



**Registration of a Charge**

Company name: **COMMERCIAL REAL ESTATE MANAGEMENT LIMITED**

Company number: **06857511**



X4JFGZMQ

Received for Electronic Filing: **04/11/2015**

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**Details of Charge**

Date of creation: **28/10/2015**

Charge code: **0685 7511 0001**

Persons entitled: **ICG-LONGBOW DEBT INVESTMENTS NO.4 S.À R.L.**

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 THE ELECTRONIC COPY INSTRUMENT  
DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION  
IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by: **FREETHS LLP**



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

Company number: 6857511

Charge code: 0685 7511 0001

The Registrar of Companies for England and Wales hereby certifies that a charge dated 28th October 2015 and created by COMMERCIAL REAL ESTATE MANAGEMENT LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 4th November 2015 .

Given at Companies House, Cardiff on 5th November 2015

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

YOUR PRINTED AGREEMENT IS VALID ONLY IF YOU HAVE RECEIVED THIS DOCUMENT FROM FREETHS LLP

# FREETHS

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DATED

28 October

2015

- (1) THE COMPANIES LISTED IN PART 1 OF  
SCHEDULE 1
- (2) THE COMPANIES LISTED IN PART 2 OF  
SCHEDULE 1
- (3) ICG-LONGBOW DEBT INVESTMENTS NO. 4  
S.À R.L.

SUBORDINATED CREDITORS' SECURITY  
AGREEMENT

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THIS DEED is made on

28 October

2015

**BETWEEN:**

- (1) **THE COMPANIES listed in Part 1 (The Chargors) of Schedule 1 as Chargors** (the "**Chargors**").
- (2) **THE COMPANIES listed in Part 2 (the Borrowers) of Schedule 1 as Borrowers** (the "**Borrowers**").
- (3) **ICG-LONGBOW DEBT INVESTMENTS NO. 4 S.À R.L.** a company incorporated in Luxembourg (registered number B195087) whose registered office is at 2 Boulevard Konrad Adenauer, L-1115 Luxembourg, Grand-Duchy of Luxembourg (the "**Lender**").

**THIS DEED WITNESSES** as follows:

**1 Interpretation**

**1.1 Definitions**

In this Deed the following words and expressions shall have the following meanings:

"**Business Day**" means a day (other than a Saturday or Sunday or public holiday) on which banks are open for general business in the City of London;

"**Charged Property**" means all property, assets, rights and revenues of the Chargors from time to time comprised within the security constituted by this Deed (and references to the Charged Property shall include references to any part of it);

"**Encumbrance**" means 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;

"**Enforcement Event**" means any condition, act or event referred to in any Event of Default;

"**Event of Default**" means any event of default defined in the Facility Agreement;

**"Facility Agreement"** means a facility agreement dated on or about the date of this Deed between the Borrowers and the Lender;

**"Finance Documents"** has the meaning set out in the Facility Agreement;

**"High Court"** means the High Court of Justice in England and Wales;

**"Insolvency Regulation"** means EU Council Regulation 1346/2000;

**"LPA"** means Law of Property Act 1925;

**"Permitted Security"** means the security created by this Deed and any other security permitted under the Facility Agreement;

**"Receiver"** means any one or more receivers and managers or (if the Lender so specifies in the relevant appointment) receivers appointed by the Lender pursuant to this Deed in respect of the Charged Property of the Chargors;

**"Secured Obligations"** means all monies, obligations and liabilities whatsoever which may now or at any time in the future be due, owing or incurred (before or after demand) by the Borrowers or the Chargors to the Secured Parties and whether present or future, actual or contingent in any manner whatsoever, as principal or surety and whether alone or jointly with any other party or parties including interest, commission, fees, legal and other costs, charges and expenses;

**"Secured Party"** means the Lender, a Receiver or Delegate;

**"Security Period"** means the period beginning on the date of this Deed and ending on the date on which the Secured Obligations have been satisfied;

**"Subordinated Debt"** 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 or on behalf of the Borrowers to the Chargors 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;

**"Subordinated Debt Documents"** means those contracts and documents (if any) brief particulars of which are set out in Schedule 4 (*Charged Contracts*) and all other

agreements and/or security evidencing or recording the terms of the Subordinated Debt from time to time; and

“VAT” means:

- (a) any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112); and
- (b) any other tax of a similar nature, whether imposed in a member state of the European Union in substitution for, or levied in addition to, such tax referred to in paragraph (a) above, or imposed elsewhere.

## 1.2 Interpretation

In this Deed:

- 1.2.1 Unless a contrary indication appears, in this Deed the provisions of clause 1.2 (Construction) of the Facility Agreement apply to this Deed as though they were set out in full in this Deed, except that references to 'this Agreement' will be construed as references to this Deed.
- 1.2.2 the “**Lender**”, any “**Party**”, any “**Secured Party**”, any “**Transaction Obligor**” or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Finance Documents;
- 1.2.3 “**disposal**” includes a sale, transfer, assignment, grant, lease, licence, declaration of trust or other disposal whether voluntary or involuntary and “**dispose**” will be construed accordingly;
- 1.2.4 “**guarantee**” means any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets of any person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness;
- 1.2.5 a “**person**” includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint

venture, consortium or partnership (whether or not having separate legal personality);

- 1.2.6 references to “**security**” shall be construed as a reference to any mortgage, standard security, pledge, hypothecation, title retention, lien, charge, assignment by way of security or other arrangement howsoever described having the same or a similar effect;
- 1.2.7 a provision of law is a reference to such provision as amended or re-enacted;
- 1.2.8 references to “**this Deed**” or to a provision of this Deed, or any other document are references to it as amended, varied, novated, supplemented, extended or restated (however fundamentally and even if any of the same increases the obligations of the Chargors or provides for further advances);
- 1.2.9 a “**Finance Document**”, or “**Transaction Document**” or any other agreement or instrument is a reference to that Finance Document, or Transaction Document or other agreement or instrument as amended, novated, supplemented, extended or restated;
- 1.2.10 the terms of the documents under which the Secured Obligations arise and of any side letters between the Chargors and the Lender relating to the Secured Obligations are incorporated in this Deed to the extent required for any purported disposition of the Charged Property to be a valid disposition in accordance with section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989;
- 1.2.11 references to this Deed include its Schedules;
- 1.2.12 references to a clause or Schedule are (unless otherwise stated) to a clause of, or a Schedule to, this Deed;
- 1.2.13 references in a Schedule or part of a Schedule to a paragraph are (unless otherwise stated) to a paragraph of that Schedule or that part of that Schedule;
- 1.2.14 Section, Clause and Schedule headings are for ease of reference only;

- 1.2.15 use of the singular shall include the plural and vice versa; and
- 1.2.16 any term or phrase defined in the Companies Act 2006 or the Insolvency Act 1986 (as the same may be amended from time to time) shall bear the same meaning in this Deed.
- 1.2.17 The Parties intend that this document shall take effect as a deed notwithstanding the fact that a Party may only execute this document under hand.

### 1.3 Clawback

If the Lender considers that an amount paid by each of the Chargors in respect of the Secured Obligations is capable of being avoided or otherwise set aside on the liquidation or administration of the relevant Chargor or otherwise then that amount shall not be considered to have been irrevocably paid for the purposes of this Deed.

### 1.4 Law of Property (Miscellaneous Provisions) Act 1989

For the purposes of section 2 of the Law of Property (Miscellaneous Provisions) Act 1989, the terms of the other Finance Documents under which the Secured Obligations arise and of any side letters between any parties in relation to the Facility Agreement are incorporated into this Deed to the extent required for any purported disposition of the Charged Property contained in this Deed to be a valid disposition in accordance with Section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989.

### 1.5 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).

### 1.6 Definitions in the Facility Agreement

Unless a contrary indication appears each term used in this Deed which is defined in the Facility Agreement shall have the same meaning as in the Facility Agreement.

## **2      Covenant to pay**

- 2.1      Each of the Chargors as primary obligors and not merely as sureties covenants in favour of the Lender that it will (subject to Clause 2.2 below) pay, discharge and perform the Secured Obligations when they become due.
- 2.2      Notwithstanding any other provisions of this Deed the recourse of the Lender against each of the Chargors under this Deed shall be limited to the Lender's rights of enforcement and recovery against the Subordinated Debt and other assets charged under this Deed by the relevant Chargor and, accordingly, the Lender agrees that the total amount recoverable by the Lender against the relevant Chargor under this Deed shall be limited to the proceeds received by the Lender in realising the Subordinated Debt and other assets charged by the relevant Chargor pursuant to this Deed.

## **3      Security**

- 3.1      Each of the Chargors with full title guarantee in favour of the Lender and as continuing security for the payment, discharge and performance of the Secured Obligations:
- 3.1.1      assigns and agrees to assign absolutely, the benefit of all of its rights, claims, title and interest in:
- (i)      the Subordinated Debt;
  - (ii)      the Subordinated Debt Documents; and
  - (iii)      all present and future claims, causes of action, payments and proceeds in respect thereof;
- 3.1.2      charges by way of first fixed charge (to the extent not effectively assigned by clause 3.1.1 above) all of its rights, claims, title and interest in:
- (i)      the Subordinated Debt;
  - (ii)      the Subordinated Debt Documents; and
  - (iii)      all present and future claims, causes of action, payments and proceeds in respect thereof.

- 3.2 The parties acknowledge that the Lender may make further advances (to the extent arising) under the Facility Agreement. The assignments and charges created by this Deed together secure any such further advances made by the Lender.

#### **4 Provisions relating to assignment**

- 4.1 Each of the Chargors give the relevant Borrowers notice that pursuant to this Deed it has charged by way of fixed charge and assigned to the Lender, as first priority chargee and assignee, all of its rights, title and interest in the Subordinated Debt Documents.
- 4.2 Each of the Chargors further irrevocably and unconditionally:
- 4.2.1 notifies the relevant Borrowers that it may not agree to materially amend, modify or terminate the Subordinated Debt Documents without the prior written consent of the Lender;
  - 4.2.2 confirms that, subject to clause 4.2.1 above, the relevant Borrowers may continue to deal with it in relation to the Subordinated Debt Documents until the relevant Borrowers receive written notice to the contrary from the Lender that an Event of Default has occurred and is continuing, but authorise and instruct the relevant Borrowers that, after the relevant Borrowers have received such notice, it will cease to have any right to deal with the relevant Borrowers in relation to the Subordinated Debt Documents except in accordance with the instructions of the Lender and therefore from that time the relevant Borrowers may deal directly with the Lender;
  - 4.2.3 authorises and instructs the relevant Borrowers to disclose information in relation to the Subordinated Debt Documents to the Lender promptly on reasonable request;
  - 4.2.4 authorises and instructs the relevant Borrowers following the relevant Borrowers' receipt of notice from the Lender that the relevant Borrowers are no longer entitled to deal with it in relation to the Subordinated Debt Documents and that an Event of Default has occurred and is continuing to pay or release all monies to which it is entitled under the Subordinated Debt Documents directly into such account as the Lender shall specify;

- 4.2.5 authorises and instructs the relevant Borrowers that, whenever the relevant Borrowers serve any notice upon it under the Subordinated Debt Documents, the relevant Borrowers should supply a copy of such notice to the Lender at its address in the parties clause above (or as otherwise notified to the relevant Borrowers by it from time to time);
  - 4.2.6 notifies to the relevant Borrowers that the provisions of this clause 4 may only be revoked with the written consent of the Lender; and
  - 4.2.7 confirms that it has not received any notice of any previous assignment or charge by the Chargors of any of its rights, title and interest in the Subordinated Debt Documents.
- 4.3 Each of the Borrowers acknowledges receipt of the notice provided pursuant to clause 4.1 above on the date of this Deed and:
- 4.3.1 accepts the instructions and authorisations set out in the notice and undertakes to act in accordance with such instructions and authorisations; and
  - 4.3.2 confirms that it has not received notice that the relevant Chargors have assigned its rights under the Subordinated Debt Documents to a third party or created any other interest (whether by way of security or otherwise) in the Subordinated Debt Documents in favour of a third party.
- 4.4 Following an Event of Default which is continuing, the relevant Chargor shall exercise its rights under the Subordinated Debt Documents as directed by the Lender and shall refrain from exercising any of its rights unless so directed by the Lender.

