

Execution Version

Dated

30<sup>th</sup> JANUARY

2019

GOLDEV WOKING LIMITED

and

WOKING BOROUGH COUNCIL

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REVOLVING £250,000,000 FACILITY AGREEMENT

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**Katten**

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## CONTENTS

Clause	Page
1. Definitions and Interpretation .....	1
2. The Facility .....	8
3. Purpose .....	9
4. Conditions of Utilisation .....	9
5. Utilisation .....	10
6. Repayment .....	11
7. Prepayment and Cancellation .....	11
8. Interest .....	12
9. Loan Periods .....	14
10. Tax Gross Up and Indemnities .....	14
11. Increased Costs .....	17
12. Other Indemnities .....	18
13. Mitigation by the Lender .....	19
14. Costs and Expenses .....	19
15. Information Undertakings .....	20
16. Development Undertakings .....	21
17. Representations .....	22
18. Undertakings .....	24
19. Events of Default .....	26
20. Changes to the Parties .....	28
21. Payment Mechanics .....	29
22. Notices .....	30
23. Calculations and Certificates .....	32
24. Partial Invalidity .....	32
25. Remedies and Waivers .....	32
26. Amendments and Waivers .....	32
27. Confidential Information .....	33
28. Counterparts .....	33
29. Co-Operation and Good Faith .....	33
30. Council as Local Authority .....	34
31. Governing Law .....	34
32. Enforcement .....	34
SCHEDULE 1 Conditions Precedent .....	35
1. Financial Information .....	35
2. Property .....	35
3. Development Documents .....	35
4. Security and other Finance Documents .....	35
5. Tax .....	36
6. Planning Permission .....	36

**APPENDIX 1** Form of Legal Charge

**APPENDIX 2** Form of Debenture

THIS AGREEMENT is dated 30<sup>th</sup> JANUARY 2019 and made between:

- (1) GOLDEV WOKING LIMITED a company incorporated in England and Wales (registered number 11339840) and whose registered office is at 73 Cornhill, London EC3V 3QQ (the "Borrower"); and
- (2) WOKING BOROUGH COUNCIL of Civic Offices, Gloucester Square, Woking, GU21 6YL (the "Lender").

IT IS AGREED as follows:

## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

In this Agreement:

"Affiliate" means a Subsidiary or a Holding Company of a person or a Subsidiary of that Holding Company.

"Agreement for Lease" means the agreement for lease relating to Woking Football Club and other land in Woking dated on or about the date of this Agreement between the Lender (1) and the Borrower (2).

"Authorisation" means an authorisation, consent, approval, resolution, licence, permit, exemption, filing, notarisation or registration.

"Availability Period" means the period from and including the date of this Agreement to and including the earlier of (i) the date falling three months after the date on which Practical Completion occurs and (ii) the seventh anniversary of the date of this Agreement.

"Available Commitment" means the Commitment minus:

- (a) the amount of any outstanding Loans; and
- (b) in relation to any proposed Utilisation, the amount of its participation in any Loans that are due to be made on or before the proposed Utilisation Date.

"Budget Cost" means an item appearing in the Cost Budget (and which shall include, for the avoidance of doubt pre-planning and associated pre-works commencement costs anticipated to be in a sum of not less than £2,000,000 (exclusive of VAT)).

"Business Day" means a day (other than a Saturday or Sunday) on which banks are open for general business in London.

"Commitment" means £250,000,000 to the extent not cancelled or reduced under this Agreement.

"Confidential Information" means all information relating to the Borrower, the Group, the Finance Documents or the Facility of which the Lender becomes aware in its capacity as, or for the purpose of becoming, the Lender or receivers under the Finance Documents or the Facility from any member of the Group or any of its advisers in whatever form but excludes information that:

- (a) is or becomes public information other than as a direct or indirect result of any breach by the Lender of clause 27.1 (*Confidentiality*); or
- (b) is identified in writing at the time of delivery as non-confidential by any member of the Group or any of its advisers; or
- (c) is known by the Lender before the date the information is disclosed to it in accordance with paragraphs (a) or (b) or is lawfully obtained by the Lender after that date, from a source which is, as far as the Lender is aware, unconnected with the Group and which, in either case, as far as the Lender is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality.

**"Cost Budget"** means the cost budget listing the itemised costs and expenses in respect of or relating to the Project as updated from time to time including for the avoidance of doubt:

- (a) costs and expenses incurred pursuant to or in connection with the Agreement for Lease and/or Implementation Agreement and all documents supplemental or ancillary thereto;
- (b) costs and expenses incurred prior to commencement of the works relating to the Development and/or acquisition of the Property;
- (c) VAT on all such costs and expenses

as approved by the Lender from time to time in accordance with clause 16.3 (*Cost Budget*) of this Agreement.

**"Council's Property"** has the meaning given to that term in the Agreement for Lease.

**"CTA"** means the Corporation Tax Act 2009.

**"Debenture"** means a debenture granted by the Borrower in favour of the Lender in the form attached at *Appendix 2 (Form of Debenture)*.

**"Delegate"** means any delegate, agent or attorney appointed by the Lender in consultation with the Borrower.

**"Development"** has the meaning given to that term in the Implementation Agreement.

**"Development Party"** means a contractor, a consultant, or any other person carrying out works in respect of the Development.

**"Disposal Proceeds"** means the disposal proceeds derived from the disposal or proposed disposal of a Unit in accordance with clause 18.3 (*Disposals*).

**"Disruption Event"** means either or both of:

- (a) a material disruption to those payment or communications systems or to those financial markets which are, in each case, required to operate in order for payments to be made in connection with the Facility (or otherwise in order for the transactions contemplated by the Finance Documents to be carried out) which disruption is not caused by, and is beyond the control of, any of the Parties; or



(b) the occurrence of any other event which results in a disruption (of a technical or systems-related nature) to the treasury or payments operations of a Party preventing that, or any other Party from:

- (i) performing its payment obligations under the Finance Documents; or
- (ii) communicating with other Parties in accordance with the terms of the Finance Documents,

and which (in either such case) is not caused by, and is beyond the control of, the Party whose operations are disrupted.

**"Duty of Care Agreement"** means a duty of care agreement between a Quantity Surveyor, the Borrower and the Lender in an agreed form.

**"Dwelling"** has the same meaning as in the Agreement for Lease.

**"Egley Road Freehold Residential Element"** has the same meaning as in the Agreement for Lease.

**"Event of Default"** means any event or circumstance specified as such in clause 19 (*Events of Default*).

**"Facility"** means the revolving loan facility made available under this Agreement as described in clause 2 (*The Facility*).

**"Facility Office"** means the office or offices notified by the Lender to the Borrower in writing (by not less than five Business Days' written notice) as the office or offices through which it will perform its obligations under this Agreement.

**"Finance Documents"** means this Agreement, the Debenture and the Legal Charge, each a **"Finance Document"**.

**"Financial Indebtedness"** means any indebtedness for or in respect of:

- (a) moneys borrowed;
- (b) any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with GAAP, be treated as a balance sheet liability;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (f) any amount raised under any other transaction (including any forward sale or purchase agreement) of a type not referred to in any other paragraph of this definition having the commercial effect of a borrowing;
- (g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value (or, if any actual

amount is due as a result of the termination or close-out of that derivative transaction, that amount) shall be taken into account);

- (h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and
- (i) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (h) above.

“GAAP” means generally accepted accounting principles in the UK.

“Ground Leases” has the meaning given to that term in the Agreement for Lease.

“Group” means the Borrower, any Holding Company of the Borrower and any Subsidiary of either.

“Holding Company” means, in relation to a person, any other person in respect of which it is a Subsidiary.

“Implementation Agreement” means an implementation agreement dated on or about the date of this Agreement between (1) the Lender and (2) the Borrower

“Interest Period” means, in relation to a Loan, each period determined in accordance with Clause 8.4 (*Payment of interest and Interest Period*) and, in relation to an Unpaid Sum, each period determined in accordance with Clause 8.5 (*Default interest*).

“ITA” means the Income Tax Act 2007.

“Legal Charge” means a legal charge or legal charges granted by the Borrower in favour of the Lender over the Property in the form attached at *Appendix 1 (Form of Legal Charge)*.

“Limitation Acts” means the Limitation Act 1980.

“LMA” means the Loan Market Association.

“Loan” means a loan made or to be made under the Facility or the principal amount outstanding for the time being of that loan.

“Loan Period” means, in relation to a Loan, each period determined in accordance with Clause 9 (*Loan Periods*).

“Management Charges” means three (3) per cent of Relevant Development Costs, payable monthly in accordance with Clause 3.2 (*Purpose*).

“Margin” means two per cent. per annum.

“Material Adverse Effect” means a material adverse effect on:

- (a) the ability of the Borrower to perform its obligations under the Finance Documents, or
- (b) the validity or enforceability of, or the effectiveness or ranking of any Security granted or purported to be granted pursuant to any of, the Finance Documents, or

(c) the rights or remedies of the Lender under any of the Finance Documents.

**"Net Disposal Proceeds"** means 90 per cent of Disposal Proceeds.

**"Objectives"** has the meaning given to that term in the Implementation Agreement.

**"Original Financial Statements"** means, in relation to the Borrower and to the extent available, its audited or unaudited financial statements (as the case may be) for its financial year ending immediately prior to the date of delivery to the Lender.

**"Original Jurisdiction"** means, in relation to the Borrower, the jurisdiction under whose laws the Borrower is incorporated as at the date of this Agreement.

**"Party"** means a party to this Agreement.

**"Practical Completion"** means the date upon which the Borrower and the Quantity Surveyor have certified to the Lender that practical completion of the Development has occurred.

**"Project"** has the meaning given to that term in the Agreement for Lease.

**"Property"** means:

- (a) the premises demised by the Ground Leases; and
- (b) the Egley Road Freehold Residential Element.

**"Qualifying Lender"** has the meaning given to it in clause 10 (*Tax Gross Up and Indemnities*).

**"Quantity Surveyor"** means any chartered surveyor appointed by the Borrower in respect of the Development.

**"Rate"** means the percentage rate per annum which is equal to the percentage rate per annum at which the Lender is able to draw a Loan from the Public Works Loan Board.

**"Receiver"** means a receiver or receiver and manager or administrative receiver of the whole or any part of the Security Assets.

**"Relevant Development Costs"** means the costs of the Development as set out in the Cost Budget save for:

- (a) any payment of Community Infrastructure Levy;
- (b) payments pursuant to s106 Agreements or other statutory agreements; and
- (c) any interest payments on Loans pursuant to this Agreement.

**"Relevant Jurisdiction"** means, in relation to the Borrower:

- (a) its Original Jurisdiction;
- (b) any jurisdiction where any asset subject to or intended to be subject to the Transaction Security to be created by it is situated;
- (c) any jurisdiction where it conducts its business; and

(d) the jurisdiction whose laws govern the perfection of the Legal Charge.

**"Repeating Representations"** means each of the representations set out in Clause 17.1 (*Status*) to Clause 17.6 (*Governing law and enforcement*) and Clause 17.9 (*No default*) to Clause 17.12 (*Ranking of Security*).

**"Satisfactory Planning Permission"** has the meaning given in the Agreement for Lease.

**"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 the Borrower to any Secured Party under each Finance Document.

**"Secured Party"** means the Lender, a Receiver or any Delegate.

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

**"Security Asset"** means all of the assets of the Borrower which from time to time are, or are expressed to be, the subject of the Transaction Security.

**"Security Property"** means:

- (a) the Transaction Security expressed to be granted in favour of the Lender and all proceeds of the Transaction Security;
- (b) all obligations expressed to be undertaken by the Borrower to pay amounts in respect of the Secured Liabilities to the Lender and secured by the Transaction Security together with all representations and warranties expressed to be given by the Borrower or any other person in favour of the Lender; and
- (c) any other amounts or property, whether rights, entitlements, choses in action or otherwise, actual or contingent, which the Lender holds as Security.

**"Subsidiary"** means a subsidiary undertaking within the meaning of section 1162 of the Companies Act 2006.

**"Tax"** means 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).

**"Termination Date"** means the earlier of (i) the date of completion of the disposal of the last Unit at the Property and (ii) the eighth anniversary of the date of this Agreement.

**"Transaction Documents"** means the Finance Documents, the Agreement for Lease and the Implementation Agreement.

**"Transaction Security"** means the Security created or evidenced or expressed to be created or evidenced under the Debenture and/or the Legal Charge.

**"Unit"** means each individual residential unit constructed on the Property.

**"Unit Disposal Document"** means any agreement relating to the disposal of a Unit, or any other document designated as such by the Lender and the Borrower.



“Unpaid Sum” means any sum due and payable but unpaid by the Borrower under the Finance Documents.

“Utilisation” means a utilisation of the Facility.

“Utilisation Date” means the date of a Utilisation.

“Utilisation Request” means a notice in form and substance satisfactory to the Lender.

“VAT” means any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112) and any other tax of a similar nature, whether imposed in a member state of the European Union in substitution for, or levied in addition to, such tax, or imposed elsewhere.

## 1.2 Construction

- (a) Unless a contrary indication appears, any reference in this Agreement to:
- (i) the “Lender”, the “Borrower”, any “Party”, any “Secured Party” or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Finance Documents;
  - (ii) a document in “agreed form” is a document which is previously agreed in writing by or on behalf of the Borrower and the Lender or, if not so agreed, is in the form specified by the Lender;
  - (iii) “assets” includes present and future properties, revenues and rights of every description;
  - (iv) “disposal” includes a sale, transfer, assignment, grant, lease, licence, declaration of trust or other disposal, whether voluntary or involuntary, and “dispose” will be construed accordingly;
  - (v) a “Finance Document” or any other agreement or instrument is a reference to that Finance Document or Transaction Document or other agreement or instrument as amended, novated, supplemented, extended or restated;
  - (vi) “guarantee” means any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets of any person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness;
  - (vii) “indebtedness” includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
  - (viii) a “person” includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership or other entity (whether or not having separate legal personality);



- (ix) 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 of any regulatory, self-regulatory or other authority or organisation;
- (x) a provision of law is a reference to that provision as amended or re-enacted; and
- (xi) a time of day is a reference to London time.
- (b) The determination of the extent to which a rate is “**for a period equal in length**” to an Interest Period shall disregard any inconsistency arising from the last day of that Interest Period being determined pursuant to the terms of this Agreement.
- (c) Section, clause and Schedule headings are for ease of reference only.
- (d) Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement.
- (e) A Default (other than an Event of Default) is “**continuing**” if it has not been remedied or waived and an Event of Default is “**continuing**” if it has not been remedied or waived.

### 1.3 Currency symbols and definitions

“£”, “**GBP**” and “**sterling**” denote the lawful currency of the United Kingdom.

### 1.4 Third party rights

- (a) Unless expressly provided to the contrary in a Finance Document a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the “**Third Parties Act**”) to enforce or to enjoy the benefit of any term of this Agreement.
- (b) Notwithstanding any term of any Finance Document the consent of any person who is not a Party is not required to rescind or vary this Agreement at any time.

## 2. THE FACILITY

### 2.1 The Facility

Subject to the terms of this Agreement, the Lender makes available to the Borrower a sterling revolving loan facility in an aggregate amount equal to the Commitment.

### 2.2 Lender’s rights and obligations

- (a) Failure by the Lender to perform its obligations under the Finance Documents does not affect the obligations of the Lender under the Finance Documents.
- (b) The rights of the Lender under or in connection with the Finance Documents are separate and independent rights and any debt arising under the Finance Documents to the Lender from the Borrower is a separate and independent debt

in respect of which the Lender shall be entitled to enforce its rights in accordance with paragraph (c) below. The rights of the Lender include any debt owing to the Lender under the Finance Documents and, for the avoidance of doubt, any part of a Loan or any other amount owed by the Borrower which relates to the Lender's participation in the Facility or its role under a Finance Document is a debt owing to the Lender by the Borrower.

- (c) The Lender may, except as specifically provided in the Finance Documents, separately enforce its rights under or in connection with the Finance Documents.
- (d) The Lender shall utilise funds available to it either from the Public Works Loan Board or from its own resources or, at its absolute discretion, from a cheaper source of funding.

### **3. PURPOSE**

#### **3.1 Purpose**

The Borrower must apply all amounts borrowed by it under the Facility:

- (a) strictly in accordance with and towards the acquisition of the Property pursuant to and/or as anticipated under the Agreement for Lease (and all documents ancillary or supplemental thereto) and the carrying out of the Development pursuant to and/or anticipated under the Implementation Agreement (and all documents ancillary or supplemental thereto); and
- (b) subject otherwise to complying with clause 3.1(a) towards Budget Costs and the costs and fees associated therewith including, but not limited to:
  - (i) the Management Charges;
  - (ii) payment of interest on Loans; and
  - (iii) the repayment of a Loan already made at the end of the relevant Loan Period.

#### **3.2 Payment and Monitoring**

- (a) The Management Charges shall be payable monthly, by way of a Utilisation in accordance with clause 5 (*Utilisation*).
- (b) The Lender is not bound to monitor or verify the application of any amount borrowed pursuant to this Agreement.
- (c) The Borrower shall provide to the Lender such evidence of its compliance with clause 3 (*Purpose*) as the Lender shall reasonably require.

### **4. CONDITIONS OF UTILISATION**

#### **4.1 Initial conditions precedent**

The Lender will only be obliged to comply with clause 5.4 (*Lender's participation*) in relation to any Utilisation if on or before the relevant Utilisation Date, the Lender has received all of the documents and other evidence listed in **Schedule 1 (*Conditions Precedent*)** in form and substance satisfactory to it.

## **9. LOAN PERIODS**

### **9.1 Selection of Loan Periods**

- (a) A Loan Period for a Loan shall be determined by the Borrower, but shall not in any event be for a period less than one year nor more than five years.
- (b) A Loan Period shall not extend beyond the Termination Date.
- (c) Each Loan Period for a Loan shall start on the Utilisation Date or (if already made) on the day immediately following the expiry of the preceding Loan Period.

### **9.2 Next Business Day**

If a Loan Period would otherwise end on a day which is not a Business Day, that Loan Period will instead end on the next Business Day in that calendar month (if there is one) or the preceding Business Day (if there is not).

### **9.3 Consolidation**

If two or more Loan Periods end on the same date, those Loans will be consolidated into, and treated as, a single Loan on the last day of the Loan Period.

## **10. TAX GROSS UP AND INDEMNITIES**

### **10.1 Definitions**

- (a) In this Agreement:

“Qualifying Lender” means:

- (i) a Lender which is beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document and is:
  - (A) a Lender which is a bank (as defined for the purpose of section 879 of the ITA) making an advance under a Finance Document and is within the charge to United Kingdom corporation tax as respects any payments of interest made in respect of that advance or would be within such charge as respects such payments apart from section 18A of the CTA, or in respect of an advance made under a Finance Document by a person that was a bank (as defined for the purpose of section 879 of the ITA) at the time that that advance was made and within the charge to United Kingdom corporation tax as respects any payments of interest made in respect of that advance; or
  - (B) a Lender which is a local authority or company resident in the United Kingdom for United Kingdom tax purposes; or
- (ii) a Lender which is a building society (as defined for the purpose of section 880 of the ITA) making an advance under a Finance Document.

“Tax Credit” means a credit against, relief or remission for, or repayment of any Tax.

“**Tax Deduction**” means a deduction or withholding for or on account of Tax from a payment under a Finance Document.

“**Tax Payment**” means either the increase in a payment made by the Borrower to the Lender under clause 10.2 (*Tax gross-up*) or a payment under clause 10.3 (*Tax indemnity*).

#### 10.2 Tax gross-up

- (a) The Borrower shall make all payments to be made by it without any Tax Deduction, unless a Tax Deduction is required by law.
- (b) The Borrower shall promptly upon becoming aware that it must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Lender accordingly. Similarly, the Lender shall notify the Borrower on becoming so aware in respect of a payment payable to the Lender.
- (c) If a Tax Deduction is required by law to be made by the Borrower, the amount of the payment due from that the Borrower shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.
- (d) A payment shall not be increased under paragraph (c) above by reason of a Tax Deduction on account of Tax imposed by the United Kingdom, if on the date on which the payment falls due the payment could have been made to the Lender without a Tax Deduction if the Lender had been a Qualifying Lender, but on that date the Lender is not or has ceased to be a Qualifying Lender other than as a result of any change after the date it became a Lender under this Agreement in (or in the interpretation, administration, or application of) any law or Treaty or any published practice or published concession of any relevant taxing authority.
- (e) If the Borrower is required to make a Tax Deduction, the Borrower shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.
- (f) Within thirty days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Borrower or making that Tax Deduction shall deliver to the Lender a statement under section 975 of the ITA or other evidence reasonably satisfactory to that Finance Party that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.

#### 10.3 Tax indemnity

- (a) The Borrower shall (within five Business Days of demand by the Lender) pay to the Lender an amount equal to the loss, liability or cost which the Lender determines will be or has been (directly or indirectly) suffered for or on account of Tax by the Lender in respect of a Finance Document.
- (b) Paragraph (a) above shall not apply:
  - (i) with respect to any Tax assessed on the Lender under the law of the jurisdiction in which the Lender is incorporated or, if different, the jurisdiction (or jurisdictions) in which the Lender is treated as resident



for tax purposes or under the law of the jurisdiction in which the Lender's Facility Office is located in respect of amounts received or receivable in that jurisdiction, if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by the Lender; or

- (ii) to the extent a loss, liability or cost is compensated for by an increased payment under clause 10.2 (*Tax gross-up*) or would have been compensated for by an increased payment under clause 10.2 (*Tax gross-up*) but was not so compensated solely because one of the exclusions in paragraph (d) of clause 10.2 (*Tax gross-up*) applied.
- (c) If the Lender makes or intends to make, a claim under paragraph (a) above shall promptly notify the Borrower of the event which will give, or has given, rise to the claim.

#### 10.4 Tax Credit

If the Borrower makes a Tax Payment and the Lender determines that a Tax Credit is attributable to an increased payment of which that Tax Payment forms part, to that Tax Payment or to a Tax Deduction in consequence of which that Tax Payment was required and the Lender has obtained and utilised that Tax Credit, the Lender shall pay an amount to the Borrower which the Lender determines will leave it (after that payment) in the same after-Tax position as it would have been in had the Tax Payment not been required to be made by the Borrower.

#### 10.5 Stamp taxes

The Borrower shall pay and, within five Business Days of demand, indemnify each Secured Party against any reasonable and proper cost, loss or liability that Secured Party reasonably and properly incurs in relation to all stamp duty, land and buildings transaction tax (if applicable), registration and other similar Taxes payable in respect of any Finance Document.

#### 10.6 VAT

- (a) All amounts expressed to be payable under a Finance Document by any Party to the Lender which (in whole or in part) constitute the consideration for any supply for VAT purposes are deemed to be exclusive of any VAT which is chargeable on that supply, and accordingly, if VAT is or becomes chargeable on any supply made by the Lender to any Party under a Finance Document and the Lender is required to account to the relevant tax authority for the VAT, that Party must pay to the Lender (in addition to and at the same time as paying any other consideration for such supply) an amount equal to the amount of that VAT (and the Lender must promptly provide an appropriate VAT invoice to that Party).
- (b) Where a Finance Document requires any Party to reimburse or indemnify for any cost or expense, that Party shall reimburse or indemnify (as the case may be) the Lender for the full amount of such cost or expense, including such part thereof as represents VAT, save to the extent that the Lender reasonably determines that it is entitled to credit or repayment in respect of such VAT from the relevant tax authority.
- (c) Any reference in this clause 10.6 to any Party shall, at any time when such Party is treated as a member of a group for VAT purposes, include (where appropriate



and unless the context otherwise requires) a reference to the representative member of such group at such time (the term "representative member" to have the same meaning as in the Value Added Tax Act 1994).

In relation to any supply made by the Lender to any Party under a Finance Document, if reasonably requested by the Lender, that Party must promptly provide the Lender with details of that Party's VAT registration and such other information as is reasonably requested in connection with the Lender's VAT reporting requirements in relation to such supply.

## 11. INCREASED COSTS

### 11.1 Increased costs

- (a) Subject to clause 11.2 (*Exceptions*) the Borrower shall, within five Business Days of a demand by the Lender, pay to the Lender the amount of any reasonable and proper Increased Costs reasonably and properly incurred by the Lender or any of its Affiliates as a result of (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation or (ii) compliance with any law or regulation made after the date of this Agreement.
- (b) In this Agreement "**Increased Costs**" means:
  - (i) a reduction in the rate of return from the Facility or on the Lender's (or its Affiliate's) overall capital;
  - (ii) an additional or increased cost; or
  - (iii) a reduction of any amount due and payable under any Finance Document,

which is reasonably and properly incurred or suffered by the Lender or any of its Affiliates to the extent that it is directly attributable to the Lender having entered into its Commitment or funding or performing its obligations under any Finance Document.

### 11.2 Exceptions

- (a) Clause 11.1 (*Increased costs*) does not apply to the extent any Increased Cost is:
  - (i) attributable to a Tax Deduction required by law to be made by the Borrower;
  - (ii) compensated for by clause 10.3 (*Tax indemnity*) (or would have been compensated for under clause 10.3 (*Tax indemnity*) but was not so compensated solely because any of the exclusions in paragraph (b) of clause 10.3 (*Tax indemnity*) applied); or
  - (iii) attributable to the wilful breach by the Lender or its Affiliates of any law or regulation.
- (b) In this clause 11.2, a reference to a "**Tax Deduction**" has the same meaning given to the term in clause 10.1 (*Definitions*).

## 12. OTHER INDEMNITIES

### 12.1 Currency indemnity

If any sum due from the Borrower under the Finance Documents (a “Sum”), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the “First Currency”) in which that Sum is payable into another currency (the “Second Currency”) for the purpose of (i) making or filing a claim or proof against that the Borrower or (ii) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings, that the Borrower shall, as an independent obligation, within five Business Days of demand, indemnify each Secured Party to whom that Sum is due against any reasonable and proper cost, loss or liability reasonably and properly, directly arising out of or as a result of the conversion including any discrepancy between (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.

### 12.2 Other indemnities

The Borrower shall, within five Business Days of demand, indemnify each Secured Party against any reasonable and proper cost, loss or liability reasonably and properly incurred by that Secured Party as a result of:

- (a) the occurrence of any Event of Default;
- (b) a failure by the Borrower to pay any amount due under a Finance Document on its due date;
- (c) funding, or making arrangements to fund, its participation in a Loan requested by the Borrower in a Utilisation Request but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by that Secured Party alone); or
- (d) a Loan (or part of a Loan) not being prepaid in accordance with a notice of prepayment given by the Borrower.

### 12.3 Indemnity to the Lender

The Borrower shall within five Business Days of demand indemnify the Lender against any reasonable and proper cost, loss or liability reasonably and properly incurred by the Lender (acting reasonably) as a result of investigating any event which it reasonably believes is an Event of Default (and which subsequently results in the occurrence of an Event of Default), or instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under this Agreement.

### 12.4 Further indemnity to the Lender, Receivers and Delegates

The Borrower shall within five Business Days of demand indemnify each Secured Party against any reasonable and proper cost, loss or liability reasonably and properly incurred by any of them as a result of:

- (a) any failure by the Borrower to comply with its obligations under clause 14 (*Costs and Expenses*);
- (b) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised;

- (c) the taking, holding, protection or enforcement of the Transaction Security;
- (d) the exercise of any of the rights, powers, discretions, authorities and remedies vested in each Secured Party by the Finance Documents or by law;
- (e) instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under this Agreement; or
- (f) acting as Lender, Receiver or Delegate under the Finance Documents or which otherwise relates to any of the Security Property (otherwise, in each case, than by reason of the relevant Lender's, Receiver's or Delegate's gross negligence or wilful misconduct).

### **13. MITIGATION BY THE LENDER**

#### **13.1 Mitigation and limitation of liability**

- (a) The Lender shall take all reasonable steps to mitigate any circumstances which arise and which would result in the Facility ceasing to be available or any amount becoming payable under or pursuant to, or cancelled pursuant to, any of clause 7.1 (*Illegality*), clause 10 (*Tax Gross Up and Indemnities*) and clause 11 (*Increased Costs*) including (but not limited to) transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.
- (b) The Borrower shall within five Business Days of demand indemnify the Lender for all reasonable and proper costs and expenses reasonably and properly incurred by the Lender as a result of steps taken by it under clause 13.1 (*Mitigation*).

### **14. COSTS AND EXPENSES**

#### **14.1 Transaction expenses**

The Borrower shall within five Business Days of demand pay the Lender the amount of all reasonable and proper costs and expenses (including legal fees) reasonably and properly incurred by any Secured Party in an amount previously agreed with the Borrower in connection with the negotiation, preparation, printing, execution, syndication and perfection of this Agreement and any other documents referred to in this Agreement and any other Finance Documents executed after the date of this Agreement.

#### **14.2 Amendment costs**

If (a) the Borrower requests an amendment, waiver or consent or (b) an amendment is required pursuant to clause 21.6 (*Change of currency*), the Borrower shall, within five Business Days of demand, reimburse the Lender for the amount of all reasonable and proper costs and expenses (including legal fees) reasonably and properly incurred by any Secured Party in responding to, evaluating, negotiating or complying with that request or requirement.

#### **14.3 Enforcement and preservation costs**

The Borrower shall, within five Business Days of demand, pay to each Secured Party the amount of all reasonable and proper costs and expenses (including legal fees) reasonably and properly incurred by that Secured Party in connection with the enforcement of, or the preservation of any rights under, any Finance Document or the

Transaction Security and with any proceedings instituted by or against that Secured Party as a consequence of it entering into a Finance Document, taking or holding the Transaction Security, or enforcing those rights.

## **15. INFORMATION UNDERTAKINGS**

The undertakings in this clause 15 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

### **15.1 Financial statements**

The Borrower shall supply to the Lender:

- (a) as soon as they are available, but in any event within 270 days after the end of each of its financial years its audited consolidated financial statements for that financial year, and the audited financial statements of the Borrower for that financial year; and
- (b) as soon as the same become available, but in any event within 180 days after the end of each half of each of its financial years its consolidated financial statements for that financial half year, and the financial statements of the Borrower for that financial half year.

### **15.2 Requirements as to financial statements**

- (a) Each set of financial statements delivered by the Borrower pursuant to clause 15.1 (*Financial statements*) shall be certified by a director of the relevant company as giving a true and fair view (if audited) or fairly representing (if unaudited) its financial condition as at the date as at which those financial statements were drawn up.
- (b) Each set of financial statements delivered by the Borrower pursuant to clause 15.1 (*Financial statements*) shall be prepared using GAAP
- (c) Any reference in this Agreement to those financial statements shall be construed as a reference to those financial statements as adjusted to reflect the basis upon which the previous financial statements were prepared.

### **15.3 Information: miscellaneous**

The Borrower shall supply to the Lender as soon as reasonably practicable after becoming aware of them, the details of any litigation, arbitration or administrative proceedings or investigations which are current or pending against the Borrower and which, if adversely determined, are reasonably likely to have a Material Adverse Effect.

### **15.4 Notification of default**

- (a) The Borrower shall notify the Lender of any Event of Default (and the steps, if any, being taken to remedy it) as soon as reasonably practicable after becoming aware of its occurrence.
- (b) As soon as reasonably practicable following a request by the Lender, the Borrower shall supply to the Lender a certificate signed by one of its directors or a senior officer on its behalf certifying that no Event of Default is continuing



(or if an Event of Default is continuing, specifying the Event of Default and the steps, if any, being taken to remedy it).

**15.5 "Know your customer" checks**

If:

- (a) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the date of this Agreement; or
- (b) any change in the status of the Borrower, or the composition of the shareholders of the Borrower, after the date of this Agreement,

obliges the Lender to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not already available to it, the Borrower shall as soon as reasonably practicable following a request of the Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Lender in order for the Lender to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

**16. DEVELOPMENT UNDERTAKINGS**

**16.1 Sale of Dwellings**

The Borrower must actively market and offer for sale (or otherwise dispose of in accordance with or as anticipated by the Agreement for Lease) all Dwellings constructed as part of the Development as and when appropriate during the course of the Development.

**16.2 Information on the Development**

- (a) The Borrower must supply to the Lender on the last day of each month following first Utilisation, the first of which starts on the date of this Agreement, details of the:
  - (i) progress of the Development;
  - (ii) any other matters relating to the Developmentas the Lender may reasonably request.
- (b) If requested by the Lender, the Developer (or its designated representative) will attend meetings at the Lender's offices to discuss progress of the Development not more often than once a month.

**16.3 Cost Budget**

- (a) The Borrower will supply to the Lender the Cost Budget for approval:
  - (i) prior to submitting the first Utilisation Request; and
  - (ii) thereafter each time the Cost Budget is materially amended



and the Borrower will, acting reasonably and in good faith, not unreasonably withhold or delay its approval to the Cost Budget each time it is submitted for approval in accordance with this clause 16.3(a);

- (b) If a Cost Budget submitted pursuant to clause 16.3(b) has not been approved by the Lender in accordance with clause 16.3(a) prior to the submission of a Utilisation Request then for the purposes of Loans made the previously approved Cost Budget will apply.

## **17. REPRESENTATIONS**

The Borrower makes the representations and warranties set out in this clause 17 (*Representations*) to the Lender on the date of this Agreement.

### **17.1 Status**

It is a limited liability corporation, duly incorporated and validly existing under the law of its Original Jurisdiction and it has the power to own its assets and carry on its business as it is being conducted.

### **17.2 Binding obligations**

The obligations expressed to be assumed by it in each Transaction Document to which it is a party are legal, valid, binding and enforceable obligations.

### **17.3 Non-conflict with other obligations**

The entry into and performance by it of, and the transactions contemplated by, the Transaction Documents and the granting of the Transaction Security do not and will not conflict with any law or regulation applicable to it, its constitutional documents, or any agreement or instrument binding upon it or any of its assets or constitute a default or termination event (however described) under any such agreement or instrument.

### **17.4 Power and authority**

- (a) 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, the Transaction Documents to which it is or will be a party and the transactions contemplated by those Transaction Documents.
- (b) No limit on its powers will be exceeded as a result of the borrowing, grant of security or giving of guarantees or indemnities contemplated by the Transaction Documents to which it is a party.

### **17.5 Validity and admissibility in evidence**

- (a) All Authorisations required or desirable (i) to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Transaction Documents to which it is a party, and (ii) to make the Transaction Documents to which it is a party admissible in evidence in its Relevant Jurisdictions have been obtained or effected and are in full force and effect except any Authorisation referred to in paragraph (a) of clause 17.8 (*No filing or stamp taxes*).
- (b) All Authorisations necessary for the conduct of the business, trade and ordinary activities of the Borrower have been obtained or effected and are in full force

and effect if failure to obtain or effect those Authorisations has or is reasonably likely to have a Material Adverse Effect.

**17.6 Governing law and enforcement**

The choice of the governing law of the Finance Documents will be recognised and enforced in its Relevant Jurisdictions and any judgment obtained in relation to a Finance Document in the jurisdiction of the governing law of that Finance Document will be recognised and enforced in its Relevant Jurisdictions.

**17.7 Deduction of Tax**

- (a) It is not required to make any Tax Deduction (as defined in clause 10.1 (*Definitions*)) from any payment it may make under any Finance Document to a Lender which is a Qualifying Lender.
- (b) No rental income payable to the Borrower is subject to a requirement to make a deduction or withholding for or on account of Tax from that rental income.

**17.8 No filing or stamp taxes**

- (a) Under the laws of its Relevant Jurisdiction it is not necessary that the Finance Documents be registered, filed, recorded, notarised or enrolled with any court or other authority in that jurisdiction or that any stamp, registration, notarial or similar Taxes or fees be paid on or in relation to the Finance Documents or the transactions contemplated by the Finance Documents except (i) registration of particulars of the Security Documents at Companies House under the Companies Act 2006 and payment of associated fees, and (ii) registration of the Legal Charge at the Land Registry or Land Charges Registry in England and Wales and payment of associated fees, which registrations, filings, taxes and fees will be made and paid promptly after the date of the relevant Security Document.
- (b) Any disclosure required to be made by it to any relevant taxing authority in relation to stamp duty land tax payable on any transactions contemplated by or being financed by the Transaction Documents has been made.

**17.9 No default**

- (a) No Event of Default and, as at the date of this Agreement and each Utilisation Date, no Default is continuing or is reasonably likely to result from the making of any Utilisation or the entry into, or the performance of, or any transaction contemplated by, any Transaction Document.
- (b) No other event or circumstance is outstanding which constitutes (or, with the expiry of a grace period, the giving of notice, the making of any determination or any combination of any of the foregoing, would constitute) a default or a termination event (however described) under any other agreement or instrument which is binding on it or to which any of its assets are subject which has or is reasonably likely to have a Material Adverse Effect.

**17.10 Pari passu ranking**

Its payment obligations under the Finance Documents rank at least pari passu with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.

**17.11 No proceedings pending or threatened**

No litigation, arbitration or administrative proceedings or investigations of, or before, any court, arbitral body or agency which, if adversely determined, are reasonably likely to have a Material Adverse Effect have (to the best of its knowledge and belief (having made due and careful enquiries)) been started or threatened against it.

**17.12 Ranking of Security**

The security conferred by the Legal Charge constitutes a first priority security interest of the type described, over the assets referred to, in the Legal Charge and those assets are not subject to any prior or pari passu Security.

**17.13 Repetition**

The Repeating Representations are deemed to be made by the Borrower by reference to the facts and circumstances then existing on the date of each Utilisation Request, on each Utilisation Date and the first day of each Interest Period (except any which relate to the Original Financial Statements, which will cease to be so made once subsequent financial statements have been delivered under this Agreement).

**18. UNDERTAKINGS**

The undertakings in this clause 18 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

**18.1 Authorisations**

The Borrower shall promptly obtain, comply with and do all that is necessary to maintain in full force and effect, and supply certified copies to the Lender of, any Authorisation required under any law or regulation of a Relevant Jurisdiction to enable it to perform its obligations under the Transaction Documents and to ensure the legality, validity, enforceability or admissibility in evidence of any Transaction Document, or own its assets and carry on its business as it is being conducted.

**18.2 Compliance with laws**

The Borrower shall comply in all respects with all laws to which it may be subject, if failure so to comply has or is reasonably likely to have a Material Adverse Effect.

**18.3 Disposals**

- (a) The Borrower shall not enter into a single transaction or a series of transactions (whether related or not and whether voluntary or involuntary) to dispose of all or any part of the Properties.
- (b) Paragraph (a) above does not apply to any disposal of a Unit in accordance with paragraph (c) below.
- (c) The Borrower may dispose of a Unit if:
  - (i) no Event of Default is continuing or would result from that disposal; and
  - (ii) that disposal is on arm's length terms to an unrelated third party.

- (d) The Borrower must ensure that the Net Disposal Proceeds are immediately applied in accordance with clause 7.2 (*Mandatory prepayment*).
- (e) The Borrower shall supply to the Lender a copy of each Unit Disposal Document and each amendment, supplement, waiver or release of a Unit Disposal Document promptly upon entering the same.

#### 18.4 Implementation Agreement

The Lender and the Borrower agree that they will each, in all material respects, comply with their respective obligations under the Agreement for Lease and the Implementation Agreement.

#### 18.5 Taxes

The Borrower must pay all Taxes due and payable by it prior to the accrual of any fine or penalty for late payment and that its residence for tax purposes is in its Original Jurisdiction.

#### 18.6 Negative pledge

In this Clause 18.6, "**Quasi-Security**" means an arrangement or transaction described in paragraph (b) below.

- (a) The Borrower shall not create or permit to subsist any Security over any of its assets.
- (b) The Borrower shall not:
  - (i) sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by the Borrower;
  - (ii) sell, transfer or otherwise dispose of any of its receivables on recourse terms;
  - (iii) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or
  - (iv) enter into any other preferential arrangement having a similar effect,

in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.

- (c) Paragraphs (a) and (b) above do not apply to any Security or (as the case may be) Quasi-Security, listed below:
  - (i) the Transaction Security;
  - (ii) any lien arising by operation of law and in the ordinary course of trading; or
  - (iii) any Security that is released prior to the first Utilisation.



**18.7 Merger**

The Borrower shall not enter into any amalgamation, demerger, merger or corporate reconstruction.

**18.8 Change of accounting arrangements**

The Borrower shall upon written request from the Lender make such reasonable changes to the parties which carry out its accounting function and the processes which comprise its accounting function as the Lender shall reasonably require.

**18.9 Change of business**

The Borrower shall procure that no substantial change is made to the general nature of the business of the Borrower from that carried on at the date of this Agreement.

**19. EVENTS OF DEFAULT**

Each of the events or circumstances set out in this clause 19 is an Event of Default (save for clause 19.8)

**19.1 Non-payment**

The Borrower does not pay on the due date any amount payable pursuant to a Finance Document at the place and in the currency in which it is expressed to be payable unless its failure to pay is caused by administrative or technical error, or a Disruption Event, and payment is made within five Business Days of its due date.

**19.2 Other obligations**

- (a) The Borrower does not comply with any provision of the Finance Documents (other than those referred to in clause 19.1 (*Non-payment*)) above.
- (b) No Event of Default under paragraph (a) will occur if the failure to comply is capable of remedy and is remedied within 10 Business Days of the Lender giving notice to the Borrower.

**19.3 Misrepresentation**

- (a) Any representation or statement made or deemed to be made by the Borrower in the Finance Documents or any other document delivered by or on behalf of the Borrower under or in connection with any Finance Document is or proves to have been incorrect or misleading in any material respect when made or deemed to be made.
- (b) No Event of Default under paragraph (a) above will occur if the misrepresentation is capable of remedy and is remedied within 10 Business Days of the Lender giving notice to the Borrower.

**19.4 Insolvency**

- (a) The Borrower:
  - (i) is unable or admits inability to pay its debts as they fall due;



- (ii) is deemed to, or is declared to, be unable to pay its debts under applicable law; or
- (iii) suspends or threatens to suspend making payments on any of its debts.
- (b) The value of the assets of the Borrower is less than its liabilities (taking into account contingent and prospective liabilities).
- (c) A moratorium is declared in respect of any indebtedness of the Borrower.

**19.5 Insolvency proceedings**

Any corporate action, legal proceedings or other procedure or step is taken in relation to:

- (a) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Borrower;
  - (b) a composition, compromise, assignment or arrangement with any creditor of the Borrower;
  - (c) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of the Borrower or any of its assets; or
  - (d) enforcement of any Security over any assets of the Borrower,
- or any analogous procedure or step is taken in any jurisdiction.

This clause 19.5 shall not apply to any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within 21 days of commencement.

**19.6 Creditors' process**

Any expropriation, attachment, sequestration, distress or execution or any analogous process in any jurisdiction affects any asset or assets of the Borrower and is not discharged within 21 days.

**19.7 Unlawfulness and invalidity**

- (a) It is or becomes unlawful for the Borrower to perform any of its obligations under the Finance Documents or any Transaction Security ceases to be effective.
- (b) Any obligation or obligations of the Borrower under any Finance Documents are not or cease to be legal, valid, binding or enforceable and the cessation individually or cumulatively materially and adversely affects the interests of the Lender under the Finance Documents.
- (c) Any Finance Document ceases to be in full force and effect or any Transaction Security ceases to be legal, valid, binding, enforceable or effective or is alleged by a party to it (other than the Lender) to be ineffective.

**19.8 Cross Default**

- (a) Any Financial Indebtedness of the Borrower is not paid when due nor within any originally applicable grace period.
- (b) Any Financial Indebtedness of the Borrower is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described).
- (c) Any commitment for any Financial Indebtedness of the Borrower is cancelled or suspended by a creditor of the Borrower as a result of an event of default (however described).
- (d) Any creditor of the Borrower becomes entitled to declare any Financial Indebtedness of the Borrower due and payable prior to its specified maturity as a result of an event of default (however described).

**19.9 Material adverse change**

Any event or circumstance occurs which has or is reasonably likely to have a Material Adverse Effect.

**19.10 Repudiation**

The Borrower repudiates a Finance Document or evidences an intention to repudiate a Finance Document.

**19.11 Agreement for Lease/Implementation Agreement**

The Agreement for Lease or the Implementation Agreement is terminated.

**19.12 Acceleration**

On and at any time after the occurrence of an Event of Default which is continuing the Lender may, by notice to the Borrower:

- (a) cancel the Commitment whereupon it shall immediately be cancelled;
- (b) declare that all or part of the Loans, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, whereupon they shall become immediately due and payable;
- (c) declare that all or part of the Loans be payable on demand, whereupon they shall immediately become payable on demand by the Lender; and/or
- (d) exercise or direct the Lender to exercise any or all of its rights, remedies, powers or discretions under the Finance Documents.

**20. CHANGES TO THE PARTIES**

**20.1 Assignments and transfers**

No party may assign any of its rights or transfer any of its rights or obligations under the Finance Documents save as permitted by the Implementation Agreement.

## **21. PAYMENT MECHANICS**

### **21.1 Payments to the Lender**

On each date on which the Borrower is required to make a payment under a Finance Document, the Borrower shall make the same available to the Lender (unless a contrary indication appears in a Finance Document) for value on the due date at the time and in such funds specified by the Lender as being customary at the time for settlement of transactions in the relevant currency in the place of payment.

### **21.2 Partial payments**

- (a) If the Lender receives a payment that is insufficient to discharge all the amounts then due and payable by the Borrower under the Finance Documents, the Lender shall apply that payment towards the obligations of the Borrower under the Finance Documents in the following order:
  - (i) **first**, in or towards payment pro rata of any unpaid amount owing to the Lender, any Receiver or any Delegate under the Finance Documents;
  - (ii) **secondly**, in or towards payment pro rata of any accrued interest and fees due but unpaid under this Agreement;
  - (iii) **thirdly**, in or towards payment pro rata of any principal due but unpaid under this Agreement; and
  - (iv) **fourthly**, in or towards payment pro rata of any other sum due but unpaid under the Finance Documents.
- (b) The Lender may vary the order set out in paragraphs (a)(ii) to (a)(iv) above. Any such variation may include the re-ordering of obligations set out in any such paragraph.

### **21.3 No set-off by the Borrower**

All payments to be made by the Borrower under the Finance Documents shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

### **21.4 Business Days**

Any payment under the Finance Documents which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not). During any extension of the due date for payment of any principal or Unpaid Sum under this Agreement interest is payable on the principal or Unpaid Sum at the rate payable on the original due date.

### **21.5 Currency of account**

- (a) Subject to paragraph (b) below, sterling is the currency of account and payment for any sum due from the Borrower under any Finance Document.
- (b) Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred and any amount expressed to be payable in a currency other than sterling shall be paid in that other currency.

#### 21.6 Change of currency

- (a) 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 any reference in the Finance Documents to, and any obligations arising under the Finance Documents 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 Borrower), and 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).
- (b) If a change in any currency of a country occurs, this Agreement will, to the extent the Lender (acting reasonably and after consultation with the Borrower) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the market to which that currency applies and otherwise to reflect the change in currency.

### 22. NOTICES

#### 22.1 Communications in writing

Any communication to be made under or in connection with the Finance Documents shall be made in writing and, unless otherwise stated, may only be made by letter.

#### 22.2 Addresses

The address (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with the Finance Documents is:

- (a) in the case of the Borrower, that identified with its name below; and
- (b) in the case of the Lender, that identified with their names below,

or any substitute address or fax number or department or officer as the Party may notify to the Lender (or the Lender may notify to the other Parties, if a change is made by the Lender) by not less than five Business Days' notice.

Borrower: Wayne Gold, Goldev Woking Limited, 73 Cornhill, London EC3V 3QQ.

Lender: (i) Leigh Clarke, Finance Director and (ii) Peter Bryant, Head of Democratic and Legal Services, Woking Borough Council, Civic Offices, Gloucester Square, Woking GU21 6YL.

#### 22.3 Delivery

- (a) Any communication or document made or delivered by one person to another under or in connection with the Finance Documents will only be effective 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(s) is specified as part of its address details provided under clause 22.2 (*Addresses*), if addressed to that department or officer(s)



- (b) 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(s) identified with the Lender's signature below (or any substitute department or officer(s) as the Lender shall specify for this purpose).
- (c) Any communication or document which becomes effective, in accordance with paragraphs (a) and (b) above after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

#### 22.4 Notification of address

Promptly upon changing its address, the Lender shall notify the other Parties.

#### 22.5 Electronic communication

- (a) Any communication to be made between any two Parties under or in connection with the Finance Documents may be made by electronic mail or other electronic means (including, without limitation, by way of posting to a secure website) if those two Parties notify each other in writing of their electronic mail address and/or any other information required to enable the transmission of information by that means, and notify each other of any change to their address or any other such information supplied by them by not less than five Business Days' notice.
- (b) Any such electronic communication as specified in paragraph (a) above to be made between the Borrower and the Lender may only be made in that way to the extent that those two Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication.
- (c) Any such electronic communication as specified in paragraph (a) above made between any two Parties will be effective only when actually received (or made available) in readable form and in the case of any electronic communication made by a Party to the Lender only if it is addressed in such a manner as the Lender shall specify for this purpose.
- (d) Any electronic communication which becomes effective, in accordance with paragraph (c) above, after 5:00 p.m. in the place in which the Party to whom the relevant communication is sent or made available has its address for the purpose of this Agreement shall be deemed only to become effective on the following day.
- (e) Any reference in a Finance Document to a communication being sent or received shall be construed to include that communication being made available in accordance with this clause 22.5.

#### 22.6 English language

Any notice given under or in connection with the Lender must be in English. All other documents provided under or in connection with any Finance Document must be in English or, 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.

**23. CALCULATIONS AND CERTIFICATES**

**23.1 Accounts**

In any litigation or arbitration proceedings arising out of or in connection with a Finance Document, the entries made in the accounts maintained by the Lender are *prima facie* evidence of the matters to which they relate.

**23.2 Certificates and Determinations**

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

**23.3 Day count convention**

Any interest, commission or fee accruing under the Lender will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 365 days or, in any case where the practice in the Relevant Market differs, in accordance with that market practice.

**24. PARTIAL INVALIDITY**

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

**25. REMEDIES AND WAIVERS**

No failure to exercise, nor any delay in exercising, on the part of the Lender, any right or remedy under a Finance Document shall operate as a waiver of any such right or remedy or constitute an election to affirm any of the Finance Documents. No election to affirm any Finance Document on the part of the Lender shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in each Finance Document are cumulative and not exclusive of any rights or remedies provided by law.

**26. AMENDMENTS AND WAIVERS**

**26.1 Required consents**

The Lender may effect any amendment or waiver permitted by this clause 26. The Lender may engage, pay for and rely on the services of lawyers in determining the consent level required for and effecting any amendment, waiver or consent under this Agreement. The Borrower agrees to any such amendment or waiver permitted by this clause 26 which is agreed to by the Borrower. This includes any amendment or waiver which would, but for this clause, require the consent of all of the Borrowers.

**27. CONFIDENTIAL INFORMATION**

**27.1 Confidentiality**

The Lender agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by clause 27.2 (*Disclosure of Confidential Information*), and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information.

**27.2 Disclosure of Confidential Information**

The Lender may only disclose such Confidential Information as the Lender shall be required by law.

**27.3 Entire agreement**

This clause 27 constitutes the entire agreement between the Parties in relation to the obligations of the Lender under the Finance Documents regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.

**27.4 Inside information**

The Lender acknowledges that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and the Lender undertakes not to use any Confidential Information for any unlawful purpose.

**28. COUNTERPARTS**

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

**29. CO-OPERATION AND GOOD FAITH**

**29.1 Good faith**

Each party undertakes to co-operate in good faith with the others to facilitate the proper performance of this Agreement and the transactions contemplated under it and in particular will:

- (a) use all reasonable endeavours to avoid unnecessary disputes and claims against the others;
- (b) not interfere with the rights of the other party and its servants, agents, representatives, contractors or sub-contractors (of any tier) on its behalf in performing its obligations under this Agreement or in any other way hinder or prevent such other party or its servants, agents, representatives or sub-contractors on its behalf from performing those obligations; and
- (c) offer reasonable assistance to the other party (and their servants, agents, representatives or sub-contractors) to enable them to perform those obligations so far as is reasonably practicable and subject to the party providing such assistance being reimbursed any costs properly incurred.

**29.2 Mutual co-operation**

Without prejudice to any other provision in this Agreement, the parties acknowledge that the size, scope and complexity of the Project and the general nature of the Development such as the Development means that unforeseen matters material to the joint aims of the parties to achieve the Objectives may arise which will require the co-operation of the parties to satisfactorily resolve and in such event the parties agree that they shall with all due expedition apply reasonable endeavours to work together to resolve such matters on a reasonable basis which is mutually satisfactory and in accordance with the Objectives but if a satisfactory resolution cannot be found then determination of what shall be satisfactory in the circumstances shall be referred to determination by an expert.

**29.3 Minimising costs**

Without prejudice to Clause 29.2 (*Mutual co-operation*) the parties agree that they shall cooperate together in relation to any arrangements anticipated by this Agreement to minimise costs and expenditure incurred by either party.

**30. COUNCIL AS LOCAL AUTHORITY**

Nothing herein contained or implied shall prejudice or affect any of the statutory rights, powers or duties for the time being vested in the Lender as local authority for the area in which the Sites are located (including without limitation its rights, powers or duties as a local planning authority) and all such rights, powers and duties shall in regard to the Sites and any buildings thereon or the occupiers thereof be enforceable and exercisable by the Lender as fully and freely as if this Agreement had not been executed and any consent or approval given by or under this Agreement shall be deemed a consent or approval by the Lender as lender under this Agreement and not as local authority.

**31. GOVERNING LAW**

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

**32. ENFORCEMENT**

**32.1 Jurisdiction**

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement) (a "**Dispute**").
- (b) The Parties 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.

This Agreement has been entered into on the date stated at the beginning of this Agreement.



**SCHEDULE 1**  
**Conditions Precedent**

**1. Financial Information**

The Original Financial Statements.

**2. Property**

In this section an “**acceptable undertaking**” means a solicitor’s undertaking from a firm of solicitors regulated by the Law Society of England and Wales and approved for this purpose by the Lender and in form and substance satisfactory to the Lender.

- (a) All title documents relating to the Borrower’s interest in the Property or an acceptable undertaking to hold the same to the order of the Lender;
- (b) A clear Land Charges Registry search against the Borrower or the results of Land Registry searches in favour of the Lender on the appropriate forms against all of the registered titles comprising the Borrower’s interest in the Property and:
  - (i) giving not less than 20 Business Days’ priority beyond the date of the relevant Security Agreement; and
  - (ii) showing no adverse entries.
- (c) All necessary Land Registry application forms in relation to the transfer of the Property to the Borrower and the charging of the Property in favour of the Lender (including a form to note the obligation to make further advances, a form to register the restriction contained in the Security Agreement and a form for disclosable overriding interests), duly completed, accompanied by payment of the applicable Land Registry fees or an acceptable undertaking in relation to the same.
- (d) A land transaction return in relation to any stamp duty land tax payable in connection with the transfer of the Property to the Borrower, duly completed (stating the Borrower’s solicitors as the Borrower’s agent and directing the HM Revenue & Customs to send its certificate to the Borrower’s solicitors), accompanied by payment of that stamp duty land tax and an undertaking from the Borrower’s solicitors to deliver the land transaction return certificate to the Lender or its solicitors within three Business Days of receipt or an acceptable undertaking in relation to the same.
- (e) Copies of all Authorisations required in connection with the transfer of the Property to the Borrower and the charging of the Property in favour of the Lender.

**3. Development Documents**

The Cost Budget.

**4. Security and other Finance Documents**

- (a) The Legal Charge and the Debenture duly executed by the Borrower and the Lender.
- (b) A Duty of Care Agreement duly executed by the Quantity Surveyor.

5. **Tax**

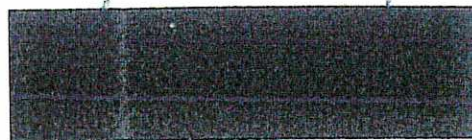
- (a) A copy of the VAT registration certificate for the Borrower.
- (b) Evidence that the Borrower has duly elected to waive exemption in relation to the Property and that HM Revenue & Customs has received that election.

6. **Planning Permission**

A Satisfactory Planning Permission.

EXECUTED AS A DEED by  
GOLDEV WOKING LIMITED  
acting by

)  
)  
)



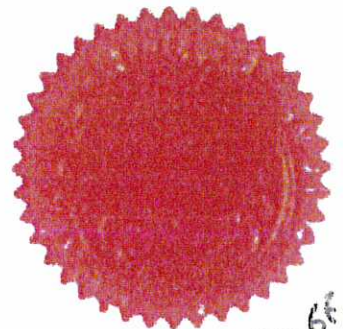
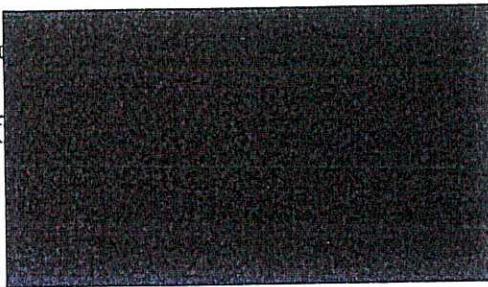
Director

In the presence of:

Witness signature

Witness name: S

Witness address:



2016

EXECUTED as a deed under the  
common seal of WOKING BOROUGH  
COUNCIL

)  
)  
)



Mayor



Head of Democratic and Legal  
Services

**APPENDIX 1**  
**Form of Legal Charge**



Dated

201[●]

GOLDEV WOKING LIMITED  
AND  
WOKING BOROUGH COUNCIL

---

LEGAL MORTGAGE  
IN RESPECT OF  
LAND AT WOKING

---

**Katten**

Katten Muchin Rosenman UK LLP

Paternoster House  
65 St Paul's Churchyard  
London EC4M 8AB  
Tel: 020 7776 7620  
Fax: 020 7776 7621

## CONTENTS

No.	Item	Page
1.	Definitions and Interpretation .....	1
2.	Covenant to Pay .....	5
3.	Grant of Security .....	5
4.	Perfection of Security .....	6
5.	Liability of the Borrower .....	6
6.	Representations and Warranties .....	7
7.	General Covenants .....	8
8.	Property Covenants .....	10
9.	Powers of the Lender .....	14
10.	When Security Becomes Enforceable .....	16
11.	Enforcement of Security .....	16
12.	Receivers .....	18
13.	Powers of Receiver .....	19
14.	Delegation .....	21
15.	Application of Proceeds .....	22
16.	Costs and Indemnity .....	23
17.	Further Assurance .....	23
18.	Power of Attorney .....	24
19.	Release .....	24
20.	Assignment and Transfer .....	24
21.	Set-off .....	24
22.	Amendments, Waivers and Consents .....	25
23.	Severance .....	25
24.	Counterparts .....	26
25.	Third Party Rights .....	26
26.	Further Provisions .....	26
27.	Notices .....	27
28.	Governing Law and Jurisdiction .....	27
	SCHEDULE 1 Property .....	28

This deed is dated

201[●]

#### **PARTIES**

- (1) **GOLDEV WOKING LIMITED** incorporated and registered in England and Wales with company number 11339840 whose registered office is at 73 Cornhill, London EC3V 3QQ ("**Borrower**")
- (2) **WOKING BOROUGH COUNCIL** a local authority of Civic Offices, Gloucester Road, Woking GU21 6YL ("**Lender**")

#### **BACKGROUND**

- (A) The Lender has agreed, under the Facility Agreement, to provide the Borrower with loan facilities on a secured basis.
- (B) The Borrower owns the Property.
- (C) Under this deed, the Borrower provides security to the Lender for the loan facilities made or to be made available under the Facility Agreement.

#### **AGREED TERMS**

##### **1. DEFINITIONS AND INTERPRETATION**

###### **1.1 Definitions**

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

"**Agreement for Lease**" has the meaning given to that term in the Facility Agreement.

"**Business Day**" means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

"**Charged Assets**" means all the assets, property and undertaking of the Borrower, which are, or are intended to be, subject to the Security created by, or pursuant to, this deed (and references to the Charged Assets shall include references to any part of them).

"**Commercial Units**" has the meaning given to that expression in the Agreement for Lease.

"**Delegate**" means any person appointed by the Lender or any Receiver under clause 14 and any person appointed as attorney of the Lender, Receiver or Delegate.

"**Development**" has the meaning given to that expression in the Facility Agreement.

"**Dwelling**" has the meaning given to that expression in the Agreement for Lease.

"**Environment**" means the natural and man-made environment including all or any of the following media, namely air, water and land (including air within buildings and other natural or man-made structures above or below the ground) and any living organisms (including man) or systems supported by those media.

"**Environmental Law**" means all applicable laws, statutes, regulations, secondary legislation, bye-laws, common law, directives, treaties and other measures, judgments and decisions of

any court or tribunal, codes of practice and guidance notes in so far as they relate to or apply to the Environment.

**"Environmental Licence"** means any authorisation, permit or licence necessary under Environmental Law in respect of any of the Charged Assets.

**"Event of Default"** has the meaning given to that expression in the Facility Agreement.

**"Facility Agreement"** means the £250,000,000 facility agreement dated on or around the date of this deed between the Borrower and the Lender for the provision of the loan facilities secured by this deed.

**"Financial Collateral"** has the meaning given to that expression in the Financial Collateral Regulations.

**"Financial Collateral Regulations"** means the Financial Collateral Arrangements (No 2) Regulations 2003 (SI 2003/3226).

**"Implementation Agreement"** has the meaning given to that term in the Facility Agreement.

**"Insurance Policy"** means each contract and policy of insurance effected or maintained by the Borrower from time to time relating to the Property.

**"LPA 1925"** means the Law of Property Act 1925.

**"Permitted Disposal"** means any grant of a lease or tenancy or freehold sale of a Dwelling or Commercial Units required by or otherwise permitted by the Facility Agreement and/or Agreement for Lease.

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

**"Receiver"** means a receiver or receiver and manager appointed by the Lender under clause 12.

**"Rental Income"** means any rental income from the Property from time to time.

**"Secured Liabilities"** means all present and future obligations and liabilities of the Borrower to the Lender, whether actual or contingent and whether owed jointly or severally, as principal or surety or in any other capacity, under or in connection with the Facility Agreement or this deed (including, without limitation, those arising under clause 26.3.2), together with all interest (including, without limitation, default interest) accruing in respect of those monies, obligations or liabilities.

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

**"Security Financial Collateral Arrangement"** has the meaning given to that expression in the Financial Collateral Regulations.

**"Security Period"** means the period starting on the date of this deed and ending on the date on which the Lender is satisfied that all the Secured Liabilities have been unconditionally and



irrevocably paid and discharged in full and no further Secured Liabilities are capable of being outstanding.

“**Valuation**” means any valuation relating to the Property supplied to the Lender by the Borrower (or on its behalf).

“**VAT**” means the value added tax or any equivalent tax chargeable in the UK or elsewhere.

## 1.2 Interpretation

In this deed:

- (a) *clause and Schedule headings shall not affect the interpretation of this deed;*
- (b) a reference to a person shall include a reference to an individual, firm, company, corporation, partnership, unincorporated body of persons, government, state or agency of a state or any association, trust, joint venture or consortium (whether or not having separate legal personality);
- (c) *unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;*
- (d) *unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;*
- (e) a reference to a party shall include that party's successors, permitted assigns and permitted transferees and this deed shall be binding on, and enure to the benefit of, the parties to this deed and their respective personal representatives, successors, permitted assigns and permitted transferees;
- (f) a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;
- (g) a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision;
- (h) a reference to writing or written includes fax but not email;
- (i) *an obligation on a party not to do something includes an obligation not to allow that thing to be done;*
- (j) a reference to this deed (or any provision of it) or to any other agreement or document referred to in this deed is a reference to this deed, that provision or such other agreement or document as amended (in each case, *other than in breach of the provisions of this deed*) from time to time;
- (k) *unless the context otherwise requires, a reference to a clause or Schedule is to a clause of, or Schedule to, this deed;*
- (l) any words following the terms including, include, in particular, for example or any *similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;*
- (m) a reference to an amendment includes a novation, re-enactment, supplement or variation (and amend and amended shall be construed accordingly);

- (n) a reference to assets includes present and future properties, undertakings, revenues, rights and benefits of every description;
- (o) a reference to an authorisation includes an approval, authorisation, consent, exemption, filing, licence, notarisation, registration and resolution;
- (p) a reference to continuing in relation to an Event of Default means an Event of Default that has not been remedied or waived;
- (q) a reference to determines or determined means, unless the contrary is indicated, a determination made at the absolute discretion of the person making it; and
- (r) a reference to a regulation includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation.

### 1.3 Clawback

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

### 1.4 Nature of security over real property

A reference in this deed to a charge or mortgage of or over the Property includes:

- 1.4.1 all buildings and fixtures and fittings (including trade and tenant's fixtures and fittings) and fixed plant and machinery that are situated on or form part of the Property at any time;
- 1.4.2 the proceeds of the sale of any part of the Property and any other monies paid or payable in respect of or in connection with the Property;
- 1.4.3 the benefit of any covenants for title given, or entered into, by any predecessor in title of the Borrower in respect of the Property, and any monies paid or payable in respect of those covenants; and
- 1.4.4 all rights under any licence, agreement for sale or agreement for lease in respect of the Property.

### 1.5 Law of Property (Miscellaneous Provisions) Act 1989

For the purposes of section 2 of the Law of Property (Miscellaneous Provisions) Act 1989, the terms of the Facility Agreement and of any side letters between any parties in relation to the Facility Agreement are incorporated into this deed.

### 1.6 Perpetuity period

If the rule against perpetuities applies to any trust created by this deed, the perpetuity period shall be 125 years (as specified by section 5(1) of the Perpetuities and Accumulations Act 2009).

1.7 **Schedules**

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

2. **COVENANT TO PAY**

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

3. **GRANT OF SECURITY**

3.1 **Legal mortgage and fixed charges**

As a continuing security for the payment and discharge of the Secured Liabilities, the Borrower with full title guarantee charges to the Lender:

3.1.1 by way of a first legal mortgage, the Property; and

3.1.2 by way of a first fixed charge:

- (a) all its rights in each Insurance Policy, including all claims, the proceeds of all claims and all returns of premiums in connection with each Insurance Policy, the Rental Income and the benefit of any guarantee or security in respect of the Rental Income to the extent not effectively assigned under clause 3.2;
- (b) the benefit of all other contracts, guarantees, appointments and warranties relating to the Charged Assets and other documents to which the Borrower is a party or which are in its favour or of which it has the benefit relating to any letting, development, sale, purchase, use or the operation of the Charged Assets or otherwise relating to the Charged Assets (including, in each case, but without limitation, the right to demand and receive all monies whatever payable to or for its benefit under or arising from any of them, all remedies provided for in any of them or available at law or in equity in relation to any of them, the right to compel performance of any of them and all other rights, interests and benefits whatever accruing to or for its benefit arising from any of them); and
- (c) all licences, consents and authorisations (statutory or otherwise) held or required in connection with its business carried on at the Property or the use of any Charged Asset, and all rights in connection with them.

3.2 **Assignment**

As a continuing security for the payment and discharge of the Secured Liabilities, the Borrower with full title guarantee assigns to the Lender absolutely, subject to a proviso for reassignment on irrevocable discharge in full of the Secured Liabilities:

3.2.1 all its rights in each Insurance Policy, including all claims, the proceeds of all claims and all returns of premiums in connection with each Insurance Policy; and

3.2.2 the Rental Income and the benefit of any guarantee or security in respect of the Rental Income

provided that nothing in this clause 3.2 shall constitute the Lender as mortgagee in possession.

**4. PERFECTION OF SECURITY**

**4.1 Registration of legal mortgage at the Land Registry**

The Borrower consents to an application being made by the Lender to the Land Registrar for the following restriction in Form P to be registered against its title to the Property:

*"No disposition of the registered estate by the proprietor of the registered estate[, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction,] is to be registered without a written consent signed by the proprietor for the time being of the charge dated [●] in favour of [NAME OF PARTY] referred to in the charges register or their conveyancer or without a certificate signed by a conveyancer that the provisions of [clause [●] of [●]] have been complied with or that they do not apply to the disposition."*

**4.2 Further advances**

The Lender covenants with the Borrower that it shall perform its obligations to make advances under the Facility Agreement (including any obligation to make available further advances).

**4.3 First registration**

If the title to the Property is not registered at the Land Registry, the Borrower shall ensure that no person (other than itself) shall be registered under the Land Registration Act 2002 as the proprietor of all or any part of the Property, without the prior written consent of the Lender.

**4.4 Cautions against first registration and notices**

Whether or not title to the Property is registered at the Land Registry, if any caution against first registration or any notice (whether agreed or unilateral) is registered against the Borrower's title to the Property, the Borrower shall immediately provide the Lender with full particulars of the circumstances relating to such caution or notice. If such caution or notice was registered to protect a purported interest the creation of which is not permitted under this deed, the Borrower shall immediately, and at its own expense, take such steps as the Lender may require to ensure that the caution or notice, as applicable, is withdrawn or cancelled.

**5. LIABILITY OF THE BORROWER**

**5.1 Liability not discharged**

The Borrower's liability under this deed in respect of any of the Secured Liabilities shall not be discharged, prejudiced or affected by:

5.1.1 any security, guarantee, indemnity, remedy or other right held by, or available to, the Lender that is, or becomes, wholly or partially illegal, void or unenforceable on any ground;



5.1.2 the Lender renewing, determining, varying or increasing any facility or other transaction in any manner or concurring in, accepting or varying any compromise, arrangement or settlement, or omitting to claim or enforce payment from any other person; or

5.1.3 any other act or omission that, but for this clause 5.1, might have discharged, or otherwise prejudiced or affected, the liability of the Borrower.

**5.2 Immediate recourse**

The Borrower waives any right it may have to require the Lender to enforce any security or other right, or claim any payment from, or otherwise proceed against, any other person before enforcing this deed against the Borrower.

**6. REPRESENTATIONS AND WARRANTIES**

**6.1 Times for making representations and warranties**

The Borrower makes the representations and warranties set out in this clause 6 to the Lender on the date of this deed and the representations and warranties are deemed to be repeated on each day of the Security Period with reference to the facts and circumstances existing at the time of repetition.

**6.2 Ownership of Charged Assets**

The Borrower is the sole legal and beneficial owner of the Charged Assets and has good, valid and marketable title to the Property.

**6.3 No Security**

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

**6.4 No adverse claims**

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

**6.5 No adverse covenants**

Save to the extent disclosed by the Borrower to the Lender prior to the date of this deed there are no covenants, agreements, reservations, conditions, interests, rights or other matters whatever that materially and adversely affect the Charged Assets.

**6.6 No breach of laws**

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

**6.7 No interference in enjoyment**

No facility necessary for the enjoyment and use of the Charged Assets is subject to terms entitling any person to terminate or curtail its use.

**6.8 No overriding interests**

Save to the extent disclosed by the Borrower to the Lender prior to the date of this deed nothing has arisen, has been created or is subsisting, that would be an overriding interest in the Property.

**6.9 No prohibitions or breaches**

There is no prohibition on the Borrower assigning its rights in any of the Charged Assets referred to in clause 3.2 and the entry into of this deed by the Borrower does not, and will not, constitute a breach of any policy, agreement, document, instrument or obligation binding on the Borrower or its assets.

**6.10 Environmental compliance**

The Borrower has, at all times, complied in all material respects with all applicable Environmental Law and Environmental Licences.

**6.11 Avoidance of security**

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

**6.12 Enforceable security**

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

**7. GENERAL COVENANTS**

**7.1 Negative pledge and disposal restrictions**

The Borrower shall not at any time, except with the prior written consent of the Lender or as otherwise permitted by the Facility Agreement:

7.1.1 create, purport to create or permit to subsist any Security on, or in relation to, any Charged Asset other than any Security created by this deed;

7.1.2 sell, assign, transfer, part with possession of, or otherwise dispose of in any manner (or purport to do so), all or any part of, or any interest in, the Charged Assets; or

7.1.3 create or grant (or purport to create or grant) any interest in the Charged Assets in favour of a third party.

**7.2 Preservation of Charged Assets**

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

**7.3 Compliance with laws and regulations**

7.3.1 The Borrower shall not, without the Lender's prior written consent, use or permit the Charged Assets to be used in any way contrary to law.

7.3.2 The Borrower shall:

- (a) comply with the requirements of any law or regulation relating to or affecting the Charged Assets or the use of them or any part of them;
- (b) obtain, and promptly renew from time to time, and comply with the terms of all authorisations that are required in connection with the Charged Assets or their use or that are necessary to preserve, maintain or renew any Charged Asset; and
- (c) promptly effect any maintenance, modifications, alterations or repairs that are required by any law or regulation to be effected on or in connection with the Charged Assets.

**7.4 Enforcement of rights**

The Borrower shall use its best endeavours to:

- 7.4.1 procure the prompt observance and performance by the relevant counterparty to any agreement or arrangement with the Borrower and forming part of the Charged Assets of the covenants and other obligations imposed on such counterparty; and
- 7.4.2 enforce any rights and institute, continue or defend any proceedings relating to any of the Charged Assets that the Lender may require from time to time.

**7.5 Notice of misrepresentation and breach**

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

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

**7.6 Title documents**

The Borrower shall, on the execution of this deed, deposit with the Lender and the Lender shall, for the duration of this deed, be entitled to hold:

- 7.6.1 all deeds and documents of title relating to the Charged Assets that are in the possession or control of the Borrower (and if these are not within the possession or control of the Borrower, the Borrower undertakes to obtain possession of all these deeds and documents of title); and
- 7.6.2 each Insurance Policy;

or shall deliver to the Lender an undertaking from a firm of solicitors to hold the same to the order of the Lender.

**7.7 Notices to be given by the Borrower**

7.7.1 The Borrower shall within five days of the execution of this deed give notice to the relevant insurers of the assignment of the Borrower's rights and interest in and under each Insurance Policy (including the proceeds of any claims under that Insurance Policy) under clause 3.2.1.

7.7.2 The Borrower shall obtain the Lender's prior approval of the form of any notice or acknowledgement to be used under this clause 7.7.

**8. PROPERTY COVENANTS**

**8.1 Repair and maintenance**

The Borrower shall following practical completion of each part of the Development keep all premises, and fixtures and fittings on that part of the Property, in such repair and condition as to enable the Property to be let in accordance with all applicable laws and regulations.

**8.2 No alterations**

8.2.1 Following practical completion of each part of the Development the Borrower shall not, without the prior written consent of the Lender:

- (a) pull down or remove the whole or any part of any building forming that part of the Property nor permit the same to occur; or
- (b) make or permit to be made any material alterations to that part of the Property or sever or remove, or permit to be severed or removed, any of its fixtures or fittings (except to make any necessary repairs or renew or replace the same in accordance with clause 8.1).

8.2.2 The Borrower shall promptly give notice to the Lender if the premises or fixtures or fittings forming part of the Property are destroyed or damaged.

**8.3 Development restrictions**

The Borrower shall not save as provided in the Agreement for Lease, without the prior written consent of the Lender:

8.3.1 make or, in so far as it is able, permit others to make any application for planning permission or development consent in respect of the Property; or

8.3.2 carry out, or permit or suffer to be carried out, on the Property any development (as defined in each of the Town and Country Planning Act 1990 and the Planning Act 2008) or change or permit, or suffer to be changed, the use of the Property.

**8.4 Insurance**

8.4.1 The Borrower shall insure and keep insured (or where, in the case of any leasehold property, insurance is the responsibility of the landlord under the terms of the lease, either procure that the landlord insures and keeps insured or, if and to the extent that the landlord does not do so, itself insure and keep insured) the Charged Assets against:



- (a) loss or damage by fire or terrorist acts, including any third-party liability arising from such acts;
  - (b) other risks, perils and contingencies that would be insured against by reasonably prudent persons carrying on the same class of business as the Borrower; and
  - (c) any other risk, perils and contingencies as the Lender may reasonably require.
- 8.4.2 Any such insurance must be with an insurance company or underwriters, and on such terms, as are reasonably acceptable to the Lender and must include property owners' public liability and third party liability insurance and be for not less than the replacement value of the relevant Charged Asset (meaning, in the case of any premises on the Property, the total cost of entirely rebuilding, reinstating or replacing the premises in the event of their being destroyed, together with architects', surveyors', engineers' and other professional fees and charges for shoring or propping up, demolition, site clearance and reinstatement with adequate allowance for inflation) and loss of rents payable by the tenants or other occupiers of the Property for a period of at least three years, including provision for increases in rent during the period of insurance.
- 8.4.3 The Borrower shall, if requested by the Lender, produce to the Lender each policy, certificate or cover note relating to any insurance required by clause 8.4.1 (or where, in the case of any leasehold property, that insurance is effected by the landlord, such evidence of insurance as the Borrower is entitled to obtain from the landlord under the terms of the relevant lease).
- 8.4.4 The Borrower shall, if requested by the Lender, and where such interest is not generically noted, procure that a note of the Lender's interest is endorsed on each Insurance Policy (other than public liability and third party liability insurances) effected or maintained by it or any person on its behalf in accordance with clause 8.4.1 but without the Lender having any liability for any premium in relation to those Insurance Policies unless it has expressly and specifically requested to be made liable in respect of any increase in premium or unpaid premium in respect of any Insurance Policy.
- 8.4.5 The Borrower shall ensure that each Insurance Policy effected or maintained by it or any person on its behalf in accordance with clause 8.4.1 contains:
- (a) a loss payee clause under which the Lender is named as first loss payee (other than in respect of any claim under any public liability and third-party liability insurances);
  - (b) terms ensuring that it cannot be avoided or vitiated as against the Lender by reason of the act or default of any other insured party or any misrepresentation, non-disclosure or failure to make a fair presentation of risk by any other insured party;
  - (c) a waiver of each insurer's rights of subrogation against the Borrower, the Lender and the tenants of the Property other than any such rights arising in connection with any fraud or criminal offence committed by any of those persons in respect of the Property or any Insurance Policy; and



- (d) terms ensuring that no insurer can repudiate, rescind or cancel it, treat it as avoided in whole or in part nor treat it as expired due to non-payment of premium without giving at least 30 days' prior written notice to the Lender.

**8.5 Insurance premiums**

The Borrower shall:

- 8.5.1 promptly pay all premiums in respect of each Insurance Policy required by clause 8.4.1 and do all other things necessary to keep that policy in full force and effect; and
- 8.5.2 (if the Lender so requires) give to the Lender copies of the receipts for all premiums and other payments necessary for effecting and keeping up each Insurance Policy required by clause 8.4.1 (or where, in the case of leasehold property, insurance is effected by the landlord, such evidence of the payment of premiums as the Borrower is entitled to obtain from the landlord under the terms of the relevant lease).

**8.6 No invalidation of insurance**

The Borrower shall not do or omit to do, or permit to be done or omitted, any act or thing that may invalidate or otherwise prejudice any Insurance Policy required by clause 8.4.1.

**8.7 Proceeds from Insurance Policies**

All monies payable under any Insurance Policy required by clause 8.4.1 shall (whether or not the security constituted by this deed has become enforceable):

- 8.7.1 be paid immediately to the Lender;
- 8.7.2 if they are not paid directly to the Lender by the insurers, be held, pending such payment, by the Borrower as trustee of the same for the benefit of the Lender; and
- 8.7.3 be applied in making good or recouping expenditure in respect of the loss or damage for which those monies are received or, after the security constituted by this deed has become enforceable and, if the Lender so directs, in or towards discharge or reduction of the Secured Liabilities.

**8.8 Leases and licences affecting the Property**

The Borrower shall not, except by way of a Permitted Disposal without the prior written consent of the Lender (which consent, in the case of clause 8.8.4, is not to be unreasonably withheld or delayed in circumstances in which the Borrower may not unreasonably withhold or delay its consent):

- 8.8.1 grant any licence or tenancy affecting the whole or any part of the Property, or exercise the statutory powers of leasing or of accepting surrenders under section 99 or section 100 of the LPA 1925 (or agree to grant any such licence or tenancy, or agree to exercise the statutory powers of leasing or of accepting surrenders under section 99 or section 100 of the LPA 1925);
- 8.8.2 in any other way dispose of, accept the surrender of, surrender or create any legal or equitable estate or interest in the whole or any part of the Property (or agree to

dispose of, accept the surrender of, surrender or create any legal or equitable estate or interest in the whole or any part of the Property);

8.8.3 let any person into occupation, or share occupation, of the whole or any part of the Property; or

8.8.4 grant any consent or licence under any lease or licence affecting the Property.

**8.9 No restrictive obligations**

The Borrower shall not save by way of a Permitted Disposal, without the prior written consent of the Lender, enter into any onerous or restrictive obligations affecting the whole or any part of the Property or create or permit to arise any overriding interest, easement or right whatever in or over the whole or any part of the Property.

**8.10 Proprietary rights**

The Borrower shall procure that no person shall become entitled to assert any proprietary or other like right or interest over the whole or any part of the Property, without the prior written consent of the Lender.

**8.11 Compliance with and enforcement of covenants**

The Borrower shall:

8.11.1 observe and perform all covenants, stipulations and conditions to which the Property, or the use of it, is or may be subject and (if the Lender so requires) produce to the Lender evidence sufficient to satisfy the Lender that those covenants, stipulations and conditions have been observed and performed; and

8.11.2 diligently enforce all covenants, stipulations and conditions benefiting the Property and shall not (and shall not agree to) waive, release or vary any of the same.

**8.12 Notices or claims relating to the Property**

8.12.1 The Borrower shall:

(a) give full particulars to the Lender of any notice, order, direction, designation, resolution, application, requirement or proposal given or made by any public or local body or authority (a "Notice") that specifically applies to the Property, or to the locality in which it is situated, within seven days after becoming aware of the relevant Notice; and

(b) (if the Lender so requires) immediately, and at the cost of the Borrower, take all reasonable and necessary steps to comply with any Notice, and make, or join with the Lender in making, any objections or representations in respect of that Notice that the Lender thinks fit.

8.12.2 The Borrower shall give full particulars to the Lender of any claim, notice or other communication served on it in respect of any modification, suspension or revocation of any Environmental Licence or any alleged breach of any Environmental Law, in each case relating to the Property.

**8.13 Payment of outgoings**

The Borrower shall pay (or procure payment of the same) when due all charges, rates, taxes, duties, assessments and other outgoings relating to or imposed on the Property or on its occupier.

**8.14 Environment**

The Borrower shall in respect of the Property:

8.14.1 comply in all material respects with all the requirements of Environmental Law; and

8.14.2 obtain and comply in all material respects with all Environmental Licences.

**8.15 Conduct of business on Property**

The Borrower shall carry on its trade and business on those parts (if any) of the Property as are used for the purposes of trade or business in accordance with the standards of good management from time to time current in such trade or business.

**8.16 Inspection**

The Borrower shall permit the Lender, any Receiver and any person appointed by either of them to enter on and inspect the Property on reasonable prior notice subject always to the Lender or other person making good any damage caused and complying with all requirements as to health and safety.

**8.17 VAT option to tax**

The Borrower shall not save in respect of the property which is the subject of the Development, without the prior written consent (such consent not to be unreasonably withheld or delayed) of the Lender:

8.17.1 exercise any VAT option to tax in relation to the Property; or

8.17.2 revoke any VAT option to tax exercised, and disclosed to the Lender in writing, before the date of this deed.

**9. POWERS OF THE LENDER**

**9.1 Power to remedy**

9.1.1 The Lender shall be entitled (but shall not be obliged) to remedy, at any time, a breach by the Borrower of any of its obligations contained in this deed.

9.1.2 The Borrower irrevocably authorises the Lender and its agents to do all things that are necessary or desirable for that purpose.

9.1.3 Any monies expended by the Lender in remedying a breach by the Borrower of its obligations contained in this deed shall be reimbursed by the Borrower to the Lender on a full indemnity basis and shall carry interest in accordance with clause 19.1 (*Release*).

9.1.4 In remedying any breach in accordance with this clause 9.1 (*Power to Remedy*), the Lender, its agents and their respective officers, agents and employees shall be

entitled to enter onto the Property and to take any action as the Lender may reasonably consider necessary or desirable including, without limitation, carrying out any repairs, other works or development.

**9.2 Exercise of rights**

The rights of the Lender under clause 9.1 are without prejudice to any other rights of the Lender under this deed. The exercise of any rights of the Lender under this deed shall not make the Lender liable to account as a mortgagee in possession.

**9.3 Lender has Receiver's powers**

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

**9.4 Conversion of currency**

9.4.1 For the purpose of, or pending, the discharge of any of the Secured Liabilities, the Lender may convert any monies received, recovered or realised by it under this deed (including the proceeds of any previous conversion under this clause 9.4) from their existing currencies of denomination into any other currencies of denomination that the Lender may think fit.

9.4.2 Any such conversion shall be effected at Lloyd's Bank PLC's then prevailing spot selling rate of exchange for such other currency against the existing currency.

9.4.3 Each reference in this clause 9.4 to a currency extends to funds of that currency and, for the avoidance of doubt, funds of one currency may be converted into different funds of the same currency.

**9.5 New accounts**

9.5.1 If the Lender receives, or is deemed to have received, notice of any subsequent Security or other interest, affecting all or part of the Charged Assets, the Lender may open a new account for the Borrower in the Lender's books. Without prejudice to the Lender's right to combine accounts, no money paid to the credit of the Borrower in any such new account shall be appropriated towards, or have the effect of discharging, any part of the Secured Liabilities.

9.5.2 If the Lender does not open a new account immediately on receipt of the notice, or deemed notice, referred to in clause 9.5.1, then, unless the Lender gives express written notice to the contrary to the Borrower, all payments made by the Borrower to the Lender shall be treated as having been credited to a new account of the Borrower and not as having been applied in reduction of the Secured Liabilities, as from the time of receipt or deemed receipt of the relevant notice by the Lender.

**9.6 Indulgence**

The Lender may, at its discretion, grant time or other indulgence, or make any other arrangement, variation or release with any person not being a party to this deed (whether or



not any such person is jointly liable with the Borrower) in respect of any of the Secured Liabilities or of any other security for them without prejudice either to this deed or to the liability of the Borrower for the Secured Liabilities.

**10. WHEN SECURITY BECOMES ENFORCEABLE**

**10.1 Security becomes enforceable on Event of Default**

The security constituted by this deed shall become immediately enforceable if an Event of Default occurs.

**10.2 Discretion**

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

**11. ENFORCEMENT OF SECURITY**

**11.1 Enforcement powers**

11.1.1 For the purposes of all powers implied by statute, the Secured Liabilities are deemed to have become due and payable on the date of this deed.

11.1.2 The power of sale and other powers conferred by section 101 of the LPA 1925 (as varied or extended by this deed) shall be immediately exercisable at any time after the security constituted by this deed has become enforceable under clause 10.1.

11.1.3 Section 103 of the LPA 1925 does not apply to the security constituted by this deed.

**11.2 Extension of statutory powers of leasing**

The statutory powers of leasing and accepting surrenders conferred on mortgagees under the LPA 1925 and by any other statute are extended so as to authorise the Lender and any Receiver, at any time after the security constituted by this deed has become enforceable, whether in its own name or in that of the Borrower, to:

11.2.1 grant a lease or agreement for lease;

11.2.2 accept surrenders of leases; or

11.2.3 grant any option in respect of the whole or any part of the Property with whatever rights relating to other parts of it,

whether or not at a premium and containing such covenants on the part of the Borrower, and on such terms and conditions (including the payment of money to a lessee or tenant on a surrender), as the Lender or Receiver thinks fit, without the need to comply with any of the restrictions imposed by sections 99 and 100 of the LPA 1925.



### **11.3 Redemption of prior Security**

11.3.1 At any time after the security constituted by this deed has become enforceable, the Lender may:

- (a) redeem any prior Security over any Charged Asset;
- (b) procure the transfer of that Security to itself; and
- (c) settle and pass the accounts of the holder of any prior Security (and any accounts so settled and passed shall, in the absence of any manifest error, be conclusive and binding on the Borrower).

11.3.2 The Borrower shall pay to the Lender immediately on demand all principal, interest, costs, charges and expenses of, and incidental to, any such redemption or transfer, and such amounts shall be secured by this deed as part of the Secured Liabilities.

### **11.4 Protection of third parties**

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

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

### **11.5 Privileges**

Each Receiver and the Lender is entitled to all the rights, powers, privileges and immunities conferred by the LPA 1925 on mortgagees and receivers.

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

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

### **11.7 Relinquishing possession**

If the Lender, any Receiver or Delegate enters into or takes possession of a Charged Asset, it or he/she may at any time relinquish possession.

### **11.8 Conclusive discharge to purchasers**

The receipt of the Lender, or any Receiver or Delegate shall be a conclusive discharge to a purchaser and, in making any sale or other disposal of any of the Charged Assets or in making any acquisition in the exercise of their respective powers, the Lender, and every Receiver and Delegate may do so for any consideration, in any manner and on any terms that it thinks fit.

**11.9 Right of appropriation**

11.9.1 To the extent that:

- (a) the Charged Assets constitute Financial Collateral; and
- (b) this deed and the obligations of the Borrower under it constitute a Security Financial Collateral Arrangement,

the Lender shall have the right, at any time after the security constituted by this deed has become enforceable, to appropriate all or any of those Charged Assets in or towards the payment or discharge of the Secured Liabilities in any order that the Lender may, in its absolute discretion, determine.

11.9.2 The value of any Charged Assets appropriated in accordance with this clause shall be, in the case of cash, the amount standing to the credit of the Rent Account, together with any accrued but unpaid interest, at the time the right of appropriation is exercised.

11.9.3 The Borrower agrees that the method of valuation provided for in this clause are commercially reasonable for the purposes of the Financial Collateral Regulations.

**12. RECEIVERS**

**12.1 Appointment**

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

**12.2 Removal**

The Lender may, without further notice (subject to section 45 of the Insolvency Act 1986), from time to time, by way of deed, or otherwise in writing, remove any Receiver appointed by it and may, *whenever it thinks fit*, appoint a new Receiver in the place of any Receiver whose appointment may for any reason have terminated.

**12.3 Remuneration**

*The Lender may fix the remuneration of any Receiver appointed by it without the restrictions contained in section 109 of the LPA 1925 and the remuneration of the Receiver shall be a debt secured by this deed, to the extent not otherwise discharged.*

**12.4 Power of appointment additional to statutory powers**

The power to appoint a Receiver conferred by this deed shall be in addition to all statutory and other powers of the Lender under the Insolvency Act 1986, the LPA 1925 or otherwise, and shall be exercisable without the restrictions contained in sections 103 and 109 of the LPA 1925 or otherwise.

**12.5 Power of appointment exercisable despite prior appointments**

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

**12.6 Agent of the Borrower**

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

**13. POWERS OF RECEIVER**

**13.1 Powers additional to statutory powers**

13.1.1 Any Receiver appointed by the Lender under this deed shall, in addition to the rights, powers and discretions conferred on him/her by statute, have the rights, powers and discretions set out in clause 13.2 to clause 13.20.

13.1.2 A Receiver has all the rights, powers and discretions conferred on a receiver (or a receiver and manager) under the LPA 1925, and shall have those rights, powers and discretions conferred on an administrative receiver under the Insolvency Act 1986 whether he/she is an administrative receiver or not.

13.1.3 If there is more than one Receiver holding office at the same time, each Receiver may (unless the document appointing him/her states otherwise) exercise all of the powers conferred on a Receiver under this deed individually and to the exclusion of any other Receiver.

13.1.4 Any exercise by a Receiver of any of the powers given by clause 13 may be on behalf of the Borrower, the directors of the Borrower or himself/herself.

**13.2 Repair and develop the Property**

A Receiver may undertake or complete any works of repair, alteration, building or development on the Property and may apply for and maintain any planning permission, development consent, building regulation approval or any other permission, consent or licence to carry out any of the same.

**13.3 Grant or accept surrenders of leases**

A Receiver may grant, or accept, surrenders of any leases or tenancies affecting the Property on any terms, and subject to any conditions, that he/she thinks fit.

**13.4 Employ personnel and advisers**

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

13.4.2 A Receiver may discharge any such person or any such person appointed by the Borrower.

**13.5 Make and revoke VAT options to tax**

*A Receiver may make, exercise or revoke any VAT option to tax as he/she thinks fit.*

**13.6 Charge for remuneration**

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

**13.7 Take possession**

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

**13.8 Manage or reconstruct the Borrower's business**

*A Receiver may carry on, manage, develop, reconstruct, amalgamate or diversify or concur in carrying on, managing, developing, reconstructing, amalgamating or diversifying the business of the Borrower carried out at the Property.*

**13.9 Dispose of Charged Assets**

*A Receiver may grant options and licences over all or any part of the Charged Assets, grant any other interest or right over, sell, exchange, assign or lease (or concur in granting options and licences over all or any part of the Charged Assets, granting any other interest or right over, selling, exchanging, assigning or leasing) all or any of the Charged Assets in respect of which he/she is appointed for such consideration and in such manner (including, without limitation, by public auction or private sale) and generally on any terms and conditions as he/she thinks fit. A Receiver may promote, or concur in promoting, a company to purchase the Charged Assets to be disposed of by him/her.*

**13.10 Sever fixtures and fittings**

*A Receiver may sever and sell separately any fixtures or fittings from the Property without the consent of the Borrower.*

**13.11 Give valid receipts**

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

**13.12 Make settlements**

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

**13.13 Bring legal action**

*A Receiver may bring, prosecute, enforce, defend and abandon all actions, suits and proceedings in relation to any of the Charged Assets as he/she thinks fit.*

**13.14 Insure**

*A Receiver may, if he/she thinks fit, but without prejudice to the indemnity in clause 18.2 (Ratification of acts of attorneys) effect with any insurer any policy of insurance either in lieu*



or satisfaction of, or in addition to, the insurance required to be maintained by the Borrower under this deed.

**13.15 Form subsidiaries**

A Receiver may form a subsidiary of the Borrower and transfer to that subsidiary any Charged Asset.

**13.16 Borrow**

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

**13.17 Redeem prior Security**

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

**13.18 Delegation**

A Receiver may delegate his/her powers in accordance with this deed.

**13.19 Absolute beneficial owner**

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

**13.20 Incidental powers**

A Receiver may do any other acts and things that he/she:

13.20.1 may consider desirable or necessary for realising any of the Charged Assets;

13.20.2 may consider incidental or conducive to any of the rights or powers conferred on a Receiver under or by virtue of this deed or law; or

13.20.3 lawfully may or can do as agent for the Borrower.

**14. DELEGATION**

**14.1 Delegation**

The Lender or any Receiver may delegate (either generally or specifically) by power of attorney or in any other manner to any person any right, power, authority or discretion conferred on it or him/her by this deed (including the power of attorney granted under clause 18.1).



**14.2 Terms**

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

**14.3 Liability**

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

**15. APPLICATION OF PROCEEDS**

**15.1 Order of application of proceeds**

All monies received or recovered by the Lender, a Receiver or a Delegate under this deed or in connection with the realisation or enforcement of all or part of the security constituted by this deed (other than sums received under any Insurance Policy), shall (subject to the claims of any person having prior rights and by way of variation of the LPA 1925) be applied in the following order of priority (but without prejudice to the Lender's right to recover any shortfall from the Borrower):

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

**15.2 Appropriation**

Neither the Lender, any Receiver nor any Delegate shall be bound (whether by virtue of section 109(8) of the LPA 1925, which is varied accordingly, or otherwise) to pay or appropriate any receipt or payment first towards interest rather than principal or otherwise in any particular order between any of the Secured Liabilities.

**15.3 Suspense account**

All monies received by the Lender, a Receiver or a Delegate under this deed (other than sums received under any Insurance Policy that are not going to be applied in or towards discharge of the Secured Liabilities):

- 15.3.1 may, at the discretion of the Lender, Receiver or Delegate, be credited to a suspense account;
- 15.3.2 shall bear interest, if any, at the rate agreed in writing between the Lender and the Borrower; and
- 15.3.3 may be held in that account for so long as the Lender, Receiver or Delegate thinks fit.

## **16. COSTS AND INDEMNITY**

### **16.1 Costs**

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

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

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

### **16.2 Indemnity**

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

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

16.2.2 Any past or present employee or agent may enforce the terms of this clause 16.2 subject to and in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999.

## **17. FURTHER ASSURANCE**

### **17.1 Further assurance**

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

- 17.1.1 creating, perfecting or protecting the security created or intended to be created by this deed;

- 17.1.2 facilitating the realisation of any Charged Asset; or
- 17.1.3 facilitating the exercise of any right, power, authority or discretion exercisable by the Lender or any Receiver in respect of any Charged Asset,

including, without limitation the execution of any mortgage, transfer, conveyance, assignment or assurance of all or any of the assets forming part of (or intended to form part of) the Charged Assets (whether to the Lender or to its nominee) and the giving of any notice, order or direction and the making of any filing or registration which, in any such case, the Lender may consider necessary or desirable.

## **18. POWER OF ATTORNEY**

### **18.1 Appointment of attorneys**

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

- 18.1.1 the Borrower is required to execute and do under this deed; or
- 18.1.2 any attorney deems proper in exercising any of the rights, powers, authorities and discretions conferred by this deed or by law on the Lender, any Receiver or any Delegate.

### **18.2 Ratification of acts of attorneys**

The Borrower ratifies and confirms, and agrees to ratify and confirm, anything that any of its attorneys may do in the proper and lawful exercise, or purported exercise, of all or any of the rights, powers, authorities and discretions referred to in clause 18.1.

## **19. RELEASE**

### **19.1 Release**

Subject to clause 26.3, at the end of the Security Period, the Lender shall, at the request and cost of the Borrower, promptly take whatever action is necessary to:

- 19.1.1 release the Charged Assets from the security constituted by this deed; and
- 19.1.2 reassign the Charged Assets to the Borrower.

## **20. ASSIGNMENT AND TRANSFER**

Neither party may assign any of its rights, or transfer any of its rights or obligations, under this deed save as permitted by the Implementation Agreement.

## **21. SET-OFF**

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

The Lender may at any time set off any liability of the Borrower to the Lender against any liability of the Lender to the Borrower, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this deed. If the liabilities to be set off are expressed in different currencies, the Lender may convert either liability at a

market rate of exchange for the purpose of set-off. Any exercise by the Lender of its rights under this clause 21.1 shall not limit or affect any other rights or remedies available to it under this deed or otherwise.

**21.2 No obligation to set off**

The Lender is not obliged to exercise its rights under clause 21.1. If, however, it does exercise those rights it must promptly notify the Borrower of the set-off that has been made.

**21.3 Exclusion of Borrower's right of set-off**

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

**22. AMENDMENTS, WAIVERS AND CONSENTS**

**22.1 Amendments**

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

**22.2 Waivers and consents**

22.2.1 A waiver of any right or remedy under this deed or by law, or any consent given under this deed, is only effective if given in writing by the waiving or consenting party and shall not be deemed a waiver of any other breach or default. It only applies in the circumstances for which it is given and shall not prevent the party giving it from subsequently relying on the relevant provision.

22.2.2 A failure or delay by a party to exercise any right or remedy provided under this deed or by law shall not constitute a waiver of that or any other right or remedy, prevent or restrict any further exercise of that or any other right or remedy or constitute an election to affirm this deed. No single or partial exercise of any right or remedy provided under this deed or by law shall prevent or restrict the further exercise of that or any other right or remedy. No election to affirm this deed by the Lender shall be effective unless it is in writing.

**22.3 Rights and remedies**

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

**23. SEVERANCE**

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



24. **COUNTERPARTS**

24.1 **Counterparts**

24.1.1 This deed may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute one deed.

24.1.2 Transmission of a counterpart of this deed by email (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this deed. If this method of delivery is adopted, without prejudice to the validity of the deed thus made, each party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.

24.1.3 No counterpart shall be effective until each party has executed and delivered at least one counterpart.

25. **THIRD PARTY RIGHTS**

25.1 **Third party rights**

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

25.1.2 The rights of the parties to rescind or agree any amendment or waiver under this deed are not subject to the consent of any other person.

26. **FURTHER PROVISIONS**

26.1 **Independent security**

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

26.2 **Continuing security**

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

26.3 **Discharge conditional**

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

26.3.1 the Lender or its nominee may retain this deed and the security created by or under it, including all certificates and documents relating to the whole or any part



of the Charged Assets, for any period that the Lender deems necessary to provide the Lender with security against any such avoidance, reduction or order for refund; and

26.3.2 the Lender may recover the value or amount of such security or payment from the Borrower subsequently as if the release, discharge or settlement had not occurred.

**26.4 Certificates**

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

**26.5 Consolidation**

The restriction on the right of consolidation contained in section 93 of the LPA 1925 shall not apply to this deed.

**27. NOTICES**

**27.1 Delivery**

The provisions of the Facility Agreement which deal with notices apply to this deed.

**28. GOVERNING LAW AND JURISDICTION**

**28.1 Governing law**

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

**28.2 Jurisdiction**

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

**28.3 Other service**

The Borrower irrevocably consents to any process in any legal action or proceedings under clause 28.2 being served on it in accordance with the provisions of this deed relating to service of notices. Nothing contained in this deed shall affect the right to serve process in any other manner permitted by law.

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

## **SCHEDULE 1**

### **Property**

#### **Part 1. Registered Property**

The property known as [●] transferred out of title number [●] pursuant to a transfer dated [●] 2019 between the Lender (1) and the Borrower (2).

#### **Part 2. Unregistered Property**

The property known as [●] demised by a lease dated [●] 2019 between the Lender (1) and the Borrower (2).

The property known as [●] demised by a lease dated [●] 2019 between the Lender (1) and the Borrower (2).

**EXECUTED AS A DEED** by )  
**GOLDEV WOKING LIMITED** )  
acting by ) .....  
Director

In the presence of:  
Witness signature:  
Witness name:  
Witness address:

**EXECUTED** as a deed under the common seal )  
of **WOKING BOROUGH COUNCIL** ) .....  
Mayor  
  
.....  
Head of Democratic and Legal Services

**APPENDIX 2**  
**Form of Debenture**

Dated

2019

GOLDEV WOKING LIMITED

AND

WOKING BOROUGH COUNCIL

---

DEBENTURE

---

**Katten**

KattenMuchinRosenman UK LLP

Paternoster House  
65 St Paul's Churchyard  
London EC4M 8AB  
Tel: 020 7776 7620  
Fax: 020 7776 7621



## CONTENTS

No.	Item	Page
1.	Definitions and Interpretation.....	1
2.	Covenant to Pay.....	5
3.	Grant of Security .....	6
4.	Liability of the Borrower.....	8
5.	Representations and Warranties .....	9
6.	General Covenants.....	10
7.	Property covenants .....	15
8.	Investments Covenants .....	19
9.	Equipment Covenants.....	22
10.	Book Debts Covenants .....	23
11.	Relevant Agreements Covenants.....	23
12.	Intellectual Property Covenants.....	23
13.	Powers of the Lender.....	24
14.	When Security Becomes Enforceable .....	26
15.	Enforcement of Security .....	26
16.	Receiver .....	29
17.	Powers of Receiver .....	29
18.	Delegation.....	32
19.	Application of Proceeds.....	33
20.	Costs and Indemnity .....	33
21.	Further Assurance.....	34
22.	Power of Attorney .....	35
23.	Release .....	35
24.	Assignment and Transfer .....	35
25.	Set-off.....	36
26.	Amendments, Waivers and Consents .....	36
27.	Severance.....	36
28.	Counterparts.....	36
29.	Third Party Rights .....	37
30.	Further Provisions.....	37
31.	Notices .....	38
32.	Governing Law and Jurisdiction.....	38
	SCHEDULE 1 Real Property .....	40
	SCHEDULE 2 Relevant Agreements.....	41
	SCHEDULE 3 Notice and Acknowledgement - Relevant Agreement .....	42
	Part 1. Form of notice .....	42
	Part 2. Form of acknowledgement .....	43
	SCHEDULE 4 Notice and Acknowledgement - Insurance Policy.....	45
	Part 1. Form of notice .....	45
	Part 2. Form of acknowledgement .....	46
	SCHEDULE 5 Notice and Acknowledgement – Bank Account.....	48

THIS DEED is dated

2019

#### **PARTIES**

- (1) **GOLDEV WOKING LIMITED** incorporated and registered in England and Wales with company number 11339840 whose registered office is at 73 Cornhill, London EC3V 3QQ ("**Borrower**")
- (2) **WOKING BOROUGH COUNCIL** of Civic Offices, Gloucester Square, Woking GU21 6YL ("**Lender**")

#### **BACKGROUND**

- (A) The Lender has agreed, pursuant to the Facility Agreement, to provide the Borrower with loan facilities on a secured basis.
- (B) Under this deed, the Borrower provides security to the Lender for the loan facilities made available under the Facility Agreement.

#### **AGREED TERMS**

##### **1. DEFINITIONS AND INTERPRETATION**

###### **1.1 Definitions**

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

"**Administrator**" means an administrator appointed to manage the affairs, business and property of the Borrower pursuant to clause 13.8.

"**Agreement for Lease**" has the meaning given to that term in the Facility Agreement.

"**Book Debts**" means all present and future book and other debts, and monetary claims due or owing to the Borrower, and the benefit of all security, guarantees and other rights of any nature enjoyed or held by the Borrower in relation to any of them.

"**Business Day**" means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

"**Charged Property**" means any freehold, leasehold or commonhold property the subject of the security constituted by this deed and references to "**Charged Property**" shall include references to the whole or any part or part of it.

"**Commercial Units**" has the meaning given to that expression in the Agreement for Lease.

"**Delegate**" means any person appointed by the Lender or any Receiver pursuant to clause 18 and any person appointed as attorney of the Lender, Receiver or Delegate.

"**Designated Account**" means any account of the Borrower nominated by the Lender as a designated account for the purposes of this deed.

"**Development**" has the meaning given to that expression in the Facility Agreement.

"**Dwelling**" has the meaning given to that expression in the Agreement for Lease.

**"Environment"** means the natural and man-made environment including all or any of the following media, namely air, water and land (including air within buildings and other natural or man-made structures above or below the ground) and any living organisms (including man) or systems supported by those media.

**"Environmental Law"** means all applicable laws, statutes, regulations, secondary legislation, bye-laws, common law, directives, treaties and other measures, judgments and decisions of any court or tribunal, codes of practice and guidance notes in so far as they relate to or apply to the Environment.

**"Environmental Licence"** means any authorisation, permit or licence necessary under Environmental Law in respect of any of the Secured Assets.

**"Equipment"** means all present and future equipment, plant, machinery, tools, vehicles, furniture, fittings, installations and apparatus and other tangible moveable property owned by the Borrower or in which it has an interest, including any part of it and all spare parts, replacements, modifications and additions.

**"Event of Default"** has the meaning given to that expression in the Facility Agreement.

**"Excluded Property"** each leasehold property held by the Borrower under a lease that either precludes absolutely, or requires consent of a third party to, the creation of Security over the Borrower's leasehold interest in that property.

**"Facility Agreement"** means the £250,000,000 facility agreement dated on or about the date of this deed between the Borrower and the Lender for the provision of the loan facilities secured by this deed.

**"Financial Collateral"** means has the meaning given to that expression in the Financial Collateral Regulations.

**"Financial Collateral Regulations"** the Financial Collateral Arrangements (No 2) Regulations 2003 (*SI 2003/3226*).

**"Insurance Policy"** means each contract and policy of insurance effected or maintained by the Borrower from time to time in respect of its assets or business (including, without limitation, any contract or policy of insurance relating to the Charged Properties or the Equipment).

**"Intellectual Property"** means the Borrower's present and future patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**"Investments"** means all certificated shares, stock, debentures, bonds or other securities or investments (whether or not marketable) from time to time legally or beneficially owned by or on behalf of the Borrower

**"LPA 1925"** means the Law of Property Act 1925.

**"Legal Charge"** has the meaning given to it in the Facility Agreement.

**"Permitted Disposal"** means any grant of a lease or tenancy or freehold sale of a Dwelling or Commercial Units required by or otherwise permitted by the Facility Agreement and/or Agreement for Lease.

**"Receiver"** means a receiver, receiver and manager or administrative receiver appointed by the Lender under clause 16.

**"Relevant Agreement"** means each agreement specified in Schedule 2.

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

**"Secured Liabilities"** means all present and future obligations and liabilities of the Borrower to the Lender, whether actual or contingent and whether owed jointly or severally, as principal or surety or in any other capacity, under or in connection with the Facility Agreement or this deed (including, without limitation, those arising under clause 30), together with all interest (including, without limitation, default interest) accruing in respect of those obligations or liabilities.

**"Security Financial Collateral Arrangement"** means has the meaning given to that expression in the Financial Collateral Regulations.

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

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

**"VAT"** means value added tax or any equivalent tax chargeable in the UK or elsewhere.

## 1.2 Interpretation

In this deed:

- (a) *clause and Schedule headings shall not affect the interpretation of this deed;*
- (b) a reference to a person shall include a reference to an individual, firm, company, corporation, partnership, unincorporated body of persons, government, state or agency of a state or any association, trust, joint venture or consortium (whether or not having separate legal personality);
- (c) unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;
- (d) unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;
- (e) a reference to a party shall include that party's successors, permitted assigns and permitted transferees and this deed shall be binding on, and enure to the benefit of, the



parties to this deed and their respective personal representatives, successors, permitted assigns and permitted transferees;

- (f) a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;
- (g) a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision;
- (h) a reference to writing or written includes fax;
- (i) an obligation on a party not to do something includes an obligation not to allow that thing to be done;
- (j) a reference to this deed (or any provision of it) or to any other agreement or document referred to in this deed is a reference to this deed, that provision or such other agreement or document as amended (in each case, other than in breach of the provisions of this deed) from time to time;
- (k) unless the context otherwise requires, a reference to a clause or Schedule is to a clause of, or Schedule to, this deed;
- (l) any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;
- (m) a reference to an amendment includes a novation, re-enactment, supplement or variation (and amend and amended shall be construed accordingly);
- (n) a reference to assets includes present and future properties, undertakings, revenues, rights and benefits of every description;
- (o) a reference to an authorisation includes an approval, authorisation, consent, exemption, filing, licence, notarisation, registration and resolution;
- (p) a reference to continuing in relation to an Event of Default means an Event of Default that has not been remedied or waived;
- (q) a reference to determines or determined means, unless the contrary is indicated, a determination made at the absolute discretion of the person making it; and
- (r) a reference to a regulation includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation.

### 1.3 Clawback

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



**1.4 Nature of security over real property**

A reference in this deed to a charge or mortgage of or over any Charged Property includes:

- 1.4.1 all buildings and fixtures and fittings (including trade and tenant's fixtures and fittings) and fixed plant and machinery that are situated on or form part of that Charged Property at any time;
- 1.4.2 the proceeds of the sale of any part of that Charged Property and any other monies paid or payable in respect of or in connection with that Charged Property;
- 1.4.3 the benefit of any covenants for title given, or entered into, by any predecessor in title of the Borrower in respect of that Charged Property, and any monies paid or payable in respect of those covenants; and
- 1.4.4 all rights under any licence, agreement for sale or agreement for lease in respect of that Charged Property.

**1.5 Nature of security over Investments**

A reference in this deed to any share, stock, debenture or other security or investment includes:

- 1.5.1 any dividend, interest or other distribution paid or payable in respect of that share, stock, debenture or other security or investment;
- 1.5.2 any right, money, shares or property accruing, offered or issued at any time in relation to that share, stock, debenture or other security or investment by way of redemption, substitution, exchange, conversion, bonus, preference or otherwise, under option rights or otherwise.

**1.6 Law of Property (Miscellaneous Provisions) Act 1989**

For the purposes of section 2 of the Law of Property (Miscellaneous Provisions) Act 1989, the terms of the Facility Agreement and of any side letters between any parties in relation to the Facility Agreement are incorporated into this deed.

**1.7 Perpetuity period**

If the rule against perpetuities applies to any trust created by this deed, the perpetuity period shall be 125 years (as specified by section 5(1) of the Perpetuities and Accumulations Act 2009).

**1.8 Schedules**

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

**2. COVENANT TO PAY**

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

3. **GRANT OF SECURITY**

3.1 **Legal mortgage**

As a continuing security for the payment and discharge of the Secured Liabilities, the Borrower with full title guarantee charges to the Lender, by way of a first legal mortgage, all estates or interests in any freehold, leasehold or commonhold property now owned by it, including the real property (if any) specified in Schedule 1.

3.2 **Fixed charges**

As a continuing security for the payment and discharge of the Secured Liabilities, the Borrower with full title guarantee charges to the Lender by way of a first fixed charge:

- 3.2.1 all present and future estates or interests of the Borrower in, or over, any freehold, leasehold or commonhold property (other than any such property effectively mortgaged under clause 3.1);
- 3.2.2 the benefit of all other contracts, guarantees, appointments and warranties relating to each Charged Property and other documents to which the Borrower is a party or which are in its favour or of which it has the benefit relating to any letting, development, sale, purchase, use or the operation of any Charged Property or otherwise relating to any Charged Property (including, in each case, but without limitation, the right to demand and receive all monies whatever payable to or for its benefit under or arising from any of them, all remedies provided for in any of them or available at law or in equity in relation to any of them, the right to compel performance of any of them and all other rights, interests and benefits whatever accruing to or for its benefit arising from any of them);
- 3.2.3 all licences, consents and authorisations (statutory or otherwise) held or required in connection with its business or the use of any Secured Asset, and all rights in connection with them;
- 3.2.4 all its present and future goodwill;
- 3.2.5 all its uncalled capital;
- 3.2.6 all the Equipment;
- 3.2.7 all the Intellectual Property;
- 3.2.8 all the Book Debts;
- 3.2.9 all the Investments;
- 3.2.10 all monies from time to time standing to the credit of its accounts with any bank, financial institution or other person (including each Designated Account), together with all other rights and benefits accruing to or arising in connection with each account (including, but not limited to, entitlements to interest);
- 3.2.11 all its rights in respect of each Insurance Policy, including all claims, the proceeds of all claims and all returns of premiums in connection with each Insurance Policy, to the extent not effectively assigned under clause 3.3; and

- 3.2.12 all its rights in respect of each Relevant Agreement and all other agreements, instruments and rights relating to the Secured Assets, to the extent not effectively assigned under clause 3.3.

**3.3 Assignment**

As a continuing security for the payment and discharge of the Secured Liabilities, the Borrower with full title guarantee assigns to the Lender absolutely, subject to a proviso for reassignment on irrevocable discharge in full of the Secured Liabilities:

- 3.3.1 all its rights in each Insurance Policy, including all claims, the proceeds of all claims and all returns of premiums in connection with each Insurance Policy; and
- 3.3.2 the benefit of each Relevant Agreement and the benefit of all other agreements, instruments and rights relating to the Secured Assets.

**3.4 Floating charge**

As a continuing security for the payment and discharge of the Secured Liabilities, the Borrower with full title guarantee charges to the Lender, by way of first floating charge, all its undertaking, property, assets and rights not otherwise effectively mortgaged, charged or assigned under clause 3.1 to clause 3.3 inclusive.

**3.5 Qualifying floating charge**

Paragraph 14 of Schedule B1 to the Insolvency Act 1986 applies to the floating charge created by clause 3.4.

**3.6 Leasehold security restrictions**

- 3.6.1 Subject to clause 3.6.2 to clause 3.6.4, the security created by clause 3.1 to clause 3.2 shall not apply to an Excluded Property until the Borrower obtains any relevant consent, or waiver of any prohibition, to the creation of security over that Excluded Property.
- 3.6.2 In relation to each Excluded Property, the Borrower undertakes to:
- (a) apply for the relevant consent or waiver of prohibition within five Business Days of the date of this deed, and to use its best endeavours to obtain that consent or waiver as soon as possible;
  - (b) keep the Lender informed of its progress in obtaining that consent or waiver; and
  - (c) immediately on receipt of the consent or waiver, provide the Lender with a copy of that consent or waiver.
- 3.6.3 Immediately on receipt by the Borrower of the relevant consent or waiver, that Excluded Property shall become the subject of a mortgage or charge (as appropriate) pursuant to clause 3.1 to clause 3.2.
- 3.6.4 If required by the Lender at any time following receipt of that consent or waiver, the Borrower shall, at its own cost, prepare and execute any further documents and take any further action the Lender may require, in its absolute discretion, for perfecting its security over that Excluded Property.

**3.7 Automatic crystallisation of floating charge**

The floating charge created by clause 3.4 shall automatically and immediately (without notice) convert into a fixed charge over the assets subject to that floating charge if:

3.7.1 the Borrower:

- (a) creates, or attempts to create, without the prior written consent of the Lender, Security or a trust in favour of another person over all or any part of the Secured Assets (except as expressly permitted by the terms of this deed or the Facility Agreement); or
- (b) disposes, or attempts to dispose of, all or any part of the Secured Assets (other than Secured Assets that are only subject to the floating charge while it remains uncrystallised);

3.7.2 any person levies (or attempts to levy) any distress, attachment, execution or other process against all or any part of the Secured Assets; or

3.7.3 a resolution is passed or an order is made for the winding-up, dissolution, administration or re-organisation of the Borrower.

**3.8 Crystallisation of floating charge by notice**

The Lender may, in its sole discretion, by written notice to the Borrower, convert the floating charge created under this deed into a fixed charge as regards any part of the Secured Assets specified by the Lender in that notice if:

3.8.1 an Event of Default is continuing; or

3.8.2 the Lender considers those assets to be in danger of being seized or sold under any form of distress, attachment, execution or other legal process or to be otherwise in jeopardy.

**3.9 Assets acquired after any floating charge has crystallised**

Any asset acquired by the Borrower after any crystallisation of the floating charge created under this deed that, but for that crystallisation, would be subject to a floating charge under this deed, shall (unless the Lender confirms otherwise to the Borrower in writing) be charged to the Lender by way of first fixed charge.

**4. LIABILITY OF THE BORROWER**

**4.1 Liability not discharged**

The Borrower's liability under this deed in respect of any of the Secured Liabilities shall not be discharged, prejudiced or affected by:

- 4.1.1 any security, guarantee, indemnity, remedy or other right held by, or available to, the Lender that is, or becomes, wholly or partially illegal, void or unenforceable on any ground;
- 4.1.2 the Lender renewing, determining, varying or increasing any facility or other transaction in any manner or concurring in, accepting or varying any



*compromise, arrangement or settlement, or omitting to claim or enforce payment from any other person; or*

- 4.1.3 any other act or omission that, but for this clause 4.1, might have discharged, or otherwise prejudiced or affected, the liability of the Borrower.

**4.2 Immediate recourse**

The Borrower waives any right it may have to require the Lender to enforce any security or other right, or claim any payment from, or otherwise proceed against, any other person before enforcing this deed against the Borrower.

**5. REPRESENTATIONS AND WARRANTIES**

**5.1 Times for making representations and warranties**

The Borrower makes the representations and warranties set out in this clause 5 to the Lender on the date of this deed and the representations and warranties are deemed to be repeated on each day of the Security Period with reference to the facts and circumstances existing at the time of repetition.

**5.2 Ownership of Secured Assets**

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

**5.3 No Security**

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

**5.4 No adverse claims**

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

**5.5 No adverse covenants**

Save to the extent disclosed by the Borrower to the Lender prior to the date of this deed there are no covenants, agreements, reservations, conditions, interests, rights or other matters whatsoever that materially and adversely affect the Secured Assets.

**5.6 No breach of laws**

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

**5.7 No interference in enjoyment**

No facility necessary for the enjoyment and use of the Secured Assets is subject to terms entitling any person to terminate or curtail its use.

**5.8 No overriding interests**

Save to the extent disclosed by the Borrower to the Lender prior to the date of this deed nothing has arisen, has been created or is subsisting, that would be an overriding interest in any Charged Property.



**5.9 Avoidance of security**

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

**5.10 No prohibitions or breaches**

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

**5.11 Environmental compliance**

The Borrower has, at all times, complied in all material respects with all applicable Environmental Law and Environmental Licences.

**5.12 Enforceable security**

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

**5.13 Investments**

5.13.1 The Investments are fully paid and are not subject to any option to purchase or similar rights.

5.13.2 No constitutional document of an issuer of an Investment, nor any other agreement:

(a) restricts or inhibits any transfer of the Investments on creation or enforcement of the security constituted by this deed; or

(b) contains any rights of pre-emption in relation to the Investments.

5.13.3 The Borrower has complied with all notices relating to all or any of the Investments received by it pursuant to sections 790D and 790E of the Companies Act 2006.

5.13.4 No warning notice has been issued under paragraph 1(2) of Schedule 1B of the Companies Act 2006, and no restrictions notice has been issued under paragraph 1(3) of Schedule 1B of the Companies Act 2006, in respect of all or any of the Investments.

**6. GENERAL COVENANTS**

**6.1 Negative pledge and disposal restrictions**

The Borrower shall not at any time, except with the prior written consent of the Lender or as otherwise permitted by the Facility Agreement:

6.1.1 create, purport to create or permit to subsist any Security on, or in relation to, any Secured Asset other than any Security created by this deed;

6.1.2 sell, assign, transfer, part with possession of, or otherwise dispose of in any manner (or purport to do so), all or any part of, or any interest in, the Secured Assets (except, in the ordinary course of business, Secured Assets that are only subject to an uncrystallised floating charge); or

6.1.3 create or grant (or purport to create or grant) any interest in the Secured Assets in favour of a third party.

**6.2 Preservation of Secured Assets**

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

**6.3 Compliance with laws and regulations**

6.3.1 The Borrower shall not, without the Lender's prior written consent, use or permit the Secured Assets to be used in any way contrary to law.

6.3.2 The Borrower shall:

- (a) comply with the requirements of any law or regulation relating to or affecting the Secured Assets or the use of it or any part of them;
- (b) obtain, and promptly renew from time to time, and comply with the terms of all authorisations that are required in connection with the Secured Assets or their use or that are necessary to preserve, maintain or renew any Secured Asset; and
- (c) promptly effect any maintenance, modifications, alterations or repairs that are required by any law or regulation to be effected on or in connection with the Secured Assets.

**6.4 Enforcement of rights**

The Borrower shall use its best endeavours to:

6.4.1 procure the prompt observance and performance by the relevant counterparty to any agreement or arrangement with the Borrower and forming part of the Secured Assets of the covenants and other obligations imposed on such counterparty (including each counterparty in respect of a Relevant Agreement and each insurer in respect of an Insurance Policy); and

6.4.2 enforce any rights and institute, continue or defend any proceedings relating to any of the Secured Assets that the Lender may require from time to time.

**6.5 Notice of misrepresentation and breaches**

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

6.5.1 any representation or warranty set out in this deed that is incorrect or misleading in any material respect when made or deemed to be repeated; and

6.5.2 any breach of any covenant set out in this deed.

**6.6 Title documents**

The Borrower shall, if so required by the Lender, deposit with the Lender and the Lender shall, for the duration of this deed be entitled to hold:

- 6.6.1 all deeds and documents of title relating to the Secured Assets that are in the possession or control of the Borrower (and if these are not within the possession or control of the Borrower, the Borrower undertakes to obtain possession of all these deeds and documents of title);
- 6.6.2 all Insurance Policies and any other insurance policies relating to any of the Secured Assets that the Borrower is entitled to possess;
- 6.6.3 all deeds and documents of title (if any) relating to the Book Debts as the Lender may specify from time to time; and
- 6.6.4 a copy of each Relevant Agreement, certified to be a true copy by either a director of the Borrower or by the Borrower's solicitors

or shall deliver to the Lender an undertaking from a firm of solicitors to hold the same to the order of the Lender.

**6.7 Insurance**

- 6.7.1 The Borrower shall insure and keep insured (or where, in the case of any leasehold property, insurance is the responsibility of the landlord under the terms of the lease, either procure that the landlord insures and keeps insured or, if and to the extent that the landlord does not do so, itself insure and keep insured) the Secured Assets against:
  - (a) loss or damage by fire or terrorist acts, including any third party liability arising from such acts;
  - (b) other risks, perils and contingencies that would be insured against by reasonably prudent persons carrying on the same class of business as the Borrower; and
  - (c) any other risk, perils and contingencies as the Lender may reasonably require.
- 6.7.2 Any such insurance must be with an insurance company or underwriters, and on such terms, as are reasonably acceptable to the Lender, and must include property owners' public liability and third party liability insurance and be for not less than the replacement value of the relevant Secured Assets (meaning in the case of any premises on any Charged Property, the total cost of entirely rebuilding, reinstating or replacing the premises in the event of their being destroyed, together with architects', surveyors', engineers' and other professional fees and charges for shoring or propping up, demolition, site clearance and reinstatement with adequate allowance for inflation) and, in the case of any Charged Property, loss of rents payable by the tenants or other occupiers of any Charged Property for a period of at least three years, including provision for increases in rent during the period of insurance.

- 6.7.3 The Borrower shall, if requested by the Lender, produce to the Lender each policy, certificate or cover note relating to any insurance as is required by clause 6.7.1 (or where, in the case of any leasehold property, that insurance is effected by the landlord, such evidence of insurance as the Borrower is entitled to obtain from the landlord under the terms of the relevant lease).
- 6.7.4 The Borrower shall, if requested by the Lender, procure that a note of the Lender's interest is endorsed on each insurance policy (other than public liability and third party liability insurances) effected or maintained by it or any person on its behalf in accordance with clause 6.7.1 but without the Lender having any liability for any premium in relation to those insurance policies unless it has expressly and specifically requested to be made liable in respect of any increase in premium or unpaid premium in respect of any Insurance Policy.
- 6.7.5 The Borrower shall ensure that each insurance policy effected or maintained by it or any person on its behalf in accordance with clause 6.7.1 contains:
- (a) a loss payee clause under which the Lender is named as first loss payee (other than in respect of any claim under any public liability and third party liability insurances);
  - (b) terms ensuring that it cannot be avoided or vitiated as against the Lender by reason of the act or default of any other insured party or any misrepresentation, non-disclosure or failure to make a fair presentation of risk by any other insured party;
  - (c) a waiver of each insurer's rights of subrogation against the Borrower, the Lender and the tenants of any Charged Property other than any such rights arising in connection with any fraud or criminal offence committed by any of those persons in respect of any Charged Property or any insurance policy; and
  - (d) terms ensuring that no insurer can repudiate, rescind or cancel it, treat it as avoided in whole or in part nor treat it as expired due to non-payment of premium without giving at least 30 days' prior written notice to the Lender.

## 6.8 Insurance premiums

The Borrower shall:

- 6.8.1 promptly pay all premiums in respect of each insurance policy as is required by clause 6.7.1 and do all other things necessary to keep that policy in full force and effect; and
- 6.8.2 (if the Lender so requires) give to the Lender copies of the receipts for all premiums and other payments necessary for effecting and keeping up each insurance policy as is required by clause 6.7.1 (or where, in the case of leasehold property, insurance is effected by the landlord, such evidence of the payment of premiums as the Borrower is entitled to obtain from the landlord under the terms of the relevant lease).



**6.9 No invalidation of insurance**

The Borrower shall not do or omit to do, or permit to be done or omitted, any act or thing that may invalidate or otherwise prejudice any insurance policy as is required by clause 6.7.1.

**6.10 Proceeds from insurance policies**

All monies payable under any insurance policy maintained by the Borrower in accordance with clause 6.7.1 at any time (whether or not the security constituted by this deed has become enforceable) shall:

- 6.10.1 be paid immediately to the Lender;
- 6.10.2 if they are not paid directly to the Lender by the insurers, be held, pending such payment, by the Borrower as trustee of the same for the benefit of the Lender; and
- 6.10.3 be applied in making good or recouping expenditure in respect of the loss or damage for which those monies are received or, after the security constituted by this deed has become enforceable and if the Lender so directs, in or towards discharge or reduction of the Secured Liabilities.

**6.11 Notices to be given by the Borrower**

The Borrower shall:

- 6.11.1 within five business days of the execution of this deed and as so requested by the Lender from time to time:
  - (a) give notice to each counterparty to a Relevant Agreement in the form set out in Part 1 of Schedule 3; and
  - (b) procure that each counterparty provides to the Lender within five Business Days an acknowledgement of the notice in the form set out in Part 2 of Schedule 3;
- 6.11.2 within five business days of the execution of this deed and as so requested by the Lender from time to time:
  - (a) give notice to each insurer under an Insurance Policy in the form set out in Part 1 of Schedule 4; and
  - (b) procure that each insurer provides to the Lender within five Business Days an acknowledgement of the notice in the form set out in Part 2 of Schedule 4; and
- 6.11.3 within five business days of the execution of this deed and as so requested by the Lender from time to time:
  - (a) give notice to each bank, financial institution or other person (other than the Lender) with whom the Borrower holds an account (including each Designated Account) in the form set out in Part 2 of Schedule 4 (*Notice of Acknowledgement – Insurance Policy*); and



- (b) procure that each such bank, financial institution or other person provides to the Lender within five Business Days an acknowledgement of the notice in the form of Part 2 of Schedule 4 (*Notice and Acknowledgement – Insurance Policy*).

#### 6.12 Information

The Borrower shall:

- 6.12.1 give the Lender such information concerning the location, condition, use and operation of the Secured Assets as the Lender may require;
- 6.12.2 permit any persons designated by the Lender and any Receiver to enter on its premises and inspect and examine any Secured Asset, and the records relating to that Secured Asset, at all reasonable times and on reasonable prior notice; and
- 6.12.3 promptly notify the Lender in writing of any action, claim, notice or demand made by or against it in connection with all or any part of a Secured Asset or of any fact, matter or circumstance which may, with the passage of time, give rise to such an action, claim, notice or demand, together with, in each case, the Borrower's proposals for settling, liquidating, compounding or contesting any such action, claim, notice or demand and shall, subject to the Lender's prior approval, implement those proposals at its own expense.

#### 6.13 Payment of outgoings

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

#### 6.14 Appointment of accountants

6.14.1 The Borrower shall:

- (a) at its own cost, if at any time so required by the Lender, appoint an accountant or firm of accountants nominated by the Lender to investigate the financial affairs of the Borrower and report to the Lender; and
- (b) co-operate fully with any accountants so appointed and immediately provide those accountants with all information requested.

6.14.2 The Borrower authorises the Lender to make an appointment as it shall think fit at any time, without further authority from the Borrower. In every case, the Borrower shall pay, or reimburse the Lender for, the fees and expenses of those accountants.

### 7. PROPERTY COVENANTS

#### 7.1 Repair and maintenance

The Borrower shall following practical completion of each part of the Development keep all premises and fixtures and fittings on that part of each Charged Property in such repair and condition as to enable each Charged Property to be let in accordance with all applicable laws and regulations.

**7.2 No alterations**

Following practical completion of each part of the Development the Borrower shall not, without the prior written consent of the Lender:

- 7.2.1 pull down or remove the whole, or any part of, any building forming part of that part of any Charged Property or permit the same to occur;
- 7.2.2 make or permit to be made any material alterations to that part of any Charged Property, or sever or remove or permit to be severed or removed, any of its fixtures or fittings (except to make any necessary repairs or renew or replace the same in accordance with clause 7.1); or
- 7.2.3 remove or make any material alterations to any of the Equipment belonging to, or in use by, the Borrower on that part of any Charged Property (except to effect necessary repairs or replace them with new or improved models or substitutes).

**7.3 Conduct of business on Charged Properties**

The Borrower shall carry on its trade and business on those parts (if any) of the Charged Properties as are used for the purposes of trade or business in accordance with the standards of good management from time to time current in that trade or business.

**7.4 Notices or claims relating to the property**

7.4.1 The Borrower shall:

- (a) give full particulars to the Lender of any notice, order, direction, designation, resolution, application, requirement or proposal given or made by any public or local body or authority (a **Notice**) that specifically applies to any Charged Property, or to the locality in which it is situated, within seven days after becoming aware of the relevant Notice; and
- (b) (if the Lender so requires) immediately, and at the cost of the Borrower, take all reasonable and necessary steps to comply with any Notice, and make, or join with the Lender in making, any objections or representations in respect of that Notice that the Lender thinks fit.

7.4.2 The Borrower shall give full particulars to the Lender of any claim, notice or other communication served on it in respect of any modification, suspension or revocation of any Environmental Licence or any alleged breach of any Environmental Law, in each case relating to any Charged Property.

**7.5 Compliance with and enforcement of covenants**

The Borrower shall:

- 7.5.1 observe and perform all covenants, stipulations and conditions to which each Charged Property, or the use of it, is or may be subject, and (if the Lender so requires) produce to the Lender evidence sufficient to satisfy the Lender that those covenants, stipulations and conditions have been observed and performed; and

- 7.5.2 diligently enforce all covenants, stipulations and conditions benefiting each Charged Property and shall not (and shall not agree to) waive, release or vary any of the same.

**7.6 Payment of outgoings**

The Borrower shall pay (or procure payment of the same) when due all charges, rates, taxes, duties, assessments and other outgoings relating to or imposed on each Charged Property or on its occupier.

**7.7 Leases and licences affecting the Charged Properties**

The Borrower shall not except by way of a Permitted Disposal, without the prior written consent of the Lender (which consent, in the case of clause 7.7.4, is not to be unreasonably withheld or delayed in circumstances in which the Borrower may not unreasonably withhold or delay its consent):

- 7.7.1 grant any licence or tenancy affecting the whole or any part of any Charged Property, or exercise the statutory powers of leasing or of accepting surrenders under sections 99 or 100 of the LPA 1925 (or agree to grant any such licence or tenancy, or agree to exercise the statutory powers of leasing or of accepting surrenders under section 99 or section 100 of the LPA 1925);
- 7.7.2 in any other way dispose of, accept the surrender of, surrender or create any legal or equitable estate or interest in the whole or any part of any Charged Property (or agree to dispose of, accept the surrender of, surrender or create any legal or equitable estate or interest in the whole or any part of the Charged Property);
- 7.7.3 let any person into occupation of or share occupation of the whole or any part of any Charged Property; or
- 7.7.4 grant any consent or licence under any lease or licence affecting any Charged Property.

**7.8 Registration restrictions and cautions against first registration and notices**

- 7.8.1 If the title to any Charged Property is not registered at the Land Registry, the Borrower shall procure that no person (other than itself) shall be registered under the Land Registration Act 2002 as proprietor of all or any part of any Charged Property, without the prior written consent of the Lender.
- 7.8.2 Whether or not title to any Charged Property is registered at the Land Registry, if any caution against first registration or any notice (whether agreed or unilateral) is registered against the Borrower's title to any Charged Property, the Borrower shall immediately provide the Lender with full particulars of the circumstances relating to such caution or notice. If such caution or notice was registered to protect a purported interest the creation of which is not permitted under this deed, the Borrower shall immediately, and at its own expense, take such steps as the Lender may require to ensure that the caution or notice, as applicable, is withdrawn or cancelled.
- 7.8.3 The Borrower shall be liable for the costs and expenses of the Lender in lodging cautions against the registration of the title to the whole or any part of any Charged Property from time to time.

**7.9 Development restrictions**

The Borrower shall not save as provided in the Agreement for Lease, without the prior written consent of the Lender:

- 7.9.1 make or, insofar as it is able, permit others to make any application for planning permission or development consent in respect of any Charged Property; or
- 7.9.2 carry out or permit or suffer to be carried out on any Charged Property any development (as defined in each of the Town and Country Planning Act 1990 and the Planning Act 2008) or change or permit or suffer to be changed the use of any Charged Property.

**7.10 Environment**

The Borrower shall in respect of each Charged Property:

- 7.10.1 comply in all material respects with all the requirements of Environmental Law; and
- 7.10.2 obtain and comply in all material respects with all Environmental Licences.

**7.11 No restrictive obligations**

The Borrower shall not save by way of a Permitted Disposal, without the prior written consent of the Lender, enter into any onerous or restrictive obligations affecting the whole or any part of any Charged Property, or create or permit to arise any overriding interest, easement or right whatever in or over the whole or any part of any Charged Property.

**7.12 Proprietary rights**

The Borrower shall procure that no person shall become entitled to assert any proprietary or other like right or interest over the whole or any part of any Charged Property without the prior written consent of the Lender.

**7.13 Inspection**

The Borrower shall permit the Lender, any Receiver and any person appointed by either of them to enter on and inspect any Charged Property on reasonable prior notice save always to the Lender or other person making good any damage caused and observing all requirements as to health and safety.

**7.14 Property information**

The Borrower shall inform the Lender promptly of any acquisition by the Borrower of, or contract made by the Borrower to acquire, any freehold, leasehold or other interest in any property.

**7.15 VAT option to tax**

The Borrower shall not save in respect of the property which is the subject of the Development, without the prior written consent (such consent not to be unreasonably withheld or delayed) of the Lender:

- 7.15.1 exercise any VAT option to tax in relation to any Charged Property; or



- 7.15.2      revoke any VAT option to tax exercised, and disclosed to the Lender, before the date of this deed.

7.16      **Registration of legal mortgage at the Land Registry**

The Borrower consents to an application being made by the Lender to the Land Registrar for the following restriction in Form P to be registered against its title to each Charged Property over which the Lender has a legal mortgage:

*"No disposition of the registered estate by the proprietor of the registered estate[, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction,] is to be registered without a written consent signed by the proprietor for the time being of the charge dated [●] in favour of [NAME OF PARTY] referred to in the charges register or their conveyancer or without a certificate signed by a conveyancer that the provisions of [clause [●] of [●]] have been complied with or that they do not apply to the disposition."*

8.      **INVESTMENTS COVENANTS**

8.1      **Deposit of title documents**

8.1.1      The Borrower shall:

- (a)      on the execution of this deed, deposit with the Lender, or as the Lender may direct, all stock or share certificates and other documents of title or evidence of ownership relating to any Investments owned by the Borrower at that time; and
- (b)      on the purchase or acquisition by it of Investments after the date of this deed, deposit with the Lender, or as the Lender may direct, all stock or share certificates and other documents of title or evidence of ownership relating to those Investments.

8.1.2      At the same time as depositing documents with the Lender, or as the Lender may direct, in accordance with clause 8.1.1, the Borrower shall also deposit with the Lender, or as the Lender may direct:

- (a)      all stock transfer forms relating to the relevant Investments duly completed and executed by or on behalf of the Borrower, but with the name of the transferee, the consideration and the date left blank; and
- (b)      any other documents (in each case duly completed and executed by or on behalf of the Borrower) that the Lender may request to enable it or any of its nominees, or any purchaser or transferee, to be registered as the owner of, or otherwise obtain a legal title to, or to perfect its security interest in any of the relevant Investments,

so that the Lender may, at any time and without notice to the Borrower, complete and present those stock transfer forms and other documents to the issuer of the Investments for registration.

8.2      **Nominations**

- 8.2.1      The Borrower shall terminate with immediate effect all nominations it may have made (including, without limitation, any nomination made under section 145 or



section 146 of the Companies Act 2006) in respect of any Investments and, pending that termination, procure that any person so nominated:

- (a) does not exercise any rights in respect of any Investments without the prior written approval of the Lender; and
- (b) immediately on receipt by it, forward to the Lender all communications or other information received by it in respect of any Investments for which it has been so nominated.

8.2.2 The Borrower shall not, during the Security Period, exercise any rights (including, without limitation, any rights under sections 145 and 146 of the Companies Act 2006) to nominate any person in respect of any of the Investments.

### 8.3 Pre-emption rights and restrictions on transfer

The Borrower shall:

- 8.3.1 obtain all consents, waivers, approvals and permissions that are necessary, under the articles of association (or otherwise) of an issuer of any Investments, for the transfer of the Investments to the Lender or its nominee, or to a purchaser on enforcement of the security constituted by this deed; and
- 8.3.2 procure the amendment of the share transfer provisions (including, but not limited to, deletion of any pre-emption provisions) under the articles of association, other constitutional document or otherwise of each issuer of the Investments in any manner that the Lender may require in order to permit the transfer of the Investments to the Lender or its nominee, or to a purchaser on enforcement of the security constituted by this deed.

### 8.4 Dividends and voting rights before enforcement

- 8.4.1 Before the security constituted by this deed becomes enforceable, the Borrower may retain and apply for its own use all dividends, interest and other monies paid or payable in respect of the Investments and, if any are paid or payable to the Lender or any of its nominees, the Lender will hold all those dividends, interest and other monies received by it for the Borrower and will pay them to the Borrower promptly on request.
- 8.4.2 Before the security constituted by this deed becomes enforceable, the Borrower may exercise all voting and other rights and powers in respect of the Investments or, if any of the same are exercisable by the Lender or any of its nominees, to direct in writing the exercise of those voting and other rights and powers provided that:
  - (a) it shall not do so in any way that would breach any provision of the Facility Agreement or this deed or for any purpose inconsistent with the Facility Agreement or this deed; and
  - (b) the exercise of, or the failure to exercise, those voting rights or other rights and powers would not, in the Lender's opinion, have an adverse effect on the value of the Investments or otherwise prejudice the Lender's security under this deed.

8.4.3 The Borrower shall indemnify the Lender against any loss or liability incurred by the Lender (or its nominee) as a consequence of the Lender (or its nominee) acting in respect of the Investments at the direction of the Borrower.

8.4.4 The Lender shall not, by exercising or not exercising any voting rights or otherwise, be construed as permitting or agreeing to any variation or other change in the rights attaching to or conferred by any of the Investments that the Lender considers prejudicial to, or impairing the value of, the security created by this deed.

**8.5 Dividends and voting rights after enforcement**

After the security constituted by this deed has become enforceable:

8.5.1 all dividends and other distributions paid in respect of the Investments and received by the Borrower shall be held by the Borrower on trust for the Lender and immediately paid into a Designated Account or, if received by the Lender, may be applied by the Lender in accordance with clause 19.1; and

8.5.2 all voting and other rights and powers attaching to the Investments may be exercised by, or at the direction of, the Lender and the Borrower shall, and shall procure that its nominees shall, comply with any directions the Lender may give, in its absolute discretion, concerning the exercise of those rights and powers.

**8.6 Calls on Investments**

Notwithstanding the security created by this deed, the Borrower shall promptly pay all calls, instalments and other payments that may be or become due and payable in respect of all or any of the Investments. The Borrower acknowledges that the Lender shall not be under any liability in respect of any such calls, instalments or other payments.

**8.7 No alteration of constitutional documents or rights attaching to Investments**

The Borrower shall not, without the prior written consent of the Lender, amend, or agree to the amendment of:

8.7.1 the memorandum or articles of association, or any other constitutional documents, of any issuer of the Investments that is not a public company; or

8.7.2 the rights or liabilities attaching to, or conferred by, all or any of the Investments.

**8.8 Preservation of Investments**

The Borrower shall ensure (as far as it is able to by the exercise of all voting rights, powers of control and other means available to it) that any issuer of any of the Investments (that is not a public company) shall not:

8.8.1 consolidate or subdivide any of the Investments, or re-organise, exchange, repay or reduce its share capital in any way;

8.8.2 issue any new shares or stock; or

8.8.3 refuse to register any transfer of any of the Investments that may be lodged with it for registration by, or on behalf of, the Lender or the Borrower in accordance with this deed.

**8.9 Investments information**

The Borrower shall, promptly following receipt, send to the Lender copies of any notice, circular, report, accounts and any other document received by it that relates to the Investments.

**8.10 Compliance with requests for information**

The Borrower shall promptly send a copy to the Lender of, and comply with, all requests for information which is within its knowledge and which are made under any law or regulation or any similar provision in any articles of association or other constitutional document, or by any listing or other authority, relating to any of the Investments. If it fails to do so, the Lender may elect to provide such information as it may have on behalf of the Borrower.

**9. EQUIPMENT COVENANTS**

**9.1 Maintenance of Equipment**

The Borrower shall:

- 9.1.1 maintain the Equipment in good and serviceable condition (except for expected fair wear and tear) in compliance with all relevant manuals, handbooks, manufacturer's instructions and recommendations and maintenance or servicing schedules;
- 9.1.2 at its own expense, renew and replace any parts of the Equipment when they become obsolete, worn out or damaged with parts of a similar quality and of equal or greater value; and
- 9.1.3 not permit any Equipment to be:
  - (a) used or handled other than by properly qualified and trained persons; or
  - (b) overloaded or used for any purpose for which it is not designed or reasonably suitable.

**9.2 Payment of Equipment taxes**

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

**9.3 Notice of charge**

- 9.3.1 The Borrower shall, if so requested by the Lender, affix to and maintain on each item of Equipment in a conspicuous place, a clearly legible identification plate containing the following wording:

“NOTICE OF CHARGE

This [DESCRIBE ITEM] and all additions to it [and ancillary equipment] are subject to a fixed charge dated [DATE] in favour of [LENDER].”

- 9.3.2 The Borrower shall not, and shall not permit any person to, conceal, obscure, alter or remove any plate affixed in accordance with clause 9.3.1.

**10. BOOK DEBTS COVENANTS**

**10.1 Realising Book Debts**

- 10.1.1 The Borrower shall as an agent for the Lender, collect in and realise all Book Debts, pay the proceeds into a Designated Account immediately on receipt and, pending that payment, hold those proceeds in trust for the Lender;
- 10.1.2 The Borrower shall not, without the prior written consent of the Lender, withdraw any amounts standing to the credit of any Designated Account.
- 10.1.3 The Borrower shall, if called on to do so by the Lender, execute a legal assignment of the Book Debts to the Lender on such terms as the Lender may require and give notice of that assignment to the debtors from whom the Book Debts are due, owing or incurred.

**10.2 Preservation of Book Debts**

The Borrower shall not (except as provided by clause 10.1 or with the prior written consent of the Lender) release, exchange, compound, set off, grant time or indulgence in respect of, or in any other manner deal with, all or any of the Book Debts.

**11. RELEVANT AGREEMENTS COVENANTS**

**11.1 Relevant Agreements**

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

any Relevant Agreement or any other document, agreement or arrangement comprising the Secured Assets.

**12. INTELLECTUAL PROPERTY COVENANTS**

**12.1 Preservation of rights**

The Borrower shall take all necessary action to safeguard and maintain present and future rights in, or relating to, the Intellectual Property including (without limitation) by observing



all covenants and stipulations relating to those rights, and by paying all applicable renewal fees, licence fees and other outgoings.

**12.2 Registration of Intellectual Property**

The Borrower shall use all reasonable efforts to register applications for the registration of any Intellectual Property, and shall keep the Lender informed of all matters relating to each such registration.

**12.3 Maintenance of Intellectual Property**

The Borrower shall not permit any Intellectual Property to be abandoned, cancelled or to lapse.

**13. POWERS OF THE LENDER**

**13.1 Power to remedy**

13.1.1 The Lender shall be entitled (but shall not be obliged) to remedy, at any time, a breach by the Borrower of any of its obligations contained in this deed.

13.1.2 The Borrower irrevocably authorises the Lender and its agents to do all things that are necessary or desirable for that purpose.

13.1.3 Any monies expended by the Lender in remedying a breach by the Borrower of its obligations contained in this deed shall be reimbursed by the Borrower to the Lender on a full indemnity basis and shall carry interest in accordance with clause 20.1 (*Costs*).

**13.2 Exercise of rights**

13.2.1 The rights of the Lender under clause 13.1 are without prejudice to any other rights of the Lender under this deed.

13.2.2 The exercise of any rights of the Lender under this deed shall not make the Lender liable to account as a mortgagee in possession.

**13.3 Power to dispose of chattels**

13.3.1 At any time after the security constituted by this deed has become enforceable, the Lender or any Receiver may, as agent for the Borrower, dispose of any chattels or produce found on any Charged Property.

13.3.2 Without prejudice to any obligation to account for the proceeds of any disposal made under clause 13.3.1, the Borrower shall indemnify the Lender and any Receiver against any liability arising from any disposal made under clause 13.3.1.



**13.4 Lender has Receiver's powers**

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

**13.5 Conversion of currency**

13.5.1 For the purpose of, or pending the discharge of, any of the Secured Liabilities, the Lender may convert any monies received, recovered or realised by it under this deed (including the proceeds of any previous conversion under this clause 13.5) from their existing currencies of denomination into any other currencies of denomination that the Lender may think fit.

13.5.2 Any such conversion shall be effected at Lloyds Bank PLC's then prevailing spot selling rate of exchange for such other currency against the existing currency.

13.5.3 Each reference in this clause 13.5 to a currency extends to funds of that currency and, for the avoidance of doubt, funds of one currency may be converted into different funds of the same currency.

**13.6 New accounts**

13.6.1 If the Lender receives, or is deemed to have received, notice of any subsequent Security, or other interest, affecting all or part of the Secured Assets, the Lender may open a new account for the Borrower in the Lender's books. Without prejudice to the Lender's right to combine accounts, no money paid to the credit of the Borrower in any such new account shall be appropriated towards, or have the effect of discharging, any part of the Secured Liabilities.

13.6.2 If the Lender does not open a new account immediately on receipt of the notice, or deemed notice, under clause 13.6.1, then, unless the Lender gives express written notice to the contrary to the Borrower, all payments made by the Borrower to the Lender shall be treated as having been credited to a new account of the Borrower and not as having been applied in reduction of the Secured Liabilities, as from the time of receipt or deemed receipt of the relevant notice by the Lender.

**13.7 Indulgence**

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

**13.8 Appointment of an Administrator**

13.8.1 The Lender may, without notice to the Borrower, appoint any one or more persons to be an Administrator of the Borrower pursuant to Paragraph 14 of Schedule B1 of the Insolvency Act 1986 if the security constituted by this deed becomes enforceable.

- 13.8.2 Any appointment under this clause 13.8 shall:
- (a) be in writing signed by a duly authorised signatory of the Lender; and
  - (b) take effect, in accordance with paragraph 19 of Schedule B1 of the Insolvency Act 1986.
- 13.8.3 The Lender may apply to the court for an order removing an Administrator from office and may by notice in writing in accordance with this clause 13.8 appoint a replacement for any Administrator who has died, resigned, been removed or who has vacated office upon ceasing to be qualified.

**13.9 Further advances**

The Lender covenants with the Borrower that it shall perform its obligations to make advances under the Facility Agreement (including any obligation to make available further advances).

**14. WHEN SECURITY BECOMES ENFORCEABLE**

**14.1 Security becomes enforceable on Event of Default**

The security constituted by this deed shall become immediately enforceable if an Event of Default occurs.

**14.2 Discretion**

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

**15. ENFORCEMENT OF SECURITY**

**15.1 Enforcement powers**

- 15.1.1 For the purposes of all powers implied by statute, the Secured Liabilities are deemed to have become due and payable on the date of this deed.
- 15.1.2 The power of sale and other powers conferred by section 101 of the LPA 1925 (as varied or extended by this deed) shall be immediately exercisable at any time after the security constituted by this deed has become enforceable under clause 14.1.
- 15.1.3 Section 103 of the LPA 1925 does not apply to the security constituted by this deed.

**15.2 Extension of statutory powers of leasing**

The statutory powers of leasing and accepting surrenders conferred on mortgagees under the LPA 1925 and by any other statute are extended so as to authorise the Lender and any Receiver, at any time after the security constituted by this deed has become enforceable, whether in its own name or in that of the Borrower, to:

- 15.2.1 grant a lease or agreement for lease;

- 15.2.2 accept surrenders of leases; or
- 15.2.3 grant any option in respect of the whole or any part of the Secured Assets with whatever rights relating to other parts of it,

whether or not at a premium and containing such covenants on the part of the Borrower, and on such terms and conditions (including the payment of money to a lessee or tenant on a surrender) as the Lender or Receiver thinks fit without the need to comply with any of the restrictions imposed by sections 99 and 100 of the LPA 1925.

#### 15.3 Access on enforcement

- 15.3.1 At any time after the Lender has demanded payment of the Secured Liabilities or if the Borrower defaults in the performance of its obligations under this deed or the Facility Agreement, the Borrower will allow the Lender or its Receiver, without further notice or demand, immediately to exercise all its rights, powers and remedies in particular (and without limitation) to take possession of any Secured Asset and for that purpose to enter on any premises where a Secured Asset is situated (or where the Lender or a Receiver reasonably believes a Secured Asset to be situated) without incurring any liability to the Borrower for, or by any reason of, that entry.
- 15.3.2 At all times, the Borrower must use its best endeavours to allow the Lender or its Receiver access to any premises for the purpose of clause 15.3.1 (including obtaining any necessary consents or permits of other persons) and ensure that its employees and officers do the same.

#### 15.4 Redemption of prior Security

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

#### 15.5 Protection of third parties

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

- 15.5.1 whether any of the Secured Liabilities have become due or payable, or remain unpaid or undischarged;
- 15.5.2 whether any power the Lender, a Receiver or Delegate is purporting to exercise has become exercisable or is being properly exercised; or

15.5.3 how any money paid to the Lender, any Receiver or any Delegate is to be applied.

**15.6 Privileges**

Each Receiver and the Lender is entitled to all the rights, powers, privileges and immunities conferred by the LPA 1925 on mortgagees and receivers.

**15.7 No liability as mortgagee in possession**

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

**15.8 Conclusive discharge to purchasers**

The receipt of the Lender, or any Receiver or Delegate shall be a conclusive discharge to a purchaser and, in making any sale or other disposal of any of the Secured Assets or in making any acquisition in the exercise of their respective powers, the Lender, and every Receiver and Delegate may do so for any consideration, in any manner and on any terms that it thinks fit.

**15.9 Right of appropriation**

15.9.1 To the extent that:

- (a) the Secured Assets constitute Financial Collateral; and
- (b) this deed and the obligations of the Borrower under it constitute a Security Financial Collateral Arrangement,

the Lender shall have the right, at any time after the security constituted by this deed has become enforceable, to appropriate all or any of those Secured Assets in or towards the payment or discharge of the Secured Liabilities in any order that the Lender may, in its absolute discretion, determine.

15.9.2 The value of any Secured Assets appropriated in accordance with this clause shall be:

- (a) in the case of cash, the amount standing to the credit of each of the Borrower's accounts with any bank, financial institution or other person, together with any accrued but unpaid interest, at the time the right of appropriation is exercised; and
- (b) in the case of Investments, the market price of those Investments at the time the right of appropriation is exercised determined by the Lender by reference to a recognised market index or by any other method that the Lender may select (including independent valuation).

15.9.3 The Borrower agrees that the methods of valuation provided for in this clause are commercially reasonable for the purposes of the Financial Collateral Regulations.



**16. RECEIVER**

**16.1 Appointment**

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

**16.2 Removal**

The Lender may, without further notice (subject to section 45 of the Insolvency Act 1986 in the case of an administrative receiver), from time to time, by way of deed, or otherwise in writing, remove any Receiver appointed by it and may, whenever it thinks fit, appoint a new Receiver in the place of any Receiver whose appointment may for any reason have terminated.

**16.3 Remuneration**

The Lender may fix the remuneration of any Receiver appointed by it without the restrictions contained in section 109 of the LPA 1925, and the remuneration of the Receiver shall be a debt secured by this deed, to the extent not otherwise discharged.

**16.4 Power of appointment additional to statutory powers**

The power to appoint a Receiver conferred by this deed shall be in addition to all statutory and other powers of the Lender under the Insolvency Act 1986, the LPA 1925 or otherwise, and shall be exercisable without the restrictions contained in sections 103 and 109 of the LPA 1925 or otherwise.

**16.5 Power of appointment exercisable despite prior appointments**

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

**16.6 Agent of the Borrower**

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

**17. POWERS OF RECEIVER**

**17.1 General**

17.1.1 Any Receiver appointed by the Lender under this deed shall, in addition to the powers conferred on it by statute, have the rights, powers and discretions set out in clause 17.2 to clause 17.23.

17.1.2 A Receiver has all the rights, powers and discretions conferred on a receiver (or a receiver and manager) under the LPA 1925, and shall have those rights, powers



and discretions conferred on an administrative receiver under the Insolvency Act 1986 whether it is an administrative receiver or not.

17.1.3 If there is more than one Receiver holding office at the same time, each Receiver may (unless the document appointing it states otherwise) exercise all of the powers conferred on a Receiver under this deed individually and to the exclusion of any other Receiver.

17.1.4 Any exercise by a Receiver of any of the powers given by clause 17 may be on behalf of the Borrower, the directors of the Borrower (in the case of the power contained in clause 17.16) or itself.

**17.2 Repair and develop Charged Properties**

A Receiver may undertake or complete any works of repair, alteration, building or development on the Charged Properties and may apply for and maintain any planning permission, development consent, building regulation approval or any other permission, consent or licence to carry out any of the same.

**17.3 Grant or accept surrenders of leases**

A Receiver may grant, or accept, surrenders of any leases or tenancies affecting any Secured Asset on any terms, and subject to any conditions, that it thinks fit.

**17.4 Employ personnel and advisers**

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

17.4.2 A Receiver may discharge any such person or any such person appointed by the Borrower.

**17.5 Make and revoke VAT options to tax**

A Receiver may make, exercise or revoke any VAT option to tax as it thinks fit.

**17.6 Remuneration**

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

**17.7 Possession**

A Receiver may take immediate possession of, get in and realise any Secured Asset.

**17.8 Manage or reconstruct the Borrower's business**

A Receiver may carry on, manage, develop, reconstruct, amalgamate or diversify or concur in carrying on, managing, developing, reconstructing, amalgamating or diversifying the business of the Borrower.

**17.9 Dispose of Secured Assets**

A Receiver may sell, exchange, convert into money and realise all or any of the Secured Assets in respect of which it is appointed in any manner (including, without limitation, by

public auction or private sale) and generally on any terms and conditions as it thinks fit. Any sale may be for any consideration that the Receiver thinks fit and a Receiver may promote, or concur in promoting, a company to purchase the Secured Assets to be sold.

**17.10 Sever fixtures and fittings**

A Receiver may sever and sell separately any fixtures or fittings from any Charged Property without the consent of the Borrower.

**17.11 Sell Book Debts**

A Receiver may sell and assign all or any of the Book Debts in respect of which it is appointed in any manner, and generally on any terms and conditions, that it thinks fit.

**17.12 Valid receipts**

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

**17.13 Make settlements**

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

**17.14 Legal action**

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

**17.15 Improve the Equipment**

A Receiver may make substitutions of, or improvements to, the Equipment as it may think expedient.

**17.16 Make calls on Borrower members**

A Receiver may make calls conditionally or unconditionally on the members of the Borrower in respect of uncalled capital with (for that purpose and for the purpose of enforcing payments of any calls so made) the same powers as are conferred by the articles of association of the Borrower on its directors in respect of calls authorised to be made by them.

**17.17 Insure**

A Receiver may, if it thinks fit, but without prejudice to the indemnity at clause 20 (*Costs and Indemnity*) effect with any insurer any policy of insurance either in lieu or satisfaction of, or in addition to, the insurance required to be maintained by the Borrower under this deed.

**17.18 Subsidiaries**

A Receiver may form a subsidiary of the Borrower and transfer to that subsidiary any Secured Asset

**17.19 Borrow**

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

**17.20 Redeem prior Security**

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

**17.21 Delegation**

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

**17.22 Absolute beneficial owner**

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

**17.23 Incidental powers**

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

17.23.1 may consider desirable or necessary for realising any of the Secured Assets;

17.23.2 may consider incidental or conducive to any of the rights or powers conferred on a Receiver under or by virtue of this deed or law; or

17.23.3 lawfully may or can do as agent for the Borrower.

**18. DELEGATION**

**18.1 Delegation**

The Lender or any Receiver may delegate (either generally or specifically) by power of attorney or in any other manner to any person any right, power, authority or discretion conferred on it by this deed (including the power of attorney granted under clause 22.1).

**18.2 Terms**

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

**18.3 Liability**

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

**19. APPLICATION OF PROCEEDS**

**19.1 Order of application of proceeds**

*All monies received or recovered by the Lender, a Receiver or a Delegate under this deed or in connection with the realisation or enforcement of all or part of the security constituted by this deed (other than sums received under any Insurance Policy), shall (subject to the claims of any person having prior rights and by way of variation of the LPA 1925) be applied in the following order of priority (but without prejudice to the Lender's right to recover any shortfall from the Borrower):*

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

**19.2 Appropriation**

Neither the Lender, any Receiver nor any Delegate shall be bound (whether by virtue of section 109(8) of the LPA 1925, which is varied accordingly, or otherwise) to pay or appropriate any receipt or payment first towards interest rather than principal or otherwise in any particular order between any of the Secured Liabilities.

**19.3 Suspense account**

All monies received by the Lender, a Receiver or a Delegate under this deed (other than sums received under any Insurance Policy that are not going to be applied in or towards discharge of the Secured Liabilities):

- 19.3.1 may, at the discretion of the Lender, Receiver or Delegate, be credited to a suspense account;
- 19.3.2 shall bear interest, if any, at the rate agreed in writing between the Lender and the Borrower; and
- 19.3.3 may be held in that account for so long as the Lender, Receiver or Delegate thinks fit.

**20. COSTS AND INDEMNITY**

**20.1 Costs**

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

- (a) this deed or the Secured Assets;



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

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

## 20.2 Indemnity

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

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

20.2.2 Any past or present employee or agent may enforce the terms of this clause 20.2 subject to and in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999.

## 21. FURTHER ASSURANCE

### 21.1 Further assurance

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

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

including, without limitation the execution of any mortgage, transfer, conveyance, assignment or assurance of all or any of the assets forming part of (or intended to form part of) the Secured Assets (whether to the Lender or to its nominee) and the giving of any notice, order or direction and the making of any filing or registration which, in any such case, the Lender may consider necessary or desirable.



**22. POWER OF ATTORNEY**

**22.1 Appointment of attorneys**

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

22.1.1 the Borrower is required to execute and do under this deed; or

22.1.2 any attorney deems proper in exercising any of the rights, powers, authorities and discretions conferred by this deed or by law on the Lender, any Receiver or any Delegate.

**22.2 Ratification of acts of attorneys**

The Borrower ratifies and confirms, and agrees to ratify and confirm, anything that any of its attorneys may do in the proper and lawful exercise, or purported exercise, of all or any of the rights, powers, authorities and discretions referred to in clause 22.1.

**23. RELEASE**

Subject to clause 30.3, at the end of the Security Period, the Lender shall, at the request and cost of the Borrower, promptly take whatever action is necessary to:

23.1.1 release the Secured Assets from the security constituted by this deed; and

23.1.2 reassign the Secured Assets to the Borrower.

**24. ASSIGNMENT AND TRANSFER**

Neither party may assign any of its rights, or transfer any of its rights or obligations, under this deed save as permitted by the Implementation Agreement.

**25. SET-OFF**

**25.1 Lender's right of set-off**

The Lender may at any time set off any liability of the Borrower to the Lender against any liability of the Lender to the Borrower, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this deed. If the liabilities to be set off are expressed in different currencies, the Lender may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the Lender of its rights under this clause 25 shall not limit or affect any other rights or remedies available to it under this deed or otherwise.

**25.2 No obligation to set off**

The Lender is not obliged to exercise its rights under clause 25.1. If, however, it does exercise those rights it must promptly notify the Borrower of the set-off that has been made.

**25.3 Exclusion of Borrower's right of set-off**

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

**26. AMENDMENTS, WAIVERS AND CONSENTS**

**26.1 Amendments**

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

**26.2 Waivers and consents**

26.2.1 A waiver of any right or remedy under this deed or by law, or any consent given under this deed, is only effective if given in writing by the waiving or consenting party and shall not be deemed a waiver of any other breach or default. It only applies in the circumstances for which it is given and shall not prevent the party giving it from subsequently relying on the relevant provision.

26.2.2 A failure or delay by a party to exercise any right or remedy provided under this deed or by law shall not constitute a waiver of that or any other right or remedy, prevent or restrict any further exercise of that or any other right or remedy or constitute an election to affirm this deed. No single or partial exercise of any right or remedy provided under this deed or by law shall prevent or restrict the further exercise of that or any other right or remedy. No election to affirm this deed by the Lender shall be effective unless it is in writing.

**26.3 Rights and remedies**

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

**27. SEVERANCE**

**27.1 Severance**

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

**28. COUNTERPARTS**

**28.1 Counterparts**

28.1.1 This deed may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute one deed.

28.1.2 Transmission of a counterpart of this deed by email (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this deed. If this method of delivery is adopted, without prejudice to the validity of

the deed thus made, each party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.

- 28.1.3 No counterpart shall be effective until each party has executed and delivered at least one counterpart.

29. **THIRD PARTY RIGHTS**

29.1 **Third party rights**

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

- 29.1.2 The rights of the parties to rescind or agree any amendment or waiver under this deed are not subject to the consent of any other person.

30. **FURTHER PROVISIONS**

30.1 **Independent security**

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

30.2 **Continuing security**

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

30.3 **Discharge conditional**

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

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

30.4 **Certificates**

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

**30.5 Consolidation**

The restriction on the right of consolidation contained in section 93 of the LPA 1925 shall not apply to this deed.

**30.6 Small company moratorium**

Notwithstanding anything to the contrary in this deed, neither the obtaining of a moratorium by the Borrower under schedule A1 to the Insolvency Act 1986 nor the doing of anything by the Borrower with a view to obtaining such a moratorium (including any preliminary decision or investigation) shall be, or be construed as:

- 30.6.1 an event under this deed which causes any floating charge created by this deed to crystallise;
- 30.6.2 an event under this deed which causes any restriction which would not otherwise apply to be imposed on the disposal of any property by the Borrower; or
- 30.6.3 a ground under this deed for the appointment of a Receiver.

**31. NOTICES**

The notice provisions of the Facility Agreement shall apply to this deed.

**32. GOVERNING LAW AND JURISDICTION**

**32.1 Governing law**

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

**32.2 Jurisdiction**

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

**32.3 Other service**

The Borrower irrevocably consents to any process in any legal action or proceedings under clause 32.2 being served on it in accordance with the provisions of this deed relating to service of notices. Nothing contained in this deed shall affect the right to serve process in any other manner permitted by law.

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



**SCHEDULE 1**  
**Real Property**

[•]<sup>1</sup>

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<sup>1</sup> Specify relevant agreements applicable at time of entering into this Debenture.

**SCHEDULE 2**  
**Relevant Agreements<sup>2</sup>**

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<sup>2</sup> Specify relevant agreements applicable at time of entering into this Debenture.

**SCHEDULE 3**  
**Notice and Acknowledgement - Relevant Agreement**

**Part 1. Form of notice**

*[On headed notepaper of the Borrower]*

[NAME OF COUNTERPARTY]

[ADDRESS LINE 1]

[ADDRESS LINE 2]

[POSTCODE]

[DATE]

Dear [NAME OF COUNTERPARTY],

**Debenture dated [DATE] between [BORROWER] and [LENDER] (Lender)**  
**(Debenture)**

We refer to the [DESCRIBE RELEVANT AGREEMENT] (Contract).

This letter constitutes notice to you that under the Debenture [(a copy of which is attached)] we have [charged **OR** assigned, by way of security,] to [LENDER] (Lender) all our rights in respect of the Contract.

We confirm that:

- We will remain liable under the Contract to perform all the obligations assumed by us under the Contract.
- Neither the Lender nor any receiver or delegate appointed by the Lender will at any time be under any obligation or liability to you under or in respect of the Contract.

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

Subject to the above, we will remain entitled to exercise all our rights, powers and discretions under the Contract and you may continue to deal with us in relation to the Contract and give notices under the Contract to us unless and until you receive written notice to the contrary from the Lender. Thereafter, all such rights, powers and discretions shall be exercisable by, and notices shall be given to, the Lender or as it directs and we will cease to have any right to deal with you in relation to the Contract and you must deal only with the Lender.

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

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

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

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

Yours sincerely,

.....

[NAME OF BORROWER]

**Part 2. Form of acknowledgement**

*[On headed notepaper of the counterparty]*

[NAME OF LENDER]

[ADDRESS LINE 1]

[ADDRESS LINE 2]

[POSTCODE]

[DATE]

Dear [NAME OF LENDER],

**Debenture dated [DATE] between [BORROWER] (Borrower) and [LENDER] (Lender) (Debenture)**

We confirm receipt from the Borrower of a notice (Notice) dated [DATE] of [a charge OR an assignment, by way of security,] of all the Borrower's rights under [DESCRIBE RELEVANT AGREEMENT] (Contract).

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

We confirm that:

- We accept the confirmations and instructions contained in the Notice and agree to comply with the Notice.
- There has been no amendment, waiver or release of any rights or interests in the Contract since the date of the Contract.
- We will not cancel, avoid, release or otherwise allow the Contract to lapse without giving the Lender at least 30 days' prior written notice.
- We have not, as at the date of this acknowledgement, received notice that the Borrower has assigned its rights under the Contract to a third party, or created any other interest (whether by way of security or otherwise) in the Contract in favour of a third party.
- The Lender will not in any circumstances have any liability in relation to the Contract.
- The Contract shall not be rendered void, voidable or unenforceable by reason of any non-disclosure by the Lender.

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

Yours sincerely,

.....

[COUNTERPARTY]



**SCHEDULE 4**  
**Notice and Acknowledgement - Insurance Policy**

**Part 1. Form of notice**

*[On headed notepaper of the Borrower]*

[NAME OF INSURER]

[ADDRESS LINE 1]

[ADDRESS LINE 2]

[POSTCODE]

[DATE]

Dear [NAME OF INSURER],

**Debenture dated [DATE] between [BORROWER] and [LENDER] (Lender)**  
**(Debenture)**

We refer to the [DESCRIBE INSURANCE POLICY AND SPECIFY ITS POLICY NUMBER] (Policy).

This letter constitutes notice to you that under the Debenture [(a copy of which is attached)] we have [charged by way of first fixed charge to the Lender **OR** assigned to the Lender, absolutely, subject to a proviso for reassignment], all our rights in the Policy, including all claims, the proceeds of all claims and all returns of premium in connection with the Policy.

We irrevocably instruct and authorise you to:

- [Note the Lender's interest on the Policy as [DESCRIBE NOTATION REQUIRED BY LENDER TO BE ENDORSED ON POLICY, FOR EXAMPLE, "FIRST MORTGAGEE"] **OR** Name the Lender as composite insured in respect of its own separate insurable interest under the Policy] (except in relation to public liability and third party liability insurance).
- Name the Lender as first loss payee (other than in respect of any claim under any public liability and third party liability insurances).
- Comply with the terms of any written instructions received by you from the Lender relating to the Policy, without notice or reference to, or further authority from, us and without enquiring as to the justification or the validity of those instructions.
- Hold all sums from time to time due and payable by you to us under the Policy to the order of the Lender.
- Pay, or release, all monies to which we are entitled under the Policy to the Lender, or to such persons as the Lender may direct.
- Disclose information in relation to the Policy to the Lender on request by the Lender.

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

Subject to the foregoing, you may continue to deal with us in relation to the Policy 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 Policy and you must deal only with the Lender.

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

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

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

Yours sincerely,

.....  
[NAME OF BORROWER]

**Part 2. Form of acknowledgement**

*[On headed notepaper of the insurer]*

[NAME OF LENDER]

[ADDRESS LINE 1]

[ADDRESS LINE 2]

[POSTCODE]

[DATE]

Dear [NAME OF LENDER],

**Debenture dated [DATE] between [BORROWER] (Borrower) and [LENDER] (Lender) (Debenture)**

We confirm receipt from the Borrower of a notice (Notice) dated [DATE] of [a first fixed charge in favour of the Lender OR an assignment to the Lender, subject to a proviso for reassignment] of all the Borrower's rights in [DESCRIBE INSURANCE POLICY AND ITS NUMBER] (Policy), including all claims, the proceeds of all claims and all returns of premiums in connection with the Policy.

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

We confirm that:

- We accept the instructions and authorisations contained in the Notice and agree to comply with the Notice.

- We have [noted the Lender's interest on the Policy as [DESCRIBE NOTATION REQUIRED BY LENDER TO BE ENDORSED ON POLICY, FOR EXAMPLE, FIRST MORTGAGEE] OR named the Lender as composite insured in respect of its own separate insurable interest under the Policy] (except in relation to public liability and third party liability insurances).
- There has been no amendment, waiver or release of any rights or interests in the Policy since the date the Policy was issued.
- We have not, as at the date of this acknowledgement, received notice that the Borrower has assigned its rights under the Policy to a third party, or created any other interest (whether by way of security or otherwise) in the Policy in favour of a third party.
- The Policy shall not be avoided or vitiated as against the Lender by reason of the act or default of any [other] insured party or any misrepresentation, non-disclosure or failure to make a fair presentation of risk by any [other] insured party.
- [We waive our rights of subrogation against the Borrower, the Lender and the tenants of any charged Property other than any such rights arising in connection with any fraud or criminal offence committed by any of those persons in respect of any Charge Property or the Policy.]
- We will not repudiate, rescind or cancel the Policy, treat it as avoided in whole or in part nor treat it as expired due to non-payment of premium without giving at least 30 days' prior written notice to the Lender.
- The Lender will not have any liability for any premium in relation to the Policy unless it has expressly and specifically requested to be made liable in respect of any increase in premium or unpaid premium in respect of the Policy.

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

Yours sincerely,

.....

[NAME OF INSURER]

**SCHEDULE 5**  
**Notice and Acknowledgement – Bank Account**

**Schedule 1    Notice and acknowledgement - bank account**

**Part 1   Form of notice**

*[On headed notepaper of the Borrower]*

[BANK, FINANCIAL INSTITUTION OR OTHER PERSON]

[ADDRESS LINE 1]

[ADDRESS LINE 2]

[POSTCODE]

[DATE]

Dear [NAME OF ADDRESSEE],

**Debenture dated [DATE] between [BORROWER] and [LENDER] (Lender) (Debenture)**

This letter constitutes notice to you that under the Debenture [(a copy of which is attached)] we have charged, by way of first fixed charge, in favour of the Lender all monies from time to time standing to the credit of the account held with you and detailed below (the Account), together with all other rights and benefits accruing to or arising in connection with the Account (including, but not limited to, entitlements to interest):

**Name of Account:** [NAME OF ACCOUNT]

**Sort code:** [SORT CODE]

**Account number:** [ACCOUNT NUMBER]

We irrevocably instruct and authorise you to:

- Disclose to the Lender any information relating to the Account requested from you by the Lender.
- [Comply with the terms of any written notice or instructions relating to the Account received by you from the Lender.]
- [Hold all sums from time to time standing to the credit of the Account to the order of the Lender.]
- [Pay or release all or any part of the monies standing to the credit of the Account in accordance with the written instructions of the Lender.]

[We acknowledge that you may comply with the instructions in this notice without any further permission from us.]

[We are not permitted to withdraw any amount from the Account 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.]

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

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

Yours sincerely,

Signed.....

[NAME OF BORROWER]

**Part 2 Form of acknowledgement**

*[On headed notepaper of the bank, financial institution or other person]*

[LENDER]

[ADDRESS LINE 1]

[ADDRESS LINE 2]

[POSTCODE]

[DATE]

Dear [NAME OF LENDER],

**Debenture dated [DATE] between [BORROWER] (Borrower) and [LENDER] (Lender)  
(Debenture)**

We confirm receipt from the Borrower of a notice (the Notice) dated [DATE] of a charge (on the terms of the Debenture) over all monies from time to time standing to the credit of the account detailed below (the Account), together with all other rights and benefits accruing to or arising in connection with the Account (including, but not limited to, entitlements to interest).

We confirm that we:

- Accept the instructions contained in the Notice and agree to comply with the Notice.
- [Will not permit any amount to be withdrawn from the Account without your prior written consent.]
- Have not received notice of the interest of any third party in the Account.
- Have neither claimed nor exercised, nor will claim or exercise any security interest, set-off, counter-claim or other right in respect of the Account.

The Account is:

**Name of Account:** [NAME OF ACCOUNT]

**Sort code:** [SORT CODE]



**Account number:** [ACCOUNT NUMBER]

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

Yours sincerely,

Signed.....

[NAME OF BANK, FINANCIAL INSTITUTION OR OTHER PERSON]

**EXECUTED AS A DEED** by )  
**GOLDEV WOKING LIMITED** )  
acting by ) .....  
Director

In the presence of:  
Witness signature:  
Witness name:  
Witness address:

**EXECUTED** as a deed under the common seal )  
of **WOKING BOROUGH COUNCIL** ) .....  
Mayor

.....  
Head of Democratic and Legal Services

