



Registration of a Charge

Company name: **J A BALL LIMITED**

Company number: **07900473**



X68FDT61

Received for Electronic Filing: **12/06/2017**

Details of Charge

Date of creation: **07/06/2017**

Charge code: **0790 0473 0001**

Persons entitled: **INGENIOUS REAL ESTATE FINANCE LLP**

Brief description:

Contains fixed charge(s).

Contains negative pledge.

Authentication of Form

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

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: **DWF LLP**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 7900473

Charge code: 0790 0473 0001

The Registrar of Companies for England and Wales hereby certifies that a charge dated 7th June 2017 and created by J A BALL LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 12th June 2017 .

Given at Companies House, Cardiff on 13th June 2017

The above information was communicated by electronic means and authenticated by the Registrar of Companies under section 1115 of the Companies Act 2006



Companies House



THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES

DATED 7 June 2017

J A BALL LIMITED
as Chargor

INGENIOUS REAL ESTATE FINANCE LLP
as Lender

SUBORDINATION AND ASSIGNMENT OF SUBORDINATED DEBT

in respect of Shalis (Nottingham) Ltd

INGENIOUS

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DATED 7 June 2017

PARTIES

- (1) **J A BALL LIMITED** (company number 7900473) whose registered office is at Unit 2 Property Court, Telford Way Stephenson Industrial Estate, Coalville, Leicestershire LE67 3HE (the "**Chargor**")
- (2) **INGENIOUS REAL ESTATE FINANCE LLP** (company number OC396939) whose registered office is at 15 Golden Square, London W1F 9JG, United Kingdom (the "**Lender**")

BACKGROUND

- (A) The Lender has agreed to advance or to continue to advance monies or otherwise arrange credit or afford other financial facilities to the Borrower and/or others on the Security Interest created by this Deed.
- (B) The Chargor has agreed to charge certain of its assets as Security Interest to the Lender as set out in this Deed.

OPERATIVE PROVISIONS

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Deed:

"**Act**" means the Law of Property Act 1925.

"**Borrower**" means Shalis (Nottingham) Ltd (company number 07880017).

"**Charged Assets**" means assets of the Chargor subject to the Security Interest created or expressed to be created by it in favour of the Lender by or pursuant to this Deed.

"**Facility Letter**" means a facility letter dated on or about the date hereof and made between the Lender (1) and the Borrower (2) (including the standard terms and conditions attached thereto) and any agreement entered into under or supplemental to it or amending, restating or novating it.

"**Liabilities**" means all monies, obligations and liabilities which shall from time to time (and whether on or at any time after any demand or judgment) be due, owing or incurred from any Obligor to the Lender on any account whatsoever whether actual or contingent, present or future and whether solely or jointly with any other person and in whatever style or name and whether as principal or surety.

"**Obligor**" shall have the meaning as given to it in the Facility Letter.

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

"**Receiver**" means any one or more receiver, administrator or receiver and manager appointed by the Lender under this Deed (whether sole, joint and/or several and including any substitute).

"Regulations" means the Financial Collateral Arrangements (No 2) Regulations 2003 (S.I. 2003/3226) or equivalent legislation in any applicable jurisdiction bringing into effect Directive 2002/47/EC on financial collateral arrangements.

"Related Rights" means:

- (a) the proceeds of sale of any part of that asset;
- (b) all rights, powers, offers, benefits, claims, contracts, warranties, remedies, Security Interest, guarantees, indemnities or covenants for title in respect of that asset; and
- (c) all monies and proceeds paid or payable in respect of that asset,

both present and future (including all rights against any trustee, nominee, fiduciary or clearing system).

"Security Interest" means a mortgage, charge, assignment, pledge, lien, standard security, assignation or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

"Standard Conditions" means the standard terms and conditions attached to the Facility Letter.

"Subordinated Debt" means the aggregate of all monies and liabilities of whatever nature (whether actual or contingent, as principal or surety) which are now or may at any future time be outstanding or otherwise due from the Borrower to the Chargor on any account or in any manner.

