



**Registration of a Charge**

Company name: **AW Retail Limited**

Company number: **06879213**

Received for Electronic Filing: **03/11/2016**



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**Details of Charge**

Date of creation: **31/10/2016**

Charge code: **0687 9213 0006**

Persons entitled: **AGC EQUITY PARTNERS INVESTMENTS LTD**

Brief description: **NONE**

**Contains fixed charge(s).**

**Contains negative pledge.**

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**Authentication of Form**

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

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**Authentication of Instrument**

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

Certified by: **CAROLINE DODMAN**



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

Company number: 6879213

Charge code: 0687 9213 0006

The Registrar of Companies for England and Wales hereby certifies that a charge dated 31st October 2016 and created by AW Retail Limited was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 3rd November 2016 .

Given at Companies House, Cardiff on 4th November 2016

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

**OLSWANG**

**31 OCTOBER** 2016

**SECURITY AGREEMENT**

- (1) AW RETAIL LIMITED
- (2) AGC EQUITY PARTNERS INVESTMENTS LTD

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THIS DEED is made on

31 OCTOBER

2016

**BETWEEN:**

- (1) **AW Retail Limited** incorporated and registered in England and Wales with company number 06879213 whose registered office is at 1st Floor 25 Eccleston Place, London, SW1W 9NF (the "**Chargor**"); and
- (2) **AGC Equity Partners Investments Ltd** incorporated and registered in the Cayman Islands whose registered number is 228232 (the "**Lender**").

**BACKGROUND**

- (A) The Lender has agreed, pursuant to the Facility Agreement, to provide the Chargor with loan facilities on a secured basis.
- (B) Under this Deed, the Chargor provides security to the Lender for the loan facilities made available under the Facility Agreement.

**IT IS AGREED** as follows:

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Deed the following words and expressions shall have the following meanings unless the context otherwise requires:

**"Business Day"** means a day other than a Saturday, Sunday or public holiday when banks in London and the Cayman Islands are open for business;

**"Delegate"** means any person appointed by the Lender or any Receiver pursuant to clause 13 and any person appointed as attorney of the Lender, Receiver or Delegate;

**"Event of Default"** means has the meaning given to that expression in the Facility Agreement;

**"Facility Agreement"** means the facility agreement dated on or around the date of this Deed between the Borrower and the Lender for the provision of the loan facilities secured by this Deed;

**"Financial Collateral"** means shall have the meaning given to that expression in the Financial Collateral Regulations;

**"Financial Collateral Regulations"** means the Financial Collateral Arrangements (No 2) Regulations 2003 (SI 2003/3226);

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

**"Receiver"** means a receiver, receiver and manager or administrative receiver of any or all of the Secured Assets appointed by the Lender under clause 12;

**"Secured Assets"** means all the assets, property and undertaking for the time being subject to the Security created by, or pursuant to, this Deed (and references to the Secured Assets shall include references to any part of them);

**"Secured Liabilities"** means all present and future monies, obligations and liabilities of the Chargor to the Lender, whether actual or contingent and whether owed jointly or severally, as principal or surety or in any other capacity, under or in connection with the Facility Agreement, or this Deed (including, without limitation, those arising under clause 25.3.2), together with all interest (including, without limitation, default interest) accruing in respect of those monies, obligations or liabilities;

**"Security Financial Collateral Arrangement"** means shall have the meaning given to that expression in the Financial Collateral Regulations;

**"Security"** 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; and

**"Security Period"** means the period starting on the date of this Deed and ending on the date on which the Lender is satisfied that all the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full and no further Secured Liabilities are capable of being outstanding.

## **1.2 Construction**

Capitalised terms defined in the Facility Agreement have, unless expressly defined in this Deed, the same meaning in this Deed.

## **1.3 Clawback**

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

## **1.4 Perpetuity period**

If the rule against perpetuities applies to any trust created by this Deed, the perpetuity period shall be 125 years (as specified by section 5(1) of the Perpetuities and Accumulations Act 2009).

## **1.5 Schedule**

The Schedule forms part of this Deed and shall have effect as if set out in full in the body of this Deed. Any reference to this Deed includes the Schedule.

**2. COVENANT TO PAY**

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

**3. GRANT OF SECURITY**

**3.1 Fixed charges**

As a continuing security for the payment and discharge of the Secured Liabilities, the Chargor with full title guarantee charges to the Lender by way of first fixed charge all its rights in respect of the receivables under each Designated Document, to the extent not effectively assigned under clause 3.2.

