

MR01

Particulars of a charge

234896 / 13

Laserform

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

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Please go to [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk)

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

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

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

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

☒ You must enclose a certified copy of the instrument with this form. It  
must be scanned and placed on the public record. Do not send the original.

TUESDAY



L11 23/12/2014 #392  
COMPANIES HOUSE

1 Company details

Company number 0 2 0 8 8 8 4 1

Company name in full Newman Martin and Buchan (1987) Limited

3 For official use

→ Filing in this form  
Please complete in typescript or in  
bold black capitals

All fields are mandatory unless  
specified or indicated by \*

2 Charge creation date

Charge creation date d1 d8 m1 m2 y2 y0 y1 y4

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

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

Name Morgan Stanley Senior Funding, Inc

Name

Name

Name

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

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

MR01

Particulars of a charge

4

Brief description

Please give a short description of any land, ship, aircraft or intellectual property registered or required to be registered in the UK subject to a charge (which is not a floating charge) or fixed security included in the instrument

Brief description

Not applicable

Please submit only a short description. If there are a number of plots of land, aircraft and/or ships, you should simply describe some of them in the text field and add a statement along the lines of, "for more details please refer to the instrument"

Please limit the description to the available space

5

Other charge or fixed security

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

✓ ☒ Yes  
☐ No

6

Floating charge

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

✓ ☐ Yes Continue  
☒ No Go to Section 7

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

☐ Yes

7

Negative Pledge

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

☒ Yes  
☐ No

8

Trustee statement <sup>1</sup>

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

☐

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

9

Signature

Please sign the form here

Signature

Signature

X *Allen & Overy LLP* X

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

**MR01****Particulars of a charge****Presenter information**

You do not have to give any contact information, but if you do, it will help Companies House if there is a query on the form. The contact information you give will be visible to searchers of the public record

Contact name **Lucy Newton**

Company name **Allen & Overy LLP**

Address **One Bishops Square**

Post town **London**

County/Region

Postcode **E 1 6 A D**

Country **United Kingdom**

DX

Telephone **+44 20 3088 2386**

**Certificate**

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

**Checklist**

We may return forms completed incorrectly or with information missing

Please make sure you have remembered the following.

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

**Important information**

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

**How to pay**

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

Make cheques or postal orders payable to 'Companies House'

**Where to send**

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

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

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

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

**Further information**

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

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



**FILE COPY**

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

Company number: 2088841

Charge code 0208 8841 0003

The Registrar of Companies for England and Wales hereby certifies that a charge dated 18th December 2014 and created by NEWMAN MARTIN AND BUCHAN (1987) LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 23rd December 2014.

P

Given at Companies House, Cardiff on 5th January 2015



**Companies House**



**THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES**

THIS DEED INCLUDES THE CREATION OF SECURITY OVER THE RIGHTS, TITLE AND INTERESTS OF NEWMAN MARTIN AND BUCHAN LLP, A LIMITED LIABILITY PARTNERSHIP REGULATED BY THE FINANCIAL CONDUCT AUTHORITY (the FCA) NO CHANGE OF CONTROL MAY OCCUR IN RESPECT OF THIS LIMITED LIABILITY PARTNERSHIP WITHOUT THE PRIOR CONSENT OF THE FCA CONSEQUENCES OF NOT OBTAINING SUCH CONSENT INCLUDE POTENTIAL CRIMINAL LIABILITY UPON THE SECURITY BECOMING ENFORCEABLE, DO NOT TAKE ANY ACTION THAT WOULD RESULT IN THE TRANSFER OF RIGHTS, TITLE AND INTERESTS OF NEWMAN MARTIN AND BUCHAN LLP, INCLUDING OBTAINING ANY VOTING RIGHTS, WITHOUT FIRST SEEKING DETAILED LEGAL ADVICE

**SECOND LIEN CHARGE OVER RIGHTS, TITLE AND  
INTERESTS OF MEMBERS IN LIMITED LIABILITY  
PARTNERSHIP**

**18 DECEMBER 2014**

**Between**

**NMB HOLDINGS LLP**

**and**

**NEWMAN MARTIN AND BUCHAN (1987) LIMITED  
and**

**MORGAN STANLEY SENIOR FUNDING, INC.  
as Collateral Agent**

*Except for material redacted pursuant  
to s 859a of the Companies Act 2006, I  
certify that this is a correct copy of the  
original document.*

*Allen & Overy LLP*

**ALLEN & OVERY**

Allen & Overy LLP

0101839-0000002 BK 30161985 2

*One Bishops Square  
London  
E1 6AD  
22/12/2014.*

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**THIS DEED** is dated 18 December 2014 and made **BETWEEN**