"Subordinated Loan Agreement" means any agreement or other document entered into between the Chargor as lender and the Borrower as borrower evidencing the terms of any Subordinated Debt from time to time including but not limited to the loan agreement dated on or around 10 June 2015 in respect of a loan of up to £460,000.

"Subordination Period" means the period beginning on the date of this Deed and ending on the date upon which the Lender confirms in writing that the whole of the Liabilities have been unconditionally and irrevocably paid and discharged in full and all commitments of the Lender to the Borrower have been cancelled or terminated.

1.2 Construction

- 1.2.1 Unless the contrary intention is expressed, all defined terms in the Facility Letter and the Standard Conditions have the same meaning here.
- 1.2.2 The construction and interpretation provisions set out at Conditions 1.2 (*Construction*), 1.3 (*Interpretation*) and 25.7 (*Miscellaneous*) of the Standard Conditions shall apply equally to this Deed.
- 1.2.3 If any provision of this Deed shall conflict with any term of the Facility Letter then the relevant term of the Facility Letter shall prevail.
- 1.2.4 Condition 16 (*Set off*) of the Standard Conditions is incorporated in this Deed as if set out in full and with necessary changes.
- 1.2.5 Unless the contrary intention appears, references in this Deed to:
 - (a) any party to this Deed shall be construed so as to include its successors in title, permitted assigns and permitted transferees;

- (b) "in connection with", "under", "pursuant to", "by virtue of" and "in relation to" shall include each of the others;
- (c) "insolvency" includes any of the following or any steps in relation to the following:
 - (i) any insolvency, bankruptcy, liquidation, reorganisation, administration, receivership or dissolution;
 - (ii) any voluntary arrangement or assignment for the benefit of creditors; or
 - (iii) any similar or analogous event in any jurisdiction whatsoever;
- (d) an obligation of the Chargor to do something includes an obligation to procure that it is done and an obligation not to do something includes an obligation not to permit, suffer or allow it; and
- (e) references to this Deed or any other agreement, deed or document are references to them in force for the time being as amended, varied, novated, supplemented or consolidated from time to time.

1.3 Limited Recourse

The Lender's recourse to the Chargor under this Deed shall be limited to the Charged Assets.

2 WAIVER OF DEFENCES

2.1 The obligations of the Chargor under this Deed will not be affected by an act, omission, matter or thing which, but for this Clause 2 (*Waiver of defences*), would reduce, release or prejudice any of its obligations under this Deed (without limitation and whether or not known to it or the Lender) including:

- (a) any time, waiver or consent granted to, or composition with, the Borrower or other person;
- (b) the release of the Borrower or any other person under the terms of any composition or arrangement with any of its creditors;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or Security Interest over assets of, the Borrower or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any Security Interest;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Borrower or any other person;
- (e) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of any Finance Document or any other document or Security Interest including without limitation any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under any Finance Document or other document or Security Interest;

- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or Security Interest; or
- (g) any insolvency or similar proceedings.

2.2 **Immediate recourse**

The Chargor waives any right it may have of first requiring the Lender (or any trustee or agent on its behalf) to proceed against or enforce any other rights or Security Interest or claim payment from any person before claiming from the Chargor under this Deed. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

2.3 **Appropriations**

Until all amounts which may be or become payable by the Borrower under or in connection with the Finance Documents have been irrevocably paid in full, the Lender (or any trustee or agent on its behalf) may:

- (a) refrain from applying or enforcing any other monies, Security Interest or rights held or received by the Lender (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and the Borrower shall not be entitled to the benefit of the same; and
- (b) hold in an interest-bearing suspense account any monies received from the Chargor or on account of the Chargor's liability under this Deed.

2.4 **Deferral of Chargor's rights**

Until all amounts which may be or become payable by the Borrower under or in connection with the Finance Documents have been irrevocably paid in full and unless the Lender otherwise directs, the Chargor will not exercise any rights which it may have by reason of performance by it of its obligations under the Finance Documents or by reason of any amount being payable, or liability arising, under this Deed:

- (a) to be indemnified by the Borrower;
- (b) to claim any contribution from any other guarantor of the Borrower's obligations under the Finance Documents;
- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Lender under the Finance Documents or of any other guarantee or Security Interest taken pursuant to, or in connection with, the Finance Documents by the Lender;
- (d) to bring legal or other proceedings for an order requiring the Borrower to make any payment, or perform any obligation;
- (e) to exercise any right of set-off against the Borrower; and/or
- (f) to claim or prove as a creditor of the Borrower in competition with the Lender.

If the Chargor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable

all amounts which may be or become payable to the Lender by the Borrower under or in connection with the Finance Documents to be repaid in full.

2.5 Additional Security Interest

This guarantee is in addition to and is not in any way prejudiced by any other guarantee or Security Interest now or subsequently held by the Lender.

2.6 Consent

The Chargor consents to the creation and/or continuance of any Security Interest in favour of the Lender from time to time and to the provision of any loans by the Lender to the Borrower from time to time.

3 COVENANT TO PAY

The Chargor covenants with the Lender that it will:

- (a) on demand, pay and discharge each and all of the Liabilities when due; and
- (b) indemnify and keep the Lender indemnified from and against all actions, charges, claims, costs, damages, proceedings and other liabilities occasioned by any breach of any of its covenants or other obligations to the Lender.

4 SECURITY INTEREST

4.1 General

All the Security Interest created under this Deed is created in favour of the Lender as continuing Security Interest for the payment and discharge of the Liabilities with full title guarantee.

4.2 Fixed charge

To the extent not validly and effectively assigned pursuant to clause 4.3 (*Assignment*) and as a continuing security for the payment and discharge of the Liabilities, the Chargor with full title guarantee charges to the Lender by way of a first fixed charge:

- (a) all its interest in the Subordinated Debt (including all rights of enforcement of the same);
- (b) all its interest in each Subordinated Loan Agreement; and
- (c) all Related Rights.

4.3 Assignment

The Chargor assigns absolutely subject to the provisions of Clause 11 (*Discharge*) all of its rights and interests including all rights of enforcement of the same and all Related Rights;

- (a) in respect of the Subordinated Debt; and
- (b) under each Subordinated Loan Agreement.

5 NOTICE

5.1 Notice of Assignment

5.1.1 The Chargor shall immediately upon the execution of this Deed give notice substantially in the form set out in Part 1 of Schedule 2 (*Form of notice to counterparties in respect of Subordinated Debt and Subordinated Loan Agreements*) to the Borrower and any counterparty to any Subordinated Loan Agreement of the fixed charge and assignment pursuant to Clause 4 (*Security Interest*) of the Subordinated Debt and its interest in each Subordinated Loan Agreement and use best endeavours to procure that each addressee of such notice will promptly provide an acknowledgement to the Lender in the form set out in Part 2 of Schedule 2 (*Form of acknowledgement to counterparties in respect of Subordinated Debt and Subordinated Loan Agreements*).

5.1.2 Each Chargor shall within three (3) Business Days of the creation of any Subordinated Debt which is not in existence as at the date of this Deed or the entry into any Subordinated Loan Agreement not in existence as at the date of this Deed give notice substantially in the form set out in Part 1 of Schedule 2 (*Form of notice to counterparties in respect of Subordinated Debt and Subordinated Loan Agreements*) to the Borrower and any counterparty to each Subordinated Loan Agreement of the assignment pursuant to Clause 4 (*Security Interest*) of the Subordinated Debt and its interest in each Subordinated Loan Agreement and use best endeavours to procure that each addressee of such notice will promptly provide an acknowledgement to the Lender in the form set out in Part 2 of Schedule 2 (*Form of acknowledgement to counterparties in respect of Subordinated Debt and Subordinated Loan Agreements*).

5.2 Further assurance

The Chargor shall execute and do at its own cost and in such form as may be required by the Lender:

(a) such further additional mortgages, charges, assignments, transfers and conveyances; and

(b) such assurances, deeds, documents, acts and things,

as the Lender may require to perfect or protect the Security Interest created or intended to be created by this Deed and/or to facilitate or effect any dealing with the Charged Assets in connection with this Deed.

