

MR01

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Particulars of a charge

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A fee is payable with this form.  
Please see 'How to pay' on the  
last page

You can use the WebFiling service to file this form online.  
Please go to [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk)

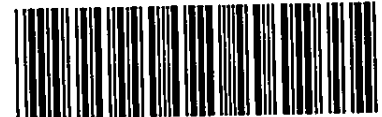
☒ **What this form is for**  
You may use this form to register  
a charge created or evidenced by  
an instrument

☒ **What this form is NOT for**  
You may not use this form to  
register a charge where there is no  
instrument. Use form MR0

For further information, please  
refer to our guidance at  
[www.companieshouse.gov.uk](http://www.companieshouse.gov.uk)

This form **must be delivered to the Registrar for registration within  
21 days** beginning with the day after the date of creation of the charge.  
Delivered outside of the 21 days it will be rejected unless it is accompanied by a  
court order extending the time for delivery.

☒ You **must** enclose a certified copy of the instrument with this form. The  
instrument must be scanned and placed on the public record.



A11 05/10/2013 #152  
COMPANIES HOUSE

**1** Company details

Company number 07038904

Company name in full ALMACANTAR LIMITED

For official use  
→ **Filling in this form**  
Please complete in typescript or in  
bold black capitals  
All fields are mandatory unless  
specified or indicated by \*

**2** Charge creation date

Charge creation date 27/09/2013

**3** Names of persons, security agents or trustees entitled to the charge

Please show the names of each of the persons, security agents or trustees  
entitled to the charge

Name DEUTSCHE PFANDBRIEFBANK AG as security trustee

Name

Name

Name

If there are more than four names, please supply any four of these names then  
tick the statement below

☐ I confirm that there are more than four persons, security agents or  
trustees entitled to the charge

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**Description**

Please give a short description of any land (including buildings), ship, aircraft or intellectual property registered (or required to be registered) in the UK which is subject to this fixed charge or fixed security

**Continuation page**

Please use a continuation page if you need to enter more details

Description

None

5

**Fixed charge or fixed security**

Does the instrument include a fixed charge or fixed security over any tangible or intangible (or in Scotland) corporeal or incorporeal property not described above? Please tick the appropriate box

☒ Yes

☐ No

6

**Floating charge**

Is the instrument expressed to contain a floating charge? Please tick the appropriate box

☐ Yes Continue

☒ No Go to **Section 7**

Is the floating charge expressed to cover all the property and undertaking of the company?

☐ Yes

7

**Negative Pledge**

Do any of the terms of the charge prohibit or restrict the chargor from creating any further security that will rank equally with or ahead of the charge? Please tick the appropriate box

☒ Yes

☐ No

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**Trustee statement ①**

You may tick the box if the company named in Section 1 is acting as trustee of the property or undertaking which is the subject of the charge

☐

① This statement may be filed after the registration of the charge (use form MR06)

9

**Signature**

Please sign the form here

Signature

Signature

X *Ashurst LLP* X

This form must be signed by a person with an interest in the charge

MR01

Particulars of a charge



**Presenter information**

We will send the certificate to the address entered below. All details given here will be available on the public record. You do not have to show any details here but, if none are given, we will send the certificate to the company's Registered Office address.

Contact name TKAPUR/BSANDE/HYPO4 00052/30848131

Company name  
Ashurst LLP

Address Broadwalk House

5 Appold Street

Post town London

Country/Region

Postcode EC2A 2HA

Country England

DX 639 London City

Telephone +44 (0)20 7638 1111



**Certificate**

We will send your certificate to the presenter's address if given above or to the company's Registered Office if you have left the presenter's information blank.



**Checklist**

**We may return forms completed incorrectly or with information missing.**

**Please make sure you have remembered the following:**

- ☐ The company name and number match the information held on the public Register
- ☐ You have included a certified copy of the instrument with this form
- ☐ You have entered the date on which the charge was created
- ☐ You have shown the names of persons entitled to the charge
- ☐ You have ticked any appropriate boxes in Sections 3, 5, 6, 7 & 8
- ☐ You have given a description in Section 4, if appropriate
- ☐ You have signed the form
- ☐ You have enclosed the correct fee
- ☐ Please do not send the original instrument, it must be a certified copy



**Important information**

**Please note that all information on this form will appear on the public record.**



**How to pay**

**A fee of £13 is payable to Companies House in respect of each mortgage or charge filed on paper.**

Make cheques or postal orders payable to 'Companies House'



**Where to send**

**You may return this form to any Companies House address. However, for expediency, we advise you to return it to the appropriate address below:**

**For companies registered in England and Wales.**  
The Registrar of Companies, Companies House,  
Crown Way, Cardiff, Wales, CF14 3UZ  
DX 33050 Cardiff

**For companies registered in Scotland.**  
The Registrar of Companies, Companies House,  
Fourth floor, Edinburgh Quay 2,  
139 Fountainbridge, Edinburgh, Scotland, EH3 9FF  
DX ED235 Edinburgh 1  
or LP - 4 Edinburgh 2 (Legal Post)

**For companies registered in Northern Ireland:**  
The Registrar of Companies, Companies House,  
Second Floor, The Linenhall, 32-38 Linenhall Street,  
Belfast, Northern Ireland, BT2 8BG  
DX 481 N R Belfast 1



**Further information**

For further information, please see the guidance notes on the website at [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk) or email [enquiries@companieshouse.gov.uk](mailto:enquiries@companieshouse.gov.uk)

**This form is available in an alternative format. Please visit the forms page on the website at [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk)**



FILE COPY

## CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 7038904

Charge code: 0703 8904 0004

The Registrar of Companies for England and Wales hereby certifies that a charge dated 27th September 2013 and created by ALMACANTAR LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 5th October 2013.

