



Registration of a Charge

Company name: **ATHERTON ALLERGATE LIMITED**

Company number: **09894386**



X9352096

Received for Electronic Filing: **17/04/2020**

Details of Charge

Date of creation: **09/04/2020**

Charge code: **0989 4386 0003**

Persons entitled: **OAKSIX HOLDINGS LIMITED (FORMERLY FORTWELL CAPITAL LIMITED AND OMNI CAPITAL PARTNERS 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:

TAYLOR WESSING LLP



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 9894386

Charge code: 0989 4386 0003

The Registrar of Companies for England and Wales hereby certifies that a charge dated 9th April 2020 and created by ATHERTON ALLERGATE LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 17th April 2020 .

Given at Companies House, Cardiff on 20th April 2020

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



Companies House



THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES

DATED

9 April 2020

ATHERTON ALLERGATE LIMITED
as Chargor

and

OAKSIX HOLDINGS LIMITED
(FORMERLY FORTWELL CAPITAL LIMITED
AND OMNI CAPITAL PARTNERS LIMITED)
as Lender

THIRD PARTY SHARE MORTGAGE

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THIS DEED is made on

9 April 2020

BETWEEN

- (1) **ATHERTON ALLERGATE LIMITED** a company incorporated in England and Wales with company number 09894386 whose registered office is 41 Paradise Walk, London SW3 4JL (the "**Chargor**");
- (2) **OAKSIX HOLDINGS LIMITED (FORMERLY FORTWELL CAPITAL LIMITED AND OMNI CAPITAL PARTNERS LIMITED)** a company incorporated in England and Wales with company number 07428221 whose registered office is at 3rd Floor, 39 Sloane Street, London SW1X 9LP (the "**Lender**").

BACKGROUND

This deed is taken in addition to a third party share mortgage between the Chargor and the Lender dated 25 August 2017 (the "**Original Share Mortgage**"). The Investments secured by the Original Share Mortgage shall be partially released to the extent set out in a deed of partial release dated on or about the date of this deed and supplemental security shall be taken as set out in this deed.

AGREED TERMS

1. Definitions and Interpretation

1.1 Definitions

In this deed:

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

"Borrower" means Cresswell Place Jersey Limited a company incorporated in Jersey under number 111277 whose registered office is at 4th Floor, St Paul's Gate, 22-24 New Street, St Helier, Jersey, JE1 4TR;

"Charged Property" means the assets mortgaged by the Chargor under this deed;

"Company" means Thames River Moorings Limited a company incorporated in England and Wales with registered number 07706650 and its registered office at 41 Paradise Walk, London SW3 4JL;

"Delegate" means any delegate, agent, attorney or co-trustee appointed by the Lender pursuant to clause 10 (Delegation);

"Dividends" means all dividends, interest and other money payable in respect of the Investments;

"Event of Default" means any event or circumstance specified as such in the Loan Agreement;

"Finance Documents" means any Finance Documents as defined in the Loan Agreement;

"Financial Collateral Regulations" means the Financial Collateral Arrangements (No 2) Regulations 2003 SI 2003/3226;

"Group" means the Chargor and its Subsidiaries;

"Insolvency Act" means the Insolvency Act 1986;

"Investments" means:

- (a) 14,175,448 ordinary shares of £0.001 each in the issued share capital of the Company, which represents 20% of the total share capital of the Company, plus such additional shares as may be necessary from time to time to maintain 20% of the total share capital of the Company, and for the avoidance of doubt the 14,175,448 / 20% shall include the 4,032,260 shares secured by the Original Share Mortgage; and
- (b) all other stocks, shares and other securities of the Company now or at any time after the date of the deed owned by the Chargor which are issued in replacement of the shares referred to in (a) above,

and all rights and benefits in respect of the assets referred to in (a) and (b) above other than the right to receive Dividends;

"Legal Reservations" means:

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

"Loan Agreement" means a loan agreement originally dated 7 October 2015 and as previously amended on 10 April 2017, 15 June 2017 and 25 August 2017 and as further amended from time to time made between, amongst others, the Borrower and the Lender;

"LPA" means the Law of Property Act 1925;

"Obligor" has the meaning given to it in the Loan Agreement and shall include, without limitation, the Borrower and the Chargor;

"Permitted Security" means the Security created under this deed;

"PSC Enforcement Notice" means a warning notice or restriction notice (each as defined in Schedule B1 paragraph 1 (2) of the Companies Act 2006;

"PSC Information Request" means a notice issued under s790D (2) or (5) of the Companies Act 2006;

"Receiver" means a receiver or receiver and manager or administrative receiver of the whole or any part of the Charged Property;

"Secured Liabilities" means:

- (a) all obligations of each Obligor owed or expressed to be owed to the Lender under or in connection with the Finance Documents whether owed jointly or severally, as principal or surety or in any other capacity;
- (b) all money, liabilities and obligations now or in the future owed or incurred by an Obligor to the Lender (including those under the Loan Agreement or this Debenture) whether actual or contingent, sole or joint, as principal or as surety, including (without limitation) any liability of an Obligor to a third party which subsequently becomes payable to the Lender by assignment or otherwise and any interest, commission, costs, charges and expenses of the Lender;
- (c) in the case of any Obligor other than the Chargor, any obligation referred to in (a) above which is or becomes Unenforceable and any cost, loss or liability which the Lender incurs as a result of any such Obligor not paying any amount expressed to be payable by it under any Finance Document on the date when it is expressed to be due;

"Secured Party" means the Lender, a Receiver or any Delegate;

"Security" means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect;

"Security Documents" has the meaning given to it in the Loan Agreement together with any other document which grants security rights or rights by way of guarantee and/or indemnity or other assurance against loss in respect of any liabilities of the Chargor under the Finance Documents;

"Subsidiary" means a subsidiary undertaking as defined by section 1162 of the Companies Act 2006;

"Tax" means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same);

"Transaction Document" means each Finance Document to which it is a party;

"Unenforceable" means void, voidable, invalid, unenforceable or otherwise irrecoverable (whether or not known to the Lender or the Chargor) and **"Unenforceability"** will be construed accordingly; and

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

1.2 *Construction*

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

- (a) this deed is a Finance Document;
- (b) the provisions of clause 1 (Definitions and Interpretation) of the Agreement shall be deemed to be incorporated into this deed;
- (c) the **"Lender"** or **"Chargor"** shall be construed so as to include its successors in title, permitted assigns and permitted transferees;

- (d) **"assets"** includes present and future properties, revenues and rights of every description;
- (e) **"disposal"** includes a sale, transfer, assignment, grant or creation of any interest derived out of all or any part of any asset, licence, declaration of trust or other disposal, whether voluntary or involuntary, and **"dispose"** will be construed accordingly;
- (f) a **"Finance Document"** any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, novated, supplemented, extended or restated from time to time;
- (g) **"indebtedness"** includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (h) a **"person"** includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality); and
- (i) a **"regulation"** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation.

1.3 *Interpretation*

Unless a contrary indication appears, in this deed:

- (a) **"obligations"** means obligations and liabilities;
- (b) references to obligations and liabilities include the whole or any part of them, present and future, actual and contingent;
- (c) any reference to **"powers"** includes rights, powers, discretions and authorities;
- (d) any reference to any asset includes any proceeds of sale of any such asset.
- (e) any reference to a provision of law is a reference to that provision as amended or re-enacted from time to time;
- (f) any reference to clauses, paragraphs and schedules are to the clauses, paragraphs of and schedules to this deed;
- (g) any reference to **"this clause"** is to the clause with a bold heading in which such expression appears and includes each sub-clause in that clause;
- (h) any reference to a time is to London time;
- (i) the words **"including"** and **"in particular"** are used by way of illustration or emphasis only and do not limit the generality of any words preceding them;
- (j) the words **"other"** and **"otherwise"** are not limited by any words preceding them;
- (k) clause and schedule headings are for ease of reference only; and

- (l) an Event of Default is "**continuing**" if it has not been remedied to the satisfaction of the Lender or waived in writing.

1.4 *Construction of charging clause*

Each of the security interests created by clause 2 (Security) shall be construed as separate and distinct interests over the relevant assets so that the re-characterisation for any reason of any security interest over any one asset shall not affect the nature of the security interest created over any other asset.

2. **Security**

As continuing security for the payment of the Secured Liabilities the Chargor with full title guarantee assigns to the Lender by way of equitable mortgage all its present and future rights and interest in:

- (a) the Investments; and
- (b) all Dividends.

3. **Investments**

3.1 *Deposit of certificates*

The Chargor shall deposit with the Lender:

- (a) on or before the date of this deed, the certificates or other documents of title to each Investment owned by the Chargor on such date;
- (b) on the date of the acquisition of any Investment acquired by the Chargor after the date of this deed or on the withdrawal of any Investment from any clearance system, the certificates or other documents of title to each such Investment;
- (c) together with the certificates or other documents referred to in paragraphs 3.1(a) and 3.1(b) above, duly executed undated blank transfers in respect of each such Investment and forms of waiver of any pre-emption rights necessary to enable such transfers to be registered.

3.2 *Payment of money due*

The Chargor shall promptly pay all money which may from time to time be due in respect of any Investment forming part of the Charged Property.

3.3 *Nominees*

If any Investment is registered in the name of a nominee the Chargor shall on demand provide to the Lender an equitable mortgage over such Investment or power of attorney or acknowledgement of the rights created by this deed over such Investment in favour of the Lender in such terms as the Lender may require duly executed by or on behalf of such nominee.

3.4 *Completion of transfers*

The Lender may at any time complete any transfers of any Investment delivered to it under clause 3.1(c) in favour of itself or any nominee for it as transferee and may present the same for registration.

