



Registration of a Charge

Company name: **PALL MALL (1) LIMITED**

Company number: **09214292**



X3HNUFF4

Received for Electronic Filing: **02/10/2014**

Details of Charge

Date of creation: **19/09/2014**

Charge code: **0921 4292 0001**

Persons entitled: **Longbow Investment No.3 S. à R.L.**

Brief description:

Contains fixed charge(s).

Contains negative pledge.

Authentication of Form

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

Authentication of Instrument

Certification statement: **I CERTIFY THAT THE ELECTRONIC COPY INSTRUMENT
DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION
IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by: **WRAGGE LAWRENCE GRAHAM & CO LLP**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 9214292

Charge code: 0921 4292 0001

The Registrar of Companies for England and Wales hereby certifies that a charge dated 19th September 2014 and created by PALL MALL (1) LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 2nd October 2014 .

Given at Companies House, Cardiff on 2nd October 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 SEPTEMBER 2014

(1) PALL MALL (1) LIMITED

as Chargor

(2) LONGBOW INVESTMENT NO. 3 S.À R.L.

as Security Agent

SECURITY OVER SHARES
IN
PALL MALL 2 LIMITED

WE CERTIFY THIS TO BE A TRUE AND COMPLETE
PHOTOGRAPHIC COPY OF THE ORIGINAL
Wragge Lawrence Graham & Co LLP
WRAGGE LAWRENCE GRAHAM & CO LLP SOLICITORS
4 MORE LONDON RIVERSIDE LONDON SE1 2AU
DATE 26.09.14



CONTENTS

Clause		Page
1	INTERPRETATION	3
2	FIXED SECURITY	6
3	REPRESENTATIONS AND WARRANTIES	7
4	UNDERTAKINGS	8
5	DIVIDENDS, VOTING RIGHTS, CALLS AND OBLIGATIONS	10
6	WHEN SECURITY BECOMES ENFORCEABLE	12
7	ENFORCEMENT OF SECURITY	12
8	RECEIVER	14
9	POWERS OF RECEIVER	15
10	APPLICATION OF PROCEEDS	17
11	EXPENSES AND INDEMNITY	18
12	DELEGATION	19
13	FURTHER ASSURANCES	19
14	POWER OF ATTORNEY	19
15	PRESERVATION OF RIGHTS	20
16	MISCELLANEOUS	25
17	RELEASE	28
18	NOTICES	29
19	COUNTERPARTS	30
20	GOVERNING LAW	30
21	ENFORCEMENT	30
22	THIRD PARTY RIGHTS	31
	Schedule 1	33

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 and is not a certified copy. It is not to be used
 as evidence in any legal proceedings. It is to be
 used only for reference purposes.

THIS DEED is made on

19 September 2014

BETWEEN:

- (1) **PALL MALL (1) LIMITED**, a limited liability company incorporated in England and Wales (with registered number 09214292) whose registered office is at New Burlington House 1075 Finchley Road, London NW11 0PU (the "Chargor"); and
- (2) **Longbow Investment No. 3 S.À R.L.**, as agent and security trustee for and on behalf of the Finance Parties (the "Security Agent", which expression shall include all successor agents and/or security trustees appointed from time to time).

WHEREAS:

- (A) The Chargor enters into this Deed to secure the payment, performance and discharge of the Secured Liabilities (as defined below).
- (B) The Chargor's directors are satisfied that entering into and performing this Deed is in the best interests, and for the commercial purposes and corporate benefit, of the Chargor's business.
- (C) It is intended by the parties hereto that this document take effect as a deed notwithstanding the fact that the Security Agent may only execute this document under hand.

NOW THIS DEED WITNESSES AND IT IS AGREED as follows:

1 INTERPRETATION

1.1 Definitions

In this Deed:

Act	means the Law of Property Act 1925;
Borrower	means Pall Mall 2 Limited, a limited liability company incorporated in England and Wales with registered number 09201996 and with its registered office at New Burlington House 1075 Finchley Road, London, NW11 0PU;
Charged Assets	means the assets of the Chargor the subject of any Security created by (or intended to be created by) this Deed, and "Charged Asset" shall be construed accordingly;
Default Rate	means the rate of interest calculated in accordance with the default interest provisions contained in clause 8.4 (<i>Default Interest</i>) of the Facility Agreement except that references to the Obligors are to be construed as references to the Chargor;
Derivative Assets	means all assets deriving from any of the Securities including all allotments, accretions, offers, rights, dividends, interest,

income, distributions, benefits and advantages whatsoever at any time accruing, offered or arising in respect of or incidental to any of the Securities and all blocks, shares, rights, money or property accruing or offered at any time by way of conversion, redemption, bonus, preference, exchange, purchase, substitution, option, interest or otherwise in respect thereof;

Facility Agreement	means the facility agreement dated on or about the date hereof between amongst others (1) the Borrower as borrower (2) the company listed in schedule 2 thereto as original lender and (3) the Security Agent as security agent (as varied, amended, restated, novated, supplemented, extended, modified and/or replaced from time to time);
Financial Collateral	has the meaning ascribed to it in the Regulations;
Obligor	has the meaning ascribed to it in the Facility Agreement;
Receiver	means a receiver and manager or (if the Security Agent so specifies in the relevant appointment) a receiver, in either case, appointed under this Deed or pursuant to any statute, and shall include, if permitted by law, an administrative receiver or an administrator;
Regulations	means the Financial Collateral Arrangements (No.2) Regulations 2003;
Secured Liabilities	means all present and future obligations and liabilities (whether owed jointly or severally, whether incurred as principal or as surety, whether or not in respect of indebtedness and whether actual or contingent) of the Borrower, the Chargor and each other Transaction Obligor to the Finance Parties including, without limitation, under or in connection with each Finance Document (including, without limitation, this Deed);
Securities	means all shares or other securities legally and/or beneficially owned from time to time by or on behalf of the Chargor in the share capital of the Borrower including, without limitation, those specified in Schedule 1 (<i>Securities</i>);
Security FCA	means a Security Financial Collateral Arrangement as defined in the Regulations;
Security Period	means the period beginning on the date of this Deed and ending on the date on which the Security Agent confirms in writing to the Chargor that all the Secured Liabilities have been irrevocably and unconditionally paid and discharged in full.

Transaction Obligor has the meaning ascribed to it in the Facility Agreement.

1.2 Construction

- (a) Capitalised terms defined in the Facility Agreement have the same meaning when used in this Deed unless otherwise defined herein or the context otherwise requires.
 - (b) The provisions of clause 1.2 (*Construction*) of the Facility Agreement apply to this Deed as if they were set out in full in this Deed, except that references to the Agreement therein will be construed as references to this Deed.
 - (c) Any reference in this Deed to a mortgage or charge of any asset or property shall be construed so as to include:
 - (i) the proceeds of sale of any part of that asset or property, and any other monies paid or payable in respect of or in connection with that asset or property; and
 - (ii) the benefit of any covenants for title given or entered into by any predecessor in title in respect of that asset or property and all other rights, benefits, claims, contracts, warranties, remedies, Security or indemnities in respect of that asset or property.
 - (d) Any reference in this Deed to any party or person includes any person deriving title from it or any permitted successor, transferee or assignee (whether immediate or derivative).
 - (e) In this Deed:
 - (i) statements referring to the Security Agent's capacity as agent and/or trustee for the Finance Parties; and
 - (ii) any statements referring to monies, obligations or liabilities owing to, or other rights, benefits or discretions granted or created under this Deed to, or covenants, undertakings or other agreements made in favour of, the Security Agent and/or the Finance Parties (as the case may be).
- are by way of explanation or clarification only and shall not prejudice the meaning of "Security Agent" (or "Finance Parties", as the case may be) elsewhere in this Deed where such statements are not made.
- (f) References in this Deed to Clauses and Schedules are references to the clauses of and schedules to this Deed, unless the context otherwise requires.
 - (g) Pursuant to, and in accordance with, the definition of "Security Document" in the Facility Agreement, the parties hereto hereby agree and confirm that this Deed shall be a Finance Document for all purposes.
 - (h) If there is any conflict between any provisions of this Deed and the relevant provisions of the Facility Agreement, the relevant provisions of the Facility Agreement shall prevail.

- (i) The fact that no, or incomplete, details of Securities are included in the relevant Schedule, does not affect the validity or enforceability of any Security constituted by this Deed.
- (j) "Secured Liabilities" includes, without limitation:
 - (i) any refinancing, further advances, novation, deferral, or extension of the facility under the Finance Documents;
 - (ii) obligations and liabilities which any Finance Party may have acquired or may in the future acquire (whether by assignment, novation, transfer, purchase, security or otherwise) in accordance with the terms of the Finance Documents;
 - (iii) any claim for (a) breach of representation, warranty or undertaking or on any Event of Default or under any indemnity or (b) damages or restitution;
 - (iv) obligations and liabilities which would be treated as such but for the liquidation, administration or dissolution of, or similar event affecting the Chargor, the Borrower or any other Transaction Obligor, or any other person, including without limitation:
 - (A) any claim as a result of any recovery by the Chargor, the Borrower or any other person of a payment on the grounds of preference or otherwise; and
 - (B) any amounts which would be included as Secured Liabilities but for any discharge, non-provability, unenforceability or non-allowance of those amounts in any such insolvency, dissolution or other proceedings.

1.3 Avoidance

If the Security Agent considers that any amount paid by the Chargor or any other Transaction Obligor or any other person in connection with the satisfaction of the Secured Liabilities is reasonably likely to be avoided or otherwise set aside on the liquidation, bankruptcy or administration (whether out of court or otherwise) of the Chargor or any other Transaction Obligor or any other person, as applicable, or otherwise, then (a) the security constituted by this Deed shall continue and (b) that amount shall not be considered to have been irrevocably paid for the purpose of this Deed.

2 FIXED SECURITY

2.1 Creation

The Chargor, as continuing security for the payment, performance and discharge of all the Secured Liabilities and in the manner specified in Clause 2.2, charges in favour of the Security Agent (as agent and trustee for and on behalf of the Finance Parties):

- (a) by way of first legal mortgage and/or first fixed charge all its right, title, benefit and interest (both present and future) in, to and under the Securities held by it and/or any nominee or other person on its behalf; and

- (b) by way of a first fixed charge all its right, title, benefit and interest (both present and future) in, to and under the Derivative Assets.

2.2 Title guarantee

- (a) Every disposition effected by this Deed is made with full title guarantee.
- (b) The following provisions of the Law of Property (Miscellaneous Provisions) Act 1994 will not apply to Clause 2.1 (*Creation*), being:
 - (i) the words "other than any charges, encumbrances or rights which that person does not and would not reasonably be expected to know about" in section 3(1);
 - (ii) the words "except to the extent that" and all the words thereafter in section 3(2); and
 - (iii) section 6(2).
- (c) The other terms of this Deed do not limit or extend any of the covenants implied by virtue of Part 1 of the Law of Property (Miscellaneous Provisions) Act 1994 but create separate and independent obligations having effect cumulatively with those implied covenants.

3 REPRESENTATIONS AND WARRANTIES

3.1 Making of representations and warranties

The Chargor makes the representations and warranties set out in this Clause 3 to the Security Agent (as agent and trustee for and on behalf of the Finance Parties). The representations and warranties so set out are made on the date of this Deed and (other than Clause 3.2 (*Accuracy of information*) and clause 3.4 (*Stamp Duty*)) are deemed to be repeated by the Chargor throughout the Security Period on each day that representations or warranties are repeated under clause 16.29 (*Repetition*) of the Facility Agreement with reference to the facts and circumstances then existing.

3.2 Accuracy of Information

As at the date of this Deed, the Securities specified in Schedule 1 (*Securities*) are the only Securities in the Borrower in which the Chargor has an interest, whether direct or indirect.

3.3 Securities and Derivative Assets

- (a) The Chargor is the sole, absolute legal and beneficial owner of the Securities and the Derivative Assets, that no person save the Chargor has any right or interest of any sort whatsoever in or to the Securities and the Derivative Assets and that there are no agreements or arrangements (including any restrictions on transfer or rights of pre-emption) affecting the Securities and/or the Derivative Assets in any way which would or might in any way or fetter or otherwise prejudice the rights of the Security Agent or any mortgagee of the Securities and the Derivative Assets or any Receiver.
- (b) The Securities are duly authorised, validly issued and fully paid.

- (c) There are no covenants, agreements, conditions, interests, rights or other matters whatsoever which adversely affect the Securities and/or Derivative Assets other than under the Finance Documents.
- (d) There are no restrictions on the sale or transfer of all or any of the Securities to the Security Agent (or any other entity appointed by it) under the articles of association or other constitutional or organisational documents of the Borrower or otherwise.

3.4 Stamp duty

No stamp or registration duty or similar tax or charge is payable in its jurisdiction of Incorporation in respect of this Deed or the share transfer instruments to be delivered pursuant Clause 4.5(b) of this Deed.

4 UNDERTAKINGS

4.1 Duration

The undertakings in this Clause 4 shall remain in force throughout the Security Period and are given by the Chargor to the Security Agent (as agent and trustee for and on behalf of the Finance Parties).

4.2 Restrictions on dealings

The Chargor shall not, save as otherwise expressly permitted by the Finance Documents:

- (a) create or permit to subsist any Security of whatsoever nature or in relation to any Charged Asset other than any Security created by this Deed;
- (b) (whether by a single transaction or a number of related transactions, and whether at the same time or over a period of time) sell, transfer, novate, grant (including granting any option), declare a trust of, or otherwise dispose of (or purport to do any of the foregoing) any Charged Asset or any part thereof or permit the same to occur;
- (c) do or cause or permit to be done anything which may in any way depreciate, jeopardise or otherwise prejudice the value to the Security Agent (as agent and trustee for and on behalf of the Finance Parties) of the Security constituted hereby and/or the value of the Charged Assets; nor
- (d) sell or otherwise dispose of any of its receivables on recourse terms.

4.3 To comply with Laws relating to Charged Assets

The Chargor shall comply with all obligations under any law or statute and all by-laws and regulations relating to the whole or any part of the Charged Assets.

4.4 Covenant to perform

- (a) The Chargor shall at all times comply with the express terms of this Deed and the other finance Documents to which it is a party.

- (b) If the Chargor fails to perform any of its obligations under this Clause 4 then the Security Agent may take such steps as it considers appropriate to procure the performance of such obligations and shall not thereby be deemed to be a mortgagee in possession and the costs and expenses incurred by the Security Agent shall be reimbursed by the Chargor on demand and until so reimbursed shall carry interest (both before and after judgement, bankruptcy, liquidation or administration) at the Default Rate from the date of the same being incurred to the date of payment.

4.5 Deposit of Securities

The Chargor shall deposit with the Security Agent (as agent and trustee for and on behalf of the Finance Parties) on the date hereof and otherwise on coming into the possession or control of the Chargor:

- (a) all stock and share certificates and documents of title relating to the Securities;
- (b) duly executed transfers or stock transfer forms in respect of the Securities with the name of the transferee, the date and the consideration left blank;
- (c) duly executed, but undated resignation letters of each officer of the Borrower in respect of whose shares comprise the Securities charged; and
- (d) such other documents (including, without limitation, any declarations of trust in respect of any Securities which are not held in the Chargor's sole name) as the Security Agent may from time to time require for perfecting the title of the Security Agent to the Securities including any bonus or rights issue (duly executed by or signed on behalf of the registered holder) or for vesting or enabling the Security Agent to vest the same in itself or its nominees or in any purchaser;

to the intent, in each such case, that the Security Agent may if an Event of Default has occurred and is continuing, present them for registration.

4.6 Securities

- (a) The Chargor shall not (and shall otherwise procure that the following shall not occur) (without the prior written consent of the Security Agent or except as expressly provided in the Facility Agreement):
 - (i) permit any person other than the Chargor or the Security Agent (or the nominee or the agent of the Security Agent), to be registered as holder of the Securities or any part thereof;
 - (ii) do or cause or permit to be done anything which may in any way depreciate, jeopardise or otherwise prejudice the value to the Security Agent of the Charged Assets;
 - (iii) take or permit the taking of any action which may result in: (a) the rights attaching to any of the Charged Assets being altered; (b) further shares in the Borrower being issued; and/or (c) any Securities being consolidated, sub-divided or converted;

- (iv) amend the articles of association or other constitutional documents of the Borrower;
 - (v) take or permit the taking of any action which results in the redomiciliation of the Borrower to a jurisdiction other than England and Wales;
 - (vi) register the transfer of any Securities to any person; nor
 - (vii) raise any objection to the transfer of the Securities pursuant to the enforcement by the Security Agent of any of its rights under this Deed.
- (b) The Chargor hereby further covenants and agrees with the Security Agent (as agent and trustee for and on behalf of the Finance Parties) that:
- (i) the Security Agent may hold all or any of such Securities in any branch of the Security Agent or with any correspondents or other agents whether in the United Kingdom or overseas and that all the Securities shall be held at the expense, risk and responsibility of the Chargor; and
 - (ii) the Chargor shall provide to the Security Agent a copy of any report, accounts, circular or notice received in respect of or in connection with any of the Securities promptly following the receipt thereof by the Chargor.

4.7 Perfection of Security

The Chargor will take such action as is available to it:

- (a) to perfect and protect the Security constituted or intended to be constituted under this Deed;
- (b) to maintain the Security constituted or intended to be constituted under this Deed;
- (c) to make all filings and registrations and to take all such other steps as may be necessary in connection with the creation, perfection or protection of the Security constituted or intended to be constituted under this Deed;
- (d) to procure that the Borrower shall promptly register any transfer of title to the Securities pursuant to any enforcement by the Security Agent of its rights under this Deed.

5 DIVIDENDS, VOTING RIGHTS, CALLS AND OBLIGATIONS

5.1 Dividends and Voting Rights

- (a) The Security Agent (as agent and trustee for and on behalf of the Finance Parties) hereby agrees with the Chargor that until the occurrence of an Event of Default which is continuing the Chargor may exercise all voting rights and other rights and powers attached to the Securities provided that it does not exercise the same in any way which may, in the opinion of the Security Agent, be prejudicial to the interests of the Security Agent under the Finance Documents or which varies the rights attaching to or conferred by the Securities in a way which could reasonably be expected to adversely affect the interests of the Finance Parties (or any of them).

- (b) On or at any time after the occurrence of an Event of Default which is continuing, or after the Chargor has requested the appointment of a Receiver, or after the appointment of a Receiver in accordance with this Deed:
 - (i) the Security Agent may (in the name of the Chargor or otherwise and without any consent or authority on the part of the Chargor irrespective of any direction given by the Chargor) exercise or refrain from exercising all voting and other rights and powers which may be exercised by the person or persons in whose name or names any of the Securities are registered or who is the holder of any of them (including all the powers and discretions conferred on trustees by the Trustee Act 1925 and the Trustee Act 2000 except as otherwise expressly provided for in this Deed but provided that the duty of care set out in Section 1(1) of the Trustee Act 2000 shall not apply to any such power of investment (however conferred) by the Security Agent in respect of securities or property subject to a trust), and the Chargor hereby irrevocably authorises and appoints the Security Agent to exercise all such voting and other rights accordingly. (For the avoidance of doubt, in case of any conflict between the Trustee Act 2000 and the terms of this Deed, the terms of this Deed shall prevail, to the fullest extent permitted by law); and
 - (ii) all Derivative Assets shall be paid without any set off or deduction whatsoever to the Security Agent.
- (c) The Chargor shall not nominate another person to enjoy or exercise all or any of its specified rights in relation to its Securities, as contemplated by section 145 of the Companies Act 2006 or otherwise.

5.2 Calls and other obligations

- (a) The Chargor shall promptly pay all calls, instalments or other payments due and payable in respect of any of its Securities and Derivative Assets and if it fails to do so the Security Agent may pay the calls, instalments or other payments on behalf of the Chargor. The Chargor shall forthwith on demand reimburse the Security Agent for any payment made by the Security Agent pursuant to this Clause 5 together with interest (as well after as before judgement, liquidation, bankruptcy, winding up or administration (whether out of court or otherwise)) at the Default Rate of interest from the date of payment by the Security Agent up to and including the date of reimbursement by the Chargor.
- (b) Without limiting its obligations under the Facility Agreement, the Chargor shall comply with all requests for information within its knowledge relating to the Securities which are made under section 793 of the Companies Act 2006 or which could be made under section 793 if the Borrower was a public limited company or under any similar provision contained in the articles of association or other constitutional documents of the Borrower relating to the Securities and, if it fails to do so, the Security Agent may provide such information as it may have on behalf of the Chargor.
- (c) The Chargor shall comply with all other conditions and obligations assumed by it in respect of any of its Securities and Derivative Assets.
- (d) The Security Agent is not obliged to carry out any obligation of the Chargor in respect of the Securities and Derivative Assets or to make any payment, or to make any enquiry as

to the nature or sufficiency of any payment received by it or the Chargor, or to present or file any claim or take any other action to collect or enforce the payment of any amount to which it may have been or to which it may be entitled under this Deed.

6 WHEN SECURITY BECOMES ENFORCEABLE

The security constituted by this Deed shall become immediately enforceable and the power of sale and other powers conferred by section 101 of the Act, as varied or amended by this Deed, shall be immediately exercisable upon and at any time after the occurrence of an Event of Default that is continuing, after which the Security Agent may in its absolute discretion enforce all or any part of the security in any manner it sees fit or in accordance with the provisions of the Finance Documents.

7 ENFORCEMENT OF SECURITY

7.1 General

- (a) The statutory power of sale conferred by section 101 of the Act (as varied by this Deed) shall arise on the date of this Deed but the Security Agent shall not exercise any such power of sale until the Security constituted by this Deed has become enforceable pursuant to Clause 7 (*When security becomes enforceable*) above.
- (b) Section 103 of the Act (restricting the power of sale) and section 93 of the Act (restricting the right of consolidation) do not apply to the security constituted by this Deed.
- (c) The Chargor shall (at its own cost) forthwith upon the request of the Security Agent, appoint a second trustee or co-trustee (if there are not already two such trustees) (in each case approved by the Security Agent) of all or part of the Charged Assets.

7.2 Right of Appropriation of Financial Collateral

- (a) To the extent that any of the Securities comprised in the Charged Assets constitute Financial Collateral and this Deed and the obligations of the Chargor under this Deed constitute a Security FCA, the Security Agent (as agent and trustee for and on behalf of the Finance Parties) shall have the right, at any time after the security constituted by this Deed has become enforceable, to appropriate all or any part of such Financial Collateral in or towards discharge of the Secured Liabilities. For this purpose, the parties agree that the value of such Financial Collateral shall be the market price of such Securities determined by the Security Agent by such process as the Security Agent may select (including, without limiting the generality of the foregoing, independent valuation).
- (b) The parties hereby agree that the manner of valuation provided for in Clause 7.2(a) shall constitute a commercially reasonable manner of valuation for the purposes of the Regulations.
- (c) To the extent that any of the Charged Assets constitute Financial Collateral, the Chargor hereby agrees that such Charged Assets shall be held or re-designated so as to be under the control of the Security Agent for the purposes of the Regulations.

7.3 Contingencies

If the Security Agent enforces the security constituted by this Deed (whether by the appointment of a Receiver or otherwise howsoever) at a time when no amounts are due under the Finance Documents but at a time when amounts may or will become so due, the Security Agent (or the Receiver) may pay the proceeds of any recoveries effected by it into an interest bearing account or otherwise as directed by the Security Agent.

7.4 No liability as mortgagee in possession

Neither the Security Agent nor any Receiver will be liable, by reason of entering into possession of a Charged Asset, to account as mortgagee or security holder in possession or for any loss on realisation or for any default or omission for which a mortgagee or security holder in possession might otherwise be liable.

7.5 Privileges

Each Receiver and the Security Agent is entitled to all the rights, powers, privileges and immunities conferred by the Act on mortgagees and receivers when such receivers have been duly appointed under the Act, except that section 103 of the Act does not apply.

7.6 Protection of third parties

No person (including a purchaser) dealing with the Security Agent or a Receiver or its or his agents need enquire;

- (a) whether the Secured Liabilities have become payable; or
- (b) whether any power which the Security Agent or that Receiver may purport to exercise has become exercisable or is being properly exercised; or
- (c) whether any money remains due under the Finance Documents; or
- (d) how any money paid to the Security Agent or to the Receiver is to be applied.

7.7 Redemption of prior mortgages

At any time after the security constituted by this Deed has become enforceable, the Security Agent may, at the sole cost and expense of the Chargor (payable to the Security Agent on demand):

- (a) redeem any prior form of Security on or relating to any Charged Asset; and/or
- (b) procure the transfer of that form of Security to itself; and/or
- (c) settle and pass the accounts of any prior mortgagee, chargee, security holder or encumbrancer which once so settled and passed shall be conclusive and binding on the Chargor.

The Chargor shall on demand pay to the Security Agent all principal monies and interest and all costs, expenses and losses incidental to any such redemption or transfer made pursuant to this Clause 7.7.

8 RECEIVER

8.1 Appointment of Receiver

At any time after the security constituted by this Deed becomes enforceable, or at any time if the Chargor so requests the Security Agent in writing, the Security Agent may, without further notice, appoint in writing under seal or in writing under its hand any one or more persons to be a Receiver of all or any part of the Charged Assets as if the Security Agent had become entitled under the Act to exercise the power of sale conferred under the Act.

8.2 Relationship with Security Agent

To the fullest extent permitted by law, any right, power or discretion conferred by this Deed (be it express or implied) or by law upon a Receiver, security holder or mortgagee of any Charged Asset may, after the security created by this Deed has become enforceable, be exercised by the Security Agent (as agent and trustee for and on behalf of the Finance Parties) in relation to any Charged Asset either:

- (a) without first appointing a Receiver; or
- (b) notwithstanding the appointment of a Receiver.

8.3 Agent of the Chargor

For all purposes each Receiver is deemed to be the agent of the Chargor and accordingly is deemed to be in the same position as a Receiver duly appointed by a mortgagee under the Act. The Chargor alone shall be responsible for the Receiver's contracts, engagements, acts, commissions, omissions, defaults and losses and for liabilities incurred by him (save for any wilful misconduct or fraud by him), and no Finance Party shall incur any liability of whatsoever nature (either to the Chargor or to any other person) by reason of the Security Agent making his appointment as a Receiver or for any other reason. The agency of the Receiver shall continue until the Chargor shall go into liquidation and after that the Receiver shall act as principal and shall not become the agent of the Security Agent.

8.4 Removal

The Security Agent (as agent and trustee for and on behalf of the Finance Parties) may by writing under its hand:

- (a) remove any Receiver appointed by it; and
- (b) whenever it deems it expedient, appoint a new Receiver in the place of any Receiver whose appointment may for any reason have terminated.

8.5 Remuneration

The Security Agent may, subject to section 36 of the Insolvency Act 1986, fix the remuneration of any Receiver appointed by it without being limited to the maximum rate specified in section 109(6) of the Act.

9 POWERS OF RECEIVER

9.1 General

- (a) In addition to those conferred by the Act on any receiver appointed under the Act, each Receiver has, and is entitled to exercise, all of the rights, powers, remedies and discretions set out below in this Clause 9 and all other rights, powers, remedies and discretions conferred on any Receiver or the Security Agent elsewhere in this Deed.
- (b) If there is more than one Receiver holding office at the same time, unless the document appointing him states otherwise, each Receiver may exercise all of the powers conferred on a Receiver under this Deed individually and to the exclusion of any other Receivers.
- (c) Every Receiver for the time being holding office by virtue of an appointment made by the Security Agent under this Deed shall have all the rights, powers and discretions conferred by the Act, the Insolvency Act 1986 and otherwise by law.
- (d) A Receiver may, in the name of the Chargor if he so wishes:
 - (i) do all acts and things which he may consider expedient for realising any Charged Asset or incidental or conducive to any of the rights, powers or discretions conferred on a Receiver under or by virtue of this Deed or by law; and
 - (ii) exercise in relation to any Charged Asset all the powers, authorities and things which he would be capable of exercising as if he were its absolute beneficial owner.

9.2 Borrow money

A Receiver may raise and borrow money (either unsecured or on the security of any Charged Asset either in priority to the security constituted by this Deed or otherwise) on any terms and for whatever purpose which he thinks fit. No person lending that money need enquire as to the propriety or purpose of the exercise of that power or to check the application of any money so raised or borrowed.

9.3 Carry on business

A Receiver may carry on the business of the Chargor as he thinks fit.

9.4 Compromise

A Receiver may settle, adjust, refer to arbitration, compromise and arrange any claims, accounts, disputes, questions and demands with or by any person who is or claims to be a creditor of the Chargor or relating in any way to any Charged Asset.

9.5 Delegation

A Receiver may delegate his powers in accordance with Clause 12 (*Delegation*).

9.6 Employees

For the purposes of this Deed, a Receiver may:

- (a) appoint and discharge managers, officers, agents, accountants, servants, workmen and others for the purposes of this Deed upon such terms as to remuneration or otherwise as he may think proper; and
- (b) discharge any such persons appointed by the Chargor.

9.7 Legal actions

A Receiver may bring, prosecute, enforce, defend and abandon all actions, suits and proceedings in relation to any Charged Asset as he considers expedient.

9.8 Possession

A Receiver may take immediate possession of, get in and collect any Charged Assets.

9.9 Receipts

A Receiver may give valid receipts for all monies and execute all assurances and things which he may consider expedient for realising any Charged Asset.

9.10 Sale of assets

A Receiver may sell, exchange, grant an option over, convert into money and realise, or otherwise dispose of any Charged Asset by public auction or private contract in any manner and on any terms which he thinks proper (including to any Subsidiary referred to below). The consideration for any such transaction may be nil, or may consist of cash, shares of profits or sums calculated by reference to profits or turnover, debentures or other obligations, shares, stock or other valuable consideration and any such consideration may be payable in a lump sum or by instalments spread over such period as he thinks fit. Any such sale, exchange, grant, conversion, realisation or disposal may be on terms excluding or limiting liability of the Security Agent and/or the Receiver.

9.11 Subsidiaries

A Receiver may form a Subsidiary or Subsidiaries of the Chargor and transfer or otherwise dispose of to any such Subsidiary any Charged Asset (or part thereof) and a Receiver may grant security over the assets of any such Subsidiary.

9.12 Oppose Petitions and Applications

A Receiver may take proceedings or any other step as it considers fit to oppose:

- (a) any petition to place the Chargor into liquidation, or provisional liquidation or an

application for the appointment of an administrator (whether out of court or otherwise); or

- (b) the taking of any step or procedure under any other analogous insolvency or bankruptcy laws in any other jurisdiction in relation to the Chargor or any of its assets.

9.13 Administrative costs

A Receiver may pay the proper administrative charges of the Security Agent and/or any Finance Party in respect of time spent by their agents and employees in dealing with matters raised by the Receiver, or relating to the receivership of the Chargor or any Charged Assets.

9.14 Securities

A Receiver may exercise all voting and other rights attaching to the Securities and/or the Derivative Assets.

9.14 Appoint Co-trustee

A Receiver may appoint a second trustee or co-trustee of all or any part of the Charged Assets.

10 APPLICATION OF PROCEEDS

- 10.1 Subject to Clause 10.4, all amounts received or recovered by the Security Agent (as agent and trustee for and on behalf of the Finance Parties), any Receiver or any administrator after this Deed has become enforceable, or in connection with the realisation or enforcement of all or any part of this Deed (for the purposes of this Clause 10, the "Recoveries"), shall be applied (and the parties hereto shall direct or request any administrator to apply such monies) in the following order of priority (but without prejudice to the right of the Security Agent (as agent and trustee for and on behalf of the Finance Parties) to recover any shortfall from the Chargor):

- (a) in discharging any sums (including remuneration) owing to the Security Agent, any Receiver or any Delegate;
- (b) in payment of all costs and expenses incurred by the Security Agent or any other Finance Party in connection with any realisation or enforcement of the Security constituted by the Security Documents taken in accordance with the terms of this Deed, the Facility Agreement and the other Finance Documents; and
- (c) in payment to the Security Agent for application in payment of, or provision for, the Secured Liabilities in accordance with clause 28.5 (*Partial payments*) of the Facility Agreement; and
- (d) (upon termination of the Security Period) in payment of the surplus (if any) to the Chargor or other person entitled to it.

- 10.2 Clause 10.1 overrides any appropriation made by the Chargor.

- 10.3 Clause 10.1 is subject to the claims of any person having at law prior rights thereto, and is by way of variation of the provisions of the Act.

- 10.4 The Security Agent may, in its discretion, hold any amount of the Recoveries in an interest

bearing suspense or impersonal account(s) in the name of the Security Agent with such financial institution (including itself) and for so long as the Security Agent shall think fit (the interest being credited to the relevant account) for later application under Clause 10.1 in respect of:

- (a) any sum to the Security Agent, any Receiver or any Delegate; and
- (b) any part of the Secured Liabilities,

that the Security Agent reasonably considers, in each case, might become due or owing at any time in the future.

11 EXPENSES AND INDEMNITY

- 11.1 The Chargor shall, within five Business Days of demand, pay to the Security Agent and every Receiver or Delegate (a "Relevant Person") the amount of all costs and expenses (including legal fees, valuers' fees, and consulting and other professional fees) incurred by that Relevant Person in connection with the enforcement of, or the preservation of any rights under, this Deed or the security constituted hereby and with any proceedings instituted by or against that Relevant Person as a consequence of it entering into this Deed, taking or holding the security constituted hereby, or enforcing those rights.
- 11.2 The Chargor shall promptly indemnify each Relevant Person against any cost, loss or liability incurred by any of them as a result of:
- (a) any failure by the Chargor to comply with its obligations under Clause 11.1;
 - (b) the taking, holding, protection or enforcement of the security constituted by this Deed;
 - (c) the exercise of any of the rights, powers, discretions, authorities and remedies vested in the Security Agent and/or each Receiver and Delegate by this Deed or by law;
 - (d) any default by the Chargor in the performance of any of the obligations expressed to be assumed by it in this Deed;
 - (e) acting as Security Agent, Receiver or Delegate (as the case may be) under this Deed or which otherwise relates to any of the Security Property constituted by or in connection with this Deed (otherwise, in each case, than by reason of the Relevant Person's gross negligence or wilful misconduct).
- 11.3 The Chargor shall pay interest at the Default Rate on the sums payable under this Clause 11 from the date on which the liability was incurred to the date of actual payment (both before and after judgement).
- 11.4 Each Relevant Person may, in priority to any payment to the Finance Parties, indemnify itself out of the Charged Assets in respect of, and pay and retain, all sums necessary to give effect to the indemnity in this Clause 11 and shall have a lien on the Charged Assets and the proceeds of the enforcement of the Charged Assets for all moneys payable to it.

12 DELEGATION

The Security Agent and any Receiver may delegate by power of attorney or in any other manner to any person any right, power or discretion exercisable by the Security Agent or any Receiver under this Deed. Any such delegation may be made upon the terms (including power to sub-delegate) and subject to any regulations which the Security Agent or such Receiver (as the case may be) may think fit. Neither the Security Agent nor any Receiver will be in any way liable or responsible to the Chargor for any loss or liability arising from any act, default, omission or misconduct on the part of any such delegate or sub-delegate. References in this Deed to a Receiver or Security Agent shall be deemed to include delegates appointed in accordance with this Clause 12.

13 FURTHER ASSURANCES

13.1 The Chargor shall promptly do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Security Agent may specify (and in such form as the Security Agent may require in favour of the Security Agent or its nominee(s)):

- (a) to create, perfect, protect and maintain the Security created or intended to be created under or evidenced by this Deed (which may include the execution or re-execution of a mortgage, charge, assignment or other Security over all or any of the Charged Assets or for the exercise of any rights, powers and remedies of the Security Agent or the Finance Parties or a Receiver provided by or pursuant to this Deed or by law; and/or
- (b) (if an Event of Default has occurred and is continuing) to facilitate the realisation of the assets (including the Charged Assets) which are, or are intended to be, the subject of this Deed and the Security created hereunder.

13.2 The Chargor shall take all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Security conferred or intended to be conferred on the Security Agent or the Finance Parties by or pursuant to this Deed.

13.3 The obligations of the Chargor under this Clause 13 shall be in addition to and not in substitution for the covenants for further assurance deemed to be included herein by virtue of section 2(1)(b) of the Law of Property (Miscellaneous Provisions) Act 1994.

14 POWER OF ATTORNEY

14.1 The Chargor by way of security hereby irrevocably appoints the following, namely:

- (a) the Security Agent;
- (b) each and every person to whom the Security Agent shall from time to time have delegated the exercise of the power of attorney conferred by this Clause; and
- (c) any Receiver appointed hereunder and for the time being holding office as such;

jointly and also severally to be its attorney or attorneys with full power of substitution and in its name and otherwise on its behalf (and respect of (b) to (c) below only at any time after the

occurrence of an Event of Default which is continuing), to do all acts and things and to sign, seal, execute, deliver, perfect and do all deeds, instruments, documents, acts and things which may be necessary for:

- (a) carrying out any obligation imposed on the Chargor by or pursuant to this Deed which the Chargor has failed to carry out (including but not limited to the obligations of the Chargor under Clause 13 (*Further Assurances*) and the statutory covenant referred to in such Clause);
- (b) carrying out any sale, lease or other dealing by the Security Agent, its delegates, any Receiver into effect;
- (c) transferring ownership or title in the Charged Assets or other property or assets or otherwise howsoever;
- (d) the purposes of the Security Agent or such Receiver appointing a second trustee or co-trustee of all or part of the Charged Assets; and
- (e) getting in the Charged Assets (if applicable);

and generally for enabling the Security Agent, its delegates or any Receiver to exercise the respective powers conferred on them by or pursuant to this Deed or by law.

14.2 The Security Agent shall have full power to delegate the power conferred on it by this Clause, but no such delegation shall preclude the subsequent exercise of such power by the Security Agent itself or preclude the Security Agent from making a subsequent delegation thereof to some other person; any such delegation may be revoked by the Security Agent at any time.

14.3 The power of attorney hereby granted is as regards the Security Agent, its delegates and any Receiver (and as the Chargor hereby acknowledges) granted irrevocably and for value as part of the security constituted by this Deed to secure proprietary interests in and the performance of obligations owed to the respective donees within the meaning of the Powers of Attorney Act 1971.

14.4 The Chargor hereby ratifies and confirms, and agrees to ratify and confirm, whatever any such attorney shall do or purport to do in the lawful exercise or purported lawful exercise of the power of attorney contained in this Clause 14.

15 PRESERVATION OF RIGHTS

15.1 Additional security

The security constituted by this Deed is in addition to and not in substitution for, and is not in any way to be merged into or in any way excluded or prejudiced by (nor shall it prejudice), any other security, guarantee or indemnity now or subsequently held by the Security Agent or any Finance Party for any of the Secured Liabilities or any other amount due by the Chargor, the Borrower or any Transaction Obligor to the Security Agent or any Finance Party. Neither shall it be prejudiced by (nor prejudice) any rights of set-off, combination of accounts, lien or other rights exercisable by the Security Agent or any Finance Party as banker.

15.2 Continuing security

The security constituted by this Deed is continuing and shall extend to the ultimate balance of all the Secured Liabilities, regardless of any intermediate payment, performance or discharge in whole or in part, and shall continue in full force and effect until the end of the Security Period.

15.3 Reinstatement

(a) If any payment by the Chargor or any other person or any release, discharge or arrangement given by the Security Agent or a Finance Party (whether in respect of the obligations of the Chargor, the Borrower or any Transaction Obligor, or any other person, or any security for those obligations or otherwise) is avoided or reduced or must be restored as a result of liquidation, administration, bankruptcy or insolvency or any similar event, or otherwise howsoever (in each case whether in whole or part):

- (i) the liability of the Chargor shall continue or be reinstated as if the payment, discharge, avoidance, reduction or restoration had not occurred; and
- (ii) the Security Agent and each Finance Party shall be entitled to recover the value or amount of that security or payment from the Chargor, as if the payment, discharge, avoidance, reduction or restoration had not occurred;

and any liability under this Clause 15.3 shall be secured by this Deed.

(b) The Finance Parties may freely concede or compromise any claim that any payment, security or other disposition is liable to avoidance or restoration.

15.4 Waiver of defences

The obligations of the Chargor under this Deed, the security constituted by this Deed, and the rights, powers and remedies of the Security Agent and the Finance Parties hereunder or at law, shall in each case not be discharged, impaired or otherwise affected by (without limitation, and whether or not known to the Chargor or any Finance Party):

- (a) any time, indulgence, waiver (in whole or in part, and howsoever fundamental) or consent granted to, or composition with the Borrower, any Transaction Obligor or any other person;
- (b) any delay or forbearance by any Finance Party in exercising its rights or remedies under any Finance Document;
- (c) the release of the Borrower, any Transaction Obligor or any other person under the terms of any composition, compromise or arrangement with any creditor of the Borrower, any or any other person;
- (d) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, the Borrower, any Transaction Obligor or any other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;

- (e) any incapacity, disability, or lack of power, authority or legal personality of or dissolution or change in the members, constitution, identity, control, function or status of the Borrower, any Transaction Obligor or any other person;
- (f) any amendment, novation, supplement, extension (whether of maturity or otherwise howsoever) or restatement (in each case, however fundamental and of whatsoever nature and whether or not more onerous) or replacement of a Finance Document or any other document or security;
- (g) any change in the constitution or identity of the Finance Parties or the Security Agent, including (without limitation): (a) the absorption or amalgamation by or of any Finance Party or the Security Agent with any person; (b) the acquisition of all or part of any Finance Party or the Security Agent's undertaking or assets by any other person; (c) any reconstruction or reorganisation of any Finance Party or the Security Agent of any kind; or (d) any assignment, transfer, novation, participation or other disposal (whether in whole or part) of the Finance Parties' rights and/or obligations under the Finance Documents or any of them;
- (h) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security, to the intent that the Chargor's obligations under this Deed shall remain in full force, as if there were no such unenforceability, illegality or invalidity;
- (i) any postponement, discharge, reduction, non-provability or other similar circumstance affecting any obligation of any other person under or in connection with any Finance Document or any other document or security resulting from any insolvency, liquidation, administration, bankruptcy or dissolution proceedings or similar proceedings or from any law, regulation or order so that each such obligation shall for the purposes of the Chargor's obligations under this Deed be construed as if there were no such circumstance;
- (j) any other act, omission, matter or thing (whether or not known to the Chargor or any Finance Party) which, but for this Clause 15.4, might reduce, release, diminish, discharge, impair, prejudice or otherwise affect the obligations of the Chargor under this Deed, the security constituted by this Deed, and/or the rights, powers and remedies conferred upon the Security Agent and the Finance Parties by any Finance Document or at law.

15.5 Confirmations

Without prejudice to the generality of Clause 15.4 (*Waiver of defences*), the Chargor hereby expressly confirms that it intends that the Security constituted by (or intended to be constituted by) this Deed shall, in each case, extend from time to time to any (however fundamental and whether or not more onerous) variation, increase, extension or addition to or of any of the Finance Documents and/or any facility or amount made available under any of the Finance Documents for the purpose of or in connection with (without limitation) any of the following:

- (a) business or property acquisitions of any nature;
- (b) increasing working capital;

- (c) enabling investor distributions to be made;
- (d) carrying out restructurings;
- (e) refinancing any other indebtedness;
- (f) making existing or additional facilities available to existing or new borrowers;
- (g) increasing or decreasing any facility or increasing or decreasing the period for which any facility is available, or in which it or the Secured Liabilities are payable;
- (h) the changing of the identity of any party or parties (including, without limitation, the identity of the providers of any security, guarantees or indemnities);
- (i) any other variation or extension of the purposes for which any such facility or amount might be available from time to time;
- (j) any other variation, renewal, payment, compromise, discharge, extension or release, in whole or in part, of any Finance Document or any modifications to the terms thereof; and/or
- (k) any fees, costs and/or expenses (including, without limitation, legal, accountancy, consultancy, and/or valuation expenses) associated with any of the foregoing.

15.6 Immediate recourse

- (a) The Chargor waives and abandons any rights it may at any time have of first requiring the Security Agent or any Finance Party to:
 - (i) proceed against, or claim or demand payment from, any person; or
 - (ii) enforce any other rights or security, guarantees or indemnities; or
 - (iii) take any action or obtain judgment in any court against any person; or
 - (iv) require that any person be made a party to any proceedings against the Chargor; or
 - (v) have recourse first to any assets of any person; or
 - (vi) file any proof or claim in any insolvency, administration, bankruptcy, liquidation or similar proceedings relating to any other person,

in each case before claiming from, or proceeding or taking any such action against or in respect of, the Chargor under this Deed.

- (b) The waivers contained in Clause 15.6(a) apply irrespective of any law or any provision in any Finance Document to the contrary.
- (c) For the avoidance of doubt, the Chargor shall be bound by this Deed whether or not made a party to any legal or other proceedings against any Transaction Obligor or any

other person for the recovery of any monies in respect of the Secured Liabilities and whether or not any formalities at any time required by the laws of England and Wales with regard to the rights or obligations of sureties shall or shall not have been observed.

15.7 Appropriations

During the Security Period each Finance Party (or any trustee or agent on its behalf) may:

- (a) refrain from applying or enforcing any other monies, security or rights held or received by that Finance Party (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and the Chargor shall not be entitled to the benefit of the same; and
- (b) hold in an interest bearing suspense account any monies received from the Chargor or on account of the Chargor's liability under this Deed (but without any obligation to pay interest on those monies).

15.8 Non-competition

- (a) During the Security Period, the Chargor shall not (unless the Security Agent otherwise directs, in which case it shall), after a demand or claim has been made or by virtue of any payment, performance or discharge by it under this Deed or any other Finance Document:
 - (i) take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights, guarantees, security or monies held, received or receivable by any Finance Party (or any trustee or agent on its behalf), nor exercise any other rights or remedies which the Chargor may have in respect thereof;
 - (ii) be entitled to any right of contribution or indemnity from the Borrower, any Transaction Obligor, or any other person in respect of any payment made or monies received on account of the Chargor's liability under this Deed or the other Finance Documents;
 - (iii) claim, rank, prove or vote as a creditor of the Borrower, any Transaction Obligor, or any other person or its estate, or in any liquidation or administration or similar proceedings, in each case in competition with any Finance Party (or any trustee or agent on its behalf);
 - (iv) bring any legal or other proceedings for an order requiring the Borrower, any Transaction Obligor, or any other person to make any payment, or perform any obligation, in respect of which the Chargor has given any guarantee, undertaking or indemnity under the Finance Documents; nor
 - (v) receive, claim or have the benefit of any payment, distribution or security from or on account of the Borrower, any Transaction Obligor, or any other person, or exercise any right of set-off or counterclaim as against any such person.

- (b) The Chargor shall hold in trust for, and forthwith pay or transfer to, the Security Agent for the Finance Parties any payment, distribution, contribution or benefit received by it either contrary to Clause 15.8(a) or as a result of a direction of the Security Agent under Clause 15.8(a).

15.9 Security held by Chargor

The Chargor shall not hold any security from any other person in respect of the Chargor's liability under this Deed and/or the other Finance Documents. The Chargor shall hold any security held by it in breach of this Clause 15.9 on trust for the Security Agent.

15.10 Voluntary arrangements

Without prejudice to any Finance Party's rights to recover such sums as a secured creditor under any Finance Document, on the approval of any voluntary arrangement in respect of any Transaction Obligor (or the implementation of any compromise or scheme of arrangement or any analogous procedure to any of the foregoing in any other jurisdiction) under which any Transaction Obligor's obligations to the Finance Parties are compromised in any way, the Chargor shall as principal obligor be liable to the Security Agent for, and hereby undertakes to the Finance Parties (as a separate and additional covenant) immediately on demand from time to time to pay to the Finance Parties, amounts equal to the sums that would have been payable to the Finance Parties by any Transaction Obligor, or any guarantor of any Transaction Obligor, had such compromise not occurred, and so that payment shall be made by the Chargor to the Finance Parties under this Clause 15.10 in the amounts and at the times at which but for the said compromise any Transaction Obligor would have been obliged to make payment to the Finance Parties. The Chargor's liability under this Clause 15.10 shall, without prejudice to the generality of Clause 15.4 (*Waiver of defences*), not be affected in any way by the Security Agent voting in favour of (if the Finance Parties choose to do so) any voluntary arrangement, compromise, scheme of arrangement or analogous procedure proposed by or in respect of any Transaction Obligor.

16 MISCELLANEOUS

16.1 Tacking

The obligation (if any) on the part of the Lenders under the Facility Agreement to make further advances to the Borrower under the Facility Agreement is deemed to be incorporated in this Deed as if set out in this Deed.

16.2 New accounts

If the Security Agent or any other Finance Party receives, or is deemed to be affected by, notice, whether actual or constructive, of any subsequent charge or other interest affecting any Charged Asset and/or the proceeds of sale of any Charged Asset, the Security Agent or the relevant Finance Party (as the case may be) may open a new account with the Chargor. If the Security Agent or the relevant Finance Party (as the case may be) does not open a new account, it shall nevertheless be treated as if it had done so at the time when it received or was deemed to have received notice. As from that time all payments made to the Security Agent or the relevant Finance Party (as the case may be) will be credited or be treated as having been credited to the new account and will not operate to reduce any amount for which this Deed is security.

16.3 Certificates and Determinations

Any certification or determination by the Security Agent of a rate or amount under any Finance Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

16.4 Stamp duties

The Chargor shall pay, and within three Business Days of demand indemnify, the Security Agent against any cost, loss or liability it incurs in relation to all stamp duty, registration and/or other similar taxes payable in respect of this Deed from time to time, and any performance or enforcement of it.

16.5 Collateral security

Where any Security constituted under this Deed initially takes effect as a collateral or further Security to another Security intended to be constituted under this Deed or which otherwise secures all or any part of the Secured Liabilities to which the Chargor is a party then, despite any receipt, release or discharge indorsed on or given in respect of or under the second mentioned Security, the first mentioned Security will operate as an independent Security.

16.6 Suspense Accounts

All monies received, recovered or realised by the Security Agent under this Deed (including the proceeds of any conversion of currency) may in the discretion of the Security Agent be credited to an interest bearing suspense or impersonal account(s) in the name of the Security Agent with such financial institution (including itself) for so long as the Security Agent shall think fit (the interest being credited to the relevant account) pending the application from time to time of those monies in the Security Agent's discretion in accordance with the provisions of Clause 10 (*Application of proceeds*) (and save as expressly provided herein no Transaction Obligor will be entitled to withdraw any amount at any time standing to the credit of any suspense or impersonal account referred to above).

16.7 Exercise of Powers

Any liberty or power which may be exercised or any determination which may be made under this Deed by the Security Agent or any Receiver may, in respect of the Transaction Obligors, be exercised or made at his absolute and unfettered discretion without any obligation to give reasons for doing so.

16.8 Constitutional Documents

The Chargor hereby certifies that its creation by this Deed of security in favour of the Security Agent does not contravene any of the provisions of its constitutional or organisational documents.

16.9 Trustee provisions

(a) The Security Agent shall hold the Security Property constituted by or in connection with this Deed, including:

(i) the benefit of this Deed;

- (ii) the Security constituted by this Deed, including the proceeds thereof; and
- (iii) all undertakings, rights, title, interests, monies and other assets contained in, constituted by or received or recovered by the Security Agent under or in connection with, this Deed;

in each case in trust for the benefit of the Finance Parties on the terms and subject to the conditions set out in this Deed and the Finance Documents.

- (b) The replacement, resignation or retirement of the person for the time being acting as Security Agent, and the appointment of any successor, shall in no way prejudice: (a) the Security created or intended to be created by the Security Documents (including this Deed); (b) the obligations of the Transaction Obligors (including the Chargor) under the Finance Documents (including this Deed); (c) the rights, powers and remedies of the Security Agent and/or the other Finance Parties under the Finance Documents (including this Deed); nor (d) the trust established pursuant to this Deed and the other Finance Documents.

16.10 Assignment

- (a) The Chargor may not assign, transfer, novate or otherwise dispose of, or declare any trust of, any of its rights and/or obligations under this Deed. This Deed shall be binding on the successors, transferees or assigns of the Chargor.
- (b) The Security Agent may at any time assign, transfer, novate, charge or otherwise dispose of all or any of its rights and benefits under this Deed to any person to whom a Finance Party may assign, transfer, charge or otherwise dispose of all or any part of its rights and benefits under the Facility Agreement. The Security Agent may at any time resign or retire as Security Agent in accordance with the terms of the Facility Agreement (and the appointment of any successor or replacement shall be governed by the terms of the Facility Agreement).

16.11 Partial Invalidity

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

16.12 Remedies, waivers, amendments and consents

- (a) No failure on nor any delay in exercising, on the part of any Finance Party (including the Security Agent) or any Receiver, any right, remedy, power or discretion under this Deed (a "Right") shall operate as a waiver of any such Right or constitute an election to affirm this Deed. No single or partial exercise of any Right shall prevent any further or other exercise of any other Right. The Rights provided in this Deed are cumulative and not exclusive of any rights, remedies, powers or discretions provided by law.
- (b) Any provision of this Deed may be amended, supplemented or novated only if the Security Agent agrees in writing, in accordance with clause 34 (*Amendments and Waivers*) of the Facility Agreement. Any waiver of, and any consent or approval by the

Security Agent under, any provision of this Deed shall not be effective unless it is in writing, and may be given subject to any conditions thought fit by the Security Agent, may be withdrawn or modified at any time, and shall be effective only in the instance, and for the purpose, for which it is given.

16.13 Delivery

The signature or sealing of this Deed by or on behalf of a party shall constitute an authority to the solicitors, or an agent or employee of the solicitors, acting for that party in connection with this Deed, and, in the case of the Chargor, the Security Agent's solicitors to date it and to deliver it as a deed on behalf of that party.

16.14 Set-off

- (a) A Finance Party (including the Security Agent) may set off any matured obligation due from the Chargor under the Finance Documents (including this Deed) (to the extent beneficially owned by that Finance Party) against any matured obligations owed by that Finance Party to the Chargor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Finance Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.
- (b) Without prejudice to Clause 16.14(a) above, and to Clause 7.2 (*Right of Appropriation of Financial Collateral*), upon the security constituted by this Deed becoming enforceable, the Finance Parties may, without notice or further demand, withdraw, apply, transfer, appropriate, or set-off any or all of the monies standing to the credit of the Accounts in or towards payment or other satisfaction of the Secured Liabilities in accordance with Clause 10 (*Application of Proceeds*).

16.15 No withholding

The Chargor shall make all payments under or in respect of this Deed without set-off or counterclaim and free and clear of any withholding or deduction, save as may be required by law in which event the amount payable shall be increased so that after such withholding or deduction the Security Agent shall receive a net amount equal to what the Security Agent would have received in the absence of such withholding or deduction.

16.16 Perpetuity

The perpetuity period applicable to the trusts constituted by this Deed shall (if relevant) be 125 years.

17 RELEASE

Upon the expiry of the Security Period (or earlier only in the Security Agent's absolute discretion), and subject to Clauses 1.3 and 15.3, the Security Agent shall, at the request and cost of the Chargor, take whatever action is necessary to release the applicable Charged Assets from the security constituted by this Deed (including without limitation, executing a deed of release and the Security Agent shall on written request from the Chargor, return to the Chargor all documents delivered by the Chargor to the Security Agent pursuant to Clause 2.5 (*Deposit of Securities*)).

18 NOTICES

18.1 Communications in writing

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

18.2 Addresses

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each party to this Deed for any communication or document to be made or delivered under or in connection with this Deed is that identified with its name below in the execution block or any substitute address or fax number or department or officer as a party to this Deed may notify to the other party by not less than five Business Days' notice.

18.3 Delivery

(a) Subject to Clause 18.5, any communication or document made or delivered under or in connection with this Deed will only be effective:

- (i) if by way of fax, when received in legible form; or
- (ii) if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address;

and, if a particular department or officer is specified as part of its address details provided under Clause 18.2, if addressed to that department or officer.

(b) Any communication or document to be made or delivered to the Security Agent will be effective only when actually received by the Security Agent and then only if it is expressly marked for the attention of the department or officer identified with the Security Agent's signature below in the execution block (or any substitute department or officer as the Security Agent shall specify for this purpose).

(c) Any communication or document which becomes effective, in accordance with Clause 18.3(a) or 18.3(b), after 5:00 p.m. in the place of receipt shall be deemed only to become effective on the next following Business Day.

18.4 Electronic communication

(a) Any communication to be made between the parties to this Deed under or in connection with this Deed may be made by electronic mail or other electronic means to the extent the parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication and if the parties:

- (i) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
- (ii) notify each other of any change to their address or any other such

information supplied by them by not less than five Business Days' notice.

- (b) Any electronic communication made between the parties to this Deed will be effective only when actually received in readable form and in the case of any electronic communication made by the Chargor to the Security Agent only if it is addressed in such a manner as the Security Agent shall specify for this purpose.
- (c) Any electronic communication which becomes effective, in accordance with Clause 18.4(a) or 18.4(b), after 5:00 p.m. in the place of receipt shall be deemed only to become effective on the next following Business Day.

18.5 Proof of service on the Chargor

In proving service of a notice, communication or other document on the Chargor it shall be sufficient to prove that either:

- (a) the envelope containing such notice was addressed to the address of the Chargor as set out in the execution block below and either:
 - (i) delivered to or left at that address; or
 - (ii) delivered into the custody of the postal authorities as a prepaid first class letter; or
- (b) the notice was transmitted by facsimile to the fax number of the Chargor set out in the execution block below.

18.6 English language

Any notice or other document given under or in connection with this Deed must be in English.

19 COUNTERPARTS

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

20 GOVERNING LAW

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

21 ENFORCEMENT

21.1 Jurisdiction

- (a) The courts of England and Wales have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute regarding the existence, validity or termination of this Deed or any non-contractual obligations arising out of or in connection with it) (a "Dispute").
- (b) The parties to this Deed agree that the courts of England and Wales are the most

appropriate and convenient courts to settle Disputes and accordingly no party to this Deed will argue to the contrary.

- (c) This Clause 21.1 is for the benefit of the Security Agent and the Finance Parties only. As a result, no Finance Party (including the Security Agent) shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Security Agent (and the Finance Parties) may take concurrent proceedings in any number of jurisdictions.
- (d) The Chargor hereby irrevocably and unconditionally:
 - (i) waives any objection to the jurisdiction of the English courts dealing with (and agrees not to raise or claim immunity from) any proceedings for such enforcement of this Deed (and shall ensure that no such claim is made on its behalf);
 - (ii) consents to the issue of any process, or the giving of any relief, in connection with those proceedings;
 - (iii) waives all immunity from suit, attachment and/or execution, that it or its assets may now or in the future have; and
 - (iv) expressly consents to and acknowledges the terms of this Clause 21.1.

22 THIRD PARTY RIGHTS

22.1 Nothing in this Deed is intended to confer on any person any right to enforce any provision of this Deed which that person would not have had but for the Contracts (Rights of Third Parties) Act 1999, save as set out in Clause 22.2 below.

22.2 Any Receiver appointed by the Security Agent, any Relevant Person (including without limitation, any Finance Party) and any lawful delegate or sub-delegate of the Security Agent or Receiver may take the benefit of:

- (a) any covenant or provision of this Deed by which the Chargor is expressed to give an undertaking or indemnity to, or to release or waive any claim against, that person; and/or
- (b) any covenant or provision of this Deed which confers, or purports to confer, any power, right, remedy or benefit upon that person;

provided that:

- (c) until the Secured Liabilities have been discharged in full, no such person may exercise or otherwise enforce any such right without the prior written consent of the Security Agent; and
- (d) notwithstanding such rights, this Deed may be restated, varied amended, supplemented, or substituted in any respect by the Security Agent and the Chargor whether to remove such rights in whole or in part or otherwise whatsoever or novated, or assigned, released or discharged by the Security Agent without, in any such case, notice to or consent from any such person.

page 32

IN WITNESS of which this document has been duly executed and delivered as a deed by each of the parties on the day and the year first stated above.

SCHEDULE 1


<u>Company</u>	<u>Shares</u>	<u>Number</u>
Pall Mall 2 Limited (registered in England and Wales with Company number: 09201996 and with its registered office at New Burlington House 1075 Finchley Road, London, NW11 0PU)	Ordinary Shares	100

EXECUTION PAGES

The Chargor

Executed as a deed by
PALL MALL (1) LIMITED

acting by a Director in the presence of a Director
witness:



.....
Print name EDWIN KRAUSZ


Witness Signature:

Witness name (BLOCK CAPITALS):

Witness occupation (BLOCK CAPITALS):

Witness address (BLOCK CAPITALS):


.....
AMY AU
.....
TRAINEE SOLICITOR
.....
Clyde & Co LLP
St Botolphs
138 Houndsditch
London
EC3A 7DH
.....


.....
Director
Print name MIRIAM KRAUSZ


in the presence of.

Witness Signature (BLOCK CAPITALS):

Witness name (BLOCK CAPITALS):

Witness occupation (BLOCK CAPITALS):

Witness address (BLOCK CAPITALS):


.....
AMY AU
.....
TRAINEE SOLICITOR
.....
Clyde & Co LLP
St Botolphs
138 Houndsditch
London
EC3A 7DH
.....

Address for notices:

Address: 8 Millfields Road
London
E5 0SB

Fax: 0208 985 4917
FAD: M Kraus
Email: zev@pallmallinvestments.com

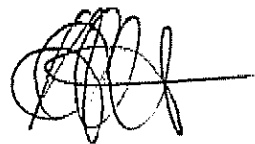
With a copy to: Cohen Arnold
New Burlington House
1075 Finchley road
London
NW11 0PU
FAO: J Schwarz/D Goldberg
Email: jonathanschwarz@cohenarnold.com

The Security Agent

Executed as a deed by
Longbow Investment No. 3 S.À R.L.
a Société à responsabilité limitée
organized and existing under the laws of
the Grand Duchy of Luxembourg
acting by

Alexis de Montpellier

being a person who in accordance with
the laws of that territory is acting
under the authority of
Longbow Investment No. 3 S.À R.L.



Manager

Print name *Alexis de Montpellier*

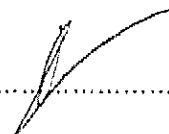
in the presence of:

Witness Signature (BLOCK CAPITALS):

Witness name (BLOCK CAPITALS):

Witness occupation (BLOCK CAPITALS):

Witness address (BLOCK CAPITALS):



Imad Qasem

6c rue Gabriel Lippmann

L-5365 Munsbach

Accountant

Address for notices:

Address: Longbow Investment No. 3 S.À R.L.
2 Boulevard Konrad Adenauer
L-1115 Luxembourg
Grand-Duchy of Luxembourg
Fax No: +352 26 25 88 79
FAO: The Board of Managers