**3.2 Assignment**

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

**4. LIABILITY OF THE CHARGOR**

**4.1 Liability not discharged**

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

4.1.1 any security, guarantee, indemnity, remedy or other right held by, or available to, the Lender that is, or becomes, wholly or partially illegal, void or unenforceable on any ground;

4.1.2 the Lender renewing, determining, varying or increasing any facility or other transaction in any manner or concurring in, accepting or varying any compromise, arrangement or settlement, or omitting to claim or enforce payment from any other person; or

4.1.3 any other act or omission that, but for this clause 4.1, might have discharged, or otherwise prejudiced or affected, the liability of the Chargor.

**4.2 Immediate recourse**

The Chargor waives any right it may have to require the Lender to enforce any security or other right, or claim any payment from, or otherwise proceed against, any other person before enforcing this Deed against the Chargor.



**5. REPRESENTATIONS AND WARRANTIES**

**5.1 Representations and warranties**

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

**5.2 Ownership of Secured Assets**

The Chargor is the sole legal and beneficial owner of the Secured Assets.

**5.3 No Security**

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

**5.4 No adverse claims**

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

**5.5 No adverse covenants**

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

**5.6 No breach of laws**

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

**5.7 Avoidance of security**

No Security expressed to be created under this Deed is liable to be avoided, or otherwise set aside, on the liquidation or administration of the Chargor or otherwise.

**5.8 Enforceable security**

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

**5.9 Times for making representations and warranties**

The representations and warranties set out in clause 5.2 to clause 5.8 are made by the Chargor on the date of this Deed and are deemed to be repeated on each day of the Security Period with reference to the facts and circumstances existing at the time of repetition.

## **6. GENERAL COVENANTS**

### **6.1 Negative pledge and disposal restrictions**

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

- 6.1.1 create, purport to create or permit to subsist any Security on, or in relation to, any Secured Asset other than any Security created by this Deed;
- 6.1.2 sell, assign, transfer, part with possession of, or otherwise dispose of in any manner (or purport to do so), all or any part of, or any interest in, the Secured Assets; or
- 6.1.3 create or grant (or purport to create or grant) any interest in the Secured Assets in favour of a third party.

### **6.2 Preservation of Secured Assets**

The Chargor shall not do, or permit to be done, any act or thing that would or might depreciate, jeopardise or otherwise prejudice the security held by the Lender, or materially diminish the value of any of the Secured Assets or the effectiveness of the security created by this Deed.

### **6.3 Chargor's waiver of set-off**

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

### **6.4 Compliance with laws and regulations**

- 6.4.1 The Chargor shall not use or permit the Secured Assets to be used in any way contrary to law.
- 6.4.2 The Chargor shall:
  - 6.4.2.1 comply with the requirements of any law and regulation relating to or affecting the Secured Assets or the use of it or any part of them;
  - 6.4.2.2 obtain, and promptly renew from time to time, and comply with the terms of all authorisations that are required in connection with the Secured Assets or their use or that are necessary to preserve, maintain or renew any Secured Asset; and
  - 6.4.2.3 promptly effect any maintenance, modifications, alterations or repairs that are required by any law or regulation to be effected on or in connection with the Secured Assets.

### **6.5 Enforcement of rights**

The Chargor shall use its best endeavours to:

6.5.1 procure the prompt observance and performance of the covenants and other obligations imposed on the Chargor's counterparties (including each counterparty in respect of a Designated Document); and

6.5.2 enforce any rights and institute, continue or defend any proceedings relating to any of the Secured Assets that the Lender may require from time to time.

**6.6 Title documents**

The Chargor shall promptly deliver to the Lender copies of all the Designated Documents from time to time, certified to be true copies by either a director of the Chargor or by the Chargor's solicitors.

**6.7 Notices to be given by the Chargor**

The Chargor shall:

6.7.1 if requested by the Lender following an Event of Default:

6.7.1.1 give notice to each counterparty to a Designated Document in the form set out in Part 1 of the Schedule; and

6.7.1.2 procure that each counterparty promptly provides to the Lender an acknowledgement of the notice in the form set out in Part 2 of the Schedule;

in each case above with such amendments as the Lender may agree.

