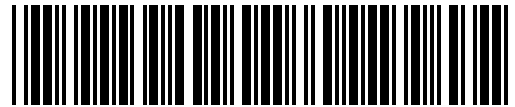




Registration of a Charge

Company Name: **NEVER WHAT IF GROUP LIMITED**

Company Number: **09859748**



Received for filing in Electronic Format on the: **23/12/2022**

XBJHMVPK

Details of Charge

Date of creation: **23/12/2022**

Charge code: **0985 9748 0003**

Persons entitled: **MERRY SEED DEVELOPMENT III LIMITED**

Brief description:

Contains fixed charge(s).

Contains negative pledge.

Authentication of Form

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

Authentication of Instrument

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

Certified by: **EVERSHEDS SUTHERLAND (INTERNATIONAL) LLP**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 9859748

Charge code: 0985 9748 0003

The Registrar of Companies for England and Wales hereby certifies that a charge dated 23rd December 2022 and created by NEVER WHAT IF GROUP LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 23rd December 2022 .

Given at Companies House, Cardiff on 3rd January 2023

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 this document as a true copy of the original, save
for material redacted pursuant to section 859G Companies
Act 2006

Eversheds Sutherland (International) LLP
.....

Eversheds Sutherland (International) LLP

EXECUTION VERSION

Dated: 23 December 2022

- (1) **NEVER WHAT IF GROUP LIMITED** as Chargor
- (2) **MERRY SEED DEVELOPMENT III LIMITED** as Security Agent

Share Charge

relating to the shares in FLETTON QUAYS APARTMENTS LIMITED

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THIS DEED is made on 23 December

2022 between:

- (1) **NEVER WHAT IF GROUP LIMITED**, registered in England and Wales (registered number 09859748) at Olivers Barn, Maldon Road, Witham, Essex, United Kingdom, CM8 3HY, as chargor (the "**Chargor**"); and
- (2) **MERRY SEED DEVELOPMENT III LIMITED**, a company incorporated in the British Virgin Islands with company number 2110165, as security trustee for the Secured Parties (the "**Security Agent**")

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Deed:

"Associated Benefits" means, in respect of any asset:

- (a) all monies including (where relevant) all dividends, distributions, profits, compensation, damages, income or interest paid or payable relating to that asset; and
- (b) all Authorisations, rights, benefits, claims or property at any time relating to that asset.

"Barclays Deed of Priority" means the deed of priority to be entered between (1) the Chargor, (2) the Security Agent and (3) Barclays Bank PLC.

"Barclays Security Agreement" means the debenture dated 04 August 2020 between (1) the Chargor and (2) Barclays Bank PLC.

"Borrower" means Propiteer Abbots Gate Limited, registered in England and Wales (registered number 12195518) at Olivers Barn, Maldon Road, Witham, Essex, United Kingdom, CM8 3HY.

"Delegate" means any delegate, agent, attorney or co-trustee appointed by the Security Agent.

"Discharge Date" means the date with effect from which the Security Agent confirms to the Chargor in writing that all the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full and all relevant commitments of the Secured Parties cancelled.

"Event of Default" has the meaning given to that term in the Facility Agreement.

"Facility Agreement" means the facility agreement dated on or about the date of this Deed between, amongst others, the Borrower, the Security Agent and the Finance Parties.

"Finance Party" means the Agent, the Security Agent, the Arranger, or a Lender.

"Fletton" means Fletton Quays Apartments Limited, registered in England and Wales (registered number 11601399) at Olivers Barn, Maldon Road, Witham, Essex, United Kingdom, CM8 3HY.

"Insolvency Act" means the Insolvency Act 1986.

"Insolvency Event" means any corporate action, legal proceedings or other procedure or step is taken in relation to:

- (a) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Chargor;
- (b) a composition, compromise, assignment or arrangement with any creditor of the Chargor;
- (c) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of the Chargor or any of its assets; or
- (d) the enforcement of any Security over any assets of the Chargor,
- (e) or any analogous procedure or step is taken in any jurisdiction.

"Investments" means:

- (a) the Specified Shares; and
- (b) all other stocks, shares, bonds, securities or investments in the capital of Fletton legally and/or beneficially owned by the Chargor from time to time.

"LPA" means the Law of Property Act 1925.

"Original Jurisdiction" means the jurisdiction under whose laws the Chargor is incorporated as at the date of this Deed.

"Receiver" means a receiver or receiver and manager or administrative receiver of the whole or any part of the Secured Property.

"Relevant Jurisdiction" means, in relation to the Chargor, its Original Jurisdiction and any jurisdiction where it conducts its business.

