



Registration of a Charge

Company name: **CHURCH WALK HOUSE LIMITED**

Company number: **09527312**



X648ECRM

Received for Electronic Filing: **12/04/2017**

Details of Charge

Date of creation: **11/04/2017**

Charge code: **0952 7312 0001**

Persons entitled: **INVESTEC BANK PLC AS SECURITY AGENT**

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: **WE 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: **OSBORNE CLARKE LLP**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 9527312

Charge code: 0952 7312 0001

The Registrar of Companies for England and Wales hereby certifies that a charge dated 11th April 2017 and created by CHURCH WALK HOUSE LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 12th April 2017 .

Given at Companies House, Cardiff on 13th April 2017

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



Companies House



THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES

We certify that, save for material redacted pursuant to s. 859G of the Companies Act 2006, this copy instrument is a correct copy of the original instrument.

Dated this 12.04.17

Signed *Osborne Clarke LLP*

Osborne Clarke LLP

2 Temple Back East

Temple Quay, Bristol

BS1 6EG

Charge over Member's Interest

- (1) The members of the Borrower listed in the Schedule (as Chargors).
- (2) Investec Bank plc

Dated 17 April 2017

Osborne Clarke LLP

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This Deed is made on

11 April 2017

Between:

- (1) The members of the Borrower whose names, jurisdiction of incorporation and registered number are listed in the Schedule (the "**Chargors**" and each a "**Chargor**"); and
- (2) Investec Bank plc (the "**Security Agent**").

This Deed witnesses as follows:

1. **Definitions and interpretation**

1.1 In this Deed, unless the context otherwise requires, the following words shall apply:

"**Borrower**" means Church Walk House Property Development LLP (registered number: OC399542).

"**Charged Investments**" means:

- (a) all Member's Interest;
- (b) all Derivative Assets; and
- (c) all Related Rights in respect of paragraphs (a) to (b) (inclusive).

"**Derivative Asset**" means all allotments, rights, benefits and advantages (including all voting rights) at any time accruing, offered or arising in respect of or incidental to each Member's Interest and all money or property accruing or offered at any time by way of conversion, redemption, bonus, preference, option, dividend, distribution, interest or otherwise in respect of each Member's Interest.

"**Facilities Agreement**" means an agreement dated on or about the date of this Deed and made between, among others, the Borrower and the Security Agent under which the Original Lenders have made available certain facilities to the Borrower as the same may be amended, novated, supplemented, extended or restated from time to time.

"**Finance Documents**" means the Finance Documents and Hedging Agreements, in each case as defined in the Facilities Agreement and in each case as amended, novated, supplemented, extended or restated from time to time.

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

"**Member's Agreement**" means the limited liability partnership agreement between the Chargors relating to the Borrower dated 6 May 2015.

"**Member's Interest**" means, in respect of each Chargor, all of its rights, title, benefit and interest in the Members' Agreement and the Borrower whether arising under the Members' Agreement or by operation of law or equity.

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

"**Related Rights**" means, where used in relation to an asset, the following:

- (a) the proceeds of sale and/or other realisation of that asset (or any part thereof or interest therein); and
- (b) all Security, Authorisations, options, agreements, rights, benefits, indemnities, guarantees, warranties or covenants for title in respect of such asset.

"Secured Liabilities" means all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally or in any other capacity whatsoever) of each Transaction Obligor to any Secured Party under each Finance Document.

"Security Assets" means the Charged Investments.

"Security Period" means the period from the date of this Deed until the date on which all of the Secured Liabilities have been irrevocably and unconditionally paid and discharged in full and that no commitment is outstanding.

1.2 Construction

- (a) Unless a contrary intention appears, sub-clause 1.21.2 (*Construction*) of the Facilities Agreement applies to this Deed, and shall be deemed to be incorporated into this Deed, mutatis mutandis, as though set out in full in this Deed, with any reference to this **"Agreement"** being deemed to be a reference to this **"Deed"**, subject to any necessary changes.
- (b) Unless the context otherwise requires or as otherwise defined in this Deed, terms defined in the Facilities Agreement mean the same in this Deed as they do in the Facilities Agreement.
- (c) Any references to the Security Agent or any Receiver shall include its Delegate.
- (d) Clauses and schedules are references to clauses of and schedules to this Deed and references to sub-clauses and paragraphs are references to sub-clauses and paragraphs of the clause or schedule in which they appear.

1.3 Implied covenants for title

The obligations of each Chargor under this Deed shall be in addition to the covenants for title deemed to be included in this Deed by virtue of Part I of the Law of Property (Miscellaneous Provisions) Act 1994.

1.4 Effect as a deed

This Deed is intended to take effect as a deed notwithstanding that the Security Agent may have executed it under hand only.

1.5 Trusts

- (a) The perpetuity period for any trusts created by this Deed is 125 years.
- (b) The Security Agent holds the benefit of this Deed on trust for the Secured parties in accordance with the terms of Clause 28.1 of the Facilities Agreement.

1.6 Third party rights

Unless a contrary intention appears, sub-clause 1.4 (*Third party rights*) of the Facilities Agreement applies to this Deed, and shall be deemed to be incorporated into this Deed, mutatis mutandis, as though set out in full in this Deed, with any references to **"this Agreement"** being deemed to be a reference to **"this Deed"**, subject to any necessary changes.

1.7 Finance documents

This Deed is a Finance Document.

2. **Covenant to pay**

Subject to Clause 3.2 (*Limited Recourse*), each Chargor as primary obligor covenants with the Security Agent (as trustee of the Secured parties) that it will on demand pay to the Security Agent the Secured Liabilities when the same fall due for payment.

3. **Security Assets**

3.1 **Security**

- (a) Each Chargor, as security for the payment of the Secured Liabilities, charges, by way of mortgage, in favour of the Security Agent, with full title guarantee, the Charged Investments.
- (b) Each Chargor consents to the creation of the Security by the other Chargor pursuant to sub-clause (a) above and to the transfer of the Member's Interest of the other Chargor on creation or enforcement of that Security, when it has become enforceable in accordance with this Deed.

3.2 **Limited recourse**

Notwithstanding any other provision in this Deed:

- (a) the liability of any Chargor to the Secured Parties under this Deed shall be:
 - (i) limited in aggregate to an amount equal to that recovered by the Secured Parties as a result of the enforcement of this Deed with respect to the Security Assets; and
 - (ii) satisfied only from the proceeds of sale or other disposal or realisation of the Security Assets pursuant to this Deed; and
- (b) the Secured Parties shall not have any recourse under this Deed to any assets of any Chargor other than the Security Assets.

4. **Nature of Security**

4.1 **Continuing security**

- (a) The Security created by this Deed is to be a continuing security notwithstanding any intermediate payment or settlement of all or any part of the Secured Liabilities or any other matter or thing.
- (b) Subject to Clause 3.2 (*Limited recourse*), if any purported obligation or liability of any Transaction Obligor to the Secured Parties which if valid would have been the subject of any obligation or charge created by this Deed is or becomes unenforceable, invalid or illegal on any ground whatsoever whether or not known to any Secured Party, the Chargors shall nevertheless be liable in respect of that purported obligation or liability as if the same were fully valid and enforceable and the Chargors were the principal debtors in respect thereof. Each Chargor hereby agrees to keep the Secured Parties fully indemnified against all damages, losses, costs and expenses arising from any failure of any Transaction Obligor to carry out any such purported obligation or liability.
- (c) The obligations and liabilities of each Chargor under this Deed will not be affected by an act, omission, matter or thing which, but for this paragraph, would reduce, release or prejudice any of its obligations or liabilities under this Deed (without limitation and whether or not known to any Secured Party) including:
 - (i) any time, waiver or consent granted to, or composition with, any Transaction Obligor or other person;

- (ii) the release of any Transaction Obligor or any other person under the terms of any composition or arrangement with any creditor of any person;
 - (iii) 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 any assets of 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;
 - (iv) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any Transaction Obligor or any other person;
 - (v) any amendment (however fundamental) or replacement of any Finance Document or any other document or Security;
 - (vi) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or Security; or
 - (vii) any insolvency or similar proceedings.
- (d) Until the Security Period has ended and unless the Security Agent otherwise directs, a Chargor will not exercise any rights which it may have by reason of performance by it of its obligations under this Deed:
- (i) to be indemnified by any Transaction Obligor (including any rights it may have by way of subrogation);
 - (ii) to claim any contribution from any guarantor of any other Transaction Obligor of the obligations under the Finance Documents;
 - (iii) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any right of the Security Agent or any of the other Secured Parties under any Finance Document or of any other guarantee or Security taken pursuant to, or in connection with, the Finance Documents;
 - (iv) to claim, rank, prove or vote as a creditor of any other Transaction Obligor or its estate in competition with the Security Agent or any of the other Secured Parties; and/or
 - (v) receive, claim or have the benefit of any payment, distribution or security from or on account of any other Transaction Obligor, or exercise any right of set-off against any other Transaction Obligor.
- (e) Each Chargor shall hold on trust for and immediately pay or transfer to the Security Agent any payment or distribution or benefit of Security received by it contrary to this sub-clause.
- (f) Each Chargor waives any right it may have of first requiring the Security Agent to proceed against or enforce any other rights or Security or claim payment from any person before claiming from a Transaction Obligor under a Finance Document. This waiver applies irrespective of any law or any provision of the Finance Document to the contrary.
- (g) Until the Security Period has ended, the Security Agent may refrain from applying or enforcing any other moneys, Security or rights held or received by the Security Agent 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 a Chargor shall not be entitled to the benefit of the same.

- (h) Without prejudice to the generality of clause 4.1(c), each Chargor expressly confirms that it intends that the Security constituted by this Deed shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to the Secured Liabilities as a result of the amendment and/or restatement of the Facilities Agreement and/or any of the other Finance Documents and/or any additional facility or amount which is made available under any of the Finance Documents for the purposes of or in connection with any of the following: business acquisitions of any nature; increasing working capital; enabling investor distributions to be made; carrying out restructurings; refinancing existing facilities; refinancing any other indebtedness; making facilities available to new borrowers; any other variation or extension of the purposes for which any such facility or amount might be made available from time to time; and any fees, costs and/or expenses associated with any of the foregoing.

4.2 Non-merger of Security

The Security created by this Deed is to be in addition to and shall neither be merged with nor in any way exclude or prejudice or be affected by any other Security or other right which the Security Agent may now or after the date of this Deed hold for any of the Secured Liabilities, and this Deed may be enforced against any Chargor without first having recourse to any other rights of the Security Agent.

5. Further assurances and protection of priority

5.1 General

- (a) Each Chargor shall, at its own expense, promptly do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Security Agent may reasonably specify (and in such form as the Security Agent may reasonably require in favour of the Security Agent or its nominee(s)):
- (i) to perfect or protect the Security created or intended to be created under, or evidenced by, this Deed (which may include the execution of a mortgage, charge, assignment or other Security over all or any of the assets which are, or are intended to be, the subject of this Deed) or for the exercise of any rights, powers and remedies of the Secured Parties provided by or pursuant to this Deed or by law;
 - (ii) to confer on the Security Agent or confer on the Secured Parties, Security over any assets of a Chargor, located in any jurisdiction, equivalent or similar to the Security intended to be conferred by or pursuant to this Deed and, pending the conferring of such Security, hold such assets upon trust (or in any manner required by the Security Agent) for the Secured Parties; and/or
 - (iii) to facilitate the realisation or enforcement of the assets which are, or are intended to be, the subject of the Security created, or intended to be created, by this Deed.
- (b) Each Chargor shall take all such action (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 Secured Parties by or pursuant to this Deed.

6. Representations and warranties

Each Chargor makes the representations and warranties listed below in favour of each of the Secured Parties.

6.1 Status

It is a duly incorporated limited liability partnership or corporation (as appropriate) and validly existing under the laws of its jurisdiction of formation.

6.2 *Binding obligations*

Subject to Legal Reservations, this Deed constitutes its legal, binding, valid and enforceable obligations.

6.3 *Non-conflict with other obligations*

- (a) It has the power to enter into and perform, and has taken all necessary action to authorise the entry into, performance and delivery of, this Deed.
- (b) The entry into and performance by it of, and the transactions contemplated by, this Deed do not and will not:
 - (i) conflict with any law or regulation or judicial or official order applicable to it; or
 - (ii) conflict with its constitutional documents;
 - (iii) the Member's Agreement; or
 - (iv) conflict with any agreement or document which is binding upon it or any of its assets and it has obtained all necessary consents and authorisations for the performance by it of this Deed.

6.4 *Security Assets*

- (a) It is the legal and beneficial owner of the Security Assets with the right to transfer with full title guarantee all or any part of the Security Assets and has good marketable title to the Security Assets.
- (b) All Member's Interest is fully paid and none are subject to any option to purchase or similar rights.
- (c) The Security Assets are free from any Security other than any Security created pursuant to this Deed or permitted by the Facilities Agreement.
- (d) It has not appointed any nominee to exercise or enjoy all or any of its rights in relation to the Charged Investments.
- (e) The Security Assets have been and will be, at all times during the Security Period, free from any restriction on transfer or rights of pre-emption save as provided in the Member's Agreement.

6.5 *Members' Agreement and Interests*

- (a) All contributions due and payable by a Chargor under the Members' Agreement have been made or paid in full and there are no monies or liabilities outstanding in respect of them.
- (b) The Chargors are the only members of the Borrower.
- (c) It has not appointed any nominee to exercise or enjoy all or any of its rights in relation to its Member's Interests or any Related Rights.
- (d) Each Chargor has consented to each other Chargor entering into and performing this Deed.

6.6 *Pari passu ranking*

Its payment obligations under this Deed rank at least pari passu with all its other present and future unsecured payment obligations, except for obligations mandatorily preferred by law.

6.7 *No filing or stamp taxes*

Save in relation to fees payable to the companies registry in respect of registration of this Deed, no stamp or registration duty or similar Tax or charge is payable in its jurisdiction of incorporation in respect of this Deed and it is not necessary that this Deed be filed, recorded or enrolled with any court or other authority in any jurisdiction.

6.8 *Information*

All written and factual information provided by it or on its behalf in connection with or pursuant to this Deed or any other Transaction Document was true and accurate in all material respects as at the date it was provided or as at the date (if any) it was stated and nothing was omitted from such information that results in such information being untrue or misleading in any material respect.

6.9 *No proceedings pending or threatened*

No litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency which, are reasonably likely to be adversely determined and are reasonably likely to have a materially adverse effect on its ability to comply with its obligations under this Deed have (to the best of its knowledge and belief) been started or threatened against it.

6.10 *Immunity*

The execution by it of this Deed constitutes, and the exercise by it of its rights and performance of its obligations under this Deed will constitute, private and commercial acts performed for private and commercial purposes and it will not be entitled to claim immunity from suit, execution, attachment or other legal process in any proceedings taken in its jurisdiction of incorporation in relation to this Deed.

6.11 *Insolvency*

- (a) It is not unable nor has admitted inability to pay its debts as they fall due, suspended making payments on any of its debts, or, by reason of actual or anticipated financial difficulties, commenced negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness.
- (b) The value of its assets is not less than its liabilities (taking into account contingent and prospective liabilities).
- (c) No moratorium has been declared in respect of any its indebtedness.

6.12 *Choice of jurisdiction and law*

- (a) it is not necessary under the laws of its jurisdiction of incorporation:
 - (i) in order to enable a Secured Party to enforce its rights under this Deed; or
 - (ii) by reason of the execution of this Deed or the performance by it of its obligations under this Deed,

that a Secured Party should be licensed, qualified or otherwise entitled to carry on business in its jurisdiction of incorporation and nor will it be deemed to be resident, domiciled or carrying on business in its jurisdiction of incorporation by reason only of execution, performance and/or enforcement of this Deed.

(b) its:

- (i) irrevocable submission under this Deed to the jurisdiction of the courts of England; and
- (ii) agreement that this Deed is governed by English law,

are legal, valid and binding, subject to the Legal Reservations, under the laws of its jurisdiction of incorporation and any judgment obtained in England will be recognised and be enforceable by the courts of its jurisdiction of incorporation.

6.13 **Ranking of Security**

The Security conferred by this Deed constitutes a first priority security interest of the type described in this Deed over the Security Assets and the Security Assets are not subject to any prior or pari passu Security other than as permitted by the Facilities Agreement.

6.14 **Repetition**

The representations in this clause are deemed to be made by each Chargor by reference to the facts and circumstances then existing on the date of this Deed and on the date of each Utilisation Request, on each Utilisation Date and on the first day of each Interest Period.

7. **Undertakings**

7.1 **Duration of undertakings**

Each Chargor undertakes to the Security Agent in the terms of this clause for the duration of the Security Period.

7.2 **General undertakings**

(a) *Negative pledge and disposal restrictions*

It will not:

- (i) create or agree to create or permit to subsist or arise any Security over all or any part of the Security Assets; or
- (ii) dispose of all or any part of the Security Assets or agree or attempt to do the same,

except as permitted by the Facilities Agreement or with the prior written consent of the Security Agent (such consent not to be unreasonably withheld or delayed).

(b) *Deposit of documents or title deeds*

It will deposit with the Security Agent:

- (i) to the extent that the relevant documents have not been deposited with a clearance system, settlement system or custodian acceptable to the Security Agent, all deeds, documents of title (or documents evidencing title or the right to title) and agreements relating to a Security Asset;
- (ii) any instruments of transfer duly completed to the Security Agent's satisfaction; and
- (iii) any other document which the Security Agent may require for the purpose of perfecting the Security created by this Deed.

(c) *Calls*

It shall duly and promptly pay all calls, instalments or other payments which may be due and payable in respect of any Charged Investments and, for the avoidance of doubt, no Secured Party shall incur any liability in respect of any amounts due from a Chargor in respect of any Charged Investments.

(d) *Compliance with laws*

It shall at all times comply with all laws and regulations applicable to it and will obtain and maintain in full force and effect all Authorisations which may at any time be required with respect to any of the Security Assets.

7.3 Charged investments

(a) *Exercise of rights*

(i) Prior to an Event of Default which is continuing, it shall not, without the prior written consent of the Security Agent (such consent not to be unreasonably withheld or delayed), exercise or refrain from exercising (or direct the same) any of the powers or rights conferred upon or exercisable by the legal or beneficial owner of the Charged Investments unless such exercise or refrain from exercising (or direction to do the same):

(A) is consistent with the terms of the Facilities Agreement; and

(B) would not, or would not be reasonably likely to, effect any rights or powers of the relevant Chargor arising from its legal and/or beneficial ownership of the Charged Investments.

(ii) On and following an Event of Default which is continuing, it shall not, without the prior written consent of the Security Agent, exercise or refrain from exercising (or direct the same) any of the powers or rights conferred upon or exercisable by the legal or beneficial owner of the Charged Investments.

(b) *Registration of transfers*

If required by the Security Agent, it shall procure that the Charged Investments which are in registered form are duly registered in the name of the Security Agent or its nominee once a transfer relating to the Charged Investments is presented for that purpose once the Security constituted by this Deed has become enforceable in accordance with Clause 8.1 (*Enforcement*).

(c) *Distributions*

It shall immediately pay all distributions or other monies received by it in respect of the Charged Investments into the Deposit Account, unless otherwise permitted by the Facilities Agreement.

(d) *Nominees*

It shall not appoint any nominee to exercise or enjoy all or any of its rights in relation to the Charged Investments.

(e) *Changes to Members' Agreement*

(i) It shall not permit the addition of a new member of the Borrower.

(ii) It shall not amend, waive or supplement or permit any amendment, waiver or supplement (by conduct or otherwise) of, any provision of the Members'

Agreement without the prior written consent of the Security Agent (such consent not to be unreasonably withheld or delayed) other than amendments which are minor or administrative in nature or which do not adversely affect the interests of the Security Agent.

- (iii) It shall not exercise any right to rescind, cancel or terminate the Members' Agreement.
- (iv) It will perform all of its material obligations under the Members' Agreement in a diligent and timely manner.
- (f) *Changes to members*
 - (i) Following the occurrence of an Event of Default which is continuing, upon the Security Agent's request, it shall procure (by amending the terms of the Members' Agreement or otherwise), the transfer of the Member's Interest to the Security Agent or its nominee and procure the appointment of the Security Agent (or its nominee) as a designated member of the Borrower and shall itself resign as a member of the Borrower.
 - (ii) It shall ensure that the Borrower maintains at least two members at all times during the Security Period.

7.4 Power to remedy

If a Chargor fails to comply with any covenant set out in sub-clause 7.2 (*General undertakings*) or sub-clause 7.3 (*Charged investments*) (inclusive), it will allow (and irrevocably authorises) the Security Agent or any Receiver to take any action on its behalf which the Security Agent or the Receiver deems necessary to ensure that those covenants are complied with. Each Chargor shall reimburse to the Security Agent and/or any Receiver, on demand, all amounts reasonably expended by the Security Agent or any Receiver in remedying such failure together with interest in accordance with sub-clause 14.4 (*Default interest*) from the date of payment by the Security Agent or Receiver (as the case may be) until the date of reimbursement.

8. Enforcement and powers of the Security Agent

8.1 Enforcement

At any time on or after the occurrence of an Event of Default which is continuing, the Security created pursuant to this Deed shall be immediately enforceable and the Security Agent may in its absolute discretion and without notice to Chargors or any of them or the prior authorisation of any court:

- (a) enforce all or any part of the Security created by this Deed and take possession of or dispose of all or any of the Security Assets in each case at such times and upon such terms as it sees fit; and
- (b) whether or not it has appointed a Receiver, exercise all of the powers, authorities and discretions:
 - (i) conferred from time to time on mortgagees by the LPA (as varied or extended by this Deed) or by law; and
 - (ii) granted to a Receiver by this Deed or from time to time by law.

8.2 Power of sale

For the purpose of all rights and powers implied or granted by law, the Secured Liabilities are deemed to have fallen due on the date of this Deed. The power of sale and other powers

conferred by section 101 of the LPA and all other enforcement powers conferred by this Deed shall be immediately exercisable at any time after an Event of Default which is continuing.

8.3 **Statutory restrictions**

The restriction on the consolidation of mortgages and on power of sale imposed by sections 93 and 103 respectively of the LPA shall not apply to the Security constituted by this Deed.

8.4 **Appropriation**

- (a) In this deed, "**financial collateral**" has the meaning given to that term in the Financial Collateral Arrangements (No.2) Regulations 2003.
- (b) At any time after an Event of Default which is continuing, the Security Agent may appropriate all or part of the financial collateral in or towards satisfaction of the Secured Liabilities.
- (c) The Parties agree that the value of any such Security Assets appropriated in accordance with sub-clause 8.4(b) shall be the market price of such Security Assets at the time the right of appropriation is exercised as determined by the Security Agent by reference to such method or source of valuation as the Security Agent may select, including by independent valuation. The Parties agree that the methods or sources of valuation provided for in this sub-clause or selected by the Security Agent in accordance with this sub-clause shall constitute a commercially reasonable manner of valuation for the purposes of the Financial Collateral Arrangements (No.2) Regulations 2003.
- (d) The Security Agent shall notify the relevant Chargor, as soon as reasonably practicable, of the exercise of its right of appropriation as regards such of the Security Assets as are specified in such notice.

9. **Appointment of a Receiver**

9.1 **Appointment**

- (a) At any time on or after the occurrence of an Event of Default which is continuing, or at the request of a Chargor or its directors, the Security Agent may, without prior notice to the Chargors, in writing (under seal, by deed or otherwise under hand) appoint a Receiver in respect of the Security Assets or any part thereof and may in like manner from time to time (and insofar as it is lawfully able to do) remove any Receiver and appoint another in his place.
- (b) Nothing in sub-clause 9.1(a) shall restrict the exercise by the Security Agent of any one or more of the rights of the Security Agent under Schedule B1 to the Insolvency Act 1986 and the rules thereunder or at common law.
- (c) Section 109(1) of the LPA shall not apply to this Deed.

9.2 **Several Receivers**

If at any time there is more than one Receiver, each Receiver may separately exercise all of the powers conferred by this Deed (unless the document appointing such Receiver states otherwise).

9.3 **Remuneration of Receiver**

The Security Agent may from time to time fix the remuneration of any Receiver appointed by it from time to time. For the purpose of this sub-clause, the limitation set out in section 109(6) of the LPA shall not apply.

9.4 ***Liability of Security Agent for actions of a Receiver***

Each Receiver shall be the agent of the Chargors which shall be solely responsible for his acts or defaults, and for his remuneration and expenses, and be liable on any agreements or engagements made or entered into by him. No Secured Party shall be responsible for any misconduct, negligence or default of a Receiver.

10. **Powers of a Receiver**

A Receiver shall have (and be entitled to exercise) in relation to the Security Assets over which he is appointed the following powers (as the same may be varied or extended by the provisions of this Deed):

- (a) all of the powers of an administrative receiver set out in Schedule 1 to the Insolvency Act 1986 (whether or not the Receiver is an administrative receiver);
- (b) all of the powers conferred from time to time on receivers, mortgagors and mortgagees in possession by the LPA;
- (c) all of the powers conferred on the Security Agent under this Deed;
- (d) all the powers and rights of a legal and beneficial owner and the power to do or omit to do anything which a Chargor itself could do or omit to do;
- (e) the power to do all things which, in the opinion of the Receiver, are incidental to any of the powers, functions, authorities or discretions conferred or vested in the Receiver pursuant to this Deed or upon receivers by statute or law generally (including the bringing or defending of proceedings in the name of, or on behalf of, a Chargor; the collection and/or realisation of Security Assets in such manner and on such terms as the Receiver sees fit; and the execution of documents in the name of a Chargor (whether under hand, or by way of deed or by utilisation of the company seal of a Chargor).

11. **Application of monies**

11.1 ***Order of application***

All amounts from time to time received or recovered by the Security Agent pursuant to the terms of this Deed or in connection with the realisation or enforcement of all or any part of the Security created by this Deed (for the purposes of this clause, the "**Recoveries**") shall be held by the Security Agent on trust to apply the same at any time as the Security Agent (in its discretion) sees fit, to the extent permitted by applicable law (and subject to the provisions of this clause), in the following order, after the payment of any preferential debts ranking in priority to the Secured Liabilities:

- (a) in discharging any sums owing to the Security Agent or any Receiver;
- (b) in payment of all costs and expenses incurred by any Secured Party in connection with any realisation or enforcement of the Security created by this Deed;
- (c) in payment of any Secured Liabilities; and
- (d) the balance of any Recoveries, after all amounts due under sub-clauses 11.1(a) to (c) have been paid in full, to the Chargors.

The provisions of this sub-clause will override any appropriation made by a Chargor.

11.2 ***Prospective liabilities***

When an Event of Default is continuing, 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 sub-clause 11.1 (*Order of application*) in respect of:

- (a) any sum to a Secured Party; 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.

11.3 *Investment of proceeds*

Prior to the application of the proceeds of the Recoveries in accordance with sub-clause 11.1 (*Order of application*) the Security Agent may, in its discretion, hold all or part of those proceeds 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) pending the application from time to time of those moneys in the Security Agent's discretion in accordance with the provisions of sub-clause 11.1 (*Order of application*).

11.4 *Currency conversion*

- (a) For the purpose of, or pending the discharge of, any of the Secured Liabilities the Security Agent may convert any moneys received or recovered by the Security Agent from one currency to another, at a market rate of exchange.
- (b) The obligations of any Transaction Obligor to pay in the due currency shall only be satisfied to the extent of the amount of the due currency purchased after deducting the costs of conversion.

11.5 *Permitted deductions*

The Security Agent shall be entitled, in its discretion:

- (a) to set aside by way of reserve, amounts required to meet, and to make and pay, any deductions and withholdings (on account of taxes or otherwise) which it is or may be required by any applicable law to make from any distribution or payment made by it under this Deed; and
- (b) to pay all Taxes which may be assessed against it in respect of any of the Security Assets, or as a consequence of performing its duties, or by virtue of its capacity as Security Agent under any of the Finance Documents or otherwise (other than in connection with its remuneration for performing its duties under this Deed).

11.6 *Good discharge*

- (a) Any payment to be made in respect of the Secured Liabilities by the Security Agent may be made to the Agent on behalf of the Finance Parties and any payment made in that way shall be a good discharge, to the extent of that payment, by the Security Agent.
- (b) The Security Agent is under no obligation to make the payments to the Agent under sub-clause 11.6(a) in the same currency as that in which the obligations and liabilities owing to the relevant Finance Party are denominated.

12. Protection of third parties

12.1 *No obligation to enquire*

No purchaser from, or other person dealing with, a Secured Party shall be obliged or concerned to enquire whether:

- (a) the right of the Secured Party to exercise any of the powers conferred by this Deed has arisen or become exercisable or as to the propriety or validity of the exercise or purported exercise of any such power; or
- (b) any of the Secured Liabilities remains outstanding or be concerned with notice to the contrary and the title and position of such a purchaser or other person shall not be impeachable by reference to any of those matters.

12.2 *Receipt conclusive*

The receipt of the Security Agent or any Receiver shall be an absolute and a conclusive discharge to a purchaser, and shall relieve such purchaser of any obligation to see to the application of any moneys paid to or by the direction of the Security Agent or any Receiver.

13. Protection of the Secured Parties

13.1 *No liability*

No Secured Party shall be liable in respect of any of the Security Assets or for any loss or damage which arises out of the exercise or the attempted or purported exercise of, or the failure to exercise any of, their respective powers.

13.2 *Possession of Security Assets*

Without prejudice to sub-clause 13.1 (*No liability*), if a Secured Party enters into possession of the Security Assets, it will not be liable to account as mortgagee in possession and may at any time at its discretion go out of such possession.

13.3 *No proceedings*

No Party (other than the Security Agent, a Receiver or a Delegate in respect of its own officers, employees or agents) may take any proceedings against any officer, employee or agent of a Finance Party, a Receiver or a Delegate in respect of any claim it might have against a Finance Party, a Receiver or a Delegate or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document or any Security Asset and any officer, employee or agent of a Finance Party, a Receiver or a Delegate may rely on this clause subject to sub-clause 1.5 (*Third party rights*) and the provisions of the Third Parties Rights Act.

14. Costs and expenses, indemnities and default interest

14.1 *Enforcement expenses*

The Chargors shall, immediately on demand pay to each Secured Party the amount of all costs and expenses (including legal fees) incurred by it in connection with the enforcement of, or the preservation or review of any rights under, this Deed and any other documents referred to in this Deed.

14.2 *Stamp duties, etc.*

Each Chargor will on demand indemnify each Secured Party, from and against any liability for any stamp, documentary, filing and other duties and Taxes (if any) which are or may become payable in connection with this Deed.

14.3 **Currency indemnity**

- (a) If any sum due from a Chargor under this Deed (a "**Sum**"), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the "**First Currency**") in which that Sum is payable into another currency (the "**Second Currency**") for the purpose of:

- (i) making or filing a claim or proof against a Chargor; or
- (ii) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

a Chargor shall as an independent obligation, within three Business Days of demand, indemnify each Secured Party to whom that Sum is due against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.

- (b) Each Chargor waives any right it may have in any jurisdiction to pay any amount under this Deed in a currency or currency unit other than that in which it is expressed to be payable.

14.4 **Default interest**

- (a) If a Chargor fails to pay any amount payable by it under this Deed on its due date, interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate which is two per cent higher than the rate above the cost to the Security Agent (as conclusively determined by the Security Agent) of funding the overdue amount.
- (b) Any interest accruing under this sub-clause shall be immediately payable by the Chargors on demand by the Security Agent.
- (c) Default interest (if unpaid) arising on an overdue amount will be compounded with the overdue amount at the end of each Interest Period applicable to that overdue amount but will remain immediately due and payable.
- (d) Any interest accruing under this Deed will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 365 days.

15. **Cumulative powers and avoidance of payments**

15.1 **Cumulative powers**

The powers which this Deed confers on the Security Agent and any Receiver appointed under this Deed are cumulative, without prejudice to their respective powers under the general law, and may be exercised as often as the relevant person thinks appropriate. The Security Agent or the Receiver may, in connection with the exercise of their powers, join or concur with any person in any transaction, scheme or arrangement whatsoever. The respective powers of the Security Agent and the Receiver will in no circumstances be suspended, waived or otherwise prejudiced by anything other than an express consent or amendment.

15.2 **Amounts avoided**

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

15.3 Discharge conditional

Any settlement or discharge between a Chargor and the Security Agent shall be conditional upon no security or payment to the Security Agent by a Chargor or any other person being avoided, set aside, ordered to be refunded or reduced by virtue of any provision or enactment relating to insolvency and accordingly (but without limiting the other rights of the Security Agent under this Deed) the Security Agent shall be entitled to recover from the Chargors the value which the Security Agent has placed on that security or the amount of any such payment as if that settlement or discharge had not occurred.

16. Ruling-off accounts

If the Security Agent receives notice of any subsequent Security or other interest affecting any of the Security Assets (except as permitted by the Facilities Agreement) it may open a new account for the Chargors in its books. If it does not do so then (unless it gives written notice to the contrary to the Chargors), as from the time it receives that notice, all payments made by a Chargor to it (in the absence of any express appropriation to the contrary) shall be treated as having been credited to a new account of the Chargors and not as having been applied in reduction of the Secured Liabilities.

17. Power of attorney

Each Chargor, by way of security, irrevocably and severally appoints each of the Security Agent and any Receiver as its attorney (with full power of substitution and delegation) in its name and on its behalf and as its act and deed to execute, seal and deliver (using the company seal where appropriate) and otherwise perfect and do any deed, assurance, agreement, instrument, act or thing which it ought to execute and do under the terms of this Deed but has failed to do so, or otherwise for any of the purposes of this Deed, and each Chargor covenants with each of the Security Agent and any Receiver to ratify and confirm all such acts or things made, done or executed by that attorney.

18. Delegation

18.1 A Secured Party may, at any time, delegate by power of attorney or otherwise to any person for any period, all or any of the rights, powers and discretions vested in it by or pursuant to this Deed.

18.2 That delegation may be made upon any terms and conditions (including the power to sub delegate) and subject to any restrictions that that Secured Party may, in its discretion, think fit in the interests of the Secured Parties and it shall not be bound to supervise, or be in any way responsible for any loss incurred by reason of any misconduct or default on the part of any such delegate or sub delegate.

19. Redemption of prior charges

The Security Agent may redeem any prior Security on or relating to any of the Security Assets or procure the transfer of that Security to itself, and may settle and pass the accounts of any person entitled to that prior Security. Any account so settled and passed shall (subject to any manifest error) be conclusive and binding on each Chargor. Each Chargor will on demand pay to the Security Agent all principal monies and interest and all losses incidental to any such redemption or transfer.

20. Set-off and other rights

20.1 Set-off rights of the Secured Party

A Secured Party may set off any matured obligation due from a Transaction Obligor under the Finance Documents (to the extent beneficially owned by that Secured Party) against any matured obligation owed by that Secured Party to an Obligor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different

currencies, the Secured Party may convert either obligation at a market rate of exchange for the purpose of the set-off.

20.2 Unliquidated claims

If the relevant obligation or liability is unliquidated or unascertained, the Secured Party may set-off the amount which it estimates (in good faith) will be the final amount of that obligation or liability once it becomes liquidated or ascertained.

20.3 No deductions

All payments under this Deed by a Chargor shall be made without any set-off, counterclaim or equity and (subject to the following sentence) free from, clear of and without deduction for any taxes, duties, levies, imposts or charges whatsoever, present or future. If a Chargor is compelled by the law of any applicable jurisdiction (or by an order of any regulatory authority in such jurisdiction) to withhold or deduct any sums in respect of taxes, duties, levies, imposts or charges from any amount payable to a Secured Party under this Deed or, if any such withholding or deduction is made in respect of any recovery under this Deed, the relevant Chargor shall pay such additional amount so as to ensure that the net amount received by that Secured Party shall equal the full amount due to it under the provisions of this Deed (had no such withholding or deduction been made).

21. Notices

21.1 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.

21.2 Addresses

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

21.3 Delivery

(a) Any communication or document made or delivered by one person to another 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 sub-clause 21.2 (*Addresses*), 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 (or any substitute department or officer as the Security Agent shall specify for this purpose).

- (c) Any communications or document which becomes effective in accordance with sub-clauses 21.3(a) to (b) after 5:00pm in the place of receipt shall be deemed only to be effective on the following day.

21.4 *Electronic communications*

- (a) Any communication to be made between any two Parties under or in connection with this Deed may be made by electronic mail or other electronic means to the extent that those two Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication and if those two 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 those two Parties will be effective only when actually received in readable form and in the case of any electronic communication made by a Party 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 sub-clause 21.4(b), after 5:00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

21.5 *English language*

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

22. *Miscellaneous*

22.1 *Assignment*

No Chargor may assign any of its rights or transfer any of its rights or obligations under this Deed. The Security Agent may assign and transfer all or any part of its rights and obligations under this Deed in accordance with the Facilities Agreement.

22.2 *Certificates conclusive*

Any certification or determination by a Secured Party of a rate or amount under this Deed is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

22.3 *Invalidity of any provision*

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.

22.4 Counterparts

- (a) 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.
- (b) Failure by one or more Parties ("**Non-Signatories**") to execute this Deed on the date of this Deed will not invalidate the provisions of this Deed as between the other Parties who do execute this Deed. Any Non-Signatories may execute this Deed (or a counterpart of this Deed) on a subsequent date and will thereupon become bound by its provisions.
- (c) If any one or more of the Chargors is not bound by any or all of the provisions of this Deed (whether by reason of lack of capacity, improper execution, failure to execute or for any other reason whatsoever) the remaining Chargors shall nonetheless continue to be bound as if such Chargor had never been a party.

22.5 Covenant to release

At the end of the Security Period, the Security Agent shall, at the request and cost of the Chargors, release and re-assign the Security Assets from the security constituted by this Deed.

22.6 Disclosure

A Secured Party may disclose to any person to whom it discloses Confidential Information in accordance with clause 39 (*Confidentiality*) of the Facilities Agreement any information about the Borrower, the Chargors, the Facilities Agreement or this Deed as that Secured Party shall consider appropriate.

23. Governing law

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

24. Jurisdiction

- 24.1 The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute relating to the existence, validity or termination of this Deed or any non-contractual obligation arising out of or in connection with this Deed) (a "**Dispute**").
- 24.2 The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- 24.3 This clause is for the benefit of the Security Agent only. As a result, the Security Agent shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Security Agent may take concurrent proceedings in any number of jurisdictions.

In witness this Deed is executed as a deed on the date appearing at the head of page 1.

Schedule
The Chargors

Name of Chargor	Jurisdiction of incorporation/formation (if applicable)	Registration number (if any)
Epsilon (Church Walk) LLP	England	117724 02 399494
Church Walk House Limited	England	09527312

02
TK

Signatories to this Deed

Chargors

Executed as a deed by)
Epsilon (Church Walk) LLP)
acting by)
in the presence of:)



Signature of member

Signature of witness



Name of witness

ROONEY HUNT

Address of witness



Occupation of witness

SURVEYOR

Notice Details

Address: 20 Thayer Street, London W1U 2DD

Attention: Peter Shasha

Executed as a deed by)
Church Walk House Limited)
acting by)
in the presence of:)

Signature of director

Signature of witness

Name of witness

Address of witness

Occupation of witness

Notice Details

Address: 33 Margaret Street, London W1G 0JD

Attention: Clare Sutcliffe

Signatories to this Deed

Chargors

Executed as a deed by)
Epsilon (Church Walk) LLP)
acting by)
in the presence of:)

Signature of member

Signature of witness

Name of witness

Address of witness

Occupation of witness

Notice Details

Address: 20 Thayer Street, London W1U 2DD

Attention: Peter Shasha

Executed as a deed by)
Church Walk House Limited)
acting by)
in the presence of:)

Signature of director

Signature of witness

Name of witness

Address of witness

Occupation of witness

Notice Details

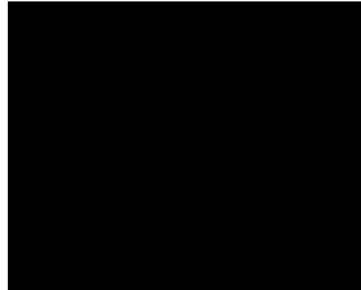
Address: 33 Margaret Street, London W1G 0JD

Attention: Clare Sutcliffe

Security Agent



Signed by *had* *TIC*)
authorised signatories *ics*)
for and on behalf of)
Investec Bank plc)



Notice Details

Address: Investec Bank plc, 2 Gresham Street, London, EC2V 7QP
Attention: Iain Bage

In the presence of:

TIBOR KORMAN



OSBORNE CLARKE LLP
ONE LONDON WALL
LONDON EC2Y 5EB