## **5 Continuing security**

- 5.1 The security constituted by this Deed shall operate as a continuing security and shall extend to the ultimate balance of the Secured Obligations regardless of any intermediate payment or discharge of any of the Secured Obligations or any other matter whatsoever.
- 5.2 In the event that the security constituted by this Deed ceases to be a continuing security for whatever reason then the Lender may at that time open or be deemed to have opened a new account or accounts and to credit all or any money arising from

the enforcement of the security constituted by this Deed or receivable hereunder to such new account(s) and such events shall not operate to reduce the amount of the Secured Obligations nor shall the liability of the Chargors be reduced or affected by any subsequent transactions, receipts or payments.

- 5.3 If the Lender receives notice of any subsequent Encumbrance, or other interest, affecting all or part of the Charged Property, the Lender may open a new account for the relevant Chargors in the Lender's books. Without prejudice to the Lender's right to combine accounts, no money paid to the credit of the relevant Chargors in any such new account shall be appropriated towards, or have the effect of discharging, any part of the Secured Obligations.
- 5.4 If the Lender does not open a new account immediately on receipt of notice under clause 5.3 then, unless the Lender gives express written notice to the contrary to the relevant Chargors, all payments made by the relevant Chargors to the Lender shall be treated as having been credited to a new account of the relevant Chargors and not as having been applied in reduction of the Secured Obligations, as from the time of receipt of the relevant notice by the Lender.

## **6 Further assurance**

- 6.1 Each of the Chargors agrees that it shall promptly upon the request of the Lender execute and deliver at its own cost and expense any deed or document and do any act or thing or take any action required by the Lender (provided such action is within its power or control) in order to confirm or establish the validity and enforceability of or otherwise in connection with the creation, perfection, enhancement or protection of the security intended to be created, conferred on the Lender by or pursuant to this Deed (including without limitation) any further legal or other mortgages, charges or assignments and/or notices in favour of the Lender, the waiver of any landlord's rights to levy distress against or enforce any similar or replacement remedy against any of the Charged Property and any instructions, instruments, transfers, renunciations and/or proxies in favour of the Lender or such other person as the Lender may direct together with any and all filings or registrations or notices or instructions or other steps required by the Lender.

## **7      Preservation of rights**

- 7.1      The security constituted by this Deed and the obligations of each of the Chargors contained herein and the rights and powers and remedies conferred on the Lender by this Deed shall be in addition to and shall not be merged with nor in any way be prejudiced or affected by any security or guarantee or judgment or order, right of recourse or other right whatsoever (whether contractual, legal or otherwise) now or at anytime hereafter held by any Secured Party or any other person nor by:
- 7.1.1      any time, waiver, indulgence, consent or concession which any Secured Party may grant to or the terms of any composition or agreement that any Secured Party may enter into with the Chargors; or
  - 7.1.2      any release or intermediate payment or discharge of the Secured Obligations; or
  - 7.1.3      any amendment, novation, supplement, extension or replacement (however fundamental and whether more or less onerous) of the Secured Obligations; or
  - 7.1.4      any legal limitation, disability, incapacity or lack of legal personality or power or authority on the part of the Chargors; or
  - 7.1.5      any unenforceability, illegality or invalidity of the Secured Obligations or any obligations owed by the Chargors; or
  - 7.1.6      any liquidation, winding up, dissolution, amalgamation, reconstruction, reorganisation, bankruptcy, administration or voluntary arrangement of the Chargor or the appointment of any Receiver or liquidator or trustee in bankruptcy in respect of the property or business or assets of the Chargors (or the equivalent of such proceedings, appointments or matters in any jurisdiction) or the occurrence of any other circumstances affecting the liability of the Chargors.
- 7.2      If any payment or discharge or security or any arrangement made in connection with the Secured Obligations is avoided or reduced for whatever reason (including without limitation under any laws relating to liquidation or administration or bankruptcy) the liability of the Chargors and the security created by this Deed shall continue as if

there had been no payment, discharge, avoidance or reduction or arrangement and the Lender shall be entitled to recover the value or amount of the security or payment as if the payment discharge or reduction had not occurred.

- 7.3 Any release, discharge or settlement between the Chargors and any Secured Party shall be deemed conditional on no payment or security received by any Secured Party in respect of the Secured Obligations 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:

7.3.1 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 Charged Property, for such period as the Lender deems necessary to provide the Lender with security against any such avoidance, reduction or order for refund; and

7.3.2 the Lender may recover the value or amount of such security or payment from the relevant Chargors subsequently as if such release, discharge or settlement had not occurred.

- 7.4 The Lender shall not be obliged to account to the Chargors, nor to any other person, for anything other than its own actual receipts which have not been distributed or paid to the person entitled (or whom the Lender, acting reasonably, believes to be entitled) in accordance with the requirements of the Deed.

## **8 Indemnities and Exclusion of Liability**

- 8.1 The provisions of clause 16.2 and 16.4 (Costs and expenses) of the Facility Agreement are incorporated into this Deed as if set out in full mutatis mutandis.

- 8.2 Each of the Chargors shall promptly indemnify and keep indemnified the Lender and every Receiver and/or Delegate against any cost, loss or liability incurred by any of them as a result of:

8.2.1 any failure by the relevant Chargors to comply with its obligations under Clause 8.1 (Costs and expenses);

- 8.2.2 acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised;
  - 8.2.3 the taking, holding, protection, preservation or enforcement of the Transaction Security;
  - 8.2.4 the exercise of any of the rights, powers, discretions, authorities and remedies vested in the Lender and each Receiver and Delegate by the Finance Documents or by law;
  - 8.2.5 any default by the relevant Chargors in the performance of any of the obligations expressed to be assumed by it in the Finance Documents;
  - 8.2.6 instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under this Deed; or
  - 8.2.7 acting as Lender, Receiver or Delegate under the Finance Documents or which otherwise relates to any of the Security Property (otherwise, in each case, than by reason of the relevant Lender's, Receiver's or Delegate's gross negligence or wilful misconduct).
- 8.3 The Lender and every Receiver and Delegate may, in priority to any payment to the Secured Parties, indemnify itself out of the Charged Property in respect of, and pay and retain, all sums necessary to give effect to the indemnity in this Clause 8 and shall have a lien on the security created by this Deed and the proceeds of the enforcement of that security for all moneys payable to it.
- 8.4 Neither the Lender or any Receiver or any Delegate will be liable to the Chargors for any expense, loss, liability or damage incurred by the relevant Chargors arising out of the exercise by such party of its rights or powers or any attempt or failure to exercise those rights or powers, except for any expense, loss, liability or damage arising from its gross negligence, fraud or wilful misconduct.
- 8.5 The Lender may act in relation to this Deed through its personnel and agents.

## **9 Undertakings**

- 9.1 Each of the Chargors covenant with the Lender in the terms set out in Schedule 3 (*Undertakings*).

## **10     Representations**

- 10.1 Each of the Chargors represents and warrants to the Lender in the terms set out in Schedule 2 (*Representations*). These representations and warranties are made on the date of this Deed with reference to the facts and circumstances then existing.

## **11     Interest**

- 11.1 Each of the Chargors agrees to pay interest to the Lender on any money demanded of it under this Deed accruing due to a Secured Party on a daily basis, from day to day, from the date of first demand until payment is made in full (as well after as before judgment or any liquidation or bankruptcy) at the rate of interest which is the default rate of interest agreed to be payable in respect of the Secured Obligations as calculated in accordance with the Finance Documents.

## **12     Amounts payable**

- 12.1 All payments by the Chargors under this Deed shall be made:
- 12.1.1 without set off, retention or counterclaim; and
  - 12.1.2 free and clear of withholding or deduction of any taxes except to the extent that the Chargors are required by law to make such withholding or deduction in which case the relevant Chargors shall pay such amount as will result in the receipt by the Lender of the sums that would have been receivable by it in the absence of such withholding or deduction in respect of the Secured Obligations under this Deed.
- 12.2 The obligations of each of the Chargors to make payments under this Deed are in the currency of the Secured Obligations and shall not be discharged or satisfied by the receipt by the Lender of any monies expressed or converted into any other currency and to the extent there is any shortfall between amounts due under this Deed in one currency and receipt by the Lender in another currency then the Lender shall be entitled to recover the amount of any shortfall from the relevant Chargors and to sell any currency received for the currency due and the relevant Chargors shall promptly indemnify the Lender against the full cost incurred in relation to such sale. The Lender shall not have any liability to the Chargors in respect of any loss arising from any fluctuation in exchange rates after such sale.

12.3 The Lender may (but is not obliged to) set off any obligation in respect of the Secured Obligations which is due and payable by the Chargors against any obligation (contingent or otherwise) owed by the Lender to the relevant Chargor and apply any money held for the account of the relevant Chargor in such order as it shall deem in its absolute discretion appropriate.

12.4 Any amount due from the Chargors under the terms of this Deed but unpaid, including without limitation any interest, may, at the sole option of the Lender, be added to the Secured Obligations and compounded in accordance with the usual practice of the Lender.

### **13 Enforcement**

13.1 Upon the occurrence of an Event of Default that is continuing the Lender may, without notice to the relevant Chargors enforce all or any part of the security constituted by this Deed at such times, in the manner and on such terms as it thinks fit including (without limitation) the appointment of a Receiver to all or any part of the Charged Property.

13.2 Section 103 LPA shall not apply to this Deed and the power of sale under section 101 LPA and all other powers conferred on the Lender and any Receiver by this Deed shall operate as a variation and extension of the statutory powers of sale and other powers under the LPA and such powers shall arise (and the Secured Obligations shall be deemed due and payable for these purposes) on the execution of this Deed.

13.3 The restrictions contained in section 93 LPA shall not apply to this Deed but the Lender shall have the same right to consolidate this Deed and the money covenanted to be paid with any other security.

13.4 The statutory powers of leasing may be exercised by the Lender at any time and the Lender and any Receiver may make any lease or agreement for lease, accept surrenders of leases and grant options on such terms as it shall think fit, without the need to comply with any restrictions imposed by sections 99 or 100 LPA.

13.5 The protection given to purchasers and persons dealing with a Receiver in the LPA will apply to purchasers and any other persons dealing with the Lender or any Receiver and no purchaser or other person dealing with the Lender or any Receiver

will be bound to see or inquire whether the right of the Lender or any Receiver to exercise any of its or his powers has arisen or become exercisable nor be concerned with any propriety or regularity on the part of the Lender or any Receiver in such exercise or dealings or whether any amount remains secured by this Deed.

- 13.6 The powers conferred by this Deed on the Lender are in addition to and not in substitution for the powers conferred on mortgagees and mortgagees in possession under the LPA, the Insolvency Act 1986 or otherwise by law and in the case of any conflict between the powers contained in any such Act and those conferred by this Deed the terms of this Deed will prevail.

