



**Registration of a Charge**

Company Name: **HLD (MANCHESTER) LIMITED**

Company Number: **09903052**



Received for filing in Electronic Format on the: **28/06/2021**

XA7L4SIP

**Details of Charge**

Date of creation: **24/06/2021**

Charge code: **0990 3052 0004**

Persons entitled: **ROUNDAPPLE HOTEL PARTNERS III LIMITED**

Brief description: **CONTAINS FIXED CHARGE. CONTAINS FLOATING CHARGE. FOR MORE DETAILS PLEASE REFER TO THE INSTRUMENT.**

**Contains fixed charge(s).**

**Contains floating 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: **SINTONS LLP**



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

Company number: 9903052

Charge code: 0990 3052 0004

The Registrar of Companies for England and Wales hereby certifies that a charge dated 24th June 2021 and created by HLD (MANCHESTER) LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 28th June 2021 .

Given at Companies House, Cardiff on 30th June 2021

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 24 June 2021

(1) HLD (MANCHESTER) LIMITED

and

(2) ROUNDAPPLE HOTEL PARTNERS III LIMITED

CHARGE OVER BANK ACCOUNT

We certify that this is a true  
copy of the original. townes\_s at  
17:08, 28/06/2021  
Sintons LLP, The Cube, Barrack  
Road, Newcastle, NE4 6DB.

SINTONS

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24 June

THIS DEED is made on <sup>^</sup> 2021

**BETWEEN**

- (1) **HLD (MANCHESTER) LIMITED** incorporated and registered in England and Wales with company number 9903052 whose registered office is at Marshall House Huddersfield Road, Elland, West Yorkshire, HX5 9BW ("**Tenant**");
- (2) **ROUNDAPPLE HOTEL PARTNERS III LIMITED** incorporated and registered in England and Wales with company number 13177335 whose registered office is at The Old Town Hall, 4 Queens Road, London, SW19 8YB ("**Landlord**").

**IT IS AGREED:**

**1. DEFINITIONS AND INTERPRETATION**

**1.1 DEFINITIONS**

Terms defined in the Underlease (as defined below) shall, unless otherwise defined in this Deed, have the same meaning in this Deed. In addition, the following definitions apply in this Deed:

"Account"	the interest bearing account in the name of HLD (Manchester) Limited, account number 83830839, sort code 60-09-27 held with the Halifax branch of the Account Bank as that account may be renamed, renumbered or redesignated from time to time.
"Account Bank"	National Westminster Bank PLC, 1 Waterhouse Street, Halifax HX1 1JA.
"Business Day"	a day (other than a Saturday, Sunday or public holiday in England) when banks in London are open for business.
"Default Rate"	2% per annum above the base rate of Barclays Bank PLC from time to time.
"Delegate"	any person appointed by the Landlord pursuant to clause 10 and any person appointed as attorney of the Landlord or any Delegate.
"Deposit"	all monies from time to time standing to the credit of the Account, together with all other rights and benefits accruing to or arising in connection with the Account (including, but not limited to, entitlements to interest).
"Event of Default"	any of the following events:  (a) the Tenant does not pay within 5 Business Days of the due date any of the Secured Liabilities and/or any amount

due pursuant to the terms of clause 12 of this Deed;

- (b) the Tenant does not comply with the provisions of clause 6 and 12 of this Deed but no Event of Default will occur under clause 6 if the failure to comply is capable of remedy and is remedied within ten Business Days of the earlier of (i) the Landlord giving notice to the Tenant, and (ii) the Tenant becoming aware of the failure to comply;
- (c) any breach by the Tenant of the Escrow Obligations set out in paragraph 4 of part 2 of Schedule 8 of the Underlease;
- (d) any representation or statement made or deemed to be made by the Tenant in this Deed is or proves to have been incorrect or misleading in any material respect when made or deemed to be made;
- (e) an Insolvency Event in relation to the Tenant;
- (f) the Tenant (or any other relevant party) rescinds or purports to rescind or repudiates or purports to repudiate this Deed or the Underlease or evidences an intention to rescind or repudiate this Deed or the Underlease;
- (g) any provision of this Deed or the Underlease is or becomes, for any reason, invalid, unlawful, unenforceable, terminated, disputed or ceases to be effective or to have full force and effect;
- (h) the Tenant is not or ceases to be a legally and beneficially wholly owned Subsidiary of Marshall Holdings Limited (CRN: Company number 01272648).

**"Financial Collateral"**

has the meaning given to that expression in the Financial Collateral Regulations.

**"Financial Collateral Regulations"**

the Financial Collateral Arrangements (No 2) Regulations 2003 (*SI 2003/3226*).

**"LPA 1925"**

the Law of Property Act 1925.

**"Secured Assets"**

all the assets, property and undertaking of the Tenant which are, or are expressed to be, subject to the Security created by, or pursuant

to, this Deed (and references to the Secured Assets shall include references to any part of them).

**"Secured Liabilities"**

the obligations and liabilities of the Tenant to the Landlord to pay the Annual Rent under the Underlease during the period commencing on the third anniversary of the date of the Underlease up to and including the fifth anniversary of the date of the Underlease subject to an aggregate maximum liability of £1,500,000 (One million five hundred thousand pounds) (inclusive of any VAT) together with all interest (including, without limitation, default interest) accruing in respect of those obligations or liabilities.