"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.

"Secured Party" means a Finance Party, a Receiver or any Delegate.

"Secured Property" means the assets of the Chargor which from time to time are, or are expressed to be, the subject of any Security created by this Deed.

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

"Specified Shares" means any shares specified in Schedule 1 (*The Specified Shares*).

"Tax Deduction" means a deduction or withholding for or on account of Tax from a payment under a Finance Document.

1.2 Construction

1.2.1 Unless a contrary indication appears, in this Deed:

- 1.2.1.1 terms defined in the Facility Agreement have the same meaning in this Deed;
- 1.2.1.2 the provisions of clause 1.2 (*Construction*) of the Facility Agreement (with the exception of clause 1.2.4) apply to this Deed as if set out in full in this Deed, except that references to the

Facility Agreement shall be construed as references to this Deed; and

1.2.1.3 all provisions in the Facility Agreement that are deemed to apply to the Finance Documents apply to this Deed as if set out in full in this Deed.

1.2.2 Unless a contrary indication appears, any reference in this Deed to:

1.2.2.1 any "**asset**" includes present and future properties, revenues and rights of every description, all proceeds of sale of such asset, all rights under any agreement for the sale, lease or licence of such asset and any monies paid or payable in respect of such asset;

1.2.2.2 any "**disposal**" includes a sale, transfer, assignment, grant, lease, licence, declaration of trust or other disposal, whether voluntary or involuntary, and "dispose" will be construed accordingly; and

1.2.2.3 a "**Finance Document**" or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, novated, supplemented, extended, restated or replaced from time to time.

1.2.3 Where this Deed includes the words "**including**", "**in particular**" or "**or otherwise**" (or similar words or phrases), the intention is to state examples and not to be exhaustive.

1.2.4 References to any Security "**created by this Deed**" are to be deemed to include such Security created or intended to be created, constituted, given, made or extended by, under or evidenced by this Deed.

1.3 **Third party rights**

1.3.1 Unless expressly provided to the contrary in this Deed, a person who is not a party to this Deed has no right under the Contracts (Rights of Third Parties) Act 1999 (the "Third Parties Act") to enforce or enjoy the benefit of any term of this Deed.

1.3.2 Notwithstanding any term of this Deed, the consent of any person who is not a party to this Deed is not required to rescind or vary this Deed at any time.

1.3.3 Any Receiver, Delegate or any person described in clause 28.11.2 (*Exclusion of liability*) of the Facility Agreement may, subject to this Clause 1.3 and the Third Parties Act, rely on any clause of this Deed which expressly confers rights on it.

2. **COVENANT TO PAY**

2.1 The Chargor, as principal debtor and not just as surety, covenants with the Security Agent to pay or discharge the Secured Liabilities when they fall due and payable in accordance with the Finance Documents.

2.2 The total amount recoverable by the Secured Parties from the Chargor in relation to the Secured Liabilities shall be limited to the amount realised from the proceeds of sale or other disposal or realisation of the Secured Property.

2.3 Clause 2.2 shall only limit the liability of the Chargor for the discharge of the Secured Liabilities and shall not:

2.3.1 reduce or discharge the Secured Liabilities themselves or limit or restrict the accrual of interest (including default interest) on any amount; or

- 2.3.2 limit the rights of any Secured Party to recover any amount from any person other than the Chargor under or in connection with the Finance Documents.

3. GRANT OF SECURITY

3.1 Fixed charges

The Chargor charges by way of first fixed charge:

- 3.1.1 all its Investments; and
- 3.1.2 all Associated Benefits relating to its Secured Property.

3.2 General

All Security created by this Deed:

- 3.2.1 is created in favour of the Security Agent, as security trustee for the Secured Parties;
- 3.2.2 unless specifically stated otherwise, is created over the present and future assets of the Chargor to the extent of its rights, title and interest in, under and to such assets at any time; and
- 3.2.3 is created with full title guarantee in accordance with the Law of Property (Miscellaneous Provisions) Act 1994.

3.3 Continuing security

The Security created by this Deed is continuing security for the payment and discharge of the Secured Liabilities. The provisions of this Deed will apply at all times:

- 3.3.1 regardless of the date on which any of the Secured Liabilities were incurred;
- 3.3.2 notwithstanding any intermediate payment or discharge; and
- 3.3.3 in respect of the full amount of the Secured Liabilities at the relevant time even if the amount of the Secured Liabilities had previously been less than that amount or had been nil at any time.