#### **14 Receivers**

- 14.1 At any time after having been requested to do so by the relevant Chargors or after the occurrence of an Event of Default which is continuing or this Deed having become enforceable in accordance with its terms and save to the extent prohibited by section 72A Insolvency Act 1986 the Lender may in writing by deed or otherwise and without prior notice to the relevant Chargors appoint one or more persons to be a Receiver of the whole or any part of the Charged Property and the Lender may, from time to time, in similar manner, remove a Receiver and appoint another or others in substitution thereof.
- 14.2 Each person appointed to be a Receiver pursuant to this Deed will be:
- 14.2.1 entitled to act independently or jointly with any other person appointed as a receiver except to the extent that the Lender may specify to the contrary in the appointment;
  - 14.2.2 for all purposes deemed the agent of the relevant Chargors who shall be solely responsible for his acts, defaults and liabilities and for the payment of his remuneration and at no time shall a receiver act as agent for the Lender; and
  - 14.2.3 entitled to remuneration at a rate to be fixed by the Lender from time to time (without being limited to any maximum rate).
- 14.3 The powers of appointment of a Receiver shall be in addition to all statutory and other powers of appointment of the Lender under the LPA (as extended by this Deed)

or otherwise and such powers shall remain exercisable from time to time by the Lender in respect of any part of the Charged Property.

- 14.4 Any Receiver shall have and be entitled to exercise, in relation to the Charged Property all rights and powers as the Lender shall see fit as though the Lender was absolute owner of the Charged Property, including (without limitation) the rights and powers set out in Schedule 4 (*Powers of Receivers*).
- 14.5 The receipt of the Lender or any Receiver shall be conclusive discharge to any purchaser and, in making any disposal of any of the Charged Property the Lender or any Receiver may do so for such consideration, in such manner and on such terms as the Lender or any receiver thinks fit.
- 14.6 Neither the Lender nor any Receiver nor any officer, employee or agent of the Lender or any Receiver shall be deemed to be or in any way liable to account as mortgagee in possession in respect of all or any Charged Property or be liable in any way to the Chargors or any other person for the manner of exercise or non exercise of any powers or rights of the Lender or any Receiver or for any act or default or omission of any nature whatsoever (other than an act, default or omission which constitutes gross negligence, fraud or wilful misconduct).
- 14.7 Any liberty or power which may be exercised or any determination which may be made under this Deed by the Lender or any Receiver may be exercised or made in the Lender's or any Receiver's absolute and unfettered discretion without any obligation to give reasons.

## **15 Appropriations and application of proceeds**

- 15.1 The Lender may apply or refrain from applying any money or property received by it in or towards payment or discharge of any liability in respect of the Secured Obligations in such order or manner as it sees fit or determines and hold any money received by it in an interest bearing suspense account or on account of the Chargors' liabilities under this Deed.
- 15.2 If the Lender (or any Receiver) enforces the security constituted by this Deed at a time when no amount in respect of the Secured Obligations is due and payable, or when the amount due and payable is not ascertained, the Lender (or any Receiver) may pay the proceeds of any recoveries effected by it into an interest bearing

suspense account. The Lender may withdraw amounts standing to the credit of such suspense account for application in or towards discharge of the Secured Obligations.

15.3 Until the Secured Obligations have been irrevocably paid in full, the Lender may refrain from applying or enforcing (or attempting to enforce) any other security, monies or rights held or received by the Lender or may apply and enforce the same in such manner and order as the Lender sees fit (whether against the Secured Obligations or otherwise) and the Chargors shall not be entitled to the benefit of such other security.

15.4 The Lender may (in accordance with the provisions of its appointment pursuant to the Facility Agreement) in its discretion grant time or other indulgence or make any other arrangement, variation or release with any person or persons not party hereto (whether or not such person or persons are jointly liable with the Chargors) in respect of any of the Secured Obligations or of any other security therefor without prejudice either to this Deed or to the liability of the Chargors for the Secured Obligations.

## **16 Immediate recourse**

16.1 The Lender shall not be obliged to proceed first against, or enforce any rights or security or claim payment from any person before claiming any benefit under this Deed and each of the Chargors hereby waives any contrary right it may have whether arising under law or otherwise.

## **17 Assignment and delegation**

17.1 The Lender may (without notice to or the prior consent of the Chargors) but in accordance with the provisions of the Facility Agreement assign or transfer all or any of its rights or powers under this Deed to any person whether in connection with an assignment or transfer or the grant of participation in respect of the Secured Obligations or otherwise and may disclose to any potential assignee, transferee or participant such confidential information about the Chargors and this Deed as it shall deem appropriate.

17.2 None of the Chargors may assign or transfer any of its rights or obligations under this Deed.

17.3 The Lender and any Receiver may from time to time employ professional advisors and delegate by power of attorney or otherwise to any person any of the powers and discretions of the Lender or any Receiver whether arising by statute, the provisions of this Deed or otherwise upon such terms and for such periods of time as they may think fit (disclosing such confidential information about the Chargors or this Deed as the Lender or any Receiver sees fit) and may at any time determine any such employment or delegation. At no time will either the Lender or any Receiver be liable to the Chargors for any loss or damage arising from any act, default, omission or misconduct of any person.

**18 Discharge of security**

Subject to clause 1.3, if the Lender is satisfied (acting reasonably) that all the Secured Obligations have been irrevocably and unconditionally paid or discharged in full and the Secured Parties have no further obligation to advance funds to the Borrower pursuant to the terms of the Facility Agreement, the Lender shall at the request and cost of the relevant Chargors take whatever action is necessary to release, reassign or discharge (as appropriate) Charged Property from the security created by this Deed.

**19 Miscellaneous**

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

19.2 No failure to exercise, nor any delay in exercising, on the part of the Lender any right or remedy under this Deed shall operate as a waiver of any such right or remedy or constitute an election to affirm this Deed. No election to affirm this Deed on the part of the Lender shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Deed are cumulative and not exclusive of any rights or remedies provided by law.

- 19.3 No failure by the Lender to give any notice which it is required to give in respect of the Chargors shall affect or impair the liability of each of the Chargors to any Secured Party under this Deed.
- 19.4 At any time after an Event of Default has occurred that is continuing or this Deed has become enforceable the Lender may redeem or take a transfer of any security ranking in priority to the security constituted by this Deed. The Lender may agree the accounts of the holder of any such prior security which agreement shall be binding and conclusive on the relevant Chargors. Any amount paid in connection with such transfer shall be payable on demand by the relevant Chargors to the Lender.
- 19.5 The powers which this Deed confers on the Lender are cumulative, without prejudice to its powers under general law, and may be exercised as often as the Lender thinks appropriate.
- 19.6 Unless expressly provided to the contrary in a 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 to enjoy any benefit of any term of this Deed.
- 19.7 This Deed may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Deed.
- 19.8 Any certification or determination by the Lender of a rate or amount under this Deed is, in the absence of manifest error, conclusive evidence of the matters to which it relates.
- 19.9 All consents, notices and demands required in connection with this Deed must be in writing. The Lender may deliver a notice or demand to each of the Chargors at the address identified with its name below or at the contact details last known by the Lender. A notice or demand signed by an official of the Lender will be effective at the time of personal delivery; or on the second Business Day after posting. A notice from the Chargors to the Lender will be effective on receipt.
- 19.10 This Deed is designated as a Finance Document.
- 19.11 Each of the Chargors has entered into this Deed in consideration of the Lender agreeing to provide (or continue to provide) finance facilities to the Borrower on the terms agreed in the Finance Documents.

- 19.12 If there is any conflict between the provisions of this Deed and the provisions of the Facility Agreement, the Facility Agreement shall prevail.
- 19.13 If any party is not bound by this Deed (or any part of it) for any reason, this does not affect the obligations of each other Party under this Deed (or under the relevant part).
- 19.14 This Deed is in addition to, and does not operate so as in any way to prejudice or affect, or be prejudiced or affected by, any other Security or guarantee which the Lender may now or at any time after the date of this Deed hold for or in respect of the Secured Obligations.
- 19.15 If any provision of this Deed is or becomes invalid or unenforceable, the validity and enforceability of the remaining provisions shall not be affected or impaired thereby.

## **20 Power of attorney**

- 20.1 As further security for the performance of the Chargor's obligations under this Deed, each of the Chargors hereby irrevocably appoints each of the Lender (whether or not a Receiver has been appointed) and also (as a separate appointment) any Receiver jointly and severally to be its attorney with full power of delegation in its names and on its behalf:
- 20.1.1 to sign, execute, seal, complete and deliver any document, deed, agreement, instrument or act which the Lender or any Receiver may require for perfecting the title of the Lender to the Charged Property or for vesting the same in the Lender, its nominees or any purchaser or generally for the purposes set out in this Deed;
- 20.1.2 to sign, execute, seal, complete and deliver any further deed or document required pursuant to clause 6.1; and
- 20.1.3 otherwise generally to sign, seal, execute and deliver all deeds, assurances, agreements and documents and to do all acts and things which may be required for the full exercise of all or any of the powers conferred on the Lender or a Receiver under this Deed or which may be deemed expedient by the Lender or a Receiver in connection with any disposal of the Charged Property, realisation or getting in of the Charged

Property or any part of it or in connection with any other exercise of any power under this Deed,

in each case where the relevant Chargors were obliged to take the relevant action pursuant to the terms of this Deed and has failed to do so.

## **21 Governing law and jurisdiction**

- 21.1 This Deed and any non-contractual obligations arising out of or in connection with it are governed by English law.
- 21.2 The choice of English law as the governing law of this Deed, will be recognised and enforced in its Relevant Jurisdictions. Any judgement obtained in England in relation to this Deed will be recognised and enforced in its Relevant Jurisdictions.
- 21.3 The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute relating to the existence, validity or termination of this Deed or any non-contractual obligation arising out of or in connection with this Deed) (a "**Dispute**").
- 21.4 The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- 21.5 This Clause 21 is for the benefit of the Lender only. As a result, the Lender shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction or in any court which the Lender believes to have competent jurisdiction at the time legal proceedings are issued. To the extent allowed by law, the Lender may take concurrent proceedings in any number of jurisdictions.
- 21.6 Each Chargor incorporated outside England and Wales irrevocably appoints Commercial Real Estate Management Limited of MCR House, 341 Great Western Street, Manchester M14 4AL as its agent to receive on its behalf in England or Wales service of any proceedings under this Clause 21. Such service shall be deemed completed on delivery to such agent (whether or not it is forwarded to and received by the relevant Chargor) and shall be valid until such time as the Lender has received prior written notice that such agent has ceased to act as agent. If for any reason such agent ceases to be able to act as agent or no longer has an address in

England or Wales, the relevant Chargors shall forthwith appoint a substitute acceptable to the Lender and deliver to the Lender the new agent's name and address and fax number within England and Wales.

## **22     Communications**

22.1    The address (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with this Deed is:

22.1.1    in the case of the Borrowers and the Lender those given for it in the execution block of the Facility Agreement;

22.1.2    in the case of the Chargors, that specified in Clause 19.9; and

22.1.3    in the case of each Receiver and each Delegate, those notified in writing to the Lender (whether in that capacity or in any other capacity) by such Receiver or Delegate (or by the Lender on its behalf) as soon as practicable after its appointment,

or any substitute address, fax number or department or officer as the relevant person may notify to the Lender (or as the Lender may notify to the other Parties, if a change is made by the Lender) by not less than five Business Days' notice.

**IN WITNESS WHEREOF** this Deed has been executed as a deed by each of the Chargors and each of the Borrowers and signed by the Lender and is intended to be and is hereby delivered on the date first above written.