**6.8 Information**

The Chargor shall:

6.8.1 give the Lender such information concerning the location, condition and operation of the Secured Assets as the Lender may require;

6.8.2 permit any persons designated by the Lender and any Receiver to enter on its premises and inspect and examine any Secured Asset, and the records relating to that Secured Asset, at all reasonable times and on reasonable prior notice; and

6.8.3 promptly notify the Lender in writing of any action, claim, notice or demand made by or against it in connection with all or any part of a Secured Asset or of any fact, matter or circumstance which may, with the passage of time, give rise to such an action, claim, notice or demand, together with, in each case, the Chargor's proposals for settling, liquidating, compounding or contesting any such action, claim, notice or demand and shall, subject to the Lender's prior approval, implement those proposals at its own expense.

**6.9 Payment of outgoings**

The Chargor shall promptly pay all taxes, fees and other outgoings in respect of the Secured Assets and, on demand, produce evidence of payment to the Lender.

**7. DESIGNATED DOCUMENTS COVENANTS**

**7.1 Designated Documents**

7.1.1 The Chargor shall, unless the Lender agrees otherwise in writing, comply with the terms of any Designated Document and any other document, agreement or arrangement comprising the Secured Assets.

7.1.2 The Chargor shall not, unless the Lender agrees otherwise in writing:

7.1.2.1 amend or vary or agree to any change in, or waive any requirement of;

7.1.2.2 settle, compromise, terminate, rescind or discharge (except by performance); or

7.1.2.3 abandon, waive, dismiss, release or discharge any action, claim or proceedings against any counterparty to a Designated Document or other person in connection with,

any Designated Document or any other document, agreement or arrangement comprising the Secured Assets.

**7.2 Realising Designated Document Proceeds**

7.2.1 The Chargor shall as an agent for the Lender, collect in and realise all proceeds of the Designated Documents, pay the proceeds into such account as the Lender directs immediately on receipt and, pending that payment, hold those proceeds in trust for the Lender;

7.2.2 The Chargor shall not (except as provided by clause 7.2 or with the prior written consent of the Lender) release, exchange, compound, set-off, grant time or indulgence in respect of, or in any other manner deal with, all or any of the Designated Document proceeds.

**8. POWERS OF THE LENDER**

**8.1 Power to remedy**

8.1.1 The Lender shall be entitled (but shall not be obliged) to remedy, at any time, a breach by the Chargor of any of its obligations contained in this Deed.

8.1.2 The Chargor irrevocably authorises the Lender and its agents to do all things that are necessary or desirable for that purpose.

8.1.3 Any monies expended by the Lender in remedying a breach by the Chargor of its obligations contained in this Deed shall be reimbursed by the Chargor to the Lender on a full indemnity basis and shall carry interest in accordance with clause 15.1.

**8.2 Exercise of rights**

The rights of the Lender under clause 8.1 are without prejudice to any other rights of the Lender under this Deed.

**8.3 Lender has Receiver's powers**

To the extent permitted by law, any right, power or discretion conferred by this Deed on a Receiver may, after the security constituted by this Deed has become enforceable, be exercised by the Lender in relation to any of the Secured Assets whether or not it has taken possession of any Secured Assets and without first appointing a Receiver or notwithstanding the appointment of a Receiver.

**8.4 Conversion of currency**

8.4.1 For the purpose of, or pending the discharge of, any of the Secured Liabilities, the Lender may convert any monies received, recovered or realised by it under this Deed (including the proceeds of any previous conversion under this clause 8.4) from their existing currencies of denomination into any other currencies of denomination that the Lender may think fit.

8.4.2 Any such conversion shall be effected at the spot rate of exchange of such bank chosen by the Lender for such other currency against the existing currency.

8.4.3 Each reference in this clause 8.4 to a currency extends to funds of that currency and, for the avoidance of doubt, funds of one currency may be converted into different funds of the same currency.

**8.5 Indulgence**

The Lender may, at its discretion, grant time or other indulgence, or make any other arrangement, variation or release with any person not being a party to this Deed (whether or not any such person is jointly liable with the Chargor) in respect of any of the Secured Liabilities, or of any other security for them without prejudice either to this Deed or to the liability of the Chargor for the Secured Liabilities.

**8.6 Further advances**

The Lender covenants with the Chargor that it shall perform its obligations to make advances under the Facility Agreement.

**9. WHEN SECURITY BECOMES ENFORCEABLE**

**9.1 Security becomes enforceable on Event of Default**

The security constituted by this Deed shall become immediately enforceable if an Event of Default occurs which is continuing.

**9.2 Discretion**

After the security constituted by this Deed has become enforceable, the Lender may, in its absolute discretion, enforce all or any part of that security at the times, in the manner and on the terms it thinks fit, and take possession of and hold or dispose of all or any part of the Secured Assets.

