



Registration of a Charge

Company name: **MOTHERCARE PLC.**

Company number: **01950509**



X66AF1CP

Received for Electronic Filing: **12/05/2017**

Details of Charge

Date of creation: **05/05/2017**

Charge code: **0195 0509 0006**

Persons entitled: **HSBC BANK PLC (AS SECURITY AGENT)**

Brief description: **N/A**

Contains fixed charge(s).

Contains negative pledge.

Authentication of Form

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

Authentication of Instrument

Certification statement: **EXCEPT FOR MATERIAL REDACTED PURSUANT TO S.859G OF THE COMPANIES ACT 2006, I CERTIFY THAT THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by: **ALLEN & OVERY LLP**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 1950509

Charge code: 0195 0509 0006

The Registrar of Companies for England and Wales hereby certifies that a charge dated 5th May 2017 and created by MOTHERCARE PLC. was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 12th May 2017 .

Given at Companies House, Cardiff on 15th May 2017

The above information was communicated by electronic means and authenticated by the Registrar of Companies under section 1115 of the Companies Act 2006



Companies House



THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES

EXECUTION VERSION

CONFIRMATORY SHARE MORTGAGE

DATED 5 May 2017

BETWEEN

MOTHERCARE PLC

as Mortgagor

and

HSBC BANK PLC

as Security Agent

ALLEN & OVERY

Allen & Overy

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CONTENTS

Clause	Page
1. Definitions and interpretation.....	1
2. Confirmation	3
3. Creation of Security.....	3
4. Incorporation	5
5. Miscellaneous.....	5
6. Governing Law.....	5
7. Enforcement	5
 Signatories	 7

THIS DEED is dated 5 May 2017 and made BETWEEN:

- (1) **MOTHERCARE PLC**, a company incorporated under the laws of England & Wales with its registered office at Cherry Tree Road, Watford Hertfordshire WD24 6SH, United Kingdom and registration number 01950509 (the **Mortgagor**); and
- (2) **HSBC BANK PLC** of 8 Canada Square, Canary Wharf, London, E14 5HQ as agent and trustee for the Finance Parties (the **Security Agent**).

BACKGROUND:

- (A) Pursuant to a share mortgage dated 18 May 2012 between the Mortgagor and the Security Agent (the **Original Share Mortgage**), the Mortgagor created Security over certain of its assets as security for, among other things, the present and future obligations and liabilities of each Obligor under the Finance Documents (as amended or supplemented).
- (B) The Facility Agreement has been amended by an amendment and restatement agreement dated on or about the date of this Deed between, among others, the Mortgagor and the Security Agent (the **Amendment and Restatement Agreement**).
- (C) The Mortgagor and the Security Agent consider that the Security created by the Mortgagor under the Original Share Mortgage secures payment of the Secured Liabilities (as defined below), but enter into this Deed in case it does not.
- (D) This Deed is supplemental to the Original Share Mortgage.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

- (a) In this Deed:
 - (i) **Bail-In Action** means the exercise of any Write-down and Conversion Powers.
 - (ii) **Bail-In Legislation** means in relation to an EEA Member Country which has implemented, or which at any time implements, Article 55 of Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms, the relevant implementing law or regulation as described in the EU Bail-In Legislation Schedule from time to time.
 - (iii) **EEA Member Country** means any member state of the European Union, Iceland, Liechtenstein and Norway.
 - (iv) **EU Bail-In Legislation Schedule** means the document described as such and published by the Loan Market Association (or any successor person) from time to time.
 - (v) **Resolution Authority** means any body which has authority to exercise any Write-down and Conversion Powers.

- (vi) **Secured Liabilities** means all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally or in any other capacity whatsoever) of each Obligor to any Finance Party under or in connection with each Finance Document including those obligations and liabilities as they are amended by the Amendment and Restatement Agreement, except for any obligation which, if it were so included, would result in this Deed contravening sections 274 and 275 of the Companies Ordinance (Cap. 622 of the Laws of Hong Kong).
 - (vii) **Write-down and Conversion Powers** means in relation to any Bail-In Legislation described in the EU Bail-In Legislation Schedule from time to time, the powers described as such in relation to that Bail-In Legislation in the EU Bail-In Legislation Schedule.
- (b) Unless a contrary intention appears, any reference in this Deed to:
- (i) this Deed is a reference to this Deed as amended, varied, novated, supplemented and replaced from time to time;
 - (ii) the Mortgagor, the Security Agent or any other Finance Party or a Receiver includes any one or more of its assigns, transferees and successors in title (in the case of the Mortgagor, so far as any such is permitted);
 - (iii) a Security Asset includes the proceeds of sale of that Security Asset;
 - (iv) the Security Agent or any other Finance Party or a Receiver (except for the references in Clause 13 (Power of attorney), includes its duly appointed nominees, attorneys, correspondents, trustees, advisers, agents, delegates and sub-delegates; and
 - (v) If the Security Agent considers that an amount paid to a Finance Party under a Finance Document is capable of being avoided or otherwise set aside on the liquidation or administration of the payer or otherwise, then that amount will not be considered to have been irrevocably paid for the purposes of this Deed.
- (c) Capitalised terms defined in the Original Share Mortgage have the same meaning in this Deed, unless expressly defined in this Deed.
- (d) The provisions of clause 1.2 (Construction) of the Facility Agreement apply to this Deed as though they were set out in full in this Deed, except that references to the Facility Agreement will be construed as references to this Deed.
- (e) (i) The term **Finance Document** includes all amendments and supplements including supplements providing for further advances; and
- (ii) the term **this Security** means any security created by this Deed.
- (f) Any covenant of the Mortgagor under this Deed (other than a payment obligation) remains in force during the Security Period.
- (g) If the Security Agent considers that an amount paid to a Finance Party under a Finance Document is capable of being avoided or otherwise set aside on the liquidation of the payer or otherwise, then that amount will not be considered to have been irrevocably paid for the purposes of this Deed.
- (h) Unless the context otherwise requires, a reference to a **Security Asset** includes the proceeds of sale of that Security Asset.

1.2 Third party rights

- (a) Unless expressly provided to the contrary in this Deed, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Ordinance (Cap. 623 of the Laws of Hong Kong) (the **Third Parties Ordinance**) to enforce or to enjoy the benefit of any term of this Deed.
- (b) Notwithstanding any term of this Deed, the consent of any person who is not a Party is not required to rescind or vary this Deed at any time.
- (c) Any Secured Party that is not a Party may enforce and enjoy the benefit of any Clause which expressly confers rights on it, subject to paragraph (b) above and the provisions of the Third Parties Ordinance.

1.3 Effect as a deed

This Deed shall take effect as a deed even if it is signed under hand on behalf of the Security Agent.

1.4 Contractual recognition of bail-in

Notwithstanding any other term of any Finance Document or any other agreement, arrangement or understanding between the Parties, each Party acknowledges and accepts that any liability of any Party to any other Party under or in connection with the Finance Documents may be subject to Bail-In Action by the relevant Resolution Authority and acknowledges and accepts to be bound by the effect of:

- (a) any Bail-In Action in relation to any such liability, including (without limitation):
 - (i) a reduction, in full or in part, in the principal amount, or outstanding amount due (including any accrued but unpaid interest) in respect of any such liability;
 - (ii) a conversion of all, or part of, any such liability into shares or other instruments of ownership that may be issued to, or conferred on, it; and
 - (iii) a cancellation of any such liability; and
- (b) a variation of any term of any Finance Document to the extent necessary to give effect to any Bail-In Action in relation to any such liability.

2. CONFIRMATION

Notwithstanding any new Security created pursuant to this Deed, the Mortgagor confirms to the Security Agent that the Security created by it under the Original Share Mortgage shall continue to secure payment and discharge of the Secured Liabilities and the Original Share Mortgage will remain in full force and effect.

3. CREATION OF SECURITY

3.1 General

- (a) All the security created under this Deed:
 - (i) is created in favour of the Security Agent;

- (ii) is created over present and future assets of the Mortgagor;
 - (iii) is created by the Mortgagor as the beneficial owner of its assets; and
 - (iv) is continuing security for the payment, discharge and performance of all the Secured Liabilities.
- (b) If the rights of the Mortgagor under a document or in respect of any other asset cannot be secured without the consent of a party to that document or any relevant third party in respect of such other asset:
- (i) the Mortgagor must notify the Security Agent promptly;
 - (ii) this Security will secure all amounts which the Mortgagor may receive, or has received, under that document or in respect of that asset, but will exclude the document or that other asset itself;
 - (iii) unless the Security Agent otherwise requires, the Mortgagor must use reasonable endeavours to obtain the consent of the relevant party to that document or, as the case may be, the relevant third party in respect of that other asset, being secured under this Deed as soon as practicable; and
 - (iv) the Mortgagor must promptly supply to the Security Agent a copy of the consent obtained by it.
- (c) The Security Agent holds the benefit of this Deed on trust for the Finance Parties.
- (d) The fact that no or incomplete details of any Security Asset are included in this Deed does not affect the validity or enforceability of this Security.
- (e) All the security created under this Deed:
- (i) is created in case the security created by the Original Share Mortgage does not secure all of the Secured Liabilities; and
 - (ii) is created in addition to and does not affect the security created by the Original Share Mortgage.
- (f) Where this Deed purports to create a first fixed Security, that Security will be a second ranking Security ranking subject to the equivalent Security created by the Original Share Mortgage until such time as the Security created by the Original Share Mortgage ceases to have effect and any representation given in relation to the Security created by this Deed shall be deemed to be qualified accordingly.
- (g) Where a right or asset has been assigned (subject to a proviso for re-assignment on redemption) under the Original Share Mortgage and the same asset or right is purported to be assigned (subject to a proviso for re-assignment on redemption) again under this Deed, that second assignment will take effect as a fixed charge over that right or asset and will only take effect as an assignment if the relevant Security created by the Original Share Mortgage ceases to have effect at a time when this Deed still has effect.

3.2 Security

The Mortgagor as beneficial owner and as continuing security for the payment and discharge of all Secured Liabilities:

- (a) mortgages and agrees to mortgage, by way of first mortgage all the Shares in favour of the Security Agent; and
- (b) (to the extent that they are not the subject of the mortgage under sub-paragraph (a) above) mortgages, charges and assigns and agree to mortgage, charge and assign by way of first fixed charge all its interests in the Related Rights in favour of the Security Agent.

4. INCORPORATION

- (a) The provisions of clause 3 (Representations - General) to clause 18 (Release) (inclusive) of the Original Share Mortgage are deemed to be incorporated into this Deed with all necessary modifications as if they were set out in full in this Deed.
- (b) Where a document has already been provided or an action has been taken under clause 5.1 (Deposit) of the Original Share Mortgage, it shall be deemed to have been delivered or completed under this Deed on the date of this Deed or on the date on which such document is provided or such action is taken under the Original Share Mortgage (if such document is provided or such action is taken after the date of this Deed) and shall not be required to be provided or done under this Deed. Notwithstanding any provision to the contrary in the Original Share Mortgage, the Security Agent will not be required to return any such documents to the Mortgagor unless required under this Deed.

5. MISCELLANEOUS

- (a) The Original Share Mortgage will remain in full force and effect.
- (b) This Deed is designated a Finance Document.

6. GOVERNING LAW

This Deed is governed by Hong Kong law.

7. ENFORCEMENT

7.1 Jurisdiction

- (a) The Hong Kong courts have exclusive jurisdiction to settle any dispute in connection with this Deed.
- (b) The Hong Kong courts are the most appropriate and convenient courts to settle any such disputes in connection with this Deed. The Mortgagor agree not to argue to the contrary and waive objection to those courts on the grounds of inconvenient forum or otherwise in relation to proceedings in connection with this Deed.
- (c) This Clause is for the benefit of the Security Agent and the other Finance Parties only. To the extent allowed by law, a Finance Party may take:
 - (i) proceedings in any other court; and
 - (ii) concurrent proceedings in any number of jurisdictions.

- (d) References in this Clause to a dispute in connection with this Deed includes any disputes as to the existence, validity or termination of this Deed.

7.2 Service of process

- (a) The Mortgagor irrevocably appoints Mothercare Procurement Limited as its agent under this Deed for service of process in any proceedings before the Hong Kong courts in connection with this Deed.
- (b) If any person appointed as process agent under this Clause is unable for any reason to so act, the Mortgagor must immediately (and in any event within 10 days of the event taking place) appoint another agent on terms acceptable to the Security Agent. Failing this, the Security Agent may appoint another process agent for this purpose.
- (c) The Mortgagor agrees that failure by a process agent to notify it of any process will not invalidate the relevant proceedings.
- (d) This Clause does not affect any other method of service allowed by law.

7.3 Waiver of immunity

The Mortgagor irrevocably and unconditionally:

- (a) agrees not to claim any immunity from proceedings brought by a Finance Party against it in relation to this Deed and to ensure that no such claim is made on its behalf;
- (b) consents generally to the giving of any relief or the issue of any process in connection with those proceedings; and
- (c) waives all rights of immunity in respect of it or its assets.

THIS DEED has been executed and delivered as a deed on the date stated at the beginning of this Deed.

SIGNATORIES

Mortgagor

EXECUTED AS A DEED by *Richard Smothers*)
MOTHERCARE PLC)

acting by a director in the presence of:

Witness signature:

Witness name:

Witness address:

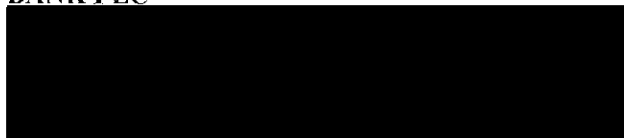
MARIE WILLIAMSON

MOTHERCARE PLC, CHERRY TREE ROAD, WD246SH

Security Agent

HSBC BANK PLC

By:



Jason Blondell
Authorised Signatory