## **Schedule 1**

### **Part 1 – The Chargors**

| <b>Name of Chargor</b>                    | <b>Registration number (or equivalent, if any)</b> |
|---|--|
| Commercial Real Estate Management Limited | 06857511 England and Wales                         |
| Rowhildon Limited                         | 07160920 England and Wales                         |

### **Part 2 – The Borrowers**

| <b>Name of Borrower</b> | <b>Registration number (or equivalent, if any)</b> |
|-------------------------|--|
| Ashhawk Limited         | 09159075 England and Wales                         |
| Beechloch Limited       | 08821108 England and Wales                         |
| Willowhawk Limited      | 09158775 England and Wales                         |
| Juniperloch Limited     | 09174899 England and Wales                         |

## Schedule 2

### Representations

- 1 Each of the Chargors represents and warrants on the date of this Deed as follows:
  - 1.1 it is the sole legal and beneficial owner of the whole of its Charged Property free from security and encumbrances other than as permitted under the Finance Documents;
  - 1.2 it is duly incorporated and validly existing under the laws of England and Wales with the power and authority to own its assets and carry on its business as presently being conducted;
  - 1.3 all actions and conditions required in order for it to lawfully enter into, exercise its rights and comply with its obligations under this Deed as valid legally binding and enforceable obligations and for this Deed to be admissible in court have been obtained or effected and are in full force and effect;
  - 1.4 its entry into and performance of its obligations under this Deed will not conflict with any law or regulation applicable to it or its constitutional documents or any agreement or instrument binding upon it or any of the Charged Property or constitute a default or termination (however defined) under any such agreement or instrument;
  - 1.5 no litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency which if adversely determined might reasonably be expected to have a Material Adverse Effect have been started or threatened against it;
  - 1.6 no proceedings or other steps have been taken and not discharged for the winding up or dissolution or bankruptcy or voluntary arrangement in relation to it or for the appointment of a receiver or liquidator or similar appointment in relation to it or its assets;
  - 1.7 its centre of main interest, including (without limitation) its place of registered office, is and remains situated within the jurisdiction of its incorporation for the

purposes of the opening of insolvency proceedings under the Insolvency Regulation and all other applicable law;

- 1.8 it has not received or acknowledged notice of any adverse claim by any person in respect of the Charged Property or any interest in it; and
  - 1.9 there are no covenants, agreements, reservations, conditions, interests, rights or other matters whatever, which materially adversely affect the Charged Property.
- 2 Subject to the Legal Reservations, the security created by this Deed constitutes security over the assets which are expressed to be subject to such security and those assets are not subject to any security other than any Permitted Security.

### **Schedule 3**

#### **Undertakings**

##### **Part 1 – General Covenants**

#### **1 Negative Pledge and Disposal Restrictions**

1.1 Each of the Chargors undertakes to the Lender, that it shall not at any time:

1.1.1 create or permit to subsist any security in respect of the whole or any part of the Charged Property; or

1.1.2 enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, transfer or otherwise dispose of the whole or any part of the Charged Property, or any interest therein,

save as permitted under the Finance Documents.

#### **2 Centre of Main Interests**

2.1 Each of the Chargors shall ensure that its centre of main interest, including (without limitation) its place of registered office, is and remains situated within the jurisdiction of its incorporation for the purposes of the opening of insolvency proceedings under the Insolvency Regulation and all other applicable law.

#### **3 Enforcement of Rights**

3.1 Each of the Chargors shall use all reasonable endeavours to procure the prompt observance and performance of the covenants and other obligations imposed on the Borrower and enforce any rights and institute, continue or defend any proceedings relating to any of the Charged Property which the Lender may from time to time require.

#### **4 Notice of Breaches**

4.1 Each of the Chargors shall promptly on becoming aware of any of the same give the Lender notice in writing of any breach of:

- 4.1.1 any representation or warranty set out in Schedule 2 (*Representations*); or
- 4.1.2 any covenant set out in this Schedule 3 (*Undertakings*).

**5 Performance under Subordinated Debt Documents**

- 5.1 Each of the Chargors will perform all of its obligations under the Subordinated Debt Documents in a diligent and timely manner and not make or agree to make any material amendments or modifications to the Subordinated Debt Documents.
- 5.2 Each of the Chargors will not waive any of its rights under the Subordinated Debt Documents, nor exercise any rights to terminate any of the Subordinated Debt Documents except, in any case, with the prior written consent of the Lender.
- 5.3 Each of the Chargors will promptly inform the Lender of any material disputes or material notices received relating to the Subordinated Debt Documents.

## **Schedule 4**

### **Powers of Receivers**

- 1 All the powers to do or abstain from doing anything which the Chargors could do or abstain from doing in relation to the Charged Property including, without limitation the powers conferred by section 109 LPA and Schedule 1 to the Insolvency Act 1986 and with all the powers of an absolute beneficial owner and in particular a receiver may:
  - 1.1 carry on, manage or concur in carrying on managing the whole or any part of the business of the relevant Chargors as he may in his discretion think fit;
  - 1.2 in each case in such manner and generally on such terms as he may in his discretion think fit, (exercising any such power by effecting such transaction in the name of or on behalf of the relevant Chargors or otherwise):
    - 1.2.1 grant rights, options or easements over and otherwise deal with or dispose of, and exercise all rights, powers and discretions incidental to, the ownership of the Charged Property;
    - 1.2.2 sell, exchange, convert into money and realise the Charged Property or concur in so doing whether by public auction or private contract or otherwise and generally in such manner and on such terms as he may in his discretion think fit for any valuable consideration and any such consideration may be payable in a lump sum or by instalments spread over such period as he may in his discretion think fit;
  - 1.3 for the purpose of exercising any of the powers, authorities or discretions conferred on him by or pursuant to the Deed or of defraying any costs which are incurred in the exercise of such powers, authorities or discretions or for any other purpose, raise and borrow money or incur any other liability either unsecured or secured on the Charged Property, either in priority to the security constituted by this Deed or otherwise, and generally on such terms as he may in his discretion think fit. No person lending such money is to be

concerned to enquire as to the propriety or purpose of the exercise of such power or as to the application of any money so raised or borrowed;

- 1.4 make, or require the directors of the relevant Chargors to make, such calls upon the shareholders of the relevant Chargors in respect of any uncalled capital of the relevant Chargor as the Lender may in his discretion require and enforce payment of any call so made by action (in the name of the relevant Chargor or a Receiver may in his discretion think fit) or otherwise;
- 1.5 settle or compromise any claim by, adjust any account with, refer to arbitration any dispute and deal with any question or demand relating in any way to the Charged Property, as he may in his discretion think fit;
- 1.6 bring, prosecute, enforce, defend and abandon all such action, suits and proceedings in relation to the Charged Property as he may in his discretion think fit;
- 1.7 appoint and discharge any manager, officer, agent, professional advisor, employee and any other person, upon such terms as he may in his discretion think fit;
- 1.8 give valid receipts for all monies and execute all assurances and things which he may in his discretion think proper or desirable for selling, leasing, converting, realising or otherwise dealing with the Charged Property; and
- 1.9 do all such other acts and things as a receiver may in his discretion consider to be incidental or conducive to any of the matters or powers set out in this Deed or otherwise incidental or conducive to the preservation, improvement or realisation of the Charged Property.

## **EXECUTION PAGES**

### **The Chargors**

Executed as a deed by **COMMERCIAL  
REAL ESTATE MANAGEMENT LIMITED**  
acting by a director in the presence of a  
witness:

.....

Director

.....

Print Name

In the presence of:

Witness Signature: .....

Witness Name (BLOCK CAPITALS): .....

Witness Occupation: .....

Witness Address: .....

### **Address for notices**

Address: MCR House  
341 Great Western Street  
Manchester  
M14 4AL

Fax No: N/A

Email: aneel.mussarat@mcrproperty.com  
Graham.Lake@mcrproperty.com

FAO: Aneel Mussarat and Graham Lake

Executed as a deed by ROWHILDON  
LIMITED acting by a director in the  
presence of a witness:

.....  
Director

.....  
Print Name

In the presence of:

Witness Signature: .....

Witness Name (BLOCK CAPITALS): .....

Witness Occupation: .....

Witness Address: .....

**Address for notices**

Address: MCR House  
341 Great Western Street  
Manchester  
M14 4AL

Fax No: N/A

Email: aneel.mussarat@mcrproperty.com  
Graham.Lake@mcrproperty.com

FAO: Aneel Mussarat and Graham Lake

### **The Borrowers**

Executed as a deed by **ASHHAWK LIMITED** acting by a director in the presence of a witness: .....

Director

.....

Print Name

In the presence of:

Witness Signature: .....

Witness Name (BLOCK CAPITALS): .....

Witness Occupation: .....

Witness Address: .....

### **Address for notices**

Address: MCR House  
341 Great Western Street  
Manchester  
M14 4AL

Fax No: N/A

Email: aneel.mussarat@mcrproperty.com  
Graham.Lake@mcrproperty.com

FAO: Aneel Mussarat and Graham Lake

Executed as a deed by **BEECHLOCH LIMITED** acting by a director in the presence of a witness: .....

Director

.....

Print Name

In the presence of:

Witness Signature: .....

Witness Name (BLOCK CAPITALS): .....

Witness Occupation: .....

Witness Address: .....

**Address for notices**

Address: MCR House  
341 Great Western Street  
Manchester  
M14 4AL

Fax No: N/A

Email: aneel.mussarat@mcrproperty.com  
Graham.Lake@mcrproperty.com

FAO: Aneel Mussarat and Graham Lake

Executed as a deed by **WILLOWHAWK LIMITED** acting by a director in the presence of a witness: .....

Director

.....

Print Name

In the presence of:

Witness Signature: .....

Witness Name (BLOCK CAPITALS): .....

Witness Occupation: .....

Witness Address: .....

**Address for notices**

Address: MCR House  
341 Great Western Street  
Manchester  
M14 4AL

Fax No: N/A

Email: aneel.mussarat@mcrproperty.com  
Graham.Lake@mcrproperty.com

FAO: Aneel Mussarat and Graham Lake

Executed as a deed by **JUNIPERLOCH LIMITED** acting by a director in the presence of a witness: .....

Director

.....

Print Name

In the presence of:

Witness Signature: .....

Witness Name (BLOCK CAPITALS): .....

Witness Occupation: .....

Witness Address: .....

**Address for notices**

Address: MCR House  
341 Great Western Street  
Manchester  
M14 4AL

Fax No: N/A

Email: aneel.mussarat@mcrproperty.com  
Graham.Lake@mcrproperty.com

FAO: Aneel Mussarat and Graham Lake

Signed as a deed by

## ICG-LONGBOW DEBT INVESTMENTS NO. 4

**S.À R.L.**

a Société à responsabilité limitée  
organized and existing under the laws of  
the Grand Duchy of Luxembourg  
acting by

R. Moore

being a person who in accordance with  
the laws of that territory is acting  
under the authority of

## ICG-LONGBOW DEBT INVESTMENTS NO. 4

**S.À R.L.**

in the presence of:

Witness' signature:

Witness' name:

Witness' address:

Witness' occupation:

Manager

Print name..... Y. O. O.

XXXXXXXXXXXXX

Anne-Sophie Cloos

6C, rue Gabriel Lippmann

.....L-5365-Munsbach.....