**10. ENFORCEMENT OF SECURITY**

**10.1 Enforcement powers**

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

10.1.2 The power of sale and other powers conferred by section 101 of the LPA 1925 (as varied or extended by this Deed) shall be immediately exercisable at any time after the security constituted by this Deed has become enforceable under clause 9.1.

10.1.3 Section 103 of the LPA 1925 does not apply to the security constituted by this Deed.

**10.2 Access on enforcement**

10.2.1 At any time after the Lender has demanded payment of the Secured Liabilities or if the Chargor defaults in the performance of its obligations under this Deed or the Facility Agreement, the Chargor will allow the Lender or its Receiver, without further notice or demand, immediately to exercise all its rights, powers and remedies in particular (and without limitation) to take possession of any Secured Asset and for that purpose to enter on any premises where a Secured Asset is situated (or where the Lender or a Receiver reasonably believes a Secured Asset to be situated) without incurring any liability to the Chargor for, or by any reason of, that entry.

10.2.2 At all times, the Chargor must use its best endeavours to allow the Lender or its Receiver access to any premises for the purpose of clause 10.2.1 (including obtaining any necessary consents or permits of other persons) and ensure that its employees and officers do the same.

### **10.3 Prior Security**

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

- 10.3.1 redeem that or any other prior Security;
- 10.3.2 procure the transfer of that Security to it; and/or
- 10.3.3 settle and pass any account of the holder of any prior Security.

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

### **10.4 Protection of third parties**

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

- 10.4.1 whether any of the Secured Liabilities have become due or payable, or remain unpaid or undischarged;
- 10.4.2 whether any power the Lender, a Receiver or Delegate is purporting to exercise has become exercisable or is properly exercisable; or
- 10.4.3 how any money paid to the Lender, any Receiver or any Delegate is to be applied.

### **10.5 Privileges**

Each Receiver and the Lender is entitled to all the rights, powers, privileges and immunities conferred by the LPA 1925 on mortgagees and receivers.

### **10.6 No liability as mortgagee in possession**

Neither the Lender, any Receiver, nor any Delegate shall be liable, by reason of entering into possession of a Security Asset or for any other reason, to account as mortgagee in possession in respect of all or any of the Secured Assets, nor shall any of them be liable for any loss on realisation of, or for any act, neglect or default of any nature in connection with, all or any of the Secured Assets for which a mortgagee in possession might be liable as such.

## **10.7 Conclusive discharge to purchasers**

The receipt of the Lender, or any Receiver or Delegate shall be a conclusive discharge to a purchaser and, in making any sale or other disposal of any of the Secured Assets or in making any acquisition in the exercise of their respective powers, the Lender, and every Receiver and Delegate may do so for any consideration, in any manner and on any terms that it or he thinks fit.

## **10.8 Right of appropriation**

### **10.8.1 To the extent that:**

10.8.1.1 the Secured Assets constitute Financial Collateral; and

10.8.1.2 this Deed and the obligations of the Chargor under it constitute a Security Financial Collateral Arrangement,

the Lender shall have the right, at any time after the security constituted by this Deed has become enforceable, to appropriate all or any of those Secured Assets in or towards the payment or discharge of the Secured Liabilities in any order that the Lender may, in its absolute discretion, determine.

10.8.2 The value of any Secured Assets appropriated in accordance with this clause shall be the price of those Secured Assets at the time the right of appropriation is exercised as listed on any recognised market index or determined by any other method that the Lender may select (including independent valuation).

10.8.3 The Chargor agrees that the methods of valuation provided for in this clause are commercially reasonable for the purposes of the Financial Collateral Regulations.

## **11. RECEIVER**

### **11.1 Appointment**

At any time after the security constituted by this Deed has become enforceable, or at the request of the Chargor, the Lender may, without further notice, appoint by way of deed, or otherwise in writing, any one or more persons to be a Receiver of all or any part of the Secured Assets.

### **11.2 Removal**

The Lender may, without further notice, from time to time, by way of deed, or otherwise in writing, remove any Receiver appointed by it and may, whenever it thinks fit, appoint a new Receiver in the place of any Receiver whose appointment may for any reason have terminated.



### **11.3 Remuneration**

The Lender may fix the remuneration of any Receiver appointed by it without the restrictions contained in section 109 of the LPA 1925, and the remuneration of the Receiver shall be a debt secured by this Deed, to the extent not otherwise discharged.