Given at Companies House, Cardiff on 10th October 2013



Companies House



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES

ashurst

## Security Assignment

Almacantar Limited

as Chargor

and

Deutsche Pfandbriefbank AG

as Security Agent

Certified as a true copy of the  
original instrument save for the  
material redacted pursuant to  
s 859G of the Companies Act 2006

*Ashurst LLP*

*27 September 2013*

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THIS DEED is made on

27 September 2013

**BETWEEN:**

- (1) **ALMACANTAR LIMITED** (a company incorporated in England and Wales with registered number 07038904) (the "**Chargor**"), and
- (2) **DEUTSCHE PFANDBRIEFBANK AG** as security trustee for itself and the other Secured Parties (the "**Security Agent**")

**RECITALS**

The Secured Parties have, at the request of the Chargor, agreed to enter into the Facility Agreement with the Borrower and it is a condition of that Facility Agreement that the Chargor enters into this deed for the provision of security for the Secured Liabilities

**THE PARTIES AGREE AS FOLLOWS:**

**1 INTERPRETATION**

**1.1 Definitions**

In this deed.

**"Additional Event of Default"** means the occurrence of an Insolvency Event in respect of the Chargor,

**"Borrower"** means Almacantar Shaftesbury S à r l, a Luxembourg private limited liability company, registered with the Luxembourg Register of Commerce and Companies under number B178446,

**"Charged Property"** means the assets mortgaged, charged or assigned to the Security Agent by this deed,

**"Facility Agreement"** means the facility agreement dated on or about the date of this deed under which the Lender has made available £47,500,000 of facilities to the Borrower,

**"Insolvency Event"** means any of the following occur in respect of the Chargor:

- (a) is dissolved (other than pursuant to a consolidation, amalgamation or merger);
- (b) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due,
- (c) makes a general assignment, arrangement or composition with or for the benefit of its creditors;
- (d)
  - (i) institutes or has instituted against it, by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organisation or the jurisdiction of its head or home office, a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation by it or such regulator, supervisor or similar official, or



- (ii) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and such proceeding or petition is instituted or presented by a person or entity not described in clause (i) above and either.
  - (A) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or
  - (B) is not dismissed, discharged, stayed or restrained in each case within 15 days of the institution or presentation thereof;
- (e) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger),
- (f) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets,
- (g) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 15 days thereafter,
- (h) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (a) to (g) above (inclusive), or
- (i) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts,

**"Receiver"** means a receiver and manager or receiver in each case appointed under this deed,

**"Secured Liabilities"** means all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally or in any other capacity whatsoever) of each Transaction Obligor to any Secured Party under any Finance Document both actual and contingent and whether incurred solely or jointly and as principal or surety or in any other capacity except for any money or liability which, if it were so included, would cause the infringement of section 678 or 679 of the Companies Act 2006,

**"Security Interest"** means any right or interest arising out of

- (a) any mortgage, standard security, charge pledge, assignment or assignation (whether or not expressed to be by way of security), hypothecation, lien, encumbrance or other priority or security interest of any kind, howsoever created or arising;
- (b) any deferred purchase, title retention, trust, sale-and-repurchase, sale-and-leaseback, hold back or "flawed asset" arrangement or right of set-off;
- (c) any other agreement or arrangement of any kind having the same or a similar commercial or economic effect as security; and
- (d) any agreement for any of the foregoing,

**"Subordinated Debt Transfer"** has the meaning given to such term in clause 7.5 (Transfer) of this deed;

**"Subordinated Loan Agreements"** means a £25,000,000 term loan facility dated on or around the date of this deed between the Borrower and the Chargor

## 1.2 Construction

In this deed, unless a contrary intention appears, a reference to

- (a) an **"agreement"** includes any legally binding arrangement, concession, contract, deed or franchise (in each case whether oral or written);
- (b) an **"amendment"** includes any amendment, supplement, variation, novation, modification, replacement or restatement and **"amend"**, **"amending"** and **"amended"** shall be construed accordingly,
- (c) **"assets"** includes property, business, undertaking and rights of every kind, present, future and contingent (including uncalled share capital) and every kind of interest in an asset,
- (d) a **"consent"** includes an authorisation, approval, exemption, licence, order, permission or waiver,
- (e) **"including"** means including without limitation and **"includes"** and **"included"** shall be construed accordingly,
- (f) **"losses"** includes losses, actions, damages, claims, proceedings, costs, demands, expenses (including fees) and liabilities and **"loss"** shall be construed accordingly,
- (g) a **"person"** includes any person, individual, firm, company, corporation, government, state or agency of a state or any undertaking (within the meaning of section 1161(1) of the Companies Act 2006) or other association, trust, joint venture, consortium or partnership (whether or not having separate legal personality) or any two or more of the foregoing,
- (h) a **"regulation"** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation,
- (i) unless the context otherwise requires or unless otherwise defined in this deed, words and expressions defined in the Facility Agreement have the same meanings when used in this deed,
- (j) section 1 of the Trustee Act 2000 shall not apply to the duties of the Security Agent in relation to the trusts created by this deed or any other Finance Document; and
- (k) the parties intend that this document shall take effect as a deed

## 1.3 Other References

In this deed, unless a contrary intention appears

- (a) a reference to any person is, where relevant, deemed to be a reference to or to include, as appropriate, that person's successors and permitted assignees or permitted transferees;

- (b) references to clauses and schedules are references to, respectively, clauses of and schedules to this deed and references to this deed include its schedules,
- (c) a reference to (or to any specified provision of) any agreement or document is to be construed as a reference to that agreement or document (or that provision) as it may be amended from time to time, but excluding for this purpose any amendment which is contrary to any provision of any Finance Document,
- (d) a reference to a statute, statutory instrument or accounting standard or any provision thereof is to be construed as a reference to that statute, statutory instrument or accounting standard or such provision thereof, as it may be amended or re-enacted from time to time,
- (e) the index to and the headings in this deed are inserted for convenience only and are to be ignored in construing this deed, and
- (f) words importing the plural shall include the singular and vice versa

## **2 COVENANT TO PAY**

### **2.1 Covenant to pay**

Subject to clause 2.2 (Limited Recourse), the Chargor as primary obligor covenants with the Security Agent (for the benefit of itself and the other Secured Parties) that it will on demand pay the Secured Liabilities when they fall due for payment.

