



**Registration of a Charge**

Company name: **FOREST HOLIDAYS LIMITED**

Company number: **08159308**



X3B63CH5

Received for Electronic Filing: **30/06/2014**

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**Details of Charge**

Date of creation: **19/06/2014**

Charge code: **0815 9308 0024**

Persons entitled: **EVANS FOREST HOLDINGS LIMITED**

Brief description:

**Contains floating charge(s) .**

**Contains negative pledge.**

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**Authentication of Form**

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

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**Authentication of Instrument**

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

Certified by: **TAS SALAM**



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

Company number: 8159308

Charge code: 0815 9308 0024

The Registrar of Companies for England and Wales hereby certifies that a charge dated 19th June 2014 and created by FOREST HOLIDAYS LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 30th June 2014 .

Given at Companies House, Cardiff on 1st July 2014

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 19 JUNE

2014

- (1) FOREST HOLIDAYS LIMITED
- (2) EVANS FOREST HOLDINGS LIMITED

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## Charge over Chattels

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relating to premises known as Christchurch Campsite, Bracelands Drive,  
Christchurch, Coleford, Gloucestershire

I certify this document as a true copy of the original.  
Save for the material redacted  
pursuant to s859A Companies Act 2006  
Date: 27/06/2014  
on behalf of Eversheds LLP

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This deed is made on 19 June

2014 between:

- (1) **FOREST HOLIDAYS LIMITED** a limited company (registered number 08159308) whose registered office is at Bath Yard, Molra, Swadlincote, Derbyshire DE12 6BA (the "**Chargor**"); and
- (2) **EVANS FOREST HOLDINGS LIMITED** a company incorporated in Jersey with company number 102468 whose registered office is at The Sanne Trust Company Limited, 13 Castle Street, St Helier, Jersey JE4 5UT and whose address for service in England is c/o Evans Management Limited, Millshaw, Leeds LS11 8EG (the "**Chargee**");

1. **INTERPRETATION** { TC "1 INTERPRETATION" \ 1 }

1.1 **Expressly defined terms**

In this deed:

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

**"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 15 (*Communications*), in the principal financial centre in the jurisdiction in which the relevant communication is delivered

**"Charged Chattels"** shall have the same meaning as the definition of "Chattels" contained in the Lease

**"Data and Records"** means all accounting, financial, maintenance, registration, insurance claims, or other information and data of any nature and in whatever form or media created or stored held by or on behalf of the Chargor in relation to the Charged Chattels

**"Deed of Priorities"** means a deed of priorities dated 28 February 2013 as the same may be amended, supplemented and restated from time to time and made between (1) Evans Forest Holdings No. 2 Limited, (2) Evans Forest Holdings Limited, (3) Lloyds TSB Bank Plc (now known as Lloyds Bank plc), (4) LDC (Managers) Limited, (5) Gary Fletcher and (6) Willoughby (712) Limited (now known as Forest Holidays Limited)

**"Delegate"** means any delegate, agent, attorney or trustee appointed by the Chargee

**"Default Rate"** means four per cent per annum

**"Discharge Date"** means the date on which all the Secured Obligations have been unconditionally and irrevocably paid and discharged in full

**"Enforcement Party"** means any of the Chargee, a Receiver or a Delegate

**"Event of Default"** means the occurrence of any of the events or circumstances described in clause 7 (*Enforceability*)

**"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 Charged Chattels, 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 the costs of transferring to the Chargee 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, or any of the foregoing as the context shall require

**"Insurances"** means all contracts or policies of insurance of whatever nature relating to the Charged Chattels 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

**"Insurance Proceeds"** means the proceeds of any claim received by the Chargor arising out of the Insurances, after deduction of any reasonable expenses incurred in relation to the relevant claim and payable by the Chargor, together with the benefit of all bonuses, profits, returns of premium and other benefits of whatever nature arising by virtue of the Chargor's ownership of the Insurances and all interest on any of the foregoing

**"Insolvency Act"** means Insolvency Act 1986

**"Interest"** means interest at the rate provided and calculated and compounded as agreed between the Chargee and the Chargor from time to time, and if not so agreed, in accordance with the practice of the Chargee from time to time both before and after judgement

**"Lease"** means the lease of the Premises to be entered into on or around the date of this deed between (1) the Chargor and (2) the Chargee and which is to be registered at the Land Registry

**"Legal Reservations"** means:

- (a) the principle that equitable remedies may be granted or refused at the discretion of a court and the limitation of enforcement by laws relating to insolvency, reorganisation and other laws generally affecting the rights of creditors; and
- (b) the time-barring of claims under the Limitation Acts, the possibility that an undertaking to assume liability for or indemnify a person against non-payment of UK stamp duty may be void and defences of set-off or counterclaim.

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

**"Party"** means a party to this deed

**"Physical Materials"** means every item of physical material now in existence, or not yet in existence but created or acquired by the Chargor after the date of this deed, whatever its description or category, relating to the Charged Chattels including any comprised within the Data and Records, and in respect of each such item the original copy or version or variant owned or produced by or delivered to or lawfully obtained by the Chargor, including disks, tapes, recordings or source and/or object codes, other media whether or not comprised

within the Data and Records or which relate to any computer or other electronic system used for the recovery or display of the Data and Records

**"Premises"** means Christchurch, Bracelands Drive, Christchurch, Coleford, Gloucestershire GL16 7NN

**"Quarter Day"** means the last day of December, March, June and September in each calendar year

**"Receiver"** means any one or more receivers and managers or (if the Chargee so specifies in the relevant appointment) receivers appointed by the Chargee pursuant to this deed in respect of the Chargor or in respect of the Charged Chattels or any of them

**"Secured Obligations"** means all indebtedness and all obligations or liabilities of any kind which may now or at any time in the future be due, owing or incurred by the Chargor to the Chargee under or in connection with the Lease, whatever their nature or basis, in any currency or currencies and however they are described together with Interest and Expenses.

**"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

**"Subsidiary"** means a subsidiary undertaking within the meaning of section 1162 of the Companies Act 2006

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

**"VAT"** means value added tax as provided for in the Value Added Taxes Act 1994 and any other tax of a similar fiscal nature.

## 1.2 Construction

In this deed:

1.2.1 any reference to:

1.2.1.1 the word **"assets"** includes present and future property, revenue, rights and interests of every kind;

1.2.1.2 the word **"guarantee"** includes any guarantee or indemnity and any other financial support (including any participation or other assurance against loss and any deposit or payment) in respect of any person's indebtedness;

1.2.1.3 the word **"indebtedness"** includes any obligation for the payment or repayment of money, whatever the nature or basis of the relevant obligation (and whether present or future, actual or contingent);

1.2.1.4 the word **"law"** includes law established by or under statute, constitution, treaty, decree, regulation or

judgment, common law and customary law; and the word "**lawful**" and similar words and phrases are to be construed accordingly;

- 1.2.1.5 the word "**person**" includes any individual, company, corporation, firm, government, state or any agency of a state and any association, partnership or trust (in each case, whether or not it has separate legal personality);
- 1.2.1.6 the word "**regulation**" includes all guidelines, official directives, regulations, requests and rules (in each case, whether or not having the force of law) of any governmental, inter-governmental or supranational agency, body or department or of any regulatory or other authority or organisation (whether statutory or non-statutory, governmental or non-governmental);
- 1.2.1.7 the word "**security**" includes any assignment by way of security, charge, lien, mortgage, pledge or other security interest securing any obligation of any person and any other agreement or arrangement having a similar effect;
- 1.2.1.8 the word "**set-off**" includes analogous rights and obligations in other jurisdictions; and
- 1.2.1.9 the word "**tax**" includes any tax, duty, impost or levy and any other charge or withholding of a similar nature (including any interest or penalty for late payment or non-payment);
- 1.2.2 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);
- 1.2.3 each reference to the "**Chargor**", or to the "**Chargee**" includes its successors in title, and its permitted assignees or permitted transferees;
- 1.2.4 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);
- 1.2.5 each reference to this deed (or to any other agreement or deed) means, at any time, this deed (or as applicable such other agreement or deed) as amended, novated, re-stated, substituted or supplemented at that time, provided that the relevant amendment, novation, re-statement, substitution or supplement does not breach any term of this deed;



- 1.2.6 each reference to the singular includes the plural and vice versa, as the context permits or requires;
- 1.2.7 the index and each heading in this deed is for convenience only and does not affect the meaning of the words which follow it;
- 1.2.8 each reference to a clause or Schedule is (unless expressly provided to the contrary) to be construed as a reference to the relevant clause of or Schedule to this deed;
- 1.2.9 wherever this deed states that the Chargor must not take a particular step without the consent of the Chargee, the Chargee has discretion whether to give its consent and can impose conditions on any such consent it gives; and
- 1.2.10 an Event of Default is "**continuing**" if it has not been remedied or waived.