### **11.4 Power of appointment additional to statutory powers**

The power to appoint a Receiver conferred by this Deed shall be in addition to all statutory and other powers of the Lender under the Insolvency Act 1986, the LPA 1925 or otherwise, and shall be exercisable without the restrictions contained in sections 103 and 109 of the LPA 1925 or otherwise.

### **11.5 Power of appointment exercisable despite prior appointments**

The power to appoint a Receiver (whether conferred by this Deed or by statute) shall be, and remain, exercisable by the Lender despite any prior appointment in respect of all or any part of the Secured Assets.

### **11.6 Agent of the Chargor**

Any Receiver appointed by the Lender under this Deed shall be the agent of the Chargor and the Chargor shall be solely responsible for the contracts, engagements, acts, omissions, defaults, losses and remuneration of that Receiver and for liabilities incurred by that Receiver. The agency of each Receiver shall continue until the Chargor goes into liquidation and after that the Receiver shall act as principal and shall not become the agent of the Lender.

## **12. POWERS OF RECEIVER**

### **12.1 General**

12.1.1 Any Receiver appointed by the Lender under this Deed shall, in addition to the powers conferred on him/her by statute, have the powers set out in clause 12.2 to clause 12.13.

12.1.2 If there is more than one Receiver holding office at the same time, each Receiver may (unless the document appointing him/her states otherwise) exercise all of the powers conferred on a Receiver under this Deed individually and to the exclusion of any other Receiver.

12.1.3 Any exercise by a Receiver of any of the powers given by clause 12 may be on behalf of the Chargor or himself/herself.

### **12.2 Employ personnel and advisers**

A Receiver may provide services and employ or engage any managers, officers, servants, contractors, workmen, agents, other personnel and professional advisers on

any terms, and subject to any conditions, that he/she thinks fit. A Receiver may discharge any such person or any such person appointed by the Chargor.

**12.3 Remuneration**

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

**12.4 Realise Secured Assets**

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

**12.5 Dispose of Secured Assets**

A Receiver may sell, exchange, convert into money and realise all or any of the Secured Assets in respect of which he/she is appointed in any manner (including, without limitation, by public auction or private sale) and generally on any terms and conditions as he/she thinks fit. Any sale may be for any consideration that the Receiver thinks fit and a Receiver may promote, or concur in promoting, a company to purchase the Secured Assets to be sold.

**12.6 Valid receipts**

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

**12.7 Make settlements**

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

**12.8 Bring proceedings**

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

**12.9 Powers under the LPA 1925**

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

#### **12.10 Redeem prior Security**

A Receiver may redeem any prior Security and settle and pass the accounts to which the Security relates. Any accounts so settled and passed shall be, in the absence of any manifest error, conclusive and binding on the Chargor, and the monies so paid shall be deemed to be an expense properly incurred by the Receiver.

#### **12.11 Delegation**

A Receiver may delegate his/her powers in accordance with this Deed.

#### **12.12 Absolute beneficial owner**

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

#### **12.13 Incidental powers**

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

12.13.1 may consider desirable or necessary for realising any of the Secured Assets;

12.13.2 may consider incidental or conducive to any of the rights or powers conferred on a Receiver under or by virtue of this Deed or law; or

12.13.3 lawfully may or can do as agent for the Chargor.

### **13. DELEGATION**

#### **13.1 Delegation**

The Lender or any Receiver may delegate (either generally or specifically) by power of attorney or in any other manner to any person any right, power, authority or discretion conferred on it by this Deed (including the power of attorney granted under clause 17.1).

#### **13.2 Terms**

The Lender and each Receiver may make a delegation on the terms and conditions (including the power to sub-delegate) that it/he/she thinks fit.

#### **13.3 Liability**

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

## **14. APPLICATION OF PROCEEDS**

### **14.1 Order of application of proceeds**

All monies received by the Lender, a Receiver or a Delegate pursuant to this Deed, after the security constituted by this Deed has become enforceable, shall (subject to the claims of any person having prior rights and by way of variation of the LPA 1925) be applied in the following order of priority:

14.1.1 in or towards payment of or provision for all costs, charges and expenses incurred by or on behalf of the Lender (and any Receiver, Delegate, attorney or agent appointed by it) under or in connection with this Deed, and of all remuneration due to any Receiver under or in connection with this Deed;

14.1.2 in or towards payment of or provision for the Secured Liabilities in any order and manner that the Lender determines; and

14.1.3 in payment of the surplus (if any) to the Chargor or other person entitled to it.