### **2.2 Limited Recourse**

- (a) Despite any provision to the contrary in any Finance Document, the liability of the Chargor to pay the Secured Liabilities at any time will be limited to the rights of enforcement and recovery against the Charged Property (and the Secured Liabilities shall not be recoverable from the Chargor by means of any action or proceeding of whatever nature against either the Chargor or any assets of the Chargor other than against the Charged Property) and accordingly the Security Agent agrees that the amount recoverable against the Chargor under this deed shall be limited to the aggregate amount equal to (without double counting)
  - (i) the aggregate amount (without any deduction for or on account of any set-off or similar right exercisable against the Chargor, any administrator or Receiver or any Finance Parties) generated by the enforcement (by whatever means) of the Security over the Charged Property, and
  - (ii) the aggregate amount of the proceeds of any disposal by an administrator or Receiver of all or any part of the Charged Property
- (b) If the aggregate amount specified in paragraph (a) above is insufficient to pay or discharge the Secured Liabilities in full for any reason the Chargor will have no liability to pay or otherwise make good any such insufficiency
- (c) Any amount of the Secured Liabilities not payable or paid when due by the Chargor in accordance with paragraphs (a) and (b) above will nevertheless continue to be regarded as being
  - (i) due and payable for the purposes of clauses 11 (Application of Moneys) and 18 (Set-off), and
  - (ii) outstanding under this deed for the purposes of making the demand under, or enforcing, any Security, guarantee, indemnity or other assurance against

financial loss in each case created or evidenced under the Finance Documents as security or in support of any of the Secured Liabilities

- (d) Except as provided in clause 2.2(a), neither the Security Agent nor any other Finance Party shall have, assert, claim, make, take or enforce any right, power, remedy, proceeding, step for winding-up, dissolution, administration or reorganisation or for the appointment of a receiver, administrator, administrative receiver, trustee or similar offices of the Chargor or of all or any of its revenues or assets or other action in respect of the Secured Liabilities or any other sum payable by the Chargor under this deed. Any covenant to pay under the Law and Property Act 1925, the Land Registration Act 1925 or otherwise shall be excluded or modified to the extent inconsistent with this clause 2.2. For the avoidance of doubt, nothing in this clause 2.2 shall mean that the Security Agent shall be prevented from making any petition or demand required in order to enforce the security constituted by this deed.

### **3 SECURITY ASSIGNMENT**

#### **3.1 Assignment of Intra-Group Receivables**

- (a) As security for the payment of the Secured Liabilities, the Chargor with full title guarantee assigns and agrees to assign absolutely by way of security to the Security Agent (subject to re-assignment on final and unconditional discharge of the Secured Liabilities) all of its rights under any Subordinated Debt including those recorded in the Subordinated Loan Agreement.
- (b) For the avoidance of doubt, the Chargor shall remain liable (and neither the Security Agent nor any other Secured Party shall in any way become liable) in respect of its obligations in relation to any Subordinated Debt.

### **4. CONTINUING SECURITY**

#### **4.1 Continuing Security**

This security is to be a continuing security notwithstanding any intermediate payment or settlement of all or any part of the Secured Liabilities or any other matter or thing.

#### **4.2 Other Security**

This security is to be in addition to and shall neither be merged in nor in any way exclude or prejudice or be affected by any other security or other right which the Security Agent and/or any other Secured Party may now or after the date of this deed hold for any of the Secured Liabilities, and this security may be enforced against the Chargor without first having recourse to any other rights of the Security Agent or any other Secured Party.

### **5. FURTHER ASSURANCE**

The Chargor will, at its own expense, promptly following request by the Security Agent, execute such deeds and other agreements and otherwise take whatever action the Security Agent may reasonably require.

- (a) to perfect and/or protect the security created (or intended to be created) by this deed,
- (b) to facilitate the realisation or enforcement of such security;
- (c) to facilitate the exercise of any of the Security Agent's rights, powers or discretions under this deed; and/or

- (d) to confer on the Security Agent security over any assets of the Chargor (in whatever jurisdiction situated) equivalent or similar to the security intended to be conferred by this deed,

including the conversion of charges to assignments, equitable security to legal security, the execution of any transfer, conveyance, assignment or assurance whatsoever (including the execution of any supplemental security instrument relating to any Charged Property) and the giving of all notices, orders, instructions and directions whatsoever

## **6. REPRESENTATIONS AND WARRANTIES**

6.1 The Chargor hereby represents and warrants to the Security Agent as follows

- (a) the Subordinated Loan Agreements constitute valid and binding obligations of the parties thereto, are in full force and effect and have not been varied or modified in any way or cancelled and no party to any Subordinated Loan Agreement is in default under the relevant Subordinated Loan Agreement,
- (b) the Subordinated Debt is free from any Security and any rights in favour of third parties except security created by this deed,
- (c) it is the sole, legal and beneficial owner of the Subordinated Debt,
- (d) that all action, conditions and things required to be taken, fulfilled and done (including the obtaining of any necessary consents) in order
  - (i) to enable it lawfully to enter into and deliver, exercise its rights and perform and comply with its obligations under this deed,
  - (ii) to ensure that those obligations are legally binding,
  - (iii) to make this deed admissible in evidence in the courts of England; and
  - (iv) to ensure that the security created by this deed has the priority specified herein, have been taken, fulfilled and done,
- (e) that its entry into and delivery, exercise of its rights, and/or performance of or compliance with its obligations under this deed do not and will not violate (i) any law or regulation or judicial order to which it is subject or (ii) its constitutional documents; or (iii) any agreement or other document to which it is a party or which is binding on it or its assets, and do not and will not result in the existence of, or oblige it to create, any security over those assets,
- (f) so far as the Chargor is aware there are no equities in existence between the counterparties under the Subordinated Loan Agreements and the Chargor which may act to the detriment of the Secured Parties;
- (g) it is a limited liability corporation, duly incorporated and validly existing under the law of its jurisdiction of incorporation,
- (h) it has the capacity to sue and be sued in its own name,
- (i) it has the power to own its assets and to carry on its business as it is being conducted,
- (j) it has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, this deed and the transactions contemplated herein,