Accountant

\*\*\*\*\*

**Address for Notices:**

Address: ICG-Longbow Debt Investments No.4 S.à r.l.  
2 Boulevard Konrad Adenauer  
L-1115 Luxembourg  
Grand-Duchy of Luxembourg

Fax No: +352 26 25 88 79

FAO: The Board of Managers

# FREETHS

DATED

28 October

2015

- (1) THE COMPANIES LISTED IN PART 1 OF  
SCHEDULE 1
- (2) THE COMPANIES LISTED IN PART 2 OF  
SCHEDULE 1
- (3) ICG-LONGBOW DEBT INVESTMENTS NO. 4  
S.À R.L.

SUBORDINATED CREDITORS' SECURITY  
AGREEMENT

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THIS DEED is made on

28 October

2015

**BETWEEN:**

- (1) **THE COMPANIES** listed in Part 1 (The Chargors) of Schedule 1 as Chargors (the "Chargors").
- (2) **THE COMPANIES** listed in Part 2 (the Borrowers) of Schedule 1 as Borrowers (the "Borrowers").
- (3) **ICG-LONGBOW DEBT INVESTMENTS NO. 4 S.À R.L.** a company incorporated in Luxembourg (registered number B195087) whose registered office is at 2 Boulevard Konrad Adenauer, L-1115 Luxembourg, Grand-Duchy of Luxembourg (the "**Lender**").

**THIS DEED WITNESSES** as follows:

**1 Interpretation**

**1.1 Definitions**

In this Deed the following words and expressions shall have the following meanings:

**"Business Day"** means a day (other than a Saturday or Sunday or public holiday) on which banks are open for general business in the City of London;

**"Charged Property"** means all property, assets, rights and revenues of the Chargors from time to time comprised within the security constituted by this Deed (and references to the Charged Property shall include references to any part of it);

**"Encumbrance"** means 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;

**"Enforcement Event"** means any condition, act or event referred to in any Event of Default;

**"Event of Default"** means any event of default defined in the Facility Agreement;

**“Facility Agreement”** means a facility agreement dated on or about the date of this Deed between the Borrowers and the Lender;

**“Finance Documents”** has the meaning set out in the Facility Agreement;

**“High Court”** means the High Court of Justice in England and Wales;

**“Insolvency Regulation”** means EU Council Regulation 1346/2000;

**“LPA”** means Law of Property Act 1925;

**“Permitted Security”** means the security created by this Deed and any other security permitted under the Facility Agreement;

**“Receiver”** means any one or more receivers and managers or (if the Lender so specifies in the relevant appointment) receivers appointed by the Lender pursuant to this Deed in respect of the Charged Property of the Chargors;

**“Secured Obligations”** means all monies, obligations and liabilities whatsoever which may now or at any time in the future be due, owing or incurred (before or after demand) by the Borrowers or the Chargors to the Secured Parties and whether present or future, actual or contingent in any manner whatsoever, as principal or surety and whether alone or jointly with any other party or parties including interest, commission, fees, legal and other costs, charges and expenses;

**“Secured Party”** means the Lender, a Receiver or Delegate;

**“Security Period”** means the period beginning on the date of this Deed and ending on the date on which the Secured Obligations have been satisfied;

**“Subordinated Debt”** 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 or on behalf of the Borrowers to the Chargors 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;

**“Subordinated Debt Documents”** means those contracts and documents (if any) brief particulars of which are set out in Schedule 4 (*Charged Contracts*) and all other

agreements and/or security evidencing or recording the terms of the Subordinated Debt from time to time; and

**"VAT"** means:

- (a) any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112); and
- (b) any other tax of a similar nature, whether imposed in a member state of the European Union in substitution for, or levied in addition to, such tax referred to in paragraph (a) above, or imposed elsewhere.

## 1.2 Interpretation

In this Deed:

- 1.2.1 Unless a contrary indication appears, in this Deed the provisions of clause 1.2 (Construction) of the Facility Agreement apply to this Deed as though they were set out in full in this Deed, except that references to 'this Agreement' will be construed as references to this Deed.
- 1.2.2 the **"Lender"**, any **"Party"**, any **"Secured Party"**, any **"Transaction Obligor"** or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Finance Documents;
- 1.2.3 **"disposal"** includes a sale, transfer, assignment, grant, lease, licence, declaration of trust or other disposal whether voluntary or involuntary and **"dispose"** will be construed accordingly;
- 1.2.4 **"guarantee"** means any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets of any person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness;
- 1.2.5 a **"person"** includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint

venture, consortium or partnership (whether or not having separate legal personality);

- 1.2.6 references to **"security"** shall be construed as a reference to any mortgage, standard security, pledge, hypothecation, title retention, lien, charge, assignment by way of security or other arrangement howsoever described having the same or a similar effect;
- 1.2.7 a provision of law is a reference to such provision as amended or re-enacted;
- 1.2.8 references to **"this Deed"** or to a provision of this Deed, or any other document are references to it as amended, varied, novated, supplemented, extended or restated (however fundamentally and even if any of the same increases the obligations of the Chargors or provides for further advances);
- 1.2.9 a **"Finance Document"**, or **"Transaction Document"** or any other agreement or instrument is a reference to that Finance Document, or Transaction Document or other agreement or instrument as amended, novated, supplemented, extended or restated;
- 1.2.10 the terms of the documents under which the Secured Obligations arise and of any side letters between the Chargors and the Lender relating to the Secured Obligations are incorporated in this Deed to the extent required for any purported disposition of the Charged Property to be a valid disposition in accordance with section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989;
- 1.2.11 references to this Deed include its Schedules;
- 1.2.12 references to a clause or Schedule are (unless otherwise stated) to a clause of, or a Schedule to, this Deed;
- 1.2.13 references in a Schedule or part of a Schedule to a paragraph are (unless otherwise stated) to a paragraph of that Schedule or that part of that Schedule;
- 1.2.14 Section, Clause and Schedule headings are for ease of reference only;

- 1.2.15 use of the singular shall include the plural and vice versa; and
- 1.2.16 any term or phrase defined in the Companies Act 2006 or the Insolvency Act 1986 (as the same may be amended from time to time) shall bear the same meaning in this Deed.
- 1.2.17 The Parties intend that this document shall take effect as a deed notwithstanding the fact that a Party may only execute this document under hand.

### 1.3 Clawback

If the Lender considers that an amount paid by each of the Chargors in respect of the Secured Obligations is capable of being avoided or otherwise set aside on the liquidation or administration of the relevant Chargor or otherwise then that amount shall not be considered to have been irrevocably paid for the purposes of this Deed.

### 1.4 Law of Property (Miscellaneous Provisions) Act 1989

For the purposes of section 2 of the Law of Property (Miscellaneous Provisions) Act 1989, the terms of the other Finance Documents under which the Secured Obligations arise and of any side letters between any parties in relation to the Facility Agreement are incorporated into this Deed to the extent required for any purported disposition of the Charged Property contained in this Deed to be a valid disposition in accordance with Section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989.

### 1.5 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).

### 1.6 Definitions in the Facility Agreement

Unless a contrary indication appears each term used in this Deed which is defined in the Facility Agreement shall have the same meaning as in the Facility Agreement.

## **2     Covenant to pay**

- 2.1     Each of the Chargors as primary obligors and not merely as sureties covenants in favour of the Lender that it will (subject to Clause 2.2 below) pay, discharge and perform the Secured Obligations when they become due.
- 2.2     Notwithstanding any other provisions of this Deed the recourse of the Lender against each of the Chargors under this Deed shall be limited to the Lender's rights of enforcement and recovery against the Subordinated Debt and other assets charged under this Deed by the relevant Chargor and, accordingly, the Lender agrees that the total amount recoverable by the Lender against the relevant Chargor under this Deed shall be limited to the proceeds received by the Lender in realising the Subordinated Debt and other assets charged by the relevant Chargor pursuant to this Deed.

## **3     Security**

- 3.1     Each of the Chargors with full title guarantee in favour of the Lender and as continuing security for the payment, discharge and performance of the Secured Obligations:
- 3.1.1     assigns and agrees to assign absolutely, the benefit of all of its rights, claims, title and interest in:
- (i)     the Subordinated Debt;
  - (ii)    the Subordinated Debt Documents; and
  - (iii)   all present and future claims, causes of action, payments and proceeds in respect thereof;
- 3.1.2     charges by way of first fixed charge (to the extent not effectively assigned by clause 3.1.1 above) all of its rights, claims, title and interest in:
- (i)     the Subordinated Debt;
  - (ii)    the Subordinated Debt Documents; and
  - (iii)   all present and future claims, causes of action, payments and proceeds in respect thereof.

- 3.2 The parties acknowledge that the Lender may make further advances (to the extent arising) under the Facility Agreement. The assignments and charges created by this Deed together secure any such further advances made by the Lender.

#### **4 Provisions relating to assignment**

- 4.1 Each of the Chargors give the relevant Borrowers notice that pursuant to this Deed it has charged by way of fixed charge and assigned to the Lender, as first priority chargee and assignee, all of its rights, title and interest in the Subordinated Debt Documents.

- 4.2 Each of the Chargors further irrevocably and unconditionally:

4.2.1 notifies the relevant Borrowers that it may not agree to materially amend, modify or terminate the Subordinated Debt Documents without the prior written consent of the Lender;

4.2.2 confirms that, subject to clause 4.2.1 above, the relevant Borrowers may continue to deal with it in relation to the Subordinated Debt Documents until the relevant Borrowers receive written notice to the contrary from the Lender that an Event of Default has occurred and is continuing, but authorise and instruct the relevant Borrowers that, after the relevant Borrowers have received such notice, it will cease to have any right to deal with the relevant Borrowers in relation to the Subordinated Debt Documents except in accordance with the instructions of the Lender and therefore from that time the relevant Borrowers may deal directly with the Lender;

4.2.3 authorises and instructs the relevant Borrowers to disclose information in relation to the Subordinated Debt Documents to the Lender promptly on reasonable request;

4.2.4 authorises and instructs the relevant Borrowers following the relevant Borrowers' receipt of notice from the Lender that the relevant Borrowers are no longer entitled to deal with it in relation to the Subordinated Debt Documents and that an Event of Default has occurred and is continuing to pay or release all monies to which it is entitled under the Subordinated Debt Documents directly into such account as the Lender shall specify;

- 4.2.5 authorises and instructs the relevant Borrowers that, whenever the relevant Borrowers serve any notice upon it under the Subordinated Debt Documents, the relevant Borrowers should supply a copy of such notice to the Lender at its address in the parties clause above (or as otherwise notified to the relevant Borrowers by it from time to time);
  - 4.2.6 notifies to the relevant Borrowers that the provisions of this clause 4 may only be revoked with the written consent of the Lender; and
  - 4.2.7 confirms that it has not received any notice of any previous assignment or charge by the Chargors of any of its rights, title and interest in the Subordinated Debt Documents.
- 4.3 Each of the Borrowers acknowledges receipt of the notice provided pursuant to clause 4.1 above on the date of this Deed and:
- 4.3.1 accepts the instructions and authorisations set out in the notice and undertakes to act in accordance with such instructions and authorisations; and
  - 4.3.2 confirms that it has not received notice that the relevant Chargors have assigned its rights under the Subordinated Debt Documents to a third party or created any other interest (whether by way of security or otherwise) in the Subordinated Debt Documents in favour of a third party.
- 4.4 Following an Event of Default which is continuing, the relevant Chargor shall exercise its rights under the Subordinated Debt Documents as directed by the Lender and shall refrain from exercising any of its rights unless so directed by the Lender.

