



Registration of a Charge

Company name: **KEMPTON HOMES LIMITED**

Company number: **03925327**



X8FLT0SU

Received for Electronic Filing: **07/10/2019**

Details of Charge

Date of creation: **23/09/2019**

Charge code: **0392 5327 0020**

Persons entitled: **SHAWBROOK BANK LIMITED (CRN: 00388466)**

Brief description: **NONE.**

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

Certified by: **BETHANY HARGREAVES ON BEHALF OF TLT**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 3925327

Charge code: 0392 5327 0020

The Registrar of Companies for England and Wales hereby certifies that a charge dated 23rd September 2019 and created by KEMPTON HOMES LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 7th October 2019 .

Given at Companies House, Cardiff on 8th October 2019

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



Security Agreement

- (1) Kempton Homes Limited
- (2) Shawbrook Bank Limited

Dated 23 September 2019

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This deed is made the 23rd day of September 2019

Between:

- (1) **KEMPTON HOMES LIMITED** (company number 03925327) (**Chargor**); and
- (2) **SHAWBROOK BANK LIMITED** incorporated and registered in England and Wales under company registration number 00388466 the registered office of which is at Lutea House, The Drive, Warley Hill Business Park, Great Warley, Brentwood, Essex, CM13 3BE (**Lender**).

Background:

- (A) The Lender has provided or is to provide the Borrower with on-demand development loan facilities on a secured basis.
- (B) Under this deed, the Chargor provides security to the Lender in relation to the Secured Liabilities.

It is agreed as follows:

1 Definitions and Interpretation

1.1 Definitions

The following definitions apply in this deed

Account Bank	Santander UK plc
Borrower	Diana Josephs of Apartment 7, Madison Apartments, 41 Seymour Grove, Manchester, M16 0NB and Habib Mofarah-Ghasri of 62 Cheadle Road, Cheadle Hulme, Cheadle, SK8 5ET
Building Contract	the JCT Design and Build (2016 edition) building contract entered or to be entered into between the Chargor (as employer) and Trilandium Construction Limited (as contractor) to carry out and complete the design and construction of the Building Works for a contract sum of approximately £13,900,000.00
Building Works	has the meaning given to that term in the Facility Agreement
Business Day	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business
Counterparty	any party to a Relevant Agreement other than the Chargor
Delegate	any person appointed by the Lender or any Receiver pursuant to clause 12, and any person appointed as attorney of the Lender, Receiver or Delegate
Deposit	all monies from time to time standing to the credit of the Development Account, together with all other rights and benefits accruing to or arising in connection with the Development Account (including, but not limited to, entitlements to interest)

Development	means the development of the Property as referred to in the Facility Agreement and which is the subject of the Development Agreement
Development Account	has the meaning given to it in the Facility Agreement, and being as at the date of this deed the account held by the Chargor with the Account Bank with sort code 09-01-29 and account number 25179156 (as that account may be renamed, renumbered or redesignated from time to time)
Development Agreement	means the development agreement entered or to be entered into between (1) Magic Carpets (2) the Borrower and (3) the Chargor appointing the Chargor in relation to the Development
Employer's Agent Appointment	means the letter of appointment dated 8 July 2019 between the Chargor and Henry Riley LLP (company number OC334120) in connection with the Development
Event of Default	<p>(a) any event or circumstance specified as an event of default (howsoever described or defined) in the Facility Agreement, any of the other Finance Documents or any document or instrument constituting Secured Liabilities and/or</p> <p>(b) the Lender making, or becoming entitled to make, demand for all or any part of the Secured Liabilities</p>
Facility Agreement	the facility letter (incorporating the Lender's standard terms and conditions for development loans) entered or to be entered into between the Lender, the Borrower and the Chargor, as the same may have been and/or may be amended, supplemented, novated, varied, supplemented, extended, restated and/or replaced from time to time
Finance Documents	has the meaning given to such term in the Facility Agreement
Financial Collateral	has the meaning given to that expression in the Financial Collateral Regulations.
Financial Collateral Regulations	the Financial Collateral Arrangements (No 2) Regulations 2003 (<i>SI 2003/3226</i>).
Magic Carpets	Magic Carpets Co. Limited (company number 00921733)
Obligors	the Borrower, Magic Carpets and the Chargor
Property	means the land at 76 - 82 Oldham Street and land Bounded by Spear Street, Warwick Street and Houldsworth Street, Manchester M4 1LF and owned by Diana Josephs and Magic Carpets (as applicable) under title numbers GM207353, GM162711, GM783275, LA41659 and GM8873

Receiver	a receiver, receiver and manager or administrative receiver of any or all of the Secured Assets appointed by the Lender under clause 10
Relevant Agreement	(a) each document described or referred to in Schedule 1 (b) each document, agreement, contract, guarantee, appointment and warranty referred to in clauses 3.1.3 and 3.1.4 and whether entered into before, on or after the date of this deed and (c) each other agreement designated as a Relevant Agreement by the Lender in writing
Relevant Policy	each contract and policy of insurance effected or maintained from time to time by the Chargor in respect of the Development and/or the Property and/or the Building Works, together with all moneys paid or payable in respect of that policy
Rights	any Security or other right or benefit whether arising by set-off, counterclaim, subrogation, indemnity, proof in liquidation or otherwise and whether from contribution or otherwise
Secured Assets	all the assets, property and undertaking for the time being subject to any Security created by this deed (and references to the Secured Assets shall include references to any part of them)
Secured Liabilities	all present and future monies, obligations and liabilities of each Obligor to the Lender, whether actual or contingent and whether owed jointly or severally, as principal or surety or in any other capacity, together with all interest (including, without limitation, default interest) accruing in respect of such monies, obligations or liabilities
Security	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	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

1.2 Interpretation

In this deed:

- 1.2.1 clause, Schedule and paragraph headings shall not affect the interpretation of this deed;

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- 1.2.2 where there are two or more persons included in the expression the "**Obligors**", "**Chargor**" or the "**Borrower**" (A) references to respectively the Obligors, Chargor or the Borrower are references to all or any of them as the context may require and (B) all borrowings, indebtedness, assignments, charges, agreements, undertakings, covenants, obligations, warranties and representations given, undertaken, made or assumed by respectively the Obligors, Chargor or Borrower shall be deemed to have been respectively given, undertaken, made or assumed by them jointly and severally and construed accordingly;
- 1.2.3 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) and that person's personal representatives, successors, permitted assigns and permitted transferees;
- 1.2.4 unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;
- 1.2.5 unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;
- 1.2.6 a reference to a party or any other person shall include that party's or that person's successors, personal representatives, permitted assigns and permitted transferees;
- 1.2.7 a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;
- 1.2.8 a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision;
- 1.2.9 a reference to **writing** or **written** includes fax but not e-mail;
- 1.2.10 an obligation on a party not to do something includes an obligation not to allow that thing to be done;
- 1.2.11 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, varied, supplemented, extended, novated, restated or replaced (in each case, other than in breach of the provisions of this deed) from time to time;
- 1.2.12 unless the context otherwise requires, a reference to a clause or Schedule is to a clause of, or Schedule to, this deed and a reference to a paragraph is to a paragraph of the relevant Schedule;
- 1.2.13 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;
- 1.2.14 a reference to an **amendment** includes a novation, re-enactment, supplement or variation (and amended shall be construed accordingly);
- 1.2.15 a reference to **assets** includes present and future properties, undertakings, revenues, rights and benefits of every description;

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- 1.2.16 a reference to an **authorisation** includes an approval, authorisation, consent, exemption, filing, licence, notarisation, registration and resolution;
- 1.2.17 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
- 1.2.18 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 in respect of the Secured Liabilities is capable of being avoided or otherwise set aside on the liquidation, bankruptcy, administration or other insolvency event of any Obligor, any other person or otherwise, then that amount shall not be considered to have been irrevocably paid for the purposes of this deed.

1.4 **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).

1.5 **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 Chargor shall, on demand, pay to the Lender and discharge the Secured Liabilities when they become due.

3 **Grant of Security**

3.1 **Assignment**

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

- 3.1.1 the benefit of each Relevant Agreement;
- 3.1.2 all its rights in each Relevant Policy, including all claims, the proceeds of all claims and all returns of premiums in connection with each Relevant Policy;
- 3.1.3 the benefit of any other document or agreement entered or to be entered into by the Chargor in connection with the Property, the Development and/or the Building Works;
- 3.1.4 the benefit of all other contracts, guarantees, appointments and warranties relating to the Property, the Development, the Building Works, the Secured Assets and other documents to which the Chargor 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 Property,

the Development or the Building Works or otherwise relating to the Secured 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);

- 3.1.5 all authorisations (statutory or otherwise) held or required in connection with the use of any Secured Assets, and all rights in connection with them,

provided that nothing in this clause 3.1 shall constitute the Lender as a mortgagee in possession.

3.2 Fixed Charge

As a continuing security for the payment and discharge of the Secured Liabilities, the Chargor with full title guarantee:

- 3.2.1 to the extent that they have not been effectively assigned under clause 3.1 above, charges by way of a first fixed charge all of its rights listed under clause 3.1 above; and
- 3.2.2 charges to the Lender by way of first fixed charge, all of its present and future right, title, benefit and interest in and to the Development Account and the Deposit.

3.3 Chargor entitled to exercise rights

Until the Lender serves a notice on the Chargor to the contrary, the Chargor shall be entitled to exercise all its rights in the Secured Assets, subject to the other provisions of this deed.

4 Liability of the Chargor and Lender protections

4.1 Liability not discharged

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

- 4.1.1 any intermediate payment, settlement of account or discharge in whole or in part of the Secured Liabilities;
- 4.1.2 any variation, extension, discharge, compromise, dealing with, exchange or renewal of any right or remedy that the Lender may now or after the date of this deed have from or against any Obligor or any other person in connection with the Secured Liabilities;
- 4.1.3 any act or omission by the Lender or any other person in taking up, perfecting or enforcing any Security, indemnity, or guarantee from or against any Obligor or any other person;
- 4.1.4 any termination, amendment, variation, novation, replacement or supplement of or to any of the Secured Liabilities;
- 4.1.5 any grant of time, indulgence, waiver or concession to any Obligor or any other person;
- 4.1.6 any insolvency, bankruptcy, liquidation, administration, winding-up, incapacity, limitation, disability, the discharge by operation of law, or any

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change in the constitution, name or style of any Obligor or any other person;

- 4.1.7 any invalidity, illegality, unenforceability, irregularity or frustration of any actual or purported obligation of, or Security held from, any Obligor or any other person in connection with the Secured Liabilities;
- 4.1.8 any claim or enforcement of payment from any Obligor or any other person;
- 4.1.9 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;
- 4.1.10 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
- 4.1.11 any other act or omission that would not have discharged or affected the liability of the Chargor had it been a principal debtor or by anything done or omitted by any person which, but for this provision, might operate to exonerate or discharge the Chargor or otherwise reduce or extinguish its liability under this deed.

4.2 Immediate recourse

- 4.2.1 The Chargor 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 Chargor.
- 4.2.2 The Chargor waives any right it may have to require the Lender:
 - (a) to take any action or obtain judgment in any court against any Obligor or any other person;
 - (b) to make or file any claim in a bankruptcy, liquidation, administration or insolvency of any Obligor or any other person; or
 - (c) to make demand, enforce or seek to enforce any claim, right or remedy against any Obligor or any other person,

before taking steps to enforce any of its rights or remedies under this deed

4.3 Non-competition

The Chargor warrants to the Lender that it has not taken or received, and shall not take, exercise or receive the benefit of any Rights from or against any other Obligor, its liquidator, an administrator, co-guarantor or any other person in connection with any liability of, or payment by, the Chargor under this deed but:

- 4.3.1 if any of the Rights is taken, exercised or received by the Chargor, those Rights and all monies at any time received or held in respect of those Rights shall be held by the Chargor on trust for the Lender for application in or towards the discharge of the Secured Liabilities under this deed; and
- 4.3.2 on demand by the Lender, the Chargor shall promptly transfer, assign or pay to the Lender all Rights and all monies from time to time held on trust by the Mortgagor under this clause 4.3.

5 Representations and Warranties

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The Chargor makes the representations and warranties set out in this clause 5 to the Lender.

5.1 Due incorporation

The Chargor:

- 5.1.1 is a duly incorporated limited liability company validly existing under the law of its jurisdiction of incorporation; and
- 5.1.2 has the power to own its assets and carry on its business as it is being conducted.

5.2 Powers

- 5.2.1 The Chargor has the power to enter into, deliver and perform, and has taken all necessary action to authorise its entry into, delivery and performance of this deed and the transactions contemplated by it.
- 5.2.2 No limit on its powers will be exceeded as a result of the grant of Security contemplated by this deed.

5.3 Non-contravention

The entry into and performance by the Chargor of, and the transactions contemplated by, this deed do not and will not contravene or conflict with:

- 5.3.1 its constitutional documents;
- 5.3.2 any agreement or instrument binding on it or its assets or constitute a default or termination event (however described) under any such agreement or instrument; or
- 5.3.3 any law or regulation or judicial or official order applicable to it.

5.4 Authorisations

The Chargor has obtained all required or desirable authorisations to enable it to enter into, exercise its rights and comply with its obligations in this deed and to make it admissible in evidence in its jurisdiction of incorporation or, as the case may be, domicile. Any such authorisations are in full force and effect.

5.5 Binding obligations

- 5.5.1 The Chargor's obligations under this deed are legal, valid, binding and enforceable.
- 5.5.2 this deed creates:
 - (a) valid, legally binding and enforceable Security for the obligations expressed to be secured by it; and
 - (b) subject to registration in accordance with the Companies Act 2006, perfected Security over the assets expressed to be subject to Security in it, in favour of the Lender, having the priority and ranking expressed to be created by this deed and ranking ahead of all (if any) Security and rights of third parties, except those preferred by law.

5.6 No filing or stamp taxes

It is not necessary to file, record or enrol this deed with any court or other authority or pay any stamp, registration or similar taxes in relation to this deed or any transaction

contemplated by it (other than in connection with the registrations referred to in clause 5.5.2(b)).

5.7 No litigation

No litigation, arbitration, administrative proceedings or investigations are taking place, pending or, to the Chargor's knowledge, threatened against it, any of its directors or any of its assets.

5.8 Ownership of Secured Assets

The Chargor is the sole legal and beneficial owner of, and has good, valid and marketable title to the Secured Assets held by it.

5.9 Secured Assets

5.9.1 The counterparts and instruments comprising the Relevant Agreements or other document, agreement or arrangement comprising the Secured Assets as provided to the Lender on or before the date of this deed, evidence all terms of the relevant Secured Assets, and there are no other documents, agreements or arrangements that may affect the operation or enforceability of any Secured Assets.

5.9.2 No Relevant Agreement, Relevant Policy or other document, agreement or arrangement comprising the Secured Assets is void, voidable or otherwise unenforceable.

5.9.3 No variation of any Relevant Agreement, Relevant Policy or other document, agreement or arrangement comprising the Secured Assets is contemplated.

5.9.4 The Chargor is not in breach of its obligations under any Relevant Agreement, Relevant Policy or other document, agreement or arrangement comprising the Secured Assets and nothing has occurred:

- (a) which is, or would constitute (with the giving of notice or passage of time or both), an event of default (however described) under any Relevant Agreement, Relevant Policy or other document, agreement or arrangement comprising the Secured Assets; or
- (b) which would entitle a person to terminate or rescind a Relevant Agreement, Relevant Policy or other document, agreement or arrangement comprising the Secured Assets.

5.10 No Security

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

5.11 No adverse claims

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

5.12 No adverse covenants

There are no covenants, agreements, reservations, conditions, interests, rights or other matters whatsoever that materially and adversely affect the Secured Assets.

5.13 No breach of laws

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

5.14 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 an Obligor or otherwise.

5.15 No prohibitions

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

5.16 Enforceable security

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

5.17 Times for making representations and warranties

The representations and warranties set out in clause 5.1 to clause 5.16 are made by the Chargor on the date of this deed and 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 Covenants

6.1 Negative pledge and disposal restrictions

The Chargor shall not at any time, except with the prior written consent of the Lender:

- 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; or
- 6.1.3 create or grant (or purport to create or grant) any interest in any Secured Asset in favour of a third party.

6.2 Preservation of Secured Assets

The Chargor 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 diminish the value of any of the Secured Assets or the effectiveness of the security created by this deed.

6.3 Relevant Agreements

- 6.3.1 The Chargor shall, unless the Lender agrees otherwise in writing, comply with the terms of any Relevant Agreement and any other document, agreement or arrangement comprising the Secured Assets.
- 6.3.2 The Chargor shall not, unless the Lender agrees otherwise in writing:
 - (a) amend or vary or agree to any change in, or waive any requirement of;
 - (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 or other person in connection with, any Relevant Agreement and any other document, agreement or arrangement comprising the Secured Assets.

6.4 Rights

The Chargor shall:

- 6.4.1 not waive any of the Lender's rights or release any person from its obligations in connection with the Secured Assets; and
- 6.4.2 take all necessary or appropriate action against any person (including as reasonably required by the Lender) to protect and enforce its rights, and recover money or receive other property in connection with, the Secured Assets.

6.5 Payment of money

The Chargor shall, if the Lender directs, ensure that all money payable to, or other property receivable by, the Chargor under or in relation to any Secured Assets is paid or delivered to the Lender (or that such Chargor pays over or delivers such amounts to the Lender).

6.6 Chargor's waiver of set-off

The Chargor waives any present or future right of set-off it may have in respect of the Secured Liabilities (including sums payable by it under this deed).

6.7 Compliance with laws and regulations

- 6.7.1 The Chargor shall not, without the Lender's prior written consent, use or permit the Secured Assets to be used in any way contrary to law.
- 6.7.2 The Chargor shall:
 - (a) comply with the requirements of any law and regulation relating to or affecting the Secured Assets or the use of them or any part of them; and
 - (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.

6.8 Enforcement of rights

The Chargor shall use its best endeavours to:

- 6.8.1 procure the prompt observance and performance of the covenants and other obligations imposed on the Chargor's counterparties (including each Counterparty in respect of a Relevant Agreement and each insurer in respect of a Relevant Policy); and
- 6.8.2 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.

6.9 Notice of misrepresentations and breaches

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

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6.9.1 any representation or warranty set out in clause 5 which is incorrect or misleading in any material respect when made or deemed to be repeated; and

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

6.10 Notices to be given by Chargor

The Chargor shall:

6.10.1 immediately on the execution of this deed:

- (a) give notice to each Counterparty to a Relevant Agreement, in the form set out in Part 1 of Schedule 2 of the assignment of its rights and interest in and under that Relevant Agreement pursuant to clause 3.1; and
- (b) procure that each Counterparty will promptly provide to the Lender within five Business Days an acknowledgement of the notice, in the form set out in Part 2 of Schedule 2 of the Lender's interest;

6.10.2 immediately on the execution of this deed:

- (a) give notice to the other parties to each other contract, guarantee, appointment, warranty or authorisation relating to the Secured Assets and any other document to which it is a party, substantially in the form set out in Part 1 of Schedule 2 (and except only to the extent the Lender agrees otherwise in writing), of the assignment of its rights and interest in and under it pursuant to clause 3.1; and
- (b) procure that each addressee of such notice will promptly provide to the Lender within five Business Days an acknowledgement of the notice, substantially in the form set out in Part 2 of Schedule 2 (and except only to the extent the Lender agrees otherwise in writing), of the Lender's interest;

6.10.3 on the execution of this deed and as so requested by the Lender from time to time:

- (a) give notice to the relevant insurers, in the form set out in Part 1 of Schedule 3, of the assignment of the Chargor's rights and interest in, and under, each Relevant Policy (including the proceeds of any claims under that Relevant Policy) pursuant to clause 3.1; and
- (b) procure that each insurer provides to the Lender promptly within five Business Days an acknowledgement of the notice, in the form set out in Part 2 of Schedule 3 of the Lender's interest;

6.10.4 immediately on the execution of this deed:

- (a) give notice to the Account Bank in the form set out in Part 1 of Schedule 4; and
- (b) procure that the Account Bank provides to the Lender promptly within five Business Days an acknowledgement of the notice in the form of Part 2 of Schedule 4; and

6.10.5 in the case of each Relevant Agreement, Relevant Policy or other document, agreement or arrangement designated as Secured Assets after the date of this deed, the Chargor shall, give the relevant notices and procure each relevant acknowledgement referred to in clauses 6.10.1 to 6.10.4 (both inclusive) on the later of that Relevant Agreement, document, agreement or arrangement coming into existence, or, in the

case of a Relevant Policy, being put on risk, or being designated Secured Assets.

6.11 Documents

The Chargor shall, if so required by the Lender, deposit with the Lender and the Lender shall, for the duration of the Security Period, be entitled to hold all the Chargor's original counterparts of, and instruments comprising, each Relevant Agreement, each Relevant Policy and each other document, instrument or agreement comprising the Secured Assets.

6.12 Information

The Chargor shall:

- 6.12.1 give the Lender such information concerning the Secured Assets as the Lender may require; and
- 6.12.2 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 Chargor's proposals for settling, liquidating, compounding or contesting any such action, claim or demand and shall, subject to the Lender's prior approval, implement those proposals at its own expense.

6.13 Payment of outgoings

The Chargor 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 Compliance with covenants

The Chargor shall observe and perform all covenants, stipulations and conditions to which any Secured Assets, or the use of them, is or may be subjected 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.

6.15 Ranking of obligations

The payment obligations of the Chargor under this deed will, at all times, rank in all respects in priority to all its other indebtedness, other than indebtedness preferred by operation of law in the event of its winding-up.

6.16 Authorisations

The Chargor shall obtain all consents and authorisations necessary (and do all that is needed to maintain them in full force and effect) under any law or regulation to enable it to perform its obligations under this deed and to ensure the legality, validity, enforceability and admissibility in evidence of this deed.

6.17 Insurance

The Chargor shall:

- 6.17.1 not amend, waive or release any rights or interests in a Relevant Policy;
- 6.17.2 if requested by the Lender, deliver to the Lender each policy, certificate or cover note relating to any Relevant Policy;

6.17.3 if requested by the Lender, procure that a note of the Lender's interest is endorsed on or that the Lender is named as composite insurance in respect of its own separate insurable interest under each Relevant Policy (other than public liability and third party liability insurances) effected or maintained by it or any person on its behalf, but without the Lender having any liability for any premium in relation to those Relevant 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 Relevant Policy; and

6.17.4 The Chargor shall ensure that each Relevant Policy effected or maintained by it or any person on its behalf 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 Chargor and the Lender other than any such rights arising in connection with any fraud or criminal offence committed by any of those persons in respect any Relevant 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.

6.18 Insurance premiums

The Chargor shall:

6.18.1 promptly pay all premiums in respect of each Relevant Policy and do all other things necessary to keep that Relevant Policy in full force and effect; and

6.18.2 (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 Relevant Policy.

6.19 No invalidation of insurance

The Chargor shall not do, or permit to be done, or omit or permit to be omitted, any thing that if done or not done as the case may be, may invalidate or otherwise prejudice any Relevant Policy.

6.20 Proceeds from the Relevant Policies

All monies received or receivable under any Relevant Policy at any time (whether or not the security constituted by this deed has become enforceable) shall:

6.20.1 immediately be paid to the Lender;

6.20.2 (if they are not paid directly to the Lender by the insurers) be held by the Chargor as trustee of the same for the benefit of the Lender (and the Chargor shall account for them to the Lender); and

- 6.20.3 at the option of the Lender, be applied in making good or recouping expenditure in respect of the loss or damage for which such monies are received, or in or towards discharge or reduction of the Secured Liabilities.

6.21 Restrictions on repayment and withdrawals from the Development Account

Save as specifically permitted under the Facility Agreement, the Chargor shall not:

- 6.21.1 make any request or demand for repayment or payment of all or any part of the Deposit;
- 6.21.2 withdraw or transfer all or any part of the Deposit until after the Security Period has expired;
- 6.21.3 permit or agree to any variation of the rights attaching to the Development Account or close the Development Account; or
- 6.21.4 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 (including, without limitation, closing the Development Account).

6.22 Payment of account charges

The Chargor shall promptly pay all charges and other outgoings in respect of the Development Account and Deposit and, on demand, produce evidence of payment to the Lender.

7 Powers of the Lender

7.1 Power to remedy

- 7.1.1 The Lender shall be entitled (but shall not be obliged) to remedy, at any time, a breach by the Chargor of any of its obligations contained in this deed.
- 7.1.2 The Chargor irrevocably authorise the Lender and its agents to do all things that are necessary or desirable for that purpose.
- 7.1.3 Any monies expended by the Lender in remedying a breach by the Chargor of its obligations contained in this deed, shall be reimbursed by the Chargor to the Lender on a full indemnity basis and shall carry interest in accordance with clause 14.1.

7.2 Exercise of rights

- 7.2.1 The Lender shall be entitled (but shall not be obliged) to exercise the rights granted to the Chargor under the Security Assets either in the name of the Chargor or as mortgagee.
- 7.2.2 The rights of the Lender under clause 7.1 are without prejudice to any other rights of the Lender under this deed.
- 7.2.3 The exercise of any rights of the Lender under this deed shall not make the Lender liable to account as a mortgagee in possession.

7.3 Lender has Receiver's powers

To the extent permitted by law, any right, power or discretion conferred by this deed on a Receiver may, after the security constituted by this deed has become enforceable, be

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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.

7.4 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 Chargor) 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 any person for the Secured Liabilities.

8 When Security becomes enforceable

8.1 Security becomes enforceable on Event of Default

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

8.2 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.

8.3 Timed deposits

8.3.1 The rights and powers of the Lender under this clause 8 shall apply notwithstanding that:

- (a) all or any part of the Deposit may have been deposited for a fixed or minimum period or be subject to a period of notice;
- (b) any interest on the Deposit is calculated by reference to a fixed or minimum period; and/or
- (c) any such fixed or minimum period or period of notice may or may not have been given.

8.3.2 The Chargor irrevocably authorises the Lender at any time after the security constituted by this deed has become enforceable to break or determine the Deposit in whole or in part and/or to renew all or any of the Deposit for such fixed periods as the Lender may, in its absolute discretion, from time to time think fit.

9 Enforcement of Security

9.1 Enforcement powers

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

9.1.2 The power of sale and other powers conferred by section 101 of the LPA 1925 (as varied or extended by this deed) shall be exercisable at any time after the security constituted by this deed has become enforceable under clause 8.1.

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

9.2 Application of the Deposit

After the security constituted by this deed has become enforceable, the Lender shall be entitled to apply, transfer or set off all or any part of the Deposit to discharge in whole or in part, the Secured Liabilities in accordance with the provisions of this deed.

9.3 Access on enforcement

9.3.1 At any time after the Lender has demanded payment of the Secured Liabilities or if the Chargor defaults in the performance of its obligations under this deed or an Event of Default occurs, the Chargor 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 Chargor for, or by any reason of, that entry.

9.3.2 At all times, the Chargor must use best endeavours to allow the Lender or its Receiver access to any premises for the purpose of clause 9.3.1 (including obtaining any necessary consents or permits of other persons) and ensure that its employees and officers do the same.

9.4 Prior Security

At any time after the security constituted by this deed has become enforceable, or after any powers conferred by any Security having priority to this deed shall have become exercisable, the Lender may:

9.4.1 redeem that or any other prior Security;

9.4.2 procure the transfer of that Security to it; and

9.4.3 settle and pass any account of the holder of any prior Security.

The settlement and passing of any such account shall, in the absence of any manifest error, be conclusive and binding on the Chargor. All monies paid by the Lender to an encumbrancer in settlement of any of those accounts shall, as from its payment by the Lender, be due from the Chargor to the Lender on current account and shall bear interest and be secured as part of the Secured Liabilities.

9.5 Protection of third parties

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

9.5.1 whether any of the Secured Liabilities have become due or payable, or remain unpaid or undischarged;

9.5.2 whether any power the Lender, a Receiver or Delegate is purporting to exercise has become exercisable or is properly exercisable; or

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

9.6 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.

9.7 No liability as mortgagee in possession

Neither the Lender, any Receiver nor any 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, neglect or default of any nature in connection with, all or any of the Secured Assets for which a mortgagee in possession might be liable as such.

9.8 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 or he thinks fit.

9.9 Right of appropriation

9.9.1 To the extent that:

- (a) any of the Secured Assets constitute Financial Collateral; and
- (b) this deed and the obligations of the Chargor 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.

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

9.9.3 The Chargor agrees that the method of valuation provided for in this clause is commercially reasonable for the purposes of the Financial Collateral Regulations.

10 Receiver

10.1 Appointment

At any time after the security constituted by this deed has become enforceable, or at the request of the Chargor, 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.

10.2 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.

10.3 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.

10.4 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.

10.5 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.

10.6 Agent of the Chargor

Any Receiver appointed by the Lender under this deed shall be the agent of the Chargor and the Chargor 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 Chargor goes into liquidation and after that, the Receiver shall act as principal and shall not become the agent of the Lender.

11 Powers of Receiver

11.1 General

- 11.1.1 Any Receiver appointed by the Lender under this deed shall, in addition to the powers conferred on him by statute, have the powers set out in clause 11.2 to clause 11.15.
- 11.1.2 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.
- 11.1.3 Any exercise by a Receiver of any of the powers given by clause 11 may be on behalf of the Chargor, the directors of the Chargor or himself.

11.2 Employ personnel and advisers

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 thinks fit. A Receiver may discharge any such person or any such person appointed by the Chargor.

11.3 Remuneration

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

11.4 Realise Secured Assets

A Receiver may collect and get in the Secured Assets or any part of them in respect of which he is appointed, and make any demands and take any proceedings as may seem expedient for that purpose, enforce or exercise any rights or covenants contained therein and take possession of the Secured Assets with like rights.

11.5 Dispose of Secured Assets

A Receiver may sell or assign (or concur in selling or assigning), all or any of the Secured Assets in respect of which he is appointed in any manner (including, without

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limitation, by public auction or private sale) and generally on any terms and conditions as he 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.

11.6 Valid receipts

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

11.7 Make settlements

A Receiver may make any arrangement, settlement or compromise between the Chargor and any other person that he may think expedient.

11.8 Bring proceedings

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

11.9 Insurance

A Receiver may, if he thinks fit, but without prejudice to the indemnity in clause 14, effect with any insurer, any policy of insurance either in lieu or satisfaction of, or in addition to, that insurance.

11.10 Powers under the LPA 1925

A Receiver may exercise all powers provided for in the LPA 1925 in the same way as if he had been duly appointed under the LPA 1925, and exercise all powers provided for an administrative receiver in Schedule 1 to the Insolvency Act 1986.

11.11 Borrow

A Receiver may, for any of the purposes authorised by this clause 11, raise money by borrowing from the Lender (or from any other person) either unsecured or on the security of all or any of the Secured Assets in respect of which he is appointed on any terms that he thinks fit (including, if the Lender consents, terms under which that security ranks in priority to this deed).

11.12 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 Chargor, and the monies so paid shall be deemed to be an expense properly incurred by the Receiver.

11.13 Delegation

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

11.14 Absolute beneficial owner

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

11.15 Incidental powers

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

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- 11.15.1 may consider desirable or necessary for realising any of the Secured Assets;
- 11.15.2 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
- 11.15.3 lawfully may or can do as agent for the Chargor.

12 Delegation

12.1 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 16.1).

12.2 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.

12.3 Liability

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

13 Application of Proceeds

13.1 Order of application of proceeds

All monies received by the Lender, a Receiver or a Delegate pursuant to this deed, after the security constituted by this deed has become enforceable, 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:

- 13.1.1 in or towards payment of or provision for all costs, 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;
- 13.1.2 in or towards payment of or provision for the Secured Liabilities in any order and manner that the Lender determines; and
- 13.1.3 in payment of the surplus (if any) to the Chargor or other person entitled to it.

13.2 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.

13.3 Suspense account

All monies received by the Lender, a Receiver or a Delegate under this deed:

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- 13.3.1 may, at the discretion of the Lender, Receiver or Delegate, be credited to any suspense or securities realised account;
- 13.3.2 shall bear interest, if any, at the rate agreed in writing between the Lender and the Chargor; and
- 13.3.3 may be held in that account for so long as the Lender, Receiver or Delegate thinks fit.

14 Costs and Indemnity

14.1 Costs

The Chargor shall, promptly on 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:

- 14.1.1 this deed or the Secured Assets;
- 14.1.2 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
- 14.1.3 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 or expense arose until full discharge of that cost or expense (whether before or after judgment, liquidation, winding up, bankruptcy, administration or other insolvency event of the Chargor) at the rate and in the manner specified in any facility agreement entered into between the Borrower and the Lender.

14.2 Indemnity

The Chargor 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:

- 14.2.1 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;
- 14.2.2 taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) the security constituted by this deed; or
- 14.2.3 any default or delay by the Chargor in performing any of its obligations under this deed.

Any past or present employee or agent may enforce the terms of this clause 14.2 subject to and in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999.

15 Further Assurance

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

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- 15.1.1 creating, perfecting or protecting the security intended to be created by this deed;
- 15.1.2 facilitating the realisation of any Secured Asset; or
- 15.1.3 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 (if the Lender or Receiver thinks it expedient) the execution of any 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 registration.

16 Power of Attorney

16.1 Appointment of attorneys

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

- 16.1.1 the Chargor is required to execute and do under this deed; or
- 16.1.2 any attorney deems proper or desirable 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.

16.2 Ratification of acts of attorneys

The Chargor 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 16.1.

17 Release

17.1 Subject to clause 24.3, on the expiry of the Security Period (but not otherwise), the Lender shall, at the request and cost of the Chargor, take whatever action is necessary to:

- 17.1.1 release the Secured Assets from the security constituted by this deed; and
- 17.1.2 reassign the Secured Assets to the Chargor.

18 Assignment and Transfer

18.1 Assignment by Lender

- 18.1.1 At any time, without the consent of the Chargor, the Lender may assign or transfer any or all of its rights and obligations under this deed.
- 18.1.2 The Lender may disclose to any actual or proposed assignee or transferee any information in its possession that relates to the Chargor, the Secured Assets and this deed that the Lender considers appropriate.

18.2 Assignment by Chargor

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The Chargor may not assign any of its rights, or transfer any of its rights or obligations, under this deed.

19 Set-off

19.1 Lender's right of set-off

The Lender may at any time set off any liability of the Chargor to the Lender against any liability of the Lender to the Chargor, 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 19 shall not limit or affect any other rights or remedies available to it under this deed or otherwise.

19.2 No obligation to set off

The Lender is not obliged to exercise its rights under clause 19.1. If, however, it does exercise those rights it must promptly notify the Chargor of the set-off that has been made.

19.3 Exclusion of Chargor's right of set-off

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

20 Amendments, Waivers and Consents

20.1 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).

20.2 Waivers and consents

20.2.1 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.

20.2.2 A failure to exercise, or a delay in exercising, 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.

20.3 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.

21 Severance

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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.

22 Counterparts

22.1 Counterparts

This deed may be executed and delivered in any number of counterparts, each of which is an original and which together have the same effect as if each party had signed the same document.

23 Third Party Rights

23.1 Third party rights

23.1.1 Except as expressly provided in clause 14.2, a person who is not a party to this deed (other than a permitted successor or assign, any Receiver or any Delegate) 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. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

23.1.2 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.

24 Further Provisions

24.1 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.

24.2 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.

24.3 Discharge conditional

Any release, discharge or settlement between the Chargor 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 pursuant to any law relating to insolvency, bankruptcy, winding up, administration, receivership or otherwise. Despite any such release, discharge or settlement:

24.3.1 the Lender or its nominee may retain this deed and the security created by or pursuant to 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

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

24.4 Certificates

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

24.5 Consolidation

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

25 Notices

25.1 Delivery

Each notice or other communication required to be given under or in connection with this deed shall be:

- 25.1.1 in writing;
- 25.1.2 delivered by hand, by pre-paid first-class post or other next working day delivery service or sent by fax; and
- 25.1.3 sent to the relevant party at the address set out in the particulars.

or to any other address or fax number as is notified in writing by one party to the other from time to time.

25.2 Receipt by Chargor

Any notice or other communication that the Lender gives to the Chargor shall be deemed to have been received:

- 25.2.1 if delivered by hand, at the time it is left at the relevant address;
- 25.2.2 if posted by pre-paid first class post or other next working day delivery service, on the second Business Day after posting; and
- 25.2.3 if sent by fax, when received in legible form.

A notice or other communication given as described in clause 25.2.1 or clause 25.2.3 on a day that is not a Business Day, or after normal business hours, in the place it is received, shall be deemed to have been received on the next Business Day.

25.3 Receipt by Lender

Any notice or other communication given to the Lender shall be deemed to have been received only on actual receipt.

25.4 Service of proceedings

This clause 25 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

25.5 No notice by e-mail

A notice or other communication given under or in connection with this deed is not valid if sent by e-mail.

26 Governing Law and Jurisdiction

26.1 Governing law

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

26.2 Jurisdiction

Each party irrevocably agree that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this deed or its subject matter or formation (including non-contractual disputes or claims). Nothing in this clause shall limit the right of the Lender to take proceedings against the Chargor 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.

26.3 Other service

The Chargor irrevocably consents to any process in any proceedings under clause 26.2 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 deed has been entered into on the date stated at the beginning of it.

Schedule 1

Relevant Agreements

1. The Development Agreement
2. Building Contract
3. The Employer's Agent Appointment

Schedule 2

Notice and acknowledgement of assignment of Relevant Agreement

Part 1

Form of notice of assignment

[On the letterhead of the Chargor]

[Name]

[Address]

Dear Sirs,

Security agreement (Security Agreement) dated 2019 between [] and Shawbrook Bank Limited (2)

We refer to the [INSERT DETAILS OF AGREEMENT] dated [] and made between [INSERT DETAILS] (Agreement).

This letter constitutes notice to you that under the Security Agreement (a copy of which is attached) we have assigned to Shawbrook Bank Limited (**Lender**), by way of security, all our rights, title and interest and benefit in and to the Agreement.

We irrevocably instruct and authorise you to:

- Comply with the terms of any written instructions received by you from the Lender relating to the Agreement, without notice or reference to, or further authority from, us and without enquiring as to the justification or the validity of those instructions.
- Hold all sums from time to time due and payable by you to us under the Agreement to the order of the Lender.
- Pay, or release, all monies to which we are entitled under the Agreement to the Lender, or to such persons as the Lender may direct.
- Disclose information in relation to the Agreement to the Lender on request by the Lender.

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

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

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

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

Please confirm that you agree to the terms of this notice, and to act in accordance with its provisions, by sending the attached acknowledgement to the Lender at:

Shawbrook Bank Limited
Lutea House
Warley Hill Business Park
The Drive
Brentwood
Essex

EXECUTION VERSION

CM13 3BE

with a copy to us.

