof including, but not limited to, the assignment constituted by clause 3.1 of this Deed.

**27. Counterparts**

**27.1 Counterparts**

- (a) This deed may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute one deed.
- (b) No counterpart shall be effective until each party has executed and delivered at least one counterpart.

**28. Third party rights**

**28.1 Third party rights**

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

**29. Further provisions**

**29.1 Independent security**

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

#### **29.2 Continuing security**

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

#### **29.3 Discharge conditional**

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

- (a) the Lender or its nominee may retain this deed and the security created by or under it, including all certificates and documents relating to the whole or any part of the Secured Assets, for any period that the Lender deems necessary to provide the Lender with security against any such avoidance, reduction or order for refund; and
- (b) the Lender may recover the value or amount of such security or payment from the Chargor subsequently as if the release, discharge or settlement had not occurred.

#### **29.4 Certificates**

A certificate or determination by the Lender as to any amount for the time being due to it from the Chargor under this deed and the Facility Agreement shall be, in the absence of any manifest error, conclusive evidence of the amount due.

#### **29.5 Consolidation**

The restriction on the right of consolidation contained in section 17 of the Conveyancing Act shall not apply to this deed.

### **30. Notices**

#### **30.1 Delivery**

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

- (a) in writing;
- (b) delivered by hand, by pre-paid first-class post or other next working day delivery service or sent by fax; and
- (c) sent to each party at their registered office or to any other address or fax number as is notified in writing by one party to the other from time to time.

### **30.2 Receipt by Chargor**

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

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

A notice or other communication given as described in clause 30.2(a) or clause 30.2(c) on a day that is not a Business Day, or after normal business hours, in the place it is received, shall be deemed to have been received on the next Business Day.

### **30.3 Receipt by Lender**

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

### **30.4 Service of proceedings**

This clause 30 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## **31. Governing law and jurisdiction**

### **31.1 Governing law**

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

### **31.2 Jurisdiction**

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

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

## **Schedule 1 Notice and acknowledgement – Material Contract**

### **Part 1 Form of notice of assignment**

*[On the letterhead of the Chargor]*

[NAME OF COUNTERPARTY]

[ADDRESS LINE 1]

[ADDRESS LINE 2]

[POSTCODE]

[DATE]

Dear [NAME OF ADDRESSEE],

**Security assignment (Assignment) dated [DATE] between [CHARGOR] and [LENDER]**

We refer to the [DESCRIBE MATERIAL CONTRACT] (Contract).

This letter constitutes notice to you that under the Assignment [(a copy of which is attached)] we have assigned to [LENDER] (Lender) absolutely, subject to a proviso for reassignment, all our rights, title and interest and benefit in and to the Contract.

We irrevocably instruct and authorise you to:

- Comply with the terms of any written instructions received by you from the Lender relating to the Contract, without notice or reference to, or further authority from, us and without enquiring as to the justification or the validity of those instructions.
- Hold all sums from time to time due and payable by you to us under the Contract to the order of the Lender.
- Pay, or release, all monies to which we are entitled under the Contract to the Lender, or to such persons as the Lender may direct.
- Disclose information in relation to the Contract to the Lender on request by the Lender.

Neither the Assignment nor this notice releases, discharges or otherwise affects your liability and obligations in respect of the Contract.

Subject to the foregoing, you may continue to deal with us in relation to the Contract until you receive written notice to the contrary from the Lender. Thereafter, we will cease to have any right to deal with you in relation to the Contract and you must deal only with the Lender.

Please note that we have agreed that we will not amend or waive any provision of or terminate the Contract without the prior written consent of the Lender.

The instructions in this notice may only be revoked or amended with the prior written consent of the Lender.



Please confirm that you agree to the terms of this notice, and to act in accordance with its provisions, by sending the attached acknowledgement to the Lender at [ADDRESS OF LENDER], with a copy to us.

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

Yours faithfully,

.....

[NAME OF CHARGOR]

## Part 2 Form of acknowledgement of assignment

*[On the letterhead of the Counterparty]*

[NAME OF LENDER]

[ADDRESS LINE 1]

[ADDRESS LINE 2]

[POSTCODE]

[DATE]

Dear [NAME OF ADDRESSEE],

**Security assignment (Assignment) dated [DATE] between [CHARGOR] and [LENDER]**

We confirm receipt from [CHARGOR] (Chargor) of a notice (Notice) dated [DATE] of an absolute assignment, subject to a proviso for reassignment, of all the Chargor's rights under [DESCRIBE MATERIAL CONTRACT] (Contract).

[Terms defined in the Notice shall have the same meaning when used in this acknowledgement.]

We confirm that:

- We accept the instructions and authorisations contained in the Notice and agree to comply with the Notice.
- There has been no amendment, waiver or release of any rights or interests in the Contract since the date of the Contract.
- We will not repudiate, rescind or cancel the Contract, treat it as avoided in whole or in part nor treat it as expired without giving the Lender at least 30 days' prior written notice.
- We have not, as at the date of this acknowledgement, received notice that the Chargor has assigned its rights under the Contract to a third party, or created any other interest (whether by way of security or otherwise) in the Contract in favour of a third party.
- The Lender will not in any circumstances have any liability in relation to the Contract.
- The Contract shall not be rendered void, voidable or unenforceable by reason of any non-disclosure by the Lender.

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

Yours faithfully,

.....

[COUNTERPARTY]

EXECUTION PAGE

THE CHARGOR

EXECUTED as a DEED by  
BALLYCLARE DEVELOPMENTS LIMITED  
acting by a single director  
in the presence of:


  
Director

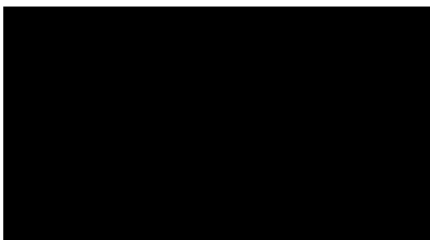
Witness Signature:

Name:

Address:

Occupation:

  
ANDREW HARRIS




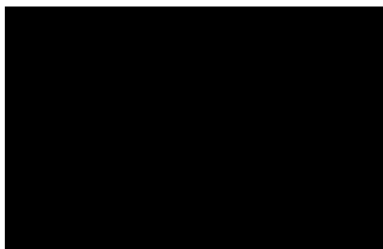
Witness Signature:

Name:

Address:

Occupation:

  
SHANE COCKE



**THE LENDER**

**EXECUTED** as a **DEED** by  
**COLLINBRIDGE FINANCE LTD**  
acting by a single director  
in the presence of:

\_\_\_\_\_  
Director

Witness Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Occupation: \_\_\_\_\_

Witness Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Occupation: \_\_\_\_\_

**THE COUNTERPARTY**

**EXECUTED** as a **DEED** by  
**RAMORE INVESTMENTS LIMITED**  
acting by a single director  
in the presence of:

\_\_\_\_\_  
Director

Witness Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Occupation: \_\_\_\_\_

Witness Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Occupation: \_\_\_\_\_