## **5 Continuing security**

- 5.1 The security constituted by this Deed shall operate as a continuing security and shall extend to the ultimate balance of the Secured Obligations regardless of any intermediate payment or discharge of any of the Secured Obligations or any other matter whatsoever.
- 5.2 In the event that the security constituted by this Deed ceases to be a continuing security for whatever reason then the Lender may at that time open or be deemed to have opened a new account or accounts and to credit all or any money arising from

the enforcement of the security constituted by this Deed or receivable hereunder to such new account(s) and such events shall not operate to reduce the amount of the Secured Obligations nor shall the liability of the Chargors be reduced or affected by any subsequent transactions, receipts or payments.

- 5.3 If the Lender receives notice of any subsequent Encumbrance, or other interest, affecting all or part of the Charged Property, the Lender may open a new account for the relevant Chargors in the Lender's books. Without prejudice to the Lender's right to combine accounts, no money paid to the credit of the relevant Chargors in any such new account shall be appropriated towards, or have the effect of discharging, any part of the Secured Obligations.
- 5.4 If the Lender does not open a new account immediately on receipt of notice under clause 5.3 then, unless the Lender gives express written notice to the contrary to the relevant Chargors, all payments made by the relevant Chargors to the Lender shall be treated as having been credited to a new account of the relevant Chargors and not as having been applied in reduction of the Secured Obligations, as from the time of receipt of the relevant notice by the Lender.

## **6 Further assurance**

- 6.1 Each of the Chargors agrees that it shall promptly upon the request of the Lender execute and deliver at its own cost and expense any deed or document and do any act or thing or take any action required by the Lender (provided such action is within its power or control) in order to confirm or establish the validity and enforceability of or otherwise in connection with the creation, perfection, enhancement or protection of the security intended to be created, conferred on the Lender by or pursuant to this Deed (including without limitation) any further legal or other mortgages, charges or assignments and/or notices in favour of the Lender, the waiver of any landlord's rights to levy distress against or enforce any similar or replacement remedy against any of the Charged Property and any instructions, instruments, transfers, renunciations and/or proxies in favour of the Lender or such other person as the Lender may direct together with any and all filings or registrations or notices or instructions or other steps required by the Lender.

## **7      Preservation of rights**

- 7.1      The security constituted by this Deed and the obligations of each of the Chargors contained herein and the rights and powers and remedies conferred on the Lender by this Deed shall be in addition to and shall not be merged with nor in any way be prejudiced or affected by any security or guarantee or judgment or order, right of recourse or other right whatsoever (whether contractual, legal or otherwise) now or at anytime hereafter held by any Secured Party or any other person nor by:
- 7.1.1      any time, waiver, indulgence, consent or concession which any Secured Party may grant to or the terms of any composition or agreement that any Secured Party may enter into with the Chargors; or
  - 7.1.2      any release or intermediate payment or discharge of the Secured Obligations; or
  - 7.1.3      any amendment, novation, supplement, extension or replacement (however fundamental and whether more or less onerous) of the Secured Obligations; or
  - 7.1.4      any legal limitation, disability, incapacity or lack of legal personality or power or authority on the part of the Chargors; or
  - 7.1.5      any unenforceability, illegality or invalidity of the Secured Obligations or any obligations owed by the Chargors; or
  - 7.1.6      any liquidation, winding up, dissolution, amalgamation, reconstruction, reorganisation, bankruptcy, administration or voluntary arrangement of the Chargor or the appointment of any Receiver or liquidator or trustee in bankruptcy in respect of the property or business or assets of the Chargors (or the equivalent of such proceedings, appointments or matters in any jurisdiction) or the occurrence of any other circumstances affecting the liability of the Chargors.
- 7.2      If any payment or discharge or security or any arrangement made in connection with the Secured Obligations is avoided or reduced for whatever reason (including without limitation under any laws relating to liquidation or administration or bankruptcy) the liability of the Chargors and the security created by this Deed shall continue as if

there had been no payment, discharge, avoidance or reduction or arrangement and the Lender shall be entitled to recover the value or amount of the security or payment as if the payment discharge or reduction had not occurred.

- 7.3 Any release, discharge or settlement between the Chargors and any Secured Party shall be deemed conditional on no payment or security received by any Secured Party in respect of the Secured Obligations 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:

7.3.1 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 Charged Property, for such period as the Lender deems necessary to provide the Lender with security against any such avoidance, reduction or order for refund; and

7.3.2 the Lender may recover the value or amount of such security or payment from the relevant Chargors subsequently as if such release, discharge or settlement had not occurred.

- 7.4 The Lender shall not be obliged to account to the Chargors, nor to any other person, for anything other than its own actual receipts which have not been distributed or paid to the person entitled (or whom the Lender, acting reasonably, believes to be entitled) in accordance with the requirements of the Deed.

## **8 Indemnities and Exclusion of Liability**

- 8.1 The provisions of clause 16.2 and 16.4 (Costs and expenses) of the Facility Agreement are incorporated into this Deed as if set out in full mutatis mutandis.

- 8.2 Each of the Chargors shall promptly indemnify and keep indemnified the Lender and every Receiver and/or Delegate against any cost, loss or liability incurred by any of them as a result of:

8.2.1 any failure by the relevant Chargors to comply with its obligations under Clause 8.1 (Costs and expenses);

- 8.2.2 acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised;
  - 8.2.3 the taking, holding, protection, preservation or enforcement of the Transaction Security;
  - 8.2.4 the exercise of any of the rights, powers, discretions, authorities and remedies vested in the Lender and each Receiver and Delegate by the Finance Documents or by law;
  - 8.2.5 any default by the relevant Chargors in the performance of any of the obligations expressed to be assumed by it in the Finance Documents;
  - 8.2.6 instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under this Deed; or
  - 8.2.7 acting as Lender, Receiver or Delegate under the Finance Documents or which otherwise relates to any of the Security Property (otherwise, in each case, than by reason of the relevant Lender's, Receiver's or Delegate's gross negligence or wilful misconduct).
- 8.3 The Lender and every Receiver and Delegate may, in priority to any payment to the Secured Parties, indemnify itself out of the Charged Property in respect of, and pay and retain, all sums necessary to give effect to the indemnity in this Clause 8 and shall have a lien on the security created by this Deed and the proceeds of the enforcement of that security for all moneys payable to it.
- 8.4 Neither the Lender or any Receiver or any Delegate will be liable to the Chargors for any expense, loss, liability or damage incurred by the relevant Chargors arising out of the exercise by such party of its rights or powers or any attempt or failure to exercise those rights or powers, except for any expense, loss, liability or damage arising from its gross negligence, fraud or wilful misconduct.
- 8.5 The Lender may act in relation to this Deed through its personnel and agents.

## **9 Undertakings**

- 9.1 Each of the Chargors covenant with the Lender in the terms set out in Schedule 3 (*Undertakings*).

## **10     Representations**

- 10.1 Each of the Chargors represents and warrants to the Lender in the terms set out in Schedule 2 (*Representations*). These representations and warranties are made on the date of this Deed with reference to the facts and circumstances then existing.

## **11     Interest**

- 11.1 Each of the Chargors agrees to pay interest to the Lender on any money demanded of it under this Deed accruing due to a Secured Party on a daily basis, from day to day, from the date of first demand until payment is made in full (as well after as before judgment or any liquidation or bankruptcy) at the rate of interest which is the default rate of interest agreed to be payable in respect of the Secured Obligations as calculated in accordance with the Finance Documents.

## **12     Amounts payable**

- 12.1 All payments by the Chargors under this Deed shall be made:
- 12.1.1 without set off, retention or counterclaim; and
  - 12.1.2 free and clear of withholding or deduction of any taxes except to the extent that the Chargors are required by law to make such withholding or deduction in which case the relevant Chargors shall pay such amount as will result in the receipt by the Lender of the sums that would have been receivable by it in the absence of such withholding or deduction in respect of the Secured Obligations under this Deed.
- 12.2 The obligations of each of the Chargors to make payments under this Deed are in the currency of the Secured Obligations and shall not be discharged or satisfied by the receipt by the Lender of any monies expressed or converted into any other currency and to the extent there is any shortfall between amounts due under this Deed in one currency and receipt by the Lender in another currency then the Lender shall be entitled to recover the amount of any shortfall from the relevant Chargors and to sell any currency received for the currency due and the relevant Chargors shall promptly indemnify the Lender against the full cost incurred in relation to such sale. The Lender shall not have any liability to the Chargors in respect of any loss arising from any fluctuation in exchange rates after such sale.

- 12.3 The Lender may (but is not obliged to) set off any obligation in respect of the Secured Obligations which is due and payable by the Chargors against any obligation (contingent or otherwise) owed by the Lender to the relevant Chargor and apply any money held for the account of the relevant Chargor in such order as it shall deem in its absolute discretion appropriate.
- 12.4 Any amount due from the Chargors under the terms of this Deed but unpaid, including without limitation any interest, may, at the sole option of the Lender, be added to the Secured Obligations and compounded in accordance with the usual practice of the Lender.

### **13 Enforcement**

- 13.1 Upon the occurrence of an Event of Default that is continuing the Lender may, without notice to the relevant Chargors enforce all or any part of the security constituted by this Deed at such times, in the manner and on such terms as it thinks fit including (without limitation) the appointment of a Receiver to all or any part of the Charged Property.
- 13.2 Section 103 LPA shall not apply to this Deed and the power of sale under section 101 LPA and all other powers conferred on the Lender and any Receiver by this Deed shall operate as a variation and extension of the statutory powers of sale and other powers under the LPA and such powers shall arise (and the Secured Obligations shall be deemed due and payable for these purposes) on the execution of this Deed.
- 13.3 The restrictions contained in section 93 LPA shall not apply to this Deed but the Lender shall have the same right to consolidate this Deed and the money covenanted to be paid with any other security.
- 13.4 The statutory powers of leasing may be exercised by the Lender at any time and the Lender and any Receiver may make any lease or agreement for lease, accept surrenders of leases and grant options on such terms as it shall think fit, without the need to comply with any restrictions imposed by sections 99 or 100 LPA.
- 13.5 The protection given to purchasers and persons dealing with a Receiver in the LPA will apply to purchasers and any other persons dealing with the Lender or any Receiver and no purchaser or other person dealing with the Lender or any Receiver

will be bound to see or inquire whether the right of the Lender or any Receiver to exercise any of its or his powers has arisen or become exercisable nor be concerned with any propriety or regularity on the part of the Lender or any Receiver in such exercise or dealings or whether any amount remains secured by this Deed.

- 13.6 The powers conferred by this Deed on the Lender are in addition to and not in substitution for the powers conferred on mortgagees and mortgagees in possession under the LPA, the Insolvency Act 1986 or otherwise by law and in the case of any conflict between the powers contained in any such Act and those conferred by this Deed the terms of this Deed will prevail.

#### **14 Receivers**

- 14.1 At any time after having been requested to do so by the relevant Chargors or after the occurrence of an Event of Default which is continuing or this Deed having become enforceable in accordance with its terms and save to the extent prohibited by section 72A Insolvency Act 1986 the Lender may in writing by deed or otherwise and without prior notice to the relevant Chargors appoint one or more persons to be a Receiver of the whole or any part of the Charged Property and the Lender may, from time to time, in similar manner, remove a Receiver and appoint another or others in substitution thereof.

- 14.2 Each person appointed to be a Receiver pursuant to this Deed will be:

14.2.1 entitled to act independently or jointly with any other person appointed as a receiver except to the extent that the Lender may specify to the contrary in the appointment;

14.2.2 for all purposes deemed the agent of the relevant Chargors who shall be solely responsible for his acts, defaults and liabilities and for the payment of his remuneration and at no time shall a receiver act as agent for the Lender; and

14.2.3 entitled to remuneration at a rate to be fixed by the Lender from time to time (without being limited to any maximum rate).

- 14.3 The powers of appointment of a Receiver shall be in addition to all statutory and other powers of appointment of the Lender under the LPA (as extended by this Deed)

or otherwise and such powers shall remain exercisable from time to time by the Lender in respect of any part of the Charged Property.

- 14.4 Any Receiver shall have and be entitled to exercise, in relation to the Charged Property all rights and powers as the Lender shall see fit as though the Lender was absolute owner of the Charged Property, including (without limitation) the rights and powers set out in Schedule 4 (*Powers of Receivers*).
- 14.5 The receipt of the Lender or any Receiver shall be conclusive discharge to any purchaser and, in making any disposal of any of the Charged Property the Lender or any Receiver may do so for such consideration, in such manner and on such terms as the Lender or any receiver thinks fit.
- 14.6 Neither the Lender nor any Receiver nor any officer, employee or agent of the Lender or any Receiver shall be deemed to be or in any way liable to account as mortgagee in possession in respect of all or any Charged Property or be liable in any way to the Chargors or any other person for the manner of exercise or non exercise of any powers or rights of the Lender or any Receiver or for any act or default or omission of any nature whatsoever (other than an act, default or omission which constitutes gross negligence, fraud or wilful misconduct).
- 14.7 Any liberty or power which may be exercised or any determination which may be made under this Deed by the Lender or any Receiver may be exercised or made in the Lender's or any Receiver's absolute and unfettered discretion without any obligation to give reasons.

## **15 Appropriations and application of proceeds**

- 15.1 The Lender may apply or refrain from applying any money or property received by it in or towards payment or discharge of any liability in respect of the Secured Obligations in such order or manner as it sees fit or determines and hold any money received by it in an interest bearing suspense account or on account of the Chargors' liabilities under this Deed.
- 15.2 If the Lender (or any Receiver) enforces the security constituted by this Deed at a time when no amount in respect of the Secured Obligations is due and payable, or when the amount due and payable is not ascertained, the Lender (or any Receiver) may pay the proceeds of any recoveries effected by it into an interest bearing

suspense account. The Lender may withdraw amounts standing to the credit of such suspense account for application in or towards discharge of the Secured Obligations.

- 15.3 Until the Secured Obligations have been irrevocably paid in full, the Lender may refrain from applying or enforcing (or attempting to enforce) any other security, monies or rights held or received by the Lender or may apply and enforce the same in such manner and order as the Lender sees fit (whether against the Secured Obligations or otherwise) and the Chargors shall not be entitled to the benefit of such other security.
- 15.4 The Lender may (in accordance with the provisions of its appointment pursuant to the Facility Agreement) in its discretion grant time or other indulgence or make any other arrangement, variation or release with any person or persons not party hereto (whether or not such person or persons are jointly liable with the Chargors) in respect of any of the Secured Obligations or of any other security therefor without prejudice either to this Deed or to the liability of the Chargors for the Secured Obligations.

**16 Immediate recourse**

- 16.1 The Lender shall not be obliged to proceed first against, or enforce any rights or security or claim payment from any person before claiming any benefit under this Deed and each of the Chargors hereby waives any contrary right it may have whether arising under law or otherwise.

**17 Assignment and delegation**

- 17.1 The Lender may (without notice to or the prior consent of the Chargors) but in accordance with the provisions of the Facility Agreement assign or transfer all or any of its rights or powers under this Deed to any person whether in connection with an assignment or transfer or the grant of participation in respect of the Secured Obligations or otherwise and may disclose to any potential assignee, transferee or participant such confidential information about the Chargors and this Deed as it shall deem appropriate.
- 17.2 None of the Chargors may assign or transfer any of its rights or obligations under this Deed.

- 17.3 The Lender and any Receiver may from time to time employ professional advisors and delegate by power of attorney or otherwise to any person any of the powers and discretions of the Lender or any Receiver whether arising by statute, the provisions of this Deed or otherwise upon such terms and for such periods of time as they may think fit (disclosing such confidential information about the Chargors or this Deed as the Lender or any Receiver sees fit) and may at any time determine any such employment or delegation. At no time will either the Lender or any Receiver be liable to the Chargors for any loss or damage arising from any act, default, omission or misconduct of any person.

**18 Discharge of security**

Subject to clause 1.3, if the Lender is satisfied (acting reasonably) that all the Secured Obligations have been irrevocably and unconditionally paid or discharged in full and the Secured Parties have no further obligation to advance funds to the Borrower pursuant to the terms of the Facility Agreement, the Lender shall at the request and cost of the relevant Chargors take whatever action is necessary to release, reassign or discharge (as appropriate) Charged Property from the security created by this Deed.

**19 Miscellaneous**

- 19.1 If, at any time, any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.
- 19.2 No failure to exercise, nor any delay in exercising, on the part of the Lender any right or remedy under this Deed shall operate as a waiver of any such right or remedy or constitute an election to affirm this Deed. No election to affirm this Deed on the part of the Lender shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Deed are cumulative and not exclusive of any rights or remedies provided by law.

- 19.3 No failure by the Lender to give any notice which it is required to give in respect of the Chargors shall affect or impair the liability of each of the Chargors to any Secured Party under this Deed.
- 19.4 At any time after an Event of Default has occurred that is continuing or this Deed has become enforceable the Lender may redeem or take a transfer of any security ranking in priority to the security constituted by this Deed. The Lender may agree the accounts of the holder of any such prior security which agreement shall be binding and conclusive on the relevant Chargors. Any amount paid in connection with such transfer shall be payable on demand by the relevant Chargors to the Lender.
- 19.5 The powers which this Deed confers on the Lender are cumulative, without prejudice to its powers under general law, and may be exercised as often as the Lender thinks appropriate.
- 19.6 Unless expressly provided to the contrary in a 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 to enjoy any benefit of any term of this Deed.
- 19.7 This Deed may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Deed.
- 19.8 Any certification or determination by the Lender of a rate or amount under this Deed is, in the absence of manifest error, conclusive evidence of the matters to which it relates.
- 19.9 All consents, notices and demands required in connection with this Deed must be in writing. The Lender may deliver a notice or demand to each of the Chargors at the address identified with its name below or at the contact details last known by the Lender. A notice or demand signed by an official of the Lender will be effective at the time of personal delivery; or on the second Business Day after posting. A notice from the Chargors to the Lender will be effective on receipt.
- 19.10 This Deed is designated as a Finance Document.
- 19.11 Each of the Chargors has entered into this Deed in consideration of the Lender agreeing to provide (or continue to provide) finance facilities to the Borrower on the terms agreed in the Finance Documents.

- 19.12 If there is any conflict between the provisions of this Deed and the provisions of the Facility Agreement, the Facility Agreement shall prevail.
- 19.13 If any party is not bound by this Deed (or any part of it) for any reason, this does not affect the obligations of each other Party under this Deed (or under the relevant part).
- 19.14 This Deed is in addition to, and does not operate so as in any way to prejudice or affect, or be prejudiced or affected by, any other Security or guarantee which the Lender may now or at any time after the date of this Deed hold for or in respect of the Secured Obligations.
- 19.15 If any provision of this Deed is or becomes invalid or unenforceable, the validity and enforceability of the remaining provisions shall not be affected or impaired thereby.

## **20 Power of attorney**

- 20.1 As further security for the performance of the Chargor's obligations under this Deed, each of the Chargors hereby irrevocably appoints each of the Lender (whether or not a Receiver has been appointed) and also (as a separate appointment) any Receiver jointly and severally to be its attorney with full power of delegation in its names and on its behalf:
- 20.1.1 to sign, execute, seal, complete and deliver any document, deed, agreement, instrument or act which the Lender or any Receiver may require for perfecting the title of the Lender to the Charged Property or for vesting the same in the Lender, its nominees or any purchaser or generally for the purposes set out in this Deed;
- 20.1.2 to sign, execute, seal, complete and deliver any further deed or document required pursuant to clause 6.1; and
- 20.1.3 otherwise generally to sign, seal, execute and deliver all deeds, assurances, agreements and documents and to do all acts and things which may be required for the full exercise of all or any of the powers conferred on the Lender or a Receiver under this Deed or which may be deemed expedient by the Lender or a Receiver in connection with any disposal of the Charged Property, realisation or getting in of the Charged

Property or any part of it or in connection with any other exercise of any power under this Deed,

in each case where the relevant Chargors were obliged to take the relevant action pursuant to the terms of this Deed and has failed to do so.

## **21 Governing law and jurisdiction**

- 21.1 This Deed and any non-contractual obligations arising out of or in connection with it are governed by English law.
- 21.2 The choice of English law as the governing law of this Deed, will be recognised and enforced in its Relevant Jurisdictions. Any judgement obtained in England in relation to this Deed will be recognised and enforced in its Relevant Jurisdictions.
- 21.3 The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute relating to the existence, validity or termination of this Deed or any non-contractual obligation arising out of or in connection with this Deed) (a "**Dispute**").
- 21.4 The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- 21.5 This Clause 21 is for the benefit of the Lender only. As a result, the Lender shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction or in any court which the Lender believes to have competent jurisdiction at the time legal proceedings are issued. To the extent allowed by law, the Lender may take concurrent proceedings in any number of jurisdictions.
- 21.6 Each Chargor incorporated outside England and Wales irrevocably appoints Commercial Real Estate Management Limited of MCR House, 341 Great Western Street, Manchester M14 4AL as its agent to receive on its behalf in England or Wales service of any proceedings under this Clause 21. Such service shall be deemed completed on delivery to such agent (whether or not it is forwarded to and received by the relevant Chargor) and shall be valid until such time as the Lender has received prior written notice that such agent has ceased to act as agent. If for any reason such agent ceases to be able to act as agent or no longer has an address in

England or Wales, the relevant Chargors shall forthwith appoint a substitute acceptable to the Lender and deliver to the Lender the new agent's name and address and fax number within England and Wales.

## **22     Communications**

22.1    The address (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with this Deed is:

22.1.1     in the case of the Borrowers and the Lender those given for it in the execution block of the Facility Agreement;

22.1.2     in the case of the Chargors, that specified in Clause 19.9; and

22.1.3     in the case of each Receiver and each Delegate, those notified in writing to the Lender (whether in that capacity or in any other capacity) by such Receiver or Delegate (or by the Lender on its behalf) as soon as practicable after its appointment,

or any substitute address, fax number or department or officer as the relevant person may notify to the Lender (or as the Lender may notify to the other Parties, if a change is made by the Lender) by not less than five Business Days' notice.

**IN WITNESS WHEREOF** this Deed has been executed as a deed by each of the Chargors and each of the Borrowers and signed by the Lender and is intended to be and is hereby delivered on the date first above written.

## **Schedule 1**

### **Part 1 – The Chargors**

| <b>Name of Chargor</b>                    | <b>Registration number (or equivalent, if any)</b> |
|---|--|
| Commercial Real Estate Management Limited | 06857511 England and Wales                         |
| Rowhildon Limited                         | 07160920 England and Wales                         |

### **Part 2 – The Borrowers**

| <b>Name of Borrower</b> | <b>Registration number (or equivalent, if any)</b> |
|-------------------------|--|
| Ashhawk Limited         | 09159075 England and Wales                         |
| Beechloch Limited       | 08821108 England and Wales                         |
| Willowhawk Limited      | 09158775 England and Wales                         |
| Juniperloch Limited     | 09174899 England and Wales                         |

## **Schedule 2**

### **Representations**

- 1 Each of the Chargors represents and warrants on the date of this Deed as follows:
  - 1.1 it is the sole legal and beneficial owner of the whole of its Charged Property free from security and encumbrances other than as permitted under the Finance Documents;
  - 1.2 it is duly incorporated and validly existing under the laws of England and Wales with the power and authority to own its assets and carry on its business as presently being conducted;
  - 1.3 all actions and conditions required in order for it to lawfully enter into, exercise its rights and comply with its obligations under this Deed as valid legally binding and enforceable obligations and for this Deed to be admissible in court have been obtained or effected and are in full force and effect;
  - 1.4 its entry into and performance of its obligations under this Deed will not conflict with any law or regulation applicable to it or its constitutional documents or any agreement or instrument binding upon it or any of the Charged Property or constitute a default or termination (however defined) under any such agreement or instrument;
  - 1.5 no litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency which if adversely determined might reasonably be expected to have a Material Adverse Effect have been started or threatened against it;
  - 1.6 no proceedings or other steps have been taken and not discharged for the winding up or dissolution or bankruptcy or voluntary arrangement in relation to it or for the appointment of a receiver or liquidator or similar appointment in relation to it or its assets;
  - 1.7 its centre of main interest, including (without limitation) its place of registered office, is and remains situated within the jurisdiction of its incorporation for the

purposes of the opening of insolvency proceedings under the Insolvency Regulation and all other applicable law;

1.8 it has not received or acknowledged notice of any adverse claim by any person in respect of the Charged Property or any interest in it; and

1.9 there are no covenants, agreements, reservations, conditions, interests, rights or other matters whatever, which materially adversely affect the Charged Property.

2 Subject to the Legal Reservations, the security created by this Deed constitutes security over the assets which are expressed to be subject to such security and those assets are not subject to any security other than any Permitted Security.

### **Schedule 3**

#### **Undertakings**

##### **Part 1 – General Covenants**

#### **1 Negative Pledge and Disposal Restrictions**

- 1.1 Each of the Chargors undertakes to the Lender, that it shall not at any time:
- 1.1.1 create or permit to subsist any security in respect of the whole or any part of the Charged Property; or
  - 1.1.2 enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, transfer or otherwise dispose of the whole or any part of the Charged Property, or any interest therein,

save as permitted under the Finance Documents.

#### **2 Centre of Main Interests**

- 2.1 Each of the Chargors shall ensure that its centre of main interest, including (without limitation) its place of registered office, is and remains situated within the jurisdiction of its incorporation for the purposes of the opening of insolvency proceedings under the Insolvency Regulation and all other applicable law.

#### **3 Enforcement of Rights**

- 3.1 Each of the Chargors shall use all reasonable endeavours to procure the prompt observance and performance of the covenants and other obligations imposed on the Borrower and enforce any rights and institute, continue or defend any proceedings relating to any of the Charged Property which the Lender may from time to time require.

#### **4 Notice of Breaches**

- 4.1 Each of the Chargors shall promptly on becoming aware of any of the same give the Lender notice in writing of any breach of:

- 4.1.1 any representation or warranty set out in Schedule 2 (*Representations*); or
- 4.1.2 any covenant set out in this Schedule 3 (*Undertakings*).

## **5 Performance under Subordinated Debt Documents**

- 5.1 Each of the Chargors will perform all of its obligations under the Subordinated Debt Documents in a diligent and timely manner and not make or agree to make any material amendments or modifications to the Subordinated Debt Documents.
- 5.2 Each of the Chargors will not waive any of its rights under the Subordinated Debt Documents, nor exercise any rights to terminate any of the Subordinated Debt Documents except, in any case, with the prior written consent of the Lender.
- 5.3 Each of the Chargors will promptly inform the Lender of any material disputes or material notices received relating to the Subordinated Debt Documents.

## **Schedule 4**

### **Powers of Receivers**

- 1 All the powers to do or abstain from doing anything which the Chargors could do or abstain from doing in relation to the Charged Property including, without limitation the powers conferred by section 109 LPA and Schedule 1 to the Insolvency Act 1986 and with all the powers of an absolute beneficial owner and in particular a receiver may:
  - 1.1 carry on, manage or concur in carrying on managing the whole or any part of the business of the relevant Chargors as he may in his discretion think fit;
  - 1.2 in each case in such manner and generally on such terms as he may in his discretion think fit, (exercising any such power by effecting such transaction in the name of or on behalf of the relevant Chargors or otherwise):
    - 1.2.1 grant rights, options or easements over and otherwise deal with or dispose of, and exercise all rights, powers and discretions incidental to, the ownership of the Charged Property;
    - 1.2.2 sell, exchange, convert into money and realise the Charged Property or concur in so doing whether by public auction or private contract or otherwise and generally in such manner and on such terms as he may in his discretion think fit for any valuable consideration and any such consideration may be payable in a lump sum or by instalments spread over such period as he may in his discretion think fit;
  - 1.3 for the purpose of exercising any of the powers, authorities or discretions conferred on him by or pursuant to the Deed or of defraying any costs which are incurred in the exercise of such powers, authorities or discretions or for any other purpose, raise and borrow money or incur any other liability either unsecured or secured on the Charged Property, either in priority to the security constituted by this Deed or otherwise, and generally on such terms as he may in his discretion think fit. No person lending such money is to be

concerned to enquire as to the propriety or purpose of the exercise of such power or as to the application of any money so raised or borrowed;

- 1.4 make, or require the directors of the relevant Chargors to make, such calls upon the shareholders of the relevant Chargors in respect of any uncalled capital of the relevant Chargor as the Lender may in his discretion require and enforce payment of any call so made by action (in the name of the relevant Chargor or a Receiver may in his discretion think fit) or otherwise;
- 1.5 settle or compromise any claim by, adjust any account with, refer to arbitration any dispute and deal with any question or demand relating in any way to the Charged Property, as he may in his discretion think fit;
- 1.6 bring, prosecute, enforce, defend and abandon all such action, suits and proceedings in relation to the Charged Property as he may in his discretion think fit;
- 1.7 appoint and discharge any manager, officer, agent, professional advisor, employee and any other person, upon such terms as he may in his discretion think fit;
- 1.8 give valid receipts for all monies and execute all assurances and things which he may in his discretion think proper or desirable for selling, leasing, converting, realising or otherwise dealing with the Charged Property; and
- 1.9 do all such other acts and things as a receiver may in his discretion consider to be incidental or conducive to any of the matters or powers set out in this Deed or otherwise incidental or conducive to the preservation, improvement or realisation of the Charged Property.

## EXECUTION PAGES

### **The Chargors**

Executed as a deed by **COMMERCIAL  
REAL ESTATE MANAGEMENT LIMITED**  
acting by a director in the presence of a  
witness:

.....*Graham Lake*.....

Director

.....GRAHAM LAKE.....

Print Name

In the presence of:

Witness Signature:

.....*JK*.....

Witness Name (BLOCK CAPITALS):

.....JANE KIRKHAM.....

Witness Occupation:

.....SOLICITOR.....

Witness Address:

.....1 Byron Place, Manchester  
M3 3H6.....

### Address for notices

Address: MCR House  
341 Great Western Street  
Manchester  
M14 4AL

Fax No: N/A

Email: aneel.mussarat@mcrproperty.com  
Graham.Lake@mcrproperty.com

FAO: Aneel Mussarat and Graham Lake

Executed as a deed by **ROWHILDON LIMITED** acting by a director in the presence of a witness:

  
.....

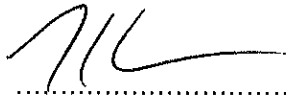
Director

GRAHAM LAKE  
.....

Print Name

In the presence of:

Witness Signature:

  
.....

Witness Name (BLOCK CAPITALS):

JANE KIRKHAM  
.....

Witness Occupation:

SOLICITOR  
.....

Witness Address:

1 Byron Place, Manchester  
M3 3H6

**Address for notices**

Address: MCR House  
341 Great Western Street  
Manchester  
M14 4AL


Fax No: N/A

Email: aneel.mussarat@mcrproperty.com  
Graham.Lake@mcrproperty.com

FAO: Aneel Mussarat and Graham Lake

**The Borrowers**

Executed as a deed by **ASHHAWK LIMITED** acting by a director in the presence of a witness:

.....

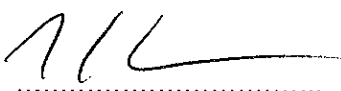
Director

.....GRAHAM LAKE

Print Name

In the presence of:

Witness Signature:

.....

Witness Name (BLOCK CAPITALS):

.....JANE KIRKHAM

Witness Occupation:

.....SOLICITOR

Witness Address:

.....1 Byron Place, Manchester  
M3 3HG

Executed as a deed by **BEECHLOCH LIMITED** acting by a director in the presence of a witness:

.....

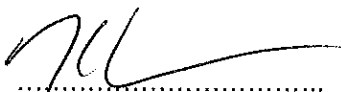
Director

.....GRAHAM LAKE

Print Name

In the presence of:

Witness Signature:

.....

Witness Name (BLOCK CAPITALS):

.....JANE KIRKHAM


Witness Occupation:

.....SOLICITOR

Witness Address:

.....1 Byron Place, Manchester  
M3 3HG

Executed as a deed by **WILLOWHAWK LIMITED** acting by a director in the presence of a witness:

  
.....

Director

GRAHAM LAKE  
.....

Print Name

In the presence of:

Witness Signature:

  
.....

Witness Name (BLOCK CAPITALS):

JANE KIRKHAM  
.....

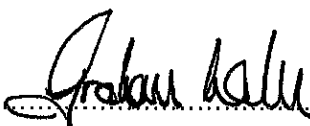
Witness Occupation:

SOLICITOR  
.....

Witness Address:

1 Byrom Place, Manchester  
M3 3HB  
.....

Executed as a deed by **JUNIPERLOCH LIMITED** acting by a director in the presence of a witness:

  
.....

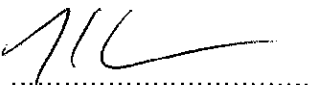
Director

GRAHAM LAKE  
.....

Print Name

In the presence of:

Witness Signature:

  
.....

Witness Name (BLOCK CAPITALS):

JANE KIRKHAM  
.....

Witness Occupation:

SOLICITOR  
.....

Witness Address:

1 Byrom Place, Manchester  
M3 3HB  
.....

**Address for notices**

Address: MCR House  
341 Great Western Street  
Manchester  
M14 4AL

Fax No: N/A

Email: aneel.mussarat@mcrproperty.com  
Graham.Lake@mcrproperty.com

FAO: Aneel Mussarat and Graham Lake

**The Lender**

Signed as a deed by

**ICG-LONGBOW DEBT INVESTMENTS NO. 4**

**S.À R.L.**

a Société à responsabilité limitée  
organized and existing under the laws of  
the Grand Duchy of Luxembourg  
acting by

.....  
..... Manager

being a person who in accordance with  
the laws of that territory is acting  
under the authority of

Print name.....

**ICG-LONGBOW DEBT INVESTMENTS NO. 4**

**S.À R.L.**

in the presence of:

Witness' signature: .....

Witness' name: .....

Witness' address: .....

.....

.....

Witness' occupation: .....

**Address for Notices:**

Address: ICG-Longbow Debt Investments No.4 S.à r.l.  
2 Boulevard Konrad Adenauer  
L-1115 Luxembourg  
Grand-Duchy of Luxembourg

Fax No: +352 26 25 88 79

FAO: The Board of Managers