### 1.3 **Third Party Rights**

- 1.3.1 A person who is not an Enforcement Party has no right under the Third Parties Act to enforce or enjoy the benefit of any term of this deed except to the extent that this deed expressly provides for it to do so.
- 1.3.2 No consent of any person who is not a Party is required to rescind or vary this deed at any time.
- 1.3.3 This clause 1.3 does not affect any right or remedy of any person which exists, or is available, otherwise than pursuant to the Third Parties Act.

## 2. **COVENANT TO PAY{ TC "2 COVENANT TO PAY" \1 }**

### 2.1 **Covenant**

The Chargor covenants with the Chargee that it will pay, discharge and perform the Secured Obligations on demand and (where applicable) in the manner provided in the documents evidencing the Secured Obligations.

### 2.2 **Default Interest**

Any amount which is not paid under this deed on the due date shall bear interest (as well after as before judgment) payable on demand at the Default Rate from time to time from the due date until the date of actual unconditional and irrevocable payment and discharge of such amount in full, save to the extent that interest at such rate on such amount and for such period is charged pursuant to any other document relevant to that liability and itself constitutes part of the Secured Obligations.

## 3. **CHARGING CLAUSE{ TC "3 CHARGING CLAUSE" \1 }**

### 3.1 **Floating Charge**

- 3.1.1 The Chargor, as a continuing security for the payment, discharge and performance of the Secured Obligations charges in favour of the Chargee, by way of first floating charge, the Charged Chattels and the Physical Materials.

3.1.2 The floating charge created by Clause 3.1 may not be converted into a fixed charge solely by reason of:

3.1.2.1 the obtaining of a moratorium; or

3.1.2.2 anything done with a view to obtaining a moratorium,

under Schedule A1 to the Insolvency Act 1986.

### **3.2 Notice of assignment or charge**

Upon the security constituted by this Deed becoming enforceable, the Chargor shall forthwith upon receiving a request to that effect from the Chargee give notice of each such charge of its right, title and interest (if any) in and to:

3.2.1 the Insurance Proceeds, to each of the other parties to the Insurances;

3.2.2 any maintenance or support contracts relating to the Charged Chattels, to the other parties to such contracts;

3.2.3 the Charged Chattels, to the owner of any premises where the Charged Chattels are kept from time to time; and

3.2.4 any other assets to such persons as the Chargee may require;

and every such notice will be in such form as the Chargee may require or agree.

### **3.3 Continuing security**

All the security granted or created by this deed is to be a continuing security which shall remain in full force and effect notwithstanding any intermediate payment or settlement of account or other matter or thing whatsoever and in particular the intermediate satisfaction by the Chargor or any other person of the whole or any part of the Secured Obligations.

### **3.4 Conversion of floating charge**

3.4.1 The Chargee may, at any time, by notice in writing to the 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:

3.4.1.1 an Event of Default has occurred which is continuing; or

3.4.1.2 the Chargee 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 Chargee, be likely to lead to the appointment of an administrator or administrative receiver in relation to the Chargor (or such administrator or administrative receiver has been appointed) or to the winding-up of the Chargor.

3.4.2 By way of further assurance, the Chargor shall, promptly following service of such notice upon it, execute a fixed charge over such assets in such form as the Chargee shall require.

### 3.5 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 3.4 (*Conversion of floating charge*):

- 3.5.1 if the Chargor creates (or purports to create) any Security on or over any of the Charged Chattels or the Physical Materials without the prior written consent of the Chargee, or
- 3.5.2 if the 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 the Chargor or any of its assets,

then and in any such event, such floating charge shall, without any notice being given under Clause 3.4 (*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 Charged Chattels and the Physical Materials.

### 3.6 Full title guarantee and implied covenants

All the security created or given under this deed is made with full title guarantee in accordance with the Law of Property (Miscellaneous Provisions) Act 1994.

### 3.7 Miscellaneous

The fact that no or incomplete details of any particular chattels are included or inserted into this document shall not affect the validity or enforceability of the charges created by this deed.

## 4. **NEGATIVE PLEDGE { TC "4 NEGATIVE PLEDGE " \1 }**

### 4.1 Negative pledge

During the Security Period, the Chargor must not create, extend or permit to subsist any security over any of the Charged Chattels other than security referred to or permitted under the Deed of Priorities.

## 5. **REPRESENTATIONS AND WARRANTIES{ TC "5 REPRESENTATIONS AND WARRANTIES" \1 }**

The Chargor represents and warrants to the Chargee on the date of this deed and on each day of the Security Period as follows:

### 5.1 Status

It is a limited liability partnership, duly incorporated and validly existing under the laws of England and Wales and has the power to own its assets and carry on its business and other activities as they are being conducted;

### 5.2 Power and enforceability

The Chargor has the power to enter into this deed and to perform its obligations and exercise its rights under it and the obligations expressed to be assumed by

it under this deed are (and at all relevant times have been) legal, valid, binding and enforceable obligations (subject to the Legal Reservations).

**5.3 No Enforcement**

No person who holds any other security over any asset of the Chargor has enforced or given notice of its intention to enforce such security;

**5.4 Non-conflict with other obligations**

Neither the execution of this deed by the Chargor, nor the Chargor's compliance with its terms will:

5.4.1 conflict with or result in any breach of any law or regulation applicable to it;

5.4.2 cause any limitation on any of its powers or on the right or ability of its directors to exercise those powers to be exceeded; nor

5.4.3 constitute a default, acceleration of payment or termination event (however described) under any agreement or instrument binding upon it;

**5.5 Authorisations**

All Authorisations required for the execution, delivery, issue, validity or enforceability of this deed or of the performance of the Chargor's obligations or the exercise of its rights under this deed have been obtained and have not been (and the Chargor is not aware of any circumstance having arisen whereby they might be) withdrawn or varied in whole or part;

**5.6 Priority of security**

The charges contained in clause 3 (*Charging clause*) constitute first priority security over the assets which are expressed to be secured by such charges or and those assets are not subject to any security;

**5.7 Legal and Beneficial Owner**

It is the legal and beneficial owner of the Charged Chattels free from all security or third party rights whatsoever (other than security referred to or permitted under the Deed of Priorities) and none of the Charged Chattels bears any nameplates, notices or other notifications of any third party's adverse interest in such Charged Chattel;

**5.8 Repair and condition - no claims**

The Charged Chattels are in a good state of repair and in good working order and condition, have at all times been used and operated in accordance with all applicable laws, and are not now, and have not been, the subject of any claim under the Insurances, nor against the manufacturer, supplier or any other third party in respect of any obligation, warranty or guarantee assumed or given in relation to the Charged Chattels; and

6. **UNDERTAKINGS{ TC "6 UNDERTAKINGS" \1 }**

The Chargor undertakes to the Chargee in the terms of the following provisions of this clause 6, all such undertakings to commence on the date of this deed and to continue throughout the Security Period:

6.1 **Perform**

It will at all times comply with the terms (express or implied) of this deed and of all contracts relating to the Secured Obligations including without limitation the Lease;

6.2 **Not to jeopardise security**

It will not do anything or allow anything to be done which may in any way materially depreciate, jeopardise or otherwise prejudice the value to the Chargee of the security constituted by this deed or the priority of its ranking as expressed in this deed;

6.3 **Register of Charged Assets**

It will supply on the date of this Deed and every five (5) years thereafter an accurate register disclosing the identity and current location of the Charged Chattels.

6.4 **Further assurance**

It will at all times (and forthwith upon the Chargee's written request) but at the Chargor's own expense take all steps (including the making of all filings and registrations and the payment of all fees and taxes) and execute all documents necessary (a) to render effective and valid any security or any right or power created or intended to be created or evidenced under or by this deed but which is or may be ineffective or invalid, (b) to perfect, protect or improve any such security or to facilitate its enforcement or realisation, (c) to protect the Chargee's position under this deed or any other deed or document entered into pursuant to this deed or (d) in connection with the exercise of any of any rights or powers by any Enforcement Party under or in relation to this deed, and so that any security document required to be executed pursuant to this clause will be in such form and will contain such provisions as the Chargee may reasonably require;

6.5 **Insurance**

6.5.1 Except to the extent that the Chargee elects to effect insurances over the Charged Chattels, it will obtain, maintain and renew (all at its own expense) with a reputable independent insurance company or underwriters in respect of the Charged Chattels insurance or equivalent indemnity cover:

6.5.1.1 with the interest of the Chargee noted on the policy;

6.5.1.2 against loss or damage by fire, explosion, storm, flood, lightning, earthquake, impact, aircraft and articles dropped from aircraft, riot, civil commotion, malicious damage, bursting or over-flowing pipes or tanks, oil leakage, subsidence, landslip and heave, public liability and liability under the Defective Premises Act 1972 (if

applicable), terrorism to the fullest extent available on the insurance market from time to time, (and in the time of war, against war risks and any statutory insurance scheme which may be applicable to the Charged Chattels);

6.5.1.3 In a value equal to the full cost of reinstatement from time to time including proper provision for cost inflation over any period that might be required for planning and negotiation the replacement plus the cost of all professional fees and the cost of complying with any laws;

6.5.2 It will promptly pay all premiums and other sums necessary to effect and maintain the Insurances required by this deed and will on demand at reasonable times produce to the Chargee the Insurances and evidence that the premiums and other sums have been paid; and

6.5.3 to the extent that the Chargee elects to effect insurances over the Charged Chattels it will promptly upon demand reimburse or pay to the Chargee all premiums or other properly incurred sums expended by the Chargee in effecting such insurances;

#### 6.6 Expenses

It will pay all Expenses within 10 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;

#### 6.7 Indemnity

The Chargor will indemnify the Chargee and will keep the Chargee indemnified against all losses and Expenses incurred by the Chargee as a result of a breach by the Chargor of its obligations under clauses 6.1 to 6.5 inclusive and in connection with the exercise by the Chargee of its rights contained in clause 6.6 above (*Power to remedy*). All sums the subject of this indemnity will be payable by the Chargor to the Chargee on demand and if not so paid will bear interest at the Default Rate. Any unpaid interest will be compounded with Monthly rests.

