



**Registration of a Charge**

Company name: **BAYSHILL PROPERTIES LIMITED**

Company number: **05668978**

Received for Electronic Filing: **24/08/2020**



X9C44HGY

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**Details of Charge**

Date of creation: **21/08/2020**

Charge code: **0566 8978 0002**

Persons entitled: **HSBC UK BANK PLC**

Brief description:

**Contains fixed 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:

**BEN POWELL ON BEHALF OF WOMBLE BOND DICKINSON (UK)  
LLP**



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

Company number: 5668978

Charge code: 0566 8978 0002

The Registrar of Companies for England and Wales hereby certifies that a charge dated 21st August 2020 and created by BAYSHILL PROPERTIES LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 24th August 2020 .

Given at Companies House, Cardiff on 25th August 2020

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**

**DATED**

**21 August**

**2020**

**(1) BAYSHILL PROPERTIES LIMITED**

**- and -**

**(2) HSBC UK BANK PLC**

**CHARGE OVER SUBORDINATED DEBT**

**HSBC** 

**HSBC UK Bank plc**

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THIS DEED is made on

21 August

2020

**BETWEEN:**

- (1) **BAYSHILL PROPERTIES LIMITED** a company incorporated in England and Wales (registered number 05668978) whose registered office is at Third Floor, 95 The Promenade, Cheltenham, Gloucestershire, GL50 1HH (the "Chargor"); and
- (2) **HSBC UK BANK PLC** (the "Lender").

**IT IS AGREED** as follows:

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Deed:

<b>"Affiliate"</b>	means a Subsidiary of a company, a Holding Company of that company or any other Subsidiary of that Holding Company
<b>"Authorisation"</b>	means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration
<b>"Borrower"</b>	means Fishmour LLP, a company incorporated and registered under the laws of England and Wales with registered number OC430204 whose registered office is at Third Floor, 95 The Promenade, Cheltenham, United Kingdom, GL50 1HH
<b>"Holding Company"</b>	has the meaning given in section 1159 of the Companies Act 2006
<b>"Interest Rate"</b>	means the rate of interest payable on any facility secured by the Security
<b>"Parallel Security Document"</b>	means any security document in respect of any asset secured under this Deed entered into by the Chargor in favour of HSBC Bank plc
<b>"Receiver"</b>	means an administrative receiver, a receiver and/or manager of any or all of the Chargor's assets appointed by the Lender under the Security
<b>"Secured Liabilities"</b>	means all monies from time to time due or owing and all other actual or contingent liabilities from time to time incurred by the Borrower to the Lender and all monies covenanted to be paid by the Chargor under this Deed
<b>"Security"</b>	means the Security Interests created or intended to be created by or pursuant to this Deed
<b>"Security Assets"</b>	means all the Chargor's assets from time to time the subject of Security
<b>"Security Interest"</b>	means a mortgage, charge, assignment, pledge, lien, standard security, assignation or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect

<b>"Subordinated Debt"</b>	means any monies, obligations and liabilities (whether actual or contingent, whether incurred solely or jointly with any other person and whether incurred as principal or surety) now or in the future due, owing or incurred by the Borrower to the Chargor in any currency, together with all interest on any of the same, and all costs, charges and expenses incurred in connection with any of the same
<b>"Subordinated Debt Documentation"</b>	means the documents specified in Schedule 1 ( <i>Subordinated Debt Documentation</i> ) and all other agreements and/or security evidencing or recording the terms of the Subordinated Debt from time to time
<b>"Subsidiary"</b>	has the meaning given in section 1159 of the Companies Act 2006 and in interpreting that provision for the purposes of this Deed, a company is to be treated as a member of a subsidiary if it would have been a subsidiary of that company but for any registration of its shares in the name of (i) a nominee or (ii) any party holding Security over those shares, or that secured party's nominee where such registration is necessary or desirable for the purpose of perfecting any such Security.

## 1.2 Interpretation

1.2.1 Unless a contrary indication appears, any reference in this Deed to:

- (a) **"assets"** includes present and future properties, revenues and rights of every description;
- (b) **"the Lender"** shall be construed to include its successors in title, permitted assigns and permitted transferees;
- (c) a **"disposal"** includes a licence, transfer, sale or other disposal of any kind whether voluntary or involuntary;
- (d) **"includes"** or **"including"** shall be read and construed as including the phrase **"without limitation"**;
- (e) this **"Deed"** or any other agreement or instrument is a reference to this Deed, or other agreement or instrument as amended, supplemented, extended, restated, novated and/or replaced in any manner from time to time (however fundamentally and even if any of the same increases the Borrower's obligations or provides for further advances);
- (f) a provision of law is a reference to that provision as amended or re-enacted; and
- (g) the singular includes the plural and vice versa.

1.2.2 When any provision of this Deed refers to an approval or consent by the Lender that provision shall be construed so as to require that consent or approval to be given in writing.

1.2.3 Where the Chargor includes two or more entities a reference to the Chargor shall mean to each of the entities severally as well as all of the entities jointly.

1.2.4 Where the Chargor is not a limited company, references to **"its"** and **"it"** shall be read and construed as references to **"his"** and **"him"** or **"her"** as applicable.

1.2.5 References to clauses and paragraphs are to be construed, unless otherwise stated, as references to clauses and paragraphs of this Deed.



1.2.6 Clause headings are for ease of reference only and shall not affect the construction of this Deed.

1.2.7 If the Lender reasonably considers that an amount paid by the Chargor under this Deed or Borrower is capable of being avoided or otherwise set aside on the bankruptcy, liquidation or administration of the Chargor or the Borrower, then that amount shall not be considered to have been irrevocably paid for the purposes of this Deed.

### **1.3 Third party rights**

Only a Receiver has any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Deed.

### **1.4 Delivery**

The parties intend this Deed to be delivered on the first date specified on page 1 of this Deed and that this Deed shall take effect as a deed notwithstanding the fact that the Lender may only execute this Deed under hand.

## **2. COVENANT TO PAY**

### **2.1 Covenant to pay**

2.1.1 The Chargor shall pay or discharge each of the Secured Liabilities when the same fall due for payment. The total amount recoverable by the Lender or any Receiver from the Chargor in relation to the Secured Liabilities shall be limited to the amount realised from the proceeds of sale or other disposal or realisation of the Security Assets together with all costs, expenses, interest and other amounts payable by the Chargor under the terms of this Deed.

2.1.2 Clause 2.1.1 shall only limit the liability of the Chargor for the discharge of the Secured Liabilities and shall not:

- (a) reduce or discharge the Secured Liabilities themselves or limit or restrict the accrual of interest (including default interest) on any amount; or
- (b) limit the rights of the Lender or any Receiver to recover any amount from any person other than the Chargor in connection with the Secured Liabilities.

### **2.2 Trust**

If or to the extent that for any reason the assignment or charging of any Security Asset is prohibited, the Chargor shall:

2.2.1 hold it on trust for the Lender as security for the payment and discharge of the Secured Liabilities; and

2.2.2 take such steps as the Lender may require to remove the impediment to assignment or charging it.

### **2.3 Further advances**

This Deed is made to secure any further advances or other facilities but it does not create any obligation on the Lender to make any further advances or make other facilities available.

### **2.4 Default interest**

2.4.1 Any amount which is not paid under this Deed when due shall bear interest (both before and after judgment and payable on demand) from the due date until the date on which such

amount is unconditionally and irrevocably paid and discharged in full on a daily basis at the rate that is two per cent above the Interest Rate from time to time.

- 2.4.2 Default interest will accrue from day to day on a year of 365 days and will be compounded at such intervals as the Lender considers are appropriate but will remain immediately due and payable.

### **3. SECURITY**

#### **3.1 Nature of security**

All Security and dispositions created or made by or pursuant to this Deed are created or made in favour of the Lender with full title guarantee in accordance with the Law of Property (Miscellaneous Provisions) Act 1994 as security for the discharge of the Secured Liabilities.

#### **3.2 Assignment**

- 3.2.1 The Chargor assigns and agrees to assign (subject to a proviso for re-assignment on redemption) to the Lender absolutely, as continuing security for the payment, performance and discharge of the Secured Liabilities all of its right, title, benefit and interest (both present and future) in, to and under:

- (a) the Subordinated Debt;
- (b) the Subordinated Debt Documentation; and
- (c) all present and future claims, causes of action, payments and proceeds in respect thereof.

- 3.2.2 To the extent that any such right, title, benefit and interest described in Clause 3.2.1 is not assignable or capable of assignment, such assignment purported to be effected by Clause 3.2.1 shall operate, as continuing security for the payment, discharge, performance and satisfaction of the Secured Liabilities, as an assignment of any and all proceeds of such right, title, benefit or interest paid or payable thereunder save for any proceeds or other amounts properly payable to any third party and to which the Chargor has no right, title, benefit or interest.

#### **3.3 Charge**

The Chargor, as continuing security for the payment, performance and discharge of the Secured Liabilities, charges in favour of the Lender by way of a first fixed charge (to the extent the same are not capable of assignment under Clause 3.2 (*Assignment*)) all its rights, title, benefit and interest (both present and future) in, to and under:

- 3.3.1 the Subordinated Debt;
- 3.3.2 the Subordinated Debt Documentation; and
- 3.3.3 all present and future claims, causes of action, payments and proceeds in respect thereof.

#### **3.4 Notice of Security**

The Chargor must immediately give notice of the grant of the Security to the Borrower in the form set out in the Schedule 2 (*Form of notice of assignment*), and it shall use its reasonable endeavours to procure that the recipient of the notice acknowledges it in writing.

#### **3.5 Ranking**

The Chargor consents to the Lender and HSBC Bank plc entering into priority, intercreditor or other similar arrangements (to which the Chargor shall not be party) to regulate the ranking of the security granted by the Chargor under this Deed and any Parallel Security Document.

#### **4. REPRESENTATIONS**

##### **4.1 General**

The Chargor makes the representations and warranties set out in this Clause 4 (*Representations*) to the Lender on the date of this Deed and on each day the Secured Liabilities are outstanding.

##### **4.2 Status**

4.2.1 It is a limited liability corporation, duly incorporated and validly existing under the law of its jurisdiction of incorporation.

4.2.2 It and each of its Subsidiaries has the power to own its assets and carry on its business as it is being conducted.

##### **4.3 Binding obligations**

4.3.1 Its obligations in this Deed are legal, valid, binding and enforceable obligations.

4.3.2 The Security Interests which this Deed purports to create are valid and effective and are not liable to be avoided or otherwise set aside on its liquidation or administration.

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

The entry into and performance by it of its obligations under this Deed and the granting of the Security do not and will not conflict with:

4.4.1 any law or regulation applicable to it;

4.4.2 its constitutional documents; or

4.4.3 any agreement or instrument binding upon it or any of its assets or constitute a default or termination event (however described) under any such agreement or instrument.

##### **4.5 Power and authority**

4.5.1 It has the power to enter into, perform and deliver, and have taken all necessary action to authorise its entry into, performance and delivery of, this Deed and the grant of the Security.

4.5.2 No limit on its powers will be exceeded as a result of the grant of the Security.

##### **4.6 Validity and admissibility in evidence**

4.6.1 All Authorisations required or desirable:

(a) to enable it lawfully to enter into, exercise its rights and comply with its obligations under this Deed and to grant the Security; and

(b) to make this Deed admissible in evidence in its jurisdiction of incorporation,

have been obtained or effected and are in full force and effect.

4.6.2 All Authorisations necessary for the conduct of its business, trade and ordinary activities have been obtained or effected and are in full force and effect.

#### **4.7 Solvency**

As at the date of this Deed:

- 4.7.1 it is able to meet its debts as they fall due;
- 4.7.2 it is not deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or any analogous provision in any relevant jurisdiction; and
- 4.7.3 no corporate action, legal proceeding or other procedure or step has been taken in relation to:
  - (a) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Chargor;
  - (b) a composition, compromise, assignment or arrangement with any creditor of the Chargor;
  - (c) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of the Chargor or any of its assets; or
  - (d) enforcement of any Security over any assets of the Chargor,or any analogous procedure or step has been taken in any jurisdiction.

#### **4.8 Security**

No Security Interest exists over any of the Security Assets other than pursuant to a Parallel Security Document or as permitted by this Deed.

#### **4.9 Ranking**

The Security has or will have first ranking priority and it is not subject to any prior ranking or pari passu ranking Security Interest (other than pursuant to any Parallel Security Document).

#### **4.10 Title to assets**

It is the sole legal and beneficial owner of the Security Assets.

#### **4.11 Centre of main interest and establishments**

For the purposes of Regulation (EU) 2015/848 of 20 May 2015 on insolvency proceedings (recast) (the "Regulation"), its "*centre of main interest*" (as that term is used in Article 3(1) of the Regulation) is situated in England and Wales and it has no "*establishment*" (as that term is used in Article 2(h) of the Regulation) in any other jurisdiction.

#### **4.12 Governing law and enforcement**

- 4.12.1 The choice of law specified in this Deed as the governing law of this Deed will be recognised and enforced in its jurisdiction of incorporation.
- 4.12.2 Any judgment obtained in England in relation to this Deed will be recognised and enforced in its jurisdiction of incorporation.

#### **4.13 Information**

- 4.13.1 All information supplied by it or on its behalf to the Lender or any Receiver in connection with this Deed or any Security Asset was true and accurate as at the date it was provided or as at any date at which it was stated to be given.
- 4.13.2 It has not omitted to supply any information which, if disclosed, would make the information referred to in Clause 4.13.1 untrue or misleading in any respect.

#### **4.14 Sanctions**

None of the Chargor, any of its Subsidiaries, any director or officer or any employee, agent, or affiliate of the Chargor or any of its Subsidiaries is an individual or entity ("Person") that is, or is owned or controlled by Persons that are, (i) the subject of any sanctions administered or enforced by the US Department of the Treasury's Office of Foreign Assets Control, the US Department of State, the United Nations Security Council, the European Union, Her Majesty's Treasury, or the Hong Kong Monetary Authority (collectively, "Sanctions"), or (ii) located, organised or resident in a country or territory that is the subject of Sanctions, including currently, the Crimea region, Cuba, Iran, North Korea and Syria other than to the extent that such representation/warranty would conflict with Council Regulation (EC) No 2271/96, as amended.

#### **4.15 Anti-corruption law**

The Charger has conducted its businesses in compliance with applicable anti-corruption laws and has instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

### **5. GENERAL UNDERTAKINGS**

#### **5.1 Negative pledge**

The Chargor shall not create or permit to subsist any Security Interest (other than a Security Interest created under any Parallel Security Document) over any Security Asset without the consent of the Lender.

#### **5.2 No disposals**

Unless the Lender consents, the Chargor shall not make any disposal of its assets that are mortgaged, charged or assigned to the Lender by this Deed even if the disposal is involuntary.

#### **5.3 Covenants and payments**

The Chargor must:

- 5.3.1 observe and perform all covenants and other obligations and matters (whether or not contained in any agreement or other document) from time to time affecting any of the Security Assets and on the Lender's reasonable request produce evidence to satisfy the Lender that it is complying with this obligation;
- 5.3.2 not permit any breach of any bye-laws, other laws and regulations affecting any of the Security Assets; and
- 5.3.3 pay or procure the payment of all taxes, charges, assessments, impositions and other outgoings of any kind which are from time to time payable in respect of any of the Security Assets.

#### **5.4 Enforcement of rights**

The Chargor must at its cost use its best endeavours to enforce any rights and institute, continue or defend any proceedings relating to any of the Security Assets which the Lender may require from time to time.

#### **5.5 Amendments to documents**

The Chargor shall not amend, vary, novate, supplement, supersede, waive or terminate any provision of any Subordinated Debt Documentation without the prior written consent of the Lender.

### **6. FURTHER ASSURANCE**

The Chargor shall at its own expense ensure any documents are executed and any acts and things are done which the Lender may reasonably require from time to time for:

- 6.1 giving effect to, perfecting or protecting the Security;
- 6.2 facilitating the realisation of any Security Asset;
- 6.3 facilitating the exercise of all powers, authorities and discretions vested in the Lender or in any Receiver; or
- 6.4 perfecting any Security over any assets acquired by the Chargor after the date of this Deed.

### **7. ENFORCEMENT**

#### **7.1 Remedying defaults**

The Lender or a Receiver may (but is not obliged to) take any action to remedy a failure by the Chargor to observe and perform the provisions of this Deed at the Chargor's cost.

#### **7.2 Timing of enforcement**

7.2.1 The Secured Liabilities are deemed to have become due on the date of this Deed.

7.2.2 The Security shall become enforceable on the earlier of:

- (a) the date the Lender demands repayment of any of the Secured Liabilities;
- (b) the date the Chargor breaches a provision of this Deed or any document evidencing the facilities to which the Secured Liabilities relate;
- (c) the date the Borrower breaches a provision of any document evidencing the facilities to which the Secured Liabilities relate;
- (d) any Security Interest created pursuant to a Parallel Security Document becoming enforceable; or
- (e) the Chargor's request.

7.2.3 Neither section 93(1) nor section 103 of the Law of Property Act 1925 shall apply to this Deed.

### **7.3 Powers of the Lender**

7.3.1 At any time after the Security becomes enforceable or if requested by the Chargor, the Lender may without further notice (unless required by law):

- (a) appoint any person (or persons) to be a receiver, receiver and manager or administrative receiver of all or any part of the Security Assets and/or of the income of the Security Assets; and/or
- (b) appoint or apply for the appointment of any person who is appropriately qualified as the Chargor's administrator; and/or
- (c) exercise all or any of the powers conferred on mortgagees by the Insolvency Act 1986, the Law of Property Act 1925 (as amended or extended by this Deed) and/or all or any of the powers which are conferred by this Deed on a Receiver, in each case without first appointing a Receiver or notwithstanding the appointment of any Receiver; and/or
- (d) take such further action as it sees fit to enforce all or any part of the Security.

### **7.4 No liability**

Neither the Lender nor any Receiver shall be liable as a mortgagee in possession or otherwise to account in relation to the Security Assets for any loss on realisation or for any other default or omission. No exercise of the right in Clause 7.1 (*Remedying defaults*) shall render the Lender or a Receiver a mortgagee in possession. Neither the Lender nor any Receiver is under any obligation to exercise any power or discretion enjoyed by it in relation to the Security Assets.

## **8. RECEIVER**

### **8.1 Removal and replacement**

The Lender may from time to time remove any Receiver appointed by it and, whenever it may deem appropriate, may appoint a new Receiver in the place of any Receiver whose appointment has terminated.

### **8.2 Multiple Receivers**

If at any time there is more than one Receiver of all or any part of the Security Assets and/or the income of the Security Assets, each Receiver shall have power to act individually (unless otherwise stated in the appointment document).

### **8.3 Remuneration**

8.3.1 Any Receiver shall be entitled to remuneration for his services at a rate to be fixed by agreement between him and the Lender (or, failing such agreement, to be fixed by the Lender) and section 109(6) of the Law of Property Act 1925 shall not apply.

8.3.2 The remuneration of any Receiver shall be payable by the Chargor and shall form part of the Secured Liabilities.

### **8.4 Payment by Receiver**

Only monies actually paid by a Receiver to the Lender in relation to the Secured Liabilities shall be capable of being applied by the Lender in discharge of the Secured Liabilities.

### **8.5 Chargor's agent**

Any Receiver shall be the Chargor's agent and the Chargor shall (subject to the Companies Act 2006 and the Insolvency Act 1986) be solely responsible for his acts and defaults and for the payment of

his remuneration. The Lender shall not incur any liability (either to the Chargor or to any other person) by reason of the appointment of a Receiver or for any other reason.

## **9. POWERS OF RECEIVER**

### **9.1 General powers**

#### **9.1.1 Any Receiver shall have:**

- (a) all the powers which are conferred by the Law of Property Act 1925 on mortgagees in possession and receivers appointed under that Act but without the restrictions contained in sections 103 or 109(1) of that Act;
- (b) (whether or not he is an administrative receiver) all the powers which are listed in schedule 1 of the Insolvency Act 1986; and
- (c) all powers which are conferred by any other law or regulation conferring power on receivers.

9.1.2 To the extent that the Security Assets constitute "*financial collateral*" and this Deed and the Chargor's obligations under this Deed constitute a "*security financial collateral arrangement*" (in each case for the purpose of and as defined in the Financial Collateral Arrangements (No.2) Regulations 2003 (SI 2003/3226) each Receiver and the Lender shall have the right after this Security has become enforceable to appropriate all or any part of that financial collateral in or towards that satisfaction of the Secured Liabilities.

9.1.3 For the purpose of Clause 9.1.2, the value of the financial collateral appropriated shall be such amount as the Receiver or Lender reasonably determines having taken into account advice obtained by it from an independent investment or accountancy firm of national standing selected by it.

### **9.2 Additional powers**

In addition to the powers referred to in Clause 9.1 (*General powers*), a Receiver shall have the following powers:

- 9.2.1 to take possession of, collect and get in all or any part of the Security Assets and/or income in respect of which he was appointed;
- 9.2.2 to redeem any Security Interest and to borrow or raise any money and secure the payment of any money in priority to the Secured Liabilities for the purpose of the exercise of his powers and/or defraying any costs or liabilities incurred by him in such exercise;
- 9.2.3 to sell or concur in selling or otherwise disposing of all or any part of the Security Assets in respect of which he was appointed without the need to observe the restrictions imposed by section 103 of the Law of Property Act 1925, and, without limitation:
  - (a) the consideration for any such transaction may consist of cash, debentures or other obligations, shares, stock or other valuable consideration (and the amount of such consideration may be dependent upon profit or turnover or be determined by a third party); and
  - (b) any such consideration may be payable in a lump sum or by instalments spread over such period as he thinks fit;
- 9.2.4 to carry out any sale or other disposal of all or any part of the Security Assets by conveying, transferring or assigning the same in the Chargor's name and, for that purpose, to enter into covenants and other contractual obligations in the Chargor's name and so as to bind the Chargor;



- 9.2.5 to take any such proceedings in the Chargor's name as he shall think fit in respect of the Security Assets and/or income in respect of which he was appointed (including proceedings for recovery of rent or other monies in arrears at the date of his appointment);
- 9.2.6 to enter into or make any such agreement, arrangement or compromise as he shall think fit;
- 9.2.7 to form one or more subsidiaries of the Chargor and to transfer to any such subsidiary all or any part of the Security Assets; and
- 9.2.8 to:
  - (a) give valid receipts for all monies and to do all such other things as may seem to him to be incidental or conducive to any other power vested in him or necessary or desirable for the realisation of any Security Asset;
  - (b) exercise in relation to each Security Asset all such powers and rights as he would be capable of exercising if he were the absolute beneficial owner of the Security Assets; and
  - (c) use the Chargor's name for any of the above purposes.

### 9.3 Limitation

The Lender may in the instrument by which a Receiver is appointed limit the powers of the Receiver.

## 10. APPROPRIATION OF RECEIPTS

### 10.1 Application

- 10.1.1 Subject to Clause 10.2 (*Suspense account*), any monies received by the Lender in respect of the Security (subject to the payment of any claims having priority to the Security, but in substitution for section 109(8) of the Law of Property Act 1925) shall be applied in the following order of priority:
  - (a) in discharging the remuneration of any Receiver and all costs, charges and expenses of and incidental to his or her appointment;
  - (b) in or towards payment or discharge of the Secured Liabilities; and
  - (c) in payment of the surplus (if any) to the Chargor or other person entitled to it.
- 10.1.2 The Lender may apply sums received towards the payment or discharge of the Secured Liabilities in reduction of any part of the Secured Liabilities in any order or manner as it thinks fit. The Lender may override any appropriation made by the Chargor.

### 10.2 Suspense account

Any monies received by the Lender or any Receiver may be placed in an interest bearing suspense or securities realised account and kept there for so long as the Lender considers prudent.

## 11. SET-OFF

- 11.1 The Lender may (but shall not be obliged to) set off any obligation which is due and payable by the Chargor and unpaid or any contingent obligation from the Chargor against any obligation (whether or not matured) owed by the Lender or any of its Affiliates to the Chargor, regardless of the place of payment, booking branch or currency of either obligation.
- 11.2 If either obligation is unliquidated or unascertained, the Lender may set off in an amount estimated by it in good faith to be the amount of that obligation.

**12. CURRENCY CONVERSION**

All monies received or held by the Lender or any Receiver under this Deed may be converted from their existing currency into such other currency as the Lender or the Receiver considers necessary or desirable to cover the obligations and liabilities comprised in the Secured Liabilities in that other currency at the Lender's spot rate of exchange.

**13. NEW ACCOUNT**

If the Lender receives or is deemed to be affected by notice (whether actual or constructive) of any subsequent Security Interest affecting some or all of the Security Assets or their proceeds of sale, then the Lender may open a new account for the Chargor. If it does not do so, it shall nevertheless be treated as if it had done so at the time when it received, or was deemed to have received, the notice. As from that time, any payment made to the Lender for the Chargor's account shall be credited (or be treated as having been credited) to the new account and shall not operate to reduce the amount for which the Security applies.

**14. DELEGATION AND APPOINTMENT OF ATTORNEYS**

**14.1 Delegation**

14.1.1 The Lender may delegate to any person or persons all or any of the powers, authorities and discretions which are exercisable under this Deed. A delegation may be made in any manner (including by power of attorney) in and on any terms (including power to sub-delegate) which the Lender thinks fit.

14.1.2 The Lender shall not be liable or responsible to the Chargor for any loss or damage arising from any act, default, omission or misconduct on the part of any of its delegates or sub-delegates.

**14.2 Attorneys**

14.2.1 By way of security, the Chargor irrevocably appoints the Lender, every Receiver and every delegate or sub-delegate appointed under Clause 14.1 (*Delegation*) separately to be its attorney on its behalf, in its name:

- (a) to execute and do any documents, acts and things which it is required to execute and do under this Deed or any other document relating to the Secured Liabilities; and
- (b) to execute and do any documents, acts and things which any attorney may deem proper or desirable in exercising any powers, authorities and discretions conferred by this Deed any documents relating to the Secured Liabilities or by law on the Lender or any Receiver.

14.2.2 The Chargor ratifies and confirms anything which any of its attorneys does in the proper and lawful exercise or purported exercise of all or any of the powers, authorities and discretions referred to in this Clause 14.2 (*Attorneys*).

**15. REDEMPTION OF PRIOR SECURITY INTERESTS**

**15.1 Redemption**

The Lender may at any time redeem, or procure the transfer to it of, any prior Security Interest over any Security Assets at the Chargor's cost.

**15.2 Costs of redemption**

All principal monies, interest, costs, charges and expenses incurred in and incidental to any redemption or transfer under Clause 15.1 (*Redemption*) shall be paid by the Chargor on demand, in each case together with interest calculated and in the manner referred to in Clause 19 (*Indemnities*).

**16. RELEASES**

**16.1 Releases conditional**

16.1.1 Any release, settlement, discharge, re-assignment or arrangement in respect of the Security (in this Clause 16 (*Releases*), a "release") made by the Lender on the faith of any assurance, security or payment shall be conditional on that assurance, security or payment not being avoided, reduced, clawed back or ordered to be repaid under any law relating to liquidation, bankruptcy or insolvency.

16.1.2 If any avoidance, reduction, or clawback occurs or any order is made as referred to in Clause 16.1 (*Releases conditional*), then the release shall have no effect and shall not prejudice the Lender's right to enforce the Security in respect of the Secured Liabilities. As between the Chargor and the Lender, the Security shall (notwithstanding the release) be deemed to have remained at all times in effect and held by the Lender as security for the Secured Liabilities.

**16.2 Retention**

16.2.1 If and for so long as any assurance, security or payment as is mentioned in Clause 16.1 (*Releases conditional*) remains in the reasonable opinion of the Lender susceptible of being avoided, reduced, clawed back or ordered to be repaid under any law relating to liquidation, bankruptcy or insolvency, the Lender may in its absolute discretion retain all or part of the Security and other rights under this Deed as security for the Secured Liabilities after they have been paid and discharged in full.

16.2.2 If, at any time while all or part of the Lender's rights under this Deed are so retained:

- (a) an application is made to a competent court for a winding-up or bankruptcy order to be made in respect of the Chargor;
- (b) steps are taken to wind the Chargor up or make the Chargor bankrupt;
- (c) an application is made to a competent court for an administration order to be made in respect of the Chargor;
- (d) a notice of intention to appoint an administrator to the Chargor is filed at court; or
- (e) the appointment of an administrator to the Chargor takes effect,

then the Lender may continue to retain all or part of its rights under this Deed for any further period as the Lender may determine in its absolute discretion.

**17. CONTINUING SECURITY**

**17.1 Continuing security**

The Security is continuing security and shall secure the ultimate balance of the Secured Liabilities, notwithstanding:

17.1.1 intermediate payment or discharge of the whole or part of the Secured Liabilities;

17.1.2 the Chargor's death, bankruptcy, liquidation or other incapacity or any change in its constitution, name or style;

17.1.3 any change in the Lender's constitution, name or style, its absorption in or amalgamation with any other person or the acquisition of all or part of its undertaking by any other person; or

17.1.4 any other event, matter or thing.

## 17.2 Additional to other rights

The Security is in addition to (and shall not merge with, otherwise prejudice or affect or be prejudiced or affected by) any other remedy, guarantee, indemnity, Security Interest or other right which may be or have been created (by the Chargor or otherwise) in favour of the Lender. Accordingly, the Chargor's liability under this Deed shall not be prejudiced or affected by, and this Deed may be enforced notwithstanding:

17.2.1 the existence or invalidity of all or any of those rights; or

17.2.2 at any time, the Lender exchanging, releasing, varying, abstaining from perfecting or enforcing or otherwise dealing or omitting to deal with all or any of those rights.

## 18. THIRD PARTY PROTECTION

No purchaser, mortgagee or other person dealing with the Lender or a Receiver shall be concerned:

18.1 to enquire whether any of the Secured Liabilities have become due or payable or remain unpaid or undischarged;

18.2 whether the power which the Lender or Receiver is purporting to exercise has become exercisable; or

18.3 to see to the application of any money paid to the Lender or to a Receiver.

## 19. INDEMNITIES

The Chargor agrees to fully indemnify the Lender and any Receiver (and in the case of legal costs and expenses on a solicitor and own client basis) on demand against all liabilities, losses, claims, actions, damages, costs and expenses incurred by, made or brought against the Lender or Receiver (or any manager or agent appointed by the Lender or Receiver):

19.1 as a result of the Chargor's failure to perform any of its obligations under this Deed;

19.2 in the exercise (or purported exercise) of any of the powers or other rights conferred by this Deed;

19.3 in respect of any costs, charges or expenses incurred in connection with Clause 12 (*Currency Conversion*);

19.4 in respect of the redemption of any prior Security Interest over any Security Asset under Clause 15 (*Redemption of Prior Security Interests*); or

19.5 in respect of any other matter or thing done or omitted relating to the Security Assets,

together in each case with interest at the Interest Rate calculated on a daily basis from the date it is incurred or becomes payable to the Lender or the Receiver until the date of payment, whether before or after any judgment.

## 20. CALCULATIONS AND CERTIFICATES

Any certificate of or determination by the Lender specifying the amount of the Secured Liabilities is, in the absence of manifest error, conclusive evidence against the Chargor of the matters to which it relates.

**21. PARTIAL INVALIDITY**

All the provisions of this Deed are severable and distinct from one another and if at any time any provision is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of any of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

**22. REMEDIES AND WAIVERS**

No failure to exercise nor any delay in exercising any right or remedy under this Deed against the Chargor shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise, or the exercise of any other right or remedy. The rights and remedies provided are cumulative and not exclusive of any rights or remedies provided by law.

**23. AMENDMENTS AND WAIVERS**

Any provision of this Deed may be amended only if the Chargor and the Lender agree in writing and any breach of this Deed may be waived before or after it occurs only if the Lender so agrees in writing. A waiver given or consent granted by the Lender under this Deed will be effective only if given in writing and then only in the instance and for the purpose for which it is given.

**24. TRANSFER AND CONFIDENTIALITY**

**24.1 Transfer**

24.1.1 The Lender may assign and/or transfer its rights and obligations under this Deed.

24.1.2 The Chargor shall not assign any of its rights or transfer any of its obligations under this Deed.

**24.2 Confidentiality**

The Lender may disclose to:

24.2.1 any transferee or potential transferee;

24.2.2 any assignee or potential assignee;

24.2.3 any person with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to or including the Secured Liabilities;

24.2.4 any ratings agency;

24.2.5 any of the officers, directors, employees, professional advisers, auditors, partners and representatives of the persons referred to in sub-clauses 24.2.1 to 24.2.4;

24.2.6 any of its Affiliates and to any of its or their officers, directors, employees, professional advisers, auditors, partners and representatives;

24.2.7 any person to whom information is required or requested to be disclosed by any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation;

24.2.8 any person to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes; and

24.2.9 any insurance company or underwriters in relation to the properties,

such confidential information as the Lender shall consider appropriate.

**25. COUNTERPARTS**

This Deed may be executed in any number of counterparts, all of which, taken together, shall constitute one and the same instrument and any party may enter into this Deed by executing a counterpart.

**26. NOTICES**

**26.1 Communications in writing**

Any communication to be made under or in connection with this Deed shall be made in writing in the English language and, unless otherwise stated, must be made by letter.

**26.2 Addresses**

The Lender may deliver any communication, document or notice to the Chargor relating to this Deed to its registered office, or address to which a notice under any facility relating to the Secured Liabilities might be sent or any additional address the Chargor may notify to the Lender by not less than five business days' notice.

**26.3 Delivery**

26.3.1 Any communication or document made or delivered by one person to another under or in connection with this Deed will only be effective when it has been left at the relevant address or five business days after being deposited in the post, postage prepaid, in an envelope addressed to it at that address.

26.3.2 Any communication or document to be made or delivered to the Lender will be effective only when actually received by the Lender and then only if it is expressly marked for the attention of the department or officer identified with Lender's signature below (or any substitute department or officer as the Lender shall specify for this purpose).

**27. PARALLEL SECURITY DOCUMENTS**

The Chargor may at any time enter into a Parallel Security Document. Entry into and performance of the terms of a Parallel Security Document shall not breach any term of this Deed. /

**28. GOVERNING LAW**

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

**29. ENFORCEMENT**

**29.1 Jurisdiction**

29.1.1 The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including disputes regarding the existence, validity or termination of this Deed, the Security Interests intended to be created by it or any non-contractual obligations arising out of or in connection with it) (a "Dispute").

29.1.2 The Chargor agrees that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly it will not argue to the contrary.

29.1.3 This Clause 29.1 is for the benefit of the Lender only. The Lender may take proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Lender may take concurrent proceedings in any number of jurisdictions.

**IN WITNESS WHEREOF THE CHARGOR HAS EXECUTED THIS DEED AS A DEED** the year and date appearing on the first page of it.

**SCHEDULE 1**

**SUBORDINATED DEBT DOCUMENTATION**

<b>Date of Subordinated Debt Document</b>	<b>Parties</b>	<b>Name of Subordinated Debt Document</b>
	(1) Bayshill Properties Limited and (2) HSBC UK Bank plc	Deed of Subordination Bayshill Properties



## SCHEDULE 2

### FORM OF NOTICE OF ASSIGNMENT

To: [Borrower]

Date: [ ] 20[ ]

Dear Sirs

We (the "Company") give you notice that we have assigned and charged to HSBC UK Bank plc in its capacity as ("Lender") pursuant to a charge entered into by us in favour of the Lender dated [ ] 20[ ], all our right and remedies in connection with the subordinated loan agreement dated [ ] 20[ ] made between (1) the Company and (2) you, (the "Agreement") including all moneys which may be payable in respect of the Agreement.

With effect from your receipt of this notice:

1. following receipt of the Lender's written notification, all payments by you to us under or arising from the Agreement should be made to the Lender or to the Lender's order as either may specify in writing from time to time;
2. all remedies provided for in the Agreement or available at law or in equity are exercisable by the Lender;
3. all rights to compel performance of the Agreement are exercisable by the Lender although the Company shall remain liable to perform all the obligations assumed by it under the Agreement;
4. all rights, interests and benefits whatsoever accruing to or for the benefit of ourselves arising from the Agreement belong to the Lender and no changes may be made to the terms of the Agreement nor may the Agreement be terminated without the Lender's consent; and
5. you are authorised and instructed, without requiring further approval from us, to provide the Lender with such information relating to the Agreement as it may from time to time request and to send it copies of all notices issued by you under the Agreement to the Lender as well as to us.

These instructions may not be revoked, nor may the terms of the Agreement be amended, varied or waived without the prior written consent of the Lender.

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

Please acknowledge receipt of this notice by signing the acknowledgement on the enclosed copy letter and returning it to the Lender at HSBC UK Bank plc, [insert address] marked for the attention of [insert details of the Relationship Manager].

Yours faithfully

for and on behalf of  
**BAYSHILL PROPERTIES LIMITED**

[On copy only:]

To: HSBC UK Bank plc  
[insert address]

FAO: [insert details of the Relationship Manager]; and

We acknowledge receipt of a notice in the terms set out above and confirm that we have not received notice of any previous assignments or charges of or over any of the right and remedies in connection with the Agreement and that we will comply with the terms of that notice.

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

**For and on behalf of the Borrower**

By: [ ]

Dated: [ ]

EXECUTION PAGE

THE CHARGOR

Executed as a deed by BAYSHILL PROPERTIES LIMITED acting by JAMEI GEMOUR, in the presence of:

Director

Signature (Witness)

Print Name CLAIRE LONG

Address

Lester Aldridge LLP  
Alleyn House  
23-27 Carlton Crescent  
Southampton  
SO15 2EU

Occupation

THE LENDER

SIGNED for and on behalf of

)

HSBC UK BANK PLC

)

Communications to the Lender are to be delivered to:

Address:

For the attention of: Wendy D Howard

**EXECUTION PAGE**

**THE CHARGOR**

Executed as a deed by **BAYSHILL PROPERTIES LIMITED** acting by ....., in the presence of:

.....  
Director

*Signature (Witness)* .....

*Print Name*.....

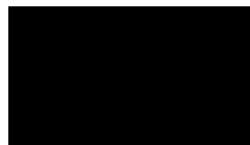
*Address*.....

*Occupation*.....

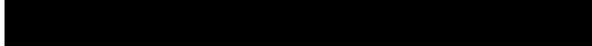
**THE LENDER**

**SIGNED** for and on behalf of )

**HSBC UK BANK PLC** )



Communications to the Lender are to be delivered to:

Address: 

For the attention of: Wendy D Howard