### **14.2 Appropriation**

Neither the Lender, any Receiver nor any Delegate shall be bound (whether by virtue of section 109(8) of the LPA 1925, which is varied accordingly, or otherwise) to pay or appropriate any receipt or payment first towards interest rather than principal or otherwise in any particular order between any of the Secured Liabilities.

### **14.3 Suspense account**

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

14.3.1 may, at the discretion of the Lender, Receiver or Delegate, be credited to any suspense or securities realised account;

14.3.2 shall bear interest, if any, at the rate agreed in writing between the Lender and the Chargor; and

14.3.3 may be held in that account for so long as the Lender, Receiver or Delegate thinks fit.

## **15. COSTS AND INDEMNITY**

### **15.1 Costs**

The Chargor shall, promptly on demand, pay to, or reimburse, the Lender and any Receiver or any Delegate, on a full indemnity basis, all costs, charges, expenses, taxes and liabilities of any kind (including, without limitation, legal, printing and out-of-pocket expenses) incurred by the Lender, any Receiver or any Delegate in connection with:

15.1.1 this Deed or the Secured Assets;

15.1.2 taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) any of the Lender's, a Receiver's or a Delegate's rights under this Deed;  
or

15.1.3 taking proceedings for, or recovering, any of the Secured Liabilities,

together with interest, which shall accrue and be payable (without the need for any demand for payment being made) from the date on which the relevant cost or expense arose until full discharge of that cost or expense (whether before or after judgment, liquidation, winding up or administration of the Chargor) at the rate and in the manner specified in the Facility Agreement.

## **15.2 Indemnity**

The Chargor shall indemnify the Lender, each Receiver and each Delegate, and their respective employees and agents against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by any of them arising out of or in connection with:

15.2.1 the exercise or purported exercise of any of the rights, powers, authorities or discretions vested in them under this Deed or by law in respect of the Secured Assets;

15.2.2 taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) the security constituted by this Deed; or

15.2.3 any default or delay by the Chargor in performing any of its obligations under this Deed.

Any past or present employee or agent may enforce the terms of this clause 15.2 subject to and in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999.

## **16. FURTHER ASSURANCE**

### **16.1 Further assurance**

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

16.1.1 creating, perfecting or protecting the security intended to be created by this Deed;

16.1.2 facilitating the realisation of any Secured Asset; or

16.1.3 facilitating the exercise of any right, power, authority or discretion exercisable by the Lender or any Receiver in respect of any Secured Asset,

including, without limitation (if the Lender or Receiver thinks it expedient) the execution of any transfer, conveyance, assignment or assurance of all or any of the assets forming part of (or intended to form part of) the Secured Assets (whether to the Lender or to its nominee) and the giving of any notice, order or direction and the making of any registration.

**17. POWER OF ATTORNEY**

**17.1 Appointment of attorneys**

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

17.1.1 the Chargor is required to execute and do under this Deed; or

17.1.2 any attorney deems proper or desirable in exercising any of the rights, powers, authorities and discretions conferred by this Deed or by law on the Lender, any Receiver or any Delegate.

**17.2 Ratification of acts of attorneys**

The Chargor ratifies and confirms, and agrees to ratify and confirm, anything that any of its attorneys may do in the proper and lawful exercise, or purported exercise, of all or any of the rights, powers, authorities and discretions referred to in clause 17.1.

**18. RELEASE**

Subject to clause 25.3, on the expiry of the Security Period (but not otherwise), the Lender shall, at the request and cost of the Chargor, take whatever action is necessary to:

18.1.1 release the Secured Assets from the security constituted by this Deed; and

18.1.2 reassign the Secured Assets to the Chargor.

**19. ASSIGNMENTS AND TRANSFERS**

**19.1 Assignments and transfers by the Lender**

The Lender may:

19.1.1 assign any or all of its rights; or

19.1.2 transfer by novation any or all of its rights and obligations,

under this Deed.

**19.2 Assignments and transfers by the Chargor**

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

**20. SET-OFF**

**20.1 Lender's right of set-off**

The Lender may set off any matured obligation due from the Chargor under this Deed against any matured obligation owed by the Lender to the Chargor, regardless of the place of payment, booking branch or currency of either obligation. Any exercise by the Lender of its rights under this clause 20 shall not limit or affect any other rights or remedies available to it under this Deed or otherwise.

**20.2 No obligation to set off**

The Lender is not obliged to exercise its rights under clause 20.1. If, however, it does exercise those rights it must promptly notify the Chargor of the set-off that has been made.

**20.3 Exclusion of Chargor's right of set-off**

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

**21. AMENDMENTS, WAIVERS AND CONSENTS**

**21.1 Amendments**

No amendment of this Deed shall be effective unless it is in writing and signed by, or on behalf of, each party (or its authorised representative).

**21.2 Waivers and consents**

21.2.1 A waiver of any right or remedy under this Deed or by law, or any consent given under this Deed, is only effective if given in writing by the waiving or consenting party and shall not be deemed a waiver of any other breach or default. It only applies in the circumstances for which it is given and shall not prevent the party giving it from subsequently relying on the relevant provision.

21.2.2 A failure to exercise, or a delay in exercising, any right or remedy provided under this Deed or by law shall not constitute a waiver of that or any other right or remedy, prevent or restrict any further exercise of that or any other right or remedy or constitute an election to affirm this Deed. No single or partial exercise of any right or remedy provided under this Deed or by law shall prevent or restrict the further exercise of that or any other right or remedy. No

election to affirm this Deed by the Lender shall be effective unless it is in writing.

**21.3 Rights and remedies**

The rights and remedies provided under this Deed are cumulative and are in addition to, and not exclusive of, any rights and remedies provided by law.

**22. SEVERANCE**

**22.1 Severance**

If any provision (or part of a provision) of this Deed is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision (or part of a provision) shall be deemed deleted. Any modification to or deletion of a provision (or part of a provision) under this clause shall not affect the legality, validity and enforceability of the rest of this Deed.

**23. COUNTERPARTS**

**23.1 Counterparts**

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.

**24. THIRD PARTY RIGHTS**

**24.1 Third party rights**

Except as expressly provided a person who is not a party to this Deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce, or enjoy the benefit of, any term of this Deed. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

**25. FURTHER PROVISIONS**

**25.1 Independent security**

The security constituted by this Deed shall be in addition to, and independent of, any other security or guarantee that the Lender may hold for any of the Secured Liabilities at any time. No prior security held by the Lender over the whole or any part of the Secured Assets shall merge in the security created by this Deed.

**25.2 Continuing security**

The security constituted by this Deed shall remain in full force and effect as a continuing security for the Secured Liabilities, despite any settlement of account, or intermediate



payment, or other matter or thing, unless and until the Lender discharges this Deed in writing.

### **25.3 Discharge conditional**

Any release, discharge or settlement between the Chargor and the Lender shall be deemed conditional on no payment or security received by the Lender in respect of the Secured Liabilities being avoided, reduced or ordered to be refunded pursuant to any law relating to insolvency, bankruptcy, winding-up, administration, receivership or otherwise. Despite any such release, discharge or settlement:

- 25.3.1 the Lender or its nominee may retain this Deed and the security created by or pursuant to it, including all certificates and documents relating to the whole or any part of the Secured Assets, for any period that the Lender deems necessary to provide the Lender with security against any such avoidance, reduction or order for refund; and
- 25.3.2 the Lender may recover the value or amount of such security or payment from the Chargor subsequently as if the release, discharge or settlement had not occurred.

### **25.4 Certificates**

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

### **25.5 Consolidation**

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

## **26. NOTICES**

### **26.1 Addresses and delivery**

- 26.1.1 Any communication to be made under or in connection with this Deed shall be made in writing and, unless otherwise stated, may be made by email or letter.
- 26.1.2 The contact details of the Borrower for any communication or document to be made or delivered under or in connection with this Deed are:

Address: AW Retail Limited, 25 Eccleston Place, London SW1W 9NF

Email To: amf@amandawakeley.com

Cc: cr@amandawakeley.com

Attention: Ahlya Fateh / Chitra Ramachandran

- 26.1.3 The contact details for the Lender for any communication or document to be made or delivered under or in connection with this Deed are:

Address: AGC Equity Partners Investments Ltd, 33 Davies Street, London W1K 4LR

Email To: sdhanani@agcequitypartners.com

Cc: lloh@agcequitypartners.com

Attention: Sangeet Dhanani / Laraine Loh

- 26.1.4 Any party to this Deed may change its contact details by giving five business days' notice to the other party. Any communication or document made or delivered by one person to another under or in connection with this Deed will only be effective if by way of email, at the time of transmission, or, if by way of letter, when it has been left at the relevant address or two business days after being deposited in the post postage prepaid in an envelope addressed to it at that address. Any communication or document to be made or delivered to the Lender will be effective only when actually received by the Lender.

