



**Companies House**

**MR01**(ef)

**Registration of a Charge**

Company name: **BATTERSEA PLACE RETIREMENT VILLAGE LIMITED**

Company number: **07545666**

Received for Electronic Filing: **12/08/2013**



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**Details of Charge**

Date of creation: **07/08/2013**

Charge code: **0754 5666 0002**

Persons entitled: **STARWOOD EUROPEAN FINANCE PARTNERS LIMITED**

Brief description: **THE PROPERTY KNOWN AS LAND AT 73 ALBERT ROAD, BATTERSEA, LONDON SW11 4DS AND DESCRIBED IN MORE DETAIL IN THE REGISTERED TITLE (TITLE NUMBER: TGL16934).**

**Contains fixed charge(s).**

**Contains floating charge(s) (floating charge covers all the property or undertaking of the company).**

**Notification of addition to or amendment of charge.**

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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:

**NIGEL DALE**



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

Company number: 7545666

Charge code: 0754 5666 0002

The Registrar of Companies for England and Wales hereby certifies that a charge dated 7th August 2013 and created by BATTERSEA PLACE RETIREMENT VILLAGE LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 12th August 2013 .

Given at Companies House, Cardiff on 12th August 2013



Companies House



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES

## Mezzanine Security Agreement

Battersea Place LLP

and

Battersea Place Retirement Village Limited

and

~~Starfin Lux S.à r.l.~~

L STARWOOD EUROPEAN FINANCE PARTNERS LIMITED

(AL)

The rights and obligations of the parties to this Deed are subject to an Intercreditor Agreement (as defined in this Deed)



7 August 2013

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This Deed is made on 7 August 2013

**BETWEEN**

- (1) **BATTERSEA PLACE LLP**, a limited liability partnership incorporated in England and Wales with registered number OC326797 whose registered office is at Sherwood House, Forest Road, Kew TW9 3BY (the "**First Chargor**");
- (2) **BATTERSEA PLACE RETIREMENT VILLAGE LIMITED**, a company incorporated in England and Wales with company number 07545666 whose registered address is at Sherwood House, Forest Road, Kew TW9 3BY (the "**Second Chargor**"); and
- (3) ~~STARFIN LUX S.À.R.L.~~, in its capacity as Security Trustee.

1. **INTERPRETATION**

1.1 **Expressly defined terms**

STARWOOD EUROPEAN FINANCE PARTNERS LIMITED. (HL)

In this Deed, the following words and phrases have the specified meanings.

**"Associated Rights"** means, in relation to any asset, all proceeds of sale of such asset, all rights, powers, benefits, covenants, warranties, guarantees or Security given or implied in respect of such asset, all rights under any agreement for sale, agreement for lease or licence of or in respect of such asset, and any monies and proceeds paid or payable in respect of such asset;

**"Applicable Undertaking"** means the undertaking set out in clause 14.2 (Authorisations), 14.3 (Compliance with Laws), 15.2 (Repair) and 15.4 (Insurances) of the Mezzanine Facility Agreement;

**"Authorisation"** means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration;

**"Bank Balances"** means all monies (including interest) from time to time standing to the credit of any and all present or future accounts which a Chargor has, or has an interest in, with any bank, financial institution, or other person (including the Specified Bank Balances and any other cash cover or suspense account established pursuant to any of the Finance Documents) and all indebtedness represented by any such accounts;

**"Business Day"** means a day, other than a Saturday or a Sunday, on which banks are open for general business in London or, for the purpose of clause 17 (Communications), in the principal financial centre in the jurisdiction in which the relevant communication is delivered;

**"Charged Contracts"** means, in relation to any Chargor the contracts set out in schedule 2 (Charged Contracts);

**"Charged Debts"** means all book and other debts and all other rights and claims charged to the Security Trustee pursuant to clause 3.1(g);

**"Chargor"** means the First Chargor or the Second Chargor, together the "**Chargors**";

**"Collection Account"** means, in relation to any Chargor, such specially designated account with Barclays Bank PLC or such other account with such other bank as the Security Trustee may from time to time direct for the purposes of clause 7.10 (Collection of Book Debts);

**"COMI"** means centre of main interests (as that term is used in Article 3(1) of the EC Regulation);

**"Companies Act"** means the Companies Act 2006;

**"Default Rate"** means three per cent per annum above the highest rate of Interest ordinarily applicable to the Secured Obligations from time to time;

**"Delegate"** means any delegate, agent, attorney or trustee appointed by the Security Trustee;

**"Derivative Payment"** means, in relation to an asset, any damages, compensation, remuneration, profit, bonus, royalties, fee, rent, income or other benefit which the relevant Chargor may derive from or be awarded or entitled to in respect of such asset;

**"Designated Chattels"** means the plant, machinery, equipment, vehicles, and other chattels (if any) listed in respect of any Chargor in schedule 5 (Designated Chattels) and shall include any additions, modifications and/or equipment ancillary to any such plant, machinery, equipment, vehicles or other chattels;

**"Development Document"** has the meaning set out in the Mezzanine Facility Agreement;

**"Discharge Date"** means the date with effect from which the Security Trustee confirms to the First Chargor that all the Secured Obligations have been unconditionally and irrevocably paid and discharged in full and all relevant commitments of the Security Trustee and of each of the Mezzanine Finance Parties have been cancelled;

**"Distribution Rights"** means all Dividends, all shares or other property derived from any relevant Investment (whether by way of conversion, consolidation, subdivision, substitution, redemption, bonus, preference, option or otherwise) and all other allotments, accretions, rights, benefits and advantages of all kinds accruing, offered or otherwise derived from or incidental to any relevant Investment;

**"Dividends"** means all dividends, distributions, interest and other income paid or payable on or derived from any relevant Investment;

**"EC Regulation"** means The Council of the European Union Regulation No. 1346/2000 on Insolvency Proceedings;

**"Enforcement Party"** means any of the Security Trustee, a Receiver or a Delegate;

**"Establishment "** means, in relation to any Chargor, an establishment as that term is defined in relation to a debtor in Article 2 (h) of the EC Regulation;

**"Event of Default"** means the occurrence of any of the events or circumstances defined in the Mezzanine Facility Agreement as an **"Event of Default"**;

**"Expenses"** means all fees, discounts, commissions and other banking or service charges, legal and other professional fees, premiums, costs or expenses, in each case calculated on a full indemnity basis and together with VAT, incurred by any Enforcement Party in connection with the Secured Assets, the preparation, negotiation and creation of this Deed, taking, perfecting, enforcing or exercising any power under this Deed, the appointment of any Receiver or Delegate, the breach of any provision of this Deed and/or the protection, realisation or enforcement of this Deed, and includes any payments made under clause 7.18 (Power to remedy), and also includes the costs of transferring to the Security Trustee or the Receiver any security ranking in priority to the security constituted by this Deed, or the amount required to be paid to secure the unconditional and irrevocable discharge of such security (if applicable);

**"Financial Indebtedness"** has the meaning set out in the Mezzanine Facility Agreement;

**"Fixed Charge Assets"** means, at any time, all of the Secured Assets which are at that time the subject of any valid and effective fixed Security pursuant to clause 3.1 (Fixed charges) or clause 3.2 (Assignments by way of Security);

**"Fixtures"** means any fixtures (but excluding landlord's fixtures), fittings, fixed plant or machinery from time to time situated on or forming part of any Property;

**"Floating Charge Assets"** means, at any time, all of the Secured Assets which are at that time the subject of any floating charge created by this Deed;

**"Insolvency Act"** means the Insolvency Act 1986;

**"Insurance Proceeds"** means the proceeds of any insurance claim received by any Chargor (after deduction of (a) any reasonable expenses incurred in relation to the relevant claim and payable by such Chargor and (b) amounts paid to meet third party claims) together with the benefit of all bonuses, profits, returns of premium and other benefits of whatever nature arising by virtue of any Chargor's ownership of any Insurances and all the Chargor's interest in any of the foregoing;

**"Insurances"** means all contracts or policies of insurance of whatever nature which from time to time are taken out or maintained by or on behalf of the Chargor or (to the extent of its relevant interest) in which the Chargor has an interest;

**"Intellectual Property"** means, in relation to any Chargor, (a) all rights in confidential information, copyright and like rights, database rights, design rights, rights in design, knowhow, rights in inventions, patents, service marks, trade marks and all other intellectual property rights and interests, whether registered (or the subject of an application for registration) or un-registered, owned by such Chargor or in which the Chargor has an interest from time to time and (b) the benefit of such Chargor's applications and rights to use such assets, in each case throughout the world now and in the future;

**"Intercreditor Agreement"** has the meaning set out in the Mezzanine Facility Agreement;

**"Interest Reserve Account"** has the meaning set out in the Mezzanine Facility Agreement;

**"Investment"** means, in respect of the Chargor, any negotiable instrument, certificate of deposit, debenture, share (including, save where the context otherwise requires, any of the Shares) or other investment (as specified for the purposes of section 22 of the Financial Services and Markets Act 2000 as at the date of this Deed) now or in the future owned by such Chargor, in each case whether held directly by, or to the order of, such Chargor or by any trustee, nominee, fiduciary or clearance system on behalf of such Chargor, and also including any rights in respect of such Investment against any such trustee, nominee, fiduciary or clearing system;

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

**"Members"** means Lifecare Residences Limited, a company incorporated in England and Wales with registered number 05110137 and the Second Chargor;

**"Mezzanine Facility Agreement"** means a mezzanine facility agreement dated on or about the date of this Deed and made between, amongst others (1) the First Chargor, (2) the Second Chargor and (3) the Security Trustee, as the same may be varied, amended, modified, supplemented or replaced;

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



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

**"Mezzanine Supplemental Assignment"** means an assignment and charge over contracts entered into by a Chargor in favour of the Security Trustee, in the form set out in Part 2 of schedule 9 (Form of Mezzanine Supplemental Assignment) in respect of any contract entered into by a Chargor after the date of this Deed;

**"Mezzanine Supplemental Legal Mortgage"** means a mortgage entered into by a Chargor in favour of the Security Trustee, in the form set out in Part 1 of schedule 9 (Form of Mezzanine Supplemental Legal Mortgage) in respect of any Property acquired by a Chargor after the date of this Deed;

**"Obligor"** means any of the Borrower and the Members;

**"Party"** means an original party to this Deed;

**"Permitted Security Interest"** has the meaning set out in the Mezzanine Facility Agreement;

**"Property"** means the Real Property from time to time owned by any Chargor or in which any Chargor has any right, title or interest. Any reference to **"Property"** also includes a reference to each separate part or parts of such Real Property;

**"Real Property"** means (a) any freehold, leasehold or immovable property, wherever situated, and (b) any buildings, fixtures, fittings, fixed plant or machinery from time to time situated on or forming part of that freehold, leasehold or immovable property;

**"Receiver"** means any one or more receivers and managers or (if the Security Trustee so specifies in the relevant appointment) receivers appointed by the Security Trustee pursuant to this Deed in respect of any Chargor or in respect of the Secured Assets of any Chargor;

**"Repeating Representations"** has the meaning set out in the Mezzanine Facility Agreement;

**"Secured Assets"** means the assets the subject of any Security created by this Deed;

**"Secured Obligations"** means all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally or in any other capacity whatsoever) of each Obligor and each grantor of Security to the Secured Parties (or any of them) under each or any of the Mezzanine Finance Documents together with all costs, charges and expenses incurred by any Secured Party in connection with the protection, preservation or enforcement of its respective rights under the Mezzanine Finance Documents;

**"Secured Parties"** means each Mezzanine Finance Party and any Receiver or Delegate and **"Secured Party"** means any of the Secured Parties;

**"Security"** means any assignment by way of security, mortgage, charge, pledge, lien or other security interest securing any obligation of any person and any other agreement or arrangement having a similar effect;

**"Security Period"** means the period beginning on the date of this Deed and ending on the Discharge Date;

**"Senior Discharge Date"** has the meaning set out in the Intercreditor Agreement;

**"Senior Finance Parties"** has the meaning set out in the Mezzanine Facility Agreement;

**"Shares"** means (In relation to each Chargor) all shares (if any) specified in Schedule 4 (Shares) in respect of such Chargor and also all other stocks, shares, debentures, bonds, warrants, coupons or other securities now or in the future owned by such Chargor from time to time, or any in which it has an interest;

**"Specified Bank Balances"** means all monies (including interest) from time to time standing to the credit of the accounts specified in schedule 1 (Bank accounts), as such accounts may be re-designated and/or re-numbered from time to time, and all indebtedness represented by any such account;

**"Specified Shares"** means in relation to a Chargor the Shares specified in Schedule 4 (Shares) opposite its name;

**"Starwood Finance Parties"** has the meaning set out in the Mezzanine Facility Agreement;

**"Supplemental Security Document"** means each Mezzanine Supplemental Legal Mortgage and each Mezzanine Supplemental Assignment;

**"Tax"** means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same);

**"Third Parties Act"** means the Contracts (Rights of Third Parties) Act 1999;

**"Transaction Document"** has the meaning set out in the Mezzanine Facility Agreement;

**"VINCI Lender"** means VINCI PLC a company incorporated in England and Wales with company number 00737204 whose registered office is at Astral House, Imperial Way, Watford, Hertfordshire WD24 4WW.

## 1.2 **Definitions contained in Mezzanine Facility Agreement**

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

## 1.3 **Construction**

In this Deed:

(a) unless a contrary indication appears, a reference to:

- (i) **"assets"** includes present and future properties, revenues, rights and interests of every kind and reference to an **"asset"** includes any part or parts of such asset;
- (ii) **"guarantee"** includes 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 pay any deposit on behalf of, or 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;
- (iii) **"indebtedness"** includes any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;

- (iv) **"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);
  - (v) **"regulation"** includes any regulation, rule, official directive, request or guideline (in each case, whether or not having the force of law) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
  - (vi) **"set-off"** includes analogous rights and obligations in jurisdictions other than England and Wales; and
  - (vii) the **"First Chargor"**, the **"Second Chargor"**, the **"Security Trustee"** or any **"Party"** or **"Obligor"**, or any of the **"Secured Parties"**, shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
- (b) where something (or a list of things) is introduced by the word **"including"**, or by the phrase **"in particular"**, or is followed by the phrase **"or otherwise"**, the intention is to state an example (or examples) and not to be exhaustive (and the same applies when other similar words or phrases are used);
  - (c) unless this Deed expressly states otherwise or the context requires otherwise, (a) each reference in this Deed to any provision of any statute or of any subordinate legislation means, at any time, the relevant provision as in force at that time (even if it has been amended or re-enacted since the date of this Deed) and (b) each reference in this Deed to any provision of any statute at any time includes any subordinate legislation made pursuant to or in respect of such provisions as in force at such time (whether made before or after the date of this Deed and whether amended or re-enacted since the date of this Deed);
  - (d) each reference to this Deed (or to any other agreement, instrument or deed) means, at any time, this Deed (or as applicable such other agreement, instrument or deed) as amended, novated, supplemented, extended, or restated, at that time, provided that the relevant amendment, novation, supplement, extension, substitution or restatement does not breach any term of this Deed or of any of the Mezzanine Finance Documents;
  - (e) the index and Clause and Schedule headings are for ease of reference only;
  - (f) an Event of Default is **"continuing"** if it has not been waived by the Security Trustee;
  - (g) references to any Security **"created...by this Deed"** are to be deemed to include such Security created, constituted, given, made or extended by, under or pursuant to this Deed;
  - (h) to the extent that the provisions of this Deed duplicate those of any Supplemental Security Document the provisions of that Supplemental Security Document shall prevail; and
  - (i) Clauses 1.1 (Expressly defined terms), 1.2 (Definitions contained in Mezzanine Facility Agreement), 1.3 (Construction), 4 (Further Assurance), 9 (Enforcement of security), 13 (Power of Attorney), 14 (Application, Variation and Extension of Statutory Provisions), 18 (Governing Law) and 19 (Jurisdiction) of this Deed are incorporated into any Supplemental Security Document as if expressly incorporated into that Supplemental Security Document, as if references in those clauses to this Deed were references to that Supplemental Security Document and as if all

references in those clauses to Secured Assets were references to the assets of the Chargors from time to time charged in favour of, or assigned (whether at law or in equity) to the Security Trustee by or pursuant to that Supplemental Security Document.