3.4 Additional security

The Security created by this Deed is in addition to and is not in any way prejudiced by any other guarantee or security now or subsequently held by any Secured Party. No prior Security held by any Secured Party over the whole or any of the Secured Property will merge with the Security created by this Deed.

3.5 Validity of details of Specified Shares

The fact that incorrect or incomplete details of any Specified Shares are included or inserted in Schedule 1 (The Specified Shares) will not affect the validity or enforceability of the Security created by this Deed.

4. REPRESENTATIONS

The Chargor makes the representations and warranties set out in this Clause 4 to each Secured Party on the date of this Deed.

4.1 Status

4.1.1 It is a limited liability corporation, duly incorporated and validly existing under the law of its Original Jurisdiction.

4.1.2 It has the power to own its assets and carry on its business as it is being conducted.

4.2 Binding obligations

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

4.3 Non-conflict with other obligations

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

4.3.1 any law or regulation applicable to it;

4.3.2 its constitutional documents; or

4.3.3 any agreement or instrument binding upon it or any of its assets or constitute a default or termination event (however described) under any such agreement or instrument.

4.4 Power and authority

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

4.4.2 No limit on its powers will be exceeded as a result of the grant of Security or giving of guarantees or indemnities contemplated by this Deed.

4.5 Validity and admissibility in evidence

All Authorisations required:

4.5.1 to enable it lawfully to enter into, exercise its rights and comply with its obligations under this Deed; and

4.5.2 to make this Deed admissible in evidence in its Relevant Jurisdictions,

have been obtained or effected and are in full force and effect except any Authorisation referred to in Clause 4.8 (*No filing or stamp taxes*).

4.5.3 All Authorisations necessary for the conduct of the business, trade and ordinary activities of the Chargor have been obtained or effected and are in full force and effect.

4.6 Governing law and enforcement

4.6.1 Subject to the Legal Reservations, the choice of English law as the governing law of this Deed will be recognised and enforced in its Relevant Jurisdictions.

4.6.2 Subject to the Legal Reservations, any judgment obtained in England and Wales in relation to this Deed will be recognised and enforced in its Relevant Jurisdictions.

4.7 **Deduction of Tax**

As at the date of this Deed, it is not required to make any Tax Deduction for or on account of Tax from any payment it may make under this Deed.

4.8 **No filing or stamp taxes**

Under the laws of its Relevant Jurisdictions it is not necessary that this Deed be registered, filed, recorded, notarised or enrolled with any court or other authority in that jurisdiction or that any stamp, registration, notarial or similar Taxes or fees be paid on or in relation to this Deed or the transactions contemplated by this Deed except registration of particulars of this Deed at Companies House under the Companies Act 2006 and payment of associated fees, which will be made and paid promptly after the date of this Deed.

4.9 **Information**

4.9.1 All information supplied by it or on its behalf to any Secured Party in connection with this Deed or any Secured Property was true and accurate as at the date it was provided or as at any date at which it was stated to be given.

4.9.2 It has not omitted to supply any information which, if disclosed, would make the information referred to in Clause 4.9.1 untrue or misleading in any respect.

4.9.3 As at the first Utilisation Date, nothing has occurred since the date of the information referred to in Clause 4.9.1 which, if disclosed, would make that information untrue or misleading in any material respect.

4.10 **Pari passu ranking**

Its payment obligations under this Deed rank at least pari passu with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.

4.11 **No proceedings pending or threatened**

4.11.1 No litigation, arbitration or administrative proceedings or investigations of or before any court, arbitral body or agency which, if adversely determined, are reasonably likely to have a Material Adverse Effect have been started or threatened against it.

4.11.2 No judgment or order of a court, arbitral body or agency which is likely to have a Material Adverse Effect has been made against it.

4.12 **Insolvency**

No:

4.12.1 corporate action, legal proceeding or other procedure or step described in clause 25.7 (*Insolvency proceedings*) of the Facility Agreement; or

4.12.2 creditors' process described in clause 25.8 (*Creditors' process*) of the Facility Agreement,

has been taken or, to its knowledge, threatened in relation to it and none of the circumstances described in clause 25.6 (*Insolvency*) of the Facility Agreement applies to it.

4.13 **Centre of main interests and establishments**

For the purposes of Regulation (EU) 2015/848 of 20 May 2015 on Insolvency Proceedings (recast) (the "**Regulation**"), its centre of main interest (as that term is used in Article 3(1) of the Regulation) is situated in its Original Jurisdiction and it has no "establishment" (as that term is used in Article 2(10) of the Regulation) in any other jurisdiction.

4.14 **Ranking of Security**

Subject to the Legal Reservations and Perfection Requirements, the security conferred by this Deed constitutes a first priority security interest of the type described, over the assets referred to, in this Deed and those assets are not subject to any prior or pari passu Security.

4.15 **Secured Property**

- 4.15.1 It is the sole legal and beneficial owner of, and has good and marketable title to, the Secured Property, in each case, free from Security or restrictions (other than those created by or pursuant to the Finance Documents and/or the Barclays Security Agreement (which is the subject of the Barclays Deed of Priority)).
- 4.15.2 The shares in the capital of Fletton that the Chargor holds are fully paid and are not subject to any option to purchase or similar rights.
- 4.15.3 The constitutional documents of Fletton do not and could not restrict or inhibit any transfer of the shares of Fletton on creation or enforcement of the Security conferred by this Deed.
- 4.15.4 66.3% of the entire issued share capital of Fletton is, legally and beneficially, directly owned and controlled by the Chargor.

4.16 **Repetition**

Each of the representations and warranties set out in this Clause 4 are deemed to be made by the Chargor by reference to the facts and circumstances then existing on the date of each Utilisation Request, on each Utilisation Date and on the first day of each Interest Period.

5. **UNDERTAKINGS**

The undertakings in this Clause 5 remain in force from the date of this Deed and to continue throughout the Security Period.

5.1 **Negative pledge**

During the Security Period, the Chargor may not create or permit to subsist any Security over any Secured Property other than as permitted under the Facility Agreement.

5.2 **Disposals**

During the Security Period, the Chargor shall not enter into a single transaction or a series of transactions (whether related or not and whether voluntary or involuntary) to dispose of all or any part of any Secured Property (including of any legal or beneficial ownership rights and any ancillary rights) or enter into any transfer or financing arrangement (including but not limited to a repurchase (repo) transaction and/or a total return swap or other synthetic transaction and/or any other agreement or arrangement having an economic effect substantially similar to a repurchase (repo) transaction and/or a total return transaction or other synthetic transaction) with respect to any Secured Property, other than as permitted under the Facility Agreement.

5.3 **Documents relating to Secured Property**

The Chargor shall:

- 5.3.1 on the date of this Deed (in the case of any Secured Property existing on the date of this Deed), within five Business Days of the date of acquisition or receipt of any Secured Property (in the case of any Secured Property acquired or received after the date of this Deed) and, at any other time, promptly upon request by the Security Agent in writing, deposit with the Security Agent:

- 5.3.1.1 all documents of title or other evidence of ownership relating to its Secured Property;
- 5.3.1.2 transfers of the Investments, each executed in blank; and
- 5.3.1.3 such deeds, certificates and documents relating to its Secured Property as the Security Agent may reasonably request; and
- 5.3.2 promptly supply to the Security Agent such further information regarding its Secured Property as the Security Agent may reasonably request in writing.
- 5.3.3 The Security Agent may retain any document delivered to it pursuant to this Deed until the Discharge Date.

5.4 **Maintenance of Secured Property**

The Chargor may not:

- 5.4.1 take or permit the taking of any action which may adversely affect the value of any of the Secured Property, prejudice the interests of any Secured Party under any Finance Document or result in the rights attaching to any of the Secured Property being altered or diluted; or
- 5.4.2 except where the Security Agent so requires or permits, nominate another person to enjoy or exercise any of its rights in relation to any of the Secured Property.

5.5 **Dividends and voting rights**

- 5.5.1 Subject to Clause 5.4 (*Maintenance of Secured Property*) and Clause 5.5.2, the Chargor may:
 - 5.5.1.1 receive and retain all dividends or other income paid or payable in respect of its Investments; and
 - 5.5.1.2 exercise all voting and other rights attaching to its Investments, provided that it does so for a purpose not inconsistent with any Finance Document.
- 5.5.2 While any Event of Default is continuing:
 - 5.5.2.1 the Chargor shall hold any dividends or other income received in respect of the Investments on trust for the Security Agent and pay such amounts into a separate account or otherwise as the Security Agent may direct; and
 - 5.5.2.2 the Security Agent may serve written notice on the Chargor in accordance with the provisions of the Facility Agreement, and on and from the Business Day following the date of such notice, the Chargor shall exercise all voting and other rights attaching to the Investments as the Security Agent may direct.

5.6 **Further assurance**

The Chargor shall promptly take all such actions, including executing all such documents, notices and instructions in such form as the Security Agent may reasonably require:

- 5.6.1 to create, perfect, protect and (if necessary) maintain the Security created by this Deed or for the exercise of any rights, powers and remedies of the Secured Parties provided by or under this Deed or by law or regulation; and/or

- 5.6.2 to facilitate the realisation of the assets which are, or are intended to be, the subject of the Security created by this Deed.

5.7 **Power to remedy**

If the Chargor fails to comply with any of its obligations under this Deed, the Security Agent (or its nominee) may (at the Chargor's expense) take such action as is necessary to protect any assets against the consequences of the Chargor's non-compliance and/or to ensure compliance with such obligations. The Security Agent is not obliged to perform any obligation of the Chargor nor to take any action which it may be entitled to take under this Deed.

5.8 **Power of attorney**

- 5.8.1 As security for the performance of its obligations under this Deed, the Chargor irrevocably appoints the Security Agent, each Receiver and each Delegate to be its attorney, with full power of substitution.
- 5.8.2 Each attorney may, in the name of the Chargor and on its behalf and at its expense, do anything which the Chargor is obliged to do under any Finance Document to which it is a party but has failed to do or which the Security Agent, Receiver or Delegate may in their absolute discretion consider appropriate in connection with the exercise of any of their rights, powers, authorities or discretions in relation to the Secured Property or under or otherwise for the purposes of any Finance Document or any law or regulation.
- 5.8.3 The Chargor ratifies and confirms anything done by any attorney under this Clause 5.8. The Chargor agrees to indemnify each attorney against all actions, claims, demands and proceedings taken or made against it and all costs, damages, expenses, liabilities and losses incurred by each attorney as a result of or in connection with anything lawfully done by it under or in connection with this power of attorney.

6. **RIGHTS OF ENFORCEMENT**

6.1 **Secured Liabilities deemed payable**

For the purposes of all rights and powers implied by statute, the Secured Liabilities are due and payable on the date of this Deed.

6.2 **When Security enforceable**

The Security created by this Deed is enforceable at any time while an Event of Default is continuing.

6.3 **Enforcement powers**

At any time (a) when the Security created by this Deed is enforceable or (b) following a request by the Chargor, the Security Agent may, without further notice:

- 6.3.1 sell, appropriate, realise or transfer, including to itself or to any other person, all or any part of the Secured Property;
- 6.3.2 appoint one or more persons to be a Receiver of all or any part of the Secured Property;
- 6.3.3 exercise any of the powers, authorities and discretions conferred on mortgagees, administrators or receivers, under the LPA, the Insolvency Act, any other legislation or regulation or under this Deed; and/or
- 6.3.4 take such further action as it sees fit to enforce all or any part of the Security created by this Deed.

6.4 **Rights in relation to a Receiver**

The Security Agent may remove any Receiver appointed under this Deed, appoint another person as Receiver or appoint additional Receivers. Each Receiver will be deemed to be the agent of the Chargor who alone will be responsible for the acts and defaults of the Receiver and for any liabilities incurred by the Receiver. The Security Agent may fix the remuneration of a Receiver which will be payable by the Chargor and form part of the Secured Liabilities.

6.5 **Redemption of prior Security**

Where there is any Security created over any of the Secured Property which ranks in priority to the Security created by this Deed and:

6.5.1 the Security created by this Deed becomes enforceable; and/or

6.5.2 the holder of such other Security takes any steps to enforce that Security,

the Security Agent or any Receiver may, at its sole discretion and at the cost and expense of the Chargor, redeem, take a transfer of and/or repay the indebtedness secured by such other Security. All amounts paid by the Security Agent or a Receiver under this Clause will form part of the Secured Liabilities.

6.6 **Appropriation of payments**

Any appropriation by the Security Agent or a Receiver under this Deed will override any appropriation by the Chargor.

6.7 **Financial collateral**

6.7.1 To the extent that any of the assets charged under this Deed constitute "financial collateral" and this Deed constitutes a "financial collateral arrangement" (in each case, for the purpose of and as defined in the Financial Collateral Arrangements (No. 2) Regulations 2003 (the "**FC Regulations**")), the Security Agent will have the right at any time when such Security is enforceable to appropriate all or any part of that financial collateral in such manner as it sees fit in or towards the satisfaction of the Secured Liabilities.

6.7.2 Where any financial collateral is appropriated, its value shall be:

6.7.2.1 in the case of cash, its face value at the time of the appropriation;

6.7.2.2 if the financial collateral is listed or traded on a recognised exchange, the value at which it could have been sold on that exchange at the time of appropriation; and

6.7.2.3 in any other case, the amount reasonably determined by the Security Agent by such process as it may select, including independent valuation,

and the Chargor agrees that the method of valuation provided for in this Clause 6.7.2 is commercially reasonable for the purposes of the FC Regulations.

6.8 **Demands**

Any demand for payment made by any Secured Party shall be valid and effective even if it contains no statement of the relevant Secured Liabilities or an inaccurate or incomplete statement of them.

7. POWERS OF A RECEIVER

7.1 General powers

Any Receiver will have:

- 7.1.1 the rights, powers, privileges and immunities conferred on receivers, receivers and managers and mortgagees in possession under the LPA;
- 7.1.2 the rights, powers, privileges and immunities conferred on administrative receivers (whether or not that Receiver is an administrative receiver) under the Insolvency Act; and
- 7.1.3 all other rights, powers, privileges and immunities conferred by law or regulation on receivers, receivers and managers, mortgagees in possession and administrative receivers.

7.2 Specific powers

The rights, powers and remedies provided in this Deed are in addition to any rights, powers and remedies under law or regulation. Any Receiver will have the following additional powers:

- 7.2.1 the power to do or omit to do anything which the Chargor could do or omit to do in relation to the Secured Property which is the subject of the appointment;
- 7.2.2 the power to do all other acts and things which the Receiver may consider necessary for realising any of the Secured Property or incidental or conducive to any of the rights, powers and discretions conferred on a Receiver under this Deed or by law or regulation; and
- 7.2.3 the power to use the Chargor's name for all the above purposes.

7.3 Variation of statutory powers

The following statutory provisions do not apply to this Deed or any Security created by this Deed:

- 7.3.1 the restriction on the consolidation of mortgages in section 93 of the LPA;
- 7.3.2 the restrictions on the power to grant or accept the surrender of leases in sections 99 and 100 of the LPA;
- 7.3.3 the conditions to the exercise of a power of sale in section 103 of the LPA;
- 7.3.4 the restrictions on the application of proceeds by a mortgagee or receiver in sections 105, 107(2) and 109(8) of the LPA; and
- 7.3.5 the restrictions on the appointment of a receiver in section 109(1) of the LPA and the provisions regarding a receiver's remuneration in section 109(6) of the LPA.

8. PAYMENTS AND ACCOUNTS

8.1 Set-off and other remedies

- 8.1.1 All payments to be made by the Chargor under this Deed shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

8.1.2 A Secured Party may set off any matured obligation due from the Chargor under this Deed (to the extent beneficially owned by that Secured Party) against any matured obligation owed by that Secured 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 Secured Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

8.1.3 A Secured Party may, at any time, combine or consolidate any accounts held by it for the Chargor.

8.2 **No withholding**

8.2.1 The Chargor shall make all payments to be made by it without any Tax Deduction, unless a Tax Deduction is required by law.

8.2.2 The Chargor shall, promptly upon becoming aware that it must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction), notify the Security Agent accordingly.

8.2.3 If a Tax Deduction is required by law to be made by the Chargor, the amount of the payment due from the Chargor shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.

8.2.4 If the Chargor is required to make a Tax Deduction, the Chargor shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.

8.3 **VAT**

Clause 12.7 (VAT) of the Facility Agreement applies to this Deed as if set out in full in this Deed, except that references to a Party shall be construed as references to a party to this Deed.

8.4 **Default interest**

If the 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 four per cent. per annum higher than the rate which would have been payable if the overdue amount had, during the period of non-payment, constituted a Loan in the currency of the overdue amount for successive Interest Periods, each of a duration selected by the Agent (acting reasonably). Any interest accruing under this Clause shall be immediately payable by the Chargor on demand by the Security Agent. 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.

8.5 **General**

8.5.1 Subject to Clause 8.5.2, sterling (£) is the currency of payment for any sum due from the Chargor under this Deed.

8.5.2 Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.

8.5.3 If the Chargor pays any amount in a different currency, it shall as an independent obligation promptly indemnify each Secured Party against any cost, loss or liability arising out of or as a result of the conversion into the required currency.

8.5.4 All amounts payable by the Chargor under this Deed shall be paid promptly to, and in accordance with the instructions of, the Security Agent.

8.5.5 Any certification or determination by any 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.

8.5.6 Any demand for payment made by the Security Agent shall be valid and effective even if it contains no statement of the relevant liabilities or an inaccurate or incomplete statement of them. The Security Agent may make any number of demands under this Deed.

9. APPLICATION OF PROCEEDS

9.1 Order of priority

All amounts received by any Secured Party in connection with the enforcement of the Security created by this Deed will be applied, to the extent permitted by applicable law, in accordance with the provisions of the Finance Documents.

9.2 New accounts

If at any time:

9.2.1 any of the Chargor's obligations cease to be continuing obligations for any reason; or

9.2.2 a Secured Party receives or is deemed to have received notice of subsequent Security over any of the Secured Property,

each Secured Party may open a new account with the Chargor. If a Secured Party does not open a new account, it will be treated as having done so at the time when the Chargor's obligations cease to be continuing obligations or, as the case may be, the relevant notice of subsequent security was received and, as from that time, all payments made by or on behalf of the Chargor to that Secured Party will be credited or be treated as having been credited to the relevant new account and not as having been applied in discharge of the Secured Liabilities.

9.3 Release of Secured Property

If the Security Agent is satisfied that all the Secured Liabilities have, subject to Clauses 12.1 (*Reinstatement*) and 12.2 (*Avoidable payments*), been unconditionally and irrevocably paid and discharged in full and all facilities which might give rise to Secured Liabilities terminated, the Security Agent will, at the request and cost of the Chargor, execute such documents and take such steps necessary to release the Secured Property from the Security created by this Deed.

10. PROTECTION OF THIRD PARTIES

10.1 No buyer from, or other person dealing with, any Secured Party will be concerned to enquire whether:

10.1.1 any money remains due under the Finance Documents;

10.1.2 any power which that Secured Party is purporting to exercise has arisen or become exercisable; or

10.1.3 that Secured Party is validly appointed and acting within its powers in accordance with this Deed.

10.2 The receipt of any Secured Party will be an absolute and conclusive discharge to a purchaser of any of the Secured Property who will have no obligation to enquire how any monies are applied.

11. PROTECTION OF SECURITY AGENT

11.1 No liability as mortgagee in possession

No Secured Party will be liable to account to the Chargor as mortgagee in possession by reason of entering into possession of any of the Secured Property, nor for any cost, loss or liability on realisation, nor for any default or omission for which a mortgagee in possession might be liable.

11.2 Tacking

The Security created by this Deed is intended to secure any further advances which any Secured Party is obliged to make under the Finance Documents.

11.3 Discretion of the Secured Parties

Each Secured Party is entitled to exercise its rights, powers and discretions under this Deed in accordance with the terms of the Finance Documents and the Chargor does not have any right to control or restrict any Secured Party's exercise of any of its rights, powers or discretions under this Deed.

12. SAVING PROVISIONS

12.1 Reinstatement

If, at any time, there has been a release, settlement or discharge of the Chargor's obligations under this Deed and, as a consequence of any Insolvency Event or for any other reason:

- 12.1.1 any payment made to any person in respect of any of the Secured Liabilities is required to be repaid; and/or
- 12.1.2 any Security (or other right) held by the Secured Parties in respect of any of the Secured Liabilities (whether under this Deed or otherwise) is declared void, is set aside or is otherwise affected,

then the Chargor's obligations under this Deed will continue in effect as if there had been no such release, settlement or discharge and as if the relevant payment had not been made and/or (as applicable) the relevant obligation or Security (or other right) had not been so affected; and accordingly (but without limiting the Secured Parties' other rights under this Deed) the Security Agent will be entitled to recover from the Chargor the value which the Security Agent has placed upon such Security (or other right) or the amount of any such payment as if such release, settlement or discharge had not occurred.

12.2 Avoidable payments

If the Security Agent, acting reasonably, considers that any amount paid by or on behalf of the Chargor in respect of the Secured Liabilities is capable of being avoided, set aside or ordered to be refunded or reduced for any reason then, for the purposes of this Deed, such amount will not be considered to have been irrevocably paid.

12.3 Waiver of defences

The obligations of the Chargor under this Deed and the Security created by this Deed will not be affected by any act, omission, matter or thing which, but for this Clause, would reduce, release or prejudice any of its obligations under this Deed or the Security created by this Deed (without limitation and whether or not known to it or any Secured Party) including:

- 12.3.1 any time, waiver or consent granted to, or composition with, the Chargor, any Obligor or any other person;

- 12.3.2 the release of any Obligor or any other person under the terms of any composition or arrangement with any creditor of any Obligor;
- 12.3.3 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 Chargor, any 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;
- 12.3.4 any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Chargor, any Obligor or any other person;
- 12.3.5 any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of any Finance Document or any other document or security including without limitation any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under any Finance Document or other document or security;
- 12.3.6 any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security; or
- 12.3.7 any insolvency or similar proceedings.

12.4 Chargor Intent

Without prejudice to the generality of Clause 12.3 (*Waiver of defences*), the Chargor expressly confirms that it intends that the Security created by this Deed shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any of the Finance Documents and/or any facility or amount made available under any of the Finance Documents for the purposes of or in connection with any of the following: acquisitions of any nature; increasing working capital; enabling 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 facility or amount might be made available from time to time; and any fees, costs and/or expenses associated with any of the foregoing.