6 REPRESENTATIONS AND WARRANTIES

The Chargor makes the representations and warranties set out in this Clause 6 (*Representations and warranties*) to the Lender.

6.1 Status

6.1.1 It is a limited liability corporation, duly incorporated and validly existing under the law of England and Wales.

6.1.2 It has the power to own its assets and carry on the business which it conducts and/or proposes to conduct.

6.2 Binding obligations

The obligations expressed to be assumed by it in this Deed are legal, valid, binding and enforceable obligations.

6.3 Non-conflict

The entry into and performance by it of, and the transactions contemplated by, this Deed do not and will not conflict with:

- (a) any law or regulatory requirement applicable to it;
- (b) its constitutional documents; or
- (c) any agreement or instrument binding upon it or any of its assets.

6.4 Power and authority

It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, this Deed and the transactions contemplated by this Deed.

6.5 Validity and admissibility in evidence

Each authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration required or desirable:

- (a) to enable it lawfully to enter into, exercise its rights and comply with its obligations under this Deed; and
- (b) to make this Deed admissible in evidence in England and Wales,

has been obtained or effected and is in full force and effect.

6.6 No proceedings pending or threatened

No litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency have been started or threatened against it.

6.7 Solvency

No step has been taken for its insolvency.

6.8 Legal and beneficial ownership

It is and will be the sole legal and beneficial owner of the Charged Assets free from any encumbrance or Security Interest except as created by this Deed.

6.9 Effective Security Interest

This Deed is an effective Security Interest over the Charged Assets.

6.10 Waivers

The Chargor has waived any requirements or covenants of any nature in any Subordinated Loan Agreement:

- (a) obliging the Borrower to provide any guarantee or security interest of any nature in respect of any Subordinated Debt;

- (b) obliging the Borrower to repay any Subordinated Debt on or following any advances made by the Lender to the Borrower under the Facility Letter or otherwise; and
- (c) preventing the Chargor from creating or granting any Security Interest in favour of the Lender;

and furthermore confirms that no interest (default or otherwise) is or will accrue under any Subordinated Loan Agreement in respect of the above or otherwise.

6.11 Assignment

Notwithstanding any terms to the contrary in any Subordinated Loan Agreement, the Chargor and Borrower have agreed that all rights, title and interest to any Subordinated Loan Agreement and/or Subordinated Debt can be assigned in favour of the Lender.

6.12 Legal Advice

The Chargor is satisfied that it has received, and fully understands, the legal advice provided to it regarding the terms of, and the implications of entry into, this Deed.

6.13 Repetition of representations

The representations and warranties set out in this Clause 6 (*Representations and warranties*) are made by the Chargor on the date of this Deed and in addition are deemed to be made by the Chargor by reference to the facts and circumstances then existing on the date of each Drawdown Request and each Payment Date.

7 COVENANTS

The Chargor gives the undertakings in this Clause 7 (*Covenants*) which remain in force from the date of this Deed until this Deed is discharged.

7.1 Information

The Chargor shall supply to the Lender such information regarding its financial condition, business and operations as the Lender may request.

7.2 Negative pledge

It shall not create or permit to subsist any Security Interest over any of the Charged Assets save for the Security Interest created pursuant to this Deed.

7.3 Disposals

It shall not sell, lease, transfer or otherwise dispose of any of the Charged Assets.

7.4 Subordinated Loan Agreement

7.4.1 It shall, duly and promptly perform its obligations under each Subordinated Loan Agreement.

7.4.2 After the security created by this Deed has become enforceable, the Lender may exercise, without any further consent or authority on the part of the Chargor and irrespective of any direction given by the Chargor, the Chargor's rights under each Subordinated Loan Agreement.