#### 7. ENFORCEABILITY { TC "7 ENFORCEABILITY " \ 1 }

7.1 For the purposes of all powers implied by the LPA or any other applicable statute the Secured Obligations shall be deemed to have become due and payable and this deed will become immediately enforceable and the powers of the Chargee and any Receiver exercisable on the date of this deed, but, as between the Chargee and the Chargor, the power of sale shall be exercisable only upon the occurrence of an Event of Default and for so long as it is continuing.

7.2 The Events of Default are:

7.2.1 the Chargor does not pay the Secured Obligations when they fall due or there is a material breach of the Lease by the Chargor;

7.2.2 there is any breach by the Chargor of the representations and warranties at clause 5 (*Representations and warranties*) or the undertakings at clause 6 (*Undertakings*) which such breach if capable of remedy is not remedied to the satisfaction of the Chargor within a period of 10 Business Days from the date upon which such breach

- occurred (or if later the date upon which the Chargor became aware of such breach);
- 7.2.3 the Chargor does not comply with, or it becomes unlawful to any extent for the Chargor to perform, any of its obligations under this deed;
  - 7.2.4 any person other than the Chargee rescinds or repudiates this deed or purports to do so or shows an intention to do so;
  - 7.2.5 any person takes possession of or exercises or attempts to exercise any power of sale in relation to the Charged Chattels;
  - 7.2.6 there is an event of default (however such event is described) under any other security over or affecting the Charged Chattels or any other assets of the Chargor or steps are taken to enforce any such security;
  - 7.2.7 the Chargor is unable or admits inability to pay its debts as they fall due (or is deemed to or declared to be unable to pay its debts under any applicable law) or the value of the assets of the Chargor is less than its liabilities (taking into account contingent and prospective liabilities);
  - 7.2.8 any of the following occurs or any person takes any steps which in the reasonable opinion of the Chargee might give rise to:
    - 7.2.8.1 a suspension or re-scheduling of the Chargor's payments, a moratorium of any of its indebtedness or its dissolution or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise);
    - 7.2.8.2 a composition, compromise, assignment or arrangement with any creditor of the Chargor;
    - 7.2.8.3 the appointment of an administrative receiver, receiver or receiver and manager or any similar officer in respect of the Chargor or any of its assets;
    - 7.2.8.4 the appointment of an administrator over the Chargor, or any person makes an application to court for such an appointment, gives notice of its intention to appoint an administrator or files notice of such an appointment at court; or
    - 7.2.8.5 an analogous procedure takes place in any jurisdiction
  - 7.2.9 a petition is presented in any Court for or a meeting is convened for the purpose of considering a resolution for the winding up of the Chargor or a resolution is passed or an order made for the winding up of the Chargor unless such action is in the reasonable opinion of the Chargee, frivolous or vexatious in nature;
  - 7.2.10 the Chargor asks the Chargee to appoint a Receiver.



8. **ENFORCEMENT OF SECURITY{ TC "8**  
**ENFORCEMENT OF SECURITY" \ 1 }**

- 8.1 At any time after the Chargee's power of sale has become exercisable, the Chargee may without further notice:
- 8.1.1 appoint one or more than one Receiver in respect of the Charged Chattels or any of them and if more than one Receiver is appointed the Receiver may act jointly and severally or individually; or
  - 8.1.2 take possession of the Charged Chattels; or
  - 8.1.3 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.
- 8.2 The Chargee may remove the Receiver and appoint another Receiver and the Chargee may also appoint an alternative or additional Receiver.
- 8.3 The Receiver will, so far as the law permits, be the agent of the Chargor and the 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 Chargee will not be responsible for any misconduct, negligence or default of the Receiver.
- 8.4 The powers of the Receiver will continue in full force and effect following the liquidation of the Chargor.
- 8.5 The remuneration of the Receiver may be fixed by the Chargee but will be payable by the Chargor. The amount of the remuneration will form part of the Secured Obligations.
- 8.6 The Receiver will have the power on behalf and at the cost of the Chargor:
- 8.6.1 to do or omit to do anything which he considers appropriate in relation to the Charged Chattels; and
  - 8.6.2 to exercise all or any of the powers conferred on the Receiver or the Chargee 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).
- 8.7 If (notwithstanding any representation or warranty to the contrary contained in this deed) there shall be any security affecting the Charged Chattels or any of them which ranks in priority to the security created by this deed and the holder of such prior security takes any steps to enforce such security, the Chargee or any Receiver may, at its option, take a transfer of, or repay the indebtedness secured by, such security.
- 8.8 The Chargee may, at any time after this deed has become enforceable pursuant to clause 7 (*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 the Chargor or otherwise and whether or not a Receiver has been appointed.



- 8.9 The Chargee 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 Receivers by this deed.

9. **APPLICATION OF PROCEEDS{ TC "9 APPLICATION OF PROCEEDS" \1 }**

9.1 **Recoveries by Receiver**

The proceeds arising from the exercise of the 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, in the following order of priority:

- 9.1.1 the costs, charges and expenses of and incidental to the Receiver's appointment and the payment of his remuneration;
- 9.1.2 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 Charged Chattels, all premiums on Insurances properly payable under this deed or any applicable statute, the cost of executing necessary or proper repairs to the Charged Chattels, and the payment of annual sums or other payments, and the interest on all principal sums, having priority to the Secured Obligations;
- 9.1.3 the Secured Obligations, in such order as the Chargee may determine; and
- 9.1.4 the claims of those persons entitled to any surplus..

9.2 **Right of appropriation**

The Chargee is entitled to appropriate money and/or assets to Secured Obligations in such manner or order as it thinks fit and any such appropriation shall override any appropriation by the Chargor.

9.3 **Insurances**

After the occurrence of an Event of Default, all Insurance Proceeds shall be paid to the Chargee (or if not paid by the insurers directly to the Chargee shall be held on trust for the Chargee) and shall (subject as otherwise provided in the documents evidencing the Secured Obligations), at the option of the Chargee be applied in replacing or reinstating the assets destroyed, damaged or lost (any deficiency being made good by the Chargor) or in payment of the Secured Obligations.

9.4 **Suspense Account**

The Chargee may place (for such time as it thinks prudent) any money received by it pursuant to this deed to the credit of a separate or suspense account (without liability to account for interest thereon) for so long and in such manner as the Chargee may from time to time determine without having any obligation to apply that money or any part of it in or towards discharge of the Secured Obligations.

10. **PROTECTION OF THIRD PARTIES**{ TC "10  
PROTECTION OF THIRD PARTIES" \ 1 }

10.1 **No duty to enquire**

A buyer from, tenant or other person dealing with any Enforcement Party will not be concerned to enquire whether any of the powers which it has exercised or purported to exercise has arisen or become exercisable and may assume that it is acting in accordance with this deed.

10.2 **Receipt conclusive**

The receipt of the Chargee or any Receiver shall be an absolute and a conclusive discharge to a purchaser of the Charged Chattels and shall relieve him of any obligation to see to the application of any monies paid to or by the direction of the Chargee or any Receiver.

11. **PROTECTION OF CHARGEES**{ TC "11  
PROTECTION OF CHARGEES" \ 1 }

11.1 **Chargee's receipts**

The Chargee shall not be obliged to account to the 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 who the Chargee, acting reasonably, believes to be entitled) in accordance with the requirements of this deed.

11.2 **Exclusion of liability**

11.2.1 No Enforcement Party will be liable to the Chargor for any expense, loss liability or damage incurred by the Chargor arising out of the exercise 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.

11.2.2 The Chargor may not 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.

11.2.3 Any officer, employee or agent of any Enforcement Party may rely on this clause 11 under the Third Parties Act.

11.3 **Effect of possession**

If the Chargee or any Receiver enters into possession of the Charged Chattels or any of them, this will not oblige either the Chargee or the Receiver to account as mortgagee in possession, and if the Chargee enters into possession at any time of the Charged Chattels or any of them it may at any time at its discretion go out of such possession.

11.4 **Chargor's indemnity**

The Chargor agrees with the Chargee to indemnify the Chargee and any Receiver or Delegate on demand against any costs, loss or liability incurred by any of them in respect of:

- 11.4.1 any exercise of the powers of the Chargee or the Receiver or any attempt or failure to exercise those powers; and
- 11.4.2 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.