3.5 *Dividends and voting rights*

The Lender shall be entitled to exercise each of the following rights at any time and the Lender gives the Chargor notice of its intention to exercise such right itself:

- (a) to receive all Dividends and apply them in reduction of the Secured Liabilities whether or not any Investment is registered in the name of the Lender or any nominee for the Lender or in the name of the Chargor or any nominee for the Chargor;
- (b) at its discretion to exercise or procure the exercise of all voting rights attached to any Investment registered in the name of the Lender or any nominee for the Lender for the purpose only of preserving the value of such Investment or realising the security over such Investment created by this deed; and
- (c) to require the Chargor to exercise any voting rights attached to any Investment registered in the name of the Chargor or any nominee for the Chargor as directed by the Lender for the purpose mentioned in paragraph 3.5(b) above.

3.6 *Lender may give up voting rights*

The Lender may at any time by giving notice to the Chargor give up any right it may have under clause 3.5(b) or clause 3.5(c) in relation to any of the Investments specified in such notice (the "**Notified Shares**") whereupon the Chargor may exercise all voting rights in relation to the Notified Shares subject to the terms of the Finance Documents.

3.7 *Dematerialisation*

The Chargor must promptly take all action required for the rematerialisation of any Investment held in dematerialised form in a clearance system.

4. **Representations**

4.1 *Duration and Scope*

The Chargor makes the representations and warranties set out in this clause to the Lender on the date of this deed.

4.2 *Status*

- (a) It is a limited liability company, duly incorporated and validly existing under the law of England and Wales.
- (b) It has the power to own its assets and carry on its business in England and Wales as it is being conducted.
- (c) Its centre of main interests for the purposes of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency procedures (the "**Regulations**") is in England and Wales and it has no establishment as such term is used in the Regulations in any other jurisdiction.

4.3 *Binding obligations*

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

4.4 *Effective Security*

The Security this deed purports to create is valid and effective and is not liable to be avoided or otherwise set aside on the Chargor's liquidation or administration.

4.5 *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 constituted by this deed do not and will not conflict with:

- (a) any law or regulation applicable to it;
- (b) its or any of its Subsidiaries' constitutional documents;
- (c) any agreement or instrument binding upon it or any of its Subsidiaries or the Company or any of its or any of its Subsidiaries' or the Company's assets or constitute a default or termination event (however described) under any agreement or instrument binding upon it or the Company.

4.6 *Power and authority*

- (a) 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.
- (b) No limit on any its powers will be exceeded as a result of the borrowing, grant of security or giving of guarantees or indemnities contemplated by this deed.

4.7 *Validity and admissibility in evidence*

Except for registration of this deed in accordance with clause 4.7 (Registration requirements), all Authorisations required or desirable:

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

have been obtained or effected and are in full force and effect.

4.8 *Registration requirements*

Except for registration of this deed under the Companies Act 2006, it is not necessary to file, register or record this deed in any public place or elsewhere.

4.9 *Governing law and enforcement*

- (a) The choice of English law as the governing law of this deed will be recognised and enforced in England & Wales.
- (b) Any judgment obtained in England in relation to this deed will be recognised and enforced in England & Wales.

4.10 *Deduction of Tax*

It is not required under the law of England & Wales to make any deduction for or on account of Tax from any payment it may make under any this deed to the Lender.

4.11 *No filing or stamp taxes*

Except for registration fees associated with registration of this deed in accordance with clause 4.7 (Registration requirements), it is not necessary under the law of England & Wales that this deed be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration, notarial or similar tax or fee be paid on or in relation to this deed or the transactions contemplated by this deed.

4.12 *No default*

- (a) No Event of Default is continuing or might result from the entry into, or the performance of, any transaction contemplated by this deed.
- (b) No other event or circumstance is outstanding which constitutes (or, with the expiry of a grace period, the giving of notice, the making of any determination or any combination of any of the foregoing, would constitute) a default or termination event (however described) under any other agreement or instrument which is binding on the Chargor or any of its Subsidiaries or the Company or to which the Chargor's or any of its Subsidiaries' (or the Company's) assets are subject.

4.13 *No misleading information*

- (a) All information supplied by it or on its behalf to the Lender in connection with the Finance Documents was true and accurate in all material respects as at the date it was provided or as at the date (if any) at which it is stated to be given.
- (b) It has not omitted to supply any information which, if disclosed, would make the information referred to in paragraph 4.13(a) above untrue or misleading in any respect.
- (c) As at the date of this deed, nothing has occurred since the date of the information referred to in paragraph 4.13(a) above which, if disclosed, would make that information untrue or misleading in any material respect.

4.14 *No proceedings pending or threatened*

No litigation, arbitration or administrative proceedings or investigations of or before, any court, arbitral body or agency have been started or threatened against the Chargor or any of its Subsidiaries or a Company.

4.15 *Security*

There is no Security over the Charged Property except for any Permitted Security.

4.16 *Ranking of Security*

This deed creates valid first priority Security of the type described over the assets to which they relate and those assets are not subject to any other Security.

4.17 *Shares*

- (a) The shares referred to in paragraph (a) of the definition of Investments in clause 1.1 are fully paid and constitute not less than 20% of the issued share capital of the Company.
- (b) The Investments are not subject to any other Security or any lien, rights of pre-emption, forfeiture or disenfranchisement whether under the articles of association of the Company or any shareholders' agreement or otherwise.
- (c) No PSC Information Request has been issued to the Chargor in respect of the Company other than any PSC Information Request with which the Chargor has complied or in respect of which the Chargor has provided a valid reason for non-compliance.
- (d) No PSC Enforcement Notice has been issued in respect of the shares in the Company.

4.18 *Pensions*

- (a) Neither the Chargor nor any of its Subsidiaries is or has at any time been an employer (for the purposes of sections 38 to 51 of the Pensions Act 2004) of an occupational pension scheme which is not a money purchase scheme (both terms as defined in the Pensions Schemes Act 1993); and
- (b) Neither the Chargor nor any of its Subsidiaries is or has at any time been "connected" with or an "associate" of (as those terms are used in sections 38 and 43 of the Pensions Act 2004) such an employer.

4.19 *Solvency*

No formal step has been taken for its insolvency.

4.20 *Repetition*

The representations and warranties in this clause are deemed to be made by the Chargor by reference to the facts and circumstances then existing on each day on which any representations and warranties are deemed to be repeated under the Agreement.

5. **Negative Undertakings**

5.1 *Negative pledge*

The Chargor shall not create or permit to subsist any Security over any of the Charged Property other than a Permitted Security.

5.2 *Disposals*

The Chargor shall not sell, transfer or otherwise dispose or purport or agree to dispose of any Charged Property.

5.3 *Mergers*

The Chargor shall not merge, or consolidate with any other person or enter into any amalgamation, demerger or reconstruction.

5.4 *Pensions*

The Chargor shall ensure that no member of the Group is or has been at any time an employer (for the purposes of sections 38 to 51 of the Pensions Act 2004) of an occupational pension scheme which is not a money purchase scheme (both terms as defined in the Pension Schemes Act 1993) or "connected" with or an "associate" of (as those terms are used in sections 38 or 43 of the Pensions Act 2004) such an employer.

6. **Information Undertakings**

6.1 *Information: miscellaneous*

The Chargor shall supply to the Lender:

- (a) all documents dispatched by it to its shareholders (or any class of them) or its creditors generally at the same time as they are dispatched;
- (b) promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against it or any member of the Group; and
- (c) promptly such further information relating to the financial condition, business and operations of any member of the Group, any Obligor or any Security provided in connection with the Finance Documents as the Lender may reasonably request.

6.2 *PSC Register*

- (a) The Chargor shall immediately notify the Lender if any PSC Information Request in respect of the Company is issued to the Chargor and shall:
 - (i) comply with each such PSC Information Request or provide a valid reason for non-compliance;
 - (ii) provide the Lender with a copy of each such PSC Information Request.
- (b) The Chargor shall immediately notify the Lender if any PSC Enforcement Notice is issued to the Chargor in respect of the shares in the Company and shall provide the Lender with a copy of each such PSC Enforcement Notice.

6.3 *Accuracy*

The Chargor shall ensure that all information supplied to the Lender by it is at the time of supply complete and accurate in all material respects.

7. **General Undertakings**

7.1 *Authorisations*

The Chargor shall promptly:

- (a) obtain, comply with and do all that is necessary to maintain in full force and effect; and
- (b) supply certified copies to the Lender of,

any Authorisation required under any law or regulation of England & Wales to:

- (i) enable it to perform its obligations under the Transaction Documents to which it is a party and to ensure the legality, validity, enforceability or admissibility in evidence in England & Wales of any such Transaction Document;
- (ii) enable it to own its assets and carry on its business as it is being conducted.

7.2 *Compliance with laws*

The Chargor shall comply in all respects with all laws to which it may be subject, if failure so to comply would materially impair its ability to perform its obligations under the Finance Documents to which it is a party.

7.3 *Consents*

The Chargor shall ensure that all consents and all documents, registrations, licences and other matters and things required by the Lender to perfect this deed are produced executed obtained or made as required by the Lender in accordance with this deed.

7.4 *Taxes*

- (a) The Chargor must pay all Taxes due and payable by it prior to the accrual of any fine or penalty for late payment.
- (b) The Chargor must ensure that its residence for Tax purposes is in the jurisdiction of its incorporation.

7.5 *Centre of main interests*

The Chargor shall take such steps as are necessary to maintain its centre of main interests for the purposes of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency procedures in England and Wales.

7.6 *Failure to comply*

If the Chargor fails to comply with any of its obligations under this deed the Lender may take such steps as it considers appropriate to procure compliance with such obligations at the cost of the Chargor.

8. Enforcement of Security

8.1 *Lender's powers*

On the occurrence of an Event of Default or if the Chargor requests that the Lender exercises any of its powers under this clause 8.1, this deed shall become enforceable and the Lender may immediately or at any time thereafter:

- (a) exercise the power of sale and all other powers conferred by s. 101 of the LPA as varied or extended by this deed;
- (b) subject to s.72A of the Insolvency Act, appoint one or more persons as a Receiver of any Charged Property;

- (c) exercise all the powers conferred on a Receiver by this deed, the LPA and the Insolvency Act;
- (d) secure and perfect its title to all or any part of the Charged Property and/or transfer any asset into the name of its nominee;
- (e) to the extent that this deed constitutes a "security financial collateral arrangement" as defined in the Financial Collateral Regulations, appropriate any Charged Property which constitutes "financial collateral" as defined in the Financial Collateral Regulations in or towards satisfaction of the Secured Liabilities and the Lender shall value such Charged Property by reference to an independent valuation or other procedure selected by the Lender acting reasonably.

8.2 *Powers under the LPA*

- (a) S.103 of the LPA will not apply to this deed.
- (b) The power of sale and all other powers conferred by s.101 of the LPA as varied or extended by this deed will arise upon execution of this deed by the Chargor.

8.3 *Receivers*

- (a) The Lender may appoint any Receiver upon such terms as to remuneration and otherwise as the Lender thinks fit and the maximum rate specified in s.109(6) of the LPA shall not apply.
- (b) Any Receiver will be the agent of the Chargor for all purposes and the Chargor will be responsible for such Receiver's acts and defaults and for his remuneration, costs, fees, taxes and expenses to the exclusion of liability on the part of the Lender.
- (c) Where two or more persons are appointed as Receiver any act authorised to be done by the Receiver may be done by all of them acting jointly or by any one or more of them acting severally.
- (d) The Lender may at any time by writing remove any Receiver (subject to the obtaining of any required order of the court in the case of an administrative receiver) whether or not the Lender appoints any other person as Receiver in his place.

9. **Powers of Receiver and Lender**

9.1 *Statutory powers*

A Receiver shall have and be entitled to exercise all the powers conferred on a receiver by the LPA and, whether or not such a Receiver is an administrative receiver, all the powers conferred upon an administrative receiver by Schedule 1 to the Insolvency Act which powers are incorporated into this deed provided that references in that Schedule to the "property of the Company" will be deemed to be references to the Charged Property for the purposes of this deed.

9.2 *Additional powers*

By way of addition to and without limiting any other powers referred to in this clause a Receiver shall have power (both before and after the commencement of any liquidation of the Chargor) to do every act and thing and exercise every power:

- (a) which the Chargor would have been entitled to do or exercise if no Receiver had been appointed or which the Receiver would have been entitled to do or exercise if the Receiver were the absolute legal and beneficial owner of the Charged Property; and
- (b) which such Receiver in his absolute discretion considers necessary or desirable for maintaining or enhancing the value of any Charged Property or for or in connection with the enforcement of the Security created by this deed or the realisation of any Charged Property,

and may use the name of the Chargor in connection with any exercise of such powers.

9.3 *Consideration*

The receipt of the Lender or any Receiver shall be a conclusive discharge to a purchaser and, in making any sale or disposal of any of the Charged Property the Lender or any Receiver may do so for such consideration, in such manner and on such terms as it thinks fit.

9.4 *Prior encumbrances*

At any time after the security given by this deed has become enforceable, the Lender may redeem any prior Security against the Charged Property or procure a transfer of such Security to itself and may agree the accounts of the person entitled to that Security and any accounts so agreed will be binding on the Chargor. Any money paid by the Lender in connection with a redemption or transfer of any prior Security will form part of the Secured Liabilities.

9.5 *Possession*

If the Lender, any Receiver or any Delegate takes possession of any Charged Property it may go out of possession at any time.

10. **Delegation**

- (a) Each of the Lender, any Receiver and any Delegate 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 this deed.
- (b) That delegation may be made upon any terms and conditions (including the power to sub delegate) and subject to any restrictions that the Lender, that Receiver or that Delegate (as the case may be) may, in its discretion, think fit 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.

11. **Exclusion of Liability**

11.1 *No obligation to recover*

Neither the Lender nor any Receiver is under any obligation to take action to collect any money or enforce any rights comprised in the Charged Property whether or not it is in possession of the relevant Charged Property.

11.2 *Liability as mortgagee in possession*

If the Lender or any Receiver takes possession of any Charged Property, it will not be liable to account to the Chargor for anything except actual receipts or be liable to the Chargor for any loss arising from any realisation of any Charged Property or for any default or omission for which a receiver or mortgagee in possession would be liable.

11.3 *Losses on enforcement*

No Secured Party will be liable to the Chargor for any loss or damage arising from:

- (a) any sale of any Charged Property;
- (b) any act, default or omission of any Secured Party in relation to any Charged Property; or
- (c) any exercise or non-exercise by any Secured Party of any power conferred upon it in relation to any Charged Property under this deed or by the LPA,

unless such loss or damage is caused by the fraud, gross negligence or wilful misconduct of such Secured Party.