- (j) It is agreed that each Supplemental Security Document is supplemental to this Deed.

#### 1.4 **Third Party Rights**

No person has any right under the Third Parties Act to enforce or enjoy the benefit of any term of this Deed, other than an Enforcement Party, which may do so, or any other person, to the extent that this Deed or any other of the Mezzanine Finance Documents expressly provides for it to do so. No consent of any person who is not a Party is required to rescind or vary this Deed at any time. This clause 1.4 does not affect any right or remedy of any person which exists, or is available, otherwise than pursuant to the Third Parties Act.

#### 1.5 **Incorporation of other terms**

- (a) The terms of the other Mezzanine Finance Documents under which the Secured Obligations arise and of any side letters between any Chargor and the Secured Parties or any of them relating to the Secured Obligations are incorporated into this Deed to the extent required for any purported disposition of the Secured Assets contained in this Deed to be a valid disposition in accordance with section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989.
- (b) Without prejudice to the operation of any applicable term of the Mezzanine Facility Agreement or any other Mezzanine Finance Document, the provisions of clauses 6.5 (Interest on overdue amounts), 20 (Evidence and Calculations), 23 (Amendments and waivers), 23.1 (Change of currency), 30 (Counterparts), 31.1 (Notices in writing), 31.3 (Effectiveness) and 31.4 (Electronic communication) of the Mezzanine Facility Agreement shall apply (mutatis mutandis) to this Deed as if set out in this Deed in full and as if any reference in any such clause to "**this Agreement**" were a reference to "**this Deed**".

- 1.6 Each party to this Deed acknowledges that their rights and obligations are subject to the terms of the Intercreditor Agreement.

### 2. **COVENANT TO PAY**

#### 2.1 **Covenant**

Each Chargor, as primary obligor and not merely as surety, covenants with the Security Trustee that it will pay, discharge and perform the Secured Obligations on demand once such Secured Obligations have become due for payment, discharge or performance under the Mezzanine Finance Documents.

### 3. **SECURITY**

#### 3.1 **Fixed charges**

Each Chargor, as a continuing security for the payment, discharge and performance of the Secured Obligations, charges in favour of the Security Trustee the following assets:

- (a) **First legal mortgage on specified Property** - by way of first legal mortgage, all its Property (if any) identified in schedule 3 (Details of Property);

- (b) **First fixed charges in respect of other Property** - by way of first fixed charge, (a) all the Property from time to time owned by it (but excluding any Property which is subject to a valid legal mortgage under clause 3.1(a)), (b) any other rights, title or interest of such Chargor in Property, wherever situated, and (c) all Associated Rights in relation to its Property;
- (c) **First fixed charges in respect of Designated Chattels** - by way of first fixed charge, (a) the Designated Chattels (if any) in respect of such Chargor (but not including any of the assets which are subject to a valid legal mortgage or valid fixed charge under clauses 3.1(b) or 3.1(b)), and (b) all Associated Rights in relation to such Designated Chattels;
- (d) **First fixed charge on specified Shares** - by way of first fixed charge, (a) the Shares (if any) listed in respect of such Chargor in schedule 4 (Shares) and (b) the Distribution Rights (if any) from time to time accruing to or on such Shares;
- (e) **First fixed charge on Investments** - by way of first fixed charge, (a) all Investments (but not including Shares which are subject to a valid fixed charge under clause 3.1(d)) and (b) all Distribution Rights from time to time accruing to or on such Investments;
- (f) **First fixed charges in respect of Insurances** - to the extent that the Insurances and/or the Insurance Proceeds are incapable for any reason of being effectively assigned pursuant to clause 3.3(c) but are capable of being effectively charged, by way of first fixed charge, the Insurances owned by or written in favour of such Chargor and all Insurance Proceeds either now or in the future held by or payable to such Chargor or in which such Chargor otherwise has an interest (to the extent of such interest);
- (g) **First fixed charges in respect of book debts** - by way of first fixed charge, (a) all present and future book and other debts, revenues and monetary claims of or owing to such Chargor and (b) all rights and claims of whatever nature of such Chargor now, or which may at any time be, held or enjoyed by it against third parties and against any securities and guarantees in respect of such debts, revenues or claims;
- (h) **First fixed charge on Specified Bank Balances** - by way of first fixed charge, all of the Specified Bank Balances in respect of such Chargor;
- (i) **First fixed charge on other Bank Balances** - by way of first fixed charge, all of its Bank Balances (but not including any Specified Bank Balances which are subject to a valid fixed charge under clause 3.1(h));
- (j) **First fixed charge on Intellectual Property** - by way of first fixed charge, all Intellectual Property (if any) owned by such Chargor or in which such Chargor has an interest (to the extent of such interest);
- (k) **First fixed charges in respect of Authorisations** - to the extent that such Authorisations and Derivative Payments are incapable for any reason of being effectively assigned pursuant to clauses 3.2(a) or 3.2(d) respectively but are capable of being effectively charged, by way of first fixed charge, (a) the benefit of all Authorisations held or utilised by such Chargor in connection with its business or the use of any of its assets and (b) the right to recover and receive all Derivative Payments which may at any time become payable to such Chargor in respect of such Authorisations;
- (l) **First fixed charge on contracts** - to the extent that they do not fall within any other provision of this clause 3.1 (Fixed Charges) and are not effectively assigned

under clause 3.2(b), by way of first fixed charge all of its rights under each agreement or document to which such Chargor is a party;

- (m) **First fixed charge on goodwill and uncalled capital** - by way of first fixed charge, all the goodwill and uncalled capital of such Chargor; and
- (n) **First fixed charge on other Associated Rights** - by way of first fixed charge, the benefit of all Associated Rights relating to any of the assets of such Chargor, in each case to the extent that such Associated Rights are capable of being made the subject of a fixed charge and are not otherwise the subject of any valid fixed charge pursuant to this Deed.

### 3.2 Assignments by way of security

As further continuing security for the payment of the Secured Obligations, each Chargor assigns absolutely (subject to the reassignment of such assets in accordance with clause 15.13) to the Security Trustee all (if any) of its right, title and interest in and to the following assets:

- (a) **Authorisations** - to the extent they are capable of being effectively assigned, all Authorisations held or utilised by such Chargor in connection with its business or the use of any of its assets and the benefit of any Derivative Payment in respect of such Authorisations;
- (b) **Charged Contracts** - the Charged Contracts and the benefit of any Derivative Payment in respect of the Charged Contracts;
- (c) **Insurances and Insurance Proceeds** - the Insurances and the benefit of all Insurance Proceeds of such Chargor; and
- (d) **Associated Rights and Derivative Payments** - any Associated Rights or Derivative Payment which are not the subject of a valid fixed charge pursuant to clause 3.1 (Fixed charges) of this Deed or valid assignment pursuant to clauses 3.2(a) to 3.2(c) and which relate to any of the assets of such Chargor, whether or not such assets are subject to a valid legal mortgage, fixed charge or assignment pursuant to this Deed.

### 3.3 Notice of charge or assignment

- (a) Each Chargor shall, promptly upon receiving a request to that effect from the Security Trustee, give notice of each charge or assignment of all (if any) its right, title and interest in and to:
  - (i) the Insurances and Insurance Proceeds, by sending a notice in the form of Part 1 of schedule 6 (Notices) (with such amendments as the Security Trustee may agree and/or require) or such other form as the Security Trustee may agree, duly completed to each of the other parties to the Insurances; and
  - (ii) the Charged Contracts, other than any Long Lease or any Agreement for Lease, by sending a notice in the form of Part 2 of schedule 6 (Notices) (with such amendments as the Security Trustee may agree and/or require) or such other form as the Security Trustee may agree, duly completed to each of the other parties to the Charged Contracts.
- (b) Each Chargor shall, following the occurrence of a Default which is continuing, give notice of each charge or assignment of all (if any) of its rights, title and interest to each Long Lease and each Agreement for Lease by sending a notice in the form of Part 2 of schedule 6 (Notices) (with such amendments as the Security Trustee may

agree and/or require) duly completed to each of the other parties to each Long Lease or Agreement for Lease (as applicable).

- (c) Each Chargor shall use its reasonable endeavours to procure that, within 14 days of the date of its receiving a request under clause 3.3(a) to give notice to the relevant other party, each such other party delivers an acknowledgement to the Security Trustee in the form of the acknowledgement of notice endorsed on a copy of the relevant notice as set out in Part 1 or Part 2 of schedule 6 (Notices).

#### **3.4 Notice of Security: Accounts**

- (a) Each Chargor will immediately upon the date of this Deed in relation to each Account maintained by it, or if later, upon the opening of any other Account, give notice to the relevant bank, building society, financial institution or other person of the assignment constituted under this Deed, the notice being in the form set out in Part 1 or 2 (as applicable) of schedule 7 (Notices to Account Bank) or such other form as the Security Trustee may agree.
- (b) Each Chargor will use reasonable endeavours to procure that, within 14 days of the date of it giving notice to Barclays Bank PLC and any other such bank, building society or other financial institution, an acknowledgement of receipt of such notice endorsed on a copy of the relevant notice substantially in the form as set out in Part 1 or 2 or 3 (as applicable) of schedule 7 (Notices to Account Bank).

#### **3.5 Exercise of rights under Charged Contracts**

- (a) Whilst no Event of Default exists and is continuing, the Security Trustee shall permit the relevant Chargor to exercise its rights under any of the Charged Contracts to which it is party, provided that the exercise of those rights in the manner proposed would not result in an Event of Default.
- (b) Where an Event of Default exists and is continuing, the relevant Chargor shall, if requested by the Security Trustee and subject to the terms of the Intercreditor Agreement, exercise its rights under the Charged Contracts only in accordance with the instructions of the Security Trustee.

#### **3.6 Floating charge**

- (a) As further continuing security for the payment, discharge and performance to the Security Trustee of the Secured Obligations, each Chargor charges in favour of the Security Trustee, by way of first floating charge, all its assets and undertaking, wherever located, both present and future.
- (b) The floating charge created by clause 3.6(a) is deferred, in relation to the relevant Chargor, in point of priority to all fixed Security validly and effectively created by such Chargor under any of the Mezzanine Security Documents in favour of the Security Trustee as security for the Secured Obligations.

#### **3.7 Conversion of floating charge**

- (a) The Security Trustee may, at any time, by notice in writing to any Chargor, convert any floating charge created by this Deed into a fixed charge as regards such assets as it shall specify in the relevant notice if:
  - (i) an Event of Default has occurred which is continuing; or
  - (ii) the Security Trustee is of the view that (a) such assets are in danger of being seized, (b) any legal process or execution is being enforced against such assets, (c) such assets are otherwise in jeopardy, or (d) steps have

been taken which would, in the reasonable opinion of the Security Trustee, be likely to lead to the appointment of an administrator or administrative receiver in relation to such Chargor (or such administrator or administrative receiver has been appointed) or to the winding-up of such Chargor.

- (b) By way of further assurance, such Chargor shall, promptly following service of such notice upon it, execute a fixed charge over such assets in such form as the Security Trustee shall require.

### **3.8 Automatic conversion of floating charge**

In addition to any circumstances in which any floating charge created under this Deed will crystallise automatically under the general law, and without prejudice to the operation of clause 3.7 (Conversion of floating charge):

- (a) if any Chargor creates (or purports to create) any Security on or over any of the Floating Charge Assets (other than any Permitted Security Interest) without the prior written consent of the Security Trustee; or
- (b) if any Chargor convenes any meeting of its members to consider a resolution in relation to its winding up, or if a liquidator, administrative receiver, receiver, administrator or another similar officer is appointed in respect of such Chargor or any of its assets,

then and in any such event, any floating charge created by this Deed in relation to such Chargor shall, without any notice being given under clause 3.7 (Conversion of floating charge) and immediately upon such event occurring, be converted into a fixed charge over all the assets which immediately prior to such conversion comprised the Floating Charge Assets of such Chargor.

### **3.9 Continuing security**

The provisions of this Deed will apply at all times (a) regardless of the date on which any of the Secured Obligations were incurred and (b) in respect of the full amount of the Secured Obligations at the relevant time even if, at some other time, the amount of the Secured Obligations has been less than the amount at the relevant time or there has been no part of the Secured Obligations outstanding.

### **3.10 Miscellaneous**

- (a) All the Security created by this Deed by any Chargor is made with full title guarantee in accordance with the Law of Property (Miscellaneous Provisions) Act 1994.
- (b) Clauses 3.1(b) to 3.1(n) inclusive shall be read and construed as if each asset described, and each asset comprised within any category of asset described, in each such Clause were expressed, separately and specifically, to have been made subject to a first fixed charge; and the validity and effectiveness of each such fixed charge will not be prejudiced by any other such first fixed charge being found not to be fully valid or effective as such.
- (c) The fact that no, or incomplete, details of any particular Secured Assets are included or inserted in any relevant Schedule shall not affect the validity or enforceability of the charges created by this Deed.
- (d) The Security created by this Deed over the Interest Reserve Account and the Parent Company Guarantee shall be Security for the Secured Obligations owed to the Starwood Finance Parties and shall not be Security for the Secured Obligations owed to VINCI Lender.



#### **4. FURTHER ASSURANCE**

Each Chargor shall:

- (a) promptly do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Security Trustee may reasonably specify (and in such form as the Security Trustee may reasonably require) in favour of the Security Trustee or its nominee(s) (a) to perfect the Security created or intended to be created or evidenced by this Deed or for the exercise of any rights, powers and remedies of the Security Trustee provided by or pursuant to this Deed; (b) to confer on the Security Trustee or the Secured Parties Security over any property or assets of such Chargor located in England and Wales or any other jurisdiction equivalent or similar to the Security intended to be created, or expressed to be created, by this Deed; and/or (c) to facilitate the realisation of the assets which are, or are intended to be, the subject of this Deed;
- (b) take all such action as is available to it (including making all filings and registrations and the payment of all fees and Taxes) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Security conferred or intended to be conferred on the Security Trustee by or pursuant to this Deed; and
- (c) notify the Security Trustee of any acquisition of Real Property (including, but not limited to the acquisition of any Real Property in relation to the Permitted Transfer) in accordance with the Mezzanine Facility Agreement and immediately upon completion of that acquisition by it after the date of this Deed and, if requested by the Security Trustee, promptly execute and deliver a Mezzanine Supplemental Legal Mortgage (or such other form of Security as the Security Trustee may reasonably require) at the relevant Chargor's expense; and
- (d) notify the Security Trustee of its entry into any Transaction Document or other contract or agreement and immediately upon completion of that Transaction Document, contract or agreement and, if requested by the Security Trustee, promptly execute and deliver a Mezzanine Supplemental Assignment (or such other form of Security as the Security Trustee may reasonably require) at the relevant Chargor's expense.

#### **5. NEGATIVE PLEDGE AND DISPOSAL RESTRICTIONS**

##### **5.1 Negative pledge**

Subject to clause 5.2, during the Security Period no Chargor shall:

- (a) create, extend or permit to subsist any Security over any of the Secured Assets; nor
- (b) (a) sell, transfer or otherwise dispose of any of its assets on terms that they are or may be leased to or re-acquired by it or by any Subsidiary of it, (b) sell, transfer or otherwise dispose of any of its receivables on recourse terms, (c) enter into any arrangement under which money, debts or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts, or (d) enter into any preferential arrangement with any person, having a similar effect to any of the arrangements or transactions previously described in this clause 5.1(b), in any case in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.

##### **5.2 Exceptions**

Clause 5.1 (Negative pledge) does not apply to Permitted Security Interests.

