



**Registration of a Charge**

Company name: **Gloag Serviced Apartments Limited**

Company number: **SC533189**



X6I9NBFS

Received for Electronic Filing: **01/11/2017**

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**Details of Charge**

Date of creation: **30/10/2017**

Charge code: **SC53 3189 0002**

Persons entitled: **THE ROYAL BANK OF SCOTLAND PLC**

Brief description: **N/A**

**Contains fixed charge(s).**

**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: **ADDLESHAW GODDARD LLP**



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

Company number: 533189

Charge code: SC53 3189 0002

The Registrar of Companies for Scotland hereby certifies that a charge dated 30th October 2017 and created by Gloag Serviced Apartments Limited was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 1st November 2017 .

Given at Companies House, Edinburgh on 2nd November 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



Date of delivery 30 OCTOBER 2017

**GLOAG SERVICED APARTMENTS LIMITED**

**THE ROYAL BANK OF SCOTLAND PLC**

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**ASSIGNATION IN SECURITY  
of development documents  
relating to Kintore House, Queen  
Street, Edinburgh**

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**THIS ASSIGNATION IN SECURITY IS DELIVERED ON 30 OCTOBER 2017 AND IS MADE BETWEEN**

- (1) **THE ROYAL BANK OF SCOTLAND PLC** incorporated in Scotland (registered number SC90312) and having its registered office at 36 St Andrew Square, Edinburgh EH2 2YB (the **Lender**); and
- (2) **GLOAG SERVICED APARTMENTS LIMITED** incorporated in Scotland (registered number SC533189) and having its registered office at 56 George Street, Edinburgh EH2 2LR (the **Assignor**)

NOW THEREFORE THE PARTIES HAVE AGREED AND DO HEREBY AGREE as follows:-

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Assigation, the following definitions will apply:-

**Administrator** any person appointed to be an administrator of the Assignor pursuant to paragraph 14 of Schedule B1 Insolvency Act.

**Agreements** the agreements specified in the Schedule.

**Assigned Assets** the Agreements, the Authorisations and the Collateral Instruments including, in each case:

- (a) the right to demand and receive all monies whatsoever payable to or for its benefit under or arising from any of them;
- (b) all remedies provided for in any of them or available at law in relation to any of them;
- (c) the right to compel performance of any of them;
- (d) the benefit of all warranties and indemnities contained therein;
- (e) any right to terminate or rescind the same; and
- (f) all other rights, interests and benefits whatsoever accruing to or for the Assignor's benefit arising from any of them

together with the Proceeds.

<b>Authorisation</b>	all authorisations (statutory or otherwise) held or required in connection with any Agreement, and all rights in connection with them.
<b>Business Day</b>	any day (other than a Saturday, Sunday or public holiday) during which clearing banks in the City of London are open for normal business.
<b>Collateral Instruments</b>	all other contracts, guarantees, indemnities, undertakings, appointments, warranties, bonds, Security and other documents in connection with the Agreements and/or the Development to which the Assignor is a party, or which are in the Assignor's favour or of which the Assignor (directly or indirectly) has the benefit.
<b>Companies Act</b>	the Companies Act 2006.
<b>Default Rate</b>	2 per cent. (2%) per annum.
<b>Development</b>	the re-development of the Property to deliver a circa. 82 unit aparthotel.
<b>Event of Default</b>	<ul style="list-style-type: none"><li>(a) the Assignor fails to pay all or any of the Secured Liabilities following a demand for payment by the Lender made in accordance with the terms of the Finance Documents;</li><li>(b) any step is taken (including the making of an application or the giving of any notice) by the Assignor or by any other person to appoint an Administrator;</li><li>(c) any step is taken (including the making of an application or the giving of any notice) by the Assignor or by any other person to wind up or dissolve the Assignor or to appoint a liquidator, trustee, manager or receiver, administrative receiver or similar officer of the Assignor or any part of its undertaking or assets;</li><li>(d) the making of a request by the Assignor for the appointment of a Receiver;</li></ul>

- (e) any analogous procedure or step to those listed in (b) to (d) above is taken under the laws of any Relevant Jurisdiction; and/or
- (f) the Assignor breaches any of the provisions of any Finance Document or an event of default (howsoever described) occurs under any Finance Document.

**Facility Agreement** the facility agreement dated on or about the date of this Assignment and made between (1) the Assignor (as borrower) and (2) the Lender (as lender) pursuant to which the Lender has agreed to make certain facilities available to the Assignor.

**Finance Documents** this Assignment, the Facility Agreement and any other agreement or document designated as a Finance Document by the Assignor and the Lender from time to time.

**Permitted Security** any Security expressly permitted in accordance with the Facility Agreement.

**Proceeds** under or in connection with any Assigned Asset:

- (a) all present and future debts, rentals, royalties, fees, VAT and monetary claims due or owing to the Assignor and all other amounts recoverable or receivable by the Assignor from other persons or due or owing to the Assignor (whether actual or contingent and whether arising under contract or in any other manner whatsoever);
- (b) the benefit of all rights and remedies of any nature relating to any of the foregoing including claims for damages and other remedies for non-payment of the same, all entitlements to interest, negotiable instruments, guarantees, indemnities, Security, reservations of property rights, rights of tracing and unpaid vendor's liens and similar associated rights; and
- (c) all proceeds of any of the foregoing.

**Property** 74-77 Queen Street, Edinburgh, EH2 4NF.

**Receiver** any receiver, manager or receiver and manager appointed in

respect of the Assignor.

**Relevant Jurisdiction** in relation to the Assignor:

- (a) its jurisdiction of incorporation;
- (b) any jurisdiction where any Assigned Asset is situated or the obligations contained within such Assigned Asset are performed or to be performed; and
- (c) any jurisdiction where it conducts its business.

**Secured Liabilities** all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally or as principal debtor, guarantor, surety or in any other capacity whatsoever or as the equivalent obligor under the laws of any other jurisdiction) of the Assignor to the Lender and including any obligations and liabilities of the Assignor to third parties assigned, novated or otherwise vested in the Lender provided that no obligation or liability shall be included in this definition of "Secured Liabilities" to the extent that, if it were so included, this Assignment (or any part of it) would constitute unlawful financial assistance within the meaning of sections 678 and 680 of the Companies Act.

**Security** a mortgage, charge, pledge, trust, assignment by way of security, assignation in security, standard security, lien, hypothecation or other encumbrance, arrangement or security interest securing any obligation of any person or any other agreement or arrangement having a similar effect or any title retention rights or set-off rights created by agreement.

**Security Period** the period beginning on the date of this Assignment and ending on the date on which:

- (a) all of the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full; and
- (b) the Lender has no further commitment, obligation or liability to the Assignor under or pursuant to the Finance Documents and any other document.

**Schedule** the schedule in three parts annexed as relative to this Assignment.



**Taxes** any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

## 1.2 Interpretation

1.2.1 In this Assignment, unless the context otherwise requires:-

- (a) references to clauses are to be construed as references to the clauses of this Assignment;
- (b) a provision of law includes a reference to that provision as replaced, modified or re-enacted from time to time and any subordinate legislation made under that statutory provision from time to time, in each case whether before or after the date of this Assignment;
- (c) words importing the plural shall include the singular and vice versa;
- (d) a person includes any individual, firm, company, corporation, government, state or agency of state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality);
- (e) a **Party**, the **Assignor**, or the **Lender** shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
- (f) **disposal** includes any sale, transfer, assignation, grant, lease, licence, declaration of trust or other disposal, whether voluntary or involuntary and **dispose** will be construed accordingly;
- (g) a company shall be construed so as to include any company, corporation or other body corporate, wherever and however incorporated or established;
- (h) writing shall, subject to clause 10, include any mode of reproducing words in a legible and non-transitory form;
- (i) this Assignment or any provision of this Assignment or any other agreement, document or instrument is to this Assignment, that provision or that agreement, document or instrument as amended, novated, supplemented, extended, restated or acceded to from time to time;
- (j) a time of day is a reference to Edinburgh time;
- (k) this Assignment shall include the Schedule; and

(l) an Event of Default is **continuing** if it has not been waived by the Lender.

- 1.3 The contents table and headings in this Assignment are for convenience only and do not affect the interpretation or construction of this Assignment.
- 1.4 Words importing the singular include the plural and vice versa and words importing a gender include every gender.
- 1.5 The words "other", "include", "including" and "in particular" do not limit the generality of any preceding words and any words which follow them shall not be construed as being limited in scope to the same class as the preceding words where a wider construction is possible.
- 1.6 Where at any time (from time to time) there is a conflict between any term of this Assignment and the terms of the Facility Agreement, the relevant terms of the Facility Agreement shall prevail.

## **2. COVENANT TO PAY**

The Assignor covenants with the Lender that it will pay or discharge on demand the Secured Liabilities when they fall due.

## **3. DEFAULT INTEREST**

- 3.1 Any amount which is not paid under this Assignment when due shall bear interest (both before and after judgment and payable on demand) from the due date until the date on which such amount is unconditionally and irrevocably paid and discharged in full on a daily basis at the Default Rate.
- 3.2 Default Interest will be calculated on the basis of the actual number of days elapsed and a year of 365 days and will be compounded at quarterly intervals.

## **4. SECURITY**

### **4.1 Assignment**

As a continuing security for the payment of the Secured Liabilities, the Assignor hereby assigns to the Lender its whole right, title, interest and benefit, present and future, in and to the Assigned Assets.