7.4.3 The Chargor hereby confirms that the Subordinated Debt is subordinated to the Liabilities in all respects.

7.4.4 The Chargor covenants that, at all times during the Subordination Period, it will not:

- (a) demand, sue, claim, prove for, accept or receive payment, prepayment or repayment of, or any distribution in respect or on account of, any of the Subordinated Debt in cash or in kind and whether on account of principal, interest or, damages for breach of the terms of the Subordinated Debt;
- (b) discharge, release or reduce any of the Subordinated Debt by set-off, netting, any right of combination of accounts or in any other manner;
- (c) assign, transfer, charge or otherwise dispose of its rights or obligations in respect of the Subordinated Debt;
- (d) accept or permit to subsist any Security Interest over any of the assets of the Borrower or any other party for any of the Subordinated Debt;
- (e) amend, vary, waive or release any term of any of the Subordinated Debt;
- (f) enter into any arrangement (other than under this Deed or otherwise in favour of the Lender) under which the Chargor is not to enforce the Borrower's obligations in relation to the Subordinated Debt;
- (g) enter into an arrangement for its benefit where the value provided by the Borrower exceeds the value received by the Borrower;
- (h) receive credit from the Borrower, or permit the Borrower to grant any guarantee or Security Interest in respect of any of the Chargor's liabilities;
- (i) receive any kind of distribution of the Borrower's assets, whether in cash, shares or otherwise;
- (j) take or omit to take any action whereby the subordination of the Subordinated Debt under this Deed might be terminated, impaired or adversely affected; and
- (k) make any application or take any step (including presentation of a petition, convening a meeting or passing a resolution) or otherwise give support for the insolvency or re-organisation of the Borrower.

7.4.5 The Chargor further covenants that, at all times during the Subordination Period, it will remain entitled to the Subordinated Debt legally and beneficially, free from any Security Interest, option, subordination or other rights in favour of any person, and will procure that the Subordinated Debt is not subject to any set-off, counterclaim or other defence.

7.5 Turnover

If the Chargor receives or recovers a payment, benefit, or distribution in cash or kind in respect of or on account of Subordinated Debt which is not permitted by this Deed then it shall properly notify the Lender, hold any such payment, benefit or distribution on trust for the Lender and immediately on demand by the Lender pay such sum or a sum equal to the value of the payment, benefit or distribution to the Lender.

7.6 Payment Obligations

The Chargor shall provisionally pay and indemnify the Lender against all existing and future taxes, duties, charges, assessments, impositions and outgoings now or at any time payable in respect of the Charged Assets.

7.7 The Chargor confirms that it will not advance any more than £460,000 by way of Subordinated Debt to the Borrower without the Lender's prior written consent.

8 RIGHTS OF ENFORCEMENT

8.1 Enforcement

8.1.1 The Liabilities shall be deemed to have become due for the purposes of section 101 of the Act immediately upon the date of this Deed.

8.1.2 The enforcement powers of the Lender in connection with this Deed shall be immediately exercisable and the floating charge created by this Deed shall automatically crystallise upon an Event of Default or, at the Lender's discretion, at the request of the Chargor.

8.1.3 Clause 8.1.2 shall not apply by reason only of a moratorium being obtained, or anything being done with a view to a moratorium being obtained, under section 1A of the Insolvency Act 1986.

8.1.4 The restrictions imposed by section 103 of the Act shall not apply to the Security Interest created by this Deed.

8.1.5 In addition to all other protection afforded by statute, every purchaser (as defined by section 205 of the Act) or other party dealing with the Lender or any Receiver shall be entitled to assume without enquiry that an Event of Default has occurred and that the Liabilities are outstanding and have become due.

8.2 Lender's and Receiver's powers and rights

8.2.1 The Lender shall have the power:

- (a) to appoint a Receiver of the whole or any part of the Charged Assets and (so far as the law allows) to remove and/or substitute any such appointee;
- (b) to appropriate Charged Assets in accordance with Clause 8.3 (*Right of appropriation*); and
- (c) to appoint an administrator of the Chargor and paragraph 14 of schedule B1 of the Insolvency Act 1986 shall apply to this Deed."

8.2.2 The Lender (without becoming a mortgagee in possession) and/or any Receiver (without personal liability) shall have the power to:

- (a) exercise all statutory and other powers and rights (including the powers conferred upon an administrative receiver by schedule 1 to the Insolvency Act 1986 whether or not the Lender and/or any Receiver is an administrative receiver);
- (b) the powers and rights specified in the Schedule; and
- (c) exercise them in the name of the Chargor and in such manner and on such terms as the person exercising them shall in its sole absolute discretion consider appropriate.