- (1) **NMB Holdings LLP**, a limited liability partnership incorporated under the laws of England and Wales with registered number OC339420,
- (2) **Newman Martin and Buchan (1987) Limited**, a company incorporated under the laws of England and Wales with registered number 02088841 (together with NMB Holdings LLP, the **Chargors**), and
- (3) **Morgan Stanley Senior Funding, Inc** as collateral agent and trustee for the Secured Parties (the **Collateral Agent** which expression shall include any person for the time being appointed as Collateral Agent for the purpose of and in accordance with the Credit Agreement)

**IT IS AGREED** as follows

## **1. DEFINITIONS AND INTERPRETATION**

### **1.1 Definitions**

In this Deed

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

**Charged Property** means all the Members' Interests which from time to time are the subject of the Security created or expressed to be created in favour of the Collateral Agent by or pursuant to this Deed

**Collateral Rights** means all rights, powers and remedies of the Collateral Agent provided by or pursuant to this Deed or by law

**Credit Agreement** means the second lien Credit Agreement dated 16 April 2013 between, amongst others, Cooper Gay Swett & Crawford Limited as borrower and guarantor, the Collateral Agent and the financial institutions named therein as original lenders

**Enforcement Event** means, the occurrence of an Event of Default which is continuing, along with notice to the Chargors

**First Lien Credit Agreement** means the first lien Credit Agreement dated 16 April 2013 between, amongst others, Cooper Gay Swett & Crawford Limited as borrower and guarantor, Morgan Stanley Senior Funding, Inc as the first lien administrative and collateral agent and the financial institutions named therein as original first lien lenders

**First Lien Rights Charge** means the first lien charge over all rights, title and interests the Chargors hold in the Partnership entered into pursuant to the First Lien Credit Agreement on or about the date of this Deed between the Chargors and Morgan Stanley Senior Funding, Inc in its capacity as the first lien collateral agent (the **First Lien Collateral Agent**)

**Group** means Cooper Gay Swett & Crawford Limited and all of its subsidiaries from time to time

**Intercreditor Agreement** means the Intercreditor Agreement dated 16 April 2013 between, amongst others, Cooper Gay Swett & Crawford Limited and among Morgan Stanley Senior Funding Inc as Administrative Agent, Collateral Agent, Second Lien Administrative Agent and Second Lien

Collateral Agent, as may be amended, restated, supplemented or otherwise modified from time to time

**Loan Documents** shall have the same meaning given to it in the Credit Agreement

**Members' Agreement** means the limited liability partnership deed dated 1 May 2009 between the Chargors and Newman Martin and Buchan LLP in relation to the organisation of the Partnership and the rights and obligations of the Chargors in relation to the Partnership

**Members' Interests** means the Chargors' rights, title and interests in the Partnership held by the Chargors from time to time and all Related Rights (including, without limitation, any rights, title and interests arising under the Members' Agreement, the Limited Liability Partnership Act 2000 (or any other law or regulation relating to limited liability partnerships) or otherwise from time to time), including, without limitation, all of its interest in the capital of, and any property or securities relating to, or derived from, all of its rights to receive the profits of, return of capital from, repayment of capital from and all of its rights to receive any distribution of the assets of, the Partnership

**Partnership** means Newman Martin and Buchan LLP, the limited liability partnership incorporated under the laws of England and Wales and referred by the Register of Companies in England and Wales as a limited liability partnership under the Limited Liability Partnerships Act 2000 (registration number OC339735) whose registered office is at 17 Bevis Marks, London EC4A 7LN

**Receiver** means a receiver or receiver and manager or, where permitted by law, an administrative receiver of the whole or any part of the Charged Property and that term will include any appointee made under a joint and/or several appointment

**Related Rights** means, in relation to any asset

- (a) the proceeds of sale of any part of that asset,
- (b) all rights under any licence, agreement for sale or agreement for lease in respect of that asset,
- (c) all rights, powers, benefits, claims, contracts, warranties, remedies, security, guarantees, indemnities or covenants for title in respect of that asset, and
- (d) any monies and proceeds paid or payable in respect of that asset

**Secured Obligations** means all of the Obligations (as defined in the Credit Agreement) provided that the Security constituted by this Deed shall not extend to or include any liability or sum which would, but for this proviso, cause such Security to be unlawful or prohibited by any applicable law (including, without limitation, section 678 or section 679 of the Companies Act 2006)

**Secured Parties** shall have the same meaning given to it in the Credit Agreement

**Security** means any mortgage, charge (fixed or floating), pledge, lien or other security interest securing any obligation of any person and any other agreement entered into for the purpose and having the effect of conferring security

**Security Period** means the period beginning on the date of this Deed and ending on the date on which all the Secured Obligations have been unconditionally and irrevocably paid and discharged in full



