



Registration of a Charge

Company Name: **AQUA TRUSTEES NUMBER 1 LIMITED**

Company Number: **10519636**



Received for filing in Electronic Format on the: **08/09/2021**

XACMMTYA

Details of Charge

Date of creation: **02/09/2021**

Charge code: **1051 9636 0011**

Persons entitled: **EMIRATES NBD BANK (P.J.S.C), LONDON BRANCH**

Brief description: **THE PROPERTY KNOWN AS 38 EBURY MEWS EAST, LONDON, SW1W 9QA AND REGISTERED AT THE LAND REGISTRY UNDER THE TITLE NUMBER NGL988054 (FREEHOLD)**

Contains fixed charge(s).

Contains negative pledge.

Chargor acting as a bare trustee for the property.

Authentication of Form

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

Authentication of Instrument

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

Certified by: **GRAHAM DUNN, SOLICITOR, FARRER & CO LLP**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 10519636

Charge code: 1051 9636 0011

The Registrar of Companies for England and Wales hereby certifies that a charge dated 2nd September 2021 and created by AQUA TRUSTEES NUMBER 1 LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 8th September 2021 .

Given at Companies House, Cardiff on 9th September 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 2 SEPTEMBER 2021

**AQUA TRUSTEES NUMBER 1 LIMITED AND AQUA TRUSTEES
NUMBER 2 LIMITED ACTING IN THEIR CAPACITY AS JOINT
TRUSTEES OF THE TA PROPERTY UNIT TRUST**

as Chargors (1)

- and -

EMIRATES NBD BANK (P.J.S.C), LONDON BRANCH (2)

as Bank

DEBENTURE

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THIS DEBENTURE is made on 2 September 2021

BETWEEN

- (1) **AQUA TRUSTEES NUMBER 1 LIMITED** (a company incorporated in England and Wales with registration number 10519636) and **AQUA TRUSTEES NUMBER 2 LIMITED** (a company incorporated in England and Wales with registration number 10519637) each having its registered office at Unit 6, The Mead Business Centre, Mead Lane, Hertford, Hertfordshire, England, SG13 7BJ, in each case acting in their capacity as joint trustees of the TA Property Unit Trust, a unit trust constituted under the laws of England pursuant to the Trust Instrument (the "**Chargors**" and each a "**Chargor**"); and
- (2) **EMIRATES NBD BANK (P.J.S.C), LONDON BRANCH** (a company incorporated in the United Arab Emirates and registered with the Ministry of Economy with commercial registration number 1004) whose registered address is at P.O. Box 777 Head Office, Baniyas Road, Dubai United Arab Emirates acting through its London Branch office at Emirates NBD House, 25 Knightsbridge, London SW1X 7LY (the "**Bank**").

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

To the extent not defined herein, capitalised terms and expressions used in this deed shall have the same meanings as ascribed to them in the Facility Letter (as defined below) and in this deed:

"**Account Bank**" means Emirates NBD Bank (P.J.S.C) (London Branch) acting through its branch at Emirates NBD House, 25 Knightsbridge, London SW1X 7LY or any other bank appointed as such in accordance with this deed;

"**Administrator**" means any one or more persons appointed as an administrator of the Chargors by the Bank under paragraph 14 of schedule B1 to the Insolvency Act;

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

"**Charged Accounts**" means the Debt Service Reserve Account or any other account which is opened in place of such account at the request of or with the consent of the Bank;

"**Charged Property**" means the assets mortgaged, charged or assigned by the Chargors under this deed;

"**Default Rate**" means the interest rate provided for in clause 10 of the Facility Letter in relation to any amount due and payable but unpaid by the Chargors under the Finance Documents;

"**Delegate**" means any delegate, agent, attorney or co-trustee appointed by the Bank pursuant to clause 12.6 (Delegation);

"**Disclosed**" means fully and fairly disclosed to the Bank with sufficient explanation and detail to identify clearly the nature, scope and full implications of the matter disclosed;

"Environment" means humans, animals, plants and all other living organisms including the ecological systems of which they form part and the following media:

- (a) air (including air within natural or man-made structures, whether above or below ground);
- (b) water (including territorial, coastal and inland waters, water under or within land and water in drains and sewers); and
- (c) land (including land under water);

"Environmental Claim" means any claim, proceeding, formal notice or investigation by any person in respect of any Environmental Law;

"Environmental Law" means any applicable law or regulation which relates to:

- (a) the pollution or protection of the Environment;
- (b) the conditions of the workplace; or
- (c) the generation, handling, storage, use, release or spillage of any substance which, alone or in combination with any other, is capable of causing harm to the Environment, including any waste;

"Environmental Permit" means any permit and other Authorisation and the filing of any notification, report or assessment required under any Environmental Law for the operation of the business of the Chargors conducted on or from the properties owned or used by the Chargors;

"Event of Default" means any event or circumstance specified as such in clause 16.1 of the Facility Letter or any other event of default (howsoever described) occurs under any Finance Document;

"Facility Letter" means a facility letter dated on or about the date hereof between the Chargors as borrower, the Personal Guarantor and the Bank, as amended, varied, supplemented and restated from time to time;

"Finance Documents" means:

- (a) the Facility Letter;
- (b) the Security Documents;
- (c) any Hedging Agreement; and
- (d) any other agreement, document or deed entered into by the Chargors with the Bank under the terms of the Facility Letter or designated as such by the Bank and the Chargors;

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

"Headlease" means a lease under which the Chargors hold title to the Property;

"Hedging Agreement" means any master agreement, confirmation, transaction, schedule or other agreement entered into or to be entered into by the Chargors with the Bank for the purpose of hedging interest payable under the Facility Letter;

"Holding Company" means, in relation to a company or corporation, any other company or corporation in respect of which it is a Subsidiary;

"Insolvency Act" means the Insolvency Act 1986;

"Insurances" means any contract of insurance effected by or for the benefit of the Chargors in relation to the Property and/or the Rental Income;

"Lease" includes any underlease, tenancy, letting, contractual licence, right to occupy, any document supplemental or collateral to any of them including any guarantee and any agreement to enter into any of them, in each case in relation to the Property or any part thereof and the expression tenant will be construed accordingly;

"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; and
- (c) similar principles, rights and defences applicable to creditors generally under the laws of any relevant jurisdiction;

"LPA" means the Law of Property Act 1925;

"Material Adverse Effect" means a material adverse effect on:

- (a) the business, operations, property, condition (financial or otherwise) or prospects of an Obligor;
- (b) the ability of an Obligor duly to perform its obligations under the Finance Documents; or
- (c) the validity or enforceability of, or the effectiveness or ranking of any Security granted or purported to be granted pursuant to any of, the Finance Documents or the rights or remedies of the Bank under any of the Finance Documents;

"Obligor" means each of the Chargors, the Trustees, the Unitholders, the Personal Guarantor and any other person that has granted Security under the Facility Letter from time to time;

"Permitted Security" means the Security created under any Security Document and, for a period beginning on the date when it attached to the relevant Security Asset and ending 30 days from such date, a lien arising by operation of law in the ordinary course of business;

"Personal Guarantor" means His Royal Highness Prince Turki Bin Muqrin Bin Abdulaziz Al Saud, presently of Al Nasseriyah Royal Palace, Al Takhsosi, Riyadh, Kingdom of Saudi Arabia

as residential address and PO Box 282578, Marina Horn/MH-7, 392 Marsa, Dubai, United Arab Emirates as a postal address;

"Property" means the property described in schedule 1;

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

"Related Rights" means, in relation to an agreement, any guarantee or security for the performance of any such agreement, any money now or at any time in the future due or owing to the Chargors under or in connection with any such agreement, all claims for damages or other remedies in respect of any present or future breach of such agreement and all rights and remedies for enforcing such agreement;

"Relevant Jurisdictions" means, in relation to each Chargor:

- (a) its jurisdiction of incorporation;
- (b) any jurisdiction where any asset subject to or intended to be subject to the Transaction Security to be created by it is situated;
- (c) any jurisdiction where it conducts its business;
- (d) the jurisdiction whose laws govern the perfection of any Security Documents entered into by it; and
- (e) any jurisdiction where any insolvency proceedings can be taken in relation to the relevant Chargor or any of its assets;

"Rental Income" means the aggregate of all amounts paid or payable to or for the account of the Chargors in connection with the letting, licence or grant of other rights of use or occupation of any part of the Property;

"Report on Title" means the report on title delivered to the Bank in accordance with the terms of the Facility Letter;

"Secured Liabilities" means:

- (a) all obligations of any of the Chargors owed or expressed to be owed to the Bank from time to time whether owed jointly or severally, as principal or surety or in any other capacity; and
- (b) all obligations of each other Obligor owed or expressed to be owed to the Bank from time to time under the Security Documents whether owed jointly or severally, as principal or surety or in any other capacity;
- (c) in the case of any Obligor other than a Chargor any obligation referred to in (a) above which is or becomes Unenforceable and any cost, loss or liability which the Bank 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 Bank, 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" means this deed, each Security Document under and as defined in the Facility Letter and 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 Chargors 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 Security" means the Security created or evidenced or expressed to be created or evidenced under the Security Documents;

"Unenforceable" means void, voidable, invalid, unenforceable or otherwise irrecoverable (whether or not known to the Bank or the Chargors) 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:

- 1.2.1 this deed is a Finance Document;
- 1.2.2 the **"Bank"** or **"Chargors"** shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
- 1.2.3 **"assets"** includes present and future properties, revenues and rights of every description;
- 1.2.4 **"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;
- 1.2.5 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;
- 1.2.6 **"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;
- 1.2.7 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

- 1.2.8 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:

- 1.3.1 "**obligations**" means obligations and liabilities;
- 1.3.2 references to obligations and liabilities include the whole or any part of them, present and future, actual and contingent;
- 1.3.3 any reference to "**powers**" includes rights, powers, discretions and authorities;
- 1.3.4 any reference to any asset includes any proceeds of sale of any such asset;
- 1.3.5 any reference to a provision of law is a reference to that provision as amended or re-enacted from time to time;
- 1.3.6 any reference to clauses, paragraphs and schedules are to the clauses, paragraphs of and schedules to this deed;
- 1.3.7 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;
- 1.3.8 any reference to a time is to London time;
- 1.3.9 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;
- 1.3.10 the words "**other**" and "**otherwise**" are not limited by any words preceding them;
- 1.3.11 clause and schedule headings are for ease of reference only; and
- 1.3.12 an Event of Default is "**continuing**" if it has not been remedied to the satisfaction of the Bank or waived in writing.

1.4 Construction of charging clause

Each of the security interests created by clause 3 (Fixed Security) shall be construed as separate and distinct interests over the relevant assets so that the 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.

1.5 Incorporation

This deed incorporates the terms of the Finance Documents and any side letters between the parties to the extent required to ensure the validity of any purported disposition under this deed of any freehold or leasehold property under s2(1) of the Law of Property (Miscellaneous Provisions) Act 1989.

2. **UNDERTAKING TO PAY**

The Chargors undertake with the Bank to pay the Secured Liabilities to the Bank when due.

3. **FIXED SECURITY**

As continuing security for the payment of the Secured Liabilities each Chargor with full title guarantee:

- 3.1 charges the Property to the Bank by way of legal mortgage ;
- 3.2 assigns to the Bank by way of fixed security its rights and interest in all present or future Rental Income;
- 3.3 assigns to the Bank by way of fixed security its rights and interest in any present or future compensation and damages for the compulsory purchase of, or any blight or disturbance affecting, the Property;
- 3.4 assigns to the Bank by way of fixed security its rights and interest in any claim against the provider of any certificate of or report on title or the provider of any other due diligence report (in its capacity as provider of the same) in connection with any Charged Property,
- 3.5 assigns to the Bank by way of fixed security its rights and interest in any present or future right to occupy the Property under licence;
- 3.6 assigns to the Bank by way of fixed security its rights and interest in any present or future contract for the purchase of the Property and any Related Rights;
- 3.7 charges to the Bank by way of fixed charge its rights and interest in respect of each Charged Account, any money now or at any time after the date of this deed standing to the credit of any Charged Account and any interest on any such money and the debt represented by any Charged Account;
- 3.8 charges to the Bank by way of fixed charge its rights and interest in any present or future Insurances and any Related Rights;
- 3.9 assigns to the Bank by way of fixed security its rights and interest in any agreements listed in schedule 2 and any Related Rights to the extent capable of assignment without infringing any provision of such agreement and if the terms of any agreement listed in schedule 2 require the consent of any party to such agreement to the assignment to the Bank which consent has not been obtained at the date of this deed such assignment shall take effect immediately on such consent being obtained;
- 3.10 to the extent that any agreement listed in schedule 2 is not capable of assignment without infringing any provision of such agreement but is capable of being charged, charges to the Bank by way of fixed security its rights and interest in such agreement and any Related Rights; and
- 3.11 to the extent that any agreement listed in schedule 2 is not capable of assignment or charge without infringing any provision of such agreement, charges to the Bank the proceeds of any Related Rights in respect of such agreement.

4. NOTICES OF ASSIGNMENT

4.1 Notice of assignment of agreements

To the extent required by the Bank, the Chargors shall give notice of the assignment of any agreement assigned to the Bank under clause 3 in the form set out in part 1 of schedule 3 (or such other form as the Bank may reasonably agree) to the other party or parties to such agreement and shall use reasonable endeavours to procure that such party or parties executes and delivers to the Bank an acknowledgement of such notice in the form set out in part 2 of schedule 3 (or such other form as the party receiving the notice shall agree to provide, if any).

4.2 Bank may give notice

Nothing in this clause 4 shall prevent the Bank from giving any notice it considers necessary or desirable in relation to the Security created over any Charged Property.

5. ACCOUNTS

If the Account Bank is not the Bank the Chargors shall give notice of the charge of the Charged Account to the Account Bank in the form set out in part 1 of schedule 4 and shall procure that the Account Bank executes and delivers to the Bank an acknowledgement of the rights of the Bank in respect of such account in the form set out in part 2 of schedule 4, or in such other form as the Bank may approve from time to time.

6. REPRESENTATIONS

6.1 Duration and Scope

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

6.2 Status

6.2.1 It is a company limited by shares, duly incorporated and validly existing under the laws of England and Wales.

6.2.2 It has the power to own its assets and carry on its business in England and Wales as it is being conducted.

6.2.3 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.

6.3 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.

6.4 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:

6.4.1 any law or regulation applicable to them;

6.4.2 its or any of its Subsidiaries' constitutional documents; or

6.4.3 any agreement or instrument binding upon it or any of their Subsidiaries or any of its or any of its Subsidiaries' assets or constitute a default or termination event (however described) under any agreement or instrument binding upon them.

6.5 Power and authority

6.5.1 It has the power to enter into, perform and deliver, and have taken all necessary action to authorise their entry into, performance and delivery of, this deed and the transactions contemplated by this deed.

6.5.2 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.

6.6 Validity and admissibility in evidence

Except for registration of this deed in accordance with clause 6.7 (Registration requirements), all Authorisations required or desirable:

6.6.1 to enable it lawfully to enter into, exercise its rights and comply with its obligations in this deed; and

6.6.2 to make this deed admissible in evidence in its Relevant Jurisdictions,

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

6.7 Registration requirements

Except for registration of this deed under the Companies Act 2006 and the Land Registration Act 2002, it is not necessary to file, register or record this deed in any public place or elsewhere.

6.8 Governing law and enforcement

6.8.1 The choice of English law as the governing law of this deed will be recognised and enforced in its Relevant Jurisdiction.

6.8.2 Any judgment obtained in England in relation to this deed will be recognised and enforced in its Relevant Jurisdiction.

6.9 Deduction of Tax

It is not required under the law of its Relevant Jurisdictions to make any deduction for or on account of Tax from any payment they may make under this deed to the Bank.

6.10 No filing or stamp taxes

Except for registration as set out in clause 6.7 of this deed and registration fees associated with registration of this deed in accordance with clause 6.7 (Registration requirements), it is not necessary under the law of its Relevant Jurisdictions 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.

6.11 No default

- 6.11.1 No Event of Default is continuing or might result from the entry into, or the performance of, any transaction contemplated by this deed.
- 6.11.2 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 a Chargor or any of its Subsidiaries or to which such Chargor's (or any of its Subsidiaries') assets are subject which has or is reasonably likely to have a Material Adverse Effect.

6.12 No misleading information

- 6.12.1 All information supplied by it or on its behalf to the Bank 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.
- 6.12.2 It has not omitted to supply any information which, if disclosed, would make the information referred to in paragraph 6.12.1 above untrue or misleading in any respect.
- 6.12.3 As at the date of this deed, nothing has occurred since the date of the information referred to in paragraph 6.12.1 above which, if disclosed, would make that information untrue or misleading in any material respect.

6.13 No proceedings pending or threatened

No litigation, arbitration or administrative proceedings or investigations of or before, any court, arbitral body or agency which, if adversely determined, might reasonably be expected to have a Material Adverse Effect have (to the best of its knowledge and belief having made due and careful enquiry) been started or threatened against any Chargor or any of its Subsidiaries.

6.14 Security

There is no Security over any of the assets which are financed by the Facility Letter or a Related Facility Letter of the Chargors or any Subsidiary of such Chargors except for any Permitted Security and the Security created under the Related Security Documents.

6.15 Ranking of Security

Subject to registration in accordance with registration under the Companies Act 2006 and the Land Registration Act 2002, 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.

6.16 The Property

Save as to matters Disclosed in the Report on Title or to the Bank or their advisors prior to the date of this deed:

- 6.16.1 the Chargors are the legal owners of the Property;

- 6.16.2 the Chargors have good and marketable title to the Property free from restrictions and onerous covenants;
- 6.16.3 the Property is free from any Security (other than Permitted Security) or Lease or licence;
- 6.16.4 the Chargors have not received or acknowledged notice of any adverse claim by any person in respect of the Property or any interest in it;
- 6.16.5 the Property is in good and substantial repair;
- 6.16.6 there is no breach of any law, regulation or covenant in respect of the Property which adversely affects or which might reasonably be expected to adversely affect the value, saleability or use of the Property;
- 6.16.7 there are no covenants, agreements, stipulations, reservations, conditions, interests, rights or other matters whatever which materially adversely affect the Property;
- 6.16.8 no facility necessary for the enjoyment and use of the Property is subject to terms entitling any person to terminate or curtail its use or which conflict with or restrict its use; and
- 6.16.9 nothing has arisen or has been created or is subsisting which would be an overriding interest or an unregistered interest which overrides first registration or a registered disposition over the Property.

6.17 **Title Deeds**

All deeds and documents necessary to show good and marketable title to the Chargors' interests in the Property will from the date of this deed be:

- 6.17.1 in possession of the Bank;
- 6.17.2 held at the applicable Land Registry; or
- 6.17.3 held to the order of the Bank by a firm of solicitors approved by the Bank for that purpose.

6.18 **Information relevant to Title and Valuation**

- 6.18.1 All factual information provided by, or on behalf of, the Chargors:
 - 6.18.1.1 to the Valuer for the purposes of any Valuation;
 - 6.18.1.2 to the solicitors preparing the Report on Title; and
 - 6.18.1.3 to the solicitors acting for the Bank in connection with the review of the Property and the Report on Title,

is, in each case, accurate in all material respects and no information has been omitted which if disclosed may reasonably be expected to materially and adversely affect the decision of the Bank whether or not to provide finance to the Chargors.

- 6.18.2 Any financial projections contained in the information referred to in paragraph 6.18.1 above have been prepared as at their date, on the basis of recent historical information and on the basis of reasonable assumptions.
- 6.18.3 There has been no change to the factual information provided pursuant to paragraph 8.19.1 above in relation to the most recent Valuation or the Report on Title between the date such information was provided and the date of that Valuation or the Report on Title which, in either case, renders that information untrue or misleading in any material respect.
- 6.18.4 No information has been withheld by it which may be material to the most recent Valuation or the Report on Title.

6.19 Environmental Law

- 6.19.1 The Chargors have at all times complied in all material respects with all applicable Environmental Law.
- 6.19.2 Any licences required under any Environmental Law have been obtained and are valid and subsisting.
- 6.19.3 The Chargors have no notice of any claim under any Environmental Law or of any circumstances which might result in such a claim applicable to the Property or any occupier of any of the Property or otherwise which might materially and adversely affect the open market realisable value or marketability of the Property.

6.20 Deleterious materials

No high alumina cement, asbestos or asbestos-based products or other deleterious materials generally known at the time of use to be deleterious to health and safety or to the durability of the Property in the particular circumstances in which they are used has been or shall be used in the construction of or any alterations or additions to the Property.

6.21 No contaminative use

To the best of the Chargors' knowledge and belief having made due and proper enquiries no contaminative use has been or is being carried on at or within the vicinity of the Property.

6.22 Dangerous substances

No dangerous substance is being or shall be used, generated, stored, transported, treated, dumped, released, deposited, buried, emitted or disposed of at, on, from or under the Property in circumstances where this might result in any environmental claim on the Chargors or any occupier of any of the Property or which might materially and adversely affect the open market realisable value or marketability of the Property.

6.23 Repetition

The representations and warranties in this clause are deemed to be made by the Chargors 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 Facility Letter.

7. NEGATIVE UNDERTAKINGS

7.1 Negative pledge

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

7.2 Disposals

The Chargors shall not sell, transfer, lease or otherwise dispose or purport or agree to dispose of:

7.2.1 any of their assets which are expressed to be mortgaged by way of legal or equitable mortgage, assigned by way of security or charged by way of fixed security or charge to the Bank under clause 3 (Fixed Security); or

7.2.2 any of their other assets other than on arm's length terms in the ordinary course of their trading.

7.3 Mergers

The Chargors shall not merge, or consolidate with any other person or enter into any amalgamation, demerger or reconstruction or continue as a company incorporated under the laws of a jurisdiction outside England and Wales.

8. INFORMATION UNDERTAKINGS

8.1 *Information: miscellaneous*

The Chargors shall supply to the Bank:

8.1.1 promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against them; and

8.1.2 promptly such further information relating to the financial condition, business and operations of them and the Property or any Security provided in connection with the Finance Documents as the Bank may reasonably request.

8.2 Notification of default

The Chargors shall notify the Bank of any Event of Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence.

8.3 "Know your customer" checks

If:

8.3.1 the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the date of this deed;

8.3.2 any change in the status of the Chargors or the composition of the shareholders in or members of the Chargors after the date of this deed; or

8.3.3 a proposed assignment or transfer by the Bank of any of its rights and obligations under this deed,

obliges the Bank (or, in the case of paragraph 8.3.3 above, any prospective assignee or transferee) to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not already available to it, the relevant Chargor shall promptly upon the request of the Bank supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Bank (for itself or, in the case of the event described in paragraph 8.3.3 above, on behalf of the proposed assignee or transferee) in order for the Bank or, in the case of the event described in paragraph 8.3.3 above, the proposed assignee or transferee to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

8.4 Accuracy

The Chargors shall ensure that all information supplied to the Bank by it is at the time of supply complete, true and accurate in all material respects.

9. GENERAL UNDERTAKINGS

9.1 Authorisations

The Chargors shall promptly:

9.1.1 obtain, comply with and do all that is necessary to maintain in full force and effect; and

9.1.2 supply certified copies to the Bank of,

any Authorisation required under any law or regulation of its Relevant Jurisdictions to:

9.1.2.1 enable it to perform their obligations under the Finance Documents to which it is a party and to ensure the legality, validity, enforceability or admissibility in evidence in the Relevant Jurisdictions of any such Finance Document;

9.1.2.2 make this deed admissible in evidence in their Relevant Jurisdictions; and

9.1.2.3 enable it to own its assets and carry on its business as it is being conducted.

9.2 Compliance with laws

The Chargors 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.

9.3 Consents

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

9.4 **Financial Indebtedness**

The Chargors shall not:

- 9.4.1 incur or allow to subsist any Financial Indebtedness other than Permitted Financial Indebtedness; or
- 9.4.2 repay any Permitted Financial Indebtedness which does not arise under a Finance Document.

9.5 **Lending and guarantees**

The Chargors shall not:

- 9.5.1 make any loan or provide any form of credit or other financial assistance to any person; or
- 9.5.2 give any guarantee or indemnity to or for the benefit of any person in respect of any obligation of any other person or otherwise assume any liability of any other person other than any guarantee or indemnity given pursuant to the Finance Documents.

9.6 **Taxes**

- 9.6.1 The Chargors must pay all Taxes due and payable by them prior to the accrual of any fine or penalty for late payment, unless (and only to the extent that):
 - 9.6.1.1 payment of those Taxes is being contested in good faith;
 - 9.6.1.2 adequate reserves are being maintained for those Taxes and the costs required to contest them; and
 - 9.6.1.3 failure to pay those Taxes is not reasonably likely to have a Material Adverse Effect.
- 9.6.2 All payments by the Chargors under any Finance Document shall be made without any deduction or withholding for or on account of any Taxes or otherwise, except to the extent that the Chargors are required by law to do otherwise. If, by law, a deduction or withholding must be made from any amount payable by the Chargors to the Bank under any Finance Document, the Chargors shall notify the Bank and shall pay such additional amounts as may be necessary to ensure that the Bank receives a net amount equal to the full amount which it would have received had payment not been made subject to any deduction or withholding.
- 9.6.3 To the extent the same has not otherwise been accounted for by way of a payment made pursuant to paragraph 11.6.2 above, the Chargors shall (within three Business Days of demand by the Bank) pay to the Bank an amount equal to any loss, liability or cost which the Bank determines (acting in good faith) has been (directly or indirectly) suffered for or on account of Tax by the Bank in respect of a Finance Document.

9.7 Filing and stamp taxes

Should it be necessary under the law of their Relevant Jurisdictions 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, the Chargors shall promptly and in any event prior to any applicable due date take such steps as are necessary in order to make such filing, recording or enrolment and pay any such associated tax or fee.

9.8 Comi

Each Chargor shall take all steps 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.

9.9 Documents of title

The Chargors shall deposit with the Bank all deeds and documents of title from time to time relating to the Charged Property.

9.10 Failure to comply

If the Chargors fail to comply with any of their obligations under this deed the Bank may take such steps as they consider appropriate to procure compliance with such obligations at the cost of the Chargors.

10. UNDERTAKINGS RELATING TO THE PROPERTY

10.1 Management

The Chargors shall procure that the Property is properly managed in accordance with the usual principles of good estate management.

10.2 Title

10.2.1 The Chargors must exercise their rights and comply in all respects with any covenant, stipulation or obligation (restrictive or otherwise) at any time affecting the Property.

10.2.2 The Chargors may not agree to any amendment, supplement, waiver, surrender or release of any covenant, stipulation or obligation (restrictive or otherwise) at any time affecting the Property.

10.2.3 The Chargors must promptly take all such steps as may be necessary or desirable to enable the Security created by this deed to be registered, where appropriate, at the applicable Land Registry.

10.3 Leases

The Chargors' statutory and any other powers of entering into Leases and accepting or agreeing to accept surrenders of Leases are excluded and may only be exercised with the Bank's prior written consent.

10.4 **Headleases**

10.4.1 The Chargors must:

- 10.4.1.1 exercise their rights and comply with their obligations under each Headlease;
- 10.4.1.2 use their reasonable endeavours to ensure that each landlord complies with their obligations under each Headlease; and
- 10.4.1.3 if so required by the Bank, apply for relief against forfeiture of any Headlease,

in a proper and timely manner.

10.4.2 The Chargors may not, without the prior written consent of the Bank:

- 10.4.2.1 agree to any amendment, supplement, waiver, surrender or release of any Headlease;
- 10.4.2.2 exercise any right to break, determine or extend any Headlease;
- 10.4.2.3 agree to any rent review in respect of any Headlease; or
- 10.4.2.4 do or allow to be done any act as a result of which any Headlease may become liable to forfeiture or otherwise be terminated.

10.5 **Maintenance**

The Chargors must ensure that all buildings, plant, machinery, fixtures and fittings on the Property are maintained in good and substantial repair and condition and, as appropriate, in good working order.

10.6 **Development**

10.6.1 The Chargors may not:

- 10.6.1.1 make or allow to be made any application for planning permission in respect of all or any part of the Property; or
- 10.6.1.2 carry out, or allow to be carried out, any demolition, construction, structural alterations or additions, development or other similar operations in respect of any part of all or any part of the Property.

10.6.2 Paragraph 10.6.1 above shall not apply to:

- 10.6.2.1 the maintenance of the buildings, plant, machinery, fixtures and fittings in accordance with the Transaction Documents; or
- 10.6.2.2 the carrying out of non-structural improvements or alterations which affect only the interior of any building on a Property.

10.6.3 The Chargors must comply in all respects with all planning laws, permissions, agreements and conditions to which the Property may be subject.

10.7 Notices

The Chargors must, within 14 days after the receipt by them of any application, requirement, order or notice served or given by any public or local or any other authority or any landlord with respect to the Property (or any part of it):

10.7.1 deliver a copy to the Bank; and

10.7.2 inform the Bank of the steps taken or proposed to be taken to comply with the relevant requirement, order or notice.

10.8 Investigation of title

The Chargors must grant the Bank or their lawyers on request all facilities within the power of the Chargors to enable the Bank or their lawyers to:

10.8.1 carry out investigations of title to the Property; and

10.8.2 make such enquiries in relation to any part of the Property as a prudent mortgagee might carry out.

10.9 Power to remedy

10.9.1 The Chargors must allow the Bank or their agents or contractors to enter the Property to view the state and condition of or to value it at reasonable times and upon reasonable notice (or at any time without notice after the occurrence of an Event of Default or in case of emergency).

10.9.2 If the Chargors fail to perform any obligations under the Finance Documents affecting the Property, the Chargors must allow the Bank or their agents and contractors:

10.9.2.1 to enter any part of the Property;

10.9.2.2 to comply with or object to any notice served on the Chargors in respect of the Property; and

10.9.2.3 to take any action that the Bank may reasonably consider necessary or desirable to prevent or remedy any breach of any such term or to comply with or object to any such notice.

10.9.3 The Chargors must immediately on request by the Bank pay the costs and expenses of the Bank or their agents and contractors incurred in connection with any action taken by them under this clause.

10.9.4 The Bank shall not be obliged to account as mortgagee in possession as a result of any action taken under this clause.

10.10 Insurances

10.10.1 The Chargors must ensure that at all times from the date of this deed Insurances are maintained in full force and effect, which:

10.10.1.1 insure the Chargors in respect of their interests in the Property and the plant and machinery on the Property (including fixtures

and improvements) for their full replacement value (being the total cost of entirely rebuilding, reinstating or replacing the relevant asset if it is completely destroyed, together with all related fees and demolition costs) and to:

- (a) provide "all risks" cover against loss or damage by fire, storm, tempest, flood, earthquake, lightning, explosion, impact, aircraft and other aerial devices and articles dropped from them, riot, civil commotion and malicious damage, bursting or overflowing of water tanks, apparatus or pipes and all other normally insurable risks of loss or damage;
- (b) provide cover for site clearance, shoring or propping up, professional fees and value added tax together with adequate allowance for inflation;
- (c) provide cover against acts of terrorism, including any third party liability arising from such acts; and
- (d) provide cover for loss of rent (in respect of a period of not less than three years or, if longer, the minimum period required under the Leases) including provision for any increases in rent during the period of insurance; and

10.10.1.2 include property owners' public liability and third party liability insurance;

10.10.1.3 insure such other risks as a prudent company in the same business as the Chargors would insure and insure against any other risk as may be required by the Bank (acting reasonably); and

10.10.1.4 in each case are in an amount, and in form, and with an insurance company or underwriters, acceptable at all times to the Bank.

10.10.2 The Chargors must procure that the Bank is named as co-insured under each of the Insurances (other than public liability and third party liability insurances) but without liability on the part of the Bank for any premium in relation to those Insurances.

10.10.3 The Chargors must procure that the Insurances comply with the following requirements:

10.10.3.1 each of the Insurances must contain:

- (a) a non-invalidating and non-vitiating clause under which the Insurance will not be vitiated or avoided as against any insured party as a result of any circumstances beyond the control of that insured party or any misrepresentation, non-disclosure, or breach of any policy term or condition, on the part of any insured party or any agent of any insured party;

- (b) a waiver of the rights of subrogation of the insurer as against the Chargors, the Bank and the tenants of a Property; and
 - (c) a loss payee clause in such terms as the Bank may reasonably require in respect of insurance claim payments otherwise payable to the Chargors;
- 10.10.3.2 the insurers must give at least 30 days' notice to the Bank if any insurer proposes to repudiate, rescind or cancel any Insurance, to treat it as avoided in whole or in part, to treat it as expired due to non-payment of premium or otherwise decline any valid claim under it by or on behalf of any insured party and must give the opportunity to rectify any such non-payment of premium within the notice period; and
- 10.10.3.3 the Chargors must use be free to assign all amounts payable to them under each of their Insurances and all their rights in connection with those amounts in favour of the Bank.
- 10.10.4 The Chargors must use all reasonable endeavours to ensure that the Bank receives copies of the Insurances, receipts for the payment of premiums for insurance and any information in connection with the insurances and claims under them which the Bank may reasonably require.
- 10.10.5 The Chargors must promptly notify the Bank of:
 - 10.10.5.1 the proposed terms of any future renewal of any of the Insurances;
 - 10.10.5.2 any amendment, supplement, extension, termination, avoidance or cancellation of any of the Insurances made or, to their knowledge, threatened or pending;
 - 10.10.5.3 any claim, and any actual or threatened refusal of any claim, under any of the Insurances;
 - 10.10.5.4 any payout made to the Chargors pursuant to any insurance policy; and
 - 10.10.5.5 any event or circumstance which has led or may lead to a breach by the Chargors of any term of this clause.
- 10.10.6 The Chargors must:
 - 10.10.6.1 comply with the terms of the Insurances;
 - 10.10.6.2 not do or permit anything to be done which may make void or voidable any of the Insurances; and
 - 10.10.6.3 comply with all reasonable risk improvement requirements of their insurers.

- 10.10.7 The Chargors must ensure that:
- 10.10.7.1 each premium for the Insurances is paid promptly and in any event prior to the commencement of the period of insurance for which that premium is payable; and
 - 10.10.7.2 all other things necessary are done so as to keep each of the Insurances in force.
- 10.10.8 If the Chargors fail to comply with any term of this clause, the Bank may, at the expense of the Chargors effect any insurance and generally do such things and take such other action as the Bank may reasonably consider necessary or desirable to prevent or remedy any breach of this clause:
- 10.10.8.1 except as provided below, the proceeds of any Insurances must, if the Bank so requires, be paid to the Bank for application in or towards payment of the Secured Liabilities;
 - 10.10.8.2 to the extent required by the basis of settlement under any Insurances or under any Lease, the Chargors must apply moneys received under any Insurances in respect of the Property towards replacing, restoring or reinstating the Property;
 - 10.10.8.3 the proceeds of any loss of rent insurance will be treated as Rental Income and applied in such manner as the Bank (acting reasonably) requires to have effect as if it were Rental Income received over the period of the loss of rent; and
 - 10.10.8.4 moneys received under liability policies held by the Chargors which are required by the Chargors to satisfy established liabilities of the Chargors to third parties must be used to satisfy these liabilities.
- 10.10.9 If the Property includes any leasehold property of which the Chargors are the tenant, the landlord under the head lease (or any superior landlord) is responsible for the insurance of any buildings on the Property, the terms of such insurance are satisfactory to the Bank, and the Chargors:
- 10.10.9.1 procures that the interest of the Bank is endorsed on every relevant policy;
 - 10.10.9.2 procures that every relevant policy contains a clause of the type referred to in paragraph 10.10.3.1(a) above; and
 - 10.10.9.3 provides a full copy of every relevant policy to the Bank once in every year together with a copy of the receipt for that year's premium,
- then such insurance will be deemed to have been accepted by the Bank in satisfaction of the obligation of the Chargors to insure the relevant buildings.

10.11 Environmental matters

10.11.1 The Chargors must:

- 10.11.1.1 comply and ensure that any relevant third party complies with all Environmental Law and discharge all duties of care and responsibilities placed upon it or any relevant third party by Environmental Law;
- 10.11.1.2 obtain, maintain and ensure compliance with all requisite Environmental Permits applicable to it or to the Property; and
- 10.11.1.3 implement procedures to monitor compliance with and to prevent liability under any Environmental Law applicable to them or the Property,

where failure to do so has or is reasonably likely to have a Material Adverse Effect or result in any liability for the Bank.

10.11.2 The Chargors must, promptly upon becoming aware, notify the Bank of:

- 10.11.2.1 any Environmental Claim started, or to their knowledge, threatened;
- 10.11.2.2 any circumstances reasonably likely to result in an Environmental Claim; or
- 10.11.2.3 any suspension, revocation or notification of any Environmental Permit.

10.11.3 The Chargors must indemnify the Bank against any loss or liability which:

- 10.11.3.1 the Bank incurs as a result of any actual or alleged breach of any Environmental Law by any person; and
- 10.11.3.2 would not have arisen if a Finance Document had not been entered into,

unless it is caused by the Bank's gross negligence or wilful misconduct.

10.12 CRC Energy Efficiency Scheme

The Chargors shall promptly inform the Bank if they become organisations or part of an organisation that is required to be a full participant in the CRC Energy Efficiency Scheme.

10.13 Proprietorship

The Chargors shall not permit any person, without the prior written consent of the Bank:

- 10.13.1 to be registered as proprietor under the Land Registration Act 2002 of any Charged Property nor create or permit to arise any interest referred to in schedule 1 or schedule 3 of such Act affecting any Charged Property; or
- 10.13.2 to become entitled to any proprietary right or interest which might affect the value of any Charged Property.

11. ENFORCEMENT OF SECURITY

11.1 Bank's powers

On the occurrence of an Event of Default or if the Chargors request that the Bank exercises any of its powers under this clause 11.1, this deed shall become enforceable and the Bank may immediately or at any time thereafter:

- 11.1.1 appoint one or more persons as an Administrator of the Chargors in accordance with schedule B1 to the Insolvency Act;
- 11.1.2 exercise the power of sale and all other powers conferred by s101 of the LPA as varied or extended by this deed;
- 11.1.3 make any lease or agreement for lease or accept surrenders of leases and grant options on such terms as it thinks fit without needing to comply with sections 99 and 100 of the LPA;
- 11.1.4 subject to s72A of and paragraph 43 of Schedule A1 to the Insolvency Act, appoint one or more persons as a Receiver of any Charged Property;
- 11.1.5 exercise all the powers conferred on a Receiver by this deed, the LPA and the Insolvency Act;
- 11.1.6 by notice to the Chargors end the Chargors' right to possession of the Property forming part of the Charged Property and enter into possession of all or such part of the Property;
- 11.1.7 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; and
- 11.1.8 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 Bank shall value such Charged Property by reference to an independent valuation or other procedure selected by the Bank acting reasonably.

11.2 Powers under the LPA

- 11.2.1 Section 103 of the LPA will not apply to this deed.
- 11.2.2 The power of sale and all other powers conferred by s101 of the LPA as varied or extended by this deed will arise upon execution of this deed by the Chargors.

11.3 Cash Cover

After the occurrence of an Event of Default the Chargors shall, immediately on demand, provide to the Bank full cash cover for any contingent liabilities forming part of the Secured Liabilities including liabilities arising in respect of bills of exchange or promissory notes accepted, endorsed or discounted and bonds, guarantees, indemnities, documentary or other credits or other instruments from time to time entered into by the Bank.

11.4 Administrators

If the Bank appoints two or more persons as Administrator of the Chargors, the appointment may specify whether those persons are to act jointly or concurrently.

11.5 Receivers

11.5.1 The Bank may appoint any Receiver upon such terms as to remuneration and otherwise as the Bank thinks fit and the maximum rate specified in s109(6) of the LPA shall not apply.

11.5.2 Any Receiver will be the agent of the Chargors for all purposes and the Chargors 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 Bank.

11.5.3 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.

11.5.4 The Bank 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 Bank appoints any other person as Receiver in his place.

12. POWERS OF RECEIVER AND BANK

12.1 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.

12.2 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 any Chargor) to do every act and thing and exercise every power:

12.2.1 which a 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

12.2.2 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 relevant Chargor in connection with any exercise of such powers.

12.3 Consideration

The receipt of the Bank 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 Bank or any Receiver may do so for such consideration, in such manner and on such terms as it thinks fit.

12.4 Prior encumbrances

At any time after the security given by this deed has become enforceable, the Bank 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 Chargors. Any money paid by the Bank in connection with a redemption or transfer of any prior Security will form part of the Secured Liabilities.

12.5 Possession

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

12.6 Delegation

12.6.1 Each of the Bank, 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.

12.6.2 That delegation may be made upon any terms and conditions (including the power to sub delegate) and subject to any restrictions that the Bank, 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.

13. EXCLUSION OF LIABILITY

13.1 No obligation to recover

Neither the Bank 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.

13.2 Liability as mortgagee in possession

If the Bank or any Receiver takes possession of any Charged Property, it will not be liable to account to the Chargors for anything except actual receipts or be liable to the Chargors 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.

13.3 Losses on enforcement

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

13.3.1 any sale of any Charged Property;

13.3.2 any act, default or omission of any Secured Party in relation to any Charged Property; or

13.3.3 any exercise or non-exercise by any Secured Party of any power conferred upon it in relation to any Charged Property by or pursuant to 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.

14. REIMBURSEMENT AND INDEMNITY

14.1 Transaction expenses

The Chargors shall promptly on demand pay the Bank the amount of all costs and expenses (including legal fees, out-of-pocket expenses, accountancy fees and consultancy fees and VAT) reasonably incurred by the Bank or any Receiver or Delegate in connection with the negotiation, preparation, printing, execution and perfection of this deed.

14.2 Amendment costs

If the Chargors request an amendment, waiver or consent, the Chargors shall, on demand, reimburse the Bank for the amount of all costs and expenses (including legal fees, out-of-pocket expenses, accountancy fees and consultancy fees and VAT) reasonably incurred by the Bank or any Receiver or Delegate in responding to, evaluating, negotiating or complying with that request or requirement.

14.3 Enforcement and preservation costs

The Chargors shall, on demand, pay to the Bank the amount of all costs and expenses (including legal fees, out-of-pocket expenses, accountancy fees and consultancy fees and VAT) 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 Chargors to meet their obligations under this deed and any proceedings instituted by or against the Bank as a consequence of taking or holding the Security constituted by this deed or enforcing those rights.

14.4 Indemnity to the Bank

The Chargors shall promptly indemnify the Bank and every Receiver and Delegate against any cost, loss or liability (including any liability under any Environmental Law) incurred by any of them:

14.4.1 as a result of:

14.4.1.1 the taking, holding, protection or enforcement of the Security constituted by this deed;

14.4.1.2 the exercise of any of the rights, powers, discretions and remedies vested in the Bank and each Receiver and Delegate by this deed or by law; or

14.4.1.3 any default by the Chargors in the performance of any of the obligations expressed to be assumed by them in this deed; or

14.4.2 which otherwise relates to any of the Charged Property or the performance of the terms of this deed (otherwise than as a result of the fraud, gross negligence or wilful misconduct of the Bank).

14.5 **Priority of Indemnity**

The Bank 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 16.4 (Indemnity to the Bank) 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.

14.6 **Bank's Management Time**

Any amount payable under this deed to the Bank by the Chargors by way of indemnity or reimbursement in respect of any cost, loss or liability incurred by the Bank shall include the cost of utilising the Bank's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Bank may notify to the Chargors.

15. **APPLICATION OF PROCEEDS**

15.1 **Order of application**

Subject to clause 15.2 (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 Bank 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 Bank to apply them at any time as the Bank (in its discretion) sees fit, to the extent permitted by applicable law (and subject to the provisions of this clause), in the following order:

- 15.1.1 in payment of all costs and expenses incurred by any Secured Party in connection with any realisation or enforcement of this deed and of all outgoings properly payable by any Secured Party;
- 15.1.2 in payment of remuneration to any Receiver;
- 15.1.3 in payment of all other amounts due and payable under the Finance Documents;
and
- 15.1.4 the balance (if any) will be applied as required by law.

15.2 **Prospective liabilities**

The Bank may, in its discretion, hold any amount of the Recoveries in an interest bearing suspense or impersonal account(s) in the name of the Bank with such financial institution (including itself) and for so long as the Bank shall think fit (the interest being credited to the relevant account) for later application under clause 15.1 (Order of Application) in respect of:

- 15.2.1 any sum owing to the Bank, any Receiver or any Delegate; and
- 15.2.2 any part of the Secured Liabilities,

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

15.3 Investment of proceeds

Prior to the application of the proceeds of the Recoveries in accordance with clause 15.1 (Order of Application) the Bank 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 Bank with such financial institution (including itself) and for so long as the Bank shall think fit (the interest being credited to the relevant account) pending the application from time to time of those moneys in the Bank's discretion in accordance with clause 15.1 (Order of Application).

15.4 Currency Conversion

15.4.1 For the purpose of, or pending the discharge of, any of the Secured Liabilities the Bank may convert any moneys received or recovered by the Bank from one currency to the currency in which the Secured Liabilities are denominated, at a market rate of exchange.

15.4.2 The obligations of the Chargors to pay in the due currency shall only be satisfied to the extent of the amount of the due currency purchased after deducting the costs of conversion.

15.5 Permitted Deductions

The Bank shall be entitled, in its discretion:

15.5.1 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

15.5.2 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 Bank under any of the Finance Documents or otherwise.

16. PROTECTION OF PERSONS DEALING WITH BANK OR RECEIVER

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

16.1 whether any event has happened upon which any of the powers conferred by this deed may have arisen or be exercisable;

16.2 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

16.3 whether any Secured Liabilities remain owing.

17. NOTICE OF SUBSEQUENT CHARGE

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

17.1 it may open a new account for the Chargors in its books and may transfer any outstanding balance owing by the Chargors to such new account; and

17.2 if it does not open a new account then, unless it gives express written notice to the contrary to the Chargors, all payments made by the Chargors to it will as from the time of receipt of

such notice be treated as having been credited to a new account of the Chargors and not as having been applied in reduction of the Secured Liabilities.

18. FURTHER ASSURANCE

When required by the Bank or any Receiver the Chargors shall, at their own cost:

- 18.1 execute a charge by way of legal mortgage, assignment by way of security or fixed charge over any assets of the Chargors (other than any assets secured under the Related Security Documents) and such legal mortgage, assignment or charge shall secure the Secured Liabilities and contain a power of sale which arises immediately upon execution, provisions excluding s93 of the LPA and the restrictions contained in s103 of the LPA and such other provisions including any similar to those in this deed as the Bank may reasonably require;
- 18.2 execute any documents or do any other thing which the Bank 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 Bank or any Receiver under this deed; and
- 18.3 convey, transfer, assign or otherwise deal with any Charged Property in such manner as the Bank or any Receiver may require in connection with any enforcement of any Security created by this deed.

19. POWER OF ATTORNEY BY CHARGORS

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

- 19.1 the Chargors are entitled to execute or do in relation to the Charged Property including giving a receipt for any money and exercising any rights or remedies forming part of the Charged Property; or
- 19.2 the Chargors are obliged to execute or do under this deed.

20. DISCHARGE OF SECURITY

20.1 Discharge conditional

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

20.2 Retention of security

Following any discharge of the Chargors made by the Bank in reliance on a payment or security the Bank 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 Bank may retain the security constituted by this deed for as long as it thinks fit.

21. REDEMPTION

If the Bank 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 Bank shall release:

21.1 without recourse or warranty, all of the Security constituted by this deed; and

21.2 the rights of the Bank under this deed.

22. DEFAULT INTEREST

Any sum payable by the Chargors under this deed will bear interest from the date on which it is due or if payable on demand from the date of demand until payment (both before and after judgment) at the Default Rate as calculated and compounded from time to time in accordance with the Facility Letter.

23. NOTICES

23.1 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.

23.2 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:

23.2.1 in the case of the Chargors:

Address: Aqua Trust Company Limited, Pier Road, St Helier,
Jersey, JE2 4XW

E-mail: sarah.mullins@aquagroup.co

For the attention of: Sarah Mullins

23.2.2 in the case of the Bank:

Address: Emirates NBD House, 25 Knightsbridge, London SW1X
7LY

Fax number: +44 (0) 20 7581 0575

For the attention of: Credit Administration

or any substitute address, fax number or department or officer as the Chargors may notify to the Bank (or the Bank may notify to the Chargors, if a change is made by the Bank) by not less than five Business Days' notice. In the case of the Chargors, the address of their registered offices or of any place where they carry on business or of any agent for the service of process under this deed shall also be addresses of Chargors for the purpose of this clause.

23.3 Delivery

23.3.1 Any communication or document made or delivered by the Bank on the Chargors under or in connection with this deed will be effective:

23.3.1.1 if left at an address referred to in this clause, when so left;

23.3.1.2 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; and

23.3.1.3 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.

23.3.2 Any communication or document to be made or delivered to the Bank will be effective only when actually received by the Bank 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 Bank shall specify for this purpose).

23.4 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:

23.4.1 in English; or

23.4.2 if not in English, and if so required by the Bank, 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.

24. CALCULATIONS AND CERTIFICATES

24.1 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 Bank are prima facie evidence of the matters to which they relate.

24.2 Certificates and Determinations

Any certification or determination by the Bank 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.

24.3 Day count convention

Any interest, commission or fee accruing under this deed will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 365 days or, in any case where the Bank determines that practice in the relevant interbank market differs, in accordance with that market practice.

25. **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.

26. **REMEDIES AND WAIVERS**

No failure to exercise, nor any delay in exercising, on the part of the Bank, 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 Bank 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 deed are cumulative and not exclusive of any rights or remedies provided by law.

27. **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.

28. **CHANGES TO THE PARTIES**

28.1 **Bank**

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

28.2 **Chargors**

The Chargors may not assign any of their rights or transfer any of their rights or obligations under this deed.

29. **DISCLOSURE**

The Bank may disclose any information about the Chargors 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.

30. **TAX GROSS-UP**

30.1 The Chargors shall make all payments to be made by them 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.

30.2 The Chargors shall promptly upon becoming aware that they must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Bank accordingly.

30.3 If a Tax Deduction is required by law to be made by the Chargors, the amount of the payment due from the Chargors 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.

30.4 If the Chargors are required to make a Tax Deduction, they 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.

30.5 Within 30 days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Chargors shall deliver to the Bank evidence satisfactory to the Bank that the Tax Deduction has been made or (as applicable) any appropriate payment has been paid to the relevant taxing authority.

31. **SET-OFF**

The Bank may set off any matured obligation due from the Chargors under this deed against any matured obligation owed by the Bank to the Chargors, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Bank may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

32. **MISCELLANEOUS**

32.1 **Possession**

The Chargors shall be entitled to possession of the Property forming part of the Charged Property until termination of such right by the Bank under clause 11.1.

32.2 **Third Party Rights**

32.2.1 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.

32.2.2 Notwithstanding any term of this deed, the consent of any person other than the Chargors and the Bank is not required to rescind or vary this deed at any time.

32.2.3 A Secured Party may, subject to this clause 32.2 and the Third Parties Act, rely on any provision of this deed which expressly confers rights on it.

32.3 **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.

32.4 **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 Bank or any other person of any other security at any time held by the Bank.

32.5 **Consolidation**

The restrictions on the right of consolidating mortgage securities contained in s93 of the LPA will not apply to this deed.

32.6 **Land Registry Consent**

By executing this deed the Chargors consent to the entry of the following restriction against any registered titles (and any unregistered properties subject to compulsory first registration) which are at any time subject to this deed:

"No disposition of the registered by the proprietor of the registered estate is to be registered without a written consent signed by the proprietor for the time being of the charge 2 September 2021 in favour of Emirates NBD Bank (P.J.S.C), London Branch, referred to in the charges register or their conveyancer".

33. **LAW**

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

34. **JURISDICTION**

34.1 **Jurisdiction of English courts**

34.1.1 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 33) (a "**Dispute**").

34.1.2 The Bank and the Chargors agree that the courts of England are the most appropriate and convenient courts to settle Disputes. The Chargors will not argue to the contrary.

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

SCHEDULE 1

THE PROPERTY

The property known as 38 Ebury Mews East, London, SW1W 9QA and registered at the Land Registry under the title number NGL988054 (freehold)

SCHEDULE 2

LIST OF AGREEMENTS

1. The sale and purchase agreement entered into by the Chargors in connection with the Property.
2. Any other present or future agreement or document relating to the acquisition, construction, management, design, servicing, letting, marketing, development, refurbishment, repair, operation or use of the Property (or any part of it).
3. Each other Agreement in relation to the Property pursuant to which the Chargors have any rights from time to time.

SCHEDULE 3

PART 1

NOTICE OF ASSIGNMENT

To: []

[Date]

Dear Sirs,

We refer to an agreement dated [] (as such agreement may be amended or supplemented, the "**Secured Agreement**") between us and you a copy of which is attached.

We give you notice that by a debenture dated [] (the "**Debenture**") entered into between us and Emirates NBD Bank (P.J.S.C), London Branch (the "**Bank**") we have charged to the Bank by way of security all our present and future rights and interest in:

1. the Secured Agreement and any money now or at any time in the future due or owing to us under or in connection with the Secured Agreement; and
2. all guarantees, indemnities, mortgages, charges and other security of whatever nature now or in the future held by us in respect of the Secured Agreement including all money now or at any time in the future due or owing to us under or in connection with the same and all rights and remedies for enforcing the same,

(together the "**Secured Assets**").

We irrevocably and unconditionally instruct and authorise you (notwithstanding any previous instructions whatsoever which we may have given to you to the contrary):

- 2.1 to pay to the Bank at its account at [] (Account No. []) under reference [] (or to such other account or accounts and/or bank or banks as may from time to time be notified to you by the Bank) all moneys forming part of the Secured Assets and otherwise to act in accordance with the instructions of the Bank in connection with the Secured Assets;
- 2.2 to comply with the terms of any written notice, statement or instructions in any way relating or purporting to relate to the Assignment and/or the Secured Assets which you receive at any time from the Bank; and
- 2.3 to disclose to the Bank, such information relating to the Secured Assets as the Bank may, at any time request.

In each case without any reference to or further authority from us and without any enquiry by you as to the justification for such instructions, notice, statement, instructions or disclosure.

The instructions and authorisations which are contained in this letter will remain in full force and effect until the Bank gives you notice in writing revoking them.

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

Would you please acknowledge receipt of this letter and your acceptance of the instructions and authorisations contained in it by signing the attached form of acknowledgement and returning it to the Bank at Emirates NBD Bank (P.J.S.C), London Branch, Emirates NBD House, 25 Knightsbridge, London, UK, SW1X 7LY (for the attention of Credit Administration).

Yours faithfully,

[]

PART 2

ACKNOWLEDGEMENT

To: Emirates NBD Bank (P.J.S.C), London Branch
Emirates NBD House
25 Knightsbridge
London
UK, SW1X 7LY

[Date]

Dear Sirs,

We acknowledge receipt of a letter (a copy of which is attached) dated [] and addressed to us by [] (the "**Chargors**") with respect to the Debenture. Expressions defined in such letter have the same meanings in this acknowledgement.

We acknowledge and confirm that:

1. we have not claimed or exercised, have no outstanding right to claim or exercise and will not exercise, any right of set-off, counterclaim or other right relating to any payments to be made by it in respect of our indebtedness under the Secured Agreement;
2. we have not received any notice that any third party has or will have any right or interest in or has made or will be making any claim or demand or taking any action against the Secured Agreement; and
3. we agree that you do not have any obligations, liabilities or responsibilities under or in respect of the Secured Agreement.

We have made the acknowledgements and confirmations and have given the undertakings set out in this letter in the knowledge that they are required by you in connection with the security which is to be constituted by the Chargors in your favour under the Debenture [(a copy of which has been furnished to us)].

This letter and any non-contractual obligations arising out of or in connection with this letter are governed by the law of England [and in connection with any proceedings with respect to this letter and any such non-contractual obligations we submit to the jurisdiction of the Courts of England for your exclusive benefit].

Yours faithfully,

[]

SCHEDULE 4

PART 1

FORM OF NOTICE TO ACCOUNT BANK

To: [insert name and address of Account Bank] (the "**Account Bank**")

Dated: []

Dear Sirs

We refer to the account of [] (the "**Chargors**") with you numbered [].

We give you notice that, by a debenture dated [] the Chargors have charged to Emirates NBD Bank (P.J.S.C), London Branch (the "**Bank**") by way of fixed charge its interest in and to the money from time to time standing to the credit of the account referred to above (the "**Charged Account**") and to all interest (if any) accruing on the Charged Account.

We irrevocably authorise and instruct you until you receive written notice from the Bank to the contrary:

1. to pay all or any part of monies from time to time standing to the credit of the Charged Account to the Bank (or as it may direct) promptly following receipt of written instructions from the Bank to that effect;
2. to disclose to the Bank any information relating to the Chargors and the Charged Account which the Bank may from time to time request you to provide; and
3. not to permit the Chargors to receive, withdraw or otherwise transfer any credit balance from time to time on the Charged Account without first obtaining the consent in writing of the Bank.

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

Would you please acknowledge receipt of this letter and your acceptance of the above by signing the attached form of acknowledgement and returning it to the Bank at Emirates NBD Bank (P.J.S.C), London Branch, Emirates NBD House, 25 Knightsbridge, London, UK, SW1X 7LY (for the attention of Credit Administration).

Yours faithfully,

[]

PART 2

ACKNOWLEDGEMENT

To: Emirates NBD Bank (P.J.S.C), London Branch

Emirates NBD House
25 Knightsbridge
London
UK, SW1X 7LY

[Date]

Dear Sirs

We acknowledge receipt of a notice (a copy of which is attached) dated [] and addressed to us by [] (the "**Chargors**"). Expressions defined in such notice have the same meanings in this acknowledgement.

We acknowledge and confirm that:

1. we accept the instructions in the notice and will act in accordance with the provisions of such notice until the Bank notifies us in writing that the notice is revoked;
2. we have not received notice that any third party has any interest in the Charged Account;
3. we have not claimed or exercised, nor will we claim or exercise against the Chargors, any right of set-off, lien, combination of accounts, counterclaim or other right relating to the Charged Account.

This acknowledgement and any non-contractual obligations arising out of or in connection with this acknowledgement are governed by the law of England and in connection with any proceedings with respect to this acknowledgment and any such non-contractual obligations we submit to the jurisdiction of the Courts of England for your exclusive benefit.

Yours faithfully,

[]

EXECUTION PAGE

THE CHARGORS

EXECUTED as a deed by
AQUA TRUSTEES NUMBER 1 LIMITED
(acting in its capacity as a trustee of the
TA PROPERTY UNIT TRUST) acting by
a director in the presence of:
in the presence of:

)
)
)
)
)
)



Director

Witness signature: 

Name of witness: Storm Dickson

Address of witness: 23 Pier Road


St Helier, Jersey, JE2 4XW

EXECUTED as a deed by
AQUA TRUSTEES NUMBER 2 LIMITED
(acting in its capacity as a trustee of the
TA PROPERTY UNIT TRUST) acting by
a director in the presence of:
in the presence of:

)
)
)
)
)
)



Director

Witness signature: 

Name of witness: Storm Dickson

Address of witness: 23 Pier Road

St Helier, Jersey, JE2 4XW

THE BANK

SIGNED for and on behalf of)
EMIRATES NBD BANK (P.J.S.C),)
LONDON BRANCH)