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

Yours faithfully,

.....
[insert name of Chargor]

Part 2

Form of acknowledgement of assignment

[On the letterhead of the Counterparty]

Shawbrook Bank Limited
Lutea House
Warley Hill Business Park
The Drive
Brentwood
Essex
CM13 3BE

Dear Sirs,

Security agreement (Security Agreement) dated 2019 between [] and Shawbrook Bank Limited (2)

We confirm receipt from [] (**Chargor**) of a notice (**Notice**) dated [] of an assignment, by way of security, of all the Chargor's rights under the [INSERT DETAILS] (**Agreement**)

We confirm that:

- We accept the instructions and authorisations 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 Agreement since the date of the Agreement.
- We will not cancel, avoid, release or otherwise allow the Agreement to lapse without giving the Lender at least 30 days' prior written notice.
- We have not, as at the date of this acknowledgement, received notice that the Chargor has assigned its rights under the Agreement to a third party, or created any other interest (whether by way of security or otherwise) in the Agreement in favour of a third party.
- The Lender will not in any circumstances have any liability in relation to the Agreement, save where the Lender seeks to exercise any rights contained in the Agreement.
- The Agreement shall not be rendered void, voidable or unenforceable by reason of any non-disclosure by the Lender.

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

EXECUTION VERSION

Yours faithfully,

.....

[insert name of Counterparty]

Schedule 3

Notice and acknowledgement of assignment of Relevant Policy

Part 1

Form of notice of assignment

[On the letterhead of the Chargor]

[NAME OF INSURANCE COMPANY]

[ADDRESS LINE 1]

[ADDRESS LINE 2]

[POSTCODE]

[DATE]

Dear [NAME OF INSURER],

Security assignment (Assignment) dated [DATE] between [CHARGOR] and [LENDER].

We refer to the [DESCRIBE INSURANCE POLICY AND SPECIFY ITS POLICY NUMBER] (Policy).

This letter constitutes notice to you that under the Assignment (a copy of which is attached) we have assigned to Shawbrook Bank Limited (**Lender**) absolutely, subject to a proviso for reassignment, all our rights, title and interest and benefit in and to the Policy including all claims, the proceeds of all claims and all returns of premiums in connection with the Policy.

We irrevocably instruct and authorise you to:

- Note the Lender's interest on the Policy as first mortgagee (except in relation to public liability and third party liability insurances).
- 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 Assignment 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.

EXECUTION VERSION

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:

Shawbrook Bank Limited
Lutea House
Warley Hill Business Park
The Drive
Brentwood
Essex
CM13 3BE

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 faithfully

.....
[NAME OF CHARGOR]

Part 2

Form of acknowledgement of assignment

[On the letterhead of the insurance company]

Shawbrook Bank Limited
Lutea House
Warley Hill Business Park
The Drive
Brentwood
Essex
CM13 3BE

[DATE]

Dear Shawbrook Bank Limited,

Security assignment (Assignment) dated [DATE] between [CHARGOR] and [LENDER]

We confirm receipt from [CHARGOR] (**Chargor**) of a notice (**Notice**) dated [DATE] of an absolute assignment to the Lender, subject to a proviso for reassignment, of all the Chargor's rights, title and interest and benefit in and to [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:

EXECUTION VERSION

- 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 first mortgagee (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 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 the Lender at least 30 days' prior written notice to the Lender.
- We have not, as at the date of this acknowledgement, received notice that the Chargor 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 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.
- The Policy shall not be avoided or vitiated as against the Lender by reason of the act or default of any insured party or any misrepresentation, non-disclosure or failure to make a fair presentation of risk by any insured party.
- We waive our rights of subrogation against the Chargor and the Lender other than any such rights arising in connection with any fraud or criminal offence committed by either of them 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 faithfully

.....
[NAME OF INSURER]

Schedule 4

Notice of assignment and acknowledgement of charge of Development Account

Notice and acknowledgement

Part 1

Form of notice

[On the letterhead of the Chargor]

[ACCOUNT BANK]

[ADDRESS LINE 1]

[ADDRESS LINE 2]

[POSTCODE]

[DATE]

Dear [NAME OF ACCOUNT BANK],

Security agreement (Charge) dated [DATE] between [CHARGOR] and Shawbrook Bank Limited

This letter constitutes notice to you that under the Charge (a copy of which is attached) we have charged, by way of first fixed charge, in favour of Shawbrook Bank Limited (the **Lender**) all monies from time to time standing to the credit of the account held with you and detailed below (**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.
- 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.

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.

EXECUTION VERSION

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:

Shawbrook Bank Limited
Lutea House
Warley Hill Business Park
The Drive
Brentwood
Essex
CM13 3BE

with a copy to us.

Yours faithfully

Signed.....

[NAME OF CHARGOR]

Part 2

Form of acknowledgement

[On the letterhead of the Account Bank]

Shawbrook Bank Limited
Lutea House
Warley Hill Business Park
The Drive
Brentwood
Essex
CM13 3BE

[DATE]

Dear Shawbrook Bank Limited,

Security agreement (Charge) dated [DATE] between [CHARGOR] and Shawbrook Bank Limited

We confirm receipt from [INSERT NAME OF CHARGOR] (**Chargor**) of a notice (**Notice**) dated [DATE] of a charge (on the terms of the Charge) over all monies from time to time standing to the credit of the account detailed below (**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.

EXECUTION VERSION

- 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 faithfully

Signed.....

[NAME OF ACCOUNT BANK]

EXECUTION VERSION

EXECUTION PAGES

Chargor

Executed as a deed by Kempton Homes Limited)
acting by a director)
in the presence of a witness:)

Witness signature REDACTED BY
TLT.

Witness name MEHRDAD PARVAZ

Witness address 100 GLANDON DRIVE
CHEADLEWULME

Witness occupation CHESHIRE SK8 7EY

REDACTED
BY TLT.

Lender

EXECUTED as a deed by
SHAWBROOK BANK LIMITED
acting by its attorney:

