



**Registration of a Charge**

Company name: **DB SYMMETRY LTD**

Company number: **04537090**

Received for Electronic Filing: **14/09/2018**



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**Details of Charge**

Date of creation: **04/09/2018**

Charge code: **0453 7090 0013**

Persons entitled: **DV4 PROPERTIES BARWOOD CO. LIMITED**

Brief description:

**Contains fixed charge(s).**

**Contains floating charge(s) .**

**Contains negative pledge.**

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**Authentication of Form**

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

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**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:

**OLIVER ELLINGTON**



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

Company number: 4537090

Charge code: 0453 7090 0013

The Registrar of Companies for England and Wales hereby certifies that a charge dated 4th September 2018 and created by DB SYMMETRY LTD was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 14th September 2018 .

Given at Companies House, Cardiff on 18th September 2018

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

DATE: 4 September 2018

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**DEED OF CONFIRMATION AND SECURITY**

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Between

**(1) DB SYMMETRY GROUP LTD**

**(2) DB SYMMETRY LTD**

(each as Chargor)

and

**(3) DV4 PROPERTIES BARWOOD CO. LIMITED**

(as Chargee)

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THIS DEED is made on 4 September 2018

**BETWEEN:**

- (1) **DB SYMMETRY GROUP LTD** (registered in England and Wales with registration number 09227456) ("**db Symmetry Group**");
- (2) **DB SYMMETRY LTD** (registered in England and Wales with registration number 04537090) ("**db Symmetry**"); and
- (3) **DV4 PROPERTIES BARWOOD CO. LIMITED** (registered in the British Virgin Islands with registration number 1847980) (the "**Chargee**").

**RECITALS**

- (A) By a guarantee and debenture (the "**Guarantee and Debenture**") originally dated 19 December 2014 made between the Chargors and the Chargee, the Chargors agreed to guarantee and provide security to the Chargee in connection with the Secured Liabilities (as defined in the Guarantee and Debenture).
- (B) Each Chargor has agreed to amend the terms of the Guarantee and Debenture, such that the secured liabilities under the Guarantee and Debenture shall extend to cover all present and future obligations and liabilities of any direct or indirect subsidiary of db Symmetry Group.
- (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.

**IT IS AGREED AS FOLLOWS:**

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Deed, unless the context otherwise requires or unless otherwise defined or provided for in this Deed, words and expressions shall have the same meanings as are attributed to them under the Guarantee and Debenture. In addition, the following words and expressions shall have the following meanings:

"**Chargor**" means db Symmetry Group or db Symmetry;

"**Party**" means a party to this Deed;

**1.2 Construction**

1.2.1 In this Deed (except where the context requires otherwise):

- (a) capitalised terms defined in the Guarantee and Debenture have, unless expressly defined in this Deed, the same meaning in this Deed;
- (b) the provisions of clause 1.2 (*Construction*) of the Guarantee and Debenture apply to this Deed as though they were set out in full in this Deed except that references in such clause to the Guarantee and Debenture are to be construed as references to this Deed; and
- (c) any reference in this Deed to a "**Finance Document**" or the "**Guarantee and Debenture**" or any other agreement, instrument or document is a reference to that Finance Document, the Guarantee and Debenture or other agreement, instrument or document as amended, novated, supplemented, extended,

restated or replaced including, without limitation, the amendment effected pursuant to this Deed and any amendment or supplement providing for further advances.

1.2.2 This Deed is designated as a Finance Document.

### 1.3 **Third party rights**

1.3.1 Unless expressly provided to the contrary in any Finance Document, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the “**Third Parties Act**”) to enforce or enjoy the benefit of any term of this Deed or any other Finance Document issued or entered into under or in connection with it but this does not affect any right or remedy of a third party which exists or is available apart from the Third Parties Act.

1.3.2 Notwithstanding any term of any Finance Document, the consent of any person who is not a Party is not required to rescind or vary this Deed or any other Finance Document entered into under or in connection with it.

1.3.3 Any Receiver may, subject to this clause 1.3 and the Third Parties Act, rely on any clause of this Deed which expressly confers rights on it.

## 2. **REPRESENTATIONS**

Each Chargor makes the representations and warranties set out in clause 4 (*Representations - General*) of the Guarantee and Debenture as at the date of this Deed with reference to the facts and circumstances then existing.

## 3. **AMENDMENTS TO THE GUARANTEE AND DEBENTURE**

Each of the Chargors and Chargee hereby agree that, with effect from the date of this Deed, the Guarantee and Debenture will be amended such that Clause 1.1 (*Definitions and Interpretation*):

3.1 the defined term, “**Chargor**” shall be deleted in its entirety and replaced with the following:

““**Chargor**” means the Company, BDL and each Additional Chargor, together being the “**Chargors**”;

3.2 the defined term, “**Finance Documents**” shall be deleted in its entirety and replaced with the following:

““**Finance Documents**” means this Deed, any loan agreement or bond instrument pursuant to which the Chargee lends to any Obligor from time to time, any bond or note issued by any Obligor to the Chargee from time to time and any other document creating or governing the Secured Liabilities or evidencing security in respect of the Secured Liabilities or any of them whether constituted prior to or after the date of this Deed;”;

3.3 the defined term, “**Secured Liabilities**” shall be deleted in its entirety and replaced with the following:

““**Secured Liabilities**” means all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally in any capacity whatsoever) of each Obligor which are, or are expressed to be, or may become due, owing or payable to the Chargee pursuant to the Finance Documents except for any obligation or liability which, if it were so included, would cause that obligation or liability or any security in respect thereof, to be unlawful or prohibited by any applicable law, together with all

costs, charges and expenses incurred by the Chargee in connection with the protection, preservation or enforcement of its rights;”;

3.4 the following defined terms shall be inserted where appropriate:

3.4.1 “**Additional Chargor**” means any person who accedes to the terms of this Deed pursuant to a duly executed Deed of Accession”;

3.4.2 “**Deed of Accession**” means a deed of accession to this Deed substantially in the form set out in Schedule 6 (Form of Deed of Accession)”;

3.4.3 “**Obligor**” means:

(a) the Chargors;

(b) db Symmetry Hinckley Ltd (registered in England and Wales with company number 10885167);

(c) db Symmetry (Aston Clinton) Ltd (registered in England and Wales with company number 11411008);

(d) db Symmetry (Bicester Reid) Ltd (registered in England and Wales with company number 10687504); and

(e) any other Subsidiary of the Company or any other entity designated as such by the Chargors and the Chargee from time to time.”; and

3.5 the form set out in Schedule 1 (*Form of Deed of Accession*) of this Deed shall be inserted as new Schedule 6 (*Form of Deed of Accession*).

#### 4. CONFIRMATION

Each Chargor confirms its consent to the amendment of the terms of the Guarantee and Debenture as set out herein and confirms that the security created in favour of the Chargee under the Guarantee and Debenture extends to all obligations of the Chargors to the Chargee under the Guarantee and Debenture as amended.

#### 5. CREATION OF SECURITY

To the extent only that the amendments referred to in Clause 3 (*Amendments to the Guarantee and Debenture*) are not effective (for whatever reason), each Chargor, as security for the payment and discharge of all the Secured Liabilities:

5.1 charges:

5.1.1 by way of a first legal mortgage all estates or interest in any freehold or leasehold property now owned by it; this includes the real property (if any) specified in Schedule 2 (Real Property) of this Deed; and

5.1.2 (to the extent that they are not the subject of a mortgage under Clause 5.1.1) by way of first fixed charge all estates or interest in any freehold or leasehold property now or subsequently owned by it;

5.2 charges by way of first fixed charge:

5.2.1 its interest in all shares, stocks, debentures, bonds or other securities and investments owned by it or held by any nominee on its behalf; and



- 5.2.2 any right, money or property accruing or offered at any time in relation to it by way of redemption, substitution, exchange, bonus or preference, under option rights or otherwise;
- 5.3 charges by way of first fixed charge all plant and machinery owned by it and its interest in any plant or machinery in its possession;
- 5.4 charges by way of first fixed charge all of its rights in respect of any amount standing to the credit of any account (including any account contemplated by this Deed) it has with any person and the debt represented by it;
- 5.5 charges by way of a first fixed charge:
  - 5.5.1 all of its book and other debts;
  - 5.5.2 all other moneys due and owing to it; and
  - 5.5.3 the benefit of all rights, securities or guarantees of any nature enjoyed or held by it in relation to any item under Clause 5.5.1 or 5.5.2;
- 5.6 charges, to the extent it is legally able to do so, by way of first fixed charge, the Intellectual Property Rights for the time being owned, possessed or controlled by it and all damages, compensation, remuneration, profit, rent or income which it may derive from the Intellectual Property Rights or be awarded or entitled in respect of such Intellectual Property Rights;
- 5.7 charges by way of first fixed charge all of its rights under any contract or policy of insurance taken out by it or on its behalf or in which it has an interest;
- 5.8 charges by way of first fixed charge all of its rights under any hedging arrangements to which it is a party;
- 5.9 assigns absolutely, subject to a proviso for re-assignment on redemption, all of its rights:
  - 5.9.1 in respect of all rental income from the Mortgaged Property;
  - 5.9.2 under each Development Management Agreement; and
  - 5.9.3 under any agreement to which it is a party except to the extent that it is subject to any fixed security created under any other term of this Clause;
- 5.10 charges by way of first fixed charge:
  - 5.10.1 any benefit, interest, claim or entitlement it has in any pension fund;
  - 5.10.2 its goodwill;
  - 5.10.3 the benefit of any Authorisation (statutory or otherwise) held in connection with its use of any Security Asset;
  - 5.10.4 the right to recover and receive compensation which may be payable to it in respect of any Authorisation referred to in Clause 5.10.3; and
  - 5.10.5 its uncalled capital; and
- 5.11 charges by way of a first floating charge all its assets not otherwise effectively mortgaged or charged by way of fixed mortgage or charge under this Clause.
- 5.12 Except as provided below, the Chargee may by notice to a Chargor convert the floating charge created by this Clause into a fixed charge as regards the relevant Chargor's assets specified in that notice, if:

- 5.12.1 an Event of Default is outstanding; or
  - 5.12.2 the Chargee considers those assets to be in danger of being seized or sold under any form of distress, execution or other legal process or otherwise.
- 5.13 The floating charge created by this Clause may not be converted into a fixed charge solely by reason of:
  - 5.13.1 the obtaining of a moratorium; or
  - 5.13.2 anything done with a view to obtaining a moratorium, under the Insolvency Act 2000.
- 5.14 The floating charge created by this Clause will automatically convert into a fixed charge over those assets of the Chargors from time to time subject to a floating charge pursuant to this Deed (the "Floating Charge Assets"):
  - 5.14.1 if steps are taken to appoint an administrator, or to issue a notice of intention to appoint an administrator, to a Chargor;
  - 5.14.2 if a Chargor knowingly creates or attempts to create any Security over all or any of the Floating Charge Assets; or
  - 5.14.3 if any person levies or attempts to levy any distress, execution, sequestration or other process against any of the Floating Charge Assets of a Chargor.
- 5.15 Paragraph 14 of schedule B1 to the Insolvency Act 1986 applies to the floating charge created by this Deed which floating charge is accordingly a qualifying floating charge for such purposes.

## **6. MISCELLANEOUS**

The provisions of clauses 17 (*Expenses and Indemnity*), 22.6 (*Severance*), of the Guarantee and Debenture shall apply to this Deed as if set out in this Deed, but as if references in those clauses to the Guarantee and Debenture were references to this Deed.

## **7. COUNTERPARTS**

This Deed may be executed in any number of counterparts and by the parties to it on separate counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

## **8. GOVERNING LAW AND JURISDICTION**

### **8.1 Governing law**

This Deed and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with English law.

### **8.2 Jurisdiction**

- 8.2.1 The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including claims for set-off and counterclaim and any dispute regarding the existence, validity or termination of this Deed and/or any non-contractual obligations arising out of or in connection with this Deed) (a "Dispute").
- 8.2.2 The Parties to this Deed agree that the courts of England are the most appropriate and convenient courts to settle Disputes and no party to this Deed will argue to the contrary.
- 8.2.3 This clause 8.2 is for the benefit of the Secured Parties only. As a result, no Secured Party shall be prevented from taking proceedings relating to a Dispute in any other

courts with jurisdiction. To the extent allowed by law, the Secured Parties may take concurrent proceedings in any number of jurisdictions.

**THIS DEED** has been executed by or on behalf of the Chargee and executed as a deed by each Chargor and is delivered on the date given at the beginning of this Deed.

**SCHEDULE 1**  
**FORM OF DEED OF ACCESSION**

**THIS DEED** is made on

20[ ]

**BETWEEN:**

- (1) **THE COMPAN[Y] / [IES] LISTED IN PART I OF THE SCHEDULE** (the "Acceding Chargor[s]");
- (2) **THE ENTITIES LISTED IN PART II OF SCHEDULE 1** (each an "Existing Chargor" and, together, the "Existing Chargors"); and
- (3) **DV4 PROPERTIES BARWOOD CO. LIMITED** (the "Chargee").

**BACKGROUND:**

- (A) This Deed is supplemental to a guarantee and debenture dated 19 December 2014 between the Chargors (named therein) and the Chargee (the "Debenture").
- (B) [The] / [Each] Acceding Chargor and each Existing Chargor enters into this Deed in connection with the Finance Documents (as defined in the Debenture).
- (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.

**IT IS AGREED** as follows:

**1. DEFINITIONS**

In this Deed (except where the context requires otherwise):

- 1.1 capitalised terms defined in the Debenture have, unless expressly defined in this Deed, the same meaning in this Deed;
- 1.2 the provisions of clause 1.2 (*Construction*) of the Debenture apply to this Deed as though they were set out in full in this Deed.

**2. ACCESSION OF THE ACCEDING CHARGOR[S]**

- 2.1 By the execution of this Deed, [the] / [each] Acceding Chargor unconditionally and irrevocably undertakes to and agrees with the Chargee to observe and be bound by the terms and provisions of the Debenture as if it were an Original Chargor under the Debenture.
- 2.2 Without prejudice to the generality of Clause 2.1, [the] / [each] Acceding Chargor:
  - 2.2.1 jointly and severally with the other Chargors covenants in the terms set out in clause 21.1 (*Covenant to pay*) of the Debenture;
  - 2.2.2 jointly and severally with the other Chargors covenants in the terms set out in clause 3 (*Guarantee*) of the Debenture; and
  - 2.2.3 in the manner and on the terms set out in clause 2 (*Creation of Security*) of the Debenture, charges and assigns all its property, assets and undertaking.
- 2.3 [The]/[Each] Existing Chargor[s]:

- 2.3.1 confirms its consent to the accession of [the] / [each] Acceding Chargor to the Debenture on the terms of Clauses 2.1 and 2.2 of this Deed;
- 2.3.2 agree that the Debenture shall from now on be read and construed as if [the] / [each] Acceding Chargor had been named in the Debenture as an Original Chargor; and
- 2.3.3 with effect on and from the date of this Deed, confirms that the guarantee and security created in favour of the Chargee under the Debenture extends to all liabilities and obligations of the Acceding Chargors to the Secured Parties.

### **3. INTERPRETATION**

This Deed shall from now on be read as one with the Debenture such that all references in the Debenture to "this Deed" and similar expressions shall include references to this Deed.

### **4. CREATION OF SECURITY**

#### **4.1 General**

- 4.1.1 All the security created under this Deed:
  - (a) is created in favour of the Chargee;
  - (b) is created over present and future assets of [the]/[each] Acceding Chargor;
  - (c) is security for the payment and satisfaction of all the Secured Liabilities;
  - (d) is created by [the]/[each] Acceding Chargor to the extent of its interest whether joint or several, legal or beneficial; and
  - (e) is made with full title guarantee in accordance with the Law of Property (Miscellaneous Provisions) Act 1994.
- 4.1.2 [The]/[Each] Acceding Chargor shall remain liable to perform all of its obligations under any contracts assigned to the Chargee under this Clause 4 (Creation of Security) and the Chargee shall not assume any obligation to perform any obligations under such contracts by virtue of this Deed.

#### **4.2 Land**

- 4.2.1 [The]/[Each] Acceding Chargor charges:
  - (a) by way of a first legal mortgage all estates or interest in any freehold or leasehold property now owned by it; this includes the real property (if any) specified in Schedule 1 (Real Property); and
  - (b) (to the extent that they are not the subject of a mortgage under Clause 4.1.1) by way of first fixed charge all estates or interest in any freehold or leasehold property now or subsequently owned by it.
- 4.2.2 A reference in this Deed to a mortgage or charge of any freehold or leasehold property includes:
  - (a) all buildings, fixtures, fittings and fixed plant and machinery on that property; and
  - (b) the benefit of any covenants for title given or entered into by any predecessor in title of [an]/[the] Acceding Chargor in respect of that property or any monies paid or payable in respect of those covenants.

**4.3 Securities**

[The]/[Each] Acceding Chargor charges by way of first fixed charge:

- 4.3.1 its interest in all shares, stocks, debentures, bonds or other securities and investments owned by it or held by any nominee on its behalf including, but not limited to, all shares issued by each member of the Group and any dividend or interest paid or payable in relation thereto; and
- 4.3.2 any right, money or property accruing or offered at any time in relation to it by way of redemption, substitution, exchange, bonus or preference, under option rights or otherwise.

**4.4 Plant and machinery**

[The]/[Each] Acceding Chargor charges by way of first fixed charge all plant and machinery owned by it and its interest in any plant or machinery in its possession.

**4.5 Credit balances**

[The]/[Each] Acceding Chargor charges by way of first fixed charge all of its rights in respect of any amount standing to the credit of any account (including any account contemplated by this Deed) it has with any person and the debt represented by it.

**4.6 Book debts etc.**

[The]/[Each] Acceding Chargor charges by way of a first fixed charge:

- 4.6.1 all of its book and other debts;
- 4.6.2 all other moneys due and owing to it; and
- 4.6.3 the benefit of all rights, securities or guarantees of any nature enjoyed or held by it in relation to any item under Clause 4.6.1 or 4.6.2.

**4.7 Intellectual Property Rights**

[The]/[Each] Acceding Chargor charges, to the extent it is legally able to do so, by way of first fixed charge, the Intellectual Property Rights for the time being owned, possessed or controlled by it and all damages, compensation, remuneration, profit, rent or income which it may derive from the Intellectual Property Rights or be awarded or entitled in respect of such Intellectual Property Rights.

**4.8 Insurances**

[The]/[Each] Acceding Chargor charges by way of first fixed charge all of its rights under any contract or policy of insurance taken out by it or on its behalf or in which it has an interest.

**4.9 Hedging**

[The]/[Each] Acceding Chargor charges by way of first fixed charge all of its rights under any hedging arrangements to which it is a party.

**4.10 Other Contracts**

[The]/[Each] Acceding Chargor assigns absolutely, subject to a proviso for re-assignment on redemption, all of its right, title and interest:

- 4.10.1 in respect of all rental and other income from the Mortgaged Property;
- 4.10.2 under each Development Management Agreement; and

- 4.10.3 under any agreement to which it is a party except to the extent that it is subject to any fixed security created under any other term of this Clause.

**4.11 Miscellaneous**

[The]/[Each] Acceding Chargor charges by way of first fixed charge:

- 4.11.1 any benefit, interest, claim or entitlement it has in any pension fund;
- 4.11.2 its goodwill;
- 4.11.3 the benefit of any Authorisation (statutory or otherwise) held in connection with its use of any Security Asset;
- 4.11.4 the right to recover and receive compensation which may be payable to it in respect of any Authorisation referred to in Clause 4.1.13; and
- 4.11.5 its uncalled capital.

**4.12 Separate charges**

Each of the charges referred to in Clauses 2.2 (Land) to 4.11 (Miscellaneous) (inclusive) shall be read and construed as, and deemed to be separate assignments or charges (as applicable) over each of the items mentioned in each such Clause, so that each item mentioned in each Clause shall be deemed to be subject to a separate assignment or charge (as applicable). Without limiting the previous sentence, if any such item shall be found to be subject to a floating charge and not to a fixed charge, such finding shall not of itself result in any other such item being deemed to be subject to a floating charge (as opposed to a fixed charge).

**4.13 Floating charge**

- 4.13.1 [The]/[Each] Acceding Chargor charges by way of a first floating charge all its assets not otherwise effectively mortgaged or charged by way of fixed mortgage or charge under this Clause.

- 4.13.2 Except as provided below, the Chargee may by notice to [an]/[the] Acceding Chargor convert the floating charge created by this Clause into a fixed charge as regards the [relevant] Acceding Chargor's assets specified in that notice, if:

- (a) an Event of Default is outstanding; or
- (b) the Chargee considers those assets to be in danger of being seized or sold under any form of distress, execution or other legal process or otherwise.

- 4.13.3 The floating charge created by this Clause may not be converted into a fixed charge solely by reason of:

- (a) the obtaining of a moratorium; or
- (b) anything done with a view to obtaining a moratorium, under the Insolvency Act 2000.

- 4.13.4 The floating charge created by this Subclause will automatically convert into a fixed charge over those assets of [each]/[the] Acceding Chargor from time to time subject to a floating charge pursuant to this Deed (the "**Floating Charge Assets**");

- (a) if steps are taken to appoint an administrator, or to issue a notice of intention to appoint an administrator, to [an]/[the] Acceding Chargor;

- (b) if [an]/[the] Acceding Chargor knowingly creates or attempts to create any Security over all or any of the Floating Charge Assets; or
- (c) if any person levies or attempts to levy any distress, execution, sequestration or other process against any of the Floating Charge Assets of [an]/[the] Acceding Chargor.

4.13.5 Paragraph 14 of schedule B1 to the Insolvency Act 1986 applies to the floating charge created by this Deed which floating charge is accordingly a qualifying floating charge for such purposes.

## **5. GUARANTEE**

### **5.1 Guarantee**

[The]/[Each] Acceding Chargor irrevocably and unconditionally jointly and severally:

- 5.1.1 guarantees to the Chargee punctual payment by each other Chargor of the Secured Liabilities; and
- 5.1.2 undertakes with the Chargee that whenever a Chargor does not pay any amount when due under or in connection with any Finance Document, it shall immediately on demand pay that amount as if it was the principal obligor.

### **5.2 Indemnity**

[The]/[Each] Acceding Chargor irrevocably and unconditionally jointly and severally agrees with the Chargee that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligation, indemnify the Chargee immediately on demand against any cost, loss or liability it incurs as a result of a Chargor not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under any Finance Document on the date when it would have been due. The amount payable by [an]/[the] Acceding Chargor under this indemnity will not exceed the amount it would have had to pay under this Clause 5 if the amount claimed had been recoverable on the basis of a guarantee.

### **5.3 Continuing obligations**

The obligations of [the]/[each] Acceding Chargor under this Clause 5 are continuing and will extend to the ultimate balance of sums payable by each Chargor under the Finance Documents, regardless of any intermediate payment or discharge in whole or in part.

### **5.4 Reinstatement**

If any discharge, release or arrangement (whether in respect of the obligations of [an]/[the] Acceding Chargor or any security for those obligations or otherwise) is made by the Chargee in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then the liability of [the]/[each] Acceding Chargor under this Clause 5 will continue or be reinstated as if the discharge, release or arrangement had not occurred.

### **5.5 Guarantor intent**

Without prejudice to the generality of Clause 21.3 (Waiver of defences) of the Guarantee and Debenture, [the]/[each] Acceding Chargor expressly confirms that it intends that this guarantee shall extend from time to time to any (however fundamental) variation, increase, extension or



addition of or to any of the Finance Documents and/or any facility or amount made available under any of the Finance Documents for the purposes of or in connection with any of the following: acquisitions of any nature; increasing working capital; enabling distributions to be made; carrying out restructurings; refinancing existing facilities; refinancing any other indebtedness; making facilities available to new borrowers; any other variation or extension of the purposes for which any facility or amount might be made available from time to time; and any fees, costs and/or expenses associated with any of the foregoing.

#### **5.6 Deferral of Chargors' rights**

Until all amounts which may be or become payable by the Chargors under or in connection with the Finance Documents have been irrevocably paid in full and unless the Chargee otherwise directs, no Acceding Chargor will exercise any rights which it may have by reason of performance by it of its obligations under the Finance Documents or by reason of any amount being payable, or liability arising, under this Clause 5:

- 5.6.1 to be indemnified by a Chargor;
- 5.6.2 to claim any contribution from any other guarantor of any Chargor's obligations under the Finance Documents;
- 5.6.3 to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Chargee under the Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, the Finance Documents by the Chargee;
- 5.6.4 to bring legal or other proceedings for an order requiring any Chargor to make any payment, or perform any obligation, in respect of which any Chargor has given a guarantee, undertaking or indemnity under Clause 3.1 (Guarantee);
- 5.6.5 to exercise any right of set-off against any Chargor; and/or
- 5.6.6 to claim or prove as a creditor of any Chargor in competition with the Chargee.
- 5.6.7 If [an]/[the] Acceding Chargor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Chargee by the Chargors under or in connection with the Finance Documents to be repaid in full on trust for the Chargee and shall promptly pay or transfer the same to Chargee.

#### **6. FURTHER ASSURANCES**

[The]/[Each] Acceding Chargor must, at its own expense, take whatever action the Chargee or a Receiver may require for:

- 6.1.1 creating, perfecting or protecting any security intended to be created by this Deed; or
- 6.1.2 facilitating the realisation of any Security Asset, or the exercise of any right, power or discretion exercisable, by the Chargee or any Receiver or any of its delegates or sub-delegates in respect of any Security Asset.

This includes:

- 6.1.3 the execution of any transfer, conveyance, assignment or assurance of any property, whether to the Chargee or to its nominee; or
- 6.1.4 the giving of any notice, order or direction and the making of any registration,

which, in any such case, the Chargee may think expedient.

**7. COUNTERPARTS**

This Deed may be executed in any number of counterparts and by the parties to it on separate counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

**8. APPLICABLE LAW AND JURISDICTION**

- 8.1 The validity, construction and performance of this Deed (and any claim, dispute or matter arising under or in connection with it or its enforceability) shall be governed by and construed in accordance with the laws of England.
- 8.2 Each of the parties to this Deed irrevocably agrees for the exclusive benefit of the Chargee that the English courts shall have exclusive jurisdiction over any claim, dispute or matter arising under or in connection with this Deed or its enforceability and that accordingly any proceedings in respect of any such claim, dispute or matter may be brought in such courts.
- 8.3 [The]/[Each] Acceding Chargor (which is not incorporated in England and Wales) irrevocably appoints [●] as its agent to receive on its behalf in England service of any proceedings arising out of or in connection with this Deed. Such service shall be deemed completed on delivery to such agent (whether or not it is forwarded to and received by the Acceding Chargor[s]). If for any reason such agent ceases to be able to act as agent or no longer has an address in England, the Acceding Chargor[s] shall immediately appoint a substitute acceptable to the Chargee and deliver to the Chargee the new agent's name, address and fax number.

**THIS DEED** has been entered into on the date stated at the beginning of this Deed and executed and delivered by or on behalf of the parties as a deed on the date specified above.

**The Acceding Chargor[s]**

**Part 1**

<b>COMPANY NAME</b>	<b>COMPANY NO.</b>	<b>JURISDICTION OF INCORPORATION</b>
[NAME[S] OF ACCEDING CHARGOR[S]]	[NUMBER[S] OF ACCEDING CHARGOR[S]]	[ • ]

**Part II**

**The Existing Chargor[s]**

<b>COMPANY NAME</b>	<b>COMPANY NO.</b>	<b>JURISDICTION OF INCORPORATION</b>
[NAME[S] OF EXISTING CHARGOR[S]]	[NUMBER[S] OF EXISTING CHARGOR[S]]	[ • ]

**DEED OF ACCESSION  
EXECUTION**

**ACCEDING CHARGORS**

[EXECUTED as a deed but not ) *Director's*  
delivered until the date of this deed by ) *Signature*.....  
[ ] acting through its member ) .....  
[●] acting by its director in the presence )  
of: *Print*  
*Name*.....

*Witness's*  
*Signature*.....

*Name*.....

*Address*.....

.....

.....

Occupation.....]

**[Insert signature blocks for [the]/[each] Acceding Chargor]**

**EXISTING CHARGORS**

[EXECUTED as a deed but not ) *Director's*  
delivered until the date of this deed by ) *Signature*.....  
[ ] acting through its member ) .....  
[●] acting by its director in the presence )  
of: *Print*  
*Name*.....

*Witness's*

*Signature*.....

*Name*.....

*Address*.....

.....

.....

Occupation.....]

[Insert signature blocks for each Existing Chargor]

**CHARGE**

<b>EXECUTED</b> as a deed but not	)	<i>Director's</i>
delivered until the date of this deed	)	<i>Signature</i> .....
by	)	
<b>DV4 PROPERTIES BARWOOD</b>	)	<i>Print Name</i> .....
<b>CO. LIMITED</b> a company		
registered in the British Virgin		
Islands acting by a director being		
persons who, in accordance with the		
laws of that territory are acting		
under the authority of the company		
in the presence of:		

*Witness's*

*Signature*.....

*Name*.....

*Address*.....

.....

.....

Occupation.....”

**SCHEDULE 2  
REAL PROPERTY**

None

**SIGNATURES**

**EXECUTED** as a deed )

by **DB SYMMETRY GROUP LTD** )

acting by: )

Director's Signature

Print Name

*RICHARD BOWEN*

in the presence of:

*Witness's Signature*

*Name*

*WILLIAM CLIMON*

*Address*

*Occupation*

**EXECUTED** as a deed )

by **DB SYMMETRY LTD** )

acting by: )

Director's Signature

Print Name

*RICHARD BOWEN*

in the presence of:

*Witness's Signature*

*Name*

*WILLIAM CLIMON*

*Address*

*Occupation*

**Chargee**

**EXECUTED** as a deed )

by **DV4 PROPERTIES BARWOOD CO.** )

**LIMITED** )

acting by: )

Director's Signature  )

Print Name *Andew Presons* )

in the presence of:

*Witness's Signature*

*Name*

  
*Jeanne Anna Whittes*

*Address*

*Thistle House*  
*4 Burnaby Street*  
*Hamilton HM 11*  
*Bermuda*

*Occupation*

*Administrative Assistant*