



Registration of a Charge

Company name: **MACDONALD HOTELS INVESTMENTS LIMITED**
Company number: **SC125204**

Received for Electronic Filing: **04/09/2020**



Details of Charge

Date of creation: **24/08/2020**
Charge code: **SC12 5204 0018**
Persons entitled: **BANK OF SCOTLAND PLC AS AGENT AND SECURITY TRUSTEE FOR EACH OF THE SECURED PARTIES (THE SECURITY TRUSTEE) (AS DEFINED IN THE INSTRUMENT APPENDED TO THIS FORM MR01).**
Brief description: **THE BURLINGTON HOTEL, NEW STREET, BIRMINGHAM B2 4JQ (WM832479)**
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: **WE 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 PART OF THE CHARGING INSTRUMENT SIGNED BY OR ON BEHALF OF THE**

CHARGOR, AND A CORRECT COPY OF THE SIGNATURE PAGE TO EACH OTHER PART OF SUCH CHARGING INSTRUMENT.

Certified by:

**JAMES WILSON ON BEHALF OF DENTONS UK AND MIDDLE EAST
LLP**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 125204

Charge code: SC12 5204 0018

The Registrar of Companies for Scotland hereby certifies that a charge dated 24th August 2020 and created by MACDONALD HOTELS INVESTMENTS LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 4th September 2020 .

Given at Companies House, Edinburgh on 7th September 2020

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



KMCP/SUMK/104563.05316/73324846.3

Legal Charge

relating to The Burlington Hotel, New Street, Birmingham B2 4JQ

(Note to the Land Registry. This Charge contains (in Clause 11.1 (*Request to the Land Registry*)) an application to enter a restriction in the Proprietorship Register and (in Clause 11.2 (*Further Advances*)) an application to enter a notice on the Charges Register)

Dated 24 August 2020

Macdonald Hotels Investments Limited
(Chargor)

Bank of Scotland plc
(Security Trustee)

Dentons UK and Middle East LLP
Quartermile One
15 Lauriston Place
Edinburgh
EH3 9EP
DX ED137 or LP 27

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Legal Charge

Dated 24 August 2020

Between

- (1) **Macdonald Hotels Investments Limited** (Registered Number SC125204) whose registered office is at Whiteside House, Whiteside Industrial Estate, Bathgate, West Lothian, EH48 2RX (the **Chargor**); and
- (2) **Bank of Scotland plc** as agent and security trustee for each of the Secured Parties (the **Security Trustee**).

Whereas

- A The Chargor enters into this Charge in connection with the Facilities Agreement (as defined below).

1 Definitions and Interpretation

1.1 Incorporation of definitions

Terms defined in the Facilities Agreement, unless otherwise defined in this Charge or unless a contrary intention appears, bear the same meaning when used in this Charge.

1.2 Additional definitions

In this Charge unless the context otherwise requires the following expressions shall have the meanings respectively assigned to them:

Charge means this legal charge.

Enforcement Event means:

- (a) an Event of Default has occurred and is continuing;
- (b) any step is taken (including, without limitation, the making of an application or the giving of any notice) by the Chargor or by any other person to appoint an administrator in respect of the Chargor;
- (c) any step is taken (including, without limitation, the making of an application or the giving of any notice) by the Chargor or by any other person to wind up or dissolve the Chargor or to appoint a liquidator, (whether provisional, interim or otherwise) trustee, receiver, administrative receiver or similar officer of the Chargor or any part of its undertaking or assets; or
- (d) the making of a request by the Chargor for the appointment of a receiver or administrator;

Existing Security means the Transaction Security Documents entered into (a) by the Chargor or (b) in respect of the Property, in each case granted in favour of the Security Trustee prior to the date of this Deed.

Facilities Agreement means the facilities agreement originally dated 19 October 2005 between, among others, the Obligors and Bank of Scotland plc as Arranger, Agent, Security Trustee and an Original Lender as amended and/or amended and restated from time to time.

Intercreditor Agreement means the intercreditor agreement dated 19 October 2005 as amended and restated on 19 June 2009, 29 October 2010 and 19 March 2014 and as further amended and restated on or around the date of this Charge between, among others, the Parent, the Obligors and Bank of Scotland plc as Arranger, Agent, Security Trustee and an Original Lender.

Planning Acts means the Town and Country Planning Act 1990 and, where applicable, the Planning (Listed Buildings and Conservation Areas) Act 1990, the Planning (Hazardous Substances) Act 1990, the Planning (Consequential Provisions) Act 1990, and the Planning and Compensation Act 1991 and any associated or similar legislation regulating the development or use of land.

Property means the freehold or leasehold property (whether registered or unregistered) owned by the Chargor and specified in Schedule 1 (*Property*).

Receiver means any person or persons appointed (and any additional person or persons appointed or substituted) as an administrative receiver, a receiver and manager or as a receiver by the Security Trustee under this Charge and shall include joint Receivers.

Secured Obligations means all present and future obligations and liabilities (whether actual or contingent, whether owed jointly or severally or as principal debtor, guarantor, surety or otherwise or as the equivalent obligor under the laws of any other jurisdiction) of the Chargor or any other Obligor to the Security Trustee and the other Secured Parties (or any of them) under the Finance Documents together with:

- (a) any refinancing, novation, refunding, deferral or extension of or increase in any of those obligations or liabilities;
- (b) any further advances and additional facilities which may be made by any Secured Party to the Chargor or any other Obligor under any agreement expressed to be supplemental to the Finance Documents and all interest, fees, and costs in connection therewith;
- (c) any claim for damages or restitution in the event of rescission of any of those obligations or liabilities or otherwise in connection with any of the Finance Documents;
- (d) any claim against the Chargor or any other Obligors flowing from the recovery by the Chargor or any other Obligors of a payment or discharge in respect of any of those liabilities on grounds of preference or otherwise;
- (e) any amounts which would be included in any of the foregoing but for any discharge, non-provability, unenforceability or non-allowability of the same in any insolvency or other proceedings; and
- (f) all costs, charges and expenses incurred by the Security Trustee or any other Secured Party in connection with the protection, preservation or enforcement of its rights against the Chargor or any other Obligor;

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

1.3 Security trust provisions

The Security Trustee holds the benefit of this Charge on trust for the Secured Parties in accordance with the terms of the Intercreditor Agreement.

1.4 Construction

1.4.1 Unless a contrary indication appears, any reference in this Charge to:

- (a) any **Chargor, Security Trustee, Secured Party, Obligor** or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
- (b) **assets** includes present and future properties, revenues and rights of every description;
- (c) an Event of Default is **continuing** if it has not been remedied or waived;
- (d) the **Facilities Agreement**, a **Finance Document** or any other agreement or instrument is a reference to that Facilities Agreement or Finance Document or other agreement or instrument as from time to time amended, novated, supplemented, replaced, extended or restated in whole or in part;
- (e) a **person** includes any person, firm, company, corporation, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality) or two or more of the foregoing;
- (f) a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
- (g) a provision of law is a reference to that provision as from time to time amended or re-enacted;
- (h) **disposal** includes a sale, transfer, grant, lease or other disposal, whether voluntary or involuntary (and **dispose** shall be construed accordingly);
- (i) **document** includes any deed, instrument (including negotiable instrument) or other document of any kind;
- (j) any matter **including** specific instances or examples of such matter shall be construed without limitation to the generality of that matter (and references to **include** shall be construed accordingly);
- (k) the **winding-up, dissolution** or **administration** of a person shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such person is incorporated or established, or any jurisdiction in which such person carries on business including the seeking of liquidation, winding-up,

reorganisation, dissolution, administration, arrangement, adjustment, protection or relief of debtors; and

(l) Clauses are to the clauses of this Charge.

1.4.2 Clause headings are for ease of reference only.

1.4.3 Words in the singular shall import the plural and *vice versa*.

1.5 Words defined in the Companies Act 2006 have the same meanings in this Charge.

1.6 The obligations of the Chargor under this Charge shall be in addition to the covenants for title deemed to be included in this Charge by virtue of Part I of the Law of Property (Miscellaneous Provisions) Act 1994.

1.7 This Charge is intended to take effect as a deed notwithstanding that the Security Trustee may have executed it under hand only.

1.8 To the extent necessary for any agreement for the disposition of the Property in this Charge to be a valid agreement under section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989, the terms of the other Finance Documents and of any side letters between the parties to this Charge are incorporated into this Charge.

2 Covenant to Pay

2.1 Covenant to pay

The Chargor, as principal debtor and not just as surety, covenants with the Security Trustee to pay, discharge and satisfy the Secured Obligations when the same become due in terms of the Finance Documents whether by acceleration or otherwise.