**12. POWER OF ATTORNEY{ TC "12 POWER OF ATTORNEY" \ 1 }**

**12.1 Grant of power**

The Chargor irrevocably and by way of security appoints the Chargee and each Receiver and any person nominated for the purpose by the Chargee or the Receiver (in writing, under hand, signed by an officer of the Chargee or by the Receiver) severally to be the attorney of the Chargor (with full power of substitution and delegation) for the purposes set out in clause 12.2 below.

**12.2 Extent of power**

The power of attorney granted in clause 12.1 above allows the Chargee, the Receiver or such nominee, in the name of the Chargor, on its behalf and as its act and deed to:

- 12.2.1 perfect the security given by the Chargor under this deed; and
- 12.2.2 upon the security constituted by this Deed becoming enforceable, execute, seal and deliver (using the Chargor's seal where appropriate) any document or do any act or thing which the Chargor may, ought or has agreed to execute or do under this deed or which the Chargee, the Receiver or such nominee may in their absolute discretion consider appropriate in connection with the exercise of any of the rights, powers, authorities or discretions of the Chargee or the Receiver under, or otherwise for the purposes of, this deed.

**12.3 Ratification**

The Chargor covenants with the Chargee 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 12

**13. APPLICATION, VARIATION AND EXTENSION OF STATUTORY PROVISIONS{ TC "13 APPLICATION, VARIATION AND EXTENSION OF STATUTORY PROVISIONS" \ 1 }**

**13.1 Conditions applicable to power of sale etc.**

- 13.1.1 For the purposes only of section 101 of the LPA, (but otherwise subject to the provisions of clause 7 (*Enforceability*)), the conditions set out in that section as to when such powers 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; and

- 13.1.2 the Chargee 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.

**13.2 Extension of powers of sale, etc.**

- 13.2.1 The power of sale and the other powers conferred by the LPA or otherwise are extended and varied to authorise the Chargee 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.

- 13.2.2 The Chargee and any Receiver shall also have and enjoy all the other powers, privileges, rights and protections conferred by the LPA and the Insolvency Act on mortgagees, receivers or administrative receivers (each as amended and extended by this deed and whether or not a receiver or administrative receiver has been appointed) but so that if there is any ambiguity or conflict between the powers contained in such statutes and those contained in this deed, those contained in this deed shall prevail.

**13.3 Consolidation of mortgages**

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 Chargee pursuant to this deed.

**13.4 LPA provisions relating to appointment of Receiver**

Section 109(1) of the LPA shall not apply to this deed.

**13.5 Application of proceeds**

Sections 105, 107(2), 109(6) and 109(8) of the LPA will not apply to the Chargee nor to a Receiver appointed under this deed.

**14. OTHER MISCELLANEOUS PROVISIONS{ TC "14  
OTHER MISCELLANEOUS PROVISIONS" \ 1  
}**

**14.1 Powers, rights and remedies cumulative**

The powers, rights and remedies provided in this deed are in addition to (and not instead of), powers, rights and remedies under law.

**14.2 Exercise of powers, rights and remedies**

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.

**14.3 Discretion**

- 14.3.1 The Chargee may decide:

14.3.1.1 whether and, if so, when, how and to what extent (i) to exercise its rights under this deed and (ii) to exercise any other right it might have in respect of the Chargor (or otherwise); and

14.3.1.2 when and how to apply any payments and distributions received for its own account under this deed,

and the Chargor has no right to control or restrict the Chargee's exercise of this discretion.

14.3.2 No provision of this deed will interfere with the Chargee'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.

#### **14.4 Set-off and combination of accounts**

14.4.1 No right of set-off or counterclaim may be exercised by the Chargor in respect of any payment due to the Chargee under this deed.

14.4.2 The Chargee may at any time after this deed has become enforceable and without notice to the Chargor:

14.4.2.1 combine or consolidate all or any of the Chargor's then existing accounts with, and liabilities to, the Chargee;

14.4.2.2 set off or transfer any sums standing to the credit of any one or more of such accounts; and/or

14.4.2.3 set-off any other obligation owed by the Chargee to the Chargor (whether or not matured at such time),

in or towards satisfaction of any of the Secured Obligations. The Chargee is to notify the Chargor in writing that such a transfer has been made.

14.4.3 If any amount is in a different currency from the amount against which it is to be set off, the Chargee may convert either amount (or both) at any reasonable time and at any reasonable rate.

#### **14.5 Power to establish new account**

If the Chargee receives notice of a subsequent mortgage or charge relating to the Charged Chattels, it will be entitled to close any account and to open a new account in respect of the closed account. If the Chargee 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.

#### **14.6 Information**

The Chargor authorises the holder of any prior or subsequent security to provide to the Chargee, and the Chargee to receive from such holder, details of the state of account between such holder and the Chargor.

#### **14.7 No assignment by Chargor**

The Chargor must 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 Chargee.

#### **14.8 Transfer by Chargee**

14.8.1 The Chargee may at any time assign, novate or otherwise deal with any rights or obligations under or interests in this deed to any person also taking an assignment, novation or other dealing in respect of the Lease.

14.8.2 The Chargee may disclose any information about the Chargor, the Charged Chattels and/or this deed to any person to whom it proposes to assign or 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.

14.8.3 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 a Party.

#### **14.9 Avoidance of settlements and other matters**

14.9.1 Any payment made by the Chargor, or settlement or discharge between the Chargor and the Chargee, is conditional upon no security or payment to the Chargee by the Chargor or any other person being avoided or set aside or ordered to be refunded or reduced by virtue of any provision or enactment relating to bankruptcy, insolvency, administration or liquidation for the time being in force and accordingly (but without limiting the Chargee's other rights under this deed) the Chargee shall be entitled to recover from the Chargor the value which the Chargee has placed upon such security or the amount of any such payment as if such payment, settlement or discharge had not occurred.

14.9.2 If the Chargee, acting reasonably, considers that any amount paid by the 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 14.9.1, then for the purposes of this deed such amount shall not be considered to have been irrevocably paid.

#### **14.10 Waiver of immunity**

To the extent that the 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 the Chargor or its assets such immunity (whether or not claimed), it hereby irrevocably agrees not to claim and hereby irrevocably waives such immunity to the fullest extent permitted by the laws of such jurisdiction.

#### **14.11 Time Deposits**

Without prejudice to the provisions of clause 14.4 (*Set-off and combination of accounts*), if during the Security Period a time deposit matures on any account which the Chargor holds with the Chargee and an Event of Default has arisen which is continuing but no amount of Secured Obligations has fallen due and payable such time deposit shall be renewed for such further maturity as the Chargee may in its absolute discretion determine.

**14.12 Perpetuity Period**

The perpetuity period applicable to the trusts created by this deed is 80 years.

**14.13 Release of security**

On the Discharge Date (but subject to clause 14.9 (*Avoidance of settlements and other matters*)) the Chargee shall at the request and proper cost of the Chargor execute and do all deeds, acts and things as may be necessary to release the Charged Chattels from the security constituted hereby or pursuant hereto.

**15. COMMUNICATIONS{ TC "15 COMMUNICATIONS" \ 1 }**

15.1 Each notice, consent and other communication in respect of this deed will be effective only if made by letter or fax, delivered to the relevant address or fax number specified on the execution page(s) of this deed (or to any substitute address or fax number notified in writing by the relevant Party for this purpose) and marked for the attention of the specified department/individual, if applicable. Each communication by letter will be effective only if delivered by hand, sent by first class post (if sent from and to an address in the UK) or sent by airmail (if sent from or to an address elsewhere).

15.2 Each communication will become effective as follows (references to times are to times in the place of delivery of the communication):

15.2.1 a hand-delivered letter will be effective as soon as it is delivered (or, if it is delivered after 5pm or on a day that is not a Business Day, it will be effective at 9am on the next Business Day);

15.2.2 a letter sent by post from and to an address in the UK will be effective at 9am on the second Business Day after it is posted and a letter sent by airmail from or to an address elsewhere will be effective at 9am on the tenth Business Day after it is posted; and

15.2.3 each communication to the Chargee will become effective only when actually received by the Chargee.

**16. GOVERNING LAW{ TC "16 GOVERNING LAW" \ 1 }**

**16.1 Governing law**

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

**17. THIS DEED{ TC "17 THIS DEED" \ 1 }**

**17.1 Consideration**

The Chargor has entered into this deed in consideration of the Chargee agreeing to provide (or to continue to provide) finance facilities to it on the terms agreed between them.

**17.2 Execution of this deed - counterparts**

If the Parties execute this deed in separate counterparts, this deed will take effect as if they had all executed a single copy.

**17.3 Execution of this deed - formalities**

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.

**17.4 Partial invalidity**

17.4.1 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.

17.4.2 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).

**17.5 Other security**

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 Chargee may now or at any time after the date of this deed hold for or in respect of the Secured Obligations.