## 6. REPRESENTATIONS AND WARRANTIES

Each Chargor represents and warrants to the Security Trustee on the date of this Deed (a) the terms of the Repeating Representations, in each case as if expressly set out in this Deed and so far as applicable to such Chargor or the Secured Assets of such Chargor and (b) as follows:

- 6.1 **No Event of Default** - No Event of Default has occurred or is continuing or might reasonably be expected to result from the execution of this Deed or from effect being given to its provisions and no person who holds any Security over any asset of such Chargor has enforced or given notice of its intention to enforce such Security .
- 6.2 **Commercial benefit** - It enters into this Deed in good faith and for the purposes of the promotion of the success of its business and has given due consideration to the terms and conditions of the documents evidencing the Secured Obligations and of this Deed and has satisfied itself that there are reasonable grounds for believing that by executing this Deed it will derive commercial benefit.
- 6.3 **Matters affecting Shares** - It does not own (either legally or beneficially) or have any interest in any stocks, shares, debentures, bonds, warrants, coupons or other securities in, issued by or relating to any other corporation.
- 6.4 **Priority of Security** - Subject to the terms of the Intercreditor Agreement, the Security created by this Deed constitutes first priority Security over the assets which are expressed to be subject to such Security and those assets are not subject to any Security other than Permitted Security Interests.
- 6.5 **Centre of main interests** - For the purposes of the EC Regulation its COMI is situated in England and Wales and it has no Establishment in any other jurisdiction.
- 6.6 **Repeated representations**

Each of the Repeating Representations and each of the further representations and warranties set out in this clause 6 (other than clause 6.2 (Commercial benefit) which is not repeated) shall be deemed to be repeated on each day during the Security Period on which representations and warranties set out in clause 12 (Representations) of the Mezzanine Facility Agreement are, or are deemed to be, made or repeated.

## 7. UNDERTAKINGS

Throughout the Security Period, each Chargor undertakes to the Security Trustee in the terms of the Applicable Undertakings, in each case so far as applicable to such Chargor or the Secured Assets of such Chargor (as if expressly set out in this Deed) and also in the terms of the following provisions of this clause 7.

- 7.1 **Perform** - It will at all times comply with the terms (express or implied) of this Deed and of all other Mezzanine Finance Documents to which it is a party.
- 7.2 **Not jeopardise Security** - It will not (and, without prejudice to clause 7.11(e), will procure that no nominee will) do or omit to do anything, or allow anything to be done or omitted, the result of which would be reasonably likely to in any way depreciate, jeopardise or otherwise prejudice the value to the Security Trustee of the Security created by this Deed or the priority of its ranking as expressed in this Deed or in the Intercreditor Agreement.
- 7.3 **Observe covenants** - It will observe and perform all covenants and stipulations from time to time on its part to be performed or observed and affecting any of the assets

owned by it or in which it has an interest or the way in which it uses or benefits from such assets.

7.4 **Effect registrations** - It will effect all registrations, make all filings or applications and pay all Taxes, rents, fees or dues necessary to keep in full force and effect, and where necessary to renew or extend, all the Secured Assets and such Chargor's right to make full use and enjoy the full benefit of the Secured Assets.

7.5 **Proceedings** - At its own cost and expense, it will use all reasonable endeavours to enforce, institute, continue or defend all proceedings affecting the Secured Assets, their state or condition or continued use or value so as to preserve to the fullest extent the value to the Security Trustee of the Security created by this Deed.

7.6 **Chattels** - If so requested by the Security Trustee, it will place and maintain on each chattel the value of which exceeds £50,000 and which is expressed to be subject to a fixed charge under this Deed, in a conspicuous place, an identification marking in the following terms and not conceal, alter or remove such marking or permit it to be concealed, altered or removed:

"Notice of Charge - This [*specify the chattel*] and additions and ancillary equipment are subject to a fixed charge in favour of ~~Starfin Lux S.à r.l.~~ *Starwood European Finance Partners Limited* (AL)"

7.7 **Maintain Intellectual Property** - It will (a) observe and perform all material covenants and stipulations from time to time affecting such Chargor's Intellectual Property or the way it is used or enjoyed, (b) make all payments, carry out or seek all registrations, grants or renewals of such Chargor's Intellectual Property, or of any licences or other interests affecting such Chargor's Intellectual Property where failure to do so would have a Material Adverse Effect, (c) generally take all such steps as may be necessary to preserve, maintain and renew when necessary or desirable (and in any case promptly following a request by the Security Trustee for it to do so) all of such Chargor's Intellectual Property, present or future, which is material to its business and (d) not do (or fail to do) anything nor permit anything to be done, if that might infringe any Intellectual Property owned or used by it and which is material to its business, or affect the existence or value of any such Intellectual Property or its right or ability to use it.

7.8 **Bank accounts** - It will ensure that throughout the Security Period all its bank accounts are held with Barclays Bank PLC in accordance with the terms of the Mezzanine Facility Agreement unless the Security Trustee directs otherwise pursuant to clause 7.10(a).

7.9 **Land Registry**

(a) In relation to all present and future registered Property (and any unregistered Property subject to compulsory first registration at the date of this Deed), it will apply to the Land Registrar to enter on the register against the title number of or to be allocated to the relevant Property a restriction in the following terms:

"No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by the proprietor for the time being of the charge dated [date of this Deed] in favour of ~~Starfin Lux S.à r.l.~~ referred to in the charges register, or its conveyancer"

and, where applicable, notice of an obligation to make further advances.

(b) It shall submit the relevant applications no later than the date of submission of the initial application for registration of the Security created by this Deed (or, in the case of the Land Registry form CH2, where applicable, promptly following its later receipt of such form duly completed by the Security Trustee), and pay all fees, costs and expenses incurred in connection with the applications.

- (c) The Security Trustee, in its absolute discretion, may make any of the applications referred to in this clause 7.9 in place of such Chargor. In such a case, such Chargor consents to the entry of the relevant restriction and will pay all fees, costs and expenses properly incurred in connection with the application.

#### **7.10 Collection of book debts**

- (a) It will collect (as agent for the Security Trustee) all Charged Debts and pay into the relevant account(s) with Barclays Bank PLC in accordance with the terms of the Mezzanine Facility Agreement or such other account with such other bank as the Security Trustee may from time to time direct all money which it shall receive in respect of such Charged Debts promptly, and in any event within 1 Business Day of receipt and pending such payment it will hold all such money upon trust for the Security Trustee.
- (b) It will not, without the prior written consent of the Security Trustee, charge, factor, discount or assign any of the Charged Debts in favour of any other person or purport to do so.
- (c) Where the Collection Account attributable to it is not maintained with Barclays Bank PLC but with some other bank or financial institution and/or where any other Bank Balances are charged to the Security Trustee pursuant to the provisions of clauses 3.1(h) or 3.1(i), it will procure that Barclays Bank PLC or such other bank or financial institution with whom the Collection Account attributable to it is maintained or where such other Bank Balances are held has received a notice in the form set out in schedule 7 (Notices to Account Bank) or such other form as the Security Trustee may agree and will use reasonable endeavours to ensure that Barclays Bank PLC, other banks or financial institutions issue a receipt and confirmation in respect of that notice as provided in such form.
- (d) Except to the extent permitted under the Mezzanine Facility Agreement, it will not without the prior consent of the Security Trustee, withdraw all or any monies from time to time standing to the credit of the Collection Account or any other Bank Balances charged to the Security Trustee pursuant to the provisions of clauses 3.1(h) or 3.1(i).

#### **7.11 Shares and other Investments**

- (a) It will, promptly upon receipt of them, deliver to the Security Trustee copies of all notices, circulars, letters, reports, accounts and other communications with shareholders relating to its holding of the Shares.
- (b) It will pay all calls or other payments due and payable in respect of any of the Shares and if it fails to do so the Security Trustee may pay the calls or other payments on its behalf.
- (c) Save with the prior written consent of the Security Trustee, it will not (a) take any action by or as a consequence of which the rights attaching to the Shares are altered or diluted or the issued capital of any of the companies whose Shares are charged by this Deed is increased, nor (b) participate in any rights issue relating to the Shares, nor (c) apply for, or consent to, the conversion of any Shares held in certificated form into uncertificated form.
- (d) Each Chargor shall not (a) declare or pay any dividend or make any other distribution in respect of any of, in the case of the First Chargor, its partnership interests, and in the case of the Second Chargor, its shares, nor (b) issue, in the case of the First Chargor, any further partnership interest or alter any rights attaching to its partnership interests as at the date of this Deed and, in the case of

the Second Chargor any further shares or alter any rights attaching to its shares as at the date of this Deed, nor (c) repay or redeem in the case of the First Chargor any of its partnership interests and in the case of the Second Chargor any of its shares.

- (e) Except where the Security Trustee requires it to do so, it will not nominate another person or persons to enjoy or exercise all or any of its rights as the registered holder of the Shares.
- (f) If the Security Trustee requires it to do so, it will take all steps within its power to procure that any of the companies to which the Shares relate will make such changes to its respective articles of association as may be necessary, pursuant to section 145 of the Companies Act, to permit it to nominate the Security Trustee or a nominee of the Security Trustee to exercise or enjoy all of any of such Chargor's rights as a registered holder of the Shares of such company.
- (g) In respect of the Specified Shares which are held within CREST or otherwise in uncertificated form, and any further Shares in uncertificated form which it subsequently acquires, it will provide such information, give such instructions and enter into such documents as the Security Trustee may reasonably require to perfect the Security created by this Deed over such Shares.
- (h) It will use reasonable endeavours to procure delivery, on or promptly following the Senior Discharge Date, to the Security Trustee (or as It shall direct) all bearer instruments, share certificates and other documents of title to or evidence of ownership of the Investments and/or the Distribution Rights owned by it or in which it has an interest together with (in the case of Shares, other than bearer instruments, held in certificated form) instruments of transfer in respect of each of the Shares executed in blank (except for the number and class of Shares and the name of the transferor) and left undated.
- (i) If it acquires Investments, whether pursuant to its Distribution Rights or for any other reason, after the date of this Deed, the provisions of clause 7.11(c) and the remaining provisions of this clause 7.11 shall apply to such Investments.
- (j) The Security Trustee may, at any time following the occurrence of an Event of Default and while it is continuing, complete the instruments of transfer on behalf of such Chargor in favour of itself or such other person as it shall select, and such Chargor shall take all steps within its power to procure that such instruments of transfer are immediately registered in the statutory registers of the relevant company and that share certificates in the name of the Security Trustee and/or its nominee(s) in respect of the Shares to which such instrument of transfer relates are delivered to the Security Trustee as soon as reasonably practicable, but in any event no later than 5 days after the date upon which the Security Trustee has delivered the relevant instrument of transfer.
- (k) Until the occurrence of an Event of Default, but not after such occurrence while such Event of Default is continuing, such Chargor will be entitled to exercise all voting and other rights and powers attaching to the Shares, provided that it will not exercise any such voting rights or powers in a manner which would prejudice the value of, or the ability of the Security Trustee to realise, the Security created by this Deed.
- (l) It shall give to the Security Trustee reasonable notice of the manner in which it proposes to exercise the rights and powers referred to in clause 7.11(k).
- (m) Subject to the terms of the Intercreditor Agreement, any Dividends will be received by such Chargor on trust for the Security Trustee and paid into a separate account

or otherwise dealt with as the Security Trustee may direct, and such Chargor shall, if the Security Trustee so requires, throughout the period following the occurrence of an Event of Default and while it is continuing exercise all voting and other rights and powers attaching to the Shares as the Security Trustee shall direct.

- (n) At any time when any Investments are registered in the name of the Security Trustee or its nominee:
  - (i) for so long as there is no Event of Default which is continuing, the Security Trustee will (so far as it is consistent with the Security created by this Deed) exercise any applicable voting or other rights and powers in accordance with the directions of such Chargor; but
  - (ii) upon the occurrence of an Event of Default and while it is continuing the Security Trustee may exercise or refrain from exercising such voting or other rights and powers as it thinks fit and may retain any Dividends, but in any case the Security Trustee will not be under any duty to ensure that any Dividends are duly and promptly paid or received by it or its nominee, nor to verify that the correct amounts are paid or received by it or its nominee, nor to take any action in connection with the taking up of any Distribution Rights in respect of or in substitution for, any of those Investments.

- 7.12 **Charged Contracts** - It will perform all its obligations under the Charged Contracts in a diligent and timely manner, not make or agree to make any amendments or modifications to the Charged Contracts, nor waive any of its rights under the Charged Contracts, nor exercise any right to terminate any of the Charged Contracts, except, in any case, with the prior written consent of the Security Trustee or as otherwise permitted under the Mezzanine Facility Agreement and will promptly inform the Security Trustee of any material disputes relating to the Charged Contracts.
- 7.13 **Access** - It will (at the risk and cost of such Chargor) permit the Security Trustee and its professional advisers, agents and contractors and, where required by the Security Trustee, independent valuers access at all reasonable times and on reasonable notice and for all reasonable purposes (including carrying out physical inspections and valuations in accordance with the Mezzanine Facility Agreement, and/or following the occurrence of a Default which is continuing the preparation or making of inventories and/or schedules and/or other records or copies) (a) to the premises, assets, books, accounts and records of such Chargor and (b) to meet and discuss matters with such senior employees as the Security Trustee may reasonably require, and will provide and will procure that any occupiers of such premises and such employees provide all reasonable assistance to the Security Trustee and such other persons in connection with the access obligations imposed by this clause 7.13.
- 7.14 **Change of business** - It will procure that no substantial change is made to the general nature of its business from that carried on at the date of this Deed.
- 7.15 **Centre of main interests** - It will not move its COMI, nor have any Establishment, outside England and Wales.
- 7.16 **Retention of documents** - Following the Senior Discharge Date, the Security Trustee may retain any document delivered to it until the Discharge Date and if, for any reason, the Security Trustee ceases to hold any such document before such time, it may, by notice to such Chargor, require that the relevant document or (if applicable) a replacement thereof be redelivered to it and such Chargor shall immediately comply (or procure compliance) with such notice.
- 7.17 **Power to remedy** - If such Chargor fails to comply with any of the covenants and undertakings set out or referred to in clauses 7.1 (Perform) to 7.16 (Retention of

documents) inclusive, it will allow (and irrevocably authorises) the Security Trustee and/or such persons as the Security Trustee nominates to take on behalf of such Chargor such action (including the making of payments) as is necessary to protect any relevant assets against the consequences of such failure to comply and/or to ensure compliance with such covenants and undertakings.

7.18 **Indemnity** - It will indemnify the Security Trustee and will keep the Security Trustee indemnified against all costs, Taxes, losses and liabilities incurred by the Security Trustee as a result of any default by such Chargor in the performance of any of the obligations expressed to be assumed by it in this Deed and in connection with the exercise by the Security Trustee of its rights contained in clauses 7.11(b) and 7.17 (Power to remedy). All sums the subject of this indemnity will be payable by such Chargor to the Security Trustee on demand.

7.19 **Expenses** - It will pay all Expenses within 3 Business Days of demand. If it does not do so, the Expenses will bear interest at the Default Rate from and including the date of demand to and including the date of actual payment.

## 8. **ENFORCEABILITY**

For the purposes of all powers implied by the LPA or any other applicable legislation, the Secured Obligations shall be deemed to have become due and payable and this Deed will become immediately enforceable and the powers of the Security Trustee and any Receiver will become exercisable on the date of this Deed, but, as between the Security Trustee and each Chargor, the power of the Security Trustee to enforce the Security created by this Deed shall be exercisable in accordance with the terms of the Intercreditor Agreement and only upon the occurrence of an Event of Default and for so long as it is continuing (unless there has been a request from such Chargor to the Security Trustee for the appointment of a Receiver, in which case it will be exercisable at any time following the making of such request).