2.2 Interest

The Chargor shall pay interest on any amount demanded from it in accordance with this Charge from the date of such demand until such amount is irrevocably discharged and paid in full (such interest to accrue on a daily basis after as well as before judgment or the liquidation or administration of the Chargor and to be payable on demand) at the rate from time to time applicable to unpaid sums specified in the Facilities Agreement, save to the extent that such interest is charged on such amount pursuant to the relevant Finance Document and itself constitutes a Secured Obligation.

3 Charge

The Chargor (subject to any Existing Security) charges with full title guarantee to the Security Trustee by way of first legal mortgage the Property to secure the Secured Obligations.

4 Covenants by the Chargor

4.1 In the case of any conflict between the provisions of this Clause 4 and the provisions of the Facilities Agreement, the provisions of the Facilities Agreement shall prevail.

4.2 The Chargor shall:

- 4.2.1 pay or cause to be paid all rents, rates, levies, assessments, impositions and outgoings whether governmental, municipal or otherwise imposed upon or payable in respect of the Property as and when the same become due and payable;
- 4.2.2 keep or cause to be kept the Property in good and substantial repair to the extent that failure to do so would have a Material Adverse Effect and permit the Security Trustee and any person authorised by the Security Trustee at all reasonable times to inspect the Property and view the state of the same (provided that such access shall not be disruptive to the Chargor's ordinary course of business);
- 4.2.3 insure and keep insured or procure to be so insured all buildings, installations and appurtenances for the time being comprised in or subject to this Charge and the fixtures and fittings and all other objects of whatever kind of an insurable nature in and upon the same against loss or damage by fire (including fire caused by riots and civil disturbances) and other usual risks including explosion, aircraft (other than hostile aircraft) and articles dropped therefrom, acts of terrorism and (where appropriate) flood, subsidence and such other risks as the Security Trustee may from time to time require (subject to such exclusions, excesses, limitations, terms and conditions as may be contained in such policy) to the full reinstatement value thereof (plus sums in respect of loss of rent, removal of debris and professional fees which may be incurred in connection with repairing, rebuilding or reinstating the same) and upon such terms as the Security Trustee may from time to time reasonably require with such underwriters or insurance companies as shall be approved of in writing from time to time by the Security Trustee in the name of the Chargor with the interest of the Security Trustee noted on the policies in respect of such insurance with the Security Trustee names as first mortgagee and sole loss payee (with or without the addition of other names) or otherwise as the Security Trustee shall direct and duly and punctually pay or cause to be paid all premiums and moneys necessary for effecting and keeping up the said insurance when the same shall become due respectively and on demand produce or cause to be produced to the Security Trustee the policy of every such insurance and receipt for every such payment;
- 4.2.4 not without the prior written consent of the Security Trustee (such consent not to be unreasonably withheld or delayed) pull down, remove or knowingly permit or suffer to be pulled down or removed any building, installation or structure for the time being comprised in or subject to this Charge or any walls, hedges or fences whereby the external boundaries are defined or (except in connection with the renewal or replacement thereof) any fixtures or erect or make or suffer to be erected or made on the Property any building, installation, alteration or improvement or otherwise waste, destroy or injure in any manner or by any means lessen or suffer to be lessened the value of the Property;
- 4.2.5 not without the prior written consent of the Security Trustee create or knowingly permit to exist any Security (other than any Existing Security or a lien arising in the ordinary course of business) or otherwise dispose of deal with or part with or share possession of the Property or any interest therein nor make or suffer to be made any material change or addition whatsoever in or to the use of the Property or agree to do any of the foregoing;
- 4.2.6 not commit any nuisance on the Property nor without the prior written consent of the Security Trustee do or permit to be done on the Property anything which would be prejudicial to the validity of any policy of insurance;
- 4.2.7 not do or omit or knowingly suffer to be done or omitted any act, matter or thing, in, on or in respect of the Property in contravention of the Planning Acts or any licences, consents, permissions or conditions granted or imposed thereunder to the extent that failure to do so would have a Material Adverse Effect;

- 4.2.8 as soon as reasonably practicable after receipt of any notice, order, direction, permission or proposal given, made or issued under or by virtue of the Planning Acts or otherwise affecting the Property or any part thereof which may result in a liability for the Chargor in excess of £250,000, give full particulars thereof to the Security Trustee and without delay comply with the same, or at any time when an Event of Default is continuing, join with the Security Trustee in objecting to or contesting the same;
- 4.2.9 perform and observe in all material respects all title burdens, stipulations and provisions affecting the Property (including but without prejudice to the generality of the foregoing all requirements and regulations of the competent authorities) and if the Property is leasehold property also produce on demand to the Security Trustee the receipt for the last payment of rent reserved by the lease under which such property is held;
- 4.2.10 as soon as reasonably practicable after receipt furnish to the Security Trustee any report, survey or information in respect of the structural condition of the Property, deleterious materials therein or contaminated substances thereon or affecting the same or which may affect adjacent or adjoining property as may come or may have come to the notice or attention of the Chargor at any time and carry out such further inspection works or take such other remedial action as the Security Trustee may direct;
- 4.2.11 from time to time or at such stated periods as may be required by the Security Trustee furnish to the Security Trustee all such particulars and information as the Security Trustee may reasonably require relating to any leases, agreements for lease or tenancies then subsisting or other arrangements effected in relation to the Property and deliver to the Security Trustee certified true copies of any such leases, agreements for lease or tenancies as soon as the same have been granted;
- 4.2.12 at all times advise the Security Trustee if any defects, damages or wants of repair manifest themselves in respect of any of the structures for the time being upon the Property and which are or may be considered to be the responsibility of any warrantors pursuant to the terms of any professional warranty agreement relating to the Property and whenever reasonably required by (but at no cost to the Security Trustee) promptly take all proper steps that the Security Trustee may reasonably prescribe for the purpose of enforcing such warranties and recovering from the warrantors thereunder all such damages or other remedy or recompense to which the Chargor or any Obligor may be entitled pursuant to the terms of such warranties and at all times keep the Security Trustee fully advised as to progress in that regard and apply any moneys recovered from any of the warrantors in or towards (with the Chargor making up any shortfall) the making good of the defects, damages and wants of repair to which the same relate;
- 4.2.13 not, without the prior written consent of the Security Trustee (such consent not to be unreasonably withheld or delayed) or unless the Security Trustee shall otherwise require, exercise any option or right of election available at law that the supplies made in respect of any lease or tenancy shall be chargeable or taxable for Value Added Tax purposes at the standard or any other applicable rate, including (without limitation) pursuant to paragraph 2 of Schedule 10 to the Value Added Tax Act 1994;
- 4.2.14 not, without the prior written consent of the Security Trustee, enter into any negotiations with any competent authority with regard to the compulsory acquisition of the Property or consent to the compulsory acquisition of the Property and, where any such compulsory acquisition has or could have a material adverse effect on the value of the Property, upon request by the Security Trustee, permit the Security Trustee and/or its representatives (for such time as the

Security Trustee requires) to conduct all or part of such negotiations or give such consent on its behalf;

- 4.2.15 comply with, and to the extent that it is within the power of the Chargor to do so, procure compliance with all Environmental Law affecting the Property where failure to do so is reasonably likely to have a Material Adverse Effect and notify the Security Trustee forthwith in writing of any breach or alleged breach or of the receipt of any notice or other communication in respect of any breach or alleged breach of any Environmental Law affecting the Property or any investigation or order, commenced or made in relation to any such breach or alleged breach where the claim if determined against the Chargor, is reasonably likely to have a Material Adverse Effect or could constitute a liability of £250,000 or more and forthwith take all steps necessary to remedy any such infringement of any Environmental Law affecting the Property;
- 4.2.16 other than in the case of any gross negligence or wilful default of the Security Trustee, indemnify and reimburse the Security Trustee in respect of any losses, damages, liabilities, claims, costs and expenses (including, without limitation, fines, penalties, judgments and awards, financial responsibility for clean-up activities and obligations, statutory or other official contributions, legal fees, technical consultancy, engineers' and experts' fees and costs and expenses) properly incurred of obtaining or retaining consents or licences or otherwise complying with Environmental Law affecting the Property;
- 4.2.17 other than in the case of any gross negligence or wilful default of the Security Trustee, indemnify and keep indemnified (on a full indemnity basis) the Security Trustee or, as the case may be, any other Secured Party, in respect of any Secured Obligations outstanding and pay the Security Trustee upon demand with interest thereon at the rate specified in any relevant Finance Document from the respective dates for payment all moneys paid by the Security Trustee or, as the case may be, any other Secured Party, in respect of all claims, costs, expenses and liability whatsoever from time to time incurred in relation to this Charge including (but without prejudice to the generality of the foregoing) all sums paid and expenses properly incurred by the Security Trustee or, as the case may be, such Secured Party:
- (a) in remedying or making good any breach or non-observance of any undertaking or obligation on the part of the Chargor herein contained; or
 - (b) under any undertaking, agreement or obligation contained in or imposed by any lease, agreement for lease, tenancy or licence affecting the Property which may have been or may hereafter be granted or entered into by the Chargor or by the predecessors in title of the Chargor or by any one or more of them; or
 - (c) under the Planning Acts whether in respect of any act, matter or thing done, omitted or suffered to be done or omitted by or on behalf of the Chargor or any person claiming under the Chargor or through whom the Chargor derives title to the Property or in respect of any objection to or the contesting of any notice, order or proposal therefor or otherwise howsoever; or
 - (d) under any requirements or regulation of any competent authority; or
 - (e) arising out of any defect in or want of repair to the Property; or
 - (f) under any title burden, agreement or obligation, restrictive or otherwise, affecting the title to the Property and enforceable against the Property or the owner thereof for the time being and whether or not recited or referred to herein; or

(g) in enforcing or exercising or protecting or attempting to enforce or exercise or protect any of the rights, powers, provisions and undertakings contained in this Charge or to be implied herefrom.

4.3 If the Chargor fails at any time to perform or observe any undertaking or condition on its part herein contained the Security Trustee shall be entitled but not obliged, in order to make good such failure in whole or in part:

4.3.1 to enter upon the Property and effect such repairs and other works thereon as the Security Trustee considers necessary;

4.3.2 to take such steps, give such notices, execute such works and do such things as the Security Trustee considers necessary to comply with any requirements of or any notice, order, direction, permission or proposal given, served or made under the Planning Acts or otherwise affecting or likely to affect the Property;

4.3.3 to insure and keep insured the Property in such amount and in such manner as required under the Finance Documents; and

4.3.4 to admit, settle, liquidate, compound or contest in such manner as the Security Trustee thinks fit any claim or liability in relation to the Property whether or not the Security Trustee is expressly indemnified herein against the same and to make such payments and expend or debit on account such moneys as the Security Trustee considers necessary to that end,

provided that the Security Trustee shall not be deemed to be a mortgagee in possession by reason of the exercise of any right conferred by this Clause 4.3 and provided further that any sum expended by the Security Trustee in accordance with this Clause 4.3 shall be repayable by the Chargor and be added to the total of the Secured Obligations.

4.4 For so long as it remains bound by the provisions of this Charge the Chargor shall not without the prior written consent of the Security Trustee:

4.4.1 create or allow to be created any mortgage charge or lien on the Property (other than any Existing Security);

4.4.2 grant or accept a surrender of any lease or licence of the Property; nor

4.4.3 transfer assign dispose or part with or share possession or occupation of the Property.

5 Other undertakings

Save as permitted by the Facilities Agreement the Chargor shall not without the prior written consent of the Security Trustee assign charge or in any other way divert the payment of any rents due in respect of the Property away from the Chargor.

6 The Security Trustee's rights

6.1 Save in so far as may be expressly provided for in the conditions of any dealing or as may otherwise be acknowledged in writing by the Security Trustee such dealings shall not prejudice or affect the undertakings, liabilities and obligations of the Chargor hereunder or the rights and remedies of the Security Trustee and shall not release or discharge any Security given by the Chargor hereunder.

- 6.2 The conditions of any dealing agreed in writing by the parties thereto shall be deemed to have been set forth herein and shall be enforceable by the Security Trustee accordingly.
- 6.3 For the purpose of this provision a dealing shall include:
 - 6.3.1 the giving of time or indulgence by the Security Trustee or, as the case may be, a Secured Party;
 - 6.3.2 the neglect or forbearance of the Security Trustee or, as the case may be, a Secured Party, in requiring or enforcing payment of any moneys hereby secured;
 - 6.3.3 the release of any property subject to this Charge or of any undertaking, condition, liability or obligation hereunder; and
 - 6.3.4 any act, omission, matter or thing whatsoever whereby the Chargor would or might have been released from any undertaking, condition, liability or obligation hereunder or any Security given by it.
- 6.4 The Security Trustee's reasonable costs (including legal costs and surveyors fees) of any dealing including the costs of any release, discharge or reconveyance will be the responsibility of the Chargor and shall be added to the total of the Secured Obligations.
- 6.5 The Security Trustee may in relation to this Charge act on the opinion or advice of or any information obtained from any lawyer, valuer, surveyor, auditor, accountant or other expert acting in his professional capacity whether obtained by the Chargor or the Security Trustee and shall not be responsible for any loss occasioned by so acting.
- 6.6 No assurance, security or payment which may be avoided under any enactment relating to bankruptcy, insolvency, winding-up or any similar process (including under sections 238 to 245 (inclusive) of the Insolvency Act 1986) and no release, settlement or discharge given or made by the Security Trustee or a Secured Party on the faith of any such assurance, security or payment, shall prejudice or affect the right of such persons to enforce the security created by or pursuant to this Charge in respect of the full extent of the Secured Obligations hereby secured. The Security Trustee shall be at liberty at its absolute discretion to retain the security so created as security for the Secured Obligations for a period of one month plus such statutory period within which any security or payment given or made pursuant to this Charge may be avoided or invalidated after the Secured Obligations hereby secured shall have been paid in full, notwithstanding any release, settlement, discharge or arrangement given or made by the Security Trustee or a Secured Party on or as a consequence of such termination of liability. If at any time within such period after such termination, a petition shall be presented to a competent court for an order for the bankruptcy, insolvency, winding up or similar process of or in respect of the Chargor or the Chargor shall commence to be wound up voluntarily or an application for an administration order shall be made to a competent court in respect of the Chargor, the Security Trustee shall be at liberty, notwithstanding the above, to continue to retain such security or any part thereof for and during such further period as the Security Trustee in its absolute discretion shall determine. The Chargor agrees that such security shall be deemed to have been and to have remained held by the Security Trustee as and by way of security for the payment to the Security Trustee of all or any sums which may become due and owing to the Security Trustee or a Secured Party in respect of the Secured Obligations hereby secured.

- 6.7 The Security Trustee shall not be liable to the Chargor in respect of any loss or damage which arises out of the exercise, the attempted or purported exercise or the failure to exercise any of its powers or for any other loss of any nature whatsoever.
- 6.8 The Security Trustee may from time to time delegate by power of attorney or otherwise to any person or corporation any powers and discretions of the Security Trustee under this Charge whether arising by statute, the provisions hereof or otherwise upon such terms and for such periods of time as it may think fit and may determine any such delegation.
- 6.9 The Security Trustee will not be liable to the Chargor for any loss or damage arising from any act, default, omission or misconduct of any delegate so appointed and references in this Charge to the Security Trustee will where the context so admits include references to any delegates so appointed.

7 The Security Trustee's powers and the Enforcement of the Charge

- 7.1 Section 103 of the Law of Property Act 1925 shall not apply to this Charge.
- 7.2 At any time upon the occurrence of an Enforcement Event, the Security Trustee may:
 - 7.2.1 appoint a Receiver over all or part of the Property;
 - 7.2.2 exercise all of the powers conferred upon it as mortgagee by the Law of Property Act 1925;
 - 7.2.3 take possession of the Property and in so doing shall be deemed to be the agent of the Chargor, and to the extent that they are not charged by the Chargor in this Charge the Security Trustee may at the expense of the Chargor and as the agent of the Chargor remove, store, preserve and, other than tenants and trade fixtures and fittings, sell or otherwise dispose of any chattels and any livestock at the Property without being liable to the Chargor for any loss in connection with such disposal and the Security Trustee will pay the net proceeds of sale of such chattels and livestock (after payment of any costs incurred in connection with such removal, storage, preservation and disposal) to the Chargor on its demand;
 - 7.2.4 retire all bills or notes which are under discount with the Security Trustee and to which the Chargor is a party in any capacity without any deduction.
- 7.3 Section 103 of the Law of Property Act 1925 shall not apply to this Charge, and the Charge shall become immediately capable of being enforced and the power of sale and other powers conferred on mortgagees by that Act shall arise and become exercisable without the restrictions contained in that Act at any time upon the occurrence of an Enforcement Event but this provision shall not affect anyone acquiring any interest in the Property from the Security Trustee or put him upon enquiry as to whether or not such Enforcement Event has occurred.
- 7.4 The Security Trustee shall be entitled to grant and make agreements for leases at a premium or otherwise and accept surrenders of leases and grant options on such terms as the Security Trustee shall consider expedient and without statutory or other restrictions.
- 7.5 The restrictions on the right of consolidating mortgages which is contained in Section 93 of the Law of Property Act 1925 shall not apply to this Charge.
- 7.6 The following provisions shall apply to any Receiver:

- 7.6.1 where more than one Receiver is appointed, they shall have the power to act severally as well as jointly in relation to all or any part of the Property unless the Security Trustee shall when appointing them specify otherwise;
- 7.6.2 if the Security Trustee appoints a Receiver over part only of the Property, the Security Trustee will still be entitled to appoint the same or another Receiver over any other part of the Property;
- 7.6.3 the Security Trustee may from time to time determine how and how much the Receiver is to be paid;
- 7.6.4 the Security Trustee may from time to time remove the Receiver from all or part of the Property and, if it wishes, appoint another in his place;
- 7.6.5 the Receiver shall, so far as the law permits, be the agent of the Chargor, who shall alone be personally liable for the Receiver's acts, defaults and costs;
- 7.6.6 the Receiver shall have all of the powers given to receivers by the Law of Property Act 1925 in the same way as if the Receiver had been duly appointed under that Act, and in addition to, but without limiting such general powers, and without prejudice to the Security Trustee's powers, the Receiver shall have power in the name of the Chargor or otherwise to do the following things:
 - (a) to take possession of, collect and get in all or any part of the Property and all rents and other income of the Property;
 - (b) to commence and/or complete any building works on any part of the Property;
 - (c) to apply for and obtain any permissions, approvals, consents or licences as he may in his absolute discretion think fit;
 - (d) to acquire any further property, assets or rights whatsoever, whether by way of purchase, lease or otherwise;
 - (e) to borrow money for any purpose specified in this clause from the Security Trustee or any other person upon the security of the Property or otherwise;
 - (f) subject to the terms of any relevant lease, to provide such services for tenants and generally to manage the Property in such manner as he shall think fit;
 - (g) if the Property is leasehold, to vary the terms of or surrender the lease and/or to take a new lease of all or any part of the Property on such terms as he shall think fit, and so that such new lease shall become charged to the Security Trustee on the terms of this Charge so far as applicable and to execute a formal legal mortgage over any such new lease in favour of the Security Trustee in such form as the Security Trustee may require;
 - (h) to operate and manage any business or undertaking conducted at the Property;
 - (i) to sell (whether by way of auction or by private contract or by any other means), let, or grant licences of, and to vary the terms of or terminate or accept surrenders of leases or tenancies of all or any part of the Property or grant options over all or any part of the Property, in such manner and for such term, with or without any payment, with such rights relating to the other parts of the Property, and generally upon such

terms and conditions (including the payment of money) as the Receiver shall think fit in his absolute discretion;

- (j) to accept payment for any such sale, lease, licence or option in a lump sum or by instalments or in cash or by debentures, securities or any other valuable consideration as the Receiver shall think fit;
- (k) to establish a company or to purchase any shares in a company to acquire all or any part of the Property or any interest in the Property;
- (l) to make any arrangement or to reach any agreement with regard to any claim which he or the Security Trustee may think fit;
- (m) to carry out all repairs, renewals and improvements to the Property as he shall think fit;
- (n) to bring or defend any proceedings in the name of the Chargor as the case may be in relation to the Property as the Receiver shall think fit;
- (o) to exercise on behalf of the Chargor all or any of the powers given to landlords or tenants (as the case may be) by the Landlord and Tenants Act 1927 to 1988 in respect of the Property but without incurring any liability in respect of the powers so exercised;
- (p) to do all such other acts and things as may be considered by the Receiver to be incidental to or necessary for any of the powers contained in this Charge or otherwise to preserve, improve or sell the Property; and

7.6.7 the Receiver shall not be authorised to exercise any of the powers set out in this Charge if and to the extent that the Security Trustee shall in writing have excluded them, whether when appointing the Receiver or subsequently.

7.7 All of the powers of the Receiver under this Charge may be exercised by the Security Trustee at any time after the Security Trustee has demanded repayment of the Secured Obligations whether as attorney of the Chargor or otherwise, and whether or not a Receiver has been appointed.

7.8 The rights of the Security Trustee and any Receiver may be exercised as often as necessary are cumulative and are in addition to their respective rights under general law and may be waived only in writing and specifically. Delay in the exercise or non-exercise of any right shall not be a waiver of that right.

8 Certificate of sums due

Any certificate or determination by the Security Trustee as to the amount of the Secured Obligations shall in the absence of manifest error, be conclusive and binding on the Chargor for all purposes of this Charge.

9 Continuing security

9.1 The security from time to time created by this Charge is a continuing security and will remain in full force and effect as a continuing security for the Secured Obligations until released or discharged by the Security Trustee.

- 9.2 No part of the security from time to time created by this Charge will be considered satisfied or discharged by any intermediate payment, discharge or satisfaction of the whole or any part of the Secured Obligations.

10 Further Assurance

The Chargor shall promptly do all such acts and execute all such documents as the Security Trustee may reasonably specify (and in such form as the Security Trustee may reasonably require) to:

- 10.1 perfect or enhance any security created or intended to be created by this Charge or for the exercise of the rights, powers and remedies of the Security Trustee or any Receiver provided by or pursuant to this Charge or by law;
- 10.2 confer on the Security Trustee security over any property or assets of the Chargor located in any jurisdiction outside England and Wales equivalent or similar to the security intended to be conferred by or pursuant to this Charge; and/or
- 10.3 after the security created by this Charge has become enforceable pursuant to Clause 7 facilitate the realisation of the assets.

11 Land Registry

11.1 Request to the Land Registry

Where the whole or any part of the Property is registered at the Land Registry the Chargor hereby applies to the Chief Land Registrar for registration against the registered title of the following restriction:

*No disposition of the registered estate by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a written consent signed by the proprietor for the time **being of the charge dated • in favour of Bank of Scotland plc referred to in the charges** register or their conveyancers.*

11.2 Further advances

If any Finance Party is obliged to make further advances under the Finance Documents, that obligation is deemed to be incorporated in this Charge and, where the whole or part of the Property is registered at the Land Registry, the Chargor applies to the Chief Land Registrar for the registration against the registered title of the Property of a note that the Security Trustee is under an obligation to make further advances to the Chargor.

12 Notices

Any communication to be made under or in connection with this Charge shall be made in accordance with Clause 34 of the Facilities Agreement.

13 Third Parties

Unless expressly provided to the contrary in this Charge, a person who is not a party to this Charge or a Secured Party may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.

14 Perpetuity Period

The perpetuity period for the trusts in this Charge is 125 years.

15 Financial Collateral

15.1 Right to appropriate

To the extent that the Property constitutes financial collateral and this Charge and the obligations of the Chargor constitute a security financial collateral arrangement (in each case for the purpose of and as defined in the Financial Collateral Arrangements (No. 2) Regulations 2003 (SI 2003 No. 3226) (the **Regulations**)) the Security Trustee shall have the right after the security created by this Charge has become enforceable to appropriate all or any part of that financial collateral in or towards the satisfaction of the Secured Obligations.

15.2 Value of financial collateral

For the purpose of Clause 15.1 (*Right to appropriate*), the value of the financial collateral appropriated shall be such amount as the Security Trustee reasonably determines having taken into account advice obtained by it from an independent investment or accountancy firm of national standing selected by it and the Chargor agrees that the method of valuation provided for in this Charge shall constitute a commercially reasonable method of valuation for the purposes of the Regulations.

16 Stamp Duty

The Chargor shall pay all stamp duties and other similar taxes or duties payable on or arising out of or in consequence of:

- 16.1 the creation of the security constituted by this Charge; and
- 16.2 the execution and delivery of this Charge and any documents executed pursuant hereto.

17 Counterparts

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

18 Governing Law and Jurisdiction

18.1 Governing law

This Charge and any non-contractual obligations arising out of or in relation to this Charge shall be governed by, and construed in accordance with, the laws of England.

18.2 Jurisdiction

- 18.2.1 The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Charge (including claims for set-off and counterclaims), including without limitation, disputes arising out of or in connection with: (i) the creation, validity, effect, interpretation, performance or non-performance of, or the legal relationships established by this Charge; and (ii) any non-contractual obligations arising out of or in connection with this Charge (a **Dispute**).
- 18.2.2 Each party irrevocably submits to the jurisdiction of the English courts to settle Disputes waives any objection to the exercise of such jurisdiction.
- 18.2.3 This Clause 18.2 (*Jurisdiction*) is for the benefit of the Secured Parties only. As a result, no Secured Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Secured Parties may take concurrent proceedings in any number of jurisdictions.

IN WITNESS WHEREOF this Charge has been executed as a deed on the date stated at the beginning of this Charge.