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



## EXECUTION

**SIGNED** as a deed by  
**EVANS FOREST HOLDINGS LIMITED**  
acting by a director and its secretary  
or two directors

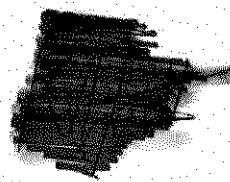
)  
)  
)  
)

Director

Director / Secretary

**SIGNED** as a deed by  
**FOREST HOLIDAYS LIMITED**  
acting by a director before  
an independent witness

)  
)  
)  
)



Director

Signature of witness:



Name of witness: ERIC GREEN

Address of witness: 38 IONA CRESCENT WIDNES WAB 5AD

Occupation of witness: COMMERCIAL CONTROLLER



Dated 19 June 2014

- (1) FOREST HOLIDAYS LIMITED
- (2) EVANS FOREST HOLDINGS LIMITED

---

## Charge over Chattels

---

relating to premises known as Christchurch Campsite, Bracelands Drive,  
Christchurch, Coleford, Gloucestershire

We certify that this is a true copy of the original

Eversheds LLP save for the material

Dated 27/6/14 redacted pursuant to

s839a Companies Act  
2006

*Eversheds*

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This deed is made on

19 June

2014 between:

- (1) **FOREST HOLIDAYS LIMITED** a limited company (registered number 08159308) whose registered office is at Bath Yard, Moira, Swadlincote, Derbyshire DE12 6BA (the "**Chargor**"); and
- (2) **EVANS FOREST HOLDINGS LIMITED** a company incorporated in Jersey with company number 102468 whose registered office is at The Sanne Trust Company Limited, 13 Castle Street, St Helier, Jersey JE4 5UT and whose address for service in England is c/o Evans Management Limited, Millshaw, Leeds LS11 8EG (the "**Chargee**");

1. **INTERPRETATION** { TC "1 INTERPRETATION" \ 1 }

1.1 **Expressly defined terms**

In this deed:

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

"**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 15 (*Communications*), in the principal financial centre in the jurisdiction in which the relevant communication is delivered

"**Charged Chattels**" shall have the same meaning as the definition of "Chattels" contained in the Lease

"**Data and Records**" means all accounting, financial, maintenance, registration, insurance claims, or other information and data of any nature and in whatever form or media created or stored held by or on behalf of the Chargor in relation to the Charged Chattels

"**Deed of Priorities**" means a deed of priorities dated 28 February 2013 as the same may be amended, supplemented and restated from time to time and made between (1) Evans Forest Holdings No. 2 Limited, (2) Evans Forest Holdings Limited, (3) Lloyds TSB Bank Plc (now known as Lloyds Bank plc), (4) LDC (Managers) Limited, (5) Gary Fletcher and (6) Willoughby (712) Limited (now known as Forest Holidays Limited)

"**Delegate**" means any delegate, agent, attorney or trustee appointed by the Chargee

"**Default Rate**" means four per cent per annum

"**Discharge Date**" means the date on which all the Secured Obligations have been unconditionally and irrevocably paid and discharged in full

"**Enforcement Party**" means any of the Chargee, a Receiver or a Delegate

"**Event of Default**" means the occurrence of any of the events or circumstances described in clause 7 (*Enforceability*)

"**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 Charged Chattels, 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 the costs of transferring to the Chargee 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, or any of the foregoing as the context shall require

**"Insurances"** means all contracts or policies of insurance of whatever nature relating to the Charged Chattels 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

**"Insurance Proceeds"** means the proceeds of any claim received by the Chargor arising out of the Insurances, after deduction of any reasonable expenses incurred in relation to the relevant claim and payable by the Chargor, together with the benefit of all bonuses, profits, returns of premium and other benefits of whatever nature arising by virtue of the Chargor's ownership of the Insurances and all interest on any of the foregoing

**"Insolvency Act"** means Insolvency Act 1986

**"Interest"** means interest at the rate provided and calculated and compounded as agreed between the Chargee and the Chargor from time to time, and if not so agreed, in accordance with the practice of the Chargee from time to time both before and after judgement

**"Lease"** means the lease of the Premises to be entered into on or around the date of this deed between (1) the Chargor and (2) the Chargee and which is to be registered at the Land Registry

**"Legal Reservations"** means:

- (a) the principle that equitable remedies may be granted or refused at the discretion of a court and the limitation of enforcement by laws relating to insolvency, reorganisation and other laws generally affecting the rights of creditors; and
- (b) the time-barring of claims under the Limitation Acts, the possibility that an undertaking to assume liability for or indemnify a person against non-payment of UK stamp duty may be void and defences of set-off or counterclaim.

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

**"Party"** means a party to this deed

**"Physical Materials"** means every item of physical material now in existence, or not yet in existence but created or acquired by the Chargor after the date of this deed, whatever its description or category, relating to the Charged Chattels including any comprised within the Data and Records, and in respect of each such item the original copy or version or variant owned or produced by or delivered to or lawfully obtained by the Chargor, including disks, tapes, recordings or source and/or object codes, other media whether or not comprised

within the Data and Records or which relate to any computer or other electronic system used for the recovery or display of the Data and Records

**"Premises"** means Christchurch, Bracelands Drive, Christchurch, Coleford, Gloucestershire GL16 7NN

**"Quarter Day"** means the last day of December, March, June and September in each calendar year

**"Receiver"** means any one or more receivers and managers or (if the Chargee so specifies in the relevant appointment) receivers appointed by the Chargee pursuant to this deed in respect of the Chargor or in respect of the Charged Chattels or any of them

**"Secured Obligations"** means all indebtedness and all obligations or liabilities of any kind which may now or at any time in the future be due, owing or incurred by the Chargor to the Chargee under or in connection with the Lease, whatever their nature or basis, in any currency or currencies and however they are described together with Interest and Expenses.

**"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

**"Subsidiary"** means a subsidiary undertaking within the meaning of section 1162 of the Companies Act 2006

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

**"VAT"** means value added tax as provided for in the Value Added Taxes Act 1994 and any other tax of a similar fiscal nature.

## 1.2 Construction

In this deed:

1.2.1 any reference to:

1.2.1.1 the word **"assets"** includes present and future property, revenue, rights and interests of every kind;

1.2.1.2 the word **"guarantee"** includes any guarantee or indemnity and any other financial support (including any participation or other assurance against loss and any deposit or payment) in respect of any person's indebtedness;

1.2.1.3 the word **"indebtedness"** includes any obligation for the payment or repayment of money, whatever the nature or basis of the relevant obligation (and whether present or future, actual or contingent);

1.2.1.4 the word **"law"** includes law established by or under statute, constitution, treaty, decree, regulation or

judgment, common law and customary law; and the word "**lawful**" and similar words and phrases are to be construed accordingly;

1.2.1.5 the word "**person**" includes any individual, company, corporation, firm, government, state or any agency of a state and any association, partnership or trust (in each case, whether or not it has separate legal personality);

1.2.1.6 the word "**regulation**" includes all guidelines, official directives, regulations, requests and rules (in each case, whether or not having the force of law) of any governmental, inter-governmental or supranational agency, body or department or of any regulatory or other authority or organisation (whether statutory or non-statutory, governmental or non-governmental);

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

1.2.1.8 the word "**set-off**" includes analogous rights and obligations in other jurisdictions; and

1.2.1.9 the word "**tax**" includes any tax, duty, impost or levy and any other charge or withholding of a similar nature (including any interest or penalty for late payment or non-payment);

1.2.2 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);

1.2.3 each reference to the "**Chargor**", or to the "**Chargee**" includes its successors in title, and its permitted assignees or permitted transferees;

1.2.4 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);

1.2.5 each reference to this deed (or to any other agreement or deed) means, at any time, this deed (or as applicable such other agreement or deed) as amended, novated, re-stated, substituted or supplemented at that time, provided that the relevant amendment, novation, re-statement, substitution or supplement does not breach any term of this deed;

- 1.2.6 each reference to the singular includes the plural and vice versa, as the context permits or requires;
- 1.2.7 the index and each heading in this deed is for convenience only and does not affect the meaning of the words which follow it;
- 1.2.8 each reference to a clause or Schedule is (unless expressly provided to the contrary) to be construed as a reference to the relevant clause of or Schedule to this deed;
- 1.2.9 wherever this deed states that the Chargor must not take a particular step without the consent of the Chargee, the Chargee has discretion whether to give its consent and can impose conditions on any such consent it gives; and
- 1.2.10 an Event of Default is "**continuing**" if it has not been remedied or waived.

### 1.3 Third Party Rights

- 1.3.1 A person who is not an Enforcement Party has no right under the Third Parties Act to enforce or enjoy the benefit of any term of this deed except to the extent that this deed expressly provides for it to do so.
- 1.3.2 No consent of any person who is not a Party is required to rescind or vary this deed at any time.
- 1.3.3 This clause 1.3 does not affect any right or remedy of any person which exists, or is available, otherwise than pursuant to the Third Parties Act.

## 2. COVENANT TO PAY{ TC "2 COVENANT TO PAY" \1 1 }

### 2.1 Covenant

The Chargor covenants with the Chargee that it will pay, discharge and perform the Secured Obligations on demand and (where applicable) in the manner provided in the documents evidencing the Secured Obligations.