8.3 Right of appropriation

To the extent that any of the Charged Assets constitute "financial collateral" and this Deed and the obligations of the Chargor under it constitute a "Security Interest financial collateral arrangement" (in each case as defined in, and for the purposes of, the Regulations), the Lender shall have the right to appropriate all or any part of it in or towards discharge of the Liabilities and transfer title in and to it to the Lender. For this purpose, the Parties agree that the value of the financial collateral so appropriated shall be the market price of such financial collateral determined by the Lender by reference to a public index or by such other process as the Lender may select, including independent valuation. The Parties agree that the method of valuation provided for in this Deed shall constitute a commercially reasonable method of valuation for the purposes of the Regulations.

8.4 Receiver as agent

So far as the law allows, a Receiver shall be the agent of the Chargor, who shall be solely liable for his acts, defaults and remuneration, but the Lender shall be entitled to agree the fees and expenses of and the mode of payment to the Receiver.

8.5 Further powers

If the Chargor defaults in the observance and performance of any obligation to the Lender, the Lender or its agents (without any of them becoming a mortgagee in possession) may at any time (but shall not be obliged to) do such things as it considers necessary to remedy the default.

8.6 Power of attorney

The Chargor by way of Security Interest irrevocably appoints the Lender and every Receiver severally its attorney in its name and on its behalf to execute any documents and do or perfect anything which the Lender and/or the Receiver shall consider appropriate for perfecting, maintaining, preserving, enhancing or enforcing the Security Interest created by this Deed and/or value of any of the Charged Assets and/or for the purpose of enforcing the performance of the Chargor's obligations in connection with this Deed.

9 APPLICATION OF RECEIPTS

9.1 Priority of payment

Subject to sums secured by Security Interest having priority to the Security Interest created by this Deed, all monies received by the Lender and/or any Receiver in the enforcement of this Deed shall (subject as follows) be applied in the following order, in payment:

- (a) **firstly**, of all fees, costs, charges, taxes, liabilities and expenses in relation to any enforcement of this Deed (including in relation to any Receiver whether on its own behalf or on behalf of the Chargor or otherwise); and
- (b) **finally**, to the Lender for application in its absolute discretion.

9.2 Crediting to suspense account

The Lender or any Receiver may credit any monies received from the enforcement of this Deed to any suspense account in any manner and for such period as the Lender or that Receiver thinks fit.

10 NOTICES

10.1 Communications in writing

Any communication to be made under or in connection with this Deed shall be made in writing and, unless otherwise stated, may be made by fax or letter.

10.2 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 is that identified with its name below or any substitute address, fax number or department or officer as the party to this Deed may notify the Lender (or the Lender may notify the Chargor if the change is made by the Lender) by not less than five Business Days' notice.

10.3 Delivery

10.3.1 Any communication or document made or delivered by one person to another person in connection with this Deed 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 two Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of its address details provided under Clause 10.2 (*Addresses*), if addressed to that department or officer.

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

11 DISCHARGE

12.1 If the Lender is satisfied that the Liabilities have been unconditionally and irrevocably paid, repaid and discharged in full, the Lender will, at the request and cost of the Chargor, discharge this Deed.

12.2 No discharge will be of any effect if any Security Interest or payment given or made in respect of the Liabilities is rescinded, avoided, reduced or invalidated whether in respect of any insolvency or otherwise.

12 GENERAL PROVISIONS

12.1 Trust provisions

The undertakings and representations made by the Chargor under this Deed are made in favour of the Lender.

12.2 Enforcement

It shall not be necessary for the Lender before taking any enforcement under this Deed to enforce or seek to enforce any guarantee or other Security Interest or other rights whether from or against the Chargor or any other person. This

Clause 12.2 (*Enforcement*) applies irrespective of any law or any provision of a Finance Document to the contrary.

12.3 Exercise of powers and liability

12.3.1 This Deed is in addition to and will not merge in or in any way be prejudiced or affected by the holding or release by the Lender of any other Security Interest at any time held by the Lender.

12.3.2 The Lender may, at any time after this Deed has become enforceable, redeem or transfer to itself any prior Security Interest against the Charged Assets and may settle and pay the accounts of the prior chargee (which shall be binding on the Chargor). All principal monies, interest, costs, charges and expenses of and incidental to such redemption or transfer shall be paid by the Chargor to the Lender on demand.

12.3.3 None of the provisions of this Deed shall be deemed to impose on the Lender or imply on their part any obligation or other liability in relation to the Charged Assets.

12.4 New Accounts

On receiving notice that the whole or any part of the Charged Assets has been encumbered by any Security Interest (other than the Security Interest created pursuant to this Deed) or disposed of:

- (a) the Lender may close the Chargor's then subsisting account and open a new account with the Chargor, and (unless the Lender gives the Chargor written notice otherwise) shall be deemed to have done so;
- (b) all payments made to the Lender after that date will be credited (or be treated as having been credited) to the new account; and
- (c) no money credited or treated as credited to the new account shall reduce the Liabilities.

12.5 Consolidation

The restriction on the right of consolidating mortgage securities contained in section 93 of the Act shall not apply to the Security Interest created by this Deed.

12.6 Expenses

The Chargor must pay the Lender within three Business Days of demand the amount of all costs and expenses (including legal fees) incurred by it in connection with the enforcement of, or the preservation of any rights against it under this Deed.

12.7 Rights of third parties

12.7.1 Unless the right of enforcement is expressly granted, it is not intended that a third party should have the right to enforce a provision of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999.

12.7.2 The parties may rescind or vary this Deed without the consent of a third party to whom an express right to enforce any of its terms has been provided.

12.8 Effect as a deed

This Deed shall take effect as a deed even if it is signed under hand on behalf of the Lender.

13 **COUNTERPARTS**

This Deed may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Deed.

14 **LAW AND JURISDICTION**

14.1 **Law**

This Deed and any non-contractual obligations arising out of or in relation to this Deed shall be governed by English law.

14.2 **Jurisdiction of English courts**

14.2.1 The courts of England have exclusive jurisdiction to settle any dispute, including, without limitation disputes relating to any non-contractual obligations arising out of or in connection with this Deed (a "**Dispute**").

14.2.2 The parties to this Deed agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no party will argue to the contrary.

14.2.3 This Clause is for the benefit of the Lender only. As a result, the Lender shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Lender may take concurrent proceedings in any number of jurisdictions.

This Deed has been executed as a Deed and delivered on the date stated at the beginning of this Deed.

Schedule 1
Lender's and Receiver's powers

1 CONDUCT OF BUSINESS

(a) Carry on business

To acquire any property, chattels, plant, machinery and materials.

(b) Compromise claims

To compromise any claim relating to the Charged Assets.

(c) Borrowing and advancing

To borrow, raise or advance money whether or not in priority to the Liabilities and with or without Security Interest.

(d) Employees

To employ solicitors, architects, surveyors, quantity surveyors, estate agents, contractors, builders, workmen, stockbrokers and others.

2 DEALING WITH THE CHARGOR'S ASSETS

(a) Possession

To enter upon and take possession of, get in, use and/or collect any Charged Asset.

(b) Payments

To pay any outgoings and payments charged on or otherwise relating to the Charged Assets or their ownership or use.

(c) Receipts

To give receipts and releases for any sums received.

(d) Assumption of rights

To assume, exercise, cancel and/or vary all or any of the powers and rights conferred on the Chargor under any Charged Asset.

(e) Insurance

To effect insurances on such terms as it thinks fit.

3 DISPOSALS

To sell or otherwise realise and deal with, and transfer title to, the Charged Assets, in return for such consideration as it thinks fit and whether or not:

- (i) for immediate or deferred consideration;
- (ii) in return for a single payment or instalments; and
- (iii) for consideration wholly or partly in cash, property or securities in whatever form,

and in all cases the terms of which shall bind any subsequent mortgagee.

4 GENERAL

(a) General powers

To do or abstain from doing all such things as it considers necessary or desirable for perfecting, maintaining preserving or enhancing the value of any of the Charged Assets or for or in connection with the enforcement of the Security Interest charges created by this Deed or the realisation of any of the Charged Assets, whether or not in accordance with the Facility Letter, including:

- (i) executing, delivering and completing all or any deeds or other documents;
- (ii) using the name of the Chargor in connection with any of the purposes in this Schedule (*Lender's and Receiver's powers*);
- (iii) commencing, carrying out and completing any acts, matters or proceedings in relation to any Charged Asset as if it were the sole and absolute beneficial owner of the Charged Assets; and
- (iv) obtaining, entering into and maintaining any bonds, covenants, commitments, engagements, guarantees and indemnities or other like arrangements.

(b) General

All its powers and discretions under this Deed shall be:

- (i) exercisable on such terms and conditions and otherwise as it may think fit; and
- (ii) as if it were the absolute and beneficial owner.

Schedule 2
PART 1

**Form of notice to counterparties in respect of Subordinated Debt and Subordinated
Loan Agreement**

From: [Chargor]

To: [Counterparty]

Date:

Dear Sirs

We refer to the [describe relevant Subordinated Loan Agreement] (the "**Agreement**")

We hereby notify you that pursuant to a share charge and assignment of subordinated debt dated [] (the "**Security Document**") we have assigned to Ingenious Real Estate Finance LLP (the "**Lender**") absolutely (subject to a proviso for reassignment on redemption) all our right, title, interest and benefit in and to:

1. all our present and future rights, title and benefit in to and under the Agreement; [and]
2. [all our present and future liabilities payable or owing from time to time by [*name of Borrower to be inserted*] to us in any currency or currencies, whether actual or contingent, whether incurred solely or jointly with any other person and whether incurred as principal or surety]¹.

We further notify you that:

- (a) we may not agree to amend, modify or terminate the Agreement without the prior written consent of the Lender;
- (b) subject to paragraph (a) above, you may continue to deal with us in relation to the Agreement until you receive written notice to the contrary from the Lender. Thereafter we will cease to have any right to deal with you in relation to the Agreement and therefore from that time you should deal only with the Lender;
- (c) you are authorised to disclose information in relation to the Agreement to the Lender on request;
- (d) until you receive written notice to the contrary from the Lender, you should pay all monies to which we are entitled under the Agreement to us; and
- (e) the provisions of this notice may only be revoked with the written consent of the Lender.

Please sign and return the enclosed copy of this notice to the Lender (with a copy to us) by way of confirmation that:

- (i) you agree to the terms set out in this notice and to act in accordance with its provisions; and

¹ To be included in relation to Subordinated Debt.

- (ii) you have not received notice that we have assigned our rights under the Agreement to a third party or created any other interest (whether by way of security or otherwise) in the Agreement in favour of a third party.

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

Yours faithfully

For and on behalf of
Chargor

Schedule 2

PART 2

**Form of acknowledgment from counterparties in respect of Subordinated Debt and
Subordinated Loan Agreement**

From: [Counterparty]

To: [Lender]

Copy to: [Chargor]

Date:

We hereby acknowledge receipt of the notice dated [], a copy of which is attached to the acknowledgment (the "Notice") and confirm the matters therein including the matters set out in paragraphs (1) and (2) of the Notice.

For and on behalf of

[Counterparty]

EXECUTION PAGE

Chargor

Executed as a deed by **J A BALL LIMITED**)
acting by a director in the presence of a witness:)
)

Director

Witness Signature: .

Witness Name:

Witness Address:

Address for notices:

Fax:

Attn: Company Secretary

Lender

Executed as a deed by **INGENIOUS REAL**)
ESTATE FINANCE LLP)
acting pursuant to a power of attorney)
dated in the presence of a)
witness:

Attorney

Witness Signature:

.....

Witness Name:

.....

Witness Address:

.....

Address for notices: 15 Golden Square,
London, W1F 9JG, United Kingdom
Fax: +44 (0)20 7319 4001
Attn: Ingenious Real Estate Team