**"Security Financial Collateral Arrangement"**

has the meaning given to that expression in the Financial Collateral Regulations.

**"Security"**

any mortgage, charge (whether fixed or floating, legal or equitable), pledge, lien, assignment by way of security or other security interest securing any obligation of any person, or any other agreement or arrangement having a similar effect.

**"Security Period"**

the period starting on the date of this Deed and ending on the date that all the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full and no further Secured Liabilities are capable of being outstanding.

**"Subsidiary"**

means a subsidiary undertaking within the meaning of section 1162 of the Companies Act 2006.

**"Underlease"**

an underlease dated 7 May 2021 between (1) the Landlord (2) the Tenant and (3) Hotel Brooklyn Limited relating to Hotel Brooklyn and Napoleons Casino of 57 and 59 Portland Street (formerly known as 55a Portland Street), Manchester, M1 3HP.

## 1.2 INTERPRETATION

In this Deed:

1.2.1 clause and Schedule headings shall not affect the interpretation of this Deed;

1.2.2 a **person** includes an individual, firm, company, corporation, partnership, unincorporated body of persons, government, state or agency of a state or any association, trust, joint venture or consortium (whether or not having separate legal personality);

- 1.2.3 unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;
- 1.2.4 unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;
- 1.2.5 a reference to a party shall include that party's successors, permitted assigns and permitted transferees and this Deed shall be binding on, and enure to the benefit of, the parties to this Deed and their respective successors, permitted assigns and permitted transferees;
- 1.2.6 a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;
- 1.2.7 a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision;
- 1.2.8 a reference to **writing** or **written** does not include email;
- 1.2.9 an obligation on a party not to do something includes an obligation not knowingly to allow that thing to be done;
- 1.2.10 a reference to **this Deed** (or any provision of it) or to any other agreement or document referred to in this Deed is a reference to this Deed, that provision or such other agreement or document as amended (in each case, other than in breach of the provisions of this Deed) from time to time;
- 1.2.11 unless the context otherwise requires, a reference to a clause or Schedule is to a clause of, or Schedule to, this Deed;
- 1.2.12 any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;
- 1.2.13 a reference to an **amendment** includes a novation, supplement or variation (and **amend** and **amended** shall be construed accordingly);
- 1.2.14 a reference to **assets** includes present and future properties, undertakings, revenues, rights and benefits of every description;
- 1.2.15 a reference to an **authorisation** includes an approval, authorisation, consent, exemption, filing, licence, notarisation, registration or resolution;
- 1.2.16 a reference to **continuing** in relation to an Event of Default means an Event of Default that has not been remedied or waived and that continues to exist;
- 1.2.17 a reference to **determines** or **determined** means, unless the contrary is indicated, a determination made at the absolute discretion of the person making it;
- 1.2.18 a reference to a **regulation** includes any regulation, rule, official directive, request or guideline (which in each case has the force of law) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;



1.2.19 a reference to "**Secured Obligations**" includes obligations and liabilities which would be treated as such but for the liquidation, administration or dissolution of or similar event affecting the Tenant; and

1.2.20 if there is any conflict or inconsistency between any provision of this Deed and any provision of the Underlease, the provision of the Underlease shall prevail.

### **1.3 CLAWBACK**

If an amount paid by the Tenant in respect of the Secured Liabilities is capable of being avoided or otherwise set aside on the liquidation or administration of the Tenant or otherwise and the Landlord reasonably considers that the Tenant is likely to enter into liquidation or administration imminently, then that amount shall not be considered to have been irrevocably paid for the purposes of this Deed.

### **1.4 SCHEDULES**

The Schedules form part of this Deed and shall have effect as if set out in full in the body of this Deed. Any reference to this Deed includes the Schedules.

## **2. COVENANT TO PAY**

2.1 The Tenant shall, on demand, pay to the Landlord and discharge the Secured Liabilities when they become due.

2.2 Any amount which is not paid under this Deed when due shall bear interest (both before and after judgment and payable on demand) from the due date until the date on which such amount is unconditionally and irrevocably paid and discharged in full on a daily basis at the rate and in the manner agreed in the Underlease under which such amount is payable.

## **3. GRANT OF SECURITY**

### **3.1 FIXED CHARGE**

As a continuing security for the payment and discharge of the Secured Liabilities, the Tenant with full title guarantee charges to the Landlord by way of first fixed charge, all of its present and future right, title, benefit and interest in and to the Account and the Deposit.

### **3.2 FLOATING CHARGE**

The Tenant charges and agrees, by way of first floating charge, to charge all of its present and future right, title and interest in and to the Account and the Deposit not otherwise effectively charged by way of a fixed charge pursuant to clause 3.1 or any other provision of this Deed.

### **3.3 CONVERSION OF A FLOATING CHARGE**

#### **3.3.1 Conversion by notice**

The Landlord may, by written notice to the Tenant, convert the floating charge created under this Deed into a fixed charge as regards the Account and the Deposit specified in the notice if:

(a) an Event of Default has occurred and is continuing; or

- (b) the Landlord reasonably considers any Secured Assets to be in danger of being seized or sold under any form of distress, attachment, execution or other legal process or to be otherwise in jeopardy.

### 3.3.2 Small companies

The floating charge created under this Deed by the Tenant shall not convert into a fixed charge solely by reason of a moratorium being obtained under the Insolvency Act 2000 (or anything done with a view to obtaining such a moratorium) in respect of the Tenant.

### 3.3.3 Automatic conversion

The floating charge created under this Deed shall (in addition to the circumstances in which the same will occur under general law) automatically convert into a fixed charge in relation to any Secured Asset which is subject to the floating charge if:

- (a) the Tenant creates (or attempts or purports to create) any Security on or over the relevant Secured Asset without the prior written consent of the Landlord; or
- (b) any third party levies or attempts to levy any distress, execution, attachment or other legal process against any such Secured Asset; and
- (c) over all Secured Assets of the Tenant which are subject to the floating charge if an administrator is appointed in respect of the Tenant or the Landlord receives notice of intention to appoint such an administrator (as contemplated by the Insolvency Act 1986).

### 3.3.4 Partial conversion

The giving of a notice by the Landlord pursuant to clause 3.3.1 in relation to any asset or class of assets of the Tenant shall not be construed as a waiver or abandonment of the rights of the Landlord to serve similar notices in respect of any other asset or class of assets or of any other right of the Landlord.

## 4. LIABILITY OF THE TENANT

### 4.1 LIABILITY NOT DISCHARGED

The Tenant's liability under this Deed in respect of any of the Secured Liabilities shall not be discharged, prejudiced or affected by:

- 4.1.1 any security, guarantee, indemnity, remedy or other right held by, or available to, the Landlord that is, or becomes, wholly or partially illegal, void or unenforceable on any ground;
- 4.1.2 the Landlord renewing, determining, varying or increasing any facility or other transaction in any manner or concurring in, accepting or varying any compromise, arrangement or settlement, or omitting to claim or enforce payment from any other person; or
- 4.1.3 any other act or omission that, but for this clause 4.1, might have discharged, or otherwise prejudiced or affected, the liability of the Tenant.

## **4.2 IMMEDIATE RECOURSE**

The Tenant waives any right it may have to require the Landlord to enforce any security or other right, or claim any payment from, or otherwise proceed against, any other person before enforcing this Deed against the Tenant.

## **5. REPRESENTATIONS AND WARRANTIES**

### **5.1 TIMES FOR MAKING REPRESENTATIONS AND WARRANTIES**

5.1.1 The Tenant makes the representations and warranties set out in this clause 5 to the Landlord on the date of this Deed and are also deemed to be made by the Tenant on the date of the Rent Commencement Date and each Rent Payment Date.

5.1.2 Each representation or warranty deemed to be made after the date of this Deed shall be deemed to be made by reference to the facts and circumstances existing at the date the representation or warranty is deemed to be made.

### **5.2 OWNERSHIP OF SECURED ASSETS**

The Tenant is the sole legal and beneficial owner of, and has good, valid and marketable title to, the Secured Assets.

### **5.3 NO SECURITY**

The Secured Assets are free from any Security other than the Security created by this Deed.

### **5.4 NO ADVERSE CLAIMS**

There is no legitimate adverse claim by any person in respect of the Secured Assets or any interest in them.

### **5.5 NO ADVERSE COVENANTS**

Save for those set out in the Underlease and this Deed, there are no covenants, agreements, reservations, conditions, interests, rights or other matters whatsoever that materially and adversely affect the Secured Assets.

### **5.6 NO BREACH OF LAWS**

There is no breach of any law or regulation that materially and adversely affects the Secured Assets.

### **5.7 NO INTERFERENCE IN ENJOYMENT**

No facility necessary for the enjoyment and use of the Secured Assets is subject to terms entitling any person to terminate or curtail its use.

### **5.8 AVOIDANCE OF SECURITY**

No Security expressed to be created under this Deed is liable to be avoided, or otherwise set aside, on the liquidation or administration of the Tenant or otherwise.

## **5.9 NO PROHIBITIONS OR BREACHES**

The entry into this Deed by the Tenant does not, and will not, constitute a breach of any agreement or instrument binding on the Tenant or its assets.

## **5.10 ENFORCEABLE SECURITY**

This Deed constitutes and will constitute the legal, valid, binding and enforceable obligations of the Tenant, and is, and will continue to be, effective security over all and every part of the Secured Assets in accordance with its terms.

## **6. COVENANTS**

### **6.1 NEGATIVE PLEDGE AND DISPOSAL RESTRICTIONS**

The Tenant shall not at any time, except with the prior written consent of the Landlord:

- 6.1.1 create, purport to create or permit to subsist any Security on, or in relation to, any Secured Asset other than any Security created by this Deed;
- 6.1.2 sell, assign, transfer, part with possession of, or otherwise dispose of in any manner (or purport to do so), all or any part of, or any interest in, the Secured Assets; or
- 6.1.3 create or grant (or purport to create or grant) any interest in the Secured Assets in favour of a third party.

### **6.2 RESTRICTIONS ON REPAYMENT AND WITHDRAWALS**

The Tenant shall not, except in accordance with the Underlease:

- 6.2.1 make any request or demand for repayment or payment of all or any part of the Deposit;
- 6.2.2 withdraw or transfer all or any part of the Deposit until after the Security Period has expired;
- 6.2.3 permit or agree to any variation of the rights attaching to the Account or close the Account; or
- 6.2.4 do, or permit to be done, any act or thing that would or might depreciate, jeopardise or otherwise prejudice the security held by the Landlord, or materially diminish the value of any of the Secured Assets or the effectiveness of the security created by this Deed (including, without limitation, closing the Account).

### **6.3 COMPLIANCE WITH LAWS AND REGULATIONS**

- 6.3.1 The Tenant shall not, without the Landlord's prior written consent, use or permit the Secured Assets to be used in any way contrary to law.
- 6.3.2 The Tenant shall:
  - (a) comply with the requirements of any law or regulation relating to or affecting the Secured Assets or the use of them or any part of them; and

- (b) obtain, and promptly renew from time to time, and comply with the terms of all authorisations that are required in connection with the Secured Assets or their use or that are necessary to preserve or maintain any Secured Asset.

#### **6.4 ENFORCEMENT OF RIGHTS**

The Tenant shall use its reasonable endeavours to:

- 6.4.1 procure the prompt observance and performance by each counterparty to any agreement or arrangement with the Tenant forming part of, or relating to, the Secured Assets of the covenants and other obligations imposed on that counterparty; and
- 6.4.2 enforce any rights and institute, continue or defend any proceedings relating to any of the Secured Assets as the Landlord may reasonably require from time to time.

#### **6.5 NOTICE OF MISREPRESENTATION AND BREACHES**

The Tenant shall, promptly on becoming aware of any of the same, notify the Landlord in writing of:

- 6.5.1 any representation or warranty set out in this Deed which is incorrect or misleading in any material respect when made or deemed to be repeated; and
- 6.5.2 any breach of any covenant set out in this Deed.

#### **6.6 NOTICE OF CHARGE**

The Tenant shall on the execution of this Deed:

- 6.6.1 give notice to the Account Bank in the form set out in Part 1 of the Schedule; and
- 6.6.2 procure that the Account Bank provides to the Landlord promptly an acknowledgement of the notice in the form of Part 2 of the Schedule.

#### **6.7 INFORMATION**

The Tenant shall:

- 6.7.1 give the Landlord such information concerning the Secured Assets as the Landlord may reasonably require and any communication received by it from the Account Bank in relation to them;
- 6.7.2 permit any persons designated by the Landlord to enter on its premises and inspect and examine the records relating to the Secured Assets, at all reasonable times and on reasonable prior notice; and
- 6.7.3 promptly notify the Landlord in writing of any action, claim, notice or demand made by or against it in connection with all or any part of a Secured Asset or of any fact, matter or circumstance which may, with the passage of time, give rise to such an action, claim, notice or demand, together with, in each case, the Tenant's proposals for settling, liquidating, compounding or contesting any such action, claim, notice or demand and shall, subject to the Landlord's prior

approval (such approval not to be unreasonably withheld or delayed), implement those proposals at its own expense.

## **6.8 PAYMENT OF ACCOUNT CHARGES**

The Tenant shall promptly pay all charges and other outgoings in respect of the Secured Assets and, on demand, produce evidence of payment to the Landlord.

## **7. POWERS OF THE LANDLORD**

### **7.1 POWER TO REMEDY**

7.1.1 The Landlord shall be entitled (but shall not be obliged) to remedy, at any time, a breach by the Tenant of any of its obligations contained in this Deed.

7.1.2 The Tenant irrevocably authorises the Landlord and its agents to do all things that are necessary or desirable for that purpose.

7.1.3 The Tenant shall reimburse the Landlord for any monies the Landlord reasonably and properly expends in remedying a breach by the Tenant of its obligations contained in this Deed, and such monies shall carry interest in accordance with clause 12.1.

### **7.2 EXERCISE OF RIGHTS**

7.2.1 The rights of the Landlord under clause 7.1 are without prejudice to any other rights of the Landlord under this Deed.

7.2.2 The exercise of any rights of the Landlord under this Deed shall not make the Landlord liable to account as a mortgagee in possession.

### **7.3 CONVERSION OF CURRENCY**

7.3.1 For the purpose of, or pending the discharge of, any of the Secured Liabilities, the Landlord may convert any monies received, recovered or realised by it under this Deed (including the proceeds of any previous conversion under this clause 7.3) from their existing currencies of denomination into any other currencies of denomination that the Landlord may think fit.

7.3.2 Any such conversion shall be effected at Barclays Bank PLC's then prevailing spot selling rate of exchange for such other currency against the existing currency.

7.3.3 Each reference in this clause 7.3 to a currency extends to funds of that currency and, for the avoidance of doubt, funds of one currency may be converted into different funds of the same currency.

### **7.4 NEW ACCOUNTS**

7.4.1 If the Landlord receives, or is deemed to have received, notice of any subsequent Security, or other interest, affecting all or part of the Secured Assets, the Landlord may open a new account for the Tenant in the Landlord's books. Without prejudice to the Landlord's right to combine accounts, no money paid to the credit of the Tenant in any such new account shall be appropriated towards, or have the effect of discharging, any part of the Secured Liabilities.



- 7.4.2 If the Landlord does not open a new account immediately on receipt of the notice, or deemed notice, under clause 7.4.1, then, unless the Landlord gives express written notice to the contrary to the Tenant, all payments made by the Tenant to the Landlord shall be treated as having been credited to a new account of the Tenant and not as having been applied in reduction of the Secured Liabilities, as from the time of receipt or deemed receipt of the relevant notice by the Landlord.

## **7.5 INDULGENCE**

The Landlord may, at its discretion, grant time or other indulgence, or make any other arrangement, variation or release with any person not being a party to this Deed (whether or not any such person is jointly liable with the Tenant) in respect of any of the Secured Liabilities, or of any other security for them without prejudice either to this Deed or to the liability of the Tenant for the Secured Liabilities.

## **8. WHEN SECURITY BECOMES ENFORCEABLE**

### **8.1 SECURITY BECOMES ENFORCEABLE ON EVENT OF DEFAULT**

The security constituted by this Deed shall become immediately enforceable if an Event of Default occurs.

### **8.2 DISCRETION**

After the security constituted by this Deed has become enforceable, the Landlord may, provided that the relevant Event of Default is continuing, in its absolute discretion, enforce all or any part of that security at the times, in the manner and on the terms it thinks fit, and take possession of and hold or dispose of all or any part of the Secured Assets for such purposes.

### **8.3 TIMED DEPOSITS**

The rights and powers of the Landlord under this clause shall apply notwithstanding that:

- 8.3.1 all or any part of the Deposit may have been deposited for a fixed or minimum period or be subject to a period of notice;
- 8.3.2 any interest on the Deposit is calculated by reference to a fixed or minimum period; and/or
- 8.3.3 any such fixed or minimum period or period of notice may or may not have been given.

The Tenant irrevocably authorises the Landlord at any time after the security constituted by this Deed has become enforceable, and provided that the relevant Event of Default is continuing, to break or determine the Deposit in whole or in part and/or to renew all or any of the Deposit for such fixed periods as the Landlord may, in its absolute discretion, from time to time think fit.

## **9. ENFORCEMENT OF SECURITY**

### **9.1 GENERAL**

- 9.1.1 For the purposes of all powers implied by statute, the Secured Liabilities are deemed to have become due and payable on the date of this Deed.

9.1.2 The power of sale and other powers conferred by section 101 of the LPA 1925 (as varied or extended by this Deed) shall be immediately exercisable at any time after the security constituted by this Deed has become enforceable under clause 8.1.

9.1.3 Section 103 of the LPA 1925 does not apply to the security constituted by this Deed.

## **9.2 APPLICATION OF THE DEPOSIT**

After the security constituted by this Deed has become enforceable, and provided that the relevant Event of Default is continuing, the Landlord shall be entitled to apply, transfer or set off all or any part of the Deposit to discharge in whole or in part, the Secured Liabilities in accordance with the provisions of this Deed.

## **9.3 REDEMPTION OF PRIOR SECURITY**

9.3.1 At any time after the security constituted by this Deed has become enforceable, and provided that the relevant Event of Default is continuing, or after any powers conferred by any Security having priority to this Deed shall have become exercisable, the Landlord may:

- (a) redeem any prior Security over any Secured Asset;
- (b) procure the transfer of that Security to itself; and
- (c) settle and pass the accounts of the holder of any prior Security (and any accounts so settled and passed shall, in the absence of any manifest error, be conclusive and binding on the Tenant).

9.3.2 The Tenant shall pay to the Landlord immediately on demand all principal, interest, costs, charges and expenses of, and incidental to, any such redemption or transfer, and such amounts shall be secured by this Deed as part of the Secured Liabilities.

## **9.4 PROTECTION OF THIRD PARTIES**

No purchaser, mortgagee or other person dealing with the Landlord or any Delegate shall be concerned to enquire:

- 9.4.1 whether any of the Secured Liabilities have become due or payable, or remain unpaid or undischarged;
- 9.4.2 whether any power the Landlord or a Delegate is purporting to exercise has become exercisable or is being properly exercised; or
- 9.4.3 how any money paid to the Landlord or any Delegate is to be applied.

## **9.5 PRIVILEGES**

The Landlord is entitled to all the rights, powers, privileges and immunities conferred by the LPA 1925 on mortgagees and receivers.



## **9.6 NO LIABILITY AS MORTGAGEE IN POSSESSION**

Neither the Landlord nor any Delegate shall be liable, by reason of entering into possession of a Security Asset or for any other reason, to account as mortgagee in possession in respect of all or any of the Secured Assets, nor shall any of them be liable for any loss on realisation of, or for any act, default or omission for which a mortgagee in possession might be liable.

## **9.7 CONCLUSIVE DISCHARGE TO PURCHASERS**

The receipt of the Landlord or any Delegate shall be a conclusive discharge to a purchaser and, in making any sale or other disposal of any of the Secured Assets or in making any acquisition in the exercise of their respective powers, the Landlord and every Delegate may do so for any consideration, in any manner and on any terms that it thinks fit.

## **9.8 RIGHT OF APPROPRIATION**

9.8.1 To the extent that:

- (a) the Secured Assets constitute Financial Collateral; and
- (b) this Deed and the obligations of the Tenant under it constitute a Security Financial Collateral Arrangement,

the Landlord shall have the right, at any time after the security constituted by this Deed has become enforceable, and provided that the relevant Event of Default is continuing, to appropriate all or any of those Secured Assets in or towards the payment or discharge of the Secured Liabilities in any order that the Landlord may, in its absolute discretion, determine.

9.8.2 The value of any Secured Assets appropriated in accordance with this clause shall be, in the case of cash, the amount standing to the credit of the Account, together with any accrued but unpaid interest, at the time that the right of appropriation is exercised.

9.8.3 The Tenant agrees that the method of valuation provided for in this clause is commercially reasonable for the purposes of the Financial Collateral Regulations.

## **10. DELEGATION**

### **10.1 DELEGATION**

The Landlord may delegate (either generally or specifically) by power of attorney or in any other manner to any person any right, power, authority or discretion conferred on it by this Deed (including the power of attorney granted under clause 14.1).

### **10.2 TERMS**

The Landlord may make a delegation on the terms and conditions (including the power to sub-delegate) that it thinks fit.

## **11. APPLICATION OF PROCEEDS**

### **11.1 ORDER OF APPLICATION OF PROCEEDS**

All monies received or recovered by the Landlord or a Delegate under this Deed or in connection with the realisation or enforcement of all or part of the security constituted by this Deed, shall (subject to the claims of any person having prior rights and by way of variation of the LPA 1925) be applied in the following order of priority (but without prejudice to the Landlord's right to recover any shortfall from the Tenant):

- 11.1.1 in or towards payment of all costs, liabilities, charges and expenses incurred by or on behalf of the Landlord (and any Delegate, attorney or agent appointed by it) under or in connection with this Deed;
- 11.1.2 in or towards payment of the Secured Liabilities in any order and manner that the Landlord determines; and
- 11.1.3 in payment of the surplus (if any) to the Tenant or other person entitled to it.

### **11.2 APPROPRIATION**

Neither the Landlord nor any Delegate shall be bound (whether by virtue of section 109(8) of the LPA 1925, which is varied accordingly, or otherwise) to pay or appropriate any receipt or payment first towards interest rather than principal or otherwise in any particular order between any of the Secured Liabilities.

### **11.3 SUSPENSE ACCOUNT**

All monies received by the Landlord or a Delegate under this Deed:

- 11.3.1 may, at the discretion of the Landlord or Delegate, be credited to a suspense account;
- 11.3.2 shall bear interest, if any, at the rate agreed in writing between the Landlord and the Tenant; and
- 11.3.3 may be held in that account for so long as the Landlord or Delegate thinks fit.

## **12. COSTS AND INDEMNITY**

### **12.1 COSTS**

12.1.1 The Tenant shall, within 5 Business Days of demand, pay to, or reimburse, the Landlord, all costs, charges, expenses, taxes and liabilities of any kind (including, without limitation, legal, printing and out-of-pocket expenses) reasonably and properly incurred by the Landlord or any Delegate in connection with:

- (a) taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) any of the Landlord's or a Delegate's rights under this Deed;
- (b) any amendment, extension, waiver, consent or suspension of rights (or any proposal for any of these) under or in connection with this Deed;
- (c) any release of any security constituted by this Deed; or

(d) taking proceedings for, or recovering, any of the Secured Liabilities.

12.1.2 Any amount demanded under clause 12.1 shall bear interest at the Default Rate (both before and after judgment) from the later of (a) the day on which those costs, charges or expenses were paid, incurred or charged by the relevant person and (b) the day on which those costs, charges or expenses were demanded from the Tenant until the date of payment of the same by the Tenant.

## 12.2 INDEMNITY

12.2.1 The Tenant shall, within 5 Business Days of demand, indemnify the Landlord and each Delegate, and their respective employees and agents against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs and all other professional costs and expenses) in each case reasonably and properly suffered or incurred by any of them arising out of or in connection with:

- (a) the exercise or purported exercise of any of the rights, powers, authorities or discretions vested in them under this Deed or by law in respect of the Secured Assets;
- (b) protecting, perfecting, preserving, releasing or enforcing (or attempting to do so) the security constituted by this Deed; or
- (c) any default or delay by the Tenant in performing any of its obligations under this Deed.

12.2.2 Any past or present employee or agent may enforce the terms of this clause 12.2 subject to and in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999.

## 13. FURTHER ASSURANCE

13.1 The Tenant shall promptly, at its own expense, take whatever action the Landlord may reasonably require for:

- 13.1.1 creating, perfecting or protecting the security created or intended to be created by this Deed;
- 13.1.2 facilitating the realisation of any Secured Asset; or
- 13.1.3 facilitating the exercise of any right, power, authority or discretion exercisable by the Landlord in respect of any Secured Asset,

including, without limitation the execution of any mortgage, transfer, conveyance, assignment or assurance of all or any of the assets forming part of (or intended to form part of) the Secured Assets (whether to the Landlord or to its nominee) and the giving of any notice, order or direction and the making of any filing or registration which, in any such case, the Landlord may reasonably consider necessary or desirable.

## **14. POWER OF ATTORNEY**

### **14.1 APPOINTMENT OF ATTORNEYS**

By way of security, the Tenant irrevocably appoints the Landlord and every Delegate separately to be the attorney of the Tenant and, in its name, on its behalf and as its act and deed, to execute any documents and do any acts and things that:

14.1.1 the Tenant is required to execute and do under this Deed; or

14.1.2 any attorney reasonably deems proper or desirable in exercising any of the rights, powers, authorities and discretions conferred by this Deed or by law on the Landlord or any Delegate.

### **14.2 RATIFICATION OF ACTS OF ATTORNEYS**

The Tenant ratifies and confirms, and agrees to ratify and confirm, anything that any of its attorneys may do in the proper and lawful exercise, or purported exercise, of all or any of the rights, powers, authorities and discretions referred to in clause 14.1.

## **15. RELEASE**

Subject to clause 22.3, at the end of the Security Period (but not otherwise), the Landlord shall, at the request and cost of the Tenant, take whatever action is necessary to release the Secured Assets from the security constituted by this Deed.

## **16. ASSIGNMENT AND TRANSFER**

### **16.1 ASSIGNMENT BY LANDLORD**

16.1.1 At any time, without the consent of the Tenant, the Landlord may assign any of its rights or transfer any of its rights and obligations under this Deed.

16.1.2 The Landlord may disclose to any actual or proposed assignee or transferee any information in its possession that relates to the Tenant, the Secured Assets and this Deed that the Landlord considers appropriate.

### **16.2 ASSIGNMENT BY TENANT**

The Tenant may not assign any of its rights, or transfer any of its rights or obligations, under this Deed or enter into any transaction which would result in any of those rights or obligations passing to another person.

## **17. SET-OFF**

### **17.1 LANDLORD'S RIGHT OF SET-OFF**

The Landlord may at any time set off any liability of the Tenant to the Landlord against any liability of the Landlord to the Tenant, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this Deed. If the liabilities to be set off are expressed in different currencies, the Landlord may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the Landlord of its rights under this clause 17 shall not limit or affect any other rights or remedies available to it under this Deed or otherwise.

## **17.2 NO OBLIGATION TO SET OFF**

The Landlord is not obliged to exercise its rights under clause 17.1. If it does exercise those rights it must promptly notify the Tenant of the set-off that has been made.

## **17.3 EXCLUSION OF TENANT'S RIGHT OF SET-OFF**

All payments made by the Tenant to the Landlord under this Deed shall be made without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## **18. AMENDMENTS, WAIVERS AND CONSENTS**

### **18.1 AMENDMENTS**

No amendment of this Deed shall be effective unless it is in writing and signed by, or on behalf of, each party (or its authorised representative).

### **18.2 WAIVERS AND CONSENTS**

18.2.1 A waiver of any right or remedy under this Deed or by law, or any consent given under this Deed, is only effective if given in writing by the waiving or consenting party and shall not be deemed a waiver of any subsequent right or remedy. It only applies to the circumstances in relation to which it is given and shall not prevent the party giving it from subsequently relying on the relevant provision.

18.2.2 A failure by the Landlord to exercise, or delay by it in exercising, any right or remedy provided under this Deed or by law shall not constitute a waiver of that or any other right or remedy, prevent or restrict any further exercise of that or any other right or remedy or constitute an election to affirm this Deed. No single or partial exercise of any right or remedy provided under this Deed or by law shall prevent or restrict the further exercise of that or any other right or remedy. No election to affirm this Deed by the Landlord shall be effective unless it is in writing.

### **18.3 RIGHTS AND REMEDIES**

The rights and remedies provided under this Deed are cumulative and are in addition to, and not exclusive of, any rights and remedies provided by law.

## **19. PARTIAL INVALIDITY**

If, at any time, any provision of this Deed is or becomes invalid, illegal 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.

## **20. COUNTERPARTS**

This Deed may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute one deed.

## **21. THIRD PARTY RIGHTS**

- 21.1 Except as expressly provided in clause 12.2, a person who is not a party to this Deed has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce, or enjoy the benefit of, any term of this Deed.
- 21.2 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.

## **22. FURTHER PROVISIONS**

### **22.1 INDEPENDENT SECURITY**

The security constituted by this Deed shall be in addition to, and independent of, any other security or guarantee that the Landlord may hold for any of the Secured Liabilities at any time. No prior security held by the Landlord over the whole or any part of the Secured Assets shall merge in the security created by this Deed.

### **22.2 CONTINUING SECURITY**

The security constituted by this Deed shall remain in full force and effect as a continuing security for the Secured Liabilities, despite any settlement of account, or intermediate payment, or other matter or thing, unless and until the Landlord discharges this Deed in writing.

### **22.3 DISCHARGE CONDITIONAL**

Any release, discharge or settlement between the Tenant and the Landlord shall be conditional on no payment or security received by the Landlord in respect of the Secured Liabilities being avoided, reduced, set aside or ordered to be refunded under any law relating to insolvency, bankruptcy, winding-up, administration, receivership or for any other reason. Despite any such release, discharge or settlement:

- 22.3.1 the Landlord or its nominee may retain this Deed and the security created by or under it, including all certificates and documents relating to the whole or any part of the Secured Assets, for any period that the Landlord reasonably deems necessary to provide the Landlord with security against any such avoidance, reduction or order for refund; and
- 22.3.2 the Landlord may recover the value or amount of such security or payment from the Tenant subsequently as if the release, discharge or settlement had not occurred.

### **22.4 CERTIFICATES**

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

### **22.5 CONSOLIDATION**

The restriction on the right of consolidation contained in section 93 of the LPA 1925 shall not apply to this Deed.

## **23. NOTICES**

Clause 47 (*Notices*) of the Underlease (relating to all communications to be made under the Underlease) is incorporated into this Deed as if fully set out in this Deed except that references to the Underlease shall be construed as references to this Deed. The address and fax numbers of each Party for all communications or documents given under or in connection with this Deed are those identified with its name below or those subsequently notified from time to time by the relevant Party for the purposes of the Underlease.

## **24. GOVERNING LAW**

This Deed and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

**IN WITNESS** the parties have executed this Agreement on the date set out above.



## SCHEDULE 1

### NOTICE AND ACKNOWLEDGEMENT

#### Part 1 Form of notice

[On the letterhead of the Tenant]

National Westminster Bank plc

Real Estate Finance Team

2 Whitehall Quay

Leeds LS1 4HR

[DATE]

Dear Sirs

**Charge over bank account (Charge) dated June 2021 between HLD (MANCHESTER) LIMITED and ROUNDAPPLE HOTEL PARTNERS III LIMITED**

This letter constitutes notice to you that under the Charge we have charged, by way of first fixed charge, in favour of Roundapple Hotel Partners III Limited (the Landlord) all monies from time to time standing to the credit of the account held with you and detailed below (Account), together with all other rights and benefits accruing to or arising in connection with the Account (including, but not limited to, entitlements to interest):

**Name of Account: HLD (Manchester) Limited**

**Sort code: 60-09-27**

**Account number: 83830839**

We irrevocably instruct and authorise you to:

- Disclose to the Landlord any information relating to the Account requested from you by the Landlord.
- Comply with the terms of any joint written notice or instructions relating to the Account received by you from the Landlord and us.
- Pay or release all or any part of the monies standing to the credit of the Account in accordance with the joint written instructions of the Landlord and us.

We acknowledge that you may comply with the instructions in this notice without any further permission from us.

We are not permitted to withdraw any amount from the Account other than in accordance with the joint written instructions of the Landlord and us.

The instructions in this notice may only be revoked or amended on the joint written instructions of the Landlord and us.



This notice, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.

Please confirm that you agree to the terms of this notice and to act in accordance with its provisions by sending the attached acknowledgement to the Landlord at The Old Town Hall, 4 Queens Road, London, SW19 8YB, with a copy to us.

Yours faithfully,

Signed.....

HLD (MANCHESTER) LIMITED

## Part 2 Form of acknowledgement

[On the letterhead of National Westminster Bank plc]

Roundapple Hotel Partners III Limited  
The Old Town Hall  
4 Queens Road  
London  
SW19 8YB

[DATE]

Dear Sirs,

**Charge over bank account (Charge) dated June 2021 between HLD (MANCHESTER) LIMITED and ROUNDAPPLE HOTEL PARTNERS III LIMITED**

We confirm receipt from HLD (Manchester) Limited (Tenant) of a notice (Notice) dated [DATE] 2021 of a charge (on the terms of the Charge) over all monies from time to time standing to the credit of the account detailed below (Account), together with all other rights and benefits accruing to or arising in connection with the Account (including, but not limited to, entitlements to interest).

We confirm that we:

- Accept the instructions contained in the Notice and agree to comply with the Notice.
- Will not permit any amount to be withdrawn from the Account other than in accordance with the joint written instructions of you and the Tenant.
- Have not received notice of the interest of any third party in the Account (provided that we shall be under no obligation to update you in this respect).
- Have neither claimed nor exercised, nor will claim or exercise, any security interest, set-off, counter-claim or other right arising after the date of this acknowledgement in respect of the Account.

The above confirmations are given on the basis that:-

- if a copy of the Charge has been provided to us, we have not reviewed this and are not on notice of any provision contained in it, other than any provisions set out in the Notice; and
- we will be entitled to rely upon any joint written instruction purporting to be from the Tenant and you in relation to the Account without further enquiry or investigation into the identity of individuals providing such instruction

The Account is:

**Name of Account: HLD (Manchester) Limited**

**Sort code: 60-09-27**

**Account number: 83830839**

This letter, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.

Yours faithfully,

Signed.....

National Westminster Bank PLC

**EXECUTED** as a **DEED** by )  
**HLD (MANCHESTER) LIMITED** )  
acting by Jonathan Booth )  
a director in the presence of: )

Director \_\_\_\_\_

Witness signature: \_\_\_\_\_  
Witness name: EMMA STANISZKO  
Witness address: 10 CROSS LANE  
ELLAND  
HX5 0QQ

**EXECUTED** as a **DEED** by )  
**ROUNDAPPLE HOTEL PARTNERS** )  
**III LIMITED** acting by Edward Nixon a )  
director in the presence of: )

Director \_\_\_\_\_

Witness signature: \_\_\_\_\_  
Witness name: \_\_\_\_\_  
Witness address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_