### 2.2 Default Interest

Any amount which is not paid under this deed on the due date shall bear interest (as well after as before judgment) payable on demand at the Default Rate from time to time from the due date until the date of actual unconditional and irrevocable payment and discharge of such amount in full, save to the extent that interest at such rate on such amount and for such period is charged pursuant to any other document relevant to that liability and itself constitutes part of the Secured Obligations.

## 3. CHARGING CLAUSE{ TC "3 CHARGING CLAUSE" \1 1 }

### 3.1 Floating Charge

- 3.1.1 The Chargor, as a continuing security for the payment, discharge and performance of the Secured Obligations charges in favour of the Chargee, by way of first floating charge, the Charged Chattels and the Physical Materials.



3.1.2 The floating charge created by Clause 3.1 may not be converted into a fixed charge solely by reason of:

3.1.2.1 the obtaining of a moratorium; or

3.1.2.2 anything done with a view to obtaining a moratorium,  
under Schedule A1 to the Insolvency Act 1986.

### **3.2 Notice of assignment or charge**

Upon the security constituted by this Deed becoming enforceable, the Chargor shall forthwith upon receiving a request to that effect from the Chargee give notice of each such charge of its right, title and interest (if any) in and to:

3.2.1 the Insurance Proceeds, to each of the other parties to the Insurances;

3.2.2 any maintenance or support contracts relating to the Charged Chattels, to the other parties to such contracts;

3.2.3 the Charged Chattels, to the owner of any premises where the Charged Chattels are kept from time to time; and

3.2.4 any other assets to such persons as the Chargee may require;

and every such notice will be in such form as the Chargee may require or agree.

### **3.3 Continuing security**

All the security granted or created by this deed is to be a continuing security which shall remain in full force and effect notwithstanding any intermediate payment or settlement of account or other matter or thing whatsoever and in particular the intermediate satisfaction by the Chargor or any other person of the whole or any part of the Secured Obligations.

### **3.4 Conversion of floating charge**

3.4.1 The Chargee may, at any time, by notice in writing to the 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:

3.4.1.1 an Event of Default has occurred which is continuing; or

3.4.1.2 the Chargee 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 Chargee, be likely to lead to the appointment of an administrator or administrative receiver in relation to the Chargor (or such administrator or administrative receiver has been appointed) or to the winding-up of the Chargor.

3.4.2 By way of further assurance, the Chargor shall, promptly following service of such notice upon it, execute a fixed charge over such assets in such form as the Chargee shall require.

### 3.5 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 3.4 (*Conversion of floating charge*):

3.5.1 if the Chargor creates (or purports to create) any Security on or over any of the Charged Chattels or the Physical Materials without the prior written consent of the Chargee, or

3.5.2 if the 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 the Chargor or any of its assets,

then and in any such event, such floating charge shall, without any notice being given under Clause 3.4 (*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 Charged Chattels and the Physical Materials.

### 3.6 Full title guarantee and implied covenants

All the security created or given under this deed is made with full title guarantee in accordance with the Law of Property (Miscellaneous Provisions) Act 1994.

### 3.7 Miscellaneous

The fact that no or incomplete details of any particular chattels are included or inserted into this document shall not affect the validity or enforceability of the charges created by this deed.

## 4. NEGATIVE PLEDGE { TC "4 NEGATIVE PLEDGE " \ 1 }

### 4.1 Negative pledge

During the Security Period, the Chargor must not create, extend or permit to subsist any security over any of the Charged Chattels other than security referred to or permitted under the Deed of Priorities.

## 5. REPRESENTATIONS AND WARRANTIES { TC "5 REPRESENTATIONS AND WARRANTIES" \ 1 }

The Chargor represents and warrants to the Chargee on the date of this deed and on each day of the Security Period as follows:

### 5.1 Status

It is a limited liability partnership, duly incorporated and validly existing under the laws of England and Wales and has the power to own its assets and carry on its business and other activities as they are being conducted;

### 5.2 Power and enforceability

The Chargor has the power to enter into this deed and to perform its obligations and exercise its rights under it and the obligations expressed to be assumed by

it under this deed are (and at all relevant times have been) legal, valid, binding and enforceable obligations (subject to the Legal Reservations).

**5.3 No Enforcement**

No person who holds any other security over any asset of the Chargor has enforced or given notice of its intention to enforce such security;

**5.4 Non-conflict with other obligations**

Neither the execution of this deed by the Chargor, nor the Chargor's compliance with its terms will:

- 5.4.1 conflict with or result in any breach of any law or regulation applicable to it;
- 5.4.2 cause any limitation on any of its powers or on the right or ability of its directors to exercise those powers to be exceeded; nor
- 5.4.3 constitute a default, acceleration of payment or termination event (however described) under any agreement or instrument binding upon it;

**5.5 Authorisations**

All Authorisations required for the execution, delivery, issue, validity or enforceability of this deed or of the performance of the Chargor's obligations or the exercise of its rights under this deed have been obtained and have not been (and the Chargor is not aware of any circumstance having arisen whereby they might be) withdrawn or varied in whole or part;

**5.6 Priority of security**

The charges contained in clause 3 (*Charging clause*) constitute first priority security over the assets which are expressed to be secured by such charges or and those assets are not subject to any security;

**5.7 Legal and Beneficial Owner**

It is the legal and beneficial owner of the Charged Chattels free from all security or third party rights whatsoever (other than security referred to or permitted under the Deed of Priorities) and none of the Charged Chattels bears any nameplates, notices or other notifications of any third party's adverse interest in such Charged Chattel;

**5.8 Repair and condition - no claims**

The Charged Chattels are in a good state of repair and in good working order and condition, have at all times been used and operated in accordance with all applicable laws, and are not now, and have not been, the subject of any claim under the Insurances, nor against the manufacturer, supplier or any other third party in respect of any obligation, warranty or guarantee assumed or given in relation to the Charged Chattels; and

6. **UNDERTAKINGS{ TC "6 UNDERTAKINGS" \ 1 }**

The Chargor undertakes to the Chargee in the terms of the following provisions of this clause 6, all such undertakings to commence on the date of this deed and to continue throughout the Security Period:

6.1 **Perform**

It will at all times comply with the terms (express or implied) of this deed and of all contracts relating to the Secured Obligations including without limitation the Lease;

6.2 **Not to jeopardise security**

It will not do anything or allow anything to be done which may in any way materially depreciate, jeopardise or otherwise prejudice the value to the Chargee of the security constituted by this deed or the priority of its ranking as expressed in this deed;

6.3 **Register of Charged Assets**

It will supply on the date of this Deed and every five (5) years thereafter an accurate register disclosing the identity and current location of the Charged Chattels.

6.4 **Further assurance**

It will at all times (and forthwith upon the Chargee's written request) but at the Chargor's own expense take all steps (including the making of all filings and registrations and the payment of all fees and taxes) and execute all documents necessary (a) to render effective and valid any security or any right or power created or intended to be created or evidenced under or by this deed but which is or may be ineffective or invalid, (b) to perfect, protect or improve any such security or to facilitate its enforcement or realisation, (c) to protect the Chargee's position under this deed or any other deed or document entered into pursuant to this deed or (d) in connection with the exercise of any of any rights or powers by any Enforcement Party under or in relation to this deed, and so that any security document required to be executed pursuant to this clause will be in such form and will contain such provisions as the Chargee may reasonably require;

6.5 **Insurance**

6.5.1 Except to the extent that the Chargee elects to effect insurances over the Charged Chattels, it will obtain, maintain and renew (all at its own expense) with a reputable independent insurance company or underwriters in respect of the Charged Chattels insurance or equivalent indemnity cover:

6.5.1.1 with the interest of the Chargee noted on the policy;

6.5.1.2 against loss or damage by fire, explosion, storm, flood, lightning, earthquake, impact, aircraft and articles dropped from aircraft, riot, civil commotion, malicious damage, bursting or over-flowing pipes or tanks, oil leakage, subsidence, landslip and heave, public liability and liability under the Defective Premises Act 1972 (if

applicable), terrorism to the fullest extent available on the insurance market from time to time, (and in the time of war, against war risks and any statutory insurance scheme which may be applicable to the Charged Chattels);

6.5.1.3 in a value equal to the full cost of reinstatement from time to time including proper provision for cost inflation over any period that might be required for planning and negotiation the replacement plus the cost of all professional fees and the cost of complying with any laws;

6.5.2 It will promptly pay all premiums and other sums necessary to effect and maintain the Insurances required by this deed and will on demand at reasonable times produce to the Chargee the Insurances and evidence that the premiums and other sums have been paid; and

6.5.3 to the extent that the Chargee elects to effect insurances over the Charged Chattels it will promptly upon demand reimburse or pay to the Chargee all premiums or other properly incurred sums expended by the Chargee in effecting such insurances;

#### 6.6 Expenses

It will pay all Expenses within 10 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;

#### 6.7 Indemnity

The Chargor will indemnify the Chargee and will keep the Chargee indemnified against all losses and Expenses incurred by the Chargee as a result of a breach by the Chargor of its obligations under clauses 6.1 to 6.5 inclusive and in connection with the exercise by the Chargee of its rights contained in clause 6.6 above (*Power to remedy*). All sums the subject of this indemnity will be payable by the Chargor to the Chargee on demand and if not so paid will bear interest at the Default Rate. Any unpaid interest will be compounded with Monthly rests.