- (k) no limit on its powers will be exceeded as a result of the granting of the security and the entry into the covenant to pay contemplated by this deed,
- (l) no
  - (i) corporate action, legal proceeding or other procedure or step described in clause 24.7 (Insolvency Proceedings) of the Facility Agreement; or
  - (ii) creditors' process described in clause 24.8 (Creditors' Process) of the Facility Agreement,

has been taken or, to the best of its knowledge and belief, threatened in relation to it and none of the circumstances described in clause 24.6 (Insolvency) of the Facility Agreement apply to it

## **7 UNDERTAKINGS**

### **7.1 Duration of Undertakings**

The Chargor undertakes to the Security Agent in the terms of this clause 7 from the date of this deed and for so long as any security constituted by or referred to in this deed remains in force

### **7.2 Negative Pledge And Disposal Restrictions**

The Chargor will not:

- (a) create or agree to create or permit to subsist any assignment by way of security, charge, right of set-off, security trust, encumbrance, any other security interest or any other agreement or arrangement having the commercial effect of conferring security over all or any part of the Charged Property, or
- (b) sell, transfer, assign, factor or otherwise dispose of all or any part of the Charged Property or the right to receive or to be paid the proceeds arising on the disposal of the same, or agree or attempt to do so,

except as permitted by the Facility Agreement or with the prior consent of the Security Agent

### **7.3 Performance of Subordinated Loan Agreement**

- (a) The Chargor will
  - (i) perform all its obligations under the Subordinated Loan Agreement in a diligent and timely manner,
  - (ii) use all reasonable endeavours to enforce performance by the counterparties to the Subordinated Loan Agreement, promptly notify the Security Agent of any failure to perform and follow the reasonable directions of the Security Agent to enforce such performance, such enforcement to be at the Obligors' expense, and
  - (iii) not make or agree to make any amendments to the Subordinated Loan Agreement, waive any of its rights under the Subordinated Loan Agreement or exercise any right to terminate the Subordinated Loan Agreement (except with the prior written consent of the Security Agent) where such amendment might have an adverse tax consequence.

- (b) Until the occurrence of an Event of Default that is continuing and/or an Additional Event of Default, but subject to paragraph (a) above, the Chargor may continue to deal with the other parties to the Subordinated Loan Agreement

#### 7.4 **Notice to Counterparties**

The Chargor will

- (a) promptly after the execution of this deed (or, in respect of any Subordinated Debt entered into after the date of execution of this deed, whether or not formally documented promptly after such entry), give notice to the other parties to the Subordinated Debt that it has assigned its rights under the applicable Subordinated Debt to the Security Agent under this deed. Such notice will be given in substantially the form set out in schedule 1,
- (b) procure that each party served with any such notice countersigns and returns the notice to the Security Agent within 14 days of the date of the notice.

#### 7.5 **Transfer**

Upon the occurrence of an Additional Event of Default the Chargor will immediately transfer to a Subordinated Creditor (as such term is defined in the Subordination Agreement) all its rights, title and interests in any Subordinated Debt (a "**Subordinated Debt Transfer**") and shall execute and deliver or enter into any agreement to effect the same as requested by the Security Agent. For the avoidance of doubt, the Security Agent acknowledges and agrees that a Subordinated Debt Transfer does not constitute an enforcement of security.

#### 7.6 **Indemnity**

The Chargor will indemnify the Security Agent against all losses incurred by the Security Agent as a result of a breach by the Chargor of its obligations under this clause 7 (Undertakings) and in connection with the exercise by the Security Agent of its rights contained in clause 8 (Attorney), save for any losses arising as a result of the Security Agent's gross negligence or wilful misconduct. All sums the subject of this indemnity will be payable by the Chargor to the Security Agent promptly on demand and if not so paid will bear interest at the rate at which default interest is payable under clause 8.4 (Default Interest) of the Facility Agreement. Any unpaid interest will be compounded with the overdue amount at the end of each Interest Period applicable but will remain immediately due and payable.

#### 8 **ATTORNEY**

The Chargor, by way of security, irrevocably and severally appoints the Security Agent, each Receiver and any person nominated for the purpose by the Security Agent or any Receiver (in writing and signed by an officer of the Security Agent or Receiver) as its attorney (with full power of substitution and delegation) in its name and on its behalf and as its act and deed to execute, seal and deliver (using the company seal where appropriate) and otherwise perfect and do any deed, assurance, agreement, instrument, act or thing which it ought to execute and do under the terms of this deed, or which may be required or deemed proper in the exercise of any rights or powers conferred on the Security Agent or any Receiver under this deed or otherwise for any of the purposes of this deed, and the Chargor covenants with the Security Agent and each Receiver to ratify and confirm all such acts or things made, done or executed by that attorney.