12.5 Immediate recourse

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

12.6 Appropriations

Until the Security Period has expired, each Secured Party (or any trustee or agent on its behalf) may:

- 12.6.1 refrain from applying or enforcing any other moneys, security or rights held or received by that Secured 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
- 12.6.2 hold in an interest-bearing suspense account any moneys received from the Chargor or on account of the Chargor's liability under this Deed.

12.7 Deferral of Chargor's rights

Unless the Security Period has expired or the Security Agent otherwise directs, the Chargor will not exercise any rights which it may have by reason of performance by it of its obligations under the Finance Documents or by reason of any amount being payable, or liability arising, under the Finance Documents:

- 12.7.1 to be indemnified by any Obligor;
- 12.7.2 to claim any contribution from any Obligor or guarantor of any Obligor's obligations under the Finance Documents;
- 12.7.3 to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Secured Parties under the Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, the Finance Documents by any Secured Party;
- 12.7.4 to bring legal or other proceedings for an order requiring any Obligor to make any payment, or perform any obligation, in respect of which the Chargor has given a guarantee, undertaking or indemnity;
- 12.7.5 to exercise any right of set-off against any Obligor; and/or
- 12.7.6 to claim or prove as a creditor of any Obligor in competition with any Secured Party.

If the Chargor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Secured Parties by the Obligors under or in connection with the Finance Documents to be repaid in full on trust for the Secured Parties and shall promptly pay or transfer the same to the Security Agent or as the Security Agent may direct for application in accordance with Clause 9.1 (*Order of priority*).

13. CHANGES TO THE PARTIES

13.1 No assignment by Chargor

The Chargor may not assign any of its rights or transfer any of its rights or obligations under this Deed.

13.2 Assignment by Security Agent

The Security Agent may assign any of its rights or transfer any of its rights or obligations under this Deed in accordance with the terms of the Facility Agreement.

14. NOTICES

14.1 Communications

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

14.2 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 or any substitute address or fax number or department or officer as the party to this Deed may notify to the Security Agent (or the Security Agent may notify to the other parties to this Deed, if a change is made by the Security Agent) by not less than five Business Days' notice.

14.3 Delivery

Any communication or document made or delivered by one person to another under or in connection with this Deed will only be effective:

14.3.1 if by way of fax, when received in legible form; or

14.3.2 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 14.2 (*Addresses*), if addressed to that department or officer.

14.3.3 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).

14.3.4 Any communication or document which becomes effective, in accordance with Clauses 14.3.1 and 14.3.2, after 5:00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

14.4 English language

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

15. 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 the Deed.

16. GOVERNING LAW

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

17. ENFORCEMENT**17.1 Jurisdiction**

17.1.1 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) and any non-contractual obligations arising out of or in connection with it (a "Dispute").

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

17.1.3 This Clause 17 is for the benefit of the Secured Parties only. As a result, no Secured Party will be prevented from taking proceedings relating to a Dispute in any other court with jurisdiction. To the extent allowed by law, the Secured Parties may take concurrent proceedings in any number of jurisdictions.

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

SCHEDULE 1

The Specified Shares

| Companies | Registration number (or equivalent, if any) | Number and class of shares |
|------------------------------------|--|---------------------------------------|
| FLETON QUAYS APARTMENTS LIMITED | 11601399 | 663 Ordinary Shares |

EXECUTION

The Chargor

Executed as a deed by
NEVER WHAT IF GROUP LIMITED,
acting by one director in the presence of:

[Redacted Signature]

Witness signature:

Witness name: Tamsin Hall

Witness address:

[Redacted Address]

)
)
) [Redacted Signature]

Director

Name: D Marshall

Communications to be delivered to:
Address: Olivers Barn, Maldon Road, Witham,
Essex, United Kingdom, CM8 3HY

Email: dave.marshall@neverwhatif.com
Attention: Dave Marshall

The Security Agent

Executed as a deed by
MERRY SEED DEVELOPMENT III
LIMITED,
acting by one director in the presence of:

[Redacted Signature]

Witness signature:

Witness name: Agnes Ip

Witness address:

[Redacted Address]

[Redacted Signature]

Director

Name: Peter Law

Communications to be delivered to:

Address: Commence Chambers, P.O. Box
2208, Road Town, Tortola, British
Virgin Islands

Copy to: 33/F, Three Pacific Place, One
Queen’s Road East, Hong Kong
Attention: General Counsel