#### 7. ENFORCEABILITY { TC "7 ENFORCEABILITY " \ 1 }

7.1 For the purposes of all powers implied by the LPA or any other applicable statute the Secured Obligations shall be deemed to have become due and payable and this deed will become immediately enforceable and the powers of the Chargee and any Receiver exercisable on the date of this deed, but, as between the Chargee and the Chargor, the power of sale shall be exercisable only upon the occurrence of an Event of Default and for so long as it is continuing.

7.2 The Events of Default are:

7.2.1 the Chargor does not pay the Secured Obligations when they fall due or there is a material breach of the Lease by the Chargor;

7.2.2 there is any breach by the Chargor of the representations and warranties at clause 5 (*Representations and warranties*) or the undertakings at clause 6 (*Undertakings*) which such breach if capable of remedy is not remedied to the satisfaction of the Chargor within a period of 10 Business Days from the date upon which such breach

- occurred (or if later the date upon which the Chargor became aware of such breach);
- 7.2.3 the Chargor does not comply with, or it becomes unlawful to any extent for the Chargor to perform, any of its obligations under this deed;
- 7.2.4 any person other than the Chargee rescinds or repudiates this deed or purports to do so or shows an intention to do so;
- 7.2.5 any person takes possession of or exercises or attempts to exercise any power of sale in relation to the Charged Chattels;
- 7.2.6 there is an event of default (however such event is described) under any other security over or affecting the Charged Chattels or any other assets of the Chargor or steps are taken to enforce any such security;
- 7.2.7 the Chargor is unable or admits inability to pay its debts as they fall due (or is deemed to or declared to be unable to pay its debts under any applicable law) or the value of the assets of the Chargor is less than its liabilities (taking into account contingent and prospective liabilities);
- 7.2.8 any of the following occurs or any person takes any steps which in the reasonable opinion of the Chargee might give rise to:
- 7.2.8.1 a suspension or re-scheduling of the Chargor's payments, a moratorium of any of its indebtedness or its dissolution or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise);
- 7.2.8.2 a composition, compromise, assignment or arrangement with any creditor of the Chargor;
- 7.2.8.3 the appointment of an administrative receiver, receiver or receiver and manager or any similar officer in respect of the Chargor or any of its assets;
- 7.2.8.4 the appointment of an administrator over the Chargor, or any person makes an application to court for such an appointment, gives notice of its intention to appoint an administrator or files notice of such an appointment at court; or
- 7.2.8.5 an analogous procedure takes place in any jurisdiction
- 7.2.9 a petition is presented in any Court for or a meeting is convened for the purpose of considering a resolution for the winding up of the Chargor or a resolution is passed or an order made for the winding up of the Chargor unless such action is in the reasonable opinion of the Chargee, frivolous or vexatious in nature;
- 7.2.10 the Chargor asks the Chargee to appoint a Receiver.

- 8.1 At any time after the Chargee's power of sale has become exercisable, the Chargee may without further notice:
  - 8.1.1 appoint one or more than one Receiver in respect of the Charged Chattels or any of them and if more than one Receiver is appointed the Receiver may act jointly and severally or individually; or
  - 8.1.2 take possession of the Charged Chattels; or
  - 8.1.3 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.
- 8.2 The Chargee may remove the Receiver and appoint another Receiver and the Chargee may also appoint an alternative or additional Receiver.
- 8.3 The Receiver will, so far as the law permits, be the agent of the Chargor and the 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 Chargee will not be responsible for any misconduct, negligence or default of the Receiver.
- 8.4 The powers of the Receiver will continue in full force and effect following the liquidation of the Chargor.
- 8.5 The remuneration of the Receiver may be fixed by the Chargee but will be payable by the Chargor. The amount of the remuneration will form part of the Secured Obligations.
- 8.6 The Receiver will have the power on behalf and at the cost of the Chargor:
  - 8.6.1 to do or omit to do anything which he considers appropriate in relation to the Charged Chattels; and
  - 8.6.2 to exercise all or any of the powers conferred on the Receiver or the Chargee 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).
- 8.7 If (notwithstanding any representation or warranty to the contrary contained in this deed) there shall be any security affecting the Charged Chattels or any of them which ranks in priority to the security created by this deed and the holder of such prior security takes any steps to enforce such security, the Chargee or any Receiver may, at its option, take a transfer of, or repay the indebtedness secured by, such security.
- 8.8 The Chargee may, at any time after this deed has become enforceable pursuant to clause 7 (*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 the Chargor or otherwise and whether or not a Receiver has been appointed.



- 8.9 The Chargee 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 Receivers by this deed.

9. **APPLICATION OF PROCEEDS{ TC "9 APPLICATION OF PROCEEDS" \ 1 }**

9.1 **Recoveries by Receiver**

The proceeds arising from the exercise of the 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, in the following order of priority:

- 9.1.1 the costs, charges and expenses of and incidental to the Receiver's appointment and the payment of his remuneration;
- 9.1.2 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 Charged Chattels, all premiums on Insurances properly payable under this deed or any applicable statute, the cost of executing necessary or proper repairs to the Charged Chattels, and the payment of annual sums or other payments, and the interest on all principal sums, having priority to the Secured Obligations;
- 9.1.3 the Secured Obligations, in such order as the Chargee may determine; and
- 9.1.4 the claims of those persons entitled to any surplus..

9.2 **Right of appropriation**

The Chargee is entitled to appropriate money and/or assets to Secured Obligations in such manner or order as it thinks fit and any such appropriation shall override any appropriation by the Chargor.

9.3 **Insurances**

After the occurrence of an Event of Default, all Insurance Proceeds shall be paid to the Chargee (or if not paid by the insurers directly to the Chargee shall be held on trust for the Chargee) and shall (subject as otherwise provided in the documents evidencing the Secured Obligations), at the option of the Chargee be applied in replacing or reinstating the assets destroyed, damaged or lost (any deficiency being made good by the Chargor) or in payment of the Secured Obligations.

9.4 **Suspense Account**

The Chargee may place (for such time as it thinks prudent) any money received by it pursuant to this deed to the credit of a separate or suspense account (without liability to account for interest thereon) for so long and in such manner as the Chargee may from time to time determine without having any obligation to apply that money or any part of it in or towards discharge of the Secured Obligations.



10. **PROTECTION OF THIRD PARTIES{ TC "10**  
**PROTECTION OF THIRD PARTIES" \ 1 }**

10.1 **No duty to enquire**

A buyer from, tenant or other person dealing with any Enforcement Party will not be concerned to enquire whether any of the powers which it has exercised or purported to exercise has arisen or become exercisable and may assume that it is acting in accordance with this deed.

10.2 **Receipt conclusive**

The receipt of the Chargee or any Receiver shall be an absolute and a conclusive discharge to a purchaser of the Charged Chattels and shall relieve him of any obligation to see to the application of any monies paid to or by the direction of the Chargee or any Receiver.

11. **PROTECTION OF CHARGE{ TC "11**  
**PROTECTION OF CHARGE" \ 1 }**

11.1 **Chargee's receipts**

The Chargee shall not be obliged to account to the 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 who the Chargee, acting reasonably, believes to be entitled) in accordance with the requirements of this deed.

11.2 **Exclusion of liability**

11.2.1 No Enforcement Party will be liable to the Chargor for any expense, loss liability or damage incurred by the Chargor arising out of the exercise 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.

11.2.2 The Chargor may not 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.

11.2.3 Any officer, employee or agent of any Enforcement Party may rely on this clause 11 under the Third Parties Act.

11.3 **Effect of possession**

If the Chargee or any Receiver enters into possession of the Charged Chattels or any of them, this will not oblige either the Chargee or the Receiver to account as mortgagee in possession, and if the Chargee enters into possession at any time of the Charged Chattels or any of them it may at any time at its discretion go out of such possession.

11.4 **Chargor's indemnity**

The Chargor agrees with the Chargee to indemnify the Chargee and any Receiver or Delegate on demand against any costs, loss or liability incurred by any of them in respect of:

- 11.4.1 any exercise of the powers of the Chargee or the Receiver or any attempt or failure to exercise those powers; and
- 11.4.2 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.

**12. POWER OF ATTORNEY{ TC "12 POWER OF ATTORNEY" \ 1 }**

**12.1 Grant of power**

The Chargor irrevocably and by way of security appoints the Chargee and each Receiver and any person nominated for the purpose by the Chargee or the Receiver (in writing, under hand, signed by an officer of the Chargee or by the Receiver) severally to be the attorney of the Chargor (with full power of substitution and delegation) for the purposes set out in clause 12.2 below.