12. **Reimbursement and Indemnity**

12.1 *Enforcement and preservation costs*

The Chargor shall, on demand, pay to the Lender the amount of all costs and expenses (including legal fees, out-of-pocket expenses, accountancy fees and consultancy fees) incurred by it in connection with the enforcement of or the preservation of any rights under this deed, steps taken to ascertain the ability of the Chargor to meet its obligations under this deed and any proceedings instituted by or against the Lender as a consequence of taking or holding the Security constituted by this deed or enforcing those rights.

12.2 *Indemnity to the Lender*

The Chargor shall promptly indemnify the Lender and every Receiver and Delegate against any cost, loss or liability incurred by any of them:

- (a) as a result of:
 - (i) the taking, holding, protection or enforcement of the Security constituted by this deed;
 - (ii) the exercise of any of the rights, powers, discretions and remedies vested in the Lender and each Receiver and Delegate by this deed or by law; or
 - (iii) any default by the Chargor in the performance of any of the obligations expressed to be assumed by it in this deed; or
- (b) which otherwise relates to any of the Charged Property or the performance of the terms of this deed (otherwise than as a result of its fraud, gross negligence or wilful misconduct).

12.3 *Priority of Indemnity*

The Lender and every Receiver and Delegate may indemnify itself out of the Charged Property in respect of, and pay and retain, all sums necessary to give effect to the indemnity in clause 12.2 (Indemnity to the Lender) and shall have a lien on the Security constituted by this deed and the proceeds of enforcement of the Security constituted by this deed for all moneys payable to it.

13. **Application of Proceeds**

13.1 *Order of application*

Subject to clause 13.2 (Prospective liabilities) and to claims having priority to the Security created by this deed and by way of variation to the provisions of the LPA, all amounts from time to time received or recovered by the Lender in connection with the realisation or enforcement of all or any part of the Security constituted by this deed (for the purposes of this clause the "**Recoveries**") shall be held by the Lender to apply them at any time as the Lender (in its discretion) sees fit, to the extent permitted by applicable law.

13.2 *Prospective liabilities*

The Lender may, in its discretion, hold any amount of the Recoveries in an interest bearing suspense or impersonal account(s) in the name of the Lender with such financial institution (including itself) and for so long as the Lender shall think fit (the interest being credited to the relevant account) for later application under clause 13.1 (Order of Application) in respect of:

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

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

13.3 *Investment of proceeds*

Prior to the application of the proceeds of the Recoveries in accordance with clause 13.1 (Order of Application) the Lender 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 Lender with such financial institution (including itself) and for so long as the Lender shall think fit (the interest being credited to the relevant account) pending the application from time to time of those moneys in the Lender's discretion in accordance with clause 13.1 (Order of Application).

13.4 *Currency Conversion*

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

13.5 *Permitted Deductions*

The Lender 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 Charged Property, or as a consequence of performing its duties, or by virtue of its capacity as Lender under any of the Finance Documents or otherwise.

14. **Protection of Persons Dealing with Lender or Receiver**

No person dealing with the Lender or any Receiver will be concerned to enquire:

- (a) whether any event has happened upon which any of the powers conferred by this deed may have arisen or be exercisable;
- (b) otherwise as to the propriety or regularity of any exercise of the powers conferred by this deed or of any act purporting or intended to be in exercise of such powers; or
- (c) whether any Secured Liabilities remain owing.

15. **Notice of Subsequent Charge**

If the Lender receives notice of any Security or other interest affecting any Charged Property:

- (a) it may open a new account for the Chargor in its books and may transfer any outstanding balance owing by the Chargor to such new account;
- (b) if it does not open a new account then, unless it gives express written notice to the contrary to the Chargor, all payments made by the Chargor to it will as from the time of receipt of such notice be treated as having been credited to a new account of the Chargor and not as having been applied in reduction of the Secured Liabilities.

16. **Further Assurance**

When required by the Lender or any Receiver the Chargor shall, at its own cost:

- (a) execute a transfer of any Investments into the name of the Lender or a nominee of the Lender or a purchaser from the Lender or a nominee of such purchaser;
- (b) execute any documents or do any other thing which the Lender or any Receiver may require for perfecting or protecting any Security created by this deed or in connection with the exercise of any powers given to the Lender or any Receiver under this deed; and

- (c) convey, transfer, assign or otherwise deal with any Charged Property in such manner as the Lender or any Receiver may require in connection with any enforcement of any Security created by this deed.

17. Power of Attorney by Chargor

The Chargor irrevocably and by way of security appoints each of the Lender, any person selected by the Lender and any Receiver its attorney in each case (with full power to appoint substitutes and to delegate) severally in its name and on its behalf to execute any document or do any act or thing which:

- (a) the Chargor is entitled to execute or do in relation to the Charged Property including:
 - (i) the exercise of voting rights in respect of the Investments (but in the case of the Lender only to the extent that the Lender is entitled to exercise such voting rights under clauses 3.5(b) and 3.5(c));
 - (ii) executing or completing any transfer in respect of the Investments;
 - (iii) giving a receipt for any money and exercising any rights or remedies forming part of the Charged Property; or
- (b) the Chargor is obliged to execute or do under this deed.

18. Protective Provisions

18.1 *Waiver of defences*

The obligations of the Chargor under this deed and the security constituted by this deed will not be affected by an act, omission, matter or thing which, but for this clause, would reduce, release or prejudice any of such obligations or security including (whether or not known to it or the Lender):

- (a) any time, waiver or consent granted to, or composition with, any other Obligor or other person;
- (b) the release of any other Obligor or any other person under the terms of any composition or arrangement with any creditor of any Obligor;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over property of, any other Obligor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any other Obligor or any other person;
- (e) any amalgamation, merger or reconstruction of the Lender with any other person or any sale or transfer of the whole or any part of the assets of the Lender to any other person;
- (f) the existence of any claim, set-off or other rights which any other Obligor may have at any time against the Lender, whether in connection with the Finance Documents or otherwise;

- (g) any novation, amendment (however fundamental) or replacement of a Finance Document or any other document or security;
- (h) any obligation of any person under any Finance Document or any other document or security being Unenforceable; or
- (i) any insolvency or similar proceedings.

18.2 *Chargor Intent*

Without prejudice to the generality of clause 18.1 (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 investor distributions to be made; carrying out restructurings; refinancing existing facilities; refinancing any other indebtedness; making available acceptance credit facilities, note purchase facilities, guarantee, stand-by or documentary credit issuance facilities; 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.

18.3 *Immediate recourse*

The Chargor waives any right it may have of first requiring the Lender to proceed against or enforce any other rights or security or claim payment from any person before enforcing the security constituted by this deed. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

18.4 *Appropriations*

Until the Secured Liabilities have been irrevocably paid in full, the Lender may:

- (a) refrain from applying or enforcing any other moneys, security or rights held or received by the Lender in respect of the Secured Liabilities, or apply and enforce the same in such manner and order as it sees fit (whether against the Secured Liabilities or otherwise) and the Chargor shall not be entitled to the benefit of the same; and
- (b) hold in an interest-bearing suspense account any money received under this deed.

18.5 *Deferral of Chargor's rights*

Until the Secured Liabilities have been irrevocably paid in full and unless the Lender otherwise directs, the Chargor will not exercise any rights which it may have by reason of the enforcement of this deed:

- (a) to be indemnified by the Borrower;
- (b) to claim any contribution from any other Obligor or any other person in respect of any obligations of that person under the Finance Documents;
- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Lender under the Finance Documents or of any

other guarantee or security taken pursuant to, or in connection with, the Finance Documents by the Lender;

- (d) 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 security under this deed;
- (e) to exercise any right of set-off against any Obligor; and/or
- (f) to claim or prove as a creditor of any Obligor in competition with the Lender.

18.6 *Turnover*

If the Chargor receives any benefit, payment or distribution in relation to the rights referred to in clause 18.5 (Deferral of Chargor's rights) it shall hold that benefit, payment or distribution to the extent necessary to enable the Secured Liabilities to be repaid in full on trust for the Lender and shall promptly pay or transfer the same to the Lender or as the Lender may direct for application as provided in clause 13 (Application of Proceeds).

19. **Discharge of Security**

19.1 *Discharge conditional*

Any discharge of the Chargor by the Lender in reliance on a payment or security received by the Lender will cease to be effective if that payment or security is avoided, reduced or invalidated for any reason and the Lender will be entitled to recover from the Chargor on demand the amount of the Secured Liabilities discharged by such payment or security.

19.2 *Retention of security*

Following any discharge of the Chargor made by the Lender in reliance on a payment or security the Lender may retain the security constituted by this deed (and all documents of title or other documents necessary to protect such Security) until the expiry of the maximum period within which such payment or security can be avoided, reduced or invalidated for any reason. If the person making such payment or giving such security goes into liquidation or administration or equivalent proceedings in any foreign jurisdiction within that period the Lender may retain the security constituted by this deed for as long as it thinks fit.

20. **Redemption**

If the Lender determines that all of the Secured Liabilities have been fully and finally discharged and it is not under any commitment, obligation or liability (actual or contingent) to make advances or provide other financial accommodation to any Obligor pursuant to the Finance Documents the Lender shall release:

- (a) without recourse or warranty, all of the Security constituted by this deed; and
- (b) the rights of the Lender under this deed.

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:

(a) in the case of the Chargor:

Address: c/o Andrew Moffat
41 Paradise Walk
London SW3 4JL

Fax 020 7349 6410

(b) in the case of the Lender:

Oaksix Holdings Limited
35 Great St. Helen's, London
England, EC3A 6AP

or any substitute address, fax number or department or officer as the Chargor may notify to the Lender (or the Lender may notify to the Chargor, if a change is made by the Lender) by not less than five Business Days' notice. In the case of the Chargor, the address of its registered office or of any place where it carries on business shall also be addresses of Chargor for the purpose of this clause.

21.3 *Delivery*

(a) Any communication or document made or delivered by the Lender on the Chargor under or in connection with this deed will be effective:

- (i) if left at an address referred to in this clause, when so left;
- (ii) if posted by first class post to an address referred to in this clause, on the next working day in the place of receipt following the day when it was posted;
- (iii) if transmitted by fax to a fax number referred to in this clause, when the sending fax machine produces a print out which confirms that transmission has taken place.

(b) Any communication or document to be made or delivered to the Lender will be effective only when actually received by the Lender and then only if it is expressly marked for the attention of the department or officer specified above (or any substitute department or officer as the Lender shall specify for this purpose).

21.4 *English language*

Any notice given under or in connection with this deed must be in English. All other documents provided under or in connection with this deed must be:

- (a) in English; or
- (b) if not in English, and if so required by the Lender, 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. Calculations and Certificates

22.1 *Accounts*

In any litigation or arbitration proceedings arising out of or in connection with this deed, the entries made in the accounts maintained by the Lender are prima facie evidence of the matters to which they relate.

22.2 *Certificates and Determinations*

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

23. Partial Invalidity

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

24. Remedies and Waivers

No failure to exercise, nor any delay in exercising, on the part of the Lender, any right or remedy under this deed shall operate as a waiver of any such right or remedy or constitute an election to affirm any of this deed. No election to affirm any of this deed on the part of the Lender shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this agreement are cumulative and not exclusive of any rights or remedies provided by law.

25. Counterparts

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

26. Changes to the parties

26.1 *Lender*

The Lender may assign or transfer the rights and interests of the Lender under or in connection with this deed to any person.

26.2 *Chargor*

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

27. **Disclosure**

The Lender may disclose any information about the Chargor to any person connected to or associated with it, and to any person to whom it proposes to assign or transfer (or has assigned or transferred) any of its rights under this deed.

28. **Tax Gross-up**

- (a) The Chargor shall make all payments to be made by it under this deed without any deduction or withholding for or on account of Tax (a "**Tax Deduction**") unless a Tax Deduction is required by law.
- (b) 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 Lender accordingly.
- (c) 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.
- (d) If the Chargor is required to make a Tax Deduction, it 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.
- (e) Within 30 days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Chargor shall deliver to the Lender evidence satisfactory to the Lender that the Tax Deduction has been made or (as applicable) any appropriate payment has been paid to the relevant taxing authority.

29. **Set-off**

The Lender may set off any obligation whether or not matured due from the Chargor under this deed against any obligation whether or not matured owed by the Lender to the Chargor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Lender may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

30. **Miscellaneous**

30.1 *Third Party Rights*

- (a) Unless expressly provided to the contrary, 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 to enjoy the benefit of any term of this deed.

- (b) Notwithstanding any term of this deed, the consent of any person other than the Chargor and the Lender is not required to rescind or vary this deed at any time.
- (c) A Secured Party may, subject to this clause 30.1 and the Third Parties Act, rely on any provision of this deed which expressly confers rights on it.

30.2 *Continuing Security*

This deed is a continuing security and extends to the balance from time to time of the Secured Liabilities irrespective of any intermediate payment of the Secured Liabilities.

30.3 *Other Security*

This deed is in addition to and will not in any way be prejudiced or affected by the holding or release by the Lender or any other person of any other security at any time held by the Lender.

30.4 *Consolidation*

The restrictions on the right of consolidating mortgage securities contained in s. 93 of the LPA will not apply to this deed.

31. **Law**

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

32. **Jurisdiction**

- (a) The courts of England 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 a dispute regarding a non-contractual obligation referred to in clause 31 (Law)) (a "**Dispute**").
- (b) The Lender and the Chargor agree that the courts of England are the most appropriate and convenient courts to settle Disputes. The Chargor will not argue to the contrary.
- (c) This clause is for the benefit of the Lender only. As a result, the Lender shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Lender may take concurrent proceedings in any number of jurisdictions.

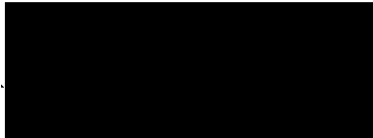
This deed has been executed and delivered as a deed by the Chargor and signed on behalf of the Lender on the date shown at the beginning of this deed

EXECUTION PAGE

THE CHARGOR

EXECUTED by **ATHERTON ALLERGATE LIMITED** acting by

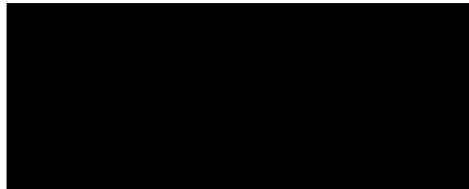
a director
in the presence of:



Director

Name of witness: *SALLY PLEASANCE*

Address of witness:



THE LENDER

SIGNED for and on behalf of
OAKSIX HOLDINGS LIMITED

)
)

EXECUTION PAGE

THE CHARGOR

EXECUTED by ATHERTON ALLERGATE)
LIMITED acting by)
)
)
a director)
in the presence of:)

..... Director

Name of witness:

Address of witness:

THE LENDER

SIGNED for and on behalf of)
OAKSIX HOLDINGS LIMITED)

