



**Registration of a Charge**

Company name: **Sky Funding Limited**

Company number: **10712889**

Received for Electronic Filing: **18/07/2017**



X6AYEPDL

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**Details of Charge**

Date of creation: **17/07/2017**

Charge code: **1071 2889 0001**

Persons entitled: **INTERTRUST TRUSTEES LIMITED**

Brief description: **N/A**

**Contains fixed charge(s).**

**Contains floating charge(s) (floating charge covers all the property or undertaking of the company).**

**Contains negative pledge.**

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**Authentication of Form**

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

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**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:

**CLIFFORD CHANCE LLP**



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

Company number: 10712889

Charge code: 1071 2889 0001

The Registrar of Companies for England and Wales hereby certifies that a charge dated 17th July 2017 and created by Sky Funding Limited was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 18th July 2017 .

Given at Companies House, Cardiff on 20th July 2017

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



**Companies House**



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES

DATED 17 JULY 2017

SKY FUNDING LIMITED  
AS BORROWER

INTERTRUST TRUSTEES LIMITED  
AS SECURITY TRUSTEE

AND

SKY LUXEMBOURG S.À R.L.  
AS SELLER

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DEED OF CHARGE

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**THIS DEED OF CHARGE** is made on 17 July 2017

**BETWEEN:**

- (1) **SKY FUNDING LIMITED** (registered number 10712889) whose registered office is at 35 Great St. Helen's London, EC3A 6AP, United Kingdom (as "**Borrower**");
- (2) **INTERTRUST TRUSTEES LIMITED** (registered number 07359549), whose registered office is at 35 Great St. Helen's London, EC3A 6AP, United Kingdom (as "**Security Trustee**"); and
- (3) **SKY LUXEMBOURG S.À R.L.** (registered number B 214.292) whose registered office is at 33 Rue Sainte Zithe L-2763 Luxembourg (as "**Seller**").

**THE PARTIES AGREE AS FOLLOWS:**

## SECTION A INTERPRETATION

### 1. INTERPRETATION

- 1.1 Unless otherwise defined in this Deed or the context requires otherwise, words and expressions used in this Deed have the meanings and constructions ascribed to them in the Master Definitions Schedule set out in Schedule 1 of the incorporated terms memorandum which is dated on or about the date of this Deed and signed for the purpose of identification by each of the Transaction Parties (as such words and constructions for this Deed may be amended, restated, varied or supplemented from time to time with the consent of the parties to this Deed) (the "**Incorporated Terms Memorandum**").

### 2. COMMON TERMS

#### 2.1 Incorporation of Common Terms

Except as provided below, the Common Terms apply to this Deed, where applicable, and shall be binding on the parties to this Deed.

#### 2.2 Amendment to Common Terms

The Common Terms are, for the purposes of this Deed, amended as follows:

- 2.2.1 Paragraph 1 (*Further Assurance*) of the Common Terms applies to this Deed as if set out in full in this Deed, and as if the Borrower were the obligor and the Security Trustee and any Receiver appointed pursuant to Clause 17 (*Appointment and removal of Administrator and Receiver*) were each an obligee for the purposes of such Paragraph; and

- 2.2.2 Paragraph 25 (*Governing Law*) and Paragraph 26 (*Jurisdiction*) of the Common Terms apply to this Deed as if set out in full in this Deed.

#### 2.3 Conflict with Common Terms

If there is any conflict between the provisions of the Common Terms and the provisions of this Deed, the provisions of this Deed shall prevail, save where any provision of this Deed relates to VAT, in which case the VAT provisions of the Common Terms shall prevail.

## **SECTION B UNDERTAKING TO PAY**

### **3. BORROWER'S UNDERTAKING TO PAY**

The Borrower undertakes to the Security Trustee (for its own account and as trustee for the other Secured Creditors) that it shall on demand duly, unconditionally and punctually pay and discharge to each of the Secured Creditors when due all monies and liabilities whatsoever constituting the Secured Amounts and perform all relevant obligations, in accordance with the terms of the Transaction Documents.

#### **3.1 Declaration of Trust**

The Security Trustee holds all of the covenants, undertakings, mortgages, sub-mortgages, standard securities, charges, sub-charges, assignments, assignations in security, pledges, liens, rights of set-off or other encumbrances or security interests, and other rights and benefits made or given under this Deed and the other Transaction Documents on trust for itself and the other Secured Creditors upon and subject to the terms and conditions of this Deed.



**SECTION C**  
**SECURITY AND DECLARATION OF TRUST**

**4. CREATION OF FIXED SECURITY**

4.1 As continuing security for the payment or discharge of the Secured Amounts the Borrower with full title guarantee in favour of the Security Trustee for the Security Trustee itself and on trust for the Secured Creditors, but subject always to the right of release and discharge set out in Clause 7 (*Redemption and Release*), hereby:

4.1.1 charges by way of first fixed charge (subject to the subsisting rights of redemption of the relevant Obligors) the Benefit of the Borrower in the Mortgage Loans and their Related Security comprised in the Mortgage Portfolio;

4.1.2 charges by way of first fixed charge the Benefit of the Borrower Accounts and any bank or other accounts in which the Borrower may at any time have or acquire any Benefit;

4.1.3 charges by way of first fixed charge the Benefit of the Borrower Trust Portion under the Collection Account Declaration of Trust; and

4.1.4 assigns absolutely the Benefit of the Borrower under each Transaction Document except this Deed (and in respect of the Interest Rate Swap Agreement, without prejudice to, and after giving effect to, any contractual netting provision contained in Interest Rate Swap Agreement).

**5. CREATION OF FLOATING CHARGE**

5.1 As continuing security for the payment or discharge of the Secured Amounts, the Borrower with full title guarantee also hereby charges, in favour of the Security Trustee for the Security Trustee itself and on trust for the Secured Creditors, by way of first floating charge the whole of its undertaking and all its property, assets and rights whatsoever and wheresoever present and future including its uncalled capital, which are not otherwise effectively subject to a fixed charge or assignment by way of security as described in Clause 4 (*Creation of Fixed Security*).

5.2 Paragraph 14 of Schedule B1 to the Insolvency Act 1986 applies to the floating charge created pursuant to this Clause 5 (*Creation of Floating Charge*), which is a qualifying floating charge.

5.3 The floating charge created by Clause 5.1 shall be postponed to any valid fixed charges created pursuant to and which remain outstanding under (or which have been created pursuant to) this Deed of Charge from time to time, and any rights of the Borrower to deal with the assets subject to the floating charge shall be expressly subject to any restrictions placed on dealing with those assets contained in any fixed charge over the same.

5.4 Without prejudice to any other event resulting in the crystallisation of the floating charge created by this clause, any other right the Security Trustee may have or any rule of law, such floating charge will automatically crystallise and convert into a fixed charge as regards:

- 5.4.1 all of the Borrower's assets subject to the floating charge, upon the delivery of a Security Protection Notice; and
- 5.4.2 any assets of the Borrower subject to the floating charge if those assets (contrary to the covenants and undertakings contained in the Transaction Documents):
  - (a) are or become subject to any Encumbrance in favour of any person other than the Security Trustee; or
  - (b) are or become the subject of a sale, transfer or other disposition, immediately prior to that Encumbrance arising or that sale, transfer or other disposition being made.
- 5.5 The floating charge created by this clause may not crystallise and be converted into a fixed charge solely by reason of:
  - 5.5.1 the obtaining of a moratorium; or
  - 5.5.2 anything done with a view to obtaining a moratorium, under section 1A of the Insolvency Act 1986, except with leave of court.

## **6. WARRANTIES AND COVENANTS BY THE BORROWER**

- 6.1 The Borrower hereby covenants with and represents, warrants and undertakes to the Security Trustee that:
  - 6.1.1 it has taken all necessary steps to enable it to create the Security in respect of the Charged Property in accordance with this Deed and has taken no action or steps which will or may prejudice its right, title and interest in, to and under the Charged Property;
  - 6.1.2 this Deed creates the Security it purports to create and such Security is not liable to be avoided or otherwise set aside upon an occurrence of and in relation to an Insolvency Event in respect of the Borrower;
  - 6.1.3 it will not create or permit to exist upon or affect any of the Charged Property any security interest whatsoever other than as created by, or in accordance with, the Transaction Documents;
  - 6.1.4 it will not transfer, sell, lend, part with or otherwise dispose of, or deal with, or grant any option, present or future, or right to acquire, any of the Charged Property or any interest, estate, right, title or benefit therein or thereto or agree or attempt or purport to do so, except that the Borrower:
    - (a) may sell all of the Mortgage Loans as a Permitted Disposal in accordance with the terms of the Senior Facility Agreement;
    - (b) may (and may agree to), in respect of all or any part of its assets or undertaking, transfer, sell, lend, pledge, part with or otherwise dispose

of or deal with, or grant any option over any present or future right to acquire any of its assets or undertaking or any interest, estate right title or benefit therein where contemplated in or provided for in the Transaction Documents and where the proceeds of the same are applied *inter alia*, in or towards repayment of the Senior Loan in accordance with the terms of the Transaction Documents; and

- 6.1.5 it shall ensure that save as permitted by the Transaction Documents, no person other than the Borrower and (as applicable) the Security Trustee shall have any equitable interest in the Charged Property.

## **7. REDEMPTION AND RELEASE**

### **7.1 Release on payment or discharge**

Upon proof being given to the satisfaction of the Security Trustee as to the irrevocable and unconditional payment or discharge of the Secured Amounts, the Security Trustee will, at the request and cost of the Borrower and without recourse, representation or warranty, release, discharge or reassign (as appropriate) the Charged Property to the Borrower or to any other person entitled to the Charged Property of whom the Security Trustee has notice.

### **7.2 Release on repurchase**

- 7.2.1 The Security Trustee agrees that if it receives a notice from the Borrower or the Servicer on behalf of the Borrower that a Repurchase Event has occurred pursuant to Clause 10 (*Repurchase*) of the Mortgage Sale Agreement requiring the Seller to repurchase the relevant Mortgage Loan and its Related Security, then the Security Trustee will be entitled to rely upon such notice without enquiry and will, at the request of the Borrower or the Servicer on behalf of the Borrower, at the cost of the Borrower, promptly execute a deed of release and take such other reasonable steps as may be required in order to release the relevant Mortgage Loan and its Related Security from the Security in accordance with the Mortgage Sale Agreement.

- 7.2.2 The Security Trustee shall not be responsible for monitoring or ascertaining whether or not a Repurchase Event has occurred, and if any such repurchase has been made in accordance with the terms of the Transaction Documents.

### **7.3 No avoidance**

No assurance, security or payment which is avoided under any enactment relating to bankruptcy or under Sections 238 to 245 or Section 423 of the Insolvency Act or any equivalent provision of the common law of any relevant jurisdiction and no release, settlement or discharge given or made by the Security Trustee in reliance on any such assurance, security or payment shall prejudice or affect the right of the Security Trustee to enforce the Security to the full extent of the Secured Amounts. The Borrower agrees that, notwithstanding any such avoidance, release, settlement or discharge, the Security shall be deemed always to have been and to have remained held by the Security Trustee as and by way of security for the payment to or to the order of the Security Trustee of the Secured Amounts.

#### **7.4 Form of Release**

- (a) The Security shall be released only upon the execution by or on behalf of the Security Trustee of either an absolute and unconditional release by way of deed or a receipt, in each case relating to all (and not part only) of the Secured Amounts.
- (b) If the Security Trustee has grounds for believing that the Borrower may be unable to pay its debts as they fall due as at the date of any payment made by the Borrower to the Security Trustee or any of the other Secured Creditors, then the Security Trustee may retain the Security until the expiry of a period of (subject to paragraph (c) below) one month plus the statutory period within which any assurance, security, guarantee or payment can be avoided or invalidated after the payment and discharge in full of all Secured Amounts notwithstanding any release, settlement, discharge or arrangement which may be given or made by the Security Trustee on or as a consequence of such payment or discharge of liability.
- (c) If, at any time within the period referred to in paragraph (b) above, any person presents a petition, or files documents with a court or any registrar for the winding-up or administration of the Borrower or any analogous proceedings are commenced by or against the Borrower, the Security Trustee may continue to retain the Security for such further period as it may determine and the Security will be deemed to continue to be held as security for the payment and discharge to the Security Trustee of all of the Secured Amounts.

#### **8. CONTINUANCE OF SECURITY**

The Security and the covenants, undertakings and provisions contained in this Deed shall remain in force as a continuing security to the Security Trustee (for itself and on behalf of the other Secured Creditors), notwithstanding any intermediate payment or satisfaction of any part of the Secured Amounts or any settlement of account or any other act, event or matter whatsoever, and shall secure the ultimate balance of the Secured Amounts, until execution by or on behalf of the Security Trustee of an absolute and unconditional release by way of deed relating to all (and not only part only) of the Charged Property.

#### **9. PAYMENTS PRIOR TO ENFORCEMENT**

9.1 Notwithstanding the Security, the Security Trustee acknowledges that, until delivery of a Security Protection Notice or an Enforcement Notice:

- 9.1.1 at all times prior to the release, re-assignment and/or discharge under Clause 7 (*Redemption and Release*) of the Security the Borrower will, save as otherwise provided in the Transaction Documents or unless the Security Trustee otherwise agrees in writing, procure that all amounts received by the Borrower under or in respect of the Transaction Documents will be credited to the Borrower Accounts in accordance with the terms of the Transaction Documents;

- 9.1.2 the Borrower may, subject to sub-clause 9.1.3 (*Payments Prior to Enforcement*), exercise its rights, powers and discretions and perform its obligations in relation to the Charged Property and under the Transaction Documents in accordance with the provisions of the Transaction Documents; and
  - 9.1.3 amounts standing to the credit of the Borrower Accounts from time to time may be withdrawn therefrom by or on behalf of the Borrower but only in accordance with the Pre-Enforcement Priorities of Payments and the other terms of the Account Bank Agreement and the Cash Management Agreement.
- 9.2 Subject to Clause 9.1, no other amounts may be withdrawn and no other payments may be made from the Borrower Accounts without the prior written consent of the Security Trustee.

**SECTION D**  
**PROTECTION OF SECURITY AND ENFORCEMENT**

**10. SECURITY PROTECTION NOTICE**

**10.1 Delivery of Security Protection Notice**

Subject to the provisions of Clause 13 (*Enforcement*) if, at any time while any of the Secured Amounts remain outstanding:

10.1.1 an Event of Default or Potential Event of Default occurs; or

10.1.2 the Security Trustee believes that the Charged Property or any part thereof is in danger of being seized or sold under any form of distress, diligence or execution levied, executed or threatened or to be otherwise in jeopardy,

then the Security Trustee may, in its absolute discretion, deliver to the Borrower a Security Protection Notice.

**10.2 Consequences of Delivery of Security Protection Notice**

Upon delivery of a Security Protection Notice, except where the Security Protection Notice has been delivered as a result of an Insolvency Event occurring solely due to the Borrower obtaining or taking steps to obtain a moratorium pursuant to Section 1A of the Insolvency Act 1986:

10.2.1 the Floating Charge shall (so far as permitted by applicable law) crystallise into a fixed charge or fixed charges as regards any assets specified in the Security Protection Notice; and

10.2.2 by way of further assurance of such fixed charge or fixed charges the Borrower shall promptly execute over such assets a fixed charge or fixed charges or other Encumbrance in favour of the Security Trustee in such form as the Security Trustee shall require,

for the avoidance of doubt, following the delivery of a Security Protection Notice but prior to the delivery of an Enforcement Notice, no steps will be taken with respect to enforcing against the Mortgage Loans.

**10.3 Withdrawal of Security Protection Notice**

The Security Trustee may at any time, unless an Enforcement Notice has been delivered, by notice in writing to the Borrower withdraw a Security Protection Notice.

**10.4 No Withdrawals from Charged Accounts**

From and including the date on which a Security Protection Notice has been delivered to the Borrower and unless and until it is withdrawn, no amount (other than any Swap Excluded Payments, Retention Amounts and amounts referable to Third Party Amounts) may be withdrawn from the Charged Accounts without the prior written consent of the Security Trustee, provided that, unless an Enforcement Notice has been delivered, the Security Trustee shall not provide consent for withdrawals under this

Clause 10.4 for any payment other than in accordance with the Priorities of Payment or other applicable provisions of the Cash Management Agreement.

## **11. ENFORCEMENT NOTICE**

The parties hereto acknowledge and agree that the circumstances in which the Security Trustee may or shall deliver an Enforcement Notice and the conditions applicable to delivery of an Enforcement Notice are set out in Clause 18.2 (*Acceleration and Enforcement of Security*) of the Senior Facility Agreement.

## **12. SECURITY ENFORCEABLE**

### **12.1 The whole of the Security shall become enforceable:**

12.1.1 upon the delivery of an Enforcement Notice but the floating charge created pursuant to Clause 5.2 may not be converted into a fixed charge where the Enforcement Notice has been delivered as a result of an Insolvency Event occurring solely due to the Borrower obtaining or taking steps to obtain a moratorium pursuant to section 1A of the Insolvency Act 1986; or

12.1.2 if any person who is entitled to do so presents a petition or an application for the appointment of an administrator of the Borrower, gives notice of intention to appoint an administrator of the Borrower or files such notice with the court.

### **12.2 For the purposes of all powers implied by statute, the Secured Amounts are deemed to have become due and payable on the date of this Deed.**

## **13. ENFORCEMENT**

### **13.1 Consequences of Enforceable Security**

From the date on which the Security becomes enforceable:

13.1.1 if it has not already crystallised, the Floating Charge shall (so far as permitted by applicable law) crystallise;

13.1.2 the Security Trustee may institute such proceedings against the Borrower or any other Transaction Party and take such action as it may think fit to enforce all or any part of the Security;

13.1.3 amounts may be withdrawn from the Charged Accounts only by the Security Trustee or, if the Security Trustee so specifies, the Cash Manager and shall be applied only in accordance with the Post-Enforcement Priority of Payments and this Deed;

13.1.4 the Security Trustee may appoint a Receiver or an administrator in accordance with Clause 17 (*Appointment and Removal of Administrator and Receiver*); and

13.1.5 whether or not it has appointed a Receiver, the Security Trustee may exercise all or any of the powers, authorities and discretions:

- (a) conferred by the Transaction Documents on any Receiver;
- (b) conferred by the LPA (as varied or extended by the Transaction Documents) or the Insolvency Act on mortgagees; or
- (c) otherwise conferred by law on mortgagees or receivers.

### **13.2 Directions to Security Trustee**

Following the delivery of an Enforcement Notice, the Security Trustee shall not, and shall not be bound to take any steps, institute any proceedings, exercise its rights and/or take any action under this Deed or in relation to the Security or give any instructions or direction in relation thereto (including without limitation any direction to sell or otherwise dispose of the Charged Property) unless it is:

- 13.2.1 directed or requested to do so by the Facility Agent (acting on the instructions of the Majority Lenders) until all amounts outstanding under the Senior Facility Agreement, including without limitation all costs, fees, expenses and interest are paid in full and the Total Commitments have been reduced to zero and thereafter in accordance with the instructions of the Subordinated Lender in accordance with Clause 18.2 (*Acceleration and Enforcement of Security*) of the Senior Facility Agreement; and
- 13.2.2 fully indemnified and/or secured and/or prefunded to its satisfaction against all Liabilities to which it may render itself liable and which it may incur by doing so,

provided that the Security Trustee may at all times, whether or not so directed, take such action in respect of any right, power or discretion which is personal to the Security Trustee or is to preserve or protect the Security Trustee's position or is of a purely administrative nature.

### **13.3 Restrictions on Disposal of the Charged Property**

If an Enforcement Notice has been delivered by the Security Trustee otherwise than by reason of non-payment of any amount due in respect of the Senior Facility Agreement, the Security Trustee will not be entitled to release or dispose of the Charged Property or any part thereof (apart from any Swap Excluded Payments or amounts referable to Third Party Amounts) unless either:

- 13.3.1 The Cash Manager certifies to the Security Trustee that a sufficient amount would be realised to allow payment in full of all amounts owing to the Senior Lender after payment of all other claims ranking in priority to the Senior Facility Agreement in accordance with the Post-Enforcement Priority of Payments (or, if at such time all amounts outstanding under the Senior Facility Agreement, including without limitation all costs, fees, expenses and interest are paid in full and the Total Commitments have been reduced to zero, the Subordinated Lender, or if the Subordinated Loan does not remain outstanding, the Secured Creditors); or
- 13.3.2 the Security Trustee has received advice, which shall be binding on the Secured Creditors, from an investment bank or other financial adviser selected



by the Security Trustee, (and if the Security Trustee is unable to obtain such advice having made reasonable efforts to do so this sub-clause 13.3.2 shall not apply) that the cash flow prospectively receivable by the Borrower will not (or that there is a significant risk that it will not) be sufficient, having regard to any other relevant actual, contingent or prospective liabilities of the Borrower, to discharge in full in due course all amounts