## 9. **ENFORCEMENT OF SECURITY**

9.1 At any time after the Security Trustee's power of sale has become exercisable, the Security Trustee may, subject to the terms of the Intercreditor Agreement without further notice, (a) appoint one or more than one person to be Receiver in respect of the Secured Assets or any of them and, if more than one person is appointed as Receiver, such appointees may act jointly and severally or individually, (b) take possession of the Secured Assets, and/or (c) in its absolute discretion enforce all or any part of the Security created by this Deed in such other lawful manner as it thinks fit. The Security Trustee may remove any person from appointment as Receiver and may appoint another person as Receiver. The Security Trustee may also appoint an additional Receiver.

9.2 The Receiver will, so far as the law permits, be the agent of each Chargor in respect of which the Receiver is appointed and each such Chargor alone will be responsible for the acts or defaults of the Receiver and will be liable on any contracts or obligations made or entered into by the Receiver. The Security Trustee will not be responsible for any misconduct, negligence or default of the Receiver. The powers of the Receiver will continue in full force and effect following any liquidation of the relevant Chargor.

9.3 The remuneration of the Receiver may be fixed by the Security Trustee but will be payable by the relevant Chargor. The amount of the remuneration will form part of the Secured Obligations.

9.4 The Receiver will have the power, on behalf and at the cost of each Chargor in respect of which the Receiver is appointed, (a) to do or omit to do anything which he considers appropriate in relation to the Secured Assets and (b) to exercise all or any of the powers conferred on the Receiver or the Security Trustee under this Deed or conferred upon

administrative receivers by the Insolvency Act (even if he is not an administrative receiver), or upon receivers by the LPA or any other statutory provision (even if he is not appointed under the LPA or such other statutory provision) but so that if there is any ambiguity or conflict between the powers contained in such legislation and those contained in this Deed, those contained in this Deed shall prevail.

- 9.5 Without prejudice to the general powers set out in clause 9.4, a Receiver will also have the powers and discretions set out in schedule 8 (Receiver's specific powers).
- 9.6 Subject to the terms of the Intercreditor Agreement, the Security Trustee or any Receiver may sever any Fixtures from the Property and sell them apart from the Property without taking possession of the Property and apply the net proceeds of such sale in or towards satisfaction of the Secured Obligations.
- 9.7 If the Security Trustee or the Receiver obtains possession of the Property, the Security Trustee or the Receiver may use and remove, store or sell any chattels on the Property (but for the avoidance of doubt this clause shall not apply to any chattels owned by or belonging to: (i) an owner of a Residential Unit; (ii) a service user of the Nursing Home or (iii) any other person who is not a Chargor), whether or not forming part of the Secured Assets, without being under any liability to any Chargor other than to account for their net proceeds of the sale. All costs, losses and liabilities incurred by the Security Trustee or the Receiver in connection with the removal, storage and sale of such chattels will form part of the Secured Obligations.
- 9.8 If (notwithstanding any representation or warranty to the contrary contained in this Deed) there shall be any Security affecting the Secured Assets or any of them which ranks in priority to the Security (other than pursuant to any Senior Security Documents) created by this Deed and the holder of such prior Security takes any steps to enforce such Security, the Security Trustee or any Receiver may, at its option, take a transfer of, or repay the indebtedness secured by, such Security subject to the terms of the Intercreditor Agreement.
- 9.9 The Security Trustee may, at any time after this Deed has become enforceable pursuant to clause 8 (Enforceability), exercise, to the fullest extent permitted by law, all or any of the powers, authorities and discretions conferred on a Receiver by this Deed, whether as attorney of any Chargor or otherwise and whether or not a Receiver has been appointed.
- 9.10 The Security Trustee may, in writing, either in its appointment of a Receiver or by subsequent notice to that Receiver, restrict the right of such Receiver to exercise all or any of the powers conferred on a Receiver by this Deed.
- 9.11 Paragraph 14 of Schedule B1 to the Insolvency Act applies to the floating charges created under this Deed.

#### 10. **PAYMENTS, ACCOUNTS AND APPLICATION OF PROCEEDS**

- 10.1 **Right of appropriation** - Subject to the provisions of clause 10.8 (Recoveries by Receiver) and the Intercreditor Agreement, the Security Trustee is entitled to appropriate money and/or assets to the Secured Obligations in such manner or order as it thinks fit and any such appropriation shall override any appropriation by any Chargor.
- 10.2 **No set-off by Chargors** - No Chargor shall exercise any right of set-off or counterclaim it might have in respect of any payment due to the Security Trustee under this Deed.
- 10.3 **Security Trustee's rights of set-off** - The Security Trustee may, at any time after this Deed has become enforceable in accordance with the terms of the Intercreditor Agreement, and without notice (a) combine or consolidate all or any of a Chargor's then existing accounts with, and liabilities to, the Security Trustee, (b) set-off or transfer any sums standing to the credit of any one or more of such accounts, and/or (c) set-off any



other obligation owed by the Security Trustee to any such Chargor (whether or not matured at such time), in or towards satisfaction of any of the Secured Obligations; and if any amount is in a different currency from the amount against which it is to be set-off, the Security Trustee may convert either amount (or both) at any reasonable time and at any reasonable rate. The Security Trustee shall notify such Chargor in writing that any such transaction has taken place.

- 10.4 **Suspense Account** - The Security Trustee may, at any time, and subject to the terms of the Intercreditor Agreement credit to a suspense account any money received by it under this Deed, to be held for so long as and on such terms as the Security Trustee may determine pending its application towards discharging the Secured Obligations.
- 10.5 **New account** - If the Security Trustee receives notice of a subsequent mortgage or charge relating to the Secured Assets, it will be entitled to close any account and to open a new account in respect of the closed account. If the Security Trustee does not open such new account, it will in any event be treated as if it had done so at the time when it received such notice.
- 10.6 **Time deposit** - Without prejudice to the provisions of clause 10.3 (Security Trustee's rights of set-off), if at any time any Chargor has made a deposit with a bank or financial institution (as directed by the Security Trustee from time to time) on terms that it will be repaid on a specified date (the "**Time Deposit**") then: (a) if the Security Trustee has made any demand under clause 2.1 (Covenant), it may vary the terms of such Time Deposit so that it becomes repayable immediately or on any other date before such specified date; or (b) if an Event of Default has arisen which is continuing but no amount of Secured Obligations has fallen due before such specified date, the Security Trustee may renew such Time Deposit for such further maturity as the Security Trustee in its absolute discretion determines.
- 10.7 **Calculations** - The Security Trustee's calculation of any amount payable by the Chargor under this Deed at any time will be conclusive (unless it has made an obvious mistake).
- 10.8 **Recoveries by Receiver** - Subject to clause 10.9, the proceeds arising from the exercise of any powers of the Receiver will, subject to any claims ranking in priority to the Secured Obligations, be applied by or at the direction of the Receiver in or towards discharging or satisfying the following amounts in the following order of priority: (a) the costs, charges and expenses of and incidental to the Receiver's appointment and the payment of his remuneration; (b) any costs, charges, expenses and liabilities of or incurred by any Enforcement Party in the exercise of any of its powers including all rents, Taxes, rates and outgoings whatever affecting the Secured Assets, all premiums on Insurances properly payable under this Deed or any applicable legislation, the cost of executing necessary or proper repairs to the Secured Assets, and the payment of annual sums or other payments, and the interest on all principal sums, having priority to the Secured Obligations; (c) the remaining Secured Obligations, in accordance with the provisions of the Mezzanine Finance Documents; and (d) the claims of those persons entitled to any surplus.
- 10.9 **Intercreditor Deed** - The order of application of monies arising as a result of enforcement of this Deed as between the Secured Parties is governed by the terms of the Intercreditor Agreement.
- 10.10 **Insurances** - Subject to the terms of the Intercreditor Agreement, all Insurance Proceeds shall be paid to the Security Trustee (or if not paid by the insurers directly to the Security Trustee shall be held on trust for the Security Trustee) and shall (subject as otherwise provided in the Mezzanine Finance Documents) be applied in replacing or reinstating the property or assets destroyed, damaged or lost (any deficiency being made good by the relevant Chargor) or (if an Event of Default has arisen which is continuing) as the Security Trustee otherwise directs.

10.11 **Currency of payment** - No payment to the Security Trustee (whether under any judgment or court order or otherwise) shall discharge the obligation or liability of any Chargor in respect of which it was made unless and until the Security Trustee shall have received payment in full in the currency in which the obligation or liability was incurred. To the extent that the amount of any such payment shall, on actual conversion into such currency, fall short of such obligation or liability expressed in that currency, the Security Trustee shall have a further separate cause of action against such Chargor and shall be entitled to enforce the Security created by this Deed to recover the amount of the shortfall.

10.12 **Currency conversion** - All money received or held by the Security Trustee or any Receiver under this Deed may be converted into such other currency as the Security Trustee considers necessary or desirable to cover the obligations and liabilities comprised in the Secured Obligations in that other currency at the Security Trustee's spot rate of exchange then prevailing for purchasing that other currency with the existing currency.

## 11. **PROTECTION OF THIRD PARTIES**

11.1 **No duty to enquire** - A buyer from, or other person dealing with, any Enforcement Party will not be concerned to enquire whether any of the powers which such Enforcement Party has exercised or purported to exercise have arisen or become exercisable and may assume that it is acting in accordance with this Deed.

11.2 **Receipt conclusive** - The receipt of the Security Trustee or any Receiver shall be an absolute and conclusive discharge to a purchaser of the Secured Assets and shall relieve him of any obligation to see to the application of any monies paid to or by the direction of the Security Trustee or any Receiver.

## 12. **PROTECTION OF SECURITY TRUSTEE**

12.1 **Security Trustee's receipts** - The Security Trustee shall not be obliged to account to any Chargor, 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 Security Trustee, acting reasonably, believes to be entitled) in accordance with the requirements of this Deed.

### 12.2 **Exclusion of liability**

- (a) No Enforcement Party will be liable to any Chargor for any expense, loss, liability or damage incurred by such Chargor arising out of the exercise by such Enforcement 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.
- (b) No Chargor may take any proceedings against any officer, employee or agent of any Enforcement Party in respect of any claim it might have against such Enforcement Party or in respect of any act or omission of any kind by that officer, employee or agent in relation to this Deed.
- (c) Any officer, employee or agent of any Enforcement Party may rely on this clause 12 under the Third Parties Act.

12.3 **Effect of possession** - If the Security Trustee or any Receiver enters into possession of the Secured Assets or any of them, this will not oblige either the Security Trustee or the Receiver to account as mortgagee in possession, and if at any time the Security Trustee enters into possession of the Secured Assets or any of them it may at any time at its discretion go out of such possession.

- 12.4     Chargors' indemnity – Each Chargor agrees with the Security Trustee to indemnify the Security Trustee and any Receiver or Delegate on demand against any costs, Taxes, losses, liabilities or damage incurred by any of them in respect of (a) the taking, holding, protection or enforcement of the Security created by this Deed, (b) any exercise of the rights, powers, discretions or remedies of, or vested in, any Enforcement Party or any attempt or failure to exercise those rights, powers, discretions or remedies and (c) anything done or omitted to be done in the exercise or purported exercise of the powers under this Deed or under any appointment duly made under the provisions of this Deed.

**13.     POWER OF ATTORNEY**

- 13.1     Each Chargor irrevocably and by way of security appoints the Security Trustee and each Receiver and any person nominated for the purpose by the Security Trustee or the Receiver (in writing, under hand, signed by an officer of the Security Trustee or by the Receiver) severally to be the attorney of such Chargor (with full power of substitution and delegation) for the purposes set out in clause 13.2.

- 13.2     The power of attorney granted in clause 13.1 allows the Security Trustee, the Receiver or the relevant nominee, in the name of such Chargor, on its behalf, as its act and deed and at its expense to perfect the Security created by the Chargor under this Deed and to execute and deliver (using such Chargor's seal where appropriate) any document or do any act or thing which such Chargor may be required, ought or has agreed to execute or do under this Deed but has failed to do or which the attorney may in its absolute discretion consider appropriate in connection with the exercise of any of the rights, powers, authorities or discretions of the Security Trustee or the Receiver under, or otherwise for the purposes of, this Deed.

- 13.3     Each Chargor covenants with the Security Trustee to ratify and confirm all acts or things made, done or executed by any attorney exercising or purporting to exercise the powers conferred in accordance with this clause 13.

**14.     APPLICATION, VARIATION AND EXTENSION OF STATUTORY PROVISIONS**

- 14.1     The covenants set out in sections 2 to 5 of the Law of Property (Miscellaneous Provisions) Act 1994 shall extend to bind a Chargor only if, in any case, the relevant covenant imposes upon such Chargor a burden, liability or obligation that would not otherwise arise under this Deed.

- 14.2     For the purposes only of section 101 of the LPA, (but otherwise subject to the provisions of clause 8 (Enforceability)), the conditions set out in that section, as to when the powers conferred on a mortgagee by that section arise, do not apply and the Secured Obligations become due and the statutory power of sale and other powers of enforcement arise immediately following the execution of this Deed. The Security Trustee and any Receiver may exercise the statutory power of sale conferred by the LPA free from the restrictions imposed by section 103 of the LPA, which shall not apply to this Deed.

- 14.3     The power of sale and the other powers conferred by the LPA or otherwise are extended and varied to authorise the Security Trustee in its absolute discretion to do all or any of the things or exercise all or any of the powers which a Receiver is empowered to do or exercise under this Deed.

- 14.4     The restriction on the consolidation of mortgages in section 93 of the LPA does not apply to this Deed nor to any Security given to the Security Trustee pursuant to this Deed. Section 109(1) of the LPA shall not apply to this Deed. Sections 105, 107(2), 109(6) and 109(8) of the LPA will not apply to the Security Trustee, nor to a Receiver appointed under this Deed.

- 14.5 The statutory and other powers of leasing, letting, entering into agreements for leases or lettings and accepting or agreeing to accept surrenders of leases or tenancies shall not be exercisable by any Chargor in relation to the Secured Assets or any part of them. The restrictions on the powers of the Security Trustee or the Receiver to grant leases or to accept the surrender of leases in sections 99 and 100 of the LPA do not apply to this Deed.

**15. OTHER MISCELLANEOUS PROVISIONS**

- 15.1 Except where expressly stated to the contrary, the powers, rights and remedies provided in this Deed are in addition to (and not instead of) powers, rights and remedies under law.
- 15.2 If an Enforcement Party fails to exercise any power, right or remedy under this Deed or delays its exercise of any power, right or remedy, this does not mean that it waives that power, right or remedy. If an Enforcement Party exercises, or partly exercises, a power, right or remedy once, this does not mean that it cannot exercise such power right or remedy again, fully or in part.
- 15.3 The Security Trustee may decide when and how to apply any payments and distributions received for its own account under this Deed, and also, as between the Security Trustee and any Chargor, whether and, if so, when, how and to what extent (a) to exercise its rights under this Deed and (b) to exercise any other right it might have in respect of any Chargor (or otherwise) without, in any case, any Chargor having the right to control or restrict the Security Trustee's exercise of this discretion.
- 15.4 No provision of this Deed will interfere with the Security Trustee's right to arrange its affairs as it may in its absolute discretion decide (nor oblige it to disclose any information relating to its affairs), except as expressly stated.
- 15.5 Each Chargor authorises the holder of any prior or subsequent Security to provide to the Security Trustee, and the Security Trustee to receive from such holder, details of the state of account between such holder and such Chargor.
- 15.6 Each Chargor shall not assign, novate or otherwise deal with its rights or obligations under or interests in this Deed, except with the prior written consent of the Security Trustee.
- 15.7 The Security Trustee may at any time assign, novate or otherwise deal with any rights or obligations under or interests in this Deed in accordance with and subject to the provisions of the Mezzanine Facility Agreement and the Intercreditor Agreement.
- 15.8 The Security Trustee may disclose in accordance with clause 25 of the Mezzanine Facility Agreement any information about any Chargor, the Secured Assets and/or this Deed to any person to whom it proposes to assign, novate or transfer (or has assigned, novated or transferred) any rights or obligations under or interests in this Deed, or with whom it proposes to enter into (or has entered into) any other dealings in relation to any such rights, obligations or interests and any person to whom the benefit of all such rights has been transferred, subject to such obligations, may enforce this Deed in the same way as if it had been an original party to this Deed.
- 15.9 If, at any time, there has been a release, settlement or discharge of any Chargor's obligations under this Deed and, as a consequence of any insolvency proceedings (or analogous proceedings) or for any other reason, (a) any payment made to any person in respect of any of the Secured Obligations is required to be repaid and/or (b) any such payment or any Security (or other right) held by the Security Trustee in respect of any of the Secured Obligations (whether under this Deed or otherwise) is void, is set aside or is otherwise affected, then the relevant Chargor's obligations under this Deed shall continue in effect as if there had been no such release, settlement or discharge and as if the relevant payment had not been made and/or (as applicable) the relevant Security (or

other right) had not been held by the Security Trustee; and accordingly (but without limiting the Security Trustee's other rights under this Deed) the Security Trustee shall be entitled to recover from such Chargor the value which the Security Trustee has placed upon such Security or the amount of any such payment as if such payment, settlement or discharge had not occurred.

- 15.10 If the Security Trustee, acting reasonably, considers that any amount paid by any Chargor in respect of the Secured Obligations is capable of being avoided or ordered to be refunded or reduced for the reasons set out in clause 15.9, then for the purposes of this Deed such amount shall not be considered to have been Irrevocably paid.
- 15.11 The Security Trustee as agent for the Secured Parties confirms that the Secured Parties shall perform their respective obligations, to the extent arising under the Mezzanine Finance Documents, to make further advances. The Security created by this Deed has been made for securing such further advances.
- 15.12 To the extent that any Chargor may be entitled in any jurisdiction to claim for itself or its assets immunity from suit, execution, attachment (whether in aid of execution, before judgment or otherwise) or other legal process of any kind wherever it might originate, or to the extent that in any such jurisdiction there may be attributed to such Chargor or its assets such immunity (whether or not claimed), it irrevocably agrees not to claim and irrevocably waives such immunity to the fullest extent permitted by the laws of such jurisdiction.
- 15.13 On the Discharge Date (but subject to clauses 15.9 and 15.10) the Security Trustee shall, at the request and cost of each Chargor, execute and do all deeds, acts and things as may be necessary to release the Secured Assets from the Security created by this Deed and to reassign absolutely all right, title and interest in and to the Secured Assets to the relevant Chargor.
- 15.14 The obligations of each Chargor under clause 2 (Covenant to pay) are unconditional and neither the provisions of this Deed nor the obligations of any Chargor will be affected by the occurrence or existence at any time of any of the following events or circumstances or by any person's knowledge or lack of knowledge as to any such matter: (a) any person's insolvency or lack of capacity, power or authority; (b) any unenforceability, illegality or invalidity of any obligation of any person; (c) any change in the constitution, membership, ownership, legal form, name or status of any person; (d) the making, amendment or termination of any other deed or agreement; (e) any amendment, novation, re-statement or substitution of, or any supplement to, any other deed or agreement; (f) any increase or reduction in the amount of any person's indebtedness or any alteration of any term, condition or arrangement in respect of any person's indebtedness; (g) any person taking or omitting to take any steps in relation to (i) any Chargor or any other person, (ii) any of the Secured Obligations, (iii) any Security, guarantee or other financial support in respect of any indebtedness and/or (iv) any other asset; or (h) anything else which, although it could affect the liability of a surety, would not affect the liability of a principal debtor.

## **16. SET-OFF**

### **16.1 Set-off Rights**

Subject to the terms of the Intercreditor Agreement, any Secured Party may set off any matured obligation due from a Chargor under the Mezzanine Finance Documents (to the extent beneficially owned by that Secured Party) against any matured obligation owed by that Secured Party to that Chargor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Secured Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

**16.2 Different Currencies**

A Secured Party may exercise its rights under clause 16.1 (Set-off Rights) notwithstanding that the amounts concerned may be expressed in different currencies and each Secured Party is authorised to effect any necessary conversions at a market rate of exchange selected by it.

**16.3 No Set Off**

Each Chargor will pay all amounts payable under this deed without any set off, counterclaim or deduction whatsoever unless required by law in which event the relevant Chargor will pay an additional amount to ensure that the payment recipient receives the amount which would have been payable had no deduction been required to have been made.

**17. COMMUNICATIONS**

**17.1 Addresses** - The address and fax number (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 are:

- (a) in the case of each Chargor and the Security Trustee, those given for each of them, respectively, in the signature pages of this Deed; and
- (b) in the case of each Receiver and each Delegate, those notified in writing to the Security Trustee (whether in that capacity or in another capacity) by such Receiver or Delegate as soon as practicable after its respective appointment,

or any substitute address, fax number or department or officer as the relevant person may notify to the Security Trustee (or as the Security Trustee may notify to the other Parties, if a change is made by the Security Trustee) by not less than 5 Business Days' notice.

**17.2 Delivery**

- (a) Any communication or document made or delivered by one person to another under or in connection with the Mezzanine Security Documents will only be effective (a) if by way of fax, when received in legible form, or (b) if by way of letter, when it has been left at the relevant address or 5 Business Days after being deposited in the post, postage prepaid, in an envelope addressed to it at that address, and, in any case, if a particular department or officer is specified as part of its address details provided under clause 17.1 (Addresses), if addressed to that department or officer.
- (b) Any communication or document to be made or delivered to the Security Trustee will be effective only when actually received by the Security Trustee and then only if it is expressly marked for the attention of the department or officer identified in accordance with clause 17.1 (Addresses).
- (c) All notices from or to a Chargor shall be sent through the Security Trustee.

**17.3 Notification of address and fax number** - Promptly upon receipt of notification of an address and fax number or change of address or fax number pursuant to clause 17.1 (Addresses) or changing its own address or fax number, the Security Trustee shall notify the other Parties.

**17.4 Communications in writing** - Any communication to be made under or in connection with the Mezzanine Security Documents shall be made in writing and, unless otherwise stated, may be made by fax or letter.

**17.5 English language**

- (a) Any notice given under or in connection with any Mezzanine Security Document must be in English.
- (b) All other documents provided under or in connection with any Mezzanine Security Document must be in English or, if not in English, and if so required by the Security Trustee, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

**18. THIS DEED**

- 18.1 Each Chargor has entered into this Deed in consideration of the Secured Parties or some of them agreeing to provide (or to continue to provide) finance facilities to it on the terms agreed in the Mezzanine Finance Documents.
- 18.2 If the Parties execute this Deed in separate counterparts, this Deed will take effect as if they had all executed a single copy.
- 18.3 This Deed is intended to be a deed even if any Party's execution is not in accordance with the formalities required for the execution of deeds.
- 18.4 This Deed has been designated a Mezzanine Finance Document in accordance with the provisions of the Mezzanine Facility Agreement.
- 18.5 The provisions of the Mezzanine Facility Agreement and each Mezzanine Security Document (including this Deed) are subject to the terms of the Intercreditor Agreement. If there is any conflict or inconsistency between:
  - (a) the terms of the Mezzanine Facility Agreement and the terms of any Mezzanine Security Document, the terms of the Mezzanine Facility Agreement shall prevail; or
  - (b) the terms of the Mezzanine Facility Agreement (or any Mezzanine Security Document) and the terms of the Intercreditor Agreement, the terms of the Intercreditor Agreement shall prevail.
- 18.6 If, at any time, any provision of this Deed is or is found to have been illegal, invalid or unenforceable in any respect under the law of any jurisdiction, this does not affect the legality, validity or enforceability of the other provisions of this Deed, nor the legality, validity or enforceability of the affected provision under the law of any other jurisdiction.
- 18.7 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).
- 18.8 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 Security Trustee may now or at any time after the date of this Deed hold for or in respect of the Secured Obligations.
- 18.9 In submitting this Deed or any counterpart to the Land Registry each Chargor shall, on each occasion, also submit a certified copy of this Deed and request the return of the original and upon the return of the original it shall deliver such original to the Security Trustee.
- 18.10 This Deed and every counterpart is the property of the Security Trustee.

19. **GOVERNING LAW**

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

20. **JURISDICTION**

20.1 **Jurisdiction of English courts**

The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute regarding the existence, validity or termination of this Deed) and any non-contractual obligations arising out of or in connection with it (the "**Dispute**"). The Parties agree that the courts of England are the most appropriate and convenient courts to settle any Dispute and accordingly no Party will argue to the contrary. This clause 20.1 is for the benefit of the Enforcement Parties only. As a result, no Enforcement Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, each Enforcement Party may take concurrent proceedings in any number of jurisdictions.

This document is executed as a deed and delivered on the date stated at the beginning of this Deed.



**SCHEDULE 1****Bank accounts**

	<b>Name or designation of bank account</b>	<b>Number of bank account</b>	<b>Name and sort code of bank and branch at which account held</b>
1.	Development Account	[REDACTED]	[REDACTED]
2.	Sales Proceeds Account	[REDACTED]	[REDACTED]
3.	Cost Overrun Account	[REDACTED]	[REDACTED]
4.	Occupancy Fee Account	[REDACTED]	[REDACTED]
5.	Excess Cash Account	[REDACTED]	[REDACTED]
6.	Deposit Account	[REDACTED]	[REDACTED]
7.	Interest Reserve Account <sup>1</sup>	[REDACTED]	[REDACTED]

<sup>1</sup> Please provide bank account details.

## SCHEDULE 2

### Charged Contracts

	<b>Brief description of Charged Contracts</b>	<b>Date of Charged Contract</b>	<b>Parties to Charged Contract (include addresses for service of notices of those parties who are not parties to this Deed)</b>
1.	Building Contract	On or around the date of this Deed	(1) VINCI Construction UK Limited of Astral House, Imperial Way, Watford, Hertfordshire WD24 4WW (2) The First Chargor
2.	Consultant Appointment – Acoustic Consultant	On or around the date of this Deed	(1) Hann Tucker Associates Limited of Duke House, 1/2 Duke Street, Woking, Surrey GU21 5BA (2) The First Chargor
3.	Consultant Appointment - Architect	On or around the date of this Deed	(1) Powell Dobson Limited of Charterhouse, The Links Business Park, Cardiff, South Glamorgan CF3 0LT (2) The First Chargor
4.	Consultant Appointment – Architect (Retained Services)	On or around the date of this Deed	1) Powell Dobson Limited of Charterhouse, The Links Business Park, Cardiff, South Glamorgan CF3 0LT (2) The First Chargor
5.	Consultant Appointment – CDM Co-ordinator	On or around the date of this Deed	(1) 3CRISK Limited of First Floor East Sail Loft, Limehouse Court 3-11, Dod Street, London E14 7EQ (2) The First Chargor
6.	Consultant Appointment – Project Manager and Employers Agent	On or around the date of this Deed	(1) Second London Wall Project Management Limited of c/o GVA Grimley Ltd, 3 Brindley Place, Birmingham, West Midlands B1 2JB (2) The First Chargor
7.	Consultant Appointment – Building Services Engineer, Fire Engineer, Environmental Strategy and BREEAM Assessment Consultant and Vertical Transportation Engineer	On or around the date of this Deed	(1) Grontmij Limited of Grove House, Mansion Gate Drive, Leeds, West Yorkshire LS7 4DN (2) The First Chargor
8.	Consultant Appointment – Quantity Surveyor	On or around the date of this Deed	(1) Quantem Consulting LLP of Quality House, 5-9 Quality Court, Chancery Lane, London WC2A 1HP (2) The First Chargor

	<b>Brief description of Charged Contracts</b>	<b>Date of Charged Contract</b>	<b>Parties to Charged Contract (include addresses for service of notices of those parties who are not parties to this Deed)</b>
9.	Consultant Appointment – Structural Engineer	On or around the date of this Deed	(1) Pell Frischman Consultants Limited of 5 Manchester Square, London W1U 3PD (2) The First Chargor
10.	Consultant Appointment – Structural Engineer (Retained Services)	On or around the date of this Deed	(1) Pell Frischman Consultants Limited of 5 Manchester Square, London W1U 3PD (2) The First Chargor]
11.	Consultant Appointment – Landscape Architect	On or around the date of this Deed	(1) Bowles & Wyer of Unit 5 Williams Court, Tunnel Way, Pitstone, Leighton Buzzard, Buckinghamshire, LU7 9GJ (2) The First Chargor
12.	Works Contract – Demolition and Enabling Works	15 May 2009	(1) Keltbray Limited of St Andrew's House, Portsmouth Road, Esher, Surrey, KT10 9TA (2) The First Chargor
13.	Parent Company Guarantee	On or around the date of this Deed	(1) VINCI PLC of Astral House, Imperial Way, Watford, Hertfordshire WD24 4WW (2) The First Chargor
14.	Performance Bond	On or around the date of this Deed	(1) VINCI Construction UK Limited of Astral House, Imperial Way, Watford, Hertfordshire WD24 4WW (2) Euler Hermes Europe S.A (N.V.) of c/o Euler Hermes UK 1 Canada Square, London E14 5DX (3) The First Chargor

### **SCHEDULE 3**

#### **Details of Property**

1. **Name of legal and beneficial owner: Battersea Place LLP**

	<b>Address of Property:</b>	The property known as land at 73 Albert Road, Battersea, London SW11 4DS and described in more detail in the registered title
	<b>Freehold/Leasehold Estate:</b>	Freehold
	<b>Title Details (where applicable):</b>	TGL16934
	<b>County and District (or London Borough):</b>	London Borough of Wandsworth

#### **SCHEDULE 4**

##### **Shares**

This Schedule has been left blank intentionally

## **SCHEDULE 5**

### **Designated Chattels**

This Schedule has been left blank intentionally

## SCHEDULE 6

### Notices

#### Part 1: Notice to insurer

(For attachment by way of endorsement to the Insurances)

To: [Name and address of insurer]

Dated: [Date]

Dear Sirs,

**Re: The policies of insurance referred to in the Schedule below (the "Policies")**

We, [Chargor] (the "**Chargor**"), give you notice that, by a security agreement dated [date] (the "**Mezzanine Security Agreement**") and made by (amongst others) ourselves in favour of ~~Starfin~~ ~~Lux S.à.r.l.~~ (the "**Security Trustee**") (as trustee for itself and certain other parties), we have, subject to the terms of an Intercreditor Agreement (as defined below), charged by way of fixed charge and assigned to the Security Trustee, all of the Policies as are capable of being charged and/or assigned by law.

The assets charged and assigned include all our right, title and interest in and to the Policies (including, but not limited to, the benefit of all sums assured by the Policies and all bonuses, profits, returns of premium and other benefits of whatever nature arising by virtue of our ownership of the Policies and all interest on any of the secured money).

We acknowledge that by a letter of even date we have notified you that we have charged by way of first ranking fixed charge all our right, interests and benefits in, to and under the Policies in favour of Barclays Bank PLC (the "**Senior Security Agent**") pursuant to a security agreement dated [date] (the "**Senior Security Agreement**").

The security granted under the Mezzanine Security Agreement is second ranking to the security granted to the Senior Security Agent under the Senior Security Agreement. All rights in favour of the Security Trustee granted under this notice are subject to the terms of an intercreditor agreement entered into (amongst others) the Chargor, the Senior Security Agent and the Security Trustee (the "**Intercreditor Agreement**").

We shall give you notice on the Senior Discharge Date (as defined in the Intercreditor Agreement) that the Senior Discharge Date has occurred.

We irrevocably and unconditionally authorise and request you:

1. to note VINCI PLC's interest on the Policies, and to note the Security Trustee's interest as co-insured and, after the Senior Discharge Date, first loss payee of the proceeds of such Policies; and
2. to give the acknowledgement, undertakings and agreements required by the Security Trustee and to act on the instructions of the Security Trustee without any further reference to or authorisation from us.

Please sign the enclosed copy of this notice and deliver it to the Security Trustee ~~at 124 boulevard de la Pétrusse, L-2330, Luxembourg~~ (with a copy to 3 rue Mozart, L-2166 Luxembourg (with a further copy to us).

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

Starwood European  
Finance Partners  
Limited

(AL)

(AL)

Yours faithfully,

For and on behalf of [Chargor]:

By: .....



## SCHEDULE 7

### The Policies

	Policy number	Name and address of insurer	Name and address of broker	Brief description of assets insured	Date of expiry of policy
1.	UC PMH 3675799	Travelers Insurance Company Ltd 61-63 London Rd, Redhill, Surrey, RH1 1NA	Lockton Insurance Brokers	Portacabin Declared Value £119,000	30/09/2013

Dated [*date*]

[*To be included on copy notice*]

To: [*Name and address of Security Trustee*] as trustee for the Secured Parties (as referred to in the Mezzanine Security Agreement)

Copy to: [*Name and address of Chargor*]

We [*name of insurer*] acknowledge receipt of the above notice. We:

1. acknowledge that the security granted under the Mezzanine Security Agreement is second ranking to the security granted to the Senior Security Agent under a security agreement of the same date. All rights in favour of the Security Trustee granted under the notice are subject to the terms of the Intercreditor Agreement.
2. agree to note VINCI PLC's interest on each Policy and to note your interest as co-insured and, after the Senior Discharge Date, first loss payee of the proceeds of such Policies;
3. undertake to disclose to you, promptly following request, without any reference to or further authority from the Chargor, such information relating to the Policies as you may at any time reasonably request;
4. save for the first fixed charge and assignment in favour of the Senior Security Agent, confirm that we have not received notice of any previous assignment or charge by the Chargor of or over any of its rights, title, interests or benefits referred to in the notice;
5. agree promptly to notify you of our intention to cancel or decline renewal of any of the Policies; and
6. agree promptly to notify you of any request made, or notification given, by the Chargor to us, to cancel the Policies, or to allow the Policies to lapse.

Terms defined in the notice apply to this endorsement. This endorsement and any obligations (whether contractual or non-contractual) arising out of or in connection with it are governed by English law.

Signed: .....

for and on behalf of [*name of insurer*]

**Part 2: Form of notice to counterparties of Charged Contracts**

To: **[Name and address of counterparty]**

Dated: **[date]**

Dear Sirs,

**Re: [here identify relevant Charged Contract] (the "Contract") made between (1) [Chargor] (the "Chargor") and (2) [here insert name of counterparty]**

We, [Chargor] (the "**Chargor**"), give you notice that, by a security agreement dated [date] (the "**Mezzanine Security Agreement**") and made by (amongst others) ourselves in favour of ~~Starfin~~ ~~Lux S.à r.l.~~ (the "**Security Trustee**") (as trustee for itself and certain other parties), we have, subject to the terms of an Intercreditor Agreement (as defined below), charged by way of fixed charge and assigned to the Security Trustee, all of our rights, title and interest in the Contract.

We acknowledge that by a letter of even date we have notified you that we have charged by way of first ranking fixed charge all our right, title and interest in the Contract in favour of Barclays Bank PLC (the "**Senior Security Agent**") pursuant to a security agreement dated [date] (the "**Senior Security Agreement**").

The security granted under the Mezzanine Security Agreement is second ranking to the security granted to the Senior Security Agent under the Senior Security Agreement. All rights in favour of the Security Trustee granted under this notice are subject to the terms of an Intercreditor agreement entered into (amongst others) the Chargor, the Senior Security Agent and the Security Trustee (the "**Intercreditor Agreement**").

We further irrevocably and unconditionally:

1. [notify you that we may not agree to amend, modify or terminate the Contract without the prior written consent of the Security Trustee;]
2. confirm that, [subject to paragraph 1 above,] you may continue to deal with us in relation to the Contract until you receive written notice to the contrary from the Security Trustee, but authorise and instruct you that, after you have received such notice, we will cease to have any right to deal with you in relation to the Contract except in accordance with the instructions of the Security Trustee and therefore from that time you may deal directly with the Security Trustee;
3. authorise and instruct you to disclose information in relation to the Contract to the Security Trustee promptly on request, without any enquiry by you as to the justification for such disclosure or reference to or further authority from us;
4. [authorise and instruct you to pay or release all monies to which we are entitled under the Contract directly into [specify designated bank account] or, if the Security Trustee so instructs you, into such other account as the Security Trustee shall specify;]
5. authorise and instruct you that, whenever you serve any notice upon us under the Contract, you should supply a copy of such notice to the Security Trustee at its address given in the copy of this notice (or as otherwise notified to you by it from time to time); and
6. notify you that the provisions of this notice may only be revoked with the written consent of the Security Trustee.

Please sign the copy of this notice and deliver it to the Security Trustee ~~at 124 boulevard de la~~  
~~Pétrusse, L-2330, Luxembourg~~ with a copy to 3 rue Mozart, L-2166 Luxembourg (with a further  
copy to us).

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

(12)

Yours faithfully,

For and on behalf of  
[Chargor]

By: .....

Starwood European Finance Partners  
Limited (AL)

[to be included on copy notice]

To: ~~Starfin Lux S.à.r.l.~~ as trustee for the Secured Parties (as referred to in the Mezzanine Security Agreement)

Copy to: [**Name and address of Chargor**]

We [**name of counterparty**] acknowledge receipt of the above notice. We:

1. acknowledge that the security granted under the Mezzanine Security Agreement is second ranking to the security granted to the Senior Security Agent under a security agreement of the same date. All rights in favour of the Security Trustee granted under the notice are subject to the terms of the Intercreditor Agreement.
2. accept the instructions and authorisations set out in the notice and undertake to act in accordance with such instructions and authorisations; and
3. save for the assignment in favour of the Senior Security Agent, confirm that we have not received notice that the Chargor has assigned its rights under the Contract to a third party or created any other interest (whether by way or security or otherwise) in the Contract in favour of a third party.

Terms defined in the notice apply to this endorsement. This endorsement and any obligations (whether contractual or non-contractual) arising out of or in connection with it are governed by English law.

Signed: .....

for and on behalf of [**name of counterparty**]

Dated: [**date**]

## SCHEDULE 8

### Notices to Account Bank

#### Part 1: Form of notice to bank operating secured account (other than the Interest Reserve Account, Development Account and the Occupancy Fee Account)

To: [**Name and address of account bank**] (the "**Account Bank**")

Dated: [**date**]

Dear Sirs,

**Re: Account No:** [insert account number] (the "**Account**")  
**Account Branch:** [insert branch name and address]  
**Account Holder:** [name of Chargor] (the "**Chargor**")

(A1)  
Starwood European  
Finance Partners  
Limited

We, [Chargor] (the "**Chargor**"), give you notice that, by a security agreement dated [date] (the "**Mezzanine Security Agreement**") and made by (amongst others) ourselves in favour of ~~Starfin~~ ~~Lux S-à-r-l~~ (the "**Security Trustee**") (as trustee for itself and certain other parties), we have, subject to the terms of an Intercreditor Agreement (as defined below), charged by way of fixed charge to the Security Trustee, all the monies (including interest) from time to time standing to the credit of the Account including any re-designation and/or re-numbering from time to time of such Account (the "**Charged Account**") and all indebtedness represented by the Charged Account and have assigned to the Security Trustee all our rights and benefits in respect of the Charged Account.

We acknowledge that by a letter of even date we have notified you that we have charged by way of first ranking fixed charge all monies (including interest) from time to time standing to the credit of the Account in favour of Barclays Bank PLC (the "**Senior Security Agent**") pursuant to a security agreement dated [date] (the "**Senior Security Agreement**").

The security granted under the Mezzanine Security Agreement is second ranking to the security granted to the Senior Security Agent under the Senior Security Agreement. All rights in favour of the Security Trustee granted under this notice are subject to the terms of an intercreditor agreement entered into (amongst others) the Chargor, the Senior Security Agent and the Security Trustee (the "**Intercreditor Agreement**").

We shall give you notice on the Senior Discharge Date (as defined in the Intercreditor Agreement) that the Senior Discharge Date has occurred.

We irrevocably and unconditionally authorise and instruct you:

1. to hold all monies from time to time standing to the credit of the Charged Account to the order of the Security Trustee and accordingly to pay all or any part of those monies to the Security Trustee (or as it may direct) promptly following receipt of written instructions from the Security Trustee to that effect;
2. to disclose to the Security Trustee such information relating to us and the Charged Account as the Security Trustee may from time to time request you to provide; and
3. that all expenses relating to the maintenance of the Charged Account and your costs and expenses in complying with our instructions in accordance with this notice shall be our responsibility and in the event that these are not otherwise met by us such expenses may be debited directly by you to the Account.

We notify you that following the Senior Discharge Date (as defined in the Intercreditor Agreement) we may not withdraw any monies from the Charged Account without first having produced to you the prior written consent of the Security Trustee to such withdrawal.

We agree that you have no notice of the particulars of the security created by the Mezzanine Security Agreement, save as set out in this notice.

The provisions of this notice may only be revoked or varied with the prior written consent of the Security Trustee.

Please sign the enclosed copy of this notice and deliver it to the Security Trustee ~~at 124 boulevard de la Pétrusse, L-2330, Luxembourg (with a copy to 3 rue Mozart, L-2166 Luxembourg)~~ (with a further copy to us).

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

Yours faithfully,

(AL)

.....  
for and on behalf of  
[Chargor]

**[to be included on copy notice]**

Starwood European Finance Partners  
Limited

To: ~~Starfin Lux S.à r.l.~~ as trustee for the Secured Parties (as referred to in the Mezzanine Security Agreement)

Copy to: **[name and address of Chargor]**

We **[Name of Account Bank]**:

1. acknowledge receipt of the above notice;
2. acknowledge that the security granted under the Mezzanine Security Agreement is second ranking to the security granted to the Senior Security Agent under a security agreement of the same date. All rights in favour of the Security Trustee granted under the notice are subject the terms of the Intercreditor Agreement.
3. agree to act in accordance with the authorisations, instructions and notifications contained or referred to in the above notice;
4. save for the assignment in favour of the Senior Security Agent, confirm that we have not received notice that the Chargor has assigned its rights to the monies standing to the credit of the Charged Account, or the indebtedness represented by them, or otherwise granted any security or other interest over those monies, or such indebtedness, in favour of any third party;
5. undertake that we will not exercise any right to combine accounts or any rights of set-off or lien or any similar rights in relation to the monies standing to the credit of the Charged Account; and
6. agree that any notice or other communication from us to the Security Trustee will be sent or made to the address of the Security Trustee stated above, or to such other address as the Security Trustee may from time to time notify to us.

The agreement in paragraph 2 above is given on the basis that:

1. we may rely on any notice or other document or information believed, reasonably, by us to be genuine and correct and to have been signed or communicated by the person by

whom it purports to be signed and communicated and we will not be liable for the consequences of such reliance and will have no obligation whatsoever to verify that the facts or matters stated in any such notice or document are true and correct; and

2. to the extent that an instruction for withdrawal from the Charged Account is given which would, in our reasonable opinion, cause the Charged Account to be overdrawn, we will only transfer the outstanding cleared credit balance in the Account.

Terms defined in the notice apply to this endorsement. This endorsement and any obligations (whether contractual or non-contractual) arising out of or in connection with it are governed by English.

.....

for and on behalf of  
[name and address of Account Bank]

Dated: [date]

**Part 2 Alternative form of notice to bank operating the Interest Reserve Account**

To: **[Name and address of account bank]** (the "Account Bank")

Dated: **[date]**

Dear Sirs,

**Re: Account No: [insert account number] (the "Account")**  
**Account Branch: [insert branch name and address]**  
**Account Holder: [name of Chargor] (the "Chargor")**

(AL)  
Starwood European  
Finance Partners Limited

We, [Chargor] (the "Chargor"), give you notice that, by a security agreement dated [date] (the "**Mezzanine Security Agreement**") and made by (amongst others) ourselves in favour of ~~Starfin~~  
~~Lux S.à r.l.~~ (the "**Security Trustee**") (as trustee for itself and certain other parties), we have, subject to the terms of an Intercreditor Agreement (as defined below), charged by way of fixed charge to the Starwood Mezzanine Finance Parties (as defined in the Mezzanine Security Agreement), all the monies (including interest) from time to time standing to the credit of the Account including any re-designation and/or re-numbering from time to time of such Account (the "**Charged Account**") and all indebtedness represented by the Charged Account and have assigned to the Starwood Mezzanine Finance Parties all our rights and benefits in respect of the Charged Account.

We irrevocably and unconditionally authorise and instruct you:

4. to hold all monies from time to time standing to the credit of the Charged Account to the order of the Security Trustee as trustee for the Starwood Mezzanine Finance Parties and accordingly to pay all or any part of those monies to the Security Trustee as trustee for the Starwood Mezzanine Finance Parties (or as it may direct) promptly following receipt of written instructions from the Security Trustee as trustee for the Starwood Mezzanine Finance Parties to that effect;
5. to disclose to the Security Trustee as trustee for the Starwood Mezzanine Finance Parties such information relating to us and the Charged Account as the Security Trustee as trustee for the Starwood Mezzanine Finance Parties may from time to time request you to provide; and
6. that all expenses relating to the maintenance of the Charged Account and your costs and expenses in complying with our Instructions in accordance with this notice shall be our responsibility and in the event that these are not otherwise met by us such expenses may be debited directly by you to the Account.

We notify you that we may not withdraw any monies from the Charged Account without first having produced to you the prior written consent of the Security Trustee as trustee for the Starwood Mezzanine Finance Parties to such withdrawal.

We agree that you have no notice of the particulars of the security created by the Mezzanine Security Agreement, save as set out in this notice.

The provisions of this notice may only be revoked or varied with the prior written consent of the Security Trustee as trustee for the Starwood Mezzanine Finance Parties.

Please sign the enclosed copy of this notice and deliver it to the Security Trustee ~~at 124 boulevard de la Pétrusse, L-2330, Luxembourg with a copy to 3 rue Mozart, L-2166 Luxembourg~~ (with a further copy to us).

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

(AL)



Yours faithfully,

.....  
for and on behalf of  
[Chargor]

[to be included on copy notice]

(AL)  
Starwood European Finance Partners  
Limited

To: ~~Starfin LUX S.à r.l.~~ as trustee for the Starwood Mezzanine Finance Parties (as referred to in the Mezzanine Security Agreement)

Copy to: [name and address of Chargor]

We [Name of Account Bank]:

3. acknowledge receipt of the above notice;
4. agree to act in accordance with the authorisations, instructions and notifications contained or referred to in the above notice;
5. confirm that we have not received notice that the Chargor has assigned its rights to the monies standing to the credit of the Charged Account, or the indebtedness represented by them, or otherwise granted any security or other interest over those monies, or such indebtedness, in favour of any third party;
6. undertake that we will not exercise any right to combine accounts or any rights of set-off or lien or any similar rights in relation to the monies standing to the credit of the Charged Account; and
7. agree that any notice or other communication from us to the Security Trustee as trustee for the Starwood Mezzanine Finance Parties will be sent or made to the address of the Security Trustee stated above, or to such other address as the Security Trustee may from time to time notify to us.

The agreement in paragraph 2 above is given on the basis that:

8. we may rely on any notice or other document or information believed, reasonably, by us to be genuine and correct and to have been signed or communicated by the person by whom it purports to be signed and communicated and we will not be liable for the consequences of such reliance and will have no obligation whatsoever to verify that the facts or matters stated in any such notice or document are true and correct; and
9. to the extent that an instruction for withdrawal from the Charged Account is given which would, in our reasonable opinion, cause the Charged Account to be overdrawn, we will only transfer the outstanding cleared credit balance in the Account.

Terms defined in the notice apply to this endorsement. This endorsement and any obligations (whether contractual or non-contractual) arising out of or in connection with it are governed by English.

.....  
for and on behalf of  
[name and address of Account Bank]

Dated: [date]

**Part 3 Alternative form of notice to bank operating the Development Account and the Occupancy Fee Account**

To: [name and address of account bank] (the "Account Bank")

Dated: [date]

Dear Sirs,

**Re: Account No:[insert account number] (the "Account")**

**Account Branch: [insert branch name and address]**

**Account Holder: Battersea Place LLP (the "Chargor")**

(AL)  
Starwood European  
Finance Partners  
Limited.

We, [Chargor] (the "Chargor"), give you notice that, by a security agreement dated [date] (the "**Mezzanine Security Agreement**") and made by (amongst others) ourselves in favour of ~~Starfin~~ ~~Lux Sàrl~~ (the "**Security Trustee**") (as trustee for itself and certain other parties), we have, subject to the terms of an Intercreditor Agreement (as defined below), charged by way of fixed charge to the Security Trustee, all the monies (including interest) from time to time standing to the credit of the Account including any re-designation and/or re-numbering from time to time of such Account (the "**Charged Account**") and all indebtedness represented by the Charged Account and have assigned to the Security Trustee all our rights and benefits in respect of the Charged Account.

We acknowledge that by a letter of even date we have notified you that we have charged by way of first ranking fixed charge all monies (including interest) from time to time standing to the credit of the Account in favour of Barclays Bank PLC (the "**Senior Security Agent**") pursuant to a security agreement dated [date] (the "**Senior Security Agreement**").

The security granted under the Mezzanine Security Agreement is second ranking to the security granted to the Senior Security Agent under the Senior Security Agreement. All rights in favour of the Security Trustee granted under this notice are subject to the terms of an intercreditor agreement entered into (amongst others) the Chargor, the Senior Security Agent and the Security Trustee (the "**Intercreditor Agreement**").

We shall give you notice on the Senior Discharge Date (as defined in the Intercreditor Agreement) that the Senior Discharge Date has occurred.

We irrevocably and unconditionally authorise and instruct you:

1. to hold all monies from time to time standing to the credit of the Charged Account to the order of the Security Trustee (subject to the consent of the Security Trustee, signified by its counter-signature of this notice, for us to operate the Charged Account[s] (the "**Security Trustee's Consent**")) and accordingly to pay all or any part of those monies to the Security Trustee (or as it may direct) promptly following receipt by you of notice of withdrawal of the Security Trustee's Consent and of written instructions from the Security Trustee to make such payment;
2. to disclose to the Security Trustee such information relating to us and the Charged Account as the Security Trustee may from time to time (whether before or after the withdrawal of the Security Trustee's Consent) request you to provide; and
3. that all expenses relating to the maintenance of the Charged Account and your costs and expenses in complying with our instructions in accordance with this notice shall be our responsibility and in the event that these are not otherwise met by us such expenses may be debited directly by you to the Account.

Until such time as you receive from the Security Trustee a written notice withdrawing the Security Trustee's Consent, nothing in this notice shall prevent you from operating the Charged Accounts in the ordinary course of banking business including, without limitation, collecting cheques and other payment orders via any medium, electronic or otherwise and accepting monies for the credit of the Charged Accounts and allowing us to draw cheques and make other payments and generally to withdraw funds from the Account.

Upon withdrawal of the Security Trustee's Consent, we may not withdraw any further monies from the Charged Accounts without first having produced to you the prior written consent of the Security Trustee to each such withdrawal.

We agree that you have no notice of the particulars of the security created by the Mezzanine Security Agreement, save as set out in this notice.

The provisions of this notice may only be revoked or varied with the prior written consent of the Security Trustee.

Please sign the enclosed copy of this notice and deliver it to the Security Trustee ~~at 124 boulevard de la Pétrusse, L-2330, Luxembourg with a copy to 3 rue Mozart, L-2166 Luxembourg~~ (with a further copy to us). (AK)

The provisions of this notice and any obligations (whether contractual or non-contractual) arising out of or in connection with it are governed by English law.

Yours faithfully,

.....  
for and on behalf of  
[Chargor]

By countersigning this notice the Security Trustee confirms that the Chargor may make withdrawals from the Charged Accounts until such time as the Security Trustee shall notify you (with a copy to the Chargor) in writing that such consent is withdrawn. Such consent may be withdrawn or modified by the Security Trustee in its absolute discretion at any time.

Countersigned by

..... (AL)  
for and on behalf of  
[name and address of Account Bank]

**[to be included on copy notice]**

To: ~~Starfin Lux S.à.r.l.~~ as trustee for the Secured Parties (as referred to in the Mezzanine Security Agreement)

Copy to: [name and address of Chargor]

We [Name of Account Bank]:

1. acknowledge receipt of the above notice;

2. acknowledge that the security granted under the Mezzanine Security Agreement is second ranking to the security granted to the Senior Security Agent under a security agreement of the same date. All rights in favour of the Security Trustee granted under the notice are subject to the terms of the Intercreditor Agreement.
3. agree to act in accordance with the authorisations, instructions, confirmation[s] and notifications contained or referred to in the above notice;
4. save for the assignment in favour of the Senior Security Agent, confirm that we have not received notice that the Chargor has assigned its rights to the monies standing to the credit of the Charged Account, or the indebtedness represented by them, or otherwise granted any security or other interest over those monies, or such indebtedness, in favour of any third party;
5. undertake that we will not exercise any right to combine accounts or any rights of set-off (other than off-setting in the ordinary course of banking transactions) or lien or any similar rights in relation to the monies standing to the credit of the Charged Account; and
6. agree that any notice or other communication from us to the Security Trustee will be sent or made to the address of the Security Trustee stated above, or to such other address as the Security Trustee may from time to time notify to us.

The agreement in paragraph 2 above is given on the basis that:

7. we may rely on any notice or other document or information believed, reasonably, by us to be genuine and correct and to have been signed or communicated by the person by whom it purports to be signed and communicated and we will not be liable for the consequences of such reliance and will have no obligation whatsoever to verify that the facts or matters stated in any such notice or document are true and correct; and
8. to the extent that an instruction for withdrawal from the Charged Account is given which would, in our reasonable opinion, cause the Charged Account to be overdrawn, we shall only transfer the outstanding cleared credit balance in the Account.

Terms defined in the notice apply to this endorsement. This endorsement and any obligations (whether contractual or non-contractual) arising out of or in connection with it are governed by English law.

.....

for and on behalf of  
[name and address of Account Bank]

Dated: [date]

## **SCHEDULE 9**

### **Receiver's specific powers**

The Receiver will have full power and authority:

1. to enter upon, and to take possession of, the Secured Assets;
2. to collect and get in all rents, fees, charges or other income of the Secured Assets;
3. generally to manage the Secured Assets and to manage or carry on, reconstruct, amalgamate, diversify or concur in carrying on the business of the relevant Chargor or any part of it as he may think fit;
4. without restriction, to sell, charge, grant, vary the terms or accept surrenders of, leases or tenancies of, licences to occupy, or options or franchises over or otherwise deal with and dispose of the Secured Assets or any property acquired in exercise of its powers under this Deed;
5. to purchase or acquire any land and purchase, acquire or grant any interest in or right over land;
6. to take a lease or tenancy of any property required or convenient for the business of the relevant Chargor or the exercise of the Receiver's powers under this Deed;
7. to exercise on behalf of the relevant Chargor and without the consent of or notice to the such Chargor all the powers conferred on a landlord or a tenant by any legislation from time to time in force in any relevant jurisdiction relating to leasehold property, landlord and tenant, rents, housing or agriculture in respect of the Property;
8. for the purpose of exercising any of the rights, powers, authorities and discretions conferred on the Receiver by or pursuant to this Deed and/or for defraying any costs, losses or liabilities which may be incurred by him in their exercise or for any other purpose, to raise or borrow moneys from the Secured Parties or others or incur any other liability on such terms, whether secured or unsecured, as he may think fit, and whether to rank in priority to this Deed or not;
9. to appoint and discharge employees, officers, consultants, advisers, managers, agents, solicitors, accountants or other professionally qualified persons, workmen and others for any of the purposes of this Deed or to guard or protect the Secured Assets upon such terms as to remuneration or otherwise as he may think fit and to discharge any such persons appointed by the relevant Chargor prior to his appointment;
10. in the name of the relevant Chargor, to bring, prosecute, enforce, defend and discontinue all such actions, suits and proceedings, in relation to such Chargor, the business of such Chargor or the Secured Assets as in any case he thinks fit;
11. to settle, adjust, refer to arbitration or expert determination, compromise and arrange any claims, accounts, disputes, questions and demands with or by any person or body who is or claims to be a creditor of the relevant Chargor or relating in any way to the Secured Assets;
12. to give valid receipts for all moneys and execute all assurances and things which may be proper or desirable for realising the Secured Assets;
13. to obtain Authorisations for and to carry out on the Property any new works or complete any unfinished works of development, building, reconstruction, maintenance, repair, renewal, improvement, furnishing or equipment;

14. to enter into, vary, cancel or waive any of the provisions of any contracts which he shall in any case think expedient in the interests of the relevant Chargor or the Security Trustee;
15. to purchase materials, tools, equipment, goods or supplies on such terms and at such price as the Receiver in the Receiver's absolute determination thinks fit;
16. to insure the Secured Assets, any assets acquired by the Receiver in exercise of his powers, and any business or works, and effect indemnity insurance or other similar insurance, in every case in such amounts, against such risks and with such offices as the Receiver thinks fit, and obtain bonds and give guarantees and Security to any bondsmen;
17. to remove, store, sell or otherwise deal with any chattels located at the Property;
18. to promote or establish any company or to acquire shares in any company (whether as a Subsidiary of the relevant Chargor or otherwise) to facilitate the exercise of his powers under this Deed, to transfer to any such company all or any of the Secured Assets or other assets acquired by the Receiver in exercise of his powers and to exercise or cause to be exercised all voting and other rights attaching to, and to charge, sell or otherwise transfer any shares in any such company;
19. to exercise all voting and other rights attaching to the Investments and all other stocks, shares and securities owned by the relevant Chargor and comprised in the Secured Assets in such manner as he thinks fit;
20. to make, or require the directors of the relevant Chargor to make, calls conditionally or unconditionally on the members of such Chargor in respect of uncalled capital; and take action to enforce payment of unpaid calls;
21. to carry into effect and complete any transaction;
22. to redeem any prior Security (or procure the transfer of such Security to an Enforcement Party) and settle and pass the accounts of the person entitled to the prior Security so that any accounts so settled and passed shall (subject to any manifest error) be conclusive and binding on the relevant Chargor and the money so paid shall be deemed to be an expense properly incurred by the Receiver; and
23. either in the name of the relevant Chargor or in the name of the Receiver to execute documents and do all other acts or things which the Receiver may consider to be incidental or conducive to any of the Receiver's powers or to the realisation or use of the Secured Assets.

**SCHEDULE 10**

**Form of Supplemental Security Documents**

**Part 1 Form of Mezzanine Supplemental Legal Mortgage**

Dated [●]

(1) [●]

(2) ~~STARFIN LUX S.A. R.L.~~ AS SECURITY TRUSTEE

Starwood European Finance Partners Limited

**Mezzanine Supplemental Legal Mortgage**

Relating to Land at [●]

This Mezzanine Supplemental Legal Mortgage is dated [●]

**BETWEEN:**

- (3) [●] of [registered office] and registered in [England and Wales] with company number [●] (the "**Chargor**"); and
- (4) ~~STARFIN LUX S.À.R.L.~~ in its capacity as Security Trustee (the "**Security Trustee**").

**RECITALS** STARWOOD EUROPEAN FINANCE PARTNERS LIMITED.

- (A) This Mezzanine Supplemental Legal Mortgage is supplemental to a security agreement dated [●] 2013, made between, amongst others, Battersea Place LLP (the "**First Chargor**"), the Chargor and the Security Trustee (the "**Mezzanine Security Agreement**").
- (B) This is a Mezzanine Security Document (as defined in the Mezzanine Facility Agreement).
- (C) The Security Trustee holds the benefit of this Mezzanine Supplemental Legal Mortgage, including the security created and other rights granted in it on trust for the Secured Parties.
- (D) It is intended that this document takes effect as a deed notwithstanding the fact that a party may only execute this document under hand.

**THE PARTIES AGREE AS FOLLOWS:**

**1. INTERPRETATION**

**1.1 Definitions**

In this Mezzanine Supplemental Legal Mortgage:

**"Associated Rights"** means, in relation to any asset, all proceeds of sale of such asset, all rights, powers, benefits, covenants, warranties, guarantees or Security given or implied in respect of such asset, all rights under any agreement for sale, agreement for lease or licence of or in respect of such asset, and any monies and proceeds paid or payable in respect of such asset.

**"Mezzanine Facility Agreement"** means the mezzanine facility agreement dated [●] 2013 between, amongst others, the First Chargor, the Chargor, the Original Mezzanine Lenders, the Mezzanine Arranger, the Mezzanine Facility Agent and the Security Trustee, as the same may be varied, amended, modified, supplemented or replaced.

**"Property"** means:

- (a) the property specified in the Schedule (Details of Property); and
- (b) any buildings, fixtures, fittings, fixed plant or machinery from time to time situated on or forming part of such property,

and includes all Associated Rights.

**1.2 Interpretation**

Save as provided in clause 2 (Incorporated Provisions) or otherwise defined in this Mezzanine Supplemental Legal Mortgage, capitalised terms defined in the Mezzanine Facility Agreement and/or the Mezzanine Security Agreement shall have the same meaning in this Mezzanine Supplemental Legal Mortgage.



The provisions of clause 1.3 of the Mezzanine Security Agreement apply to this Mezzanine Supplemental Legal Mortgage (including the provisions incorporated herein by Clause 2 (Incorporated Provisions)) as if expressly set out herein, *mutatis mutandis*, with each reference to this Deed therein being deemed to be a reference to this Mezzanine Supplemental Legal Mortgage.

The terms of the other Mezzanine Finance Documents are incorporated into this Mezzanine Supplemental Legal Mortgage to the extent required to ensure that any purported disposition of the Property contained in this Mezzanine Supplemental Legal Mortgage is a valid disposition in accordance with Section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989.

If the Security Trustee reasonably considers that an amount paid by the Chargor or any other person to a Secured Party 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 Mezzanine Supplemental Legal Mortgage.

## **2. INCORPORATED PROVISIONS**

For the avoidance of doubt and without prejudice to the generality of the foregoing Clauses, the provisions of the Mezzanine Security Agreement apply in relation to the Property to the extent that the same apply to the Property (as defined in the Mezzanine Security Agreement) and (so far as necessary to make them apply to and be enforceable in relation to the Property) they shall be deemed to be incorporated into this Mezzanine Supplemental Legal Mortgage, *mutatis mutandis*, as though set out in full herein with each reference therein to:

- 2.1 Deed being deemed to be a reference to this Mezzanine Supplemental Legal Mortgage; and
- 2.2 Schedule 3, being deemed to be a reference to the Schedule to this Mezzanine Supplemental Legal Mortgage.

## **3. FIXED SECURITY**

The Chargor charges with full title guarantee in favour of the Security Trustee for the payment and discharge of the Secured Obligations, by way of first legal mortgage the Property.

## **4. APPLICATION TO THE LAND REGISTRY**

The Chargor consents to an application being made to the Land Registry to enter the following restriction in the proprietorship register of any property which is, or is required to be, registered forming part of the Property:

"No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by the proprietor for the time being of the charge dated [date of this Deed] in favour of Starfin Lux S.à r.l referred to in the charges register or, its conveyancer."

and, where applicable, notice of an obligation to make further advances.

## **5. REPRESENTATIONS AND WARRANTIES**

- 5.1 The Chargor represents and warrants to the Security Trustee on the date of this Mezzanine Supplemental Legal Mortgage in the terms of the Repeating Representations and the representations at clauses 6.1 to 6.5 of the Mezzanine Security Agreement, in each case as if expressly set out in this Mezzanine Supplemental Legal Mortgage and so

far as applicable to the Chargor or the Property. Each of the Repeating Representations and the representations at clauses 6.1 to 6.5 of the Mezzanine Security Agreement is made by reference to the facts and circumstances existing at the date of this Mezzanine Supplemental Legal Mortgage.

5.2 The Chargor further represents and warrants as follows:

- (a) except for registration of this Mezzanine Supplemental Legal Mortgage under the Companies Act 2006 and the Land Registration Act 2002, it is not necessary to file, register or record this Mezzanine Supplemental Legal Mortgage in any public place or elsewhere;
- (b) except for registration fees associated with the registration of this Mezzanine Supplemental Legal Mortgage in accordance with clause 5.2(a) above, it is not necessary under the laws of the Chargor's jurisdiction of incorporation that this Mezzanine Supplemental Legal Mortgage be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration or similar tax be paid on or in relation to this Mezzanine Supplemental Legal Mortgage or the transactions contemplated by it; and
- (c) any disclosure required to be made by it to any relevant taxing authority in relation to stamp duty land tax payable on any transactions contemplated by this Mezzanine Supplemental Legal Mortgage has been made.

## 6. CONTINUATION

6.1 Except insofar as supplemented hereby, the Mezzanine Security Agreement will remain in full force and effect.

6.2 This Mezzanine Supplemental Legal Mortgage is supplemental to the Mezzanine Security Agreement. On and from the date of this Mezzanine Supplemental Legal Mortgage:

- (a) the Mezzanine Supplemental Legal Mortgage and the Mezzanine Security Agreement shall be read and construed as one document and in particular the definition of "**Property**" in the Mezzanine Security Agreement shall include the Property described in the Schedule hereto;
- (b) the Chargor acknowledges that references to the "**Mezzanine Security Agreement**" in the Mezzanine Facility Agreement are references to the Mezzanine Security Agreement as supplemented by this Mezzanine Supplemental Legal Mortgage; and
- (c) references in the Mezzanine Security Agreement to "**this deed**", "**hereof**", "**hereunder**" and expressions of similar import shall be deemed to be references to the Mezzanine Security Agreement as supplemented by this Mezzanine Supplemental Legal Mortgage.

## 7. THIRD PARTY RIGHTS

No person has any right under the Third Parties Act to enforce or enjoy the benefit of any term of this Mezzanine Supplemental Legal Mortgage, other than an Enforcement Party, which may do so, or any other person, to the extent that this Mezzanine Supplemental Legal Mortgage or any other of the Mezzanine Finance Documents expressly provides for it to do so. No consent of any person who is not a Party is required to rescind or vary this Mezzanine Supplemental Legal Mortgage at any time. This clause 7 does not affect any right or remedy of any person which exists, or is available, otherwise than pursuant to the Third Parties Act.

**8. GOVERNING LAW**

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

**9. COUNTERPARTS**

This Mezzanine Supplemental Legal Mortgage may be executed in any number of counterparts, each of which shall be deemed an original and this has the same effect as if the signatures on the counterparts were on a single copy of this Mezzanine Supplemental Legal Mortgage. Any party may enter into this Mezzanine Supplemental Legal Mortgage by signing any such counterpart.

**THIS MEZZANINE SUPPLEMENTAL LEGAL MORTGAGE** has been entered into as a deed on the date stated at the beginning of this Mezzanine Supplemental Legal Mortgage.

**SCHEDULE**  
**Details of Property**

<b>Address</b>	<b>Nature of Interest</b>	<b>Title Number</b>
[●]	[●]	[●]

[CHARGOR]

Executed as a deed by [*insert name in*  
*bold and upper case*]  
acting by [a director and its  
secretary/two directors]:

Director

Director/Secretary

Executed as a deed by ~~STARFIN LUX~~  
~~S.A.R.L.~~ acting by two managers

Manager

Manager

Starwood European  
Finance Partners Limited.

**Part II Form of Mezzanine Supplemental Assignment**

Dated [●]

(6) [●]

(7) ~~STARFIN LUX S.À.R.L.~~ SECURITY TRUSTEE

**Mezzanine Supplemental Assignment**

Starwood European Finance Partners  
Limited.

This Mezzanine Supplemental Assignment is dated[●]

**BETWEEN:**

- (1) [●] of [registered office] and registered in [England and Wales] with company number [●] (the "**Chargor**"); and
- (2) ~~STARFIN LUX S.A RL~~ in its capacity as Security Trustee (the "**Security Trustee**").

**RECITAL:**

Starwood European Finance Partners Limited

- (A) This Mezzanine Supplemental Assignment is supplemental to a security agreement dated [●] 2013, made between, amongst others, Battersea Place LLP (the "**First Chargor**"), the Chargor and the Security Trustee (the "**Mezzanine Security Agreement**").
- (B) This is a Mezzanine Security Document (as defined in the Mezzanine Facility Agreement).
- (C) The Security Trustee holds the benefit of this Mezzanine Supplemental Assignment, including the security created and other rights granted in it on trust for the Secured Parties.
- (D) It is intended that this document takes effect as a deed notwithstanding the fact that a party may only execute this document under hand.

**THE PARTIES AGREES AS FOLLOWS:**

**1. INTERPRETATION**

**1.1 In this Mezzanine Supplemental Assignment:**

**"Associated Rights"** means, in relation to any asset, all proceeds of sale of such asset, all rights, powers, benefits, covenants, warranties, guarantees or Security given or implied in respect of such asset, all rights under any agreement for sale, agreement for lease or licence of or in respect of such asset, and any monies and proceeds paid or payable in respect of such asset.

**"Charged Contracts"** means those contracts, brief particulars of which are set out in the Schedule (Charged Contracts) here to and includes all Associated Rights.

**"Derivative Payment"** means, in relation to an asset, any damages, compensation, remuneration, profit, bonus, royalties, fee, rent, income or other benefit which the Chargor may derive from or be awarded or entitled to in respect of such asset.

**"Mezzanine Facility Agreement"** means the mezzanine facility agreement dated [●] 2013 between the First Chargor, the Chargor, Original Mezzanine Lenders, the Mezzanine Arranger, the Mezzanine Facility Agent and the Security Trustee, as the same may be varied, amended, modified, supplemented or replaced.

**1.2 Interpretation**

Save as provided in clause 2 (Incorporated Provisions) or otherwise defined in this Mezzanine Supplemental Assignment, capitalised terms defined in the Mezzanine Facility Agreement and/or the Mezzanine Security Agreement shall have the same meaning in this Mezzanine Supplemental Assignment.

The provisions of clause 1.3 of the Mezzanine Security Agreement apply to this Mezzanine Supplemental Assignment (including the provisions incorporated herein by clause 2 (Incorporated Provisions)) as if expressly set out herein, mutatis mutandis, with each

reference to this Deed therein being deemed to be a reference to this Mezzanine Supplemental Assignment.

If the Security Trustee reasonably considers that an amount paid by the Chargor or any other person to a Secured Party 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 Mezzanine Supplemental Assignment.

## **2. INCORPORATED PROVISIONS**

For the avoidance of doubt and without prejudice to the generality of the foregoing Clauses, the provisions of the Mezzanine Security Agreement apply in relation to the Charged Contracts to the extent that the same apply to the Charged Contracts (as defined in the Mezzanine Security Agreement) and (so far as necessary to make them apply to and be enforceable in relation to the Charged Contracts) they shall be deemed to be incorporated into this Mezzanine Supplemental Assignment, mutatis mutandis, as though set out in full herein with each reference therein to:

2.1 Deed being deemed to be a reference to this Mezzanine Supplemental Assignment; and

2.2 Schedule 2, being deemed to be a reference to the Schedule to this Mezzanine Supplemental Assignment.

## **3. FIXED SECURITY**

The Chargor, as a continuing security for the payment, discharge and performance of the Secured Obligations:

### **3.1 Assignment by way of security**

assigns absolutely to the Security Trustee all its rights, title and interest in the following assets:

(a) the Charged Contracts; and

(b) the benefit of any Derivative Payment in respect of the Charged Contracts,

in each case to the fullest extent capable of assignment,

### **3.2 First fixed charge**

charges in favour of the Security Trustee, by way of first fixed charge the following assets:

(a) the Charged Contracts; and

(b) any Derivative Payment in respect of the Charged Contracts,

in each case excluding those Charged Contracts or Derivative Payments which have been validly and effectively assigned to the Security Trustee pursuant to clause 3.2 (Assignment by way of security); and also

(c) any monies (including any deposit, advance or instalment payment) payable to the Chargor for or in connection with the disposal (by whatever means and whether or not permitted by this deed) of the Charged Contracts or any interest in the Charged Contracts.



**4. NOTICES OF SECURITY: CHARGED CONTRACTS**

- 4.1 Each Chargor will immediately upon the date of this Mezzanine Supplemental Assignment in relation to each Charged Contract (other than any Long Lease or any Agreement for Lease), give notice to the relevant counterparty of the charge/assignment constituted under this Mezzanine Supplemental Assignment, the notice being in the form set out in Part 2 of Schedule 6 (Notices) of the Mezzanine Security Agreement.
- 4.2 Each Chargor shall, following the occurrence of a Default which is continuing, give notice of each charge or assignment of all (if any) of its rights, title and interest to each Long Lease and each Agreement for Lease by sending a notice in the form of Part 2 of Schedule 6 (Notices) (with such amendments as the Security Trustee may agree and/or require) duly completed to each of the other parties to each Long Lease or Agreement for Lease (as applicable).
- 4.3 Each Chargor will use reasonable endeavours to procure from each counterparty to each Charged Contract, an acknowledgement of receipt of such notice endorsed on a copy of the relevant notice as set out in Part 2 of Schedule 6 (Notices) of the Mezzanine Security Agreement.

**5. EXERCISE OF RIGHTS UNDER CHARGED CONTRACTS**

- (a) Whilst no Event of Default exists and is continuing, the Security Trustee shall permit the relevant Chargor to exercise its rights under any of the relevant Charged Contracts to which it is party, provided that the exercise of those rights in the manner proposed would not result in an Event of Default.
- (b) Where an Event of Default exists and is continuing, the relevant Chargor shall, if requested by the Security Trustee, exercise its rights under the Charged Contracts only in accordance with the instructions of the Security Trustee.

**6. REPRESENTATIONS AND WARRANTIES**

- 6.1 The Chargor represents and warrants to the Security Trustee on the date of this Mezzanine Supplemental Assignment in the terms of the Repeating Representations and the representations at clauses 6.1 to 6.5 of the Mezzanine Security Agreement, in each case as if expressly set out in this Mezzanine Supplemental Assignment and so far as applicable to the Chargor or the Charged Contracts. Each of the Repeating Representations and the representations at clauses 6.1 to 6.5 of the Mezzanine Security Agreement is made by reference to the facts and circumstances existing at the date of this Mezzanine Supplemental Assignment.
- 6.2 The Chargor further represents and warrants as follows:
- (a) except for registration of this Mezzanine Supplemental Assignment under the Companies Act 2006, it is not necessary to file, register or record this Mezzanine Supplemental Assignment in any public place or elsewhere;
- (b) except for registration fees associated with the registration of this Mezzanine Supplemental Assignment in accordance with clause 6.2(a) above, it is not necessary under the laws of the Chargor's jurisdiction of incorporation that this Mezzanine Supplemental Assignment be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration or similar tax be paid on or in relation to this Mezzanine Supplemental Assignment or the transactions contemplated by it; and
- (c) any disclosure required to be made by it to any relevant taxing authority in relation to stamp duty land tax payable on any transactions contemplated by this Mezzanine Supplemental Assignment has been made.

7. **CONTINUATION**

7.1 Except insofar as supplemented hereby, the Mezzanine Security Agreement will remain in full force and effect.

7.2 This Mezzanine Supplemental Assignment is supplemental to the Mezzanine Security Agreement. On and from the date of this Mezzanine Supplemental Assignment:

- (a) the Mezzanine Supplemental Assignment and the Mezzanine Security Agreement shall be read and construed as one document and in particular the definition of "**Charged Contracts**" in the Mezzanine Security Agreement shall include the Charged Contracts described in the Schedule hereto; and
- (b) the Chargor acknowledges that references to the "**Mezzanine Security Agreement**" in the Mezzanine Facility Agreement are references to the Mezzanine Security Agreement as supplemented by this Mezzanine Supplemental Assignment; and
- (c) references in the Mezzanine Security Agreement to "**this deed**", "**hereof**", "**hereunder**" and expressions of similar import shall be deemed to be references to the Mezzanine Security Agreement as supplemented by this Mezzanine Supplemental Assignment.

8. **THIRD PARTY RIGHTS**

No person has any right under the Third Parties Act to enforce or enjoy the benefit of any term of this Mezzanine Supplemental Assignment, other than an Enforcement Party, which may do so, or any other person, to the extent that this Mezzanine Supplemental Assignment or any other of the Mezzanine Finance Documents expressly provides for it to do so. No consent of any person who is not a Party is required to rescind or vary this Mezzanine Supplemental Assignment at any time. This clause 8 does not affect any right or remedy of any person which exists, or is available, otherwise than pursuant to the Third Parties Act.

9. **GOVERNING LAW**

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

10. **COUNTERPARTS**

This Mezzanine Supplemental Assignment may be executed in any number of counterparts, each of which shall be deemed an original and this has the same effect as if the signatures on the counterparts were on a single copy of this Mezzanine Supplemental Assignment. Any party may enter into this Mezzanine Supplemental Assignment by signing any such counterpart.

**THIS MEZZANINE SUPPLEMENTAL ASSIGNMENT** has been entered into as a deed on the date stated at the beginning of this Mezzanine Supplemental Assignment.

## **SCHEDULE**

### **Charged Contracts**

<b>Name of Chargor</b>	<b>Brief description of Charged Contract</b>	<b>Date of Charged Contract</b>	<b>Parties to Charged Contract (Include addresses for service of notices of those parties who are not parties to this Deed)</b>

[CHARGOR]

Executed as a deed by [*insert name in* )  
*bold and upper case* )  
acting by [a director and its )  
secretary/two directors]: )

Director

Director/Secretary

Executed as a deed by ~~STARFIN LUX~~ )  
~~S.A.R.L.~~ acting by two managers )  
)  
)

Starwood European Manager  
Finance Partners Director  
Limited. Manager

## EXECUTION

### THE FIRST CHARGOR

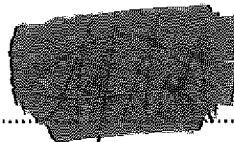
Executed as a deed by **BATTERSEA** )  
**PLACE LLP**, acting by two members: )  
)  
)

Signature of director of member

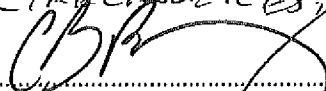
Name of member

Signature of director of member

Name of member



C. J. LOOK DIRECTOR  
LIFE CARE RESIDENCES LTD



C. J. Look Director  
Battersea Place Retirement Village Ltd

### THE SECOND CHARGOR

Executed as a deed by )  
**BATTERSEA PLACE RETIREMENT** )  
**VILLAGE LIMITED** acting by a director )  
In the presence of a witness: )

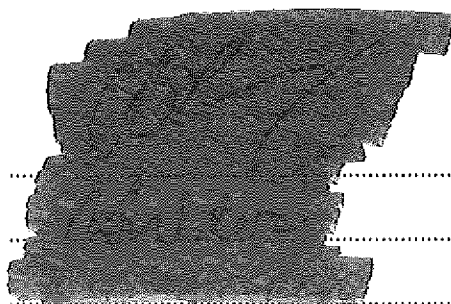
Signature of director

Signature of witness

Name of witness

Address of witness

Occupation of witness



SHERWOOD HOUSE

FOREST RD. KEW

TW9 30Y

Co Sec.

**THE SECURITY TRUSTEE**

Executed as a deed

by ~~STARFIN LUX S.A. R.L.~~ acting by two  
managers:

Starwood European Finance  
Partners Limited

.....  
.....  
.....  
.....

Signature of ~~manager~~

Name of ~~manager~~

Signature of ~~manager~~

Name of ~~manager~~

} director