**9 ENFORCEMENT AND POWERS OF THE SECURITY AGENT**

**9 1 Statutory Restrictions**

The restriction on the consolidation of mortgages and on power of sale imposed by sections 93 and 103 respectively of the Law of Property Act 1925 shall not apply to the security constituted by this deed

**9 2 Enforcement Powers**

For the purpose of all rights and powers implied or granted by statute, the Secured Liabilities are deemed to have fallen due on the date of this deed. The power of sale and other powers conferred by section 101 of the Law of Property Act 1925 and all other enforcement powers conferred by this deed shall be immediately exercisable at any time after

- (a) an Event of Default has occurred and is continuing, and/or
- (b) an Additional Event of Default has occurred and the Chargor has failed to effect a Subordinated Debt Transfer pursuant to clause 7 5 (Transfer) or a Subordinated Debt Transfer has been challenged, set aside or otherwise defeated or any step taken in respect of the same.

**9 3 Statutory Powers**

The powers conferred on mortgagees, receivers or administrative receivers by the Law of Property Act 1925 and the Insolvency Act 1986 (as the case may be) shall apply to the security created by this deed to the extent possible, unless they are expressly or impliedly excluded. If there is ambiguity or conflict between the powers contained in those Acts and those contained in this deed, those contained in this deed shall prevail

**9 4 Appointment of Receiver**

- (a) At any time after
  - (i) an Event of Default has occurred and is continuing and/or
  - (i) an Additional Event of Default has occurred and the Chargor has failed to effect a Subordinated Debt Transfer pursuant to clause 7.5 (Transfer) or a Subordinated Debt Transfer has been challenged, set aside or otherwise defeated or any step taken in respect of the same, or
  - (ii) if so requested by the Chargor,

the Security Agent may, by writing under hand signed by any officer or manager of the Security Agent, appoint any person (or persons) to be a Receiver of all or any part of the Charged Property.

- (b) Section 109(1) of the Law of Property Act 1925 shall not apply to this deed
- (c) The Security Agent shall be entitled to appoint a receiver save to the extent prohibited by section 72A of the Insolvency Act 1986

**9 5 Exercise of Powers**

- (a) At any time after:
  - (i) an Event of Default has occurred and is continuing and/or



- (ii) an Additional Event of Default has occurred and the Chargor has failed to effect a Subordinated Debt Transfer pursuant to clause 7.5 (Transfer) or a Subordinated Debt Transfer has been challenged, set aside or otherwise defeated or any application made in respect of the same,

all or any of the powers conferred upon mortgagees by the Law of Property Act 1925 as varied or extended by this deed, and all or any of the rights and powers conferred by this deed on a Receiver (whether expressly or impliedly), may be exercised by the Security Agent without further notice to the Chargor, irrespective of whether the Security Agent has taken possession or appointed a Receiver of the Charged Property

## **10 STATUS, POWERS, REMOVAL AND REMUNERATION OF RECEIVER**

### **10.1 Receiver as Agent**

Each Receiver shall be the agent of the Chargor which shall be solely responsible for his acts or defaults, and for his remuneration and expenses, and be liable on any agreements or engagements made or entered into by him. The Security Agent will not be responsible for any misconduct, negligence or default of a Receiver.

### **10.2 Powers of Receiver**

Each Receiver appointed under this deed shall have all the powers conferred from time to time on receivers by the Law of Property Act 1925 and the Insolvency Act 1986 (each of which is deemed incorporated in this deed), so that the powers set out in schedule 1 to the Insolvency Act 1986 shall (to the extent possible) extend to every Receiver, whether or not an administrative receiver. In addition, notwithstanding any liquidation of the Chargor, each Receiver shall have power to:

- (a) enter into or cancel any contracts,
- (b) redeem any prior Security Interests on or relating to the Charged Property and settle and pass the accounts of the person entitled to those prior Security Interests, so that any accounts so settled and passed shall (subject to any manifest error) be conclusive and binding on the Chargor and the money so paid shall be deemed to be an expense properly incurred by the Receiver,
- (c) settle any claims, accounts, disputes, questions and demands with or by any person who is or claims to be a creditor of the Chargor or relating to any of the Charged Property,
- (d) do all other acts and things (including signing and executing all documents and deeds) as the Receiver considers to be incidental or conducive to any of the matters or powers in this clause 10.2, or otherwise incidental or conducive to the preservation, improvement or realisation of the Charged Property, and use the name of the Chargor for all such purposes,

and in each case may use the name of the Chargor and exercise the relevant power in any manner which he may think fit

### **10.3 Removal of Receiver**

The Security Agent may by notice remove from time to time any Receiver appointed by it and, whenever it may deem appropriate, appoint a new Receiver in the place of any Receiver whose appointment has terminated, for whatever reason

#### **10 4 Remuneration of Receiver**

The Security Agent may from time to time fix the remuneration of any Receiver appointed by it

#### **10 5 Several Receivers**

If at any time there is more than one Receiver, each Receiver may separately exercise all of the powers conferred by this deed (unless the document appointing such Receiver states otherwise)

### **11 APPLICATION OF MONEYS**

#### **11 1 Order of Application**

All moneys received by the Security Agent or any Receiver appointed under this deed shall be applied in the following order.

- (a) in payment of the costs and losses incurred, and payments made, by the Security Agent and/or any Receiver (including the payment of preferential debts),
- (b) in payment of remuneration to the Receiver at such market rates as may be agreed between the Receiver and the Security Agent (acting reasonably) at or any time after the Receiver's appointment,
- (c) in or towards satisfaction of the Secured Liabilities in any order or manner which the Security Agent may determine; and
- (d) the surplus (if any) shall be paid to the Chargor or other person entitled to it

#### **11 2 Section 109 Law of Property Act 1925**

Sections 109(6) and (8) of the Law of Property Act 1925 shall not apply to a Receiver appointed under this deed

#### **11 3 Suspense Account**

- (a) Until the Secured Liabilities are paid in full, the Security Agent may place and keep (for such time as it shall determine) any money received pursuant to this deed or on account of the Chargor's liability in respect of the Secured Liabilities in an interest bearing separate suspense account (to the credit of either the Chargor or the Security Agent as the Security Agent shall think fit) and the Receiver may retain the same for the period which he and the Security Agent consider expedient without having any obligation to apply all or any part of that money in or towards discharge of the Secured Liabilities
- (b) If the security created by this deed is enforced at a time when no amount is due under the Finance Documents but at the time when amounts may or will become due, the Security Agent (or Receiver) may pay the proceeds of recoveries into a suspense account.