**12.2 Extent of power**

The power of attorney granted in clause 12.1 above allows the Chargee, the Receiver or such nominee, in the name of the Chargor, on its behalf and as its act and deed to:

- 12.2.1 perfect the security given by the Chargor under this deed; and
- 12.2.2 upon the security constituted by this Deed becoming enforceable, execute, seal and deliver (using the Chargor's seal where appropriate) any document or do any act or thing which the Chargor may, ought or has agreed to execute or do under this deed or which the Chargee, the Receiver or such nominee may in their absolute discretion consider appropriate in connection with the exercise of any of the rights, powers authorities or discretions of the Chargee or the Receiver under, or otherwise for the purposes of, this deed.

**12.3 Ratification**

The Chargor covenants with the Chargee 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 12

**13. APPLICATION, VARIATION AND EXTENSION OF STATUTORY PROVISIONS{ TC "13 APPLICATION, VARIATION AND EXTENSION OF STATUTORY PROVISIONS" \ 1 }**

**13.1 Conditions applicable to power of sale etc.**

- 13.1.1 For the purposes only of section 101 of the LPA, (but otherwise subject to the provisions of clause 7 (*Enforceability*)), the conditions set out in that section as to when such powers 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; and

13.1.2 the Chargee 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.

**13.2 Extension of powers of sale, etc.**

13.2.1 The power of sale and the other powers conferred by the LPA or otherwise are extended and varied to authorise the Chargee 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.

13.2.2 The Chargee and any Receiver shall also have and enjoy all the other powers, privileges, rights and protections conferred by the LPA and the Insolvency Act on mortgagees, receivers or administrative receivers (each as amended and extended by this deed and whether or not a receiver or administrative receiver has been appointed) but so that if there is any ambiguity or conflict between the powers contained in such statutes and those contained in this deed, those contained in this deed shall prevail.

**13.3 Consolidation of mortgages**

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 Chargee pursuant to this deed.

**13.4 LPA provisions relating to appointment of Receiver**

Section 109(1) of the LPA shall not apply to this deed.

**13.5 Application of proceeds**

Sections 105, 107(2), 109(6) and 109(8) of the LPA will not apply to the Chargee nor to a Receiver appointed under this deed.

**14. OTHER MISCELLANEOUS PROVISIONS{ TC "14 OTHER MISCELLANEOUS PROVISIONS" \ 1 }**

**14.1 Powers, rights and remedies cumulative**

The powers, rights and remedies provided in this deed are in addition to (and not instead of), powers, rights and remedies under law.

**14.2 Exercise of powers, rights and remedies**

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.

**14.3 Discretion**

14.3.1 The Chargee may decide:

14.3.1.1 whether and, if so, when, how and to what extent (i) to exercise its rights under this deed and (ii) to exercise any other right it might have in respect of the Chargor (or otherwise); and

14.3.1.2 when and how to apply any payments and distributions received for its own account under this deed,

and the Chargor has no right to control or restrict the Chargee's exercise of this discretion.

14.3.2 No provision of this deed will interfere with the Chargee'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.

#### **14.4 Set-off and combination of accounts**

14.4.1 No right of set-off or counterclaim may be exercised by the Chargor in respect of any payment due to the Chargee under this deed.

14.4.2 The Chargee may at any time after this deed has become enforceable and without notice to the Chargor:

14.4.2.1 combine or consolidate all or any of the Chargor's then existing accounts with, and liabilities to, the Chargee;

14.4.2.2 set off or transfer any sums standing to the credit of any one or more of such accounts; and/or

14.4.2.3 set-off any other obligation owed by the Chargee to the Chargor (whether or not matured at such time),

in or towards satisfaction of any of the Secured Obligations. The Chargee is to notify the Chargor in writing that such a transfer has been made.

14.4.3 If any amount is in a different currency from the amount against which it is to be set off, the Chargee may convert either amount (or both) at any reasonable time and at any reasonable rate.

#### **14.5 Power to establish new account**

If the Chargee receives notice of a subsequent mortgage or charge relating to the Charged Chattels, it will be entitled to close any account and to open a new account in respect of the closed account. If the Chargee 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.

#### **14.6 Information**

The Chargor authorises the holder of any prior or subsequent security to provide to the Chargee, and the Chargee to receive from such holder, details of the state of account between such holder and the Chargor.

#### **14.7 No assignment by Chargor**

The Chargor must 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 Chargee.

#### **14.8 Transfer by Chargee**

14.8.1 The Chargee may at any time assign, novate or otherwise deal with any rights or obligations under or interests in this deed to any person also taking an assignment, novation or other dealing in respect of the Lease.

14.8.2 The Chargee may disclose any information about the Chargor, the Charged Chattels and/or this deed to any person to whom it proposes to assign or 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.

14.8.3 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 a Party.

#### **14.9 Avoidance of settlements and other matters**

14.9.1 Any payment made by the Chargor, or settlement or discharge between the Chargor and the Chargee, is conditional upon no security or payment to the Chargee by the Chargor or any other person being avoided or set aside or ordered to be refunded or reduced by virtue of any provision or enactment relating to bankruptcy, insolvency, administration or liquidation for the time being in force and accordingly (but without limiting the Chargee's other rights under this deed) the Chargee shall be entitled to recover from the Chargor the value which the Chargee has placed upon such security or the amount of any such payment as if such payment, settlement or discharge had not occurred.

14.9.2 If the Chargee, acting reasonably, considers that any amount paid by the 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 14.9.1, then for the purposes of this deed such amount shall not be considered to have been irrevocably paid.

#### **14.10 Waiver of immunity**

To the extent that the 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 the Chargor or its assets such immunity (whether or not claimed), it hereby irrevocably agrees not to claim and hereby irrevocably waives such immunity to the fullest extent permitted by the laws of such jurisdiction.

#### **14.11 Time Deposits**

Without prejudice to the provisions of clause 14.4 (*Set-off and combination of accounts*), if during the Security Period a time deposit matures on any account which the Chargor holds with the Chargee and an Event of Default has arisen which is continuing but no amount of Secured Obligations has fallen due and payable such time deposit shall be renewed for such further maturity as the Chargee may in its absolute discretion determine.

**14.12 Perpetuity Period**

The perpetuity period applicable to the trusts created by this deed is 80 years.

**14.13 Release of security**

On the Discharge Date (but subject to clause 14.9 (*Avoidance of settlements and other matters*)) the Chargee shall at the request and proper cost of the Chargor execute and do all deeds, acts and things as may be necessary to release the Charged Chattels from the security constituted hereby or pursuant hereto.

**15. COMMUNICATIONS{ TC "15 COMMUNICATIONS" \ 1 }**

15.1 Each notice, consent and other communication in respect of this deed will be effective only if made by letter or fax, delivered to the relevant address or fax number specified on the execution page(s) of this deed (or to any substitute address or fax number notified in writing by the relevant Party for this purpose) and marked for the attention of the specified department/individual, if applicable. Each communication by letter will be effective only if delivered by hand, sent by first class post (if sent from and to an address in the UK) or sent by airmail (if sent from or to an address elsewhere).

15.2 Each communication will become effective as follows (references to times are to times in the place of delivery of the communication):

15.2.1 a hand-delivered letter will be effective as soon as it is delivered (or, if it is delivered after 5pm or on a day that is not a Business Day, it will be effective at 9am on the next Business Day);

15.2.2 a letter sent by post from and to an address in the UK will be effective at 9am on the second Business Day after it is posted and a letter sent by airmail from or to an address elsewhere will be effective at 9am on the tenth Business Day after it is posted; and

15.2.3 each communication to the Chargee will become effective only when actually received by the Chargee.

**16. GOVERNING LAW{ TC "16 GOVERNING LAW" \ 1 }**

**16.1 Governing law**

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

**17. THIS DEED{ TC "17 THIS DEED" \ 1 }**

**17.1 Consideration**

The Chargor has entered into this deed in consideration of the Chargee agreeing to provide (or to continue to provide) finance facilities to it on the terms agreed between them.

**17.2 Execution of this deed - counterparts**

If the Parties execute this deed in separate counterparts, this deed will take effect as if they had all executed a single copy.

**17.3 Execution of this deed - formalities**

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.

**17.4 Partial invalidity**

17.4.1 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.

17.4.2 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).

**17.5 Other security**

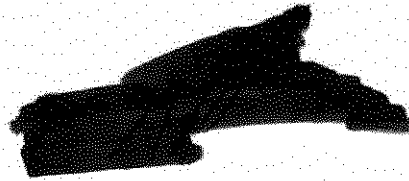
This deed is in addition to, and does not operate so as in any way to prejudice or affect, or be prejudiced or affected by, any other security or guarantee which the Chargee may now or at any time after the date of this deed hold for or in respect of the Secured Obligations.

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

## EXECUTION

**SIGNED** as a deed by  
**EVANS FOREST HOLDINGS LIMITED**  
acting by a director and its secretary  
or two directors

)  
)  
)  
)



Director



Director / Secretary

**SIGNED** as a deed by  
**FOREST HOLIDAYS LIMITED**  
acting by a director before  
an independent witness

)  
)  
)  
)

Director

Signature of witness:

Name of witness:

Address of witness:

Occupation of witness: