



**Registration of a Charge**

Company name: **MORRISON STREET HOTEL LIMITED**

Company number: **SC146403**



X63V9TYI

Received for Electronic Filing: **07/04/2017**

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**Details of Charge**

Date of creation: **23/03/2017**

Charge code: **SC14 6403 0015**

Persons entitled: **HSBC BANK PLC**

Brief description: **FIRST CHARGE IN RELATION TO ALL ESTATES AND INTERESTS IN ANY FREEHOLD, COMMONHOLD OR LEASEHOLD PROPERTY NOW OR IN THE FUTURE BELONGING TO IT, WHETHER ARISING AT LAW, IN EQUITY, OR OTHERWISE. FOR MORE DETAILS OF LAND, SHIP, AIRCRAFT AND INTELLECTUAL PROPERTY CHARGED, PLEASE REFER TO THE INSTRUMENT.**

**Contains fixed charge(s).**

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

**Contains negative pledge.**

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**Authentication of Form**

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

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**Authentication of Instrument**

Certification statement: **I CERTIFY THAT 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: **GOWLING WLG (UK) LLP**



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

Company number: 146403

Charge code: SC14 6403 0015

The Registrar of Companies for Scotland hereby certifies that a charge dated 23rd March 2017 and created by MORRISON STREET HOTEL LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 7th April 2017 .

Given at Companies House, Edinburgh on 7th April 2017

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

EXECUTION

DATED 23 March 2017

- (1) MORRISON STREET HOTEL LIMITED  
as Chargor
- (2) HSBC BANK PLC  
as Security Agent

SECURITY AGREEMENT

We certify this to be a true and complete  
photographic copy of the original  
SIGNED.....Gowling WLG (UK) LLP  
Gowling WLG (UK) LLP  
LONDON SE1 2AU  
DATE .....23 March 2017.....



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THIS SECURITY AGREEMENT is made by way of deed on 23 MAR 2017

**BETWEEN:**

- (1) **MORRISON STREET HOTEL LIMITED**, a private limited company incorporated and existing under the laws of Scotland with registered number SC146403 and whose registered office is at 1 Morrison Street Link, Edinburgh, Scotland, EH3 8DN (the "**Chargor**"); and
- (2) **HSBC BANK PLC**, as agent and security trustee for and on behalf of itself and the other Finance Parties (the "**Security Agent**", which expression shall include all successor agents and/or security trustees appointed from time to time).

**WHEREAS:**

- (A) The Chargor enters into this Deed to secure the payment, performance and discharge of the Secured Liabilities (as defined below).
- (B) The Chargor's director is satisfied that entering into and performing this Deed is in the best interests, and for the commercial purposes and corporate benefit, of the Chargor's business.
- (C) It is intended by the parties hereto that this document takes effect as a deed notwithstanding the fact that the Security Agent may only execute this document under hand.

**NOW THIS DEED WITNESSES AND IT IS AGREED as follows:**

**1 INTERPRETATION**

**1.1 Definitions**

In this Deed:

"Act" means the Law of Property Act 1925;

"Causes of Action" means all causes of action (including for breach of warranty or representation) and other rights and remedies which the Chargor has or may have in relation to the Charged Assets including those against its professional and other advisers and contractors;

"Charged Assets" means the assets and undertaking of the Chargor from time to time mortgaged, charged or assigned (or intended to be mortgaged, charged or assigned) by way of fixed and/or floating security or other Security under this Deed, or any other Security granted by the Chargor in favour of the

Security Agent, as security for the payment, performance or discharge of all or any part of the Secured Liabilities, and "**Charged Asset**" shall be construed accordingly;

"**Compensation Payment**" means monies paid or payable in connection with the Charged Assets by way of compensation, endowment, gift, grant or otherwise;

"**Default Rate**" means the rate of interest calculated in accordance with the default interest provisions contained in clause 8.4 (*Default Interest*) of the Facility Agreement;

"**Facility**" has the meaning ascribed to it in the Facility Agreement;

"**Facility Agreement**" means the facility agreement dated on or about the date hereof between Leonardo Haymarket Ltd (as borrower), the Chargor and HSBC Bank PLC as Agent, Arranger, Original Lender and Security Agent (as varied, restated and/or amended from time to time);

"**Financial Collateral**" has the meaning ascribed to it in the Regulations;

"**Fixtures**" means all fixtures and fittings (including those of trade) and fixed plant and machinery on the Mortgaged Property in each case belonging to the Chargor;

"**Hotel**" has the meaning ascribed to it in the Facility Agreement;

"**Insurances**" has the meaning ascribed to it in the Facility Agreement;

"**Material Contract**" means:

- (a) any Share Acquisition Document;
- (b) any Property Transfer Document;
- (c) any other document designated as such by the Security Agent and the Chargor from time to time;

including, in each case, any amendment or restatement thereof (however fundamental) or supplement thereto and any agreement extending the maturity thereunder, increasing any amount payable thereunder, changing the basis for calculation of a payment thereunder or introducing new or additional obligations thereunder (whether or not more onerous), and "**Material Contracts**" shall be construed accordingly;

"**Mortgaged Property**" means all freehold, commonhold and leasehold property (including, where the context admits, the Premises) the subject of the security created or intended to be created by this Deed (including in particular the Property);

**"Premises"** means any building or other edifice on or forming part of the Property or other Charged Asset;

**"Receiver"** means a receiver or a receiver and manager or (if the Security Agent so specifies in the relevant appointment) a receiver, in either case, appointed under this Deed and shall include, if permitted by law, an administrative receiver or an administrator;

**"Regulations"** means the Financial Collateral Arrangements (No.2) Regulations 2003;

**"Secured Liabilities"** means all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally and whether as principal or as surety or in any other capacity whatsoever) of the Chargor, each other Obligor and the Operator Tenant to any Secured Party under or in connection with each Finance Document (including, without limitation, this Deed);

**"Security FCA"** means a Security Financial Collateral Arrangement as defined in the Regulations;

**"Security Period"** means the period beginning on the date of this Deed and ending on the date on which the Security Agent is satisfied that the Secured Liabilities have been irrevocably and unconditionally satisfied in full and the Finance Parties are under no obligations (actual or contingent) under the Finance Documents;

**"Subordinated Debt"** has the meaning ascribed to it in the Facility Agreement;

**"Subordinated Debt Documents"** has the meaning ascribed to it in the Facility Agreement; and

**"1995 Act"** means the Landlord and Tenant (Covenants) Act 1995.

## 1.2 Construction

- (a) Capitalised terms defined in the Facility Agreement have the same meaning when used in this Deed unless otherwise defined herein.
- (b) The provisions of clause 1.2 (*Construction*) of the Facility Agreement apply to this Deed as if they were set out in full in this Deed, except that references to the Agreement therein will be construed as references to this Deed.
- (c) Any reference in this Deed to a mortgage, charge or assignment of any asset or property shall be construed so as to include:
  - (i) the proceeds of sale of any part of that asset or property, and any other monies paid or payable in respect of or in connection with that asset or property;

- (ii) the benefit of any covenants for title given or entered into by any predecessor in title in respect of that asset or property and all other rights, benefits, claims, contracts, warranties, remedies, Security or indemnities in respect of that asset or property; and
  - (iii) in respect of any Mortgaged Property, all Premises and Fixtures from time to time in or on that property.
- (d) Any reference in this Deed to any party or person includes any person deriving title from it or any permitted successor, transferee or assignee (whether immediate or derivative).
- (e) References in this Deed to Clauses and Schedules are references to the clauses of and schedules to this Deed, and references in this Deed to Paragraphs are references to the paragraphs of the Schedules or to paragraphs of the definitions (if applicable), unless the context otherwise requires.
- (f) Where two or more persons purport to create Security over a Charged Asset under this Deed then:
  - (i) they (or such of them as have the joint interest in the relevant Charged Asset) shall be deemed to have jointly mortgaged, charged and/or assigned, as appropriate, their joint interest in the relevant Charged Asset;
  - (ii) each person shall be deemed to have mortgaged, charged and/or assigned, as appropriate, its individual interest (if any) in the relevant Charged Asset; and
  - (iii) each person shall be deemed to have confirmed the Security granted by the others.
- (g) Pursuant to, and in accordance with, the definition of "**Security Document**" in the Facility Agreement, the parties hereto hereby agree and confirm that this Deed shall be a Finance Document for all purposes.
- (h) In this Deed:
  - (i) statements referring to the Security Agent's capacity as agent and/or trustee for itself and the other Finance Parties; and
  - (ii) any statements referring to monies, obligations or liabilities owing to, or other

rights, benefits or discretions granted or created under this Deed to, or covenants, undertakings or other agreements made in favour of, the Security Agent and/or the Finance Parties (as the case may be);

are by way of explanation or clarification only and shall not prejudice the meaning of "Security Agent" (or "Finance Parties", as the case may be) elsewhere in this Deed where such statements are not made.

- (i) "reasonable endeavours" includes payment by the relevant person of all its own and any third party's reasonable costs, fees and expenses.
- (j) The fact that no, or incomplete, details of any properties or intellectual property assets, rights and interests are included in the relevant Schedule, does not affect the validity or enforceability of any Security constituted by this Deed.
- (k) "Secured Liabilities" includes, for the avoidance of doubt:
  - (i) any refinancing, further advances, novation, deferral, or extension of the facilities under the Finance Documents; and
  - (ii) liabilities which would be treated as such but for the liquidation, administration or dissolution of, or similar event affecting, the Chargor, the Operator Tenant, any other Obligor, or any other person, including without limitation any amounts which would be included as Secured Liabilities but for any discharge, non-provability, unenforceability or non-allowance of those amounts in any such insolvency, dissolution or other proceedings.

### 1.3 Avoidance

If the Security Agent considers that any amount paid by the Chargor or any other Transaction Obligor or any other person in connection with the satisfaction of the Secured Liabilities is capable of being avoided or otherwise set aside on the liquidation, bankruptcy or administration (whether out of court or otherwise) of the Chargor or any other Transaction Obligor or any other person, as applicable, or otherwise, then (a) the security constituted by this Deed shall continue and (b) that amount shall not be considered to have been irrevocably paid for the purpose of this Deed.

### 1.4 Disposition of Property

The terms of the other Finance Documents and of any agreement, document or side letter

between the parties thereto are incorporated into each Finance Document (including this Deed) to the extent required for any purported disposition of any Mortgaged Property or any part thereof and any other relevant Charged Asset contained in any Finance Document to be a valid disposition in accordance with Section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989.

## 2 FIXED SECURITY

### 2.1 Charges

The Chargor, as continuing security for the payment, performance and discharge of the Secured Liabilities and in the manner specified in Clause 2.3:

- (a) charges in favour of the Security Agent (as agent and trustee for and on behalf of itself and the other Finance Parties) by way of first legal mortgage all estates and interests in any freehold, commonhold or leasehold property now belonging to it:
- (b) to the extent not validly and effectively charged by way of first legal mortgage pursuant to Clause 2.1(a), charges in favour of the Security Agent (as agent and trustee for and on behalf of itself and the other Finance Parties) by way of a first fixed charge all its rights, title, benefit and interest (both present and future) in, to and under:
  - (i) all estates and interests in any freehold, commonhold or leasehold property now or in the future belonging to it;
  - (ii) (to the extent not assigned pursuant to Clause 2.1(a)) any agreement relating to the acquisition of the Mortgaged Property and the benefit of all agreements, contracts, deeds, undertakings, guarantees, warranties and other documents now or hereafter in existence in relation to the Mortgaged Property; and
  - (iii) all plant and machinery now or in the future belonging to it and its interest in any plant or machinery in its possession and in all Fixtures;
- (c) charges in favour of the Security Agent (as agent and trustee for and on behalf of itself and the other Finance Parties) by way of a first fixed charge all its rights, title, benefit and interest (both present and future) in, to and under:
  - (i) (to the extent not assigned pursuant to Clause 2.1(a)) all of its

benefits, claims and returns of premiums in respect of the Insurances;

- (ii) (to the extent not assigned pursuant to Clause 2.1(a)) its rights under any appointment of any managing agent and/or asset manager of the Mortgaged Property or the Premises from time to time;
- (iii) the Required Cash (as defined in the Facility Agreement) and all other monies deposited in or standing to the credit of any account opened and maintained in England and Wales from time to time,;
- (iv) its goodwill and its uncalled capital;
- (v) its book and other debts and monetary claims, both uncollected and collected, the proceeds of the same and all monies otherwise due and owing to it;
- (vi) all rights, securities and guarantees of whatsoever nature enjoyed or held by it in relation to anything in Clause 2.1(b)(ix);
- (vii) all permissions of whatsoever nature and whether statutory or otherwise, held by it in connection with the Hotel and the Mortgaged Property and the right to recover and receive all compensation which may be payable to it;
- (viii) to the extent vested in it, of all building contracts, professionals' appointments, guarantees, warranties and representations given or made by any building contractors, professional advisers or any other person in relation to the Mortgaged Property, including all rights and remedies available to it against such persons;
- (ix) its patents, trade marks, copyrights, registered or other designs (including, without limitation, designs relating to any construction works on the Mortgaged Property) and any other intellectual property assets or rights vested in it;
- (x) each VAT refund payable by HMRC to the Chargor (together with all rights to claim such VAT refund and the proceeds of any

judgement awarded in favour of the Chargor in relation to such VAT refund);

- (xi) (to the fullest extent permitted at law) all rights in respect of the proceeds of any order of the court made pursuant to sections 238(3), 239(3) or 244 of the Insolvency Act 1986;
- (xii) (to the extent not assigned pursuant to Clause 2.2(a)) the benefit of all present and future Authorisations (statutory or otherwise) held in connection with the Hotel and/or the Chargor's business (including the Business) or the use of any Charged Asset and the right to recover and receive all compensation that may be payable to it in respect of them;
- (xiii) (to the extent not assigned pursuant to Clause 2.2(a)(xi)) the Subordinated Debt, the Subordinated Debt Documents, and all monies payable and all monies paid to it under or in connection with the Subordinated Debt, in each case to the extent subject to English law;
- (xiv) (to the extent not assigned pursuant to Clause 2.2(a)(xi)) the PL Receivables (as defined in the Facility Agreement), in each case to the extent subject to English law;
- (xv) (to the extent not assigned pursuant to Clause 2.2(a)(xii)) each Material Contract, including all monies payable to the Chargor and any claims, awards and judgments in favour of or receivable or received by the Chargor, under or in connection with or pursuant to the Material Contracts;
- (xvi) all assets which are specified in Clause 2.2 and are not capable of assignment and not otherwise charged pursuant to this Clause 2.1(b).

## **2.2 Assignment**

- (a) The Chargor, in the manner specified in Clause 2.3 of this Deed, assigns and agrees to assign to the Security Agent (as agent and trustee for and on behalf of itself and the other Finance Parties) absolutely, subject to re-assignment on the expiry of the Security Period

in accordance with Clause 18, as continuing security for the payment, performance and discharge of the Secured Liabilities all of its right, title, benefit and interest (both present and future) in, to and under:

- (i) all its rights (if any) under any Insurances relating to the Charged Assets to which the Chargor is otherwise entitled (including any claims or payments under, and returns of premiums in respect of, the Insurances);
- (ii) all agreements, contracts, deeds, appointments, licences, undertakings, guarantees, covenants, warranties, representations and other documents (including all documents entered into now or in the future so as to enable the Security Agent (as agent and trustee for and on behalf of itself and the other Secured Parties) to perfect its rights under this Deed or any such agreement, contract, deed, licence, undertaking, guarantee, covenant, warranty, representation or other document) entered into by or given to the Chargor in respect of the Mortgaged Properties or any other Charged Assets including all:
  - (A) claims, remedies, awards or judgements paid or payable to the Chargor (including, without limitation, all liquidated and ascertained damages payable to the Chargor under the above), in each case, relating to all or any part of the Mortgaged Property or such Charged Assets; and
  - (B) guarantees, warranties, bonds and representations given or made by, and any rights or remedies against, any designer, builder, contractor, professional adviser, sub-contractor, manufacturer, supplier or installer of any Fixture;
- (iii) all licences (including constituted or required under the Relevant Consents) held now or in the future in connection with its business (including the Business) carried on upon all or any part of the Mortgaged Property and also the right to recover and receive all compensation which may at any time become payable to the Chargor under the Licensing Act 1964, the Licensing Act 2003 or any similar legislation;
- (iv) all chattels hired, leased or rented by the Chargor to or from any person together in each case with the benefit of the related hiring, leasing or rental contract and any guarantee, indemnity or other Security for the performance of the obligations of any person under or in respect of such contract;

- (v) all Causes of Action;
  - (vi) the benefit of any Compensation Payment;
  - (vii) the Subordinated Debt, the Subordinated Debt Documents and all monies payable and all monies paid to it under or in connection with the Subordinated Debt in each case to the extent subject to English law;
  - (i) the PL Receivables (as defined in the Facility Agreement), in each case to the extent subject to English law; and
  - (ii) each Material Contract, including all moneys payable to the Chargor and any claims, awards and judgments in favour of or receivable or received by the Chargor, under or in connection with or pursuant to the Material Contracts.
- (b) To the extent that any such right, title, benefit and interest described in Clause 2.2(a) is not assignable or capable of assignment, such assignment purported to be effected by Clause 2.2(a) shall operate, as continuing Security for the payment, discharge, performance and satisfaction of the Secured Liabilities, as an assignment of any and all proceeds of such right, title, benefit or interest paid or payable thereunder save for any proceeds or other amounts properly payable to any third party and to which the Chargor has no right, title, benefit or interest.

## **2.3 Title Guarantee**

- (a) Every disposition effected by this Deed is made with full title guarantee and, in the case of the Mortgaged Property, all security constituted is given with absolute warrandice..
- (b) The other terms of this Deed do not limit or extend any of the covenants implied by virtue of Part 1 of the Law of Property (Miscellaneous Provisions) Act 1994 but create separate and independent obligations having effect cumulatively with those implied covenants.

## **3 FLOATING CHARGE**

### **3.1 Creation**

The Chargor, as continuing security for the payment, performance and discharge of the Secured Liabilities and in the manner specified in Clause 2.3 of this Deed:

- (a) charges in favour of the Security Agent (as agent and trustee for and on behalf of itself and the other Finance Parties) by way of a first floating charge all its assets and undertaking not otherwise validly and effectively mortgaged or charged by way of legal or equitable mortgage, fixed charge or assignment (whether at law or in equity) by Clause 2; and
- (b) charges in favour of the Security Agent (as agent and trustee for and on behalf of itself and the other Finance Parties) by way of a first floating charge all its present and future assets located in Scotland or otherwise governed by Scots law whether or not effectively charged by way of fixed charge under clause 2.1 (*Charges*) or assigned under clause 2.2 (*Assignment*),

### 3.2 Conversion by Notice

The Security Agent may (to the extent permissible under applicable law), by notice to the Chargor convert the floating charge created by this Deed into a fixed charge in relation to all or any of the assets of the Chargor specified in the notice if:

- (a) the Security Agent has reasonable grounds for considering those assets to be in jeopardy, by legal process or otherwise;
- (b) an Event of Default has occurred and is continuing;
- (c) steps are or have been taken to dispose of the Chargor's assets secured by this Deed (other than in accordance with the Finance Documents);
- (d) an application to appoint an administrator (whether out of court or otherwise) in relation to the Chargor (or that such an application has been made, or that such an administrator has been appointed) or the presentation of a petition to wind up the Chargor (or that such a petition has been presented or that a liquidator has been appointed) has been made; and/or
- (e) steps have been taken to appoint an administrator of the Chargor (whether out of court or otherwise).

### 3.3 Automatic Conversion

- (a) The floating charge created by this Deed shall, to the extent permissible under applicable law, (in addition to the circumstances in which the same will occur under general law)

automatically be converted (without notice) with immediate effect into a fixed charge over the assets, rights and property of the Chargor on the passing of a resolution to wind up the Chargor (or not to wind up the Chargor) or the passing of any resolution or application for putting the Chargor into administration (whether out of court or otherwise).

(b) If:

- (i) the Chargor breaches any provision of Clause 6.5 (*Restrictions on Dealings*) in respect of any of the Charged Assets which are subject to an uncrystallised floating charge under this Deed; and/or
- (ii) any person levies any distress, attachment, execution or other legal process (including any commercial rent arrears recovery) against any such Charged Assets; and/or
- (iii) any person presents or makes an application for a warrant of execution, writ of fieri facias, garnishee order or charging order in respect of any such Charged Assets;

then the floating charge created by this Deed over the Charged Assets to which the breach or step or levy or application relates shall (without prejudice to any law which may have a similar effect) automatically be converted (without notice) with immediate effect into a fixed charge over such assets as soon as that breach occurs or step is taken or levy or application is made.

### 3.4 Qualifying Floating Charge

The floating charge created by this Deed is a **qualifying floating charge** for the purposes of paragraph 14 of Schedule B1 to the Insolvency Act 1986.

### 3.5 No Waiver

The giving by the Security Agent of a notice pursuant to Clause 3.2 in relation to any class of the Chargor's assets, rights and property shall not be construed as a waiver or abandonment of the Security Agent's rights to give other similar notices in respect of any other class of assets or any of the rights of the Security Agent or any Finance Party under any Finance Document.

### **3.6 Re-conversion**

The Security Agent may, at any time in its absolute discretion, by notice in writing to the Chargor, re-convert any charge which has crystallised under Clause 3.2 (*Conversion by notice*) or Clause 3.3 (*Automatic conversion*) into a floating charge in relation to the Charged Assets specified in the notice.

### **3.7 Scotland**

The terms of Clause 3.2 (*Conversion by Notice*) and Clause 3.3 (*Automatic Conversion of Floating Charge*) shall not apply in respect of any property or assets situated in Scotland or governed by Scots law if and to the extent that any such conversion is ineffective under Scots law or would result in any Receiver being unable to exercise any powers under Section 72 of the Insolvency Act 1986.

## **4 PROVISIONS AS TO SECURITY**

### **4.1 Perfection of Security**

The Chargor shall take such action as is available to it:

- (a) to create, perfect and protect the Security constituted or intended to be constituted under this Deed;
- (b) to maintain the Security constituted or intended to be constituted under this Deed; and
- (c) to make all filings and registrations and to take all such other steps as may be necessary in connection with the creation, perfection or protection of the Security constituted or intended to be constituted under this Deed.

### **4.2 Deposit of Title Deeds**

The Chargor shall immediately upon the execution of this Deed (or upon coming into the possession of the Chargor at any time) deposit with the Security Agent (or procure that the Chargor's solicitors provide an acceptable undertaking to the Security Agent to hold to its order) all deeds, certificates and other documents constituting or evidencing title to the Charged Assets.

#### **4.3 Memorandum of Charge**

The Chargor shall promptly upon request by the Security Agent and at the Chargor's cost:

- (a) affix to such items of the Charged Assets; and/or
- (b) endorse on any documents evidencing title to the Charged Assets;

notice of the Security intended to be constituted under this Deed or which otherwise secures all or any part of the Secured Liabilities in such form as the Security Agent may require.

### **5 REPRESENTATIONS AND WARRANTIES**

#### **5.1 Making of Representations and warranties**

In addition to the representations set out in clause 19 (*Representations*) of the Facility Agreement, the Chargor makes the representations and warranties set out in this Clause 5 to the Security Agent (as agent and trustee for and on behalf of itself and the other Finance Parties). The representations and warranties so set out are made on the date of this Deed and are deemed to be repeated by the Chargor throughout the Security Period on each day that representations or warranties are repeated under clause 19.29 (*Repetition*) of the Facility Agreement with reference to the facts and circumstances then existing.

#### **5.2 Accuracy of Information**

As at the date of this Deed, the property and assets specified in the Schedules is all the property of that type in which the Chargor has an interest, whether direct or indirect.

#### **5.3 Accounts**

The Chargor is the sole legal and beneficial owner of the Accounts and all monies deposited therein or standing to the credit thereof, each of which are free from any Security (other than pursuant to this Deed) and any other rights or interests in favour of third parties.

#### **5.4 Assigned agreements**

All agreements, contracts, deeds, appointments, licences, undertakings, guarantees, covenants, warranties, representations and other documents assigned by the Chargor to the Security Agent pursuant to Clause 2.2 of this Deed are legal, valid, binding and (subject to the Legal Reservations) enforceable.

**5.5 Stamp duty**

No stamp or registration duty (other than registration fees payable at the Land Registry and Companies House) or similar tax or charge is payable in respect of this Deed.

**6 UNDERTAKINGS****6.1 Duration**

The undertakings in this Clause 6 shall remain in force throughout the Security Period and are given by the Chargor to the Security Agent (as agent and trustee for and on behalf of itself and the other Finance Parties).

**6.2 Book Debts/Receipts**

- (a) The Chargor shall at its own cost take all action to diligently collect and realise (or procure to be collected and realised) in a proper and timely manner all book and other debts and monetary claims and pay the proceeds thus realised and (subject to the terms of the Facility Agreement) all Rental Income into the relevant Account as specified in the Facility Agreement or such separate and denominated account as the Security Agent may designate from time to time and, pending payment into such account, shall hold the proceeds thus realised and all Rental Income upon trust for the Security Agent (as agent and trustee for and on behalf of itself and the other Finance Parties).
- (b) Without prejudice to Clause 6.5, the Chargor shall not, without the prior written consent of the Security Agent, release, exchange, compound, set-off or grant time or indulgence in respect of its book and other debts and monetary claims or at any time, sell, factor, discount or otherwise deal with or dispose of them.

**6.3 Notice to bank**

- (a) The Chargor shall, at the direction of the Security Agent from time to time, give notice to any bank, building society or other financial institution with whom any bank account of the Chargor is held and shall use reasonable endeavours to procure that such bank, building society or other financial institution shall promptly acknowledge that notice (in a form satisfactory to the Security Agent).

**6.4 Notice to Contract Counterparties**

The Chargor shall, at the direction of the Security Agent from time to time, give notice to each counterparty to each Material Contract substantially in the form specified in Schedule 1 and shall use reasonable endeavours to procure that each such counterparty shall promptly acknowledge that notice substantially in the form specified in Schedule 1.

**6.5 Restrictions on Dealings**

The Chargor shall not save as otherwise expressly permitted by or consented to under the Finance Documents:

- (a) create or permit to subsist any Security in relation to any Charged Asset; nor
- (b) (whether by a single transaction or a number of related transactions, and whether at the same time or over a period of time) sell, transfer, novate, grant (including granting any option), declare a trust of, lease, licence or otherwise dispose of (or purport to do any of the foregoing) any Charged Asset or any part thereof or permit the same to occur; nor
- (c) do or cause or permit to be done anything which may in any way depreciate, jeopardise or otherwise prejudice the value to the Security Agent (as agent and trustee for and on behalf of itself and the other Finance Parties) of the Security constituted hereby and/or the value of the Charged Assets; nor
- (d) sell or otherwise dispose of any of its assets on terms whereby such asset is or may be leased to or re-acquired or acquired by it, or any other member of its group or sell or otherwise dispose of any of its receivables on recourse terms.

**6.6 To comply with Laws relating to Charged Assets**

The Chargor shall comply with all obligations under any law or statute and all bye-laws and regulations relating to the whole or any part of the Charged Assets.

**6.7 To provide Information**

The Chargor shall promptly provide to the Security Agent such information as the Security Agent may reasonably require about the Charged Assets and compliance by the Chargor with the terms of this Deed.

**6.8 Covenant to perform**

- (a) The Chargor shall at all times comply with the express terms of this Deed.
- (b) If the Chargor fails to perform any of its obligations under this Clause 6 then the Security Agent may take such steps as it considers appropriate to procure the performance of such obligations and shall not thereby be deemed to be a mortgagee in possession and the costs and expenses incurred by the Security Agent shall be reimbursed by the Chargor on demand and until so reimbursed shall carry interest (both before and after judgement, bankruptcy, liquidation or administration) at the Default Rate from the date of the same being incurred to the date of payment.

**6.9 Accounts**

The Chargor shall not, without the prior written consent of the Security Agent:

- (i) utilise, withdraw or otherwise transfer any monies (including interest) standing to the credit of any Account, other than expressly in accordance with the Facility Agreement;
- (ii) release, grant time or indulgence or compound with any third party or suffer to arise any set-off or other adverse rights against any of the right, title, benefit and interest of the Chargor whatsoever present and future in any monies (including interest) standing to the credit of any Account; nor
- (iii) do or omit to do anything which may delay or prejudice the right of the Finance Parties to utilise, withdraw or transfer any monies (including interest) standing to the credit of any Account in accordance with the provisions of this Deed and the other Finance Documents.

**7 WHEN SECURITY BECOMES ENFORCEABLE**

The security constituted by this Deed shall become immediately enforceable and the power of sale and other powers conferred by section 101 of the Act, as varied or amended by this Deed, shall be immediately exercisable upon and at any time after the occurrence of any Event of Default which is continuing after which the Security Agent may in its absolute discretion enforce all or any part of the security in any manner it sees fit or in accordance with the provisions of the Finance Documents.

## **8 ENFORCEMENT OF SECURITY**

### **8.1 General**

- (a) For the purposes of all powers implied by statute, the Secured Liabilities are deemed to have become due on the date of this Deed.
- (b) Section 103 of the Act (restricting the power of sale) and section 93 of the Act (restricting the right of consolidation) do not apply to the security constituted by this Deed.
- (c) The statutory powers of leasing conferred on the Security Agent are extended and varied so that, without the need to comply with any provision of sections 99 or 100 of the Act, the Security Agent is empowered to lease, make agreements for leases, accept surrenders of leases and licences and grant options as the Security Agent may think fit.

### **8.2 Right of Appropriation of Financial Collateral**

To the extent that any of the Charged Assets constitute Financial Collateral and this Deed and the obligations of the Chargor under this Deed constitute a Security FCA, the Security Agent (as agent and trustee for and on behalf of itself and the other Finance Parties) shall have the right, at any time after the security constituted by this Deed has become enforceable, to appropriate all or any part of such Financial Collateral in or towards discharge of the Secured Liabilities. For this purpose, the parties agree that the value of such Financial Collateral shall be (in the case of cash) the amount standing to the credit of each bank account of the Chargor as the same may be secured hereunder pursuant to a Security FCA, together with any accrued but unpaid interest, at the time the right of appropriation is exercised and the parties hereby agree that the manner of valuation provided for in this Clause 8.2 shall constitute a commercially reasonable manner of valuation for the purposes of the Regulations. To the extent that any of the Charged Assets constitute Financial Collateral, the Chargor hereby agrees that such Charged Assets shall be held or re-designated so as to be under the control of the Security Agent for the purposes of the Regulations.

### **8.3 Contingencies**

If the Security Agent enforces the security constituted by this Deed (whether by the appointment of a Receiver or otherwise howsoever) at a time when no amounts are due under the Finance Documents but at a time when amounts may or will become so due, the Security Agent (or the Receiver) may pay the proceeds of any recoveries effected by it into an interest bearing account or otherwise as directed by the Security Agent.

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

Neither the Security Agent nor any Receiver will be liable, by reason of entering into possession of a Charged Asset, to account as mortgagee (or as the case may be, heritable creditor) in possession or for any loss on realisation or for any default or omission for which a mortgagee in possession might otherwise be liable.

#### **8.5 Privileges**

Each Receiver and the Security Agent is entitled to all the rights, powers, privileges and immunities conferred by the Act on mortgagees and receivers when such receivers have been duly appointed under the Act, except that section 103 of the Act does not apply.

#### **8.6 Protection of third parties**

No person (including a purchaser) dealing with the Security Agent or a Receiver or its or his agents need enquire:

- (a) whether the Secured Liabilities have become payable; or
- (b) whether any power which the Security Agent or that Receiver may purport to exercise has become exercisable or is being properly exercised; or
- (c) whether any money remains due under the Finance Documents; or
- (d) how any money paid to the Security Agent or to the Receiver is to be applied.

#### **8.7 Redemption of prior mortgages**

At any time after the security constituted by this Deed has become enforceable, the Security Agent may, at the sole cost and expense of the Chargor (payable to the Security Agent on demand):

- (a) redeem any prior form of Security on or relating to any Charged Asset; and/or
- (b) procure the transfer of that form of Security to itself; and/or
- (c) settle and pass the accounts of any prior mortgagee, chargee or encumbrancer which once so settled and passed shall be conclusive and binding on the Chargor.

The Chargor shall on demand pay to the Security Agent all principal monies and interest and all costs, expenses and losses incidental to any such redemption or transfer made pursuant to this Clause 8.7.

## **9 RECEIVER AND ADMINISTRATOR**

### **9.1 Appointment of Receiver or Administrator**

- (a) At any time after the security constituted by this Deed becomes enforceable, or at any time if the Chargor so requests the Security Agent in writing, the Security Agent may, without further notice, appoint in writing under seal or in writing under its hand any one or more persons to be a Receiver of all or any part of the Charged Assets as if the Security Agent had become entitled under the Act to exercise the power of sale conferred under the Act.
- (b) At any time after the security constituted by this Deed becomes enforceable, without further notice the Security Agent (as agent and trustee for and on behalf of itself and the other Finance Parties) may appoint (or apply to the court to appoint) any one or more qualified persons to be an administrator of the Chargor.
- (c) In this Deed "qualified person" means a person who, under any applicable provision of the Insolvency Act 1986, is qualified to act as a receiver or as an administrative receiver or administrator of any such company.
- (d) Nothing in this Deed shall prejudice or limit any power, right or remedy available to an administrator at law.

### **9.2 Relationship with Security Agent**

To the fullest extent permitted by law, any right, power or discretion conferred by this Deed (be it express or implied, and including (entirely without limitation) the power of sale under Clause 10.12 (*Sale of Assets*)) or by law upon a Receiver or mortgagee of any Charged Asset may, after the security created by this Deed has become enforceable, be exercised by the Security Agent (as agent and trustee for and on behalf of itself and the other Finance Parties) in relation to any Charged Asset either:

- (a) without first appointing a Receiver; or
- (b) notwithstanding the appointment of a Receiver.

### **9.3 Agent of the Chargor**

For all purposes each Receiver is deemed to be the agent of the Chargor and accordingly is deemed to be in the same position as a Receiver duly appointed by a mortgagee under the Act. The Chargor alone shall be responsible for the Receiver's contracts, engagements, acts, commissions, omissions, defaults and losses and for liabilities incurred by him, and no Finance Party shall incur any liability of whatsoever nature (either to the Chargor or to any other person) by reason of the Security Agent making his appointment as a Receiver or for any other reason. The agency of the Receiver shall continue until the Chargor shall go into liquidation and after that the Receiver shall act as principal and shall not become the agent of the Security Agent.

### **9.4 Removal**

The Security Agent (as agent and trustee for and on behalf of itself and the other Finance Parties) may by writing under its hand (subject to any requirement for any order of the court in the case of an administrative receiver):

- (a) remove any Receiver appointed by it;
- (b) whenever it deems it expedient, appoint a new Receiver in the place of any Receiver whose appointment may for any reason have terminated; and
- (c) replace an administrator of the Chargor previously appointed by the Security Agent where there is a vacancy in such office.

### **9.5 Remuneration**

The Security Agent may, subject to section 36 of the Insolvency Act 1986, fix the remuneration of any Receiver appointed by it without being limited to the maximum rate specified in section 109(6) of the Act.

## **10 POWERS OF RECEIVER**

### **10.1 General**

- (a) In addition to those conferred by the Act on any receiver appointed under the Act, each Receiver has, and is entitled to exercise, all of the rights, powers, remedies and discretions set out below in this Clause 10 and all other rights, powers, remedies and discretions conferred on any Receiver or the Security Agent elsewhere in this Deed.

- (b) If there is more than one Receiver holding office at the same time, unless the document appointing him states otherwise, each Receiver may exercise all of the powers conferred on a Receiver under this Deed individually and to the exclusion of any other Receivers.
- (c) Every Receiver for the time being holding office by virtue of an appointment made by the Security Agent under this Deed shall have all the rights, powers and discretions conferred by the Act, the Insolvency Act 1986 and otherwise by law and shall have all the rights, powers and discretions conferred on an administrative receiver under the Insolvency Act 1986.
- (d) A Receiver may, in the name of any Chargor if he so wishes:
  - (i) do all acts and things which he may consider expedient for realising any Charged Asset or incidental or conducive to any of the rights, powers or discretions conferred on a Receiver under or by virtue of this Deed or by law; and
  - (ii) exercise in relation to any Charged Asset all the powers, authorities and things which he would be capable of exercising as if he were its absolute beneficial owner (including, for the avoidance of doubt, the operation of any account (including, without limitation, any Account) in which the Chargor has any rights, title or interest (whether legal or beneficial)).

## **10.2 Borrow Money**

A Receiver may raise and borrow money (either unsecured or on the security of any Charged Asset, either in priority to the security constituted by this Deed or otherwise) on any terms and for whatever purpose which he thinks fit. No person lending that money need enquire as to the propriety or purpose of the exercise of that power or to check the application of any money so raised or borrowed.

## **10.3 Carry on Business**

A Receiver may carry on the business of any Chargor (including the Business) as he thinks fit.

## **10.4 Compromise**

A Receiver may settle, adjust, refer to arbitration, compromise and arrange any claims, accounts, disputes, questions and demands with or by any person who is or claims to be a creditor of a Chargor or relating in any way to any Charged Asset.

#### **10.5 Delegation**

A Receiver may delegate his powers in accordance with Clause 13.

#### **10.6 Employees**

For the purposes of this Deed, a Receiver may:

- (a) appoint and discharge managers, officers, agents, accountants, servants, workmen and others upon such terms as to remuneration or otherwise as he may think proper; and
- (b) discharge any such persons appointed by any Chargor.

#### **10.7 Leases and Licences**

A Receiver may let or licence any Charged Asset (or any part thereof) for any term and at any rent (with or without a premium) which he thinks proper and may accept a surrender of any lease, licence or tenancy of any Charged Asset on any terms which he thinks fit (including the payment of money to a lessee or tenant on a surrender).

#### **10.8 Legal Actions**

A Receiver may bring, prosecute, enforce, defend and abandon all actions, suits and proceedings in relation to any Charged Asset as he considers expedient.

#### **10.9 Possession**

A Receiver may take immediate possession of, get in and collect any Charged Asset.

#### **10.10 Protection of Assets**

A Receiver may, in each case as he may think fit:

- (a) make and effect all repairs, renewals, and improvements, and effect, renew or increase any insurances, and do all other acts which the relevant Chargor might do in the ordinary conduct of its business be they for the protection or for the improvement of the Charged Assets;
- (b) commence and/or complete any building and/or reinstatement operations on the Mortgaged Property or other Charged Asset; and

- (c) apply for, obtain and maintain any planning permission, building regulation approval or any other permission, consent or licence.

#### **10.11 Receipts**

A Receiver may give valid receipts for all monies and execute all assurances and things which he may consider expedient for realising any Charged Asset.

#### **10.12 Sale of Assets**

A Receiver may sell, exchange, grant an option over, convert into money and realise, or otherwise dispose of any Charged Asset by public auction or private contract in any manner and on any terms which he thinks proper (including to any Subsidiary referred to below). The consideration for any such transaction may be nil, or may consist of cash, shares of profits or sums calculated by reference to profits or turnover, debentures or other obligations, shares, stock or other valuable consideration and any such consideration may be payable in a lump sum or by instalments spread over such period as he thinks fit. Fixtures may be severed and sold or leased separately from the property containing them without the consent of the relevant Chargor. Any such sale, exchange, grant, conversion, realisation or disposal may be on terms excluding or limiting liability of the Security Agent and/or the Receiver.

#### **10.13 Subsidiaries**

A Receiver may form a Subsidiary or Subsidiaries of the Chargor and transfer, lease, licence or otherwise dispose of to any such Subsidiary any Charged Asset (or part thereof); and a Receiver may grant security over the assets of any such Subsidiary.

#### **10.14 Services**

A Receiver may provide, or procure the provision of, all services (including without limitation heating, lighting and cleansing) which may be deemed expedient in relation to the occupation or management of the Charged Assets.

#### **10.15 Contracts**

A Receiver may enter into, grant, perform, repudiate, rescind, terminate, vary, modify, assign, sub-let, surrender, or novate any contract, agreement, option agreement, Occupational Lease, licence, building contract, management agreement, , development or construction contract, contractor's warranty, third party right, or professional appointment or otherwise for or which relates in any way to the Charged Assets.

#### **10.16 Landlord and Tenant**

A Receiver may make allowances to and rearrangements with any lessees, tenants or other persons from whom any rents and profits may be receivable and to exercise any powers and provisions conferred on a landlord or tenant.

#### **10.17 Acquire Additional Property**

A Receiver may acquire or exchange any interest in any real or personal property which he may consider necessary or desirable to acquire in order to maintain or enhance the value of the Charged Assets or any part thereof and to grant or surrender easements, covenants and licences and to make exchanges and to enter into any agreements for the revision of boundaries.

#### **10.18 Rent Reviews**

A Receiver may implement, negotiate and agree rent reviews in such manner and upon such terms as the Receiver deems appropriate.

#### **10.19 Covenants, Guarantees and Indemnities**

A Receiver may enter into bonds, covenants, guarantees, commitments, indemnities and other obligations or liabilities as he thinks fit and make all payments needed to effect, maintain or satisfy such obligations and liabilities.

#### **10.20 VAT**

A Receiver may make such elections for VAT purposes as the Receiver in his absolute discretion thinks fit.

#### **10.21 Oppose Petitions and Applications**

A Receiver may take proceedings or any other step as it considers fit to oppose:

- (a) any petition to place the Chargor into liquidation, or provisional liquidation or an application for the appointment of an administrator (whether out of court or otherwise); or
- (b) the taking of any step or procedure under any other analogous insolvency or bankruptcy laws in any other jurisdiction in relation to the Chargor or any of its assets.

**10.22 Administrative costs**

A Receiver may pay the proper administrative charges of the Security Agent and/or any Finance Party in respect of time spent by their agents and employees in dealing with matters raised by the Receiver, or relating to the receivership of the Chargor or any Charged Assets.

**10.23 Insurance**

A Receiver may, in each case as he sees fit, negotiate, liaise or agree any matters with the insurer(s) of any Mortgaged Property or any Charged Asset in respect of, and/or take any step or action in connection with:

- (a) the application of any insurance proceeds;
- (b) the reinstatement of any Mortgaged Property; and/or
- (c) the operation and management of the Hotel or Mortgaged Property; and/or
- (d) any matters or actions ancillary thereto;

and shall have and may exercise (or refrain from exercising) all rights, powers and remedies of the Chargor, for the avoidance of doubt to the exclusion of the Chargor

**10.24 Intellectual property rights**

A Receiver may take all steps necessary to effect all registrations, renewals, applications and notifications, as the Receiver may in his discretion think prudent to maintain in force, or protect, any Chargor's intellectual property rights.

**11 APPLICATION OF PROCEEDS**

- 11.1 Subject to Clause 11.4, all amounts received or recovered by the Security Agent (as agent and trustee for and on behalf of itself and the other Finance Parties), any Receiver or any administrator after this Deed has become enforceable, or in connection with the realisation or enforcement of all or any part of this Deed (for the purposes of this Clause 11, the "**Recoveries**"), shall be applied (and the parties hereto shall direct or request any administrator to apply such monies) in the following order of priority (but without prejudice to the right of the Security Agent (as agent and trustee for and on behalf of itself and the other Finance Parties) to recover any shortfall from the Chargor):

- (a) in discharging any sums (including remuneration) owing to the Security Agent, any Receiver or any Delegate;
- (b) in payment of all costs and expenses incurred by the Agent, the Security Agent or any other Finance Party in connection with any realisation or enforcement of the Transaction Security taken in accordance with the terms of this Deed, the Facility Agreement and the other Finance Documents; and
- (c) in payment to the Agent for application in payment of, or provision for, the Secured Liabilities in accordance with Clause 32.5 (*Partial payments*) of the Facility Agreement; and
- (d) (upon termination of the Security Period) in payment of the surplus (if any) to the Chargor or other person entitled to it.

11.2 Clause 11.1 overrides any appropriation made by the Chargor.

11.3 Clause 11.1 is subject to the claims of any person having at law prior rights thereto, and is by way of variation of the provisions of the Act.

11.4 The Security Agent may, in its discretion, hold any amount of the Recoveries in an interest bearing suspense or impersonal account(s) in the name of the Security Agent with such financial institution (including itself) and for so long as the Security Agent shall think fit (the interest being credited to the relevant account) for later application under Clause 11.1 in respect of:

- (a) any sum to the Security Agent, any Receiver or any Delegate; and
- (b) any part of the Secured Liabilities;

that the Security Agent reasonably considers, in each case, might become due or owing at any time in the future.

## 12 EXPENSES AND INDEMNITY

12.1 The Chargor covenants to indemnify and to keep indemnified the Security Agent, each Finance Party and any Receiver (and any attorney, manager, delegate, agent or other appointee thereof (each a "**Relevant Person**")) (each of whom shall be entitled to be indemnified out of the Charged Assets) on demand (on a full indemnity basis) against all costs, expenses, charges, fees (including, without limitation, legal, accountancy, consultancy, and valuation fees, disbursements and out-of-pocket expenses), losses, liabilities and other sums (together "**Losses**") incurred by or

on behalf of the Security Agent, a Finance Party or any Receiver or Relevant Person in the execution or purported execution of any of the powers, authorities or discretions vested in them pursuant hereto and against all actions, proceedings, costs, claims or demands in respect of any matter or thing done or omitted in relation to the Charged Assets (including, without limitation, any realisation thereof). All such costs, charges, losses, liabilities, expenses and other sums incurred by the Security Agent, a Finance Party or any Receiver or Relevant Person shall carry interest (as well after as before judgement, liquidation, administration (whether out of court or otherwise), winding-up or bankruptcy) at the Default Rate of interest from the date of the same being incurred to the date of payment.

- 12.2 The Chargor agrees, as a separate obligation, to indemnify the Security Agent and any Receiver (each of whom shall be entitled to be indemnified out of the Charged Assets) against any loss or liability which the Security Agent or any Receiver incurs as a consequence of:

- (a) the Security Agent or any Receiver receiving any amount in respect of the Chargor's liability under this Deed; or
- (b) that liability being converted into a claim, proof, judgement or order;

in a currency other than pounds sterling.

- 12.3 For the avoidance of doubt, the Chargor's obligations to any Relevant Person under Clause 12.1 shall be reduced by any recovery already indefeasibly actually made by that Relevant Person in respect of such Losses under any other provision of the Finance Documents.

## 13 DELEGATION

The Security Agent and any Receiver may delegate by power of attorney or in any other manner to any person any right, power or discretion exercisable by the Security Agent or any Receiver under this Deed. Any such delegation may be made upon the terms (including power to sub delegate) and subject to any regulations which the Security Agent or such Receiver (as the case may be) may think fit. Neither the Security Agent nor any Receiver will 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 such delegate or sub delegate. References in this Deed to a Receiver or Security Agent shall be deemed to include delegates appointed in accordance with this Clause 13.

## 14 FURTHER ASSURANCES

- 14.1 The Chargor shall promptly do all such acts or execute all such documents (including

assignments, transfers, mortgages, charges, notices and instructions) as the Security Agent may specify (and in such form as the Security Agent may reasonably require in favour of the Security Agent or its nominee(s)):

- (a) to create, perfect, protect and maintain the Security created or intended to be created under or evidenced by this Deed (which may include the execution or re-execution of a mortgage, charge, assignment or other Security over all or any of the Charged Assets or for the exercise of any rights, powers and remedies of the Security Agent or the Finance Parties or a Receiver provided by or pursuant to this Deed or by law) including (without limitation) any further steps in connection with any of those actions;
- (b) to confer on the Security Agent, or confer on the Finance Parties, Security over any property and assets of it located in any jurisdiction equivalent or similar to the Security intended to be conferred by or pursuant to the Security Documents; and/or
- (c) (if an Event of Default is continuing) to facilitate the realisation of the assets which are, or are intended to be, the subject of the Transaction Security.

14.2 The Chargor shall take all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Security conferred or intended to be conferred on the Security Agent or the Finance Parties by or pursuant to this Deed.

14.3 The obligations of the Chargor under this Clause 14 shall be in addition to and not in substitution for (a) the covenants for further assurance deemed to be included herein by virtue of section 2(1)(b) of the Law of Property (Miscellaneous Provisions) Act 1994 and (b) Clause 17.4(d) (*Land*).

## **15 POWER OF ATTORNEY**

15.1 The Chargor by way of security hereby irrevocably appoints the following, namely:

- (a) the Security Agent;
- (b) each and every person to whom the Security Agent shall from time to time have delegated the exercise of the power of attorney conferred by this Clause;
- (c) any Receiver appointed hereunder and for the time being holding office as such; and
- (d) any administrator of the Chargor;

jointly and also severally to be its attorney or attorneys with full power of substitution and in its name and otherwise on its behalf to do, (in respect of (b) – (d) below at any time after the occurrence of a Default which is continuing) all acts and things and to sign, seal, execute, deliver, perfect and do all deeds, instruments, documents, acts and things which may be necessary or desirable for:

- (a) carrying out any obligation imposed on the Chargor by or pursuant to this Deed (including, but not limited to, the obligations of the Chargor under Clause 14 (*Further Assurances*) and the statutory covenant referred to in such Clause) which the Chargor has failed to do;
- (b) carrying out any action that the Security Agent, its delegates, any Receiver or any administrator deems necessary or desirable at any time after the Security constituted by this Deed becomes enforceable;
- (b) carrying out any sale, lease or other dealing by the Security Agent, its delegates, any Receiver or any administrator into effect;
- (c) upon an Event of Default which is continuing, conveying or transferring any legal estate or other interest in land or transferring ownership or title in any other Charged Assets or other property or assets or otherwise howsoever;
- (d) getting in the Charged Assets (if applicable);

and generally for enabling the Security Agent, its delegates, any Receiver and any administrator to exercise the respective powers conferred on them by or pursuant to this Deed or by law.

15.2 The Security Agent shall have full power to delegate the power conferred on it by this Clause, but no such delegation shall preclude the subsequent exercise of such power by the Security Agent itself or preclude the Security Agent from making a subsequent delegation thereof to some other person; any such delegation may be revoked by the Security Agent at any time.

15.3 The power of attorney hereby granted is as regards the Security Agent, its delegates, any Receiver and any administrator (and as the Chargor hereby acknowledges) granted irrevocably and for value as part of the security constituted by this Deed to secure proprietary interests in and the performance of obligations owed to the respective donees within the meaning of the Powers of Attorney Act 1971.

15.4 The Chargor hereby ratifies and confirms, and agrees to ratify and confirm, whatever any such attorney shall do or purport to do in the exercise or purported exercise of the power of attorney

contained in this Clause 15.

## **16 PRESERVATION OF RIGHTS**

### **16.1 Additional Security**

The security constituted by this Deed is in addition to and not in substitution for, and is not in any way to be merged into or in any way excluded or prejudiced by (nor shall it prejudice), any other security now or subsequently held by the Security Agent or any Finance Party for any of the Secured Liabilities or any other amount due by the Chargor to the Security Agent or any Finance Party. Neither shall it be prejudiced by (nor prejudice) any rights of set-off, combination of accounts, lien or other rights exercisable by the Security Agent or any Finance Party as banker.

### **16.2 Continuing Security**

The security constituted by this Deed is continuing and shall extend to the ultimate balance of the Secured Liabilities, regardless of any intermediate payment, performance or discharge in whole or in part, and shall continue in full force and effect until the end of the Security Period.

### **16.3 Reinstatement**

(a) If any payment by the Chargor or any other person or any release, discharge or arrangement given by the Security Agent or a Finance Party (whether in respect of the obligations of the Chargor, any Transaction Obligor or any other person, or any security for those obligations or otherwise) is avoided or reduced or must be restored as a result of liquidation, administration, bankruptcy or insolvency or any similar event, or otherwise howsoever (in each case whether in whole or part):

- (i) the liability of the Chargor shall continue or be reinstated as if the payment, discharge, avoidance, reduction or restoration had not occurred; and
- (ii) each Finance Party shall be entitled to recover the value or amount of that security or payment from the Chargor, as if the payment, discharge, avoidance, reduction or restoration had not occurred;

and any liability under this Clause 16.3 shall be secured by this Deed.

(B) The Finance Parties may freely concede or compromise any claim that any payment, security or other disposition is liable to avoidance or restoration.

#### 16.4 Waiver of defences

The obligations of the Chargor under this Deed, the security constituted by this Deed, and the rights, powers and remedies of the Security Agent and the Finance Parties hereunder or at law, shall in each case not be discharged, impaired or otherwise affected by (without limitation, and whether or not known to the Chargor or any Finance Party):

- (a) any time, indulgence, waiver (in whole or in part, and howsoever fundamental) or consent granted to, or composition with, any Obligor or any other person;
- (b) any delay or forbearance by any Finance Party in exercising its rights or remedies under any Finance Document;
- (c) the release of any Obligor or any other person under the terms of any composition, compromise or arrangement with any creditor of any Obligor or any other person;
- (d) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any Obligor or any other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- (e) any incapacity, disability, or lack of power, authority or legal personality of or dissolution or change in the members, constitution, identity, control, function or status of any Obligor or any other person;
- (f) any amendment, novation, supplement, extension (whether of maturity or otherwise howsoever) or restatement (in each case, however fundamental and of whatsoever nature and whether or not more onerous) or replacement of a Finance Document or any other document or security;
- (g) any change in the constitution or identity of the Finance Parties or the Security Agent, including (without limitation): (a) the absorption or amalgamation by or of any Finance Party or the Security Agent with any person; (b) the acquisition of all or part of any Finance Party's or the Security Agent's undertaking or assets by any other person; (c) any reconstruction or reorganisation of any Finance Party or the Security Agent of any kind; or (d) any assignment, transfer, novation, participation or other disposal (whether in whole or part) of any

Finance Party's rights and/or obligations under the Finance Documents or any of them;

- (h) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security, to the intent that the Chargor's obligations under this Deed shall remain in full force, as if there were no such unenforceability, illegality or invalidity;
- (i) any postponement, discharge, reduction, non-provability or other similar circumstance affecting any obligation of any other person under or in connection with any Finance Document or any other document or security resulting from any insolvency, liquidation, administration, bankruptcy or dissolution proceedings or similar proceedings or from any law, regulation or order so that each such obligation shall for the purposes of the Chargor's obligations under this Deed be construed as if there were no such circumstance;
- (j) any other act, omission, matter or thing (whether or not known to the Chargor or any Finance Party) which, but for this Clause 16.4, might reduce, release, diminish, discharge, impair, prejudice or otherwise affect the obligations of the Chargor under this Deed, the security constituted by this Deed, and/or the rights, powers and remedies conferred upon the Security Agent and the Finance Parties by any Finance Document or at law.

## 16.5 Confirmations

Without prejudice to the generality of Clause 16.4 (*Waiver of Defences*), each Chargor hereby expressly confirms that it intends that the Security constituted by (or intended to be constituted by) this Deed shall, in each case, extend from time to time to any (however fundamental and whether or not more onerous) variation, increase, extension or addition to or of any of the Finance Documents and/or any facility or amount made available under any of the Finance Documents for the purpose of or in connection with (without limitation) any of the following:

- (a) business or property acquisitions of any nature;
- (b) increasing working capital;
- (c) enabling investor distributions to be made;
- (d) carrying out restructurings;

- (e) refinancing any other indebtedness;
- (f) making existing or additional facilities available to existing or new borrowers;
- (g) increasing or decreasing any facility or increasing or decreasing the period for which any facility is available, or in which it or the Secured Liabilities are payable;
- (h) the changing of the identity of any party or parties (including, without limitation, the identity of the providers of any security, guarantees or indemnities);
- (i) any other variation or extension of the purposes for which any such facility or amount might be available from time to time;
- (j) any other variation, renewal, payment, compromise, discharge, extension or release, in whole or in part, of any Finance Document or any modifications to the terms thereof; and/or
- (k) any fees, costs and/or expenses (including, without limitation, legal, accountancy, consultancy, and/or valuation expenses) associated with any of the foregoing.

#### **16.6 Immediate recourse**

- (a) The Chargor waives any rights it may at any time have of first requiring the Security Agent or any Finance Party to:
  - (i) proceed against, or claim or demand payment from, any person; or
  - (ii) enforce any other rights or security, guarantees or indemnities; or
  - (iii) take any action or obtain judgment in any court against any person; or
  - (iv) require that any person be made a party to any proceedings against the Chargor; or
  - (v) have recourse first to any assets of any person; or
  - (vi) file any proof or claim in any insolvency, administration, bankruptcy, liquidation or similar proceedings relating to any other person;

in each case before claiming from, or proceeding or taking any such action against or in respect of, the Chargor under this Deed.

- (b) The waivers contained in Clause 16.1(a) apply irrespective of any law or any provision in any Finance Document to the contrary.
- (c) For the avoidance of doubt, the Chargor shall be bound by this Deed whether or not made a party to any legal or other proceedings against any Obligor or any other person for the recovery of any monies in respect of the Secured Liabilities and whether or not any formalities at any time required by the laws of England with regard to the rights or obligations of sureties shall or shall not have been observed.

#### **16.7 Appropriations**

During the Security Period each Finance Party (or any trustee or agent on its behalf) may:

- (a) refrain from applying or enforcing any other monies, security or rights held or received by that Finance Party (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and the Chargor shall not be entitled to the benefit of the same; and
- (b) hold in an interest bearing suspense account any monies received from the Chargor or on account of the Chargor's liability under this Deed.

#### **16.8 Non-competition**

- (a) During the Security Period, the Chargor shall not (unless the Security Agent otherwise directs, in which case it shall), after a demand or claim has been made or by virtue of any payment, performance or discharge by it under this Deed or any other Finance Document:
  - (i) take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights, guarantees, security or monies held, received or receivable by any Finance Party (or any trustee or agent on its behalf), nor exercise any other rights or remedies which the Chargor may have in respect thereof;
  - (ii) be entitled to any right of contribution or indemnity from any Obligor, or any other person in respect of any payment made or monies received on account of the

Chargor's liability under this Deed or the other Finance Documents;

- (iii) claim, rank, prove or vote as a creditor of any Obligor, or any other person or its estate, or in any liquidation or administration or similar proceedings, in each case in competition with any Finance Party (or any trustee or agent on its behalf);
- (iv) bring any legal or other proceedings for an order requiring any Obligor, or any other person to make any payment, or perform any obligation, in respect of which the Chargor has given any guarantee, undertaking or indemnity under the Finance Documents; nor
- (v) receive, claim or have the benefit of any payment, distribution or security from or on account of any Obligor, or any other person, or exercise any right of set-off or counterclaim as against any such person.

- (b) the Chargor shall hold in trust for, and forthwith pay or transfer to, the Security Agent for the Finance Parties any payment, distribution, contribution or benefit received by it either contrary to Clause 16.8(a) or as a result of a direction of the Security Agent under Clause 16.8(a).

#### **16.9 Security held by Chargor**

The Chargor shall not hold any security from any other person in respect of the Chargor's liability under this Deed and/or the other Finance Documents. The Chargor shall hold any security held by it in breach of this Clause 16.9 on trust for the Security Agent.

#### **16.10 Voluntary arrangements**

Without prejudice to the Security Agent's rights to recover such sums as a secured creditor under any Finance Document, on the approval of any voluntary arrangement in respect of any Transaction Obligor (or the implementation of any compromise or scheme of arrangement or any analogous procedure to any of the foregoing in any other jurisdiction) under which any Transaction Obligor's obligations to the Security Agent are compromised in any way, the Chargor shall as principal obligor be liable to the Security Agent for, and hereby undertakes to the Security Agent (as a separate and additional covenant) immediately on demand from time to time to pay to the Security Agent, amounts equal to the sums that would have been payable to the Security Agent by any Transaction Obligor, or any guarantor of any Transaction Obligor, had such compromise not occurred, and so that payment shall be made by the Chargor to the Security Agent under this Clause 16.10 in the amounts and at the times at which but for the said compromise any Transaction Obligor would have been obliged to make payment to the Security

Agent. The Chargor's liability under this Clause 16.10 shall, without prejudice to the generality of Clause 16.4 (Waiver of defences), not be affected in any way by the Security Agent voting in favour of (if the Security Agent choose to do so) any voluntary arrangement, compromise, scheme of arrangement or analogous procedure proposed by or in respect of any Transaction Obligor.

## **17 MISCELLANEOUS**

### **17.1 Covenant to Pay**

- (a) The Chargor covenants with the Security Agent (as agent and security trustee for and on behalf of itself and the other Finance Parties) that it shall on demand pay, perform or discharge the Secured Liabilities on the due date or dates therefor.
- (b) The Chargor covenants with the Security Agent (as agent and trustee for and on behalf of itself and the other Finance Parties) to pay interest on the Secured Liabilities (to the extent not otherwise charged pursuant to the Facility Agreement) on demand from the due date or dates therefor until full discharge (whether before or after judgement, liquidation, winding-up, bankruptcy or administration (whether out of court or otherwise)), such interest to accrue from day to day (on the basis of a 365 day year) calculated at the Default Rate of interest. The Security Agent may compound interest if it is not paid when due.

### **17.2 The Land Registry**

The Chargor shall, at the direction of the Security Agent, promptly apply on Form RX1 to the Land Registry (and the Chargor hereby consents to any such application being made by the Security Agent) for a restriction in the following terms to be entered on the registers of each title of any such property registered at the Land Registry in its name and against which this Deed may be noted (including, without limitation, the Mortgaged Property):

"No disposition [*or specify details*] 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 [*date*] in favour of [*chargee*] referred to in the charges register or his conveyancer."

### **17.3 Tacking**

- (a) The obligation (if any) on the part of the Lenders to make further advances to the Chargor

under the Facility Agreement is deemed to be incorporated in this Deed as if set out in this Deed.

- (b) Each Chargor shall promptly apply on form CH2 (and the Chargor hereby consents to any such application being made by the Security Agent) to the Land Registry for a note of such obligation to be entered on the registers of each title of all present and future registered freehold, commonhold and leasehold property of the Chargor (including, without limitation, the Mortgaged Property).

#### **17.4 Land**

- (a) If the title to any of the Mortgaged Property at any time is not registered at the Land Registry, the Chargor shall ensure that no person other than the Chargor shall be registered under the Land Registration Act 2002 as the proprietor of all or any part of such Mortgaged Property without the prior consent in writing of the Security Agent.
- (b) In the case of the title to any of the Mortgaged Property which is not registered at the Land Registry (including, in particular, any unregistered Mortgaged Property subject to compulsory first registration at the Land Registry under the provisions of the Land Registration Act 2002 as at the date of this Deed), the Chargor shall promptly:
  - (i) apply on Form FR1 for the first registration of the title to such property at the Land Registry or on Form CM1 in the case of any such Mortgaged Property to be registered at the Land Registry as commonhold property;
  - (ii) apply on Form RX1 for a restriction against such title in the form set out in Clause 17.2 of this Deed (as applicable);
  - (iii) make an application on Form CH2 pursuant to Clause 17.3 of this Deed; and
  - (iv) pending such applications, (unless the Security Agent otherwise directs) register this Deed in respect of such property at the Land Charges Registry pursuant to the Land Charges Act 1972;

and the Chargor hereby consents, in each such case, to any such application being made by the Security Agent.

- (c) Whether or not the title to the Mortgaged Property is registered at the Land Registry, in the event that any caution against first registration or any notice (whether agreed or unilateral) is registered against the title to all or any part of the Mortgaged Property, the

Chargor shall immediately provide the Security Agent with full particulars of the circumstances relating to such registration or notice and if such caution or notice shall have been registered in order to protect a purported interest the creation of which is not permitted under this Deed and/or the Finance Documents, the Chargor shall immediately and at its expense take such steps as the Security Agent may require to ensure that the caution or notice (as applicable) is withdrawn or cancelled.

- (d) In relation to any freehold, commonhold or leasehold or other interest in property acquired by or on behalf of the Chargor on or after the date of this Deed, the Chargor shall (at its own expense):
  - (i) notify the Security Agent immediately upon the occurrence of such acquisition (and for the purposes of this Clause 17.4(d)(i) the date of exchange of contracts for such an acquisition shall be deemed the date of acquisition);
  - (ii) where the title to any such property is registered at the Land Registry, promptly following completion of the acquisition apply to be registered as the proprietor of the registered estate acquired in relation to such property (and the Chargor hereby consents to any application that the Security Agent may require to be made to the Land Registry for the registration of an agreed unilateral notice on Form UN1 against the relevant registered title at the Land Registry for the protection of the Security constituted by this Deed);
  - (iii) where the title to any such property is not registered at the Land Registry, promptly comply with its obligations contained in this Clauses 17.4(a) to 17.4(b) (*Land*) of this Deed in respect of such property;
  - (iv) where the title to any such property represents the transfer of either part of a commonhold unit or part of the common parts of land registered as a freehold estate in commonhold land under the Commonhold and Leasehold Reform Act 2002, also procure that the application to register the transfer is accompanied by an application on Form CM3 to register the commonhold community statement and/or the memorandum and articles of association (as amended in relation to the transfer as required by Rule 15 or, as appropriate, Rule 16 of the Commonhold (Land Registration) Rules 2004);
  - (v) at its cost, in any such case, execute and deliver to the Security Agent, on demand, a legal mortgage (in substantially the same terms as this Deed, but to include such representations and undertakings, or such amendments, as the Security Agent may reasonably require) or, as the case may be, a standard

security (in substantially the same terms as the standard security granted by the Chargor, in favour of the Security Agent on or around the date hereof) in favour of the Security Agent in respect of such freehold, heritable, commonhold or leasehold or other interest in property; and

- (vi) in any event, give the Land Registry written notice of this Deed and procure that notice of it be duly noted in the registers to each title of any such property in accordance with the provisions of this Deed;

and, in any such case, shall promptly after the completion of any such registration provide the Security Agent with a copy of the relevant Title Information Document issued by the Land Registry recording such registration(s) within the applicable priority period.

#### **17.5 New Accounts**

If the Security Agent or any other Finance Party receives, or is deemed to be affected by, notice, whether actual or constructive, of any subsequent charge or other interest affecting any Charged Asset and/or the proceeds of sale of any Charged Asset, the Security Agent or the relevant Finance Party (as the case may be) may open a new account with the relevant Chargor. If the Security Agent or the relevant Finance Party (as the case may be) does not open a new account, it shall nevertheless be treated as if it had done so at the time when it received or was deemed to have received notice. As from that time all payments made to the Security Agent or the relevant Finance Party (as the case may be) will be credited or be treated as having been credited to the new account and will not operate to reduce any amount for which this Deed is security.

#### **17.6 Certificates and Determinations**

Any certification or determination by the Security Agent of a rate or amount under any Finance Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

#### **17.7 Stamp duties**

The Chargor shall pay, and within five (5) Business Days of demand indemnify, the Security Agent against any cost, loss or liability it incurs in relation to all stamp duty, SDLT, registration and/or other similar taxes payable in respect of this Deed from time to time, and any performance or enforcement of it.

## **17.8 Collateral Security**

Where any Security constituted under this Deed initially takes effect as a collateral or further Security to another Security intended to be constituted under this Deed or which otherwise secures all or any part of the Secured Liabilities to which the Chargor is a party then, despite any receipt, release or discharge indorsed on or given in respect of or under the second mentioned Security, the first mentioned Security will operate as an independent Security.

## **17.9 Suspense Accounts**

All monies received, recovered or realised by the Security Agent under this Deed (including the proceeds of any conversion of currency) may in the discretion of the Security Agent be credited to an interest bearing suspense or impersonal account(s) in the name of the Security Agent with such financial institution (including itself) for so long as the Security Agent shall think fit (the interest being credited to the relevant account) pending the application from time to time of those monies in the Security Agent's discretion in accordance with the provisions of Clause 11 (*Application of proceeds*) (and save as expressly provided herein no Obligor will be entitled to withdraw any amount at any time standing to the credit of any suspense or impersonal account referred to above).

## **17.10 Exercise of Powers**

Any liberty or power which may be exercised or any determination which may be made under this Deed by the Security Agent or any Receiver may, in respect of the Transaction Obligors, be exercised or made at his absolute and unfettered discretion without any obligation to give reasons for doing so.

## **17.11 Trustee Provisions**

- (a) The Security Agent shall hold the Security Property constituted by or in connection with this Deed, including:
  - (i) the benefit of this Deed;
  - (ii) the Security constituted by this Deed, including the proceeds thereof; and
  - (iii) all undertakings, rights, title, interests, monies and other assets contained in, constituted by or received or recovered by the Security Agent under or in connection with, this Deed;

in each case in trust for the benefit of the Finance Parties on the terms and subject to the conditions set out in this Deed and the Finance Documents.

- (b) The replacement, resignation or retirement of the person for the time being acting as Security Agent, and the appointment of any successor, shall in no way prejudice: (a) the Security created or intended to be created by the Security Documents (including this Deed); (b) the obligations of the Transaction Obligors (including the Chargor) under the Finance Documents (including this Deed); (c) the rights, powers and remedies of the Security Agent and/or the other Finance Parties under the Finance Documents (including this Deed); nor (d) the trust established pursuant to this Deed and the other Finance Documents.

#### **17.12 Constitutional Documents**

The Chargor hereby certifies that its creation by this Deed of security in favour of the Security Agent (as agent and trustee for and on behalf of itself and the other Finance Parties) does not contravene any of the provisions of its constitutional or organisational documents.

#### **17.13 Assignment**

- (a) The Chargor may not assign, transfer, novate or otherwise dispose of, or declare any trust of, any of its rights and/or obligations under this Deed. This Deed shall be binding on the successors, transferees or assigns of the Chargor.
- (b) The Security Agent may at any time assign, transfer, novate, charge or otherwise dispose of all or any of its rights and benefits under this Deed to any person to whom it may assign, transfer, charge or otherwise dispose of all or any part of its rights and benefits under the Facility Agreement. The Security Agent may at any time resign or retire as Security Agent in accordance with the terms of the Facility Agreement (and the appointment of any successor or replacement shall be governed by the terms of the Facility Agreement).

#### **17.14 Partial Invalidity**

If, at any time, any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

**17.15 Remedies, waivers, amendments and consents**

- (a) No failure nor any delay in exercising, on the part of any Finance Party (including the Security Agent) or any Receiver, any right, remedy, power or discretion under this Deed (a "Right") shall operate as a waiver of any such Right or constitute an election to affirm this Deed. No single or partial exercise of any Right shall prevent any further or other exercise of any other Right. The Rights provided in this Deed are cumulative and not exclusive of any rights, remedies, powers or discretions provided by law.
- (b) Any provision of this Deed may be amended, supplemented or novated only if the Security Agent agrees in writing, in accordance with Clause 38 (*Amendments and Waivers*) of the Facility Agreement. Any waiver of, and any consent or approval by the Security Agent under, any provision of this Deed shall not be effective unless it is in writing, and may be given subject to any conditions thought fit by the Security Agent, may be withdrawn or modified at any time, and shall be effective only in the instance, and for the purpose, for which it is given.

**17.16 Delivery**

The signature or sealing of this Deed by or on behalf of a party shall constitute an authority to the solicitors, or an agent or employee of the solicitors, acting for that party in connection with this Deed, and, in the case of the Chargor, the Security Agent's solicitors to date it and to deliver it as a deed on behalf of that party.

**17.17 Set-off**

- (a) A Finance Party (including the Security Agent) may set off any matured obligation due from the Chargor under the Finance Documents (including this Deed) (to the extent beneficially owned by that Finance Party) against any matured obligations owed by that Finance Party to the Chargor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Finance Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.
- (b) Without prejudice to Clause 17.19(a) above, and to Clause 8.2 (*Right of Appropriation of Financial Collateral*), upon the security constituted by this Deed becoming enforceable, the Finance Parties may, without notice or further demand, withdraw, apply, transfer, appropriate, or set-off any or all of the monies standing to the credit of the Accounts in or towards payment or other satisfaction of the Secured Liabilities in accordance with Clause 11 (*Application of Proceeds*).

**17.18 No withholding**

The Chargor shall make all payments under or in respect of this Deed without set-off or counterclaim and free and clear of any withholding or deduction, save as may be required by law in which event the provisions of Clause 12 (*Tax Gross Up and Indemnities*) and Clause 15 (*Mitigation by the Lenders*) of the Facility Agreement shall apply.

**17.19 Perpetuity**

The perpetuity period applicable to the trusts constituted by this Deed shall (if relevant) be 125 years.

**18 RELEASE AND RE-ASSIGNMENT**

Upon the expiry of the Security Period (or earlier only in the Security Agent's absolute discretion), and subject to Clauses 1.3 and 16.3, the Security Agent shall, at the request and cost of the Chargor, take whatever action is necessary to release and/or reassign (without recourse or warranty) the applicable Charged Assets from the security constituted by this Deed.

**19 NOTICES****19.1 Communications in writing**

Any communication to be made under or in connection with this Deed shall be made in writing and, unless otherwise stated, may be made by letter.

**19.2 Addresses**

The address (and the department or officer, if any, for whose attention the communication is to be made) of each party to this Deed for any communication or document to be made or delivered under or in connection with this Deed is that identified with its name below in the execution block or any substitute address or department or officer as a party to this Deed may notify to the other party by not less than five Business Days' notice.

**19.3 Delivery**

- (a) Subject to Clause 19.5, any communication or document made or delivered under or in connection with this Deed will only be effective, if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post postage

prepaid in an envelope addressed to it at that address and, if a particular department or officer is specified as part of its address details provided under Clause 19.2, if addressed to that department or officer.

- (b) Any communication or document to be made or delivered to the Security Agent will be effective only when actually received by the Security Agent and then only if it is expressly marked for the attention of the department or officer identified with the Security Agent's signature below in the execution block (or any substitute department or officer as the Security Agent shall specify for this purpose).
- (c) Any communication or document which becomes effective, in accordance with Clauses 19.3(a) to 19.3(b), after 5:00 p.m. in the place of receipt shall be deemed only to become effective on the next following Business Day.

#### **19.4 Electronic communication**

- (a) Any communication to be made between the parties to this Deed under or in connection with this Deed may be made by electronic mail or other electronic means to the extent the parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication and if the parties:
  - (i) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
  - (ii) notify each other of any change to their address or any other such information supplied by them by not less than five Business Days' notice.
- (b) Any electronic communication made between the parties to this Deed will be effective only when actually received in readable form and in the case of any electronic communication made by the Chargor to the Security Agent only if it is addressed in such a manner as the Security Agent shall specify for this purpose.
- (c) Any electronic communication which becomes effective, in accordance with Clause 19.4(b), after 5:00 p.m. in the place of receipt shall be deemed only to become effective on the next following Business Day.

### **19.5 Proof of service on the Chargor**

In proving service of a notice, communication or other document on the Chargor it shall be sufficient to prove that either the envelope containing such notice was addressed to the address of the Chargor as set out in the execution block below and either delivered to or left at that address or delivered into the custody of the postal authorities as a prepaid first class letter.

### **19.6 English language**

Any notice or other document given under or in connection with this Deed must be in English.

## **20 COUNTERPARTS**

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

## **21 GOVERNING LAW**

This Deed (and all non-contractual obligations arising out of or in connection with it) are governed by, and shall be construed in accordance with, English law.

## **22 ENFORCEMENT**

### **22.1 Jurisdiction**

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute regarding the existence, validity or termination of this Deed or any non-contractual obligations arising out of or in connection with it) (a "**Dispute**").
- (b) The parties to this Deed agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no party to this Deed will argue to the contrary.
- (c) This Clause 22.1 is for the benefit of the Security Agent and the Finance Parties only. As a result, no Finance Party (including the Security Agent) shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Security Agent (and the Finance Parties) may take concurrent proceedings in any number of jurisdictions.

- (d) Each Chargor hereby irrevocably and unconditionally:
  - (i) waives any objection to the jurisdiction of the English courts dealing with (and agrees not to raise or claim immunity from) any proceedings for such enforcement of this Deed (and shall ensure that no such claim is made on its behalf);
  - (ii) consents to the issue of any process, or the giving of any relief, in connection with those proceedings;
  - (iii) waives all immunity from suit, attachment and/or execution, that it or its assets may now or in the future have; and
  - (iv) expressly consents to and acknowledges the terms of this Clause 22.1.

## 23 THIRD PARTY RIGHTS

23.1 Nothing in this Deed is intended to confer on any person any right to enforce any provision of this Deed which that person would not have had but for the Contracts (Rights of Third Parties) Act 1999 (or otherwise), save as set out in Clause 23.2 below.

23.2 Any Receiver appointed by the Security Agent, any Relevant Person (including, without limitation, any Finance Party) and any lawful delegate or sub-delegate of the Security Agent or Receiver may take the benefit of:

- (a) any covenant or provision in this Deed by which a Chargor is expressed to give an undertaking or indemnity to, or to release or waive any claim against, that person; and/or
- (b) any covenant or provision of this Deed which confers, or purports to confer, any power, right, remedy or benefit upon that person;

provided that:

- (a) until the Secured Liabilities have been discharged in full, no such person may exercise or otherwise enforce any such right without the prior written consent of the Security Agent; and
- (b) notwithstanding such rights, this Deed may be restated, varied amended, supplemented, or substituted in any respect by the Security Agent and the Chargor whether to remove

such rights in whole or in part or otherwise whatsoever or novated, or assigned, released or discharged by the Security Agent without, in any such case, notice to or consent from any such person.

**IN WITNESS** of which this document has been duly executed and delivered as a deed by each of the parties on the day and the year first stated above.

## Schedule 1

### Form of Notice to Contract Counterparties

[On Headed Notepaper of Chargor]

[Date]

[Contract Counterparty]

Dear Sirs

Re: [Describe agreement]

- (1) We refer to the [contract] dated [♦] 201[ ] and made between [ ] (1) and [Contract Counterparty] (2) (the "**Agreement**")
- (2) We, [ ] (the "**Chargor**"), give you notice that by a security agreement (the "**Security Agreement**") dated [♦] 2017 between the Chargor (1) and HSBC Bank PLC (the "**Security Agent**") as security agent and trustee for itself and each of the other Finance Parties (as defined in the Security Agreement) (2) we assigned (by way of security) and/or charged all our right, title and interest in and to the Agreement and the monies from time to time due to the Chargor arising from that Agreement to the Security Agent upon the terms set out in the Security Agreement.
- (3) We irrevocably and unconditionally instruct and authorise you (notwithstanding any previous instructions which we may have given to the contrary):
  - (i) [subject to (ii) below, to apply all sums payable by you under the Agreement to *[specify account]*];
  - (ii) if you receive notice from the Security Agent at any time that the security has become enforceable, to pay all sums payable by you under the Agreement to such other account as the Security Agent may direct;

- (iii) to disclose to the Security Agent without further reference to or authority from us and without enquiry by you as to the justification of such disclosure, such information relating to the Agreement as the Security Agent may request you to disclose; and
  - (iv) to comply with the terms of any written notice, statement or instructions which you receive at any time from the Security Agent relating to the Agreement.
- (4) Please note that:
- (i) we shall remain liable to you to perform all obligations assumed by us under the Agreement, and the Security Agent, its agents and/or delegates, any receiver or any other similar person is under no obligation of any kind whatsoever thereunder; and
  - (ii) we may not agree to amend or waive or surrender the terms of, or assign or transfer our interest in, or give any consent or approval under the Agreement, in each case without the prior written consent of the Security Agent.
- (5) Save as noted above, we will remain entitled to exercise all our rights, powers and discretions under the Agreement, and you should continue to give notices under the Agreement to us, unless and until you receive notice from the Security Agent to the contrary. In this event, all the rights, powers, remedies and discretions (including, without limitation, any right to compel performance of the Agreement) will be exercisable by (or at the direction of), and notices must be given to, the Security Agent or as it directs.

This letter (and all non-contractual obligations arising out of or in connection with it) are governed by English law, and is subject to the exclusive jurisdiction of the English courts.

The instructions in this letter may not be revoked or amended without the prior written consent of the Security Agent.

Please acknowledge receipt of this letter, and confirm your agreement to the above, by signing the attached form of acknowledgement and returning it to the Security Agent at [ ] for the attention of: [ ]

Yours faithfully

.....  
For and on behalf of  
[Chargor]

**Form of Acknowledgement from  
Contract Counterparties**

Date:

[       ]

[♦]

in its capacity as Security Agent

**For the attention of: [♦]**

Dear Sirs

Re:     [insert Agreement]

We acknowledge receipt of a notice (the "Notice") dated [♦] 201[ ] and addressed to us by [       ] (the "Chargor") regarding the Agreement (as defined in the Notice) mentioned in such Notice and we accept the instructions and authorisations contained in, and agree to comply with the terms of, such Notice.

We acknowledge and confirm that:

- [(a)     (notwithstanding any terms of the Agreement to the contrary) we hereby consent to the creation of the [assignment (by way of security)] [[and/or] charge] in respect of the Agreement as referred to in the Notice;]
- (b)     as at the date of this Acknowledgement, we have not received any notice that any third party has or will have any right or interest in, or has made or will be making any claim or demand or taking any action in respect of the rights of the Chargor under or in respect of the Agreement;
- (c)     we will pay all sums due, and give notices, under the Agreement as directed in the Notice;
- (d)     the Chargor may not agree to amend, surrender or waive the terms of, or assign or transfer its interest in, or give any consent or approval under, the Agreement without your consent; and

- (e) all remedies provided for in the Agreement (or otherwise available) and all rights, interests and benefits under (and all rights to compel performance of) the Agreement shall belong to and be exercisable by you or as you direct.

This letter (and all non-contractual obligations arising out of or in connection with it) are governed by English law, and is subject to the exclusive jurisdiction of the English courts.

Yours faithfully

.....

For and on behalf of

**[Contract Counterparty]**

EXECUTION PAGES

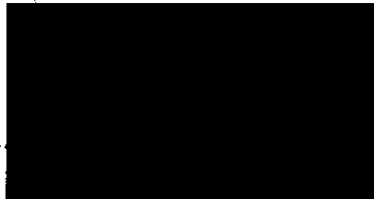
The Chargor

Executed as a deed by

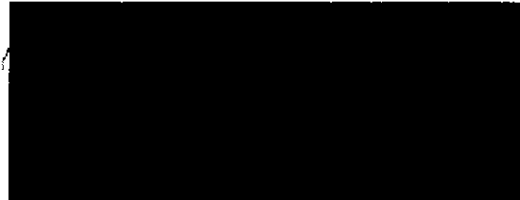
**MORRISON STREET HOTEL LIMITED**

acting by a director in the  
presence of a witness:

.....  
Director



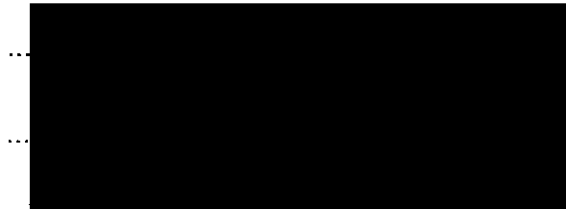
Witness Signature:



Witness name (BLOCK CAPITALS):

.....PATRICIA ZINNECKER.....

Witness occupation (BLOCK CAPITALS):



Witness address (BLOCK CAPITALS):

.....  
.....

Address for notices:

Address: 1 Morrison Street Link, Edinburgh, Scotland, EH3 8DN

FAO: Daniel Roger, Maher Nimer

**The Security Agent**

Executed as a deed by a duly authorised official  
of **HSBC BANK PLC**

Signed by...

Print name...

Attorney of **HSBC BANK PLC**

Witness Signature:

Witness name (BLOCK CAPITALS):

Witness occupation (BLOCK CAPITALS):

Witness address (BLOCK CAPITALS):

[Redacted Signature]

*Richard Hollingsworth*

[Redacted Address]

Address for notices:

Address: HSBC Bank PLC  
137 Regents Street  
London  
W1B 4HZ

FAO: Siobhan Gall, Rosa Delchini