### **12 PROTECTION OF THIRD PARTIES**

#### **12.1 No Obligation to Enquire**

No purchaser from, or other person dealing with, the Security Agent or any Receiver (or their agents) shall be obliged or concerned to enquire whether.

- (a) the right of the Security Agent or any Receiver to exercise any of the powers conferred by this deed has arisen or become exercisable or as to the propriety or validity of the exercise or purported exercise of any such power, or
- (b) any of the Secured Liabilities remain outstanding or be concerned with notice to the contrary and the title and position of such a purchaser or other person shall not be impeachable by reference to any of those matters

## **12 2 Receipt Conclusive**

The receipt of the Security Agent or any Receiver shall be an absolute and a conclusive discharge to a purchaser, and shall relieve him of any obligation to see to the application of any moneys paid to or by the direction of the Security Agent or any Receiver

## **13 PROTECTION OF SECURITY AGENT AND RECEIVER**

### **13 1 No Liability**

Neither the Security Agent nor any Receiver shall be liable in respect of any of the Charged Property or for any loss or damage which arises out of the exercise or the attempted or purported exercise of, or the failure to exercise any of, their respective powers, unless caused by its or his gross negligence or wilful default

### **13.2 Possession of Charged Property**

Without prejudice to clause 13 1 (No Liability), if the Security Agent or any Receiver enters into possession of the Charged Property, it will not be liable to account as mortgagee in possession and may at any time at its discretion go out of such possession

### **13 3 Waiver of defence**

The obligations of the Chargor under this deed will not be affected by any act, omission or circumstance which (but for this provision) may operate to release, reduce or otherwise exonerate the Chargor from its obligations hereunder including, without limitation

- (a) any time or indulgence granted to or compositioned with any person,
- (b) the taking, variation, compromise, renewal, surrender or release of or refusal to enforce any rights, remedies or securities against or granted by any person,
- (c) any failure to comply with any formality or other requirement in relation to any security or failure to realise the full value of any security,
- (d) any legal limitation, disability, incapacity or lack of power or authority or other circumstance relating to any person;
- (e) any amendment, however fundamental, to the terms of this deed or any other document or security (including, without limitation, the Finance Documents),
- (f) any change in the constitution of any person or any amalgamation or consolidation of any person with another person,
- (g) any person becoming insolvent, going into receivership or liquidation or having an administrator appointed or becoming subject to any other procedure for the suspension of payments to or protection of creditors or similar proceedings,
- (h) any release of any person under the terms of any composition or arrangement,

- (i) any unenforceability, illegality, invalidity or non-provability of any obligation of any person under any Finance Document or any other document or security, or
- (j) as any fluctuation in or partial repayment or prepayment of the Secured Liabilities

#### **13 4 Immediate Recourse**

- (a) The Chargor waives any right it may have of first requiring any Secured Party or any Receiver to proceed against or enforce any other rights or security or claim payment from any person before claiming against the Chargor under this deed
- (b) This waiver applies irrespective of any law or provision of a Finance Document to the contrary

#### **13 5 No Competition**

Subject to clause 13 6 (Exercise of Rights), until all the Secured Liabilities have been irrevocably paid and discharged in full and the Security Agent has no further commitment to provide facilities or accommodation to the Borrower, the Chargor will not exercise any rights which it may have

- (a) to claim any right of contribution in relation to any payment made by the Chargor under this deed,
- (b) to be subrogated to the rights, Security or monies held, received or receivable by any Secured Party or any Receiver (or any trustee or other agent on its behalf),
- (c) following a claim made on the Chargor under this deed, to demand or accept repayment of any monies due from the Borrower or claim any set-off or counterclaim against the Borrower,
- (d) to claim or prove in a liquidation or other insolvency proceedings of the Borrower or any co-surety in competition with any Secured Party or any Receiver

#### **13 6 Exercise of Rights**

Following the making of a demand under this deed, the Obligors will, at their own cost, promptly take such of the steps or actions as are referred to in clause 13 5 (No Competition) above as the Security Agent may from time to time stipulate

#### **13 7 Turnover**

If at any time before all the Secured Liabilities have been irrevocably paid and discharged in full and the Finance Parties have no further commitment to provide facilities or accommodation to the Obligors the Chargor receives or recovers a payment with distribution of any kind whatsoever in accordance with any direction given to it under clause 13.6 (Exercise of Rights) the Chargor will on demand promptly pay all such amounts and distributions so received to the Security Agent for application in accordance with this deed and pending that payment will hold those amounts and distributions on trust for the Security Agent on behalf of the Secured Parties.

#### **13 8 Security Agent**

The provisions set out in clause 29 (Role of the Security Agent) of the Facility Agreement shall govern the rights, duties and obligations of the Security Agent under this deed.

## **14 CUMULATIVE POWERS AND AVOIDANCE OF PAYMENTS**

### **14 1 Cumulative Powers**

The powers which this deed confers on the Security Agent, the other Secured Parties and any Receiver appointed under this deed are cumulative, without prejudice to their respective powers under the general law, and may be exercised as often as the relevant person thinks appropriate. The Security Agent, the other Secured Parties or the Receiver may, in connection with the exercise of their powers, join or concur with any person in any transaction, scheme or arrangement whatsoever. The respective powers of the Security Agent, the other Secured Parties and the Receiver will in no circumstances be suspended, waived or otherwise prejudiced by anything other than an express consent or amendment.

### **14 2 Amounts Avoided**

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

### **14 3 Discharge Conditional**

Any settlement or discharge between the Chargor and any Secured Party shall be conditional upon no security or payment to that Secured Party by that the Chargor or any other person being avoided, set aside, ordered to be refunded or reduced by virtue of any provision or enactment relating to insolvency and accordingly (but without limiting the other rights of that Secured Party under this deed) that Secured Party shall be entitled to recover from that the Chargor the value which that Secured Party has placed on that security or the amount of any such payment as if that settlement or discharge had not occurred.

## **15 RULING OFF ACCOUNTS**

If the Security Agent or any other Secured Party receives notice of any subsequent encumbrance or other interest affecting any of the Charged Property (except as permitted by the Facility Agreement) it may open a new account for the Chargor in its books. If it does not do so then (unless it gives express notice to the contrary to the Chargor), as from the time it receives that notice, all payments made by the Chargor to it (in the absence of any express appropriation to the contrary) shall be treated as having been credited to a new account of the Chargor and not as having been applied in reduction of the Secured Liabilities.

## **16. DELEGATION**

The Security Agent may delegate by power of attorney or in any other manner all or any of the powers, authorities and discretions which are for the time being exercisable by it under this deed to any person or persons upon such terms and conditions (including the power to sub-delegate) as it may think fit. The Security Agent will not be liable or responsible to the Chargor or any other person for any losses arising from any act, default, omission or misconduct on the part of any delegate.

## **17. REDEMPTION OF PRIOR CHARGES**

The Security Agent may, at any time after an Event of Default has occurred and is continuing and/or an Additional Event of Default, redeem any prior encumbrance on or relating to any of the Charged Property or procure the transfer of that encumbrance to itself, and may settle and pass the accounts of any person entitled to that prior Security Interest. Any account so settled and passed shall (subject to any manifest error) be conclusive and binding on the Chargor. The Chargor will on demand pay to the Security

Agent all principal monies and interest and all losses incidental to any such redemption or transfer.

**18 SET-OFF**

**18 1 Set-Off Rights**

Any Secured Party may at any time (without notice to the Chargor)

- (a) set-off or otherwise apply sums standing to the credit of the Chargor's accounts with that Secured Party (irrespective of the terms applicable to those accounts and whether or not those sums are then due for repayment to that Secured Party), and
- (b) set-off any other obligations (whether or not then due for performance) owed by that Secured Party to the Chargor,

against any liability of the Chargor to the relevant Secured Party under this deed

**18 2 Different Currencies**

A Secured Party may exercise its rights under clause 18 1 (Set-Off Rights) notwithstanding that the amounts concerned may be expressed in different currencies and each Secured Party is authorised to effect any necessary conversions at a market rate of exchange selected by it

**18 3 Unliquidated Claims**

If the relevant obligation or liability is unliquidated or unascertained, the Secured Party may set-off the amount which it estimates (in good faith) will be the final amount of that obligation or liability once it becomes liquidated or ascertained

**18 4 No Set-Off**

The Chargor will pay all amounts payable under this deed without any set-off, counterclaim or deduction whatsoever unless required by law in which event the Chargor will pay an additional amount to ensure that the payment recipient receives the amount which would have been payable had no deduction been required to have been made

**19. NOTICES**

**19 1 Mode of Service**

- (a) Any notice, demand, consent, agreement or other communication (a "Notice") to be served in connection with this deed will be in writing and will be made by letter or by facsimile transmission to the party to be served
- (b) The address and facsimile number of each party to this deed for the purposes of clause 19 1(a) are as shown immediately after its name on the execution pages of this deed or as notified by that party for this purpose to the other party by not less than five Business Days' notice.
- (c) Any Notice to be served by the Chargor on a Secured Party will be effective only if it is expressly marked for the attention of the department or officer (if any) specified in conjunction with the relevant address and facsimile number referred to in clause 19 1(b)

**19 2 Deemed Service**

- (a) Subject to clause 19 2(b), a Notice will be deemed to be given as follows

- (i) if by 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 the relevant party at the relevant address, and
- (ii) if by facsimile, when received in legible form
- (b) A Notice given in accordance with clause 19 1(a) but received on a non-Business Day or after business hours in the place of receipt or a day which is not a Business Day will be deemed to be given on the next Business Day in that place

## **20. CHANGES TO PARTIES**

### **20.1 Assignment by the Security Agent**

The Security Agent may at any time assign or otherwise transfer all or any part of its rights under this deed in accordance with the Facility Agreement

### **20 2 Changes to Parties**

The Chargor authorises and agrees to changes to parties under clause 25 (Changes to Lenders and Hedge Counterparties) of the Facility Agreement and authorises the Security Agent to execute on its behalf any document required to effect the necessary transfer of rights or obligations contemplated by those provisions

## **21 CURRENCY CONVERSION**

### **21 1 Conversion**

All monies received or held by the Security Agent or any Receiver under this deed may be converted into any other currency which the Security Agent considers necessary to cover the obligations and liabilities comprised in the Secured Liabilities in that other currency at the Security Agent's spot rate of exchange then prevailing for purchasing that other currency with the existing currency

### **21 2 No Discharge**

No payment to the Security Agent (whether under any judgement or court order or otherwise) shall discharge the obligation or liability of the Chargor in respect of which it was made unless and until the Security Agent has received payment in full in the currency in which the obligation or liability was incurred. To the extent that the amount of any such payment shall on actual conversion into that currency fall short of that obligation or liability expressed in that currency, the Security Agent shall have a further separate cause of action against the Chargor and shall be entitled to enforce the security constituted by this deed to recover the amount of the shortfall

## **22 MISCELLANEOUS**

### **22 1 Small Company Moratorium**

Notwithstanding any other provision of this deed, the obtaining of a moratorium under section 1A of the Insolvency Act 1986, or anything done with a view to obtaining such a moratorium (including any preliminary decision or investigation), shall not be an event causing any floating charge created by this deed to crystallise or causing restrictions which would not otherwise apply to be imposed on the disposal of property by the Chargor or a ground for the appointment of a Receiver

**22.2 Certificates Conclusive**

A certificate or determination of the Security Agent as to any amount payable under this deed will be conclusive and binding on the Chargor, except in the case of manifest error.