## **1.2 Construction**

In this Deed

- (a) terms defined in or whose interpretation or construction is provided for in the Credit Agreement (including by way of reference to terms defined in or whose interpretation or construction is provided for in any other Loan Document) shall have the same meaning when used in this Deed unless separately defined or interpreted in this Deed,
- (b) any reference to the "Collateral Agent" or the "Secured Parties" shall be construed so as to include its or their (and any subsequent) successors and any permitted transferees in accordance with their respective interests,
- (c) references in this Deed to any Clause or Schedule shall be to a clause or schedule contained in this Deed, and
- (d) a reference to this Deed, the Loan Documents or any other agreement is a reference to that document or agreement as amended or novated (however fundamentally) and includes any increase in, extension or substitution of or change to any facility made available under any such document or agreement

## **1.3 Third Party Rights**

Unless expressly provided to the contrary in any Loan Document, a person who is not a party to this Deed has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Deed

## **1.4 Miscellaneous**

- (a) If the Collateral Agent considers (acting reasonably on the basis of external legal advice) that an amount paid to a Secured Party under this Deed 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
- (b) Unless the context otherwise requires, a reference to a Charged Property includes
  - (i) any part of that Charged Property, and
  - (ii) the proceeds of sale of that Charged Property
- (c) It is intended that this document takes effect as a deed notwithstanding the fact that a party may only execute this document under hand
- (d) This Deed is entered into with the benefit of, and subject to, the terms of the Intercreditor Agreement. To the extent that any provision of this Deed is inconsistent with the provisions of the Intercreditor Agreement, the provisions of the Intercreditor Agreement shall prevail
- (e) Notwithstanding anything to the contrary in this Deed, the exercise of any right or remedy of the Collateral Agent under this Deed is subject to the provisions of the Intercreditor Agreement
- (f) If any Chargor delivers any deed, certificate or other document to the First Lien Collateral Agent pursuant to the terms of the First Lien Rights Charge and such deed, certificate or other document is also required to be delivered to the Collateral Agent pursuant to any equivalent term of this Deed, then the delivery to the First Lien Collateral Agent pursuant to the terms of the First Lien Rights

Charge shall constitute delivery of such documents to the Collateral Agent under this Deed. Any such deed, certificate or other document shall be held by the First Lien Collateral Agent under, and for the purposes of, the First Lien Rights Charge until all Security granted under the First Lien Rights Charge has been discharged in full. Upon the discharge of all Security under the First Lien Rights Charge, the Chargors shall procure that all such deeds, certificates and other documents are immediately delivered to and held by the Collateral Agent under, and for the purposes of, this Deed.

## **1.5 Permitted Transactions**

The terms of this Deed shall not operate or be construed so as to prohibit or restrict any transaction, matter or other step not prohibited by the Credit Agreement and the Collateral Agent shall

- (a) enter into and/or provide a release document in respect of the Charged Property subject to such transaction, matter or other step, and
- (b) take such other commercially reasonable action as the Chargors may request (acting reasonably),

in each case, to the extent necessary to facilitate such transaction, matter or other step

## **2. RESTRICTIONS ON DEALINGS**

### **2.1 Security**

The Chargors shall not create or permit to subsist any Security over any Charged Property except as permitted, or not expressly prohibited, by the Credit Agreement

### **2.2 Disposal**

The Chargors shall not (nor shall the Chargors agree to) enter into a single transaction or a series of transactions (whether related or not and whether voluntary or involuntary) to sell, lease, licence, sub licence, transfer or otherwise dispose of any Charged Property to the extent expressly prohibited by the Loan Documents

## **3. COVENANT TO PAY**

The Chargors covenant with the Collateral Agent (as trustee for the Secured Parties) that it shall on demand of the Collateral Agent discharge each of the Secured Obligations on their due date in accordance with their respective terms (or, if they do not specify a time for payment, immediately on demand by the Collateral Agent)

## **4. CREATION OF SECURITY**

### **4.1 General**

- (a) All the security created under this Deed
  - (i) is created in favour of the Collateral Agent,
  - (ii) is security for the payment, discharge and performance of all the Secured Obligations, and
  - (iii) is made with full title guarantee in accordance with the Law of Property (Miscellaneous Provisions) Act 1994

- (b) All the security created under this Deed by the Chargors is created over present and future assets of the Chargors
- (c) If the rights of the Chargors under a document cannot be secured without the consent of a party to that document
  - (i) the Chargors must notify the Collateral Agent promptly, and
  - (ii) this Security created under this Deed will secure all amounts which the Chargors may receive, or have received, under that document but exclude the document itself
- (d) The Collateral Agent declares that it holds the benefit of this Deed on trust for the Secured Parties

## **5. FIXED CHARGE**

The Chargors charge as continuing security for the payment and discharge of the Secured Obligations by way of a first fixed charge all their rights, title and interests from time to time in and to the Members' Interests

## **6. CHANGES TO RIGHTS**

### **6.1 Collateral Agent's obligations in respect of Members' Interests**

For the avoidance of doubt, the Collateral Agent is not obliged to

- (a) perform any obligation of the Chargors,
- (b) make any payment,
- (c) make any enquiry as to the nature or sufficiency of any payment received by it or the Chargors, or
- (d) present or file any claim or take any other action to collect or enforce the payment of any amount to which it may be entitled under this Deed,

in respect of any Members' Interest

### **6.2 Before an Enforcement Event**

Prior to the occurrence of an Enforcement Event which is continuing the Chargors shall be permitted to

- (a) receive, retain and use all dividends, interest, profit, return of capital, repayment of capital or other distribution, and other monies arising from any Members' Interests,
- (b) exercise (or refrain from exercising) all voting rights in relation to any Members' Interests provided that the Chargors shall not exercise such voting rights in any manner which (other than pursuant to a step or matter permitted under the Loan Documents) adversely affects the validity or enforceability of the Security created by them under this Deed or causes an Event of Default to occur, and
- (c) deal with, and exercise (or refrain from exercising) any other powers and rights relating to, the Members' Interests in any other manner whatsoever to the extent not prohibited by the Loan Documents

### **6.3 After an Enforcement Event**

- (a) The Collateral Agent may, at its discretion, following the occurrence of an Enforcement Event which is continuing (in its own name, the name of the Chargors or otherwise and without any further consent or authority from the Chargors)
- (i) sign a deed of accession to the Members' Agreement to be fully admitted as a new member of the Partnership,
  - (ii) exercise (or refrain from exercising) any voting rights in respect of any Members' Interests,
  - (iii) receive, retain and/or apply all dividends, interest, profit, return of capital, repayment of capital or other distribution, and other monies arising from any Members' Interests in accordance with Clause 13 (Application of Monies),
  - (iv) transfer any Members' Interests into the name of such nominee(s) of the Collateral Agent as it shall require, and
  - (v) exercise (or refrain from exercising) the powers and rights conferred on or exercisable by the legal or beneficial owner of any Members' Interests,
- in such manner and on such terms as the Collateral Agent may think fit, and the proceeds of any such action shall form part of the Charged Property
- (b) The Chargors shall, following the occurrence of an Enforcement Event which is continuing, if requested by the Collateral Agent, assign all Members' Interests to the Collateral Agent or its nominee in accordance with Clause 20.3 of the Members' Agreement

## **7. ENFORCEMENT OF SECURITY**

### **7.1 Enforcement**

At any time following the occurrence of an Enforcement Event which is continuing the Security created by or pursuant to this Deed is immediately enforceable and the Collateral Agent may, without notice to the Chargors or prior authorisation from any court, in its absolute discretion

- (a) 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 Property, and
- (b) whether or not it has appointed a Receiver, exercise all or any of the powers, authorities and discretions conferred by the Law of Property Act 1925 (as varied or extended by this Deed) on mortgagees and by this Deed on any Receiver or otherwise conferred by law on mortgagees or Receivers

### **7.2 No Liability as Mortgagee in Possession**

Neither the Collateral Agent nor any Receiver shall be liable to account as a mortgagee in possession in respect of all or any part of the Charged Property or be liable for any loss upon realisation or for any default or omission in connection with the Charged Property to which a mortgagee or mortgagee in possession might otherwise be liable, other than in the case of negligence, wilful default or breach of the terms of this Deed

### **7.3 Right of Appropriation**

- (a) To the extent that any of the Charged Property constitutes "financial collateral" and this Deed and the obligations of the Chargors hereunder constitute a "security financial collateral arrangement" (in each case as defined in, and for the purposes of, the Financial Collateral Arrangements (No 2) Regulations 2003 (SI 2003 No 3226) (the **Regulations**) the Collateral Agent shall at any time following the occurrence of an Enforcement Event which is continuing, have the right to appropriate all or any part of such financial collateral in or towards discharge of the Secured Obligations
- (b) For this purpose, the parties agree that the value of such financial collateral so appropriated shall be, in the case of Members' Interests, such amount as the Collateral Agent reasonably determines having taken into account advice obtained by it from an independent investment or accountancy firm of national standing selected by it, and each Secured Party will give credit for the proportion of the value of the financial collateral appropriated to its use
- (c) The parties agree that the method of valuation provided for in this Deed shall constitute a commercially reasonable method of valuation for the purposes of the Regulations

### **7.4 Effect of Moratorium**

The Collateral Agent shall not be entitled to exercise its rights under Clause 7.1 (Enforcement) where the right arises as a result of an Enforcement Event occurring solely due to any person obtaining or taking steps to obtain a moratorium pursuant to Schedule A1 of the Insolvency Act 1986

### **7.5 Privileges**

Each Receiver and the Collateral Agent is entitled to all the rights, powers, privileges and immunities conferred by the Law of Property Act 1925 on mortgagees and receivers duly appointed under the Law of Property Act 1925, except that Section 103 of the Law of Property Act 1925 does not apply

### **7.6 Redemption of prior mortgages**

At any time after this Security has become enforceable, the Collateral Agent may

- (a) redeem any prior Security Interest against any Collateral, and/or
- (b) procure the transfer of that Security Interest to itself, and/or
- (c) settle and pass the accounts of the prior mortgagee, chargee or encumbrancer, any accounts so settled and passed will be, in the absence of manifest error, conclusive and binding on the Chargors

### **7.7 Contingencies**

If the Security created under this Deed is enforced at a time when no amount is due under the Loan Documents but at a time when amounts may or will become due, the Collateral Agent (or the Receiver) may pay the proceeds of any recoveries effected by it into a suspense account

## **8. EXTENSION AND VARIATION OF THE LAW OF PROPERTY ACT 1925**

### **8.1 Extension of Powers**

The power of sale or other disposal conferred on the Collateral Agent and on any Receiver by this Deed shall operate as a variation and extension of the statutory power of sale under Section 101 of the Law of Property Act 1925 and such power shall arise on execution of this Deed

### **8.2 Restrictions**

The restrictions contained in Sections 93 and 103 of the Law of Property Act 1925 shall not apply to this Deed or to the exercise by the Collateral Agent of its right to consolidate all or any of the Security created by or pursuant to this Deed with any other Security in existence at any time or to its power of sale, which powers may be exercised by the Collateral Agent without notice to the Chargors on or at any time following the occurrence of an Enforcement Event which is continuing

### **8.3 General**

For the purposes of all powers implied by statute, the Secured Obligations are deemed to have become due and payable on the date of this Deed

## **9. APPOINTMENT OF RECEIVER OR ADMINISTRATOR**

### **9.1 Appointment and Removal**

Following the occurrence of an Enforcement Event which is continuing or if requested in writing by the Chargors to do so, the Collateral Agent may (acting through an authorised officer of the Collateral Agent), without prior notice to the Chargors

- (a) appoint one or more persons to be a Receiver of the whole or any part of the Charged Property,
- (b) remove (so far as it is lawfully able) any Receiver so appointed,
- (c) appoint another person(s) as an additional or replacement Receiver(s), or
- (d) appoint one or more persons to be an administrator of the Chargors

Except as provided in this clause 9 1, any restriction imposed by law on the right of a mortgagee to appoint a Receiver (including under section 109(1) of the Law of Property Act 1925) does not apply to this Deed

### **9.2 Capacity of Receivers**

Each person appointed to be a Receiver pursuant to Clause 9 1 (Appointment and Removal) shall be

- (a) entitled to act individually or together with any other person appointed or substituted as Receiver,
- (b) for all purposes shall be deemed to be the agent of the Chargors which shall be solely responsible for the contracts, engagements, acts, omissions defaults and losses of a Receiver and for and liabilities incurred by a Receiver The Chargors shall be solely responsible for the payment of the Receiver's remuneration and no Receiver shall at any time act as agent for the Collateral Agent,

- (c) deemed to be the agent of the Chargors for all purposes and accordingly will be deemed to be in the same position as a Receiver duly appointed by a mortgagee under the Law of Property Act 1925, and
- (d) entitled to remuneration for his services at a rate to be fixed by the Collateral Agent from time to time (without being limited to the maximum rate specified by the Law of Property Act 1925)

### **9.3 Relationship with Collateral Agent**

- (a) To the fullest extent allowed by law, any right, power or discretion conferred by this Deed (either expressly or impliedly) or by law on a Receiver may after this Security becomes enforceable be exercised by the Collateral Agent in relation to any Charged Property without first appointing a Receiver and notwithstanding the appointment of a Receiver
- (b) No Secured Party will incur any liability (either to the Chargors or to any other person) by reason of the appointment of a Receiver or for any other reason

### **9.4 Statutory Powers of Appointment**

The powers of appointment of a Receiver shall be in addition to all statutory and other powers of appointment of the Collateral Agent under the Law of Property Act 1925 (as extended by this Deed) or otherwise and such powers shall remain exercisable from time to time by the Collateral Agent in respect of any part of the Charged Property

## **10. POWERS OF RECEIVER**

### **10.1 General**

- (a) Every Receiver shall have and be entitled to exercise, in relation to the Charged Property (and any assets of the Chargors which, when got in, would be Charged Property) in respect of which he was appointed, and as varied and extended by the provisions of this Deed (in the name of or on behalf of the Chargors or in their own names and, in each case, at the cost of the Chargors) all of the rights, powers and discretions set out below in this Clause in addition to those conferred on it by any law, this includes
  - (i) in the case of an administrative receiver, all the rights, powers and discretions conferred on an administrative receiver under the Insolvency Act, 1986, and
  - (ii) otherwise, all the rights, powers and discretions conferred on a receiver (or a receiver and manager) under the Act and the Insolvency Act, 1986
- (b) If there is more than one Receiver holding office at the same time, each Receiver may (unless the document appointing him states otherwise) exercise all of the powers conferred on a Receiver under this Deed individually and to the exclusion of any other Receiver

### **10.2 Possession**

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

### **10.3 Carry on business**

A Receiver may carry on any business of the Chargors in any manner he thinks fit

#### **10.4 Employees**

- (a) A Receiver may appoint and discharge managers, officers, agents, accountants, servants, workmen and others for the purposes of this Deed upon such terms as to remuneration or otherwise as he thinks fit
- (b) A Receiver may discharge any person appointed by the Chargors

#### **10.5 Borrow money**

A Receiver may raise and borrow money either unsecured or on the security of any Charged Property either in priority to this Security or otherwise and generally on any terms and for whatever purpose which he thinks fit

#### **10.6 Sale of assets**

- (a) A Receiver may sell, exchange, convert into money and realise any Charged Property by public auction or private contract and generally in any manner and on any terms which he thinks fit
- (b) The consideration for any such transaction may consist of cash, debentures or other obligations, shares, stock or other valuable consideration and any such consideration may be payable in a lump sum or by instalments spread over any period which he thinks fit
- (c) Fixtures, other than landlord's fixtures, may be severed and sold separately from the property containing them without the consent of the Chargors

#### **10.7 Leases**

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

#### **10.8 Compromise**

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

#### **10.9 Legal actions**

A Receiver may bring, prosecute, enforce, defend and abandon any action, suit or proceedings in relation to any Charged Property which he thinks fit

#### **10.10 Receipts**

A Receiver may give a valid receipt for any moneys and execute any assurance or thing which may be proper or desirable for realising any Charged Property

#### **10.11 Subsidiaries**

A Receiver may form a Subsidiary of the Chargors and transfer to that Subsidiary any Charged Property



#### **10.12 Delegation**

A Receiver may delegate his powers in accordance with this Deed

#### **10.13 Lending**

A Receiver may lend money or advance credit to any customer of the Chargors

#### **10.14 Protection of assets**

A Receiver may

- (a) effect any repair or insurance and do any other act which the Chargors might do in the ordinary conduct of their businesses to protect or improve any Charged Property,
- (b) commence and/or complete any building operation, and
- (c) apply for and maintain any planning permission, building regulation approval or any other authorisation,

in each case as he thinks fit

#### **10.15 Other powers**

A Receiver may

- (a) do all other acts and things which he may consider desirable or necessary for realising any Charged Property or incidental or conducive to any of the rights, powers or discretions conferred on a Receiver under or by virtue of this Deed or law,
- (b) exercise in relation to any Charged Property all the powers, authorities and things which he would be capable of exercising if he were the absolute beneficial owner of that Charged Property, and
- (c) use the names of the Chargors for any of the above purposes

### **11. PROTECTION OF PURCHASERS**

#### **11.1 Consideration**

The receipt of the Collateral Agent or any Receiver shall be conclusive discharge to a purchaser and, in making any sale or disposal of any of the Charged Property or making any acquisition, the Collateral Agent or any Receiver may do so for such consideration, in such manner and on such terms as it thinks fit

#### **11.2 Protection of Purchasers**

No purchaser or other person dealing with the Collateral Agent or any Receiver shall be bound to inquire

- (a) whether the Secured Obligations have become payable,
- (b) whether the right of the Collateral Agent or such Receiver to exercise any of its powers has arisen or become exercisable or is being properly exercised,

- (c) whether any money remains due under the Loan Documents,
- (d) how any money paid to the Collateral Agent or to that Receiver is to be applied, or
- (e) be concerned with any propriety or regularity on the part of the Collateral Agent or such Receiver in such dealings

## **12. POWER OF ATTORNEY**

### **12.1 Appointment and Powers**

The Chargors by way of security irrevocably and unconditionally appoint the Collateral Agent and any Receiver and any of its delegates and sub-delegates severally to be its attorney and in its name, on its behalf and as its act and deed to execute, deliver and perfect all documents and do all things which the attorney may consider to be required or desirable for

- (a) carrying out any obligation imposed on the Chargors by this Deed (including the execution and delivery of any deeds, charges, assignments or other security and any transfers of the Charged Property), and
- (b) enabling the Collateral Agent and any Receiver to exercise, or delegate the exercise of, any of the rights, powers and authorities conferred on them by or pursuant to this Deed or by law (including, following the occurrence of an Enforcement Event which is continuing, the exercise of any right of a legal or beneficial owner of the Charged Property),

provided that neither the Collateral Agent nor any Receiver may exercise (or purport to exercise) any such powers, rights or authorities prior to the occurrence of an Enforcement Event which is continuing

### **12.2 Ratification**

The Chargors shall ratify and confirm all things done and all documents executed by any attorney in the exercise or purported exercise of all or any of his powers, in each case except to the extent the attorney in its name is acting negligently, with wilful misconduct or in breach of law or the terms of the Loan Documents

## **13. APPLICATION OF MONIES**

All monies received or recovered by the Collateral Agent or any Receiver pursuant to this Deed or the powers conferred by it shall (subject to the claims of any person having prior rights thereto and by way of variation of the provisions of the Law of Property Act 1925) be applied first in the payment of the costs, charges and expenses incurred and payments made by the Receiver, the payment of his remuneration and the discharge of any liabilities incurred by the Receiver in, or incidental to, the exercise of any of his powers, and thereafter shall be applied by the Collateral Agent (notwithstanding any purported appropriation by the Chargors) in accordance with the terms and conditions of the Intercreditor Agreement

## **14. EFFECTIVENESS OF SECURITY**

### **14.1 Continuing Security**

- (a) The Security created by or pursuant to this Deed shall remain in full force and effect as a continuing security for the Secured Obligations unless and until discharged by the Collateral Agent

- (b) No part of the Security from time to time intended to be constituted by the Deed will be considered satisfied or discharged by any intermediate payment, discharge or satisfaction of the whole or any part of the Secured Obligations

#### **14.2 Cumulative Rights**

The Security created by or pursuant to this Deed and the Collateral Rights shall be cumulative, in addition to and independent of every other Security which the Collateral Agent or any Secured Creditor may at any time hold for the Secured Obligations or any other obligations or any rights, powers and remedies provided by law. No prior Security held by the Collateral Agent (whether in its capacity as Collateral Agent or otherwise) or any of the other Secured Creditors over the whole or any part of the Charged Property shall merge into the Security constituted by this Deed

#### **14.3 No Prejudice**

The Security created by or pursuant to this Deed and the Collateral Rights shall not be prejudiced by any unenforceability or invalidity of any other agreement or document or by any time or indulgence granted to the Chargors or any other person, or the Collateral Agent (whether in its capacity as Collateral Agent or otherwise) or any of the other Secured Creditors or by any variation of the terms of the trust upon which the Collateral Agent holds the Security or by any other thing which might otherwise prejudice that Security or any Collateral Right

#### **14.4 Remedies and Waivers**

No failure on the part of the Collateral Agent to exercise, or any delay on its part in exercising, any Collateral Right shall operate as a waiver of that Collateral Right, nor shall any single or partial exercise of any Collateral Right preclude any further or other exercise of that or any other Collateral Right

#### **14.5 No Liability**

None of the Collateral Agent, its nominee(s) or any Receiver shall be liable by reason of (a) taking any action permitted by this Deed or (b) any neglect or default in connection with the Charged Property or (c) taking possession of or realising all or any part of the Charged Property, except in the case of negligence, wilful default or breach of the terms of Deed upon its part

#### **14.6 Immediate recourse**

The Chargors waive any right it may have of first requiring any Secured Creditor (or any security trustee or agent on its behalf) to proceed against or enforce any other rights or Security or claim payment from any person before claiming from the Chargors under this Deed. This waiver applies irrespective of any law or any provision of this Deed to the contrary

#### **14.7 Deferral of Rights**

Until such time as the Secured Obligations have been discharged in full, the Chargors will not exercise any rights which they may have by reason of performance by them of their obligations under this Deed

- (a) to be indemnified by any Obligor,
- (b) to claim any contribution from any guarantor of any Obligor's obligations under this, and/or

to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Secured Creditors under the Loan Documents or of any other guarantee or Security taken pursuant to, or in connection with, this Deed by any Secured Creditor

**15. SET-OFF**

The Chargors authorise the Collateral Agent (but the Collateral Agent shall not be obliged to exercise such right), following the occurrence of an Enforcement Event which is continuing, to set off against the Secured Obligations any amount or other obligation (contingent or otherwise) owing by the Collateral Agent to the Chargors and apply any credit balance to which the Chargors are entitled on any account with the Collateral Agent in accordance with Clause 13 (Application of Monies) (notwithstanding any specified maturity of any deposit standing to the credit of any such account)

**16. SUBSEQUENT SECURITY INTERESTS**

If the Collateral Agent (acting in its capacity as Collateral Agent or otherwise) or any of the other Secured Creditors at any time receives or is deemed to have received notice of any subsequent Security affecting all or any part of the Charged Property or any assignment or transfer of the Charged Property which is prohibited by the terms of this Deed or any other Finance Document, all payments thereafter by or on behalf of the Chargors to the Collateral Agent (whether in its capacity as Collateral Agent or otherwise) or any of the other Secured Creditors shall be treated as having been credited to a new account of the Chargors and not as having been applied in reduction of the Secured Obligations as at the time when the Collateral Agent received such notice

**17. TIME DEPOSITS**

Without prejudice to any right of set-off any Secured Party may have under any other Credit Document or otherwise, if any time deposit matures on any account any of the Chargors has with any Secured Party within the Security Period when

- (a) this Security has become enforceable, and
- (b) no Secured Obligation is due and payable,

that time deposit will automatically be renewed for any further maturity which that Secured Party considers appropriate

**18. TACKING**

Each Lender must perform its obligations under the Credit Agreement (including any obligation to make available further advances)

**19. ASSIGNMENT**

To the extent permitted by the terms of the Intercreditor Agreement, the Collateral Agent may assign and transfer all or any of its rights and obligations under this Deed. Subject to the confidentiality undertakings set out in the Loan Documents, the Collateral Agent shall be entitled to disclose such information concerning the Chargors and this Deed as the Collateral Agent (acting reasonably) considers appropriate to any actual or proposed direct or indirect successor or to any person to whom information may be required to be disclosed by any applicable law

## **20. PARTIAL INVALIDITY**

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

## **21. NOTICES**

### **21.1 Communications in Writing**

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

### **21.2 Addresses**

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of the Chargors and the Collateral Agent for any communication or document to be made or delivered under or in connection with the Deed is that identified with its name in the signature table below

### **21.3 Delivery**

- (a) Any communication or document made or delivered by one person to another under or in connection with this Deed will only be effective

- (i) if by way of fax, when received in legible form, or
- (ii) if by way of letter, when it has been left at the relevant address,

and, if a particular department or officer is specified as part of its address details, if addressed to that department or officer

- (b) Any communication or document to be made or delivered to the Collateral Agent will be effective only when actually received by the Collateral Agent and then only if it is expressly marked for the attention of the department or officer specified by the Collateral Agent for such purpose

### **21.4 English language**

- (a) Any notice given under or in connection with this Deed must be in English
- (b) All other documents provided under or in connection with this Deed must be
- (i) in English, or
  - (ii) if not in English, and if so reasonably required by the Collateral Agent, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a binding agreement or a constitutional, statutory or other official document

## **22. EXECUTION**

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

- (b) It is intended that this document takes effect as a deed notwithstanding the fact that a party may only execute this document under hand

## **23. DISCRETION AND DELEGATION**

### **23.1 Discretion**

Any liberty or power which may be exercised or any determination which may be made under this Deed by the Collateral Agent or any Receiver may, subject to the terms and conditions of the Intercreditor Agreement, be exercised or made in its absolute and unfettered discretion without any obligation to give reasons

### **23.2 Delegation**

Subject to the terms of the Intercreditor Agreement, each of the Collateral Agent and any Receiver shall have full power to delegate by power of attorney or any other manner to any person (either generally or specifically) any rights, powers, authorities and discretions conferred on it by this Deed (including the power of attorney) on such terms and conditions (including the power to sub-delegate) as it (acting reasonably) shall see fit which delegation shall not preclude either the subsequent exercise, any subsequent delegation or any revocation of such power, authority or discretion by the Collateral Agent or the Receiver itself

## **24. RELEASE**

At the end of the Security Period, the Finance Parties must, at the request and cost of the Chargors, take whatever action is necessary to release the Charged Property from this Security

## **25. GOVERNING LAW**

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

## **26. JURISDICTION**

### **26.1 English Courts**

The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute regarding the existence, validity or termination of this Deed or any non-contractual obligations arising out of or in connection with this Deed) (a **Dispute**)

### **26.2 Convenient Forum**

The parties to this Agreement agree that the courts of England are the most appropriate and convenient forum to settle Disputes between them and, accordingly, that they will not argue to the contrary

### **26.3 Exclusive Jurisdiction**

This Clause 26 (Jurisdiction) is for the benefit of the Secured Parties only. As a result and notwithstanding Clause 26.1 (English Courts), it does not prevent the Secured Parties from taking proceedings relating to a Dispute in any other court of competent jurisdiction. To the extent allowed by law the Secured Parties may take concurrent proceedings in any number of jurisdictions

**THIS DEED** has been signed on behalf of the Collateral Agent and executed as a deed by the Chargors and is delivered by it on the date specified at the beginning of this Deed

SIGNATORIES

The Chargors

EXECUTED as a deed by NMB HOLDINGS LLP

acting by

member

in the presence of

Witness's Signature

Name

Address

Fax

EXECUTED as a deed by NEWMAN MARTIN AND BUCHAN  
(1987) LIMITED

acting by

Director

in the presence of

Witness's Signature

Name

Address:

Fax

The Collateral Agent

EXECUTED as a deed by MORGAN STANLEY SENIOR  
FUNDING, INC

acting by

  
Director / authorised signatory

Stephen B. King

Vice President

in the presence of

Witness's Signature

Name

Address

Fax



Yolanda Concepcion

1585 Broadway  
New York, NY 10036

212-507-1973