### **4.2 Delivery of intimation**

On execution of this assignment, the Assignor will promptly execute and deliver to each other party to the Agreements a notice substantially in the form set out in Part 2 of the Schedule and will use all reasonable endeavours to procure that the Assignor receives an

acknowledgement from each such party substantially in the form set out in Part 3 of the Schedule.

#### **4.3 Negative pledge**

The Assignor covenants with the Lender that it shall not without the prior written consent of the Lender:

- 4.3.1 create, purport to create or permit to subsist any Security upon any of the Assigned Assets, save for any Permitted Security; or
- 4.3.2 sell, assign, dispose of or otherwise transfer whether by a single transaction or a number of transactions and whether related or not, the whole or any part of the Assigned Assets.

#### **4.4 Liability**

No obligation shall be assumed by the Lender (or its nominee) in respect of the Assigned Assets as a result of the execution and delivery of this Assignment and (in particular but without limitation to such generality) no liability will be incurred by the Lender (or its nominee) as a result of any failure by the Assignor to comply with all or any of its obligations in relation to the Assigned Assets.

### **5. ENFORCEMENT**

#### **5.1 When Assignment is enforceable**

The security constituted by this Assignment shall become immediately enforceable upon the occurrence of an Event of Default and for so long as it is continuing.

#### **5.2 Powers on enforcement**

5.2.1 At any time when the security constituted by this Assignment is enforceable in accordance with Clause 5.1 above, the Lender shall be and is entitled (but not obliged), without notice to the Assignor or any other person, either in its own name or in the name of the Assignor and in such manner and upon such terms and conditions as it thinks fit to exercise all and/or any rights and powers in relation to all or any of the Assigned Assets which could be exercised by the absolute owner thereof, including (without limitation):-

- (a) the power to sell, call in, collect, convert into money or otherwise dispose of all or any of the Assigned Assets with full power to sell any of the same either together or in parcels and either by public auction or private contract and for such consideration (whether in cash, securities or other assets and whether

deferred or not) as the Lender may think fit and with full power to buy in or rescind or vary any contract of sale of all or any of the Assigned Assets and to resell the same without being responsible for any loss which may be occasioned thereby and for the purposes aforesaid or any of them to execute and do all such assurances and things as it shall think fit;

- (b) the power to receive all or any money payable in respect of or in connection with all or any of the Assigned Assets;
- (c) to bring, prosecute, enforce, defend and abandon actions, suits and proceedings in relation to the Assigned Assets;
- (d) the power to negotiate, compromise and/or agree any dispute arising out of all or any of the Assigned Assets; and
- (e) to do all such other acts and things it may consider necessary or expedient for the realisation of the Assigned Assets or incidental to the exercise of any of the rights conferred on the Lender under or by virtue of this Assignment and to concur in the doing of anything which the Assignor has the right to do and to do any such thing jointly with any other person.

5.2.2 The Lender may exercise all or any of the powers referred to in this Assignment in such manner and to such extent as the Lender considers appropriate (in its sole discretion) and in particular (but without limitation to the generality of the foregoing) shall not be under any duty to maximise the proceeds arising from the Assigned Assets.

5.2.3 Neither the Lender nor any nominee of the Lender shall be liable to account to the Assignor except in respect of the actual receipts of the Lender or such nominee and shall not be liable to the Assignor for any loss or damage arising from the exercise by the Lender or such nominee of all or any of the powers conferred by this Assignment other than arising out of wilful misconduct of the Lender.

5.2.4 The Assignor will do or permit to be done everything which the Lender may from time to time reasonably require to be done for the purpose of enforcing the Lender's rights under this Assignment, and will allow its name to be used as and when reasonably required by the Lender for that purpose.

## **6. LIABILITY OF THE LENDER**

### **6.1 Liability**

The Lender shall not in any circumstances be liable to the Assignor or any other person for losses, damages, liabilities or expenses arising from or in connection with the application or enforcement of this Assignment or any realisation, appropriation or application of the Assigned Assets or from any act, default or omission of the Lender or its officers, employees or agents in relation to the Assigned Assets or otherwise in connection with this Assignment, except to the extent caused by the gross negligence or wilful default of the Lender or its officers, employees or agents.

### **6.2 Indemnity**

The Lender and every attorney, manager, agent, employee or other person appointed by the Lender under or in connection with this Assignment shall be and is hereby indemnified by the Assignor in respect of all liabilities, costs, losses and expenses incurred by them or him in the execution (or purported execution) of any of the powers, authorities or discretions vested in them or him pursuant to the terms of this Assignment (or by any law or regulation) and against all actions, proceedings, costs, claims and demands in respect of any matter or thing done or omitted in any way in connection with or relating to all or any of the Assigned Assets and the Lender or any such other person may retain and pay all sums in respect of the same out of money received under the powers conferred by this Assignment. The indemnity under this clause shall not apply to the extent that any such liability, cost, loss and/or expense arises as a result of the gross negligence or wilful misconduct of the Lender.

## **7. PROTECTION OF SECURITY**

### **7.1 Continuing security**

7.1.1 This Assignment shall be in addition to, and without prejudice to and shall not merge with, any other right, remedy, guarantee or Security which the Lender may at any time hold in respect of any of the Secured Liabilities and this Assignment may be enforced against the Assignor without the Lender first having recourse to any other right, remedy, guarantee or Security held or available to it.

7.1.2 This Assignment shall remain in full force and effect as a continuing security until the Lender shall have certified in writing that the Secured Liabilities have been discharged in full.

## **7.2 Waiver of rights**

**7.2.1** The obligations of the Assignor under this Assignment and the rights, powers and discretions of the Lender under this Assignment will not be reduced, discharged or otherwise affected by:

- (a) any time, waiver or consent granted to, or composition with the Assignor or any other person;
- (b) the release of the Assignor or any other person under the terms of any composition or arrangement with any creditor of the Assignor;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights or remedies against, or Security over assets of the Assignor or any other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument;
- (d) the Lender failing to realise the full value of any Security held by it;
- (e) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Assignor or any other person or any defective or excessive exercise of the Assignor's powers or authority;
- (f) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) termination or replacement of the Secured Liabilities or any document, guarantee or Security related to the Secured Liabilities including any change in the purpose of, any extension of or increase in any facility or the addition of any new facility or other document or Security;
- (g) any unenforceability, illegality, invalidity, irregularity or frustration of any obligation (actual or purported) of any person under this Assignment or any other document, guarantee or Security held in connection with the Secured Liabilities;
- (h) any claim or enforcement of payment from the Assignor or any other person;
- (i) any insolvency, bankruptcy, liquidation, administration, winding-up, incapacity, dissolution, limitation, disability, the discharge by operation of law or any similar proceedings in respect of the Assignor or any other person;
- (j) any change in the constitution, name or style of the Assignor or any other person, or if the Assignor or such other person is a partnership or other

unincorporated organisation, its dissolution or any change in its status or membership; or

- (k) anything done or omitted to be done by the Lender or any other person which but for this provision might operate to exonerate or discharge or otherwise reduce or extinguish the liability of the Assignor under this Assignment.

### **7.3 Lender's protections**

7.3.1 The Lender may make one or more demands under this Assignment.

7.3.2 This Assignment shall be in addition to, and without prejudice to and shall not merge with, any other right, remedy, guarantee or Security which the Lender may at any time hold in respect of any of the Secured Liabilities and this Assignment may be enforced without the Lender first having:

- (a) recourse to any other right, remedy, guarantee or Security held or available to it;
- (b) to take action or obtain judgment in any court against the Assignor or any other person;
- (c) to make or file any claim in a bankruptcy, liquidation, administration or insolvency of the Assignor or any other person; or
- (d) to make demand, enforce or seek to enforce any claim, right or remedy against the Assignor or any other person.

7.3.3 The Assignor's liability under this Assignment shall not be discharged or affected by anything that would not have discharged or affected it if the Assignor had been a principal debtor instead of an assignor under this Assignment.

### **7.4 Further assurance**

7.4.1 The Assignor shall promptly do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Lender may reasonably specify (and in such form as the Lender may reasonably require in favour of the Lender or its nominee(s)):

- (a) to perfect the Security created or intended to be created under or evidenced by this Assignment (which may include the execution of an assignment, charge, assignment or assurance or other Security over all or any of the assets which are, or are intended to be, the subject of this Assignment) or for

the exercise of any rights, powers and remedies of the Lender provided by law and/or pursuant to the Finance Documents;

- (b) to confer on the Lender Security over any property and assets of the Assignor located in any jurisdiction equivalent or similar to the Security intended to be conferred by or pursuant to this Assignment; and/or
- (c) to facilitate the realisation of the assets which are, or are intended to be, the subject of this Assignment.

7.4.2 The Assignor shall take such reasonable 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 Lender by this Assignment.

## **7.5 Power of attorney**

7.5.1 The Assignor by way of security irrevocably appoints the Lender to be its agent and attorney in its name and on its behalf to:

- (a) do all things which the Assignor may be required to do under this Assignment;
- (b) sign, execute (using the company seal where appropriate), deliver and otherwise perfect any Security required to be signed or executed pursuant to the terms of this Assignment; and
- (c) sign, execute (using the company seal where appropriate), deliver and complete any deeds, instruments or other documents and to do all acts and things which may be required by the Lender in the exercise of any of its powers under this Assignment, or to perfect or vest in the Lender, its nominees or any purchaser, title to any Assigned Assets or which the Lender may deem expedient in connection with the getting in, disposal, or realisation of any Assigned Assets.

7.5.2 Each agent and attorney may appoint a substitute or delegate his authority.

7.5.3 The Assignor ratifies and confirms (and agrees to ratify and confirm) anything which an attorney does or may purport to do in the exercise or purported exercise of the power of attorney conferred by clause 7.5.1.

7.5.4 The appointment effected under clause 7.5.1 shall take effect immediately, but the powers conferred shall only become exerciseable upon the occurrence of an Event of Default for so long as it is continuing or if the Assignor does not fulfil any of its



obligations under clause 7.4 within 3 Business Days of receipt of written notice from the Lender to do so.

## **8. REPRESENTATIONS AND UNDERTAKINGS**

### **8.1 Representations and warranties**

The Assignor represents and warrants to the Lender that:

- 8.1.1 the instruments or other documents comprising the Agreements as provided to the Lender before the date of this Assignment evidence all terms of the Agreements, and there are no other documents, agreements or arrangements that may affect the operation or enforceability of any Assigned Asset;
- 8.1.2 it has not granted any waiver of rights nor any allowance of time nor any forbearance or forgiveness in or in respect of any matter or thing concerning any of the Agreements;
- 8.1.3 it has not varied, departed from or altered the terms or conditions of any of the Agreements and no such variation or departure is contemplated;
- 8.1.4 has not made any claim under any of the Agreements whether in reliance on the obligations in any of the Agreements or in respect of any breach of any of the Agreements and has not received or acknowledged notice of any adverse claim by any person in respect of the Assigned Assets or any interest in them;
- 8.1.5 it has fully and duly performed all duties and undertakings falling to be performed by it under the Agreements prior to and up to the date of this Assignment and is not in breach of any of its obligations under the Agreements;
- 8.1.6 nothing has occurred which is or would constitute an event of default (howsoever described) under any Agreement or other document or agreement comprising the Assigned Assets or which would entitle a party to such Assigned Asset to terminate or rescind such Assigned Asset; and
- 8.1.7 it is the sole legal and beneficial owner of the Assigned Assets and the Assigned Assets are free from any Security other than any Permitted Security.

### **8.2 Power to Remedy**

Without prejudice to the powers granted to the Lender under clause 5, if the Assignor defaults at any time in complying with any of its obligations contained in this Assignment, the Lender shall, without prejudice to any other rights arising as a consequence of such default, be entitled (but not bound) to make good such default and the Assignor hereby irrevocably

authorises the Lender by way of security to do all such things necessary or desirable in connection therewith. Any monies so expended by the Lender shall be repayable by the Assignor to the Lender on demand together with Interest thereon.

## **9. APPROPRIATION, PAYMENTS AND COSTS AND EXPENSES**

### **9.1 Application of proceeds**

All monies received by the Lender under this Assignment shall (subject to the rights and claims of any person having a security ranking in priority to the security constituted by this Assignment) be applied in the following order:

9.1.1 in payment of the costs, charges and expenses incurred by the Lender, and payments made by the Lender, in connection with this Assignment or the Assigned Assets;

9.1.2 in or towards the satisfaction of the Secured Liabilities in accordance with clause 9.6; and

9.1.3 any surplus shall be paid to the Assignor or other person entitled to it.

### **9.2 Protection of third parties**

No purchaser from or other person dealing with the Lender in relation to the Assigned Assets shall be obliged or concerned to enquire whether the right of the Lender to exercise any of the powers conferred by this Assignment in relation to the Assigned Assets or any part of the Assigned Assets have arisen or become exercisable by the Lender, nor be concerned with notice to the contrary, nor with the propriety of the exercise or purported exercise of any such powers and the title of such a purchaser and the position of such a person shall not be effected by reference to any of those matters.

### **9.3 Notice of subsequent Security – new accounts**

9.3.1 If the Lender receives notice (whether actual or otherwise) of any subsequent Security affecting any part of the Assigned Assets and/or the proceeds of sale of the Assigned Assets, it may open a new account or accounts for the Assignor in its books.

9.3.2 If the Lender does not open a new account immediately on receipt of notice under clause 9.3.1, then (unless the Lender gives express written notice to the contrary to the Assignor) all payments made by the Assignor to the Lender shall be treated as having been credited to a new account of the Assignor and not as having been applied in reduction of the Secured Liabilities, as from the time of receipt of the relevant notice by the Lender.

#### **9.4 Set-off**

The Lender may set-off any matured obligation due from the Assignor under this Assignment against any matured obligation owed by the Lender to the Assignor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Lender may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

#### **9.5 Currency**

9.5.1 Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:

- (a) any reference in this Assignment to, and any obligations arising under this Assignment in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the Lender (after consultation with the Assignor); and
- (b) any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the Lender (acting reasonably).

9.5.2 If a change in any currency of a country occurs, this Assignment will, to the extent the Lender (acting reasonably and after consultation with the Assignor) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the London interbank market and otherwise to reflect the change in currency.

#### **9.6 Appropriation and suspense account**

9.6.1 Subject to clause 9.6.3, the Lender may appropriate all payments received in respect of the Secured Liabilities in reduction of any part of those liabilities as it thinks fit.

9.6.2 Any such appropriation shall override any appropriation by the Assignor.

9.6.3 All monies received, recovered or realised by the Lender under this Assignment may at the discretion of the Lender be credited to any suspense account for so long as the Lender determines (with interest accruing thereon at such rate, if any, as the Lender may determine for the account of the Assignor) without the Lender having

any obligation to apply such monies or any part of them in or towards the discharge of any of the Secured Liabilities.

## **9.7 Payments**

9.7.1 All payments to be made by the Assignor in respect of this Assignment, shall be made in immediately available funds to the credit of such account as the Lender may designate. All such payments shall be made free and clear of, and without any deduction for, or on account of, any set-off or counterclaim or, except to the extent compelled by law, any deduction on account of any Taxes.

9.7.2 Any demand, notification or certificate given by the Lender specifying amounts due and payable under or in connection with any of the provisions of this Assignment shall, in the absence of manifest error, be conclusive and binding on the Assignor.

## **9.8 Assignment and transfer**

The Lender may assign or transfer all or any part of its rights under this Assignment to any person to whom it may transfer its rights under the Facility Agreement, subject to the provisions of the Facility Agreement. The Assignor may not assign, transfer, charge, make the subject of a trust or deal in any other manner with this Assignment or any of its rights under this Assignment or purport to do any of the same without the prior written consent of the Lender.

## **9.9 Contingencies**

If this Assignment is enforced at a time when no amounts are due to the Lender (but at a time when amounts may become so due), the Lender may pay the proceeds of any recoveries effected by it into a blocked suspense account bearing interest at such rate (if any) as the Lender usually grants for accounts of that size and nature.

## **10. NOTICES**

### **10.1 Communications in writing**

Any notice given pursuant to this Assignment shall be in writing signed by, or on behalf of, the person issuing the notice. Any notice may, unless otherwise stated, be made by fax or letter to:

10.1.1 in the case of the Assignor:

(a) address: 56 George Street, Edinburgh EH2 2LR

(b) fax: N/A

(c) marked for the attention of: The Company Secretary,

with a copy to:

(d) address: Cromwell Investment Services Limited, First Floor, Unit 16 Manor Court Business Park, Scarborough YO11 3TU

(e) marked for the attention of: Rob Jones;

10.1.2 in the case of the Lender:

(a) address: Kirkstane House, 5<sup>th</sup> Floor, 139 St Vincent Street, Glasgow G2 5JF

(b) fax: 0141 224 0776

(c) marked for the attention of: Grant Mathieson/ Stephen MacGregor

or, in relation to any Party, such other address for service or fax number in the United Kingdom as that Party may from time to time notify to the other by not less than 5 Business Days' notice.

## 10.2 Delivery

10.2.1 Any communication or document made or delivered by one person to another under or in connection with this Assignment will only be effective:

(a) if by way of fax, when received in legible form; or

(b) 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 10.1, if addressed to that department or officer.

10.2.2 Any communication or document to be made or delivered to the Lender will be effective only when actually received by the Lender and then only if it is expressly marked for the attention of the department or officer identified with the Lender's signature below (or any substitute department or officer as the Lender shall specify for this purpose).

10.2.3 Any communication or document which becomes effective, in accordance with paragraphs 10.2.1 to 10.2.2 above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

### **10.3 English language**

10.3.1 Any notice given under or in connection with this Assignment must be in English.

10.3.2 All other documents provided under or in connection with this Assignment must be:

- (a) in English; or
- (b) if not in English, and if so required by the Lender, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

## **11. RELEASE**

### **11.1 Release**

Upon the expiry of the Security Period (but not otherwise) the Lender shall, at the request and cost of the Assignor, take whatever action is necessary to re-assign, discharge or release (without recourse or warranty) the Assigned Assets from the Security created by this Assignment.

### **11.2 Reinstatement**

Any release, discharge or settlement between the Assignor and the Lender shall be conditional upon no security, disposition or payment to the Lender by the Assignor or any other person being void, set aside or ordered to be refunded pursuant to any enactment or law relating to liquidation, administration or insolvency or for any other reason whatsoever and if such condition is not fulfilled the Assignor's liability under this Assignment shall continue and the Lender shall be entitled to enforce this Assignment as if such release, discharge or settlement had not occurred and any such payment had not been made.

### **11.3 Retention of Security**

If any payment or realisation in respect of the Secured Liabilities is, in the Lender's reasonable opinion, liable to be avoided or otherwise invalidated or adjusted by law, including any enactment or rule of law relating to insolvency, the Lender shall be entitled to retain this Assignment undischarged until the expiry of the period during which it may be challenged on any such ground.

### **11.4 Avoidance of payments**

The Lender's right to recover the Secured Liabilities in full shall not be affected or prejudiced by any payment or realisation which is avoided or otherwise invalidated or adjusted by law,

including any enactment or rule of law relating to insolvency, or by any release or discharge given by the Lender on the faith of any such payment or realisation.

## **12. GENERAL**

### **12.1 Amendments and waivers**

No variation to this Assignment shall be effective unless made in writing and signed by or on behalf of all the parties to this Assignment. A waiver given or consent granted by the Lender under this Assignment will be effective only if given in writing and then only in the instance and for the purpose for which it is given.

### **12.2 Severability**

Each provision of this Assignment is severable and distinct from the others. If at any time any provision of this Assignment is or becomes unlawful, invalid or unenforceable to any extent or in any circumstances for any reason, it shall to that extent or in those circumstances be deemed not to form part of this Assignment but (except to that extent or in those circumstances in the case of that provision) the legality, validity and enforceability of that and all other provisions of this Assignment shall not be affected in any way.

### **12.3 Illegality**

If any provision of this Assignment is found to be illegal, invalid or unenforceable in accordance with clause 12.2 but would be legal, valid or enforceable if some part of the provision were deleted, the provision in question shall apply with such modification(s) as may be necessary to make it legal, valid or enforceable.

### **12.4 Remedies and waivers**

The failure or delay in exercising a right or remedy provided by this Assignment or by law does not constitute a waiver of that (or any other) right or remedy. No single or partial exercise, or non-exercise or non-enforcement of any right or remedy provided by this Assignment or by law prevents or restricts any further or other exercise or enforcement of that (or any other) right or remedy.

### **12.5 Exercise of discretion**

Any right or power which may be exercised or any determination which may be made under this Assignment by the Lender may be exercised or made in its absolute and unfettered discretion and it shall not be obliged to give reasons therefore.

#### **12.6 Rights cumulative**

The Lender's rights and remedies contained in this Assignment are cumulative and not exclusive of any rights or remedies provided by law.

#### **12.7 Delegation**

The Lender may delegate, by power of attorney or in any other manner, to any person, any right, power or discretion exercisable by it under this Assignment upon any terms (including power to sub-delegate) which it may think fit. The Lender shall not be in any way liable or responsible to the Assignor for any loss or liability arising from any act, default, omission or misconduct on the part of any such delegate.

#### **12.8 Consent to registration**

The Assignor consents to the registration of this Assignment and of any certificate referred to in clause 9.7.2 above for preservation.

### **13. GOVERNING LAW AND JURISDICTION**

#### **13.1 Governing Law**

This Assignment together with any non-contractual disputes or claims arising out of or in connection with this Assignment shall in all respects be governed by and interpreted in accordance with Scots law.

#### **13.2 Jurisdiction**

13.2.1 For the exclusive benefit of the Lender, the Assignor irrevocably agrees that the courts of Scotland are to have jurisdiction to settle any disputes which may arise out of or in connection with this Assignment and that any proceedings may be brought in those courts.

13.2.2 Nothing contained in this clause shall limit the right of the Lender to commence any proceedings against the Assignor in any other court of competent jurisdiction nor shall the commencement of any proceedings against the Assignor in one or more jurisdictions preclude the commencement of any proceedings in any other jurisdiction, whether concurrently or not.

13.2.3 The Assignor irrevocably waives any objection which it may now or in the future have to the laying of the venue of any proceedings in any court referred to in this clause and any claim that those proceedings have been brought in an inconvenient or inappropriate forum, and irrevocably agrees that a judgment in any proceedings



commenced in any such court shall be conclusive and binding on it and may be enforced in the courts of any other jurisdiction.

#### **14. COUNTERPARTS AND DELIVERY**

##### **14.1 Counterpart execution**

This Assignment may be executed in any number of counterparts and by the parties on separate counterparts.

##### **14.2 Delivery where Assignment is executed in counterpart**

Where executed in counterpart:

- 14.2.1 this Assignment shall not take effect until all of the counterparts have been delivered;
- 14.2.2 each counterpart will be held as undelivered until the parties agree a date on which the counterparts are to be treated as delivered; and
- 14.2.3 the parties may choose to evidence the date of delivery of this Assignment by inserting this on the front page of this Assignment.

#### 14.3 Appointment of nominated person

The parties to this Assignment, in accordance with section 2(1) of the Legal Writings (Counterparts and Delivery)(Scotland) Act 2015 (the "**Counterparts Act**"), nominate Addleshaw Goddard LLP to take delivery of all counterparts of this Assignment. The parties agree that the provisions of section 2(3) of the Counterparts Act shall not apply to any counterpart of this Assignment.

**IN WITNESS WHEREOF** these presents consisting of this and the preceding 21 pages and the schedule annexed as relative hereto are executed by the parties hereto as follows:-

Subscribed for and on behalf of **THE ROYAL BANK OF SCOTLAND PLC** as Lender

by \_\_\_\_\_, a duly authorised signatory

at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 2017 before this witness:-

Witness .....

Full Name .....

.....

Address .....

Authorised signatory

.....

Subscribed for and on behalf of **GLOAG SERVICED APARTMENTS LIMITED**

by ANDREW RICHARDSON, Director

at GOINBURHA on the 5<sup>th</sup> day of OCTOBER 2017 before this witness:-

Witness

Full Name SAMUEL MURPHY

Address

Director

Director

**THIS IS THE SCHEDULE (IN THREE PARTS) REFERRED TO IN THE FOREGOING  
ASSIGNATION IN SECURITY BETWEEN GLOAG SERVICED APARTMENTS AND THE ROYAL  
BANK OF SCOTLAND PLC**

**Part 1**

**The Agreements**

1. SBCC Design and Build Contract for use in Scotland 2011 relating to the fit out of 82 serviced apartments including circulation areas, communal areas and external building repairs at the Property, made between the Assignor (as Employer) and GHI Contracts Limited (as Contractor) dated 21 and 25 September 2017;
2. Performance Bond relative to the Property made between GHI Contracts Limited (as Contractor), Panthera Underwriting Agency acting on behalf of Hiscox Insurance Company Limited (as Guarantor) and the Assignor (as Employer) dated 04, 06 and 25 September 2017;
3. Parent Company Guarantee Bond relative to the Property made between GHI Contracts Holdings Limited (as Guarantor) and the Assignor (as Employer) dated 28 August and 05 September 2017; and
4. Appointment Agreement relative to the Property made between the Assignor (as Client) and Faithful+Gould Limited (as Consultant) dated 04 and 10 July 2017.

**Part 2**  
**Form of Notice of Assignment**

[To be printed on the letterhead of the Assignor]

[name of counterparty]

[address of counterparty]

[date]

Dear Sirs

**Assignment (the Assignment) dated [date of assignment] between [Assignor] and [Lender] (the Lender) in respect of [insert description of relevant agreement] (the Agreement)**

We refer to the Agreement. By this letter we give you notice that under the Assignment (a copy of which is attached) we have assigned to the Lender, by way of security, all our rights, title, interest and benefit in and to the Agreement.

We irrevocably instruct and authorise you to:

- comply with the terms of any written instructions received by you from the Lender from time to time relating to the Agreement, without notice or reference to, or further authority from, us and without enquiring as to the justification or the validity of those instructions (including in relation to the payment of any sums referred to in the Agreement); and
- disclose information in relation to the Agreement to the Lender on request by the Lender.

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

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

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

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

Please confirm that you agree to the terms of this notice, and to act in accordance with its provisions, by sending the attached acknowledgement to the Lender at *[address of Lender]* marked for the attention of *[\*]*, with a copy to us.

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

Yours faithfully

.....

*[name of Assignor]*

**Part 3**  
**Form of Acknowledgement of Intimation**

*[To be printed on the letterhead of the Counterparty]*

[name of Lender]

[address of Lender]

Attention: [●]

[date]

Dear Sirs

**Security assignment (the Assignment) dated [date of assignment] between [Assignor] (the Assignor) and [Lender] (the Lender) in respect of [insert description of relevant agreement] (the Agreement)**

We confirm receipt from the Assignor of a notice (the **Notice**) dated [date of notice] of an assignment, by way of security, of all the Assignor's rights, title, interest and benefits in and to the Agreement.

We confirm that:

- we accept the instructions and authorisations contained in the Notice and agree to comply with the Notice and note that these instructions and authorisations cannot be revoked or varied without the Lender's prior written consent;
- upon receipt from the Lender of any instruction, such instruction may not be countermanded by any instruction received from the Assignor or any third party unless the Lender has given its prior written consent;
- there has been no amendment, waiver or release of any rights or interests in the Agreement since the date of the Agreement;
- we will not cancel, avoid, release or otherwise allow the Agreement to lapse without giving the Lender at least 30 days' prior written notice;
- we do not have and have not claimed, exercised or attempted to exercise against the Assignor any right of set-off, counter-claim or other right relating to the Agreement;
- we have not, as at the date of this acknowledgement, received notice that the Assignor has assigned its rights under the Agreement to a third party, or created any other interest (whether by way of security or otherwise) in the Agreement in favour of a third party;

- the Lender will not in any circumstances have any liability in relation to the Agreement; and
- the Agreement shall not be rendered void, voidable or unenforceable by reason of any non-disclosure by the Lender.

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

Yours faithfully

\*\*\*\*\*

[name of counterparty]





Date of delivery 30 OCTOBER 2017

**GLOAG SERVICED APARTMENTS LIMITED**

**THE ROYAL BANK OF SCOTLAND PLC**

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**ASSIGNATION IN SECURITY  
of development documents  
relating to Kintore House, Queen  
Street, Edinburgh**

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THIS ASSIGNATION IN SECURITY IS DELIVERED ON 30 OCTOBER 2017 AND IS MADE BETWEEN

- (1) **THE ROYAL BANK OF SCOTLAND PLC** incorporated in Scotland (registered number SC90312) and having its registered office at 36 St Andrew Square, Edinburgh EH2 2YB (the **Lender**); and
- (2) **GLOAG SERVICED APARTMENTS LIMITED** incorporated in Scotland (registered number SC533189) and having its registered office at 56 George Street, Edinburgh EH2 2LR (the **Assignor**)

NOW THEREFORE THE PARTIES HAVE AGREED AND DO HEREBY AGREE as follows:-

## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

In this Assigation, the following definitions will apply:-

<b>Administrator</b>	any person appointed to be an administrator of the Assignor pursuant to paragraph 14 of Schedule B1 Insolvency Act.
<b>Agreements</b>	the agreements specified in the Schedule.
<b>Assigned Assets</b>	<p>the Agreements, the Authorisations and the Collateral Instruments including, in each case:</p> <ul style="list-style-type: none"><li>(a) the right to demand and receive all monies whatsoever payable to or for its benefit under or arising from any of them;</li><li>(b) all remedies provided for in any of them or available at law in relation to any of them;</li><li>(c) the right to compel performance of any of them;</li><li>(d) the benefit of all warranties and indemnities contained therein;</li><li>(e) any right to terminate or rescind the same; and</li><li>(f) all other rights, interests and benefits whatsoever accruing to or for the Assignor's benefit arising from any of them</li></ul>

together with the Proceeds.

<b>Authorisation</b>	all authorisations (statutory or otherwise) held or required in connection with any Agreement, and all rights in connection with them.
<b>Business Day</b>	any day (other than a Saturday, Sunday or public holiday) during which clearing banks in the City of London are open for normal business.
<b>Collateral Instruments</b>	all other contracts, guarantees, indemnities, undertakings, appointments, warranties, bonds, Security and other documents in connection with the Agreements and/or the Development to which the Assignor is a party, or which are in the Assignor's favour or of which the Assignor (directly or indirectly) has the benefit.
<b>Companies Act</b>	the Companies Act 2006.
<b>Default Rate</b>	2 per cent. (2%) per annum.
<b>Development</b>	the re-development of the Property to deliver a circa. 82 unit aparthotel.
<b>Event of Default</b>	<ul style="list-style-type: none"><li>(a) the Assignor fails to pay all or any of the Secured Liabilities following a demand for payment by the Lender made in accordance with the terms of the Finance Documents;</li><li>(b) any step is taken (including the making of an application or the giving of any notice) by the Assignor or by any other person to appoint an Administrator;</li><li>(c) any step is taken (including the making of an application or the giving of any notice) by the Assignor or by any other person to wind up or dissolve the Assignor or to appoint a liquidator, trustee, manager or receiver, administrative receiver or similar officer of the Assignor or any part of its undertaking or assets;</li><li>(d) the making of a request by the Assignor for the appointment of a Receiver;</li></ul>

- (e) any analogous procedure or step to those listed in (b) to (d) above is taken under the laws of any Relevant Jurisdiction; and/or
- (f) the Assignor breaches any of the provisions of any Finance Document or an event of default (howsoever described) occurs under any Finance Document.

**Facility Agreement** the facility agreement dated on or about the date of this Assignment and made between (1) the Assignor (as borrower) and (2) the Lender (as lender) pursuant to which the Lender has agreed to make certain facilities available to the Assignor.

**Finance Documents** this Assignment, the Facility Agreement and any other agreement or document designated as a Finance Document by the Assignor and the Lender from time to time.

**Permitted Security** any Security expressly permitted in accordance with the Facility Agreement.

**Proceeds** under or in connection with any Assigned Asset:

- (a) all present and future debts, rentals, royalties, fees, VAT and monetary claims due or owing to the Assignor and all other amounts recoverable or receivable by the Assignor from other persons or due or owing to the Assignor (whether actual or contingent and whether arising under contract or in any other manner whatsoever);
- (b) the benefit of all rights and remedies of any nature relating to any of the foregoing including claims for damages and other remedies for non-payment of the same, all entitlements to interest, negotiable instruments, guarantees, indemnities, Security, reservations of property rights, rights of tracing and unpaid vendor's liens and similar associated rights; and
- (c) all proceeds of any of the foregoing.

**Property** 74-77 Queen Street, Edinburgh, EH2 4NF.

**Receiver** any receiver, manager or receiver and manager appointed in

	respect of the Assignor.
<b>Relevant Jurisdiction</b>	<p>in relation to the Assignor:</p> <ul style="list-style-type: none"> <li>(a) its jurisdiction of incorporation;</li> <li>(b) any jurisdiction where any Assigned Asset is situated or the obligations contained within such Assigned Asset are performed or to be performed; and</li> <li>(c) any jurisdiction where it conducts its business.</li> </ul>
<b>Secured Liabilities</b>	<p>all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally or as principal debtor, guarantor, surety or in any other capacity whatsoever or as the equivalent obligor under the laws of any other jurisdiction) of the Assignor to the Lender and including any obligations and liabilities of the Assignor to third parties assigned, novated or otherwise vested in the Lender provided that no obligation or liability shall be included in this definition of "Secured Liabilities" to the extent that, if it were so included, this Assignment (or any part of it) would constitute unlawful financial assistance within the meaning of sections 678 and 680 of the Companies Act.</p>
<b>Security</b>	<p>a mortgage, charge, pledge, trust, assignment by way of security, assignation in security, standard security, lien, hypothecation or other encumbrance, arrangement or security interest securing any obligation of any person or any other agreement or arrangement having a similar effect or any title retention rights or set-off rights created by agreement.</p>
<b>Security Period</b>	<p>the period beginning on the date of this Assignment and ending on the date on which:</p> <ul style="list-style-type: none"> <li>(a) all of the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full; and</li> <li>(b) the Lender has no further commitment, obligation or liability to the Assignor under or pursuant to the Finance Documents and any other document.</li> </ul>
<b>Schedule</b>	<p>the schedule in three parts annexed as relative to this Assignment.</p>

**Taxes** any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

## 1.2 Interpretation

1.2.1 In this Assignment, unless the context otherwise requires:-

- (a) references to clauses are to be construed as references to the clauses of this Assignment;
- (b) a provision of law includes a reference to that provision as replaced, modified or re-enacted from time to time and any subordinate legislation made under that statutory provision from time to time, in each case whether before or after the date of this Assignment;
- (c) words importing the plural shall include the singular and vice versa;
- (d) a person includes any individual, firm, company, corporation, government, state or agency of state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality);
- (e) a **Party**, the **Assignor**, or the **Lender** shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
- (f) **disposal** includes any sale, transfer, assignation, grant, lease, licence, declaration of trust or other disposal, whether voluntary or involuntary and **dispose** will be construed accordingly;
- (g) a company shall be construed so as to include any company, corporation or other body corporate, wherever and however incorporated or established;
- (h) writing shall, subject to clause 10, include any mode of reproducing words in a legible and non-transitory form;
- (i) this Assignment or any provision of this Assignment or any other agreement, document or instrument is to this Assignment, that provision or that agreement, document or instrument as amended, novated, supplemented, extended, restated or acceded to from time to time;
- (j) a time of day is a reference to Edinburgh time;
- (k) this Assignment shall include the Schedule; and

(f) an Event of Default is **continuing** if it has not been waived by the Lender.

- 1.3 The contents table and headings in this Assignment are for convenience only and do not affect the interpretation or construction of this Assignment.
- 1.4 Words importing the singular include the plural and vice versa and words importing a gender include every gender.
- 1.5 The words "other", "include", "including" and "in particular" do not limit the generality of any preceding words and any words which follow them shall not be construed as being limited in scope to the same class as the preceding words where a wider construction is possible.
- 1.6 Where at any time (from time to time) there is a conflict between any term of this Assignment and the terms of the Facility Agreement, the relevant terms of the Facility Agreement shall prevail.

## **2. COVENANT TO PAY**

The Assignor covenants with the Lender that it will pay or discharge on demand the Secured Liabilities when they fall due.

## **3. DEFAULT INTEREST**

- 3.1 Any amount which is not paid under this Assignment when due shall bear interest (both before and after judgment and payable on demand) from the due date until the date on which such amount is unconditionally and irrevocably paid and discharged in full on a daily basis at the Default Rate.
- 3.2 Default Interest will be calculated on the basis of the actual number of days elapsed and a year of 365 days and will be compounded at quarterly intervals.

## **4. SECURITY**

### **4.1 Assignment**

As a continuing security for the payment of the Secured Liabilities, the Assignor hereby assigns to the Lender its whole right, title, interest and benefit, present and future, in and to the Assigned Assets.

### **4.2 Delivery of intimation**

On execution of this assignment, the Assignor will promptly execute and deliver to each other party to the Agreements a notice substantially in the form set out in Part 2 of the Schedule and will use all reasonable endeavours to procure that the Assignor receives an



acknowledgement from each such party substantially in the form set out in Part 3 of the Schedule.

#### **4.3 Negative pledge**

The Assignor covenants with the Lender that it shall not without the prior written consent of the Lender:

4.3.1 create, purport to create or permit to subsist any Security upon any of the Assigned Assets, save for any Permitted Security; or

4.3.2 sell, assign, dispose of or otherwise transfer whether by a single transaction or a number of transactions and whether related or not, the whole or any part of the Assigned Assets.

#### **4.4 Liability**

No obligation shall be assumed by the Lender (or its nominee) in respect of the Assigned Assets as a result of the execution and delivery of this Assignment and (in particular but without limitation to such generality) no liability will be incurred by the Lender (or its nominee) as a result of any failure by the Assignor to comply with all or any of its obligations in relation to the Assigned Assets.

### **5. ENFORCEMENT**

#### **5.1 When Assignment is enforceable**

The security constituted by this Assignment shall become immediately enforceable upon the occurrence of an Event of Default and for so long as it is continuing.

#### **5.2 Powers on enforcement**

5.2.1 At any time when the security constituted by this Assignment is enforceable in accordance with Clause 5.1 above, the Lender shall be and is entitled (but not obliged), without notice to the Assignor or any other person, either in its own name or in the name of the Assignor and in such manner and upon such terms and conditions as it thinks fit to exercise all and/or any rights and powers in relation to all or any of the Assigned Assets which could be exercised by the absolute owner thereof, including (without limitation):-

- (a) the power to sell, call in, collect, convert into money or otherwise dispose of all or any of the Assigned Assets with full power to sell any of the same either together or in parcels and either by public auction or private contract and for such consideration (whether in cash, securities or other assets and whether

deferred or not) as the Lender may think fit and with full power to buy in or rescind or vary any contract of sale of all or any of the Assigned Assets and to resell the same without being responsible for any loss which may be occasioned thereby and for the purposes aforesaid or any of them to execute and do all such assurances and things as it shall think fit;

- (b) the power to receive all or any money payable in respect of or in connection with all or any of the Assigned Assets;
- (c) to bring, prosecute, enforce, defend and abandon actions, suits and proceedings in relation to the Assigned Assets;
- (d) the power to negotiate, compromise and/or agree any dispute arising out of all or any of the Assigned Assets; and
- (e) to do all such other acts and things it may consider necessary or expedient for the realisation of the Assigned Assets or incidental to the exercise of any of the rights conferred on the Lender under or by virtue of this Assignment and to concur in the doing of anything which the Assignor has the right to do and to do any such thing jointly with any other person.

5.2.2 The Lender may exercise all or any of the powers referred to in this Assignment in such manner and to such extent as the Lender considers appropriate (in its sole discretion) and in particular (but without limitation to the generality of the foregoing) shall not be under any duty to maximise the proceeds arising from the Assigned Assets.

5.2.3 Neither the Lender nor any nominee of the Lender shall be liable to account to the Assignor except in respect of the actual receipts of the Lender or such nominee and shall not be liable to the Assignor for any loss or damage arising from the exercise by the Lender or such nominee of all or any of the powers conferred by this Assignment other than arising out of wilful misconduct of the Lender.

5.2.4 The Assignor will do or permit to be done everything which the Lender may from time to time reasonably require to be done for the purpose of enforcing the Lender's rights under this Assignment, and will allow its name to be used as and when reasonably required by the Lender for that purpose.

## **6. LIABILITY OF THE LENDER**

### **6.1 Liability**

The Lender shall not in any circumstances be liable to the Assignor or any other person for losses, damages, liabilities or expenses arising from or in connection with the application or enforcement of this Assignment or any realisation, appropriation or application of the Assigned Assets or from any act, default or omission of the Lender or its officers, employees or agents in relation to the Assigned Assets or otherwise in connection with this Assignment, except to the extent caused by the gross negligence or wilful default of the Lender or its officers, employees or agents.

### **6.2 Indemnity**

The Lender and every attorney, manager, agent, employee or other person appointed by the Lender under or in connection with this Assignment shall be and is hereby indemnified by the Assignor in respect of all liabilities, costs, losses and expenses incurred by them or him in the execution (or purported execution) of any of the powers, authorities or discretions vested in them or him pursuant to the terms of this Assignment (or by any law or regulation) and against all actions, proceedings, costs, claims and demands in respect of any matter or thing done or omitted in any way in connection with or relating to all or any of the Assigned Assets and the Lender or any such other person may retain and pay all sums in respect of the same out of money received under the powers conferred by this Assignment. The indemnity under this clause shall not apply to the extent that any such liability, cost, loss and/or expense arises as a result of the gross negligence or wilful misconduct of the Lender.

## **7. PROTECTION OF SECURITY**

### **7.1 Continuing security**

7.1.1 This Assignment shall be in addition to, and without prejudice to and shall not merge with, any other right, remedy, guarantee or Security which the Lender may at any time hold in respect of any of the Secured Liabilities and this Assignment may be enforced against the Assignor without the Lender first having recourse to any other right, remedy, guarantee or Security held or available to it.

7.1.2 This Assignment shall remain in full force and effect as a continuing security until the Lender shall have certified in writing that the Secured Liabilities have been discharged in full.

## **7.2 Waiver of rights**

**7.2.1** The obligations of the Assignor under this Assignment and the rights, powers and discretions of the Lender under this Assignment will not be reduced, discharged or otherwise affected by:

- (a) any time, waiver or consent granted to, or composition with the Assignor or any other person;
- (b) the release of the Assignor or any other person under the terms of any composition or arrangement with any creditor of the Assignor;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights or remedies against, or Security over assets of the Assignor or any other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument;
- (d) the Lender failing to realise the full value of any Security held by it;
- (e) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Assignor or any other person or any defective or excessive exercise of the Assignor's powers or authority;
- (f) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) termination or replacement of the Secured Liabilities or any document, guarantee or Security related to the Secured Liabilities including any change in the purpose of, any extension of or increase in any facility or the addition of any new facility or other document or Security;
- (g) any unenforceability, illegality, invalidity, irregularity or frustration of any obligation (actual or purported) of any person under this Assignment or any other document, guarantee or Security held in connection with the Secured Liabilities;
- (h) any claim or enforcement of payment from the Assignor or any other person;
- (i) any insolvency, bankruptcy, liquidation, administration, winding-up, incapacity, dissolution, limitation, disability, the discharge by operation of law or any similar proceedings in respect of the Assignor or any other person;
- (j) any change in the constitution, name or style of the Assignor or any other person, or if the Assignor or such other person is a partnership or other

unincorporated organisation, its dissolution or any change in its status or membership; or

- (k) anything done or omitted to be done by the Lender or any other person which but for this provision might operate to exonerate or discharge or otherwise reduce or extinguish the liability of the Assignor under this Assignment.

### **7.3 Lender's protections**

7.3.1 The Lender may make one or more demands under this Assignment.

7.3.2 This Assignment shall be in addition to, and without prejudice to and shall not merge with, any other right, remedy, guarantee or Security which the Lender may at any time hold in respect of any of the Secured Liabilities and this Assignment may be enforced without the Lender first having:

- (a) recourse to any other right, remedy, guarantee or Security held or available to it;
- (b) to take action or obtain judgment in any court against the Assignor or any other person;
- (c) to make or file any claim in a bankruptcy, liquidation, administration or insolvency of the Assignor or any other person; or
- (d) to make demand, enforce or seek to enforce any claim, right or remedy against the Assignor or any other person.

7.3.3 The Assignor's liability under this Assignment shall not be discharged or affected by anything that would not have discharged or affected it if the Assignor had been a principal debtor instead of an assignor under this Assignment.

### **7.4 Further assurance**

7.4.1 The Assignor shall promptly do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Lender may reasonably specify (and in such form as the Lender may reasonably require in favour of the Lender or its nominee(s)):

- (a) to perfect the Security created or intended to be created under or evidenced by this Assignment (which may include the execution of an assignment, charge, assignment or assurance or other Security over all or any of the assets which are, or are intended to be, the subject of this Assignment) or for

the exercise of any rights, powers and remedies of the Lender provided by law and/or pursuant to the Finance Documents;

- (b) to confer on the Lender Security over any property and assets of the Assignor located in any jurisdiction equivalent or similar to the Security intended to be conferred by or pursuant to this Assignment; and/or
- (c) to facilitate the realisation of the assets which are, or are intended to be, the subject of this Assignment.

7.4.2 The Assignor shall take such reasonable 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 Lender by this Assignment.

## **7.5 Power of attorney**

7.5.1 The Assignor by way of security irrevocably appoints the Lender to be its agent and attorney in its name and on its behalf to:

- (a) do all things which the Assignor may be required to do under this Assignment;
- (b) sign, execute (using the company seal where appropriate), deliver and otherwise perfect any Security required to be signed or executed pursuant to the terms of this Assignment; and
- (c) sign, execute (using the company seal where appropriate), deliver and complete any deeds, instruments or other documents and to do all acts and things which may be required by the Lender in the exercise of any of its powers under this Assignment, or to perfect or vest in the Lender, its nominees or any purchaser, title to any Assigned Assets or which the Lender may deem expedient in connection with the getting in, disposal, or realisation of any Assigned Assets.

7.5.2 Each agent and attorney may appoint a substitute or delegate his authority.

7.5.3 The Assignor ratifies and confirms (and agrees to ratify and confirm) anything which an attorney does or may purport to do in the exercise or purported exercise of the power of attorney conferred by clause 7.5.1.

7.5.4 The appointment effected under clause 7.5.1 shall take effect immediately, but the powers conferred shall only become exerciseable upon the occurrence of an Event of Default for so long as it is continuing or if the Assignor does not fulfil any of its

obligations under clause 7.4 within 3 Business Days of receipt of written notice from the Lender to do so.

## **8. REPRESENTATIONS AND UNDERTAKINGS**

### **8.1 Representations and warranties**

The Assignor represents and warrants to the Lender that:

- 8.1.1 the instruments or other documents comprising the Agreements as provided to the Lender before the date of this Assignment evidence all terms of the Agreements, and there are no other documents, agreements or arrangements that may affect the operation or enforceability of any Assigned Asset;
- 8.1.2 it has not granted any waiver of rights nor any allowance of time nor any forbearance or forgiveness in or in respect of any matter or thing concerning any of the Agreements;
- 8.1.3 it has not varied, departed from or altered the terms or conditions of any of the Agreements and no such variation or departure is contemplated;
- 8.1.4 has not made any claim under any of the Agreements whether in reliance on the obligations in any of the Agreements or in respect of any breach of any of the Agreements and has not received or acknowledged notice of any adverse claim by any person in respect of the Assigned Assets or any interest in them;
- 8.1.5 it has fully and duly performed all duties and undertakings falling to be performed by it under the Agreements prior to and up to the date of this Assignment and is not in breach of any of its obligations under the Agreements;
- 8.1.6 nothing has occurred which is or would constitute an event of default (howsoever described) under any Agreement or other document or agreement comprising the Assigned Assets or which would entitle a party to such Assigned Asset to terminate or rescind such Assigned Asset; and
- 8.1.7 it is the sole legal and beneficial owner of the Assigned Assets and the Assigned Assets are free from any Security other than any Permitted Security.

### **8.2 Power to Remedy**

Without prejudice to the powers granted to the Lender under clause 5, if the Assignor defaults at any time in complying with any of its obligations contained in this Assignment, the Lender shall, without prejudice to any other rights arising as a consequence of such default, be entitled (but not bound) to make good such default and the Assignor hereby irrevocably

authorises the Lender by way of security to do all such things necessary or desirable in connection therewith. Any monies so expended by the Lender shall be repayable by the Assignor to the Lender on demand together with Interest thereon.

## **9. APPROPRIATION, PAYMENTS AND COSTS AND EXPENSES**

### **9.1 Application of proceeds**

All monies received by the Lender under this Assignment shall (subject to the rights and claims of any person having a security ranking in priority to the security constituted by this Assignment) be applied in the following order:

9.1.1 in payment of the costs, charges and expenses incurred by the Lender, and payments made by the Lender, in connection with this Assignment or the Assigned Assets;

9.1.2 in or towards the satisfaction of the Secured Liabilities in accordance with clause 9.6; and

9.1.3 any surplus shall be paid to the Assignor or other person entitled to it.

### **9.2 Protection of third parties**

No purchaser from or other person dealing with the Lender in relation to the Assigned Assets shall be obliged or concerned to enquire whether the right of the Lender to exercise any of the powers conferred by this Assignment in relation to the Assigned Assets or any part of the Assigned Assets have arisen or become exercisable by the Lender, nor be concerned with notice to the contrary, nor with the propriety of the exercise or purported exercise of any such powers and the title of such a purchaser and the position of such a person shall not be effected by reference to any of those matters.

### **9.3 Notice of subsequent Security – new accounts**

9.3.1 If the Lender receives notice (whether actual or otherwise) of any subsequent Security affecting any part of the Assigned Assets and/or the proceeds of sale of the Assigned Assets, it may open a new account or accounts for the Assignor in its books.

9.3.2 If the Lender does not open a new account immediately on receipt of notice under clause 9.3.1, then (unless the Lender gives express written notice to the contrary to the Assignor) all payments made by the Assignor to the Lender shall be treated as having been credited to a new account of the Assignor and not as having been applied in reduction of the Secured Liabilities, as from the time of receipt of the relevant notice by the Lender.



#### **9.4 Set-off**

The Lender may set-off any matured obligation due from the Assignor under this Assignment against any matured obligation owed by the Lender to the Assignor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Lender may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

#### **9.5 Currency**

9.5.1 Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:

- (a) any reference in this Assignment to, and any obligations arising under this Assignment in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the Lender (after consultation with the Assignor); and
- (b) any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the Lender (acting reasonably).

9.5.2 If a change in any currency of a country occurs, this Assignment will, to the extent the Lender (acting reasonably and after consultation with the Assignor) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the London interbank market and otherwise to reflect the change in currency.

#### **9.6 Appropriation and suspense account**

9.6.1 Subject to clause 9.6.3, the Lender may appropriate all payments received in respect of the Secured Liabilities in reduction of any part of those liabilities as it thinks fit.

9.6.2 Any such appropriation shall override any appropriation by the Assignor.

9.6.3 All monies received, recovered or realised by the Lender under this Assignment may at the discretion of the Lender be credited to any suspense account for so long as the Lender determines (with interest accruing thereon at such rate, if any, as the Lender may determine for the account of the Assignor) without the Lender having

any obligation to apply such monies or any part of them in or towards the discharge of any of the Secured Liabilities.

#### **9.7 Payments**

9.7.1 All payments to be made by the Assignor in respect of this Assignment, shall be made in immediately available funds to the credit of such account as the Lender may designate. All such payments shall be made free and clear of, and without any deduction for, or on account of, any set-off or counterclaim or, except to the extent compelled by law, any deduction on account of any Taxes.

9.7.2 Any demand, notification or certificate given by the Lender specifying amounts due and payable under or in connection with any of the provisions of this Assignment shall, in the absence of manifest error, be conclusive and binding on the Assignor.

#### **9.8 Assignment and transfer**

The Lender may assign or transfer all or any part of its rights under this Assignment to any person to whom it may transfer its rights under the Facility Agreement, subject to the provisions of the Facility Agreement. The Assignor may not assign, transfer, charge, make the subject of a trust or deal in any other manner with this Assignment or any of its rights under this Assignment or purport to do any of the same without the prior written consent of the Lender.

#### **9.9 Contingencies**

If this Assignment is enforced at a time when no amounts are due to the Lender (but at a time when amounts may become so due), the Lender may pay the proceeds of any recoveries effected by it into a blocked suspense account bearing interest at such rate (if any) as the Lender usually grants for accounts of that size and nature.

### **10. NOTICES**

#### **10.1 Communications in writing**

Any notice given pursuant to this Assignment shall be in writing signed by, or on behalf of, the person issuing the notice. Any notice may, unless otherwise stated, be made by fax or letter to:

10.1.1 in the case of the Assignor:

(a) address: 56 George Street, Edinburgh EH2 2LR

(b) fax: N/A

(c) marked for the attention of: The Company Secretary,

with a copy to:

(d) address: Cromwell Investment Services Limited, First Floor, Unit 16 Manor Court Business Park, Scarborough YO11 3TU

(e) marked for the attention of: Rob Jones;

10.1.2 in the case of the Lender:

(a) address: Kirkstane House, 5<sup>th</sup> Floor, 139 St Vincent Street, Glasgow G2 5JF

(b) fax: 0141 224 0776

(c) marked for the attention of: Grant Mathieson/ Stephen MacGregor

or, in relation to any Party, such other address for service or fax number in the United Kingdom as that Party may from time to time notify to the other by not less than 5 Business Days' notice.

## 10.2 Delivery

10.2.1 Any communication or document made or delivered by one person to another under or in connection with this Assignment will only be effective:

(a) if by way of fax, when received in legible form; or

(b) 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 10.1, if addressed to that department or officer.

10.2.2 Any communication or document to be made or delivered to the Lender will be effective only when actually received by the Lender and then only if it is expressly marked for the attention of the department or officer identified with the Lender's signature below (or any substitute department or officer as the Lender shall specify for this purpose).

10.2.3 Any communication or document which becomes effective, in accordance with paragraphs 10.2.1 to 10.2.2 above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

### **10.3 English language**

10.3.1 Any notice given under or in connection with this Assignment must be in English.

10.3.2 All other documents provided under or in connection with this Assignment must be:

- (a) in English; or
- (b) if not in English, and if so required by the Lender, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

## **11. RELEASE**

### **11.1 Release**

Upon the expiry of the Security Period (but not otherwise) the Lender shall, at the request and cost of the Assignor, take whatever action is necessary to re-assign, discharge or release (without recourse or warranty) the Assigned Assets from the Security created by this Assignment.

### **11.2 Reinstatement**

Any release, discharge or settlement between the Assignor and the Lender shall be conditional upon no security, disposition or payment to the Lender by the Assignor or any other person being void, set aside or ordered to be refunded pursuant to any enactment or law relating to liquidation, administration or insolvency or for any other reason whatsoever and if such condition is not fulfilled the Assignor's liability under this Assignment shall continue and the Lender shall be entitled to enforce this Assignment as if such release, discharge or settlement had not occurred and any such payment had not been made.

### **11.3 Retention of Security**

If any payment or realisation in respect of the Secured Liabilities is, in the Lender's reasonable opinion, liable to be avoided or otherwise invalidated or adjusted by law, including any enactment or rule of law relating to insolvency, the Lender shall be entitled to retain this Assignment undischarged until the expiry of the period during which it may be challenged on any such ground.

### **11.4 Avoidance of payments**

The Lender's right to recover the Secured Liabilities in full shall not be affected or prejudiced by any payment or realisation which is avoided or otherwise invalidated or adjusted by law,

including any enactment or rule of law relating to insolvency, or by any release or discharge given by the Lender on the faith of any such payment or realisation.

## **12. GENERAL**

### **12.1 Amendments and waivers**

No variation to this Assignment shall be effective unless made in writing and signed by or on behalf of all the parties to this Assignment. A waiver given or consent granted by the Lender under this Assignment will be effective only if given in writing and then only in the instance and for the purpose for which it is given.

### **12.2 Severability**

Each provision of this Assignment is severable and distinct from the others. If at any time any provision of this Assignment is or becomes unlawful, invalid or unenforceable to any extent or in any circumstances for any reason, it shall to that extent or in those circumstances be deemed not to form part of this Assignment but (except to that extent or in those circumstances in the case of that provision) the legality, validity and enforceability of that and all other provisions of this Assignment shall not be affected in any way.

### **12.3 Illegality**

If any provision of this Assignment is found to be illegal, invalid or unenforceable in accordance with clause 12.2 but would be legal, valid or enforceable if some part of the provision were deleted, the provision in question shall apply with such modification(s) as may be necessary to make it legal, valid or enforceable.

### **12.4 Remedies and waivers**

The failure or delay in exercising a right or remedy provided by this Assignment or by law does not constitute a waiver of that (or any other) right or remedy. No single or partial exercise, or non-exercise or non-enforcement of any right or remedy provided by this Assignment or by law prevents or restricts any further or other exercise or enforcement of that (or any other) right or remedy.

### **12.5 Exercise of discretion**

Any right or power which may be exercised or any determination which may be made under this Assignment by the Lender may be exercised or made in its absolute and unfettered discretion and it shall not be obliged to give reasons therefore.

#### **12.6 Rights cumulative**

The Lender's rights and remedies contained in this Assignment are cumulative and not exclusive of any rights or remedies provided by law.

#### **12.7 Delegation**

The Lender may delegate, by power of attorney or in any other manner, to any person, any right, power or discretion exercisable by it under this Assignment upon any terms (including power to sub-delegate) which it may think fit. The Lender shall not be in any way liable or responsible to the Assignor for any loss or liability arising from any act, default, omission or misconduct on the part of any such delegate.

#### **12.8 Consent to registration**

The Assignor consents to the registration of this Assignment and of any certificate referred to in clause 9.7.2 above for preservation.

### **13. GOVERNING LAW AND JURISDICTION**

#### **13.1 Governing Law**

This Assignment together with any non-contractual disputes or claims arising out of or in connection with this Assignment shall in all respects be governed by and interpreted in accordance with Scots law.

#### **13.2 Jurisdiction**

13.2.1 For the exclusive benefit of the Lender, the Assignor irrevocably agrees that the courts of Scotland are to have jurisdiction to settle any disputes which may arise out of or in connection with this Assignment and that any proceedings may be brought in those courts.

13.2.2 Nothing contained in this clause shall limit the right of the Lender to commence any proceedings against the Assignor in any other court of competent jurisdiction nor shall the commencement of any proceedings against the Assignor in one or more jurisdictions preclude the commencement of any proceedings in any other jurisdiction, whether concurrently or not.

13.2.3 The Assignor irrevocably waives any objection which it may now or in the future have to the laying of the venue of any proceedings in any court referred to in this clause and any claim that those proceedings have been brought in an inconvenient or inappropriate forum, and irrevocably agrees that a judgment in any proceedings

commenced in any such court shall be conclusive and binding on it and may be enforced in the courts of any other jurisdiction.

**14. COUNTERPARTS AND DELIVERY**

**14.1 Counterpart execution**

This Assignment may be executed in any number of counterparts and by the parties on separate counterparts.

**14.2 Delivery where Assignment is executed in counterpart**

Where executed in counterpart:

- 14.2.1 this Assignment shall not take effect until all of the counterparts have been delivered;
- 14.2.2 each counterpart will be held as undelivered until the parties agree a date on which the counterparts are to be treated as delivered; and
- 14.2.3 the parties may choose to evidence the date of delivery of this Assignment by inserting this on the front page of this Assignment.

**14.3 Appointment of nominated person**

The parties to this Assignment, in accordance with section 2(1) of the Legal Writings (Counterparts and Delivery)(Scotland) Act 2015 (the "**Counterparts Act**"), nominate Addleshaw Goddard LLP to take delivery of all counterparts of this Assignment. The parties agree that the provisions of section 2(3) of the Counterparts Act shall not apply to any counterpart of this Assignment.

**IN WITNESS WHEREOF** these presents consisting of this and the preceding 21 pages and the schedule annexed as relative hereto are executed by the parties hereto as follows:-

Subscribed for and on behalf of THE ROYAL BANK OF SCOTLAND PLC as Lender

by DONALD WILSON, a duly authorised signatory

at EDINBURGH on the 5<sup>th</sup> day of OCTOBER 2017 before this witness:-

Witness

Full Name STEPHEN MACQUEEN

Address

Authorised signatory



Subscribed for and on behalf of **GLOAG SERVICED APARTMENTS LIMITED**

by \_\_\_\_\_, Director

at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 2017 before this witness:-

Witness .....

Full Name .....

.....

Address .....

Director

.....

**THIS IS THE SCHEDULE (IN THREE PARTS) REFERRED TO IN THE FOREGOING  
ASSIGNATION IN SECURITY BETWEEN GLOAG SERVICED APARTMENTS AND THE ROYAL  
BANK OF SCOTLAND PLC**

**Part 1**

**The Agreements**

1. SBCC Design and Build Contract for use in Scotland 2011 relating to the fit out of 82 serviced apartments including circulation areas, communal areas and external building repairs at the Property, made between the Assignor (as Employer) and GHI Contracts Limited (as Contractor) dated 21 and 25 September 2017;
2. Performance Bond relative to the Property made between GHI Contracts Limited (as Contractor), Panthera Underwriting Agency acting on behalf of Hiscox Insurance Company Limited (as Guarantor) and the Assignor (as Employer) dated 04, 06 and 25 September 2017;
3. Parent Company Guarantee Bond relative to the Property made between GHI Contracts Holdings Limited (as Guarantor) and the Assignor (as Employer) dated 28 August and 05 September 2017; and
4. Appointment Agreement relative to the Property made between the Assignor (as Client) and Faithful+Gould Limited (as Consultant) dated 04 and 10 July 2017.

**Part 2**  
**Form of Notice of Assignment**

[To be printed on the letterhead of the Assignor]

[name of counterparty]

[address of counterparty]

[date]

Dear Sirs

**Assignment (the Assignment) dated [date of assignment] between [Assignor] and [Lender] (the Lender) in respect of [insert description of relevant agreement] (the Agreement)**

We refer to the Agreement. By this letter we give you notice that under the Assignment (a copy of which is attached) we have assigned to the Lender, by way of security, all our rights, title, interest and benefit in and to the Agreement.

We irrevocably instruct and authorise you to:

- comply with the terms of any written instructions received by you from the Lender from time to time relating to the Agreement, without notice or reference to, or further authority from, us and without enquiring as to the justification or the validity of those instructions (including in relation to the payment of any sums referred to in the Agreement); and
- disclose information in relation to the Agreement to the Lender on request by the Lender.

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

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

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

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

Please confirm that you agree to the terms of this notice, and to act in accordance with its provisions, by sending the attached acknowledgement to the Lender at [address of Lender] marked for the attention of [●], with a copy to us.

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

Yours faithfully

.....

[name of Assignor]

**Part 3**  
**Form of Acknowledgement of Intimation**

*[To be printed on the letterhead of the Counterparty]*

[name of Lender]

[address of Lender]

Attention: [●]

[date]

Dear Sirs

**Security assignment (the Assignment) dated [date of assignment] between [Assignor] (the Assignor) and [Lender] (the Lender) in respect of [insert description of relevant agreement] (the Agreement)**

We confirm receipt from the Assignor of a notice (the **Notice**) dated [date of notice] of an assignment, by way of security, of all the Assignor's rights, title, interest and benefits in and to the Agreement.

We confirm that:

- we accept the instructions and authorisations contained in the Notice and agree to comply with the Notice and note that these instructions and authorisations cannot be revoked or varied without the Lender's prior written consent;
- upon receipt from the Lender of any instruction, such instruction may not be countermanded by any instruction received from the Assignor or any third party unless the Lender has given its prior written consent;
- there has been no amendment, waiver or release of any rights or interests in the Agreement since the date of the Agreement;
- we will not cancel, avoid, release or otherwise allow the Agreement to lapse without giving the Lender at least 30 days' prior written notice;
- we do not have and have not claimed, exercised or attempted to exercise against the Assignor any right of set-off, counter-claim or other right relating to the Agreement;
- we have not, as at the date of this acknowledgement, received notice that the Assignor has assigned its rights under the Agreement to a third party, or created any other interest (whether by way of security or otherwise) in the Agreement in favour of a third party;

- the Lender will not in any circumstances have any liability in relation to the Agreement; and
- the Agreement shall not be rendered void, voidable or unenforceable by reason of any non-disclosure by the Lender.

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

Yours faithfully

.....

[name of counterparty]