**22.3 Invalidity of any Provision**

If any provision of this deed is or becomes invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired in any way

**22.4 Counterparts**

This deed may be executed in any number of counterparts, all of which taken together shall be deemed to constitute one and the same instrument

**22.5 Third Party Rights**

The Contracts (Rights of Third Parties) Act 1999 shall not apply to this deed and no rights or benefits expressly or impliedly conferred by this deed shall be enforceable under that Act against the parties to this deed by any other person.

**22.6 Covenant To Release**

Once all the Secured Liabilities have been paid in full and none of the Security Agent nor any Secured Party has any actual or contingent liability to advance further monies to, or incur liability on behalf of, the Chargor, the Security Agent and each Secured Party shall, at the request and cost of the Obligors, take any action which may be necessary to release the Charged Property from the security constituted by this deed

**23 GOVERNING LAW**

- (a) This deed and any dispute, controversy, proceedings or claims of whatever nature arising out of or in any way relating to this deed or its formation (including any non-contractual disputes or claims) shall be governed by and construed in accordance with English law.
- (b) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this deed (including a dispute regarding the existence, validity or termination of this deed) (a "**Dispute**")
- (c) The parties to this deed agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no party will argue to the contrary

**IN WITNESS** whereof this deed has been duly executed on the above date first above written



## **SCHEDULE 1**

### **Forms of notice to counterparties of Subordinated Loan Agreement**

To **[insert name and address of counterparty]**

Dated ●

Dear Sirs

**Re: [here identify the relevant Subordinated Loan Agreement] (the "Agreement")**

We notify you that Almacantar Limited (the "**Chargor**") has assigned to Deutsche Pfandbriefbank AG (the "**Security Agent**") for the benefit of itself and certain other banks and financial institutions (the "**Secured Parties**") all its right, title and interest in the Agreement as security for certain obligations owed by the Chargor to the Secured Parties

We further notify you that.

- 1 the Chargor may not agree to amend the Agreement or terminate the Agreement (without the prior written consent of the Security Agent) where such amendment might have an adverse tax consequence,
- 2 you may continue to deal with the Chargor in relation to the Agreement until you receive written notice to the contrary from the Security Agent. Thereafter the Chargor will cease to have any right to deal with you in relation to the Agreement and therefore from that time you should deal only with the Security Agent,
- 3 you are authorised to disclose information in relation to the Agreement to the Security Agent on request,
- 4 after receipt of written notice in accordance with paragraph 2 above, you must pay all monies to which the Chargor is entitled under the Agreement direct to the Security Agent (and not to the Chargor) unless the Security Agent otherwise agrees in writing, and
5. the provisions of this notice may only be revoked with the written consent of the Security Agent.

Please sign and return the enclosed copy of this notice to the Security Agent (with a copy to the Chargor) by way of confirmation that

- (a) you agree to the terms set out in this notice and to act in accordance with its provisions,
- (b) you have not received notice that the Chargor 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, and
- (c) you have not claimed or exercised, nor do you have any outstanding right to claim or exercise against the Chargor any right of set-off, counter-claim or other right relating to the Agreement

The provisions of this notice are governed by English law.

Yours faithfully

.....  
for and on behalf of  
**Almacantar Limited**

***[On acknowledgement copy]***

To ***[insert name and address of Security Agent]***

Copy to ***[insert name and address of Chargor]***

We acknowledge receipt of the above notice and confirm the matters set out in paragraphs (a) to (c) above

.....  
for and on behalf of  
***[insert name of Counterparty]***

Dated                      ●

**SIGNATORIES TO SECURITY ASSIGNMENT**

Executed as a deed by )  
**ALMACANTAR LIMITED** acting by )  
In the presence of: )

Signature of director

Signature of witness

Name of witness

Address of witness

Occupation of witness

*M. Filkin*  
3 QUEBEC MEWS W1

**Notice Details**

Address: 3 Quebec Mews, London W1H 7NX

Facsimile: N/A

Attention of: Jonathan Paul / Matthew Filkin

**With a copy to:**

Address: Mishcon de Reya, Summit House,  
12 Red Lion Square, London, WC1R  
4QD

Facsimile: 00 44 (0)207404 5982

Attention of: Stephen Hughes

**Security Agent**

Signed for and on behalf of **DEUTSCHE** )  
**PFANDBRIEFBANK AG:** )  
)  
)

Name:

**Notice Details**

Address: 21<sup>st</sup> Floor, 30 St Mary Axe, London  
EC3A 8BF

Facsimile: +44 20 7743 7737

## SIGNATORIES TO SECURITY ASSIGNMENT

Executed as a deed by )  
**ALMACANTAR LIMITED** acting by )  
in the presence of: )

Signature of director .. . . . . .  
Signature of witness .. . . . . .  
Name of witness . . . . .  
Address of witness .. . . . .  
Occupation of witness . . . . .

### Notice Details

Address: 3 Quebec Mews, London W1H 7NX

Facsimile N/A

Attention of: Jonathan Paul / Matthew Filkin

### With a copy to:

Address: Mishcon de Reya, Summit House,  
12 Red Lion Square, London, WC1R  
4QD

Facsimile: 00 44 (0)207404 5982

Attention of: Stephen Hughes

### Security Agent

Signed for and on behalf of **DEUTSCHE** )  
**PFANDBRIEFBANK AG:** )  
)  
)

Nigel Buxton  
SIMON CHARLES BAVERSTOCK BROWNE  
Name:

### Notice Details

Address: 21<sup>st</sup> Floor, 30 St Mary Axe, London  
EC3A 8BF

Facsimile: +44 20 7743 7737