Schedule 1 – Property

Description and address	Title number
The Burlington Hotel, New Street, Birmingham B2 4JQ	WM832479

Signatories

CHARGOR

EXECUTED for and on behalf of
Macdonald Hotels Investments Limited

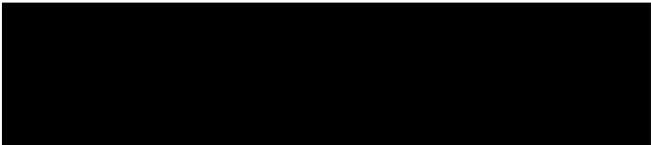
 Director (Signature)

Gordon Fraser Print Name

in the presence of:

 Witness signature

Rhoda MacLennan Print name



SECURITY TRUSTEE

EXECUTED by
Bank of Scotland plc
as Security Trustee

by

..... Authorised Signatory

..... Print Name

in the presence of this witness:

..... Witness

..... Full Name

..... Address

.....



KMCP/SUMK/104563.05316/73324846.3

Legal Charge

relating to The Burlington Hotel, New Street, Birmingham B2 4JQ

(Note to the Land Registry. This Charge contains (in Clause 11.1 (*Request to the Land Registry*)) an application to enter a restriction in the Proprietorship Register and (in Clause 11.2 (*Further Advances*)) an application to enter a notice on the Charges Register)

Dated 24 August 2020

Macdonald Hotels Investments Limited
(Chargor)

Bank of Scotland plc
(Security Trustee)

Dentons UK and Middle East LLP
Quatermile One
15 Lauriston Place
Edinburgh
EH3 9EP
DX ED137 or LP 27

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Legal Charge

Dated 24 August 2020

Between

- (1) **Macdonald Hotels Investments Limited** (Registered Number SC125204) whose registered office is at Whiteside House, Whiteside Industrial Estate, Bathgate, West Lothian, EH48 2RX (the **Chargor**); and
- (2) **Bank of Scotland plc** as agent and security trustee for each of the Secured Parties (the **Security Trustee**).

Whereas

- A The Chargor enters into this Charge in connection with the Facilities Agreement (as defined below).

1 Definitions and Interpretation

1.1 Incorporation of definitions

Terms defined in the Facilities Agreement, unless otherwise defined in this Charge or unless a contrary intention appears, bear the same meaning when used in this Charge.

1.2 Additional definitions

In this Charge unless the context otherwise requires the following expressions shall have the meanings respectively assigned to them:

Charge means this legal charge.

Enforcement Event means:

- (a) an Event of Default has occurred and is continuing;
- (b) any step is taken (including, without limitation, the making of an application or the giving of any notice) by the Chargor or by any other person to appoint an administrator in respect of the Chargor;
- (c) any step is taken (including, without limitation, the making of an application or the giving of any notice) by the Chargor or by any other person to wind up or dissolve the Chargor or to appoint a liquidator, (whether provisional, interim or otherwise) trustee, receiver, administrative receiver or similar officer of the Chargor or any part of its undertaking or assets; or
- (d) the making of a request by the Chargor for the appointment of a receiver or administrator;

Existing Security means the Transaction Security Documents entered into (a) by the Chargor or (b) in respect of the Property, in each case granted in favour of the Security Trustee prior to the date of this Deed.

Facilities Agreement means the facilities agreement originally dated 19 October 2005 between, among others, the Obligors and Bank of Scotland plc as Arranger, Agent, Security Trustee and an Original Lender as amended and/or amended and restated from time to time.

Intercreditor Agreement means the intercreditor agreement dated 19 October 2005 as amended and restated on 19 June 2009, 29 October 2010 and 19 March 2014 and as further amended and restated on or around the date of this Charge between, among others, the Parent, the Obligors and Bank of Scotland plc as Arranger, Agent, Security Trustee and an Original Lender.

Planning Acts means the Town and Country Planning Act 1990 and, where applicable, the Planning (Listed Buildings and Conservation Areas) Act 1990, the Planning (Hazardous Substances) Act 1990, the Planning (Consequential Provisions) Act 1990, and the Planning and Compensation Act 1991 and any associated or similar legislation regulating the development or use of land.

Property means the freehold or leasehold property (whether registered or unregistered) owned by the Chargor and specified in Schedule 1 (*Property*).

Receiver means any person or persons appointed (and any additional person or persons appointed or substituted) as an administrative receiver, a receiver and manager or as a receiver by the Security Trustee under this Charge and shall include joint Receivers.

Secured Obligations means all present and future obligations and liabilities (whether actual or contingent, whether owed jointly or severally or as principal debtor, guarantor, surety or otherwise or as the equivalent obligor under the laws of any other jurisdiction) of the Chargor or any other Obligor to the Security Trustee and the other Secured Parties (or any of them) under the Finance Documents together with:

- (a) any refinancing, novation, refunding, deferral or extension of or increase in any of those obligations or liabilities;
- (b) any further advances and additional facilities which may be made by any Secured Party to the Chargor or any other Obligor under any agreement expressed to be supplemental to the Finance Documents and all interest, fees, and costs in connection therewith;
- (c) any claim for damages or restitution in the event of rescission of any of those obligations or liabilities or otherwise in connection with any of the Finance Documents;
- (d) any claim against the Chargor or any other Obligors flowing from the recovery by the Chargor or any other Obligors of a payment or discharge in respect of any of those liabilities on grounds of preference or otherwise;
- (e) any amounts which would be included in any of the foregoing but for any discharge, non-provability, unenforceability or non-allowability of the same in any insolvency or other proceedings; and
- (f) all costs, charges and expenses incurred by the Security Trustee or any other Secured Party in connection with the protection, preservation or enforcement of its rights against the Chargor or any other Obligor;

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

1.3 Security trust provisions

The Security Trustee holds the benefit of this Charge on trust for the Secured Parties in accordance with the terms of the Intercreditor Agreement.

1.4 Construction

1.4.1 Unless a contrary indication appears, any reference in this Charge to:

- (a) any **Chargor, Security Trustee, Secured Party, Obligor** or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
- (b) **assets** includes present and future properties, revenues and rights of every description;
- (c) an Event of Default is **continuing** if it has not been remedied or waived;
- (d) the **Facilities Agreement, a Finance Document** or any other agreement or instrument is a reference to that Facilities Agreement or Finance Document or other agreement or instrument as from time to time amended, novated, supplemented, replaced, extended or restated in whole or in part;
- (e) a **person** includes any person, firm, company, corporation, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality) or two or more of the foregoing;
- (f) a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
- (g) a provision of law is a reference to that provision as from time to time amended or re-enacted;
- (h) **disposal** includes a sale, transfer, grant, lease or other disposal, whether voluntary or involuntary (and **dispose** shall be construed accordingly);
- (i) **document** includes any deed, instrument (including negotiable instrument) or other document of any kind;
- (j) any matter **including** specific instances or examples of such matter shall be construed without limitation to the generality of that matter (and references to **include** shall be construed accordingly);
- (k) the **winding-up, dissolution or administration** of a person shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such person is incorporated or established, or any jurisdiction in which such person carries on business including the seeking of liquidation, winding-up,

reorganisation, dissolution, administration, arrangement, adjustment, protection or relief of debtors; and

(I) Clauses are to the clauses of this Charge.

1.4.2 Clause headings are for ease of reference only.

1.4.3 Words in the singular shall import the plural and *vice versa*.

1.5 Words defined in the Companies Act 2006 have the same meanings in this Charge.

1.6 The obligations of the Chargor under this Charge shall be in addition to the covenants for title deemed to be included in this Charge by virtue of Part I of the Law of Property (Miscellaneous Provisions) Act 1994.

1.7 This Charge is intended to take effect as a deed notwithstanding that the Security Trustee may have executed it under hand only.

1.8 To the extent necessary for any agreement for the disposition of the Property in this Charge to be a valid agreement under section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989, the terms of the other Finance Documents and of any side letters between the parties to this Charge are incorporated into this Charge.

2 Covenant to Pay

2.1 Covenant to pay

The Chargor, as principal debtor and not just as surety, covenants with the Security Trustee to pay, discharge and satisfy the Secured Obligations when the same become due in terms of the Finance Documents whether by acceleration or otherwise.

2.2 Interest

The Chargor shall pay interest on any amount demanded from it in accordance with this Charge from the date of such demand until such amount is irrevocably discharged and paid in full (such interest to accrue on a daily basis after as well as before judgment or the liquidation or administration of the Chargor and to be payable on demand) at the rate from time to time applicable to unpaid sums specified in the Facilities Agreement, save to the extent that such interest is charged on such amount pursuant to the relevant Finance Document and itself constitutes a Secured Obligation.

3 Charge

The Chargor (subject to any Existing Security) charges with full title guarantee to the Security Trustee by way of first legal mortgage the Property to secure the Secured Obligations.

4 Covenants by the Chargor

4.1 In the case of any conflict between the provisions of this Clause 4 and the provisions of the Facilities Agreement, the provisions of the Facilities Agreement shall prevail.

4.2 The Chargor shall:

- 4.2.1 pay or cause to be paid all rents, rates, levies, assessments, impositions and outgoings whether governmental, municipal or otherwise imposed upon or payable in respect of the Property as and when the same become due and payable;
- 4.2.2 keep or cause to be kept the Property in good and substantial repair to the extent that failure to do so would have a Material Adverse Effect and permit the Security Trustee and any person authorised by the Security Trustee at all reasonable times to inspect the Property and view the state of the same (provided that such access shall not be disruptive to the Chargor's ordinary course of business);
- 4.2.3 insure and keep insured or procure to be so insured all buildings, installations and appurtenances for the time being comprised in or subject to this Charge and the fixtures and fittings and all other objects of whatever kind of an insurable nature in and upon the same against loss or damage by fire (including fire caused by riots and civil disturbances) and other usual risks including explosion, aircraft (other than hostile aircraft) and articles dropped therefrom, acts of terrorism and (where appropriate) flood, subsidence and such other risks as the Security Trustee may from time to time require (subject to such exclusions, excesses, limitations, terms and conditions as may be contained in such policy) to the full reinstatement value thereof (plus sums in respect of loss of rent, removal of debris and professional fees which may be incurred in connection with repairing, rebuilding or reinstating the same) and upon such terms as the Security Trustee may from time to time reasonably require with such underwriters or insurance companies as shall be approved of in writing from time to time by the Security Trustee in the name of the Chargor with the interest of the Security Trustee noted on the policies in respect of such insurance with the Security Trustee names as first mortgagee and sole loss payee (with or without the addition of other names) or otherwise as the Security Trustee shall direct and duly and punctually pay or cause to be paid all premiums and moneys necessary for effecting and keeping up the said insurance when the same shall become due respectively and on demand produce or cause to be produced to the Security Trustee the policy of every such insurance and receipt for every such payment;
- 4.2.4 not without the prior written consent of the Security Trustee (such consent not to be unreasonably withheld or delayed) pull down, remove or knowingly permit or suffer to be pulled down or removed any building, installation or structure for the time being comprised in or subject to this Charge or any walls, hedges or fences whereby the external boundaries are defined or (except in connection with the renewal or replacement thereof) any fixtures or erect or make or suffer to be erected or made on the Property any building, installation, alteration or improvement or otherwise waste, destroy or injure in any manner or by any means lessen or suffer to be lessened the value of the Property;
- 4.2.5 not without the prior written consent of the Security Trustee create or knowingly permit to exist any Security (other than any Existing Security or a lien arising in the ordinary course of business) or otherwise dispose of deal with or part with or share possession of the Property or any interest therein nor make or suffer to be made any material change or addition whatsoever in or to the use of the Property or agree to do any of the foregoing;
- 4.2.6 not commit any nuisance on the Property nor without the prior written consent of the Security Trustee do or permit to be done on the Property anything which would be prejudicial to the validity of any policy of insurance;
- 4.2.7 not do or omit or knowingly suffer to be done or omitted any act, matter or thing, in, on or in respect of the Property in contravention of the Planning Acts or any licences, consents, permissions or conditions granted or imposed thereunder to the extent that failure to do so would have a Material Adverse Effect;

- 4.2.8 as soon as reasonably practicable after receipt of any notice, order, direction, permission or proposal given, made or issued under or by virtue of the Planning Acts or otherwise affecting the Property or any part thereof which may result in a liability for the Chargor in excess of £250,000, give full particulars thereof to the Security Trustee and without delay comply with the same, or at any time when an Event of Default is continuing, join with the Security Trustee in objecting to or contesting the same;
- 4.2.9 perform and observe in all material respects all title burdens, stipulations and provisions affecting the Property (including but without prejudice to the generality of the foregoing all requirements and regulations of the competent authorities) and if the Property is leasehold property also produce on demand to the Security Trustee the receipt for the last payment of rent reserved by the lease under which such property is held;
- 4.2.10 as soon as reasonably practicable after receipt furnish to the Security Trustee any report, survey or information in respect of the structural condition of the Property, deleterious materials therein or contaminated substances thereon or affecting the same or which may affect adjacent or adjoining property as may come or may have come to the notice or attention of the Chargor at any time and carry out such further inspection works or take such other remedial action as the Security Trustee may direct;
- 4.2.11 from time to time or at such stated periods as may be required by the Security Trustee furnish to the Security Trustee all such particulars and information as the Security Trustee may reasonably require relating to any leases, agreements for lease or tenancies then subsisting or other arrangements effected in relation to the Property and deliver to the Security Trustee certified true copies of any such leases, agreements for lease or tenancies as soon as the same have been granted;
- 4.2.12 at all times advise the Security Trustee if any defects, damages or wants of repair manifest themselves in respect of any of the structures for the time being upon the Property and which are or may be considered to be the responsibility of any warrantors pursuant to the terms of any professional warranty agreement relating to the Property and whenever reasonably required by (but at no cost to the Security Trustee) promptly take all proper steps that the Security Trustee may reasonably prescribe for the purpose of enforcing such warranties and recovering from the warrantors thereunder all such damages or other remedy or recompense to which the Chargor or any Obligor may be entitled pursuant to the terms of such warranties and at all times keep the Security Trustee fully advised as to progress in that regard and apply any moneys recovered from any of the warrantors in or towards (with the Chargor making up any shortfall) the making good of the defects, damages and wants of repair to which the same relate;
- 4.2.13 not, without the prior written consent of the Security Trustee (such consent not to be unreasonably withheld or delayed) or unless the Security Trustee shall otherwise require, exercise any option or right of election available at law that the supplies made in respect of any lease or tenancy shall be chargeable or taxable for Value Added Tax purposes at the standard or any other applicable rate, including (without limitation) pursuant to paragraph 2 of Schedule 10 to the Value Added Tax Act 1994;
- 4.2.14 not, without the prior written consent of the Security Trustee, enter into any negotiations with any competent authority with regard to the compulsory acquisition of the Property or consent to the compulsory acquisition of the Property and, where any such compulsory acquisition has or could have a material adverse effect on the value of the Property, upon request by the Security Trustee, permit the Security Trustee and/or its representatives (for such time as the

Security Trustee requires) to conduct all or part of such negotiations or give such consent on its behalf;

- 4.2.15 comply with, and to the extent that it is within the power of the Chargor to do so, procure compliance with all Environmental Law affecting the Property where failure to do so is reasonably likely to have a Material Adverse Effect and notify the Security Trustee forthwith in writing of any breach or alleged breach or of the receipt of any notice or other communication in respect of any breach or alleged breach of any Environmental Law affecting the Property or any investigation or order, commenced or made in relation to any such breach or alleged breach where the claim if determined against the Chargor, is reasonably likely to have a Material Adverse Effect or could constitute a liability of £250,000 or more and forthwith take all steps necessary to remedy any such infringement of any Environmental Law affecting the Property;
- 4.2.16 other than in the case of any gross negligence or wilful default of the Security Trustee, indemnify and reimburse the Security Trustee in respect of any losses, damages, liabilities, claims, costs and expenses (including, without limitation, fines, penalties, judgments and awards, financial responsibility for clean-up activities and obligations, statutory or other official contributions, legal fees, technical consultancy, engineers' and experts' fees and costs and expenses) properly incurred of obtaining or retaining consents or licences or otherwise complying with Environmental Law affecting the Property;
- 4.2.17 other than in the case of any gross negligence or wilful default of the Security Trustee, indemnify and keep indemnified (on a full indemnity basis) the Security Trustee or, as the case may be, any other Secured Party, in respect of any Secured Obligations outstanding and pay the Security Trustee upon demand with interest thereon at the rate specified in any relevant Finance Document from the respective dates for payment all moneys paid by the Security Trustee or, as the case may be, any other Secured Party, in respect of all claims, costs, expenses and liability whatsoever from time to time incurred in relation to this Charge including (but without prejudice to the generality of the foregoing) all sums paid and expenses properly incurred by the Security Trustee or, as the case may be, such Secured Party:
- (a) in remedying or making good any breach or non-observance of any undertaking or obligation on the part of the Chargor herein contained; or
 - (b) under any undertaking, agreement or obligation contained in or imposed by any lease, agreement for lease, tenancy or licence affecting the Property which may have been or may hereafter be granted or entered into by the Chargor or by the predecessors in title of the Chargor or by any one or more of them; or
 - (c) under the Planning Acts whether in respect of any act, matter or thing done, omitted or suffered to be done or omitted by or on behalf of the Chargor or any person claiming under the Chargor or through whom the Chargor derives title to the Property or in respect of any objection to or the contesting of any notice, order or proposal therefor or otherwise howsoever; or
 - (d) under any requirements or regulation of any competent authority; or
 - (e) arising out of any defect in or want of repair to the Property; or
 - (f) under any title burden, agreement or obligation, restrictive or otherwise, affecting the title to the Property and enforceable against the Property or the owner thereof for the time being and whether or not recited or referred to herein; or

- (g) in enforcing or exercising or protecting or attempting to enforce or exercise or protect any of the rights, powers, provisions and undertakings contained in this Charge or to be implied herefrom.
- 4.3 If the Chargor fails at any time to perform or observe any undertaking or condition on its part herein contained the Security Trustee shall be entitled but not obliged, in order to make good such failure in whole or in part:
- 4.3.1 to enter upon the Property and effect such repairs and other works thereon as the Security Trustee considers necessary;
- 4.3.2 to take such steps, give such notices, execute such works and do such things as the Security Trustee considers necessary to comply with any requirements of or any notice, order, direction, permission or proposal given, served or made under the Planning Acts or otherwise affecting or likely to affect the Property;
- 4.3.3 to insure and keep insured the Property in such amount and in such manner as required under the Finance Documents; and
- 4.3.4 to admit, settle, liquidate, compound or contest in such manner as the Security Trustee thinks fit any claim or liability in relation to the Property whether or not the Security Trustee is expressly indemnified herein against the same and to make such payments and expend or debit on account such moneys as the Security Trustee considers necessary to that end,
- provided that the Security Trustee shall not be deemed to be a mortgagee in possession by reason of the exercise of any right conferred by this Clause 4.3 and provided further that any sum expended by the Security Trustee in accordance with this Clause 4.3 shall be repayable by the Chargor and be added to the total of the Secured Obligations.
- 4.4 For so long as it remains bound by the provisions of this Charge the Chargor shall not without the prior written consent of the Security Trustee:
- 4.4.1 create or allow to be created any mortgage charge or lien on the Property (other than any Existing Security);
- 4.4.2 grant or accept a surrender of any lease or licence of the Property; nor
- 4.4.3 transfer assign dispose or part with or share possession or occupation of the Property.

5 Other undertakings

Save as permitted by the Facilities Agreement the Chargor shall not without the prior written consent of the Security Trustee assign charge or in any other way divert the payment of any rents due in respect of the Property away from the Chargor.

6 The Security Trustee's rights

- 6.1 Save in so far as may be expressly provided for in the conditions of any dealing or as may otherwise be acknowledged in writing by the Security Trustee such dealings shall not prejudice or affect the undertakings, liabilities and obligations of the Chargor hereunder or the rights and remedies of the Security Trustee and shall not release or discharge any Security given by the Chargor hereunder.

- 6.2 The conditions of any dealing agreed in writing by the parties thereto shall be deemed to have been set forth herein and shall be enforceable by the Security Trustee accordingly.
- 6.3 For the purpose of this provision a dealing shall include:
- 6.3.1 the giving of time or indulgence by the Security Trustee or, as the case may be, a Secured Party;
- 6.3.2 the neglect or forbearance of the Security Trustee or, as the case may be, a Secured Party, in requiring or enforcing payment of any moneys hereby secured;
- 6.3.3 the release of any property subject to this Charge or of any undertaking, condition, liability or obligation hereunder; and
- 6.3.4 any act, omission, matter or thing whatsoever whereby the Chargor would or might have been released from any undertaking, condition, liability or obligation hereunder or any Security given by it.
- 6.4 The Security Trustee's reasonable costs (including legal costs and surveyors fees) of any dealing including the costs of any release, discharge or reconveyance will be the responsibility of the Chargor and shall be added to the total of the Secured Obligations.
- 6.5 The Security Trustee may in relation to this Charge act on the opinion or advice of or any information obtained from any lawyer, valuer, surveyor, auditor, accountant or other expert acting in his professional capacity whether obtained by the Chargor or the Security Trustee and shall not be responsible for any loss occasioned by so acting.
- 6.6 No assurance, security or payment which may be avoided under any enactment relating to bankruptcy, insolvency, winding-up or any similar process (including under sections 238 to 245 (inclusive) of the Insolvency Act 1986) and no release, settlement or discharge given or made by the Security Trustee or a Secured Party on the faith of any such assurance, security or payment, shall prejudice or affect the right of such persons to enforce the security created by or pursuant to this Charge in respect of the full extent of the Secured Obligations hereby secured. The Security Trustee shall be at liberty at its absolute discretion to retain the security so created as security for the Secured Obligations for a period of one month plus such statutory period within which any security or payment given or made pursuant to this Charge may be avoided or invalidated after the Secured Obligations hereby secured shall have been paid in full, notwithstanding any release, settlement, discharge or arrangement given or made by the Security Trustee or a Secured Party on or as a consequence of such termination of liability. If at any time within such period after such termination, a petition shall be presented to a competent court for an order for the bankruptcy, insolvency, winding up or similar process of or in respect of the Chargor or the Chargor shall commence to be wound up voluntarily or an application for an administration order shall be made to a competent court in respect of the Chargor, the Security Trustee shall be at liberty, notwithstanding the above, to continue to retain such security or any part thereof for and during such further period as the Security Trustee in its absolute discretion shall determine. The Chargor agrees that such security shall be deemed to have been and to have remained held by the Security Trustee as and by way of security for the payment to the Security Trustee of all or any sums which may become due and owing to the Security Trustee or a Secured Party in respect of the Secured Obligations hereby secured.

- 6.7 The Security Trustee shall not be liable to the Chargor in respect of any loss or damage which arises out of the exercise, the attempted or purported exercise or the failure to exercise any of its powers or for any other loss of any nature whatsoever.
- 6.8 The Security Trustee may from time to time delegate by power of attorney or otherwise to any person or corporation any powers and discretions of the Security Trustee under this Charge whether arising by statute, the provisions hereof or otherwise upon such terms and for such periods of time as it may think fit and may determine any such delegation.
- 6.9 The Security Trustee will not be liable to the Chargor for any loss or damage arising from any act, default, omission or misconduct of any delegate so appointed and references in this Charge to the Security Trustee will where the context so admits include references to any delegates so appointed.

7 The Security Trustee's powers and the Enforcement of the Charge

- 7.1 Section 103 of the Law of Property Act 1925 shall not apply to this Charge.
- 7.2 At any time upon the occurrence of an Enforcement Event, the Security Trustee may:
- 7.2.1 appoint a Receiver over all or part of the Property;
- 7.2.2 exercise all of the powers conferred upon it as mortgagee by the Law of Property Act 1925;
- 7.2.3 take possession of the Property and in so doing shall be deemed to be the agent of the Chargor, and to the extent that they are not charged by the Chargor in this Charge the Security Trustee may at the expense of the Chargor and as the agent of the Chargor remove, store, preserve and, other than tenants and trade fixtures and fittings, sell or otherwise dispose of any chattels and any livestock at the Property without being liable to the Chargor for any loss in connection with such disposal and the Security Trustee will pay the net proceeds of sale of such chattels and livestock (after payment of any costs incurred in connection with such removal, storage, preservation and disposal) to the Chargor on its demand;
- 7.2.4 retire all bills or notes which are under discount with the Security Trustee and to which the Chargor is a party in any capacity without any deduction.
- 7.3 Section 103 of the Law of Property Act 1925 shall not apply to this Charge, and the Charge shall become immediately capable of being enforced and the power of sale and other powers conferred on mortgagees by that Act shall arise and become exercisable without the restrictions contained in that Act at any time upon the occurrence of an Enforcement Event but this provision shall not affect anyone acquiring any interest in the Property from the Security Trustee or put him upon enquiry as to whether or not such Enforcement Event has occurred.
- 7.4 The Security Trustee shall be entitled to grant and make agreements for leases at a premium or otherwise and accept surrenders of leases and grant options on such terms as the Security Trustee shall consider expedient and without statutory or other restrictions.
- 7.5 The restrictions on the right of consolidating mortgages which is contained in Section 93 of the Law of Property Act 1925 shall not apply to this Charge.
- 7.6 The following provisions shall apply to any Receiver:

- 7.6.1 where more than one Receiver is appointed, they shall have the power to act severally as well as jointly in relation to all or any part of the Property unless the Security Trustee shall when appointing them specify otherwise;
- 7.6.2 if the Security Trustee appoints a Receiver over part only of the Property, the Security Trustee will still be entitled to appoint the same or another Receiver over any other part of the Property;
- 7.6.3 the Security Trustee may from time to time determine how and how much the Receiver is to be paid;
- 7.6.4 the Security Trustee may from time to time remove the Receiver from all or part of the Property and, if it wishes, appoint another in his place;
- 7.6.5 the Receiver shall, so far as the law permits, be the agent of the Chargor, who shall alone be personally liable for the Receiver's acts, defaults and costs;
- 7.6.6 the Receiver shall have all of the powers given to receivers by the Law of Property Act 1925 in the same way as if the Receiver had been duly appointed under that Act, and in addition to, but without limiting such general powers, and without prejudice to the Security Trustee's powers, the Receiver shall have power in the name of the Chargor or otherwise to do the following things:
- (a) to take possession of, collect and get in all or any part of the Property and all rents and other income of the Property;
 - (b) to commence and/or complete any building works on any part of the Property;
 - (c) to apply for and obtain any permissions, approvals, consents or licences as he may in his absolute discretion think fit;
 - (d) to acquire any further property, assets or rights whatsoever, whether by way of purchase, lease or otherwise;
 - (e) to borrow money for any purpose specified in this clause from the Security Trustee or any other person upon the security of the Property or otherwise;
 - (f) subject to the terms of any relevant lease, to provide such services for tenants and generally to manage the Property in such manner as he shall think fit;
 - (g) if the Property is leasehold, to vary the terms of or surrender the lease and/or to take a new lease of all or any part of the Property on such terms as he shall think fit, and so that such new lease shall become charged to the Security Trustee on the terms of this Charge so far as applicable and to execute a formal legal mortgage over any such new lease in favour of the Security Trustee in such form as the Security Trustee may require;
 - (h) to operate and manage any business or undertaking conducted at the Property;
 - (i) to sell (whether by way of auction or by private contract or by any other means), let, or grant licences of, and to vary the terms of or terminate or accept surrenders of leases or tenancies of all or any part of the Property or grant options over all or any part of the Property, in such manner and for such term, with or without any payment, with such rights relating to the other parts of the Property, and generally upon such

terms and conditions (including the payment of money) as the Receiver shall think fit in his absolute discretion;

- (j) to accept payment for any such sale, lease, licence or option in a lump sum or by instalments or in cash or by debentures, securities or any other valuable consideration as the Receiver shall think fit;
 - (k) to establish a company or to purchase any shares in a company to acquire all or any part of the Property or any interest in the Property;
 - (l) to make any arrangement or to reach any agreement with regard to any claim which he or the Security Trustee may think fit;
 - (m) to carry out all repairs, renewals and improvements to the Property as he shall think fit;
 - (n) to bring or defend any proceedings in the name of the Chargor as the case may be in relation to the Property as the Receiver shall think fit;
 - (o) to exercise on behalf of the Chargor all or any of the powers given to landlords or tenants (as the case may be) by the Landlord and Tenants Act 1927 to 1988 in respect of the Property but without incurring any liability in respect of the powers so exercised;
 - (p) to do all such other acts and things as may be considered by the Receiver to be incidental to or necessary for any of the powers contained in this Charge or otherwise to preserve, improve or sell the Property; and
- 7.6.7 the Receiver shall not be authorised to exercise any of the powers set out in this Charge if and to the extent that the Security Trustee shall in writing have excluded them, whether when appointing the Receiver or subsequently.
- 7.7 All of the powers of the Receiver under this Charge may be exercised by the Security Trustee at any time after the Security Trustee has demanded repayment of the Secured Obligations whether as attorney of the Chargor or otherwise, and whether or not a Receiver has been appointed.
- 7.8 The rights of the Security Trustee and any Receiver may be exercised as often as necessary are cumulative and are in addition to their respective rights under general law and may be waived only in writing and specifically. Delay in the exercise or non-exercise of any right shall not be a waiver of that right.

8 Certificate of sums due

Any certificate or determination by the Security Trustee as to the amount of the Secured Obligations shall in the absence of manifest error, be conclusive and binding on the Chargor for all purposes of this Charge.

9 Continuing security

- 9.1 The security from time to time created by this Charge is a continuing security and will remain in full force and effect as a continuing security for the Secured Obligations until released or discharged by the Security Trustee.

- 9.2 No part of the security from time to time created by this Charge will be considered satisfied or discharged by any intermediate payment, discharge or satisfaction of the whole or any part of the Secured Obligations.

10 Further Assurance

The Chargor shall promptly do all such acts and execute all such documents as the Security Trustee may reasonably specify (and in such form as the Security Trustee may reasonably require) to:

- 10.1 perfect or enhance any security created or intended to be created by this Charge or for the exercise of the rights, powers and remedies of the Security Trustee or any Receiver provided by or pursuant to this Charge or by law;
- 10.2 confer on the Security Trustee security over any property or assets of the Chargor located in any jurisdiction outside England and Wales equivalent or similar to the security intended to be conferred by or pursuant to this Charge; and/or
- 10.3 after the security created by this Charge has become enforceable pursuant to Clause 7 facilitate the realisation of the assets.

11 Land Registry

11.1 Request to the Land Registry

Where the whole or any part of the Property is registered at the Land Registry the Chargor hereby applies to the Chief Land Registrar for registration against the registered title of the following restriction:

No disposition of the registered estate by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a written consent signed by the proprietor for the time being of the charge dated • in favour of Bank of Scotland plc referred to in the charges register or their conveyancers.

11.2 Further advances

If any Finance Party is obliged to make further advances under the Finance Documents, that obligation is deemed to be incorporated in this Charge and, where the whole or part of the Property is registered at the Land Registry, the Chargor applies to the Chief Land Registrar for the registration against the registered title of the Property of a note that the Security Trustee is under an obligation to make further advances to the Chargor.

12 Notices

Any communication to be made under or in connection with this Charge shall be made in accordance with Clause 34 of the Facilities Agreement.

13 Third Parties

Unless expressly provided to the contrary in this Charge, a person who is not a party to this Charge or a Secured Party may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.

14 Perpetuity Period

The perpetuity period for the trusts in this Charge is 125 years.

15 Financial Collateral

15.1 Right to appropriate

To the extent that the Property constitutes financial collateral and this Charge and the obligations of the Chargor constitute a security financial collateral arrangement (in each case for the purpose of and as defined in the Financial Collateral Arrangements (No. 2) Regulations 2003 (SI 2003 No. 3226) (the **Regulations**)) the Security Trustee shall have the right after the security created by this Charge has become enforceable to appropriate all or any part of that financial collateral in or towards the satisfaction of the Secured Obligations.

15.2 Value of financial collateral

For the purpose of Clause 15.1 (*Right to appropriate*), the value of the financial collateral appropriated shall be such amount as the Security Trustee reasonably determines having taken into account advice obtained by it from an independent investment or accountancy firm of national standing selected by it and the Chargor agrees that the method of valuation provided for in this Charge shall constitute a commercially reasonable method of valuation for the purposes of the Regulations.

16 Stamp Duty

The Chargor shall pay all stamp duties and other similar taxes or duties payable on or arising out of or in consequence of:

- 16.1 the creation of the security constituted by this Charge; and
- 16.2 the execution and delivery of this Charge and any documents executed pursuant hereto.

17 Counterparts

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

18 Governing Law and Jurisdiction

18.1 Governing law

This Charge and any non-contractual obligations arising out of or in relation to this Charge shall be governed by, and construed in accordance with, the laws of England.

18.2 Jurisdiction

- 18.2.1 The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Charge (including claims for set-off and counterclaims), including without limitation, disputes arising out of or in connection with: (i) the creation, validity, effect, interpretation, performance or non-performance of, or the legal relationships established by this Charge; and (ii) any non-contractual obligations arising out of or in connection with this Charge (a **Dispute**).
- 18.2.2 Each party irrevocably submits to the jurisdiction of the English courts to settle Disputes waives any objection to the exercise of such jurisdiction.
- 18.2.3 This Clause 18.2 (*Jurisdiction*) is for the benefit of the Secured Parties only. As a result, no Secured Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Secured Parties may take concurrent proceedings in any number of jurisdictions.

IN WITNESS WHEREOF this Charge has been executed as a deed on the date stated at the beginning of this Charge.

Schedule 1 – Property

Description and address	Title number
The Burlington Hotel, New Street, Birmingham B2 4JQ	WM832479

Signatories

CHARGOR

EXECUTED for and on behalf of
Macdonald Hotels Investments Limited

..... Director (Signature)

..... Print Name

in the presence of:

..... Witness signature

..... Print name

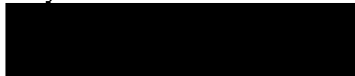
..... Address

.....

SECURITY TRUSTEE

EXECUTED by
Bank of Scotland plc
as Security Trustee

by



..... Authorised Signatory

STEPHEN CURRY..... Print Name

in the presence of this witness:



..... Witness

SHARON CHAMBERS..... Full Name

..... Address