## **26.2 Service of proceedings**

This clause 26 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## **27. GOVERNING LAW**

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

## **28. ENFORCEMENT**

### **28.1 Jurisdiction**

- 28.1.1 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**").

- 28.1.2 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.

- 28.1.3 This clause 28.1 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. To the extent allowed by law, the Lender may take concurrent proceedings in any number of jurisdictions.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

## SCHEDULE

### PART I

#### FORM OF NOTICE OF ASSIGNMENT

*[On the letterhead of the Chargor]*

To: [Contract party]

[Date]

Dear Sirs,

We give you notice that by a security agreement dated [•] (the "Deed"), we have [EITHER charged to AGC Equity Partners Investments Ltd (as chargee, the "Chargee") all our rights, title to and interest in the receivables under OR assigned by way of security to AGC Equity Partners Investments Ltd (as chargee, the "Chargee") the benefit of] *[insert details of Contract]* (the "Contract").

All sums payable to us under the Contract should be paid to the Chargee's account with [•] at [•], Account No. [•], Sort Code [•] or such other account as the Chargee may specify from time to time.

We confirm that:

1. our duties and obligations under the Contract have not been novated and we will remain liable under the Contract to perform all the obligations assumed by us under the Contract; and
2. none of the Lender, its agents, any delegate appointed by the Lender or any receiver will at any time be under any obligation or liability to you under or in respect of the Contract.

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

We hereby give you notice that we cease to have any right to deal with you in relation to the [EITHER receivables under the OR the benefit of the] Contract and all the rights, powers and discretions will be exercisable by, and notices must be given to, the Lender or as it directs.

You are authorised, without any reference to or further authority from us and without any inquiry by you as to the justification for the disclosure, to disclose information in relation to the Contract to the Lender on its request and you shall send copies of all notices and other information sent or delivered under the Contract to the Lender.

The Instructions in this letter may not be varied or revoked without the prior written consent of the Lender.

This letter and all non-contractual obligations arising out of it shall be governed by and construed in accordance with English law.

Please acknowledge receipt of this letter and your acceptance of the instructions and authorisations contained in it within 7 days of receiving this letter by sending a letter in the enclosed form direct to the Chargee at [AGC Equity Partners Investments Ltd, 33 Davies Street, London, W1K 4LR] marked for the attention of [Sangeet Dhanani].

Yours faithfully,

.....  
[AW RETAIL LIMITED]

(Director/Duly authorised signatory)

## PART II

### FORM OF ACKNOWLEDGMENT

*[On the letterhead of the relevant Counterparty]*

To: AGC Equity Partners Investments Ltd as Lender

Copy: AW Retail Limited

[Date]

Dear Sirs,

We acknowledge receipt of a notice dated [●] (the "Notice") and addressed to us by AW Retail Limited (the "Chargor") in relation to the Contract (as defined in the Notice).

We accept the instructions and authorisations contained in the Notice and undertake to act in accordance and comply with the terms thereof.

We confirm that:

1. we have not received any other notice of any assignment of, or any security or the interest of any third party in, the Contract;
2. there has been no amendment, waiver or release of any rights or interests in the Contract since the date of the Contract;
3. we will not agree to any amendment, waiver or release of any provision of the Contract without the prior written consent of the Lender;
4. as at the date of this acknowledgement, we are not aware of any breach by the Chargor of the terms of the Contract; and
5. we do not have and have not claimed or exercised any right or claim against the Chargor or exercised or attempted to exercise any right of set-off, counterclaim or other right relating to the Contract.

This letter and all non-contractual obligations arising out of it shall be governed by and construed in accordance with English law.

Yours faithfully,

.....  
[Counterparty]

(Director/Duly authorised signatory)

THIS DEED has been executed by or on behalf of the parties on the date at the top of page 1.

**Lender:**

EXECUTED as a deed but not ) Director's  
delivered until the date of this Deed by ) Signature .....  
AGC Equity Partners Investments )  
Ltd acting by its director )  
in the presence of ) Print Name... Walid Abu-Saad

Witness's  
Signature.....

Name..... LARAINÉ LOH

Address..... 33 DAVIES STREET

..... LONDON W1K 4LR

Occupation..... INVESTMENT MANAGER

**Chargor:**

EXECUTED as a deed but not ) Director's  
delivered until the date of this Deed by ) Signature .....  
AW Retail Limited )  
acting by its director )  
in the presence of ) Print Name... ATHYA FATEH

Witness's  
Signature.....

Name..... Chitra Ramachandran

Address.....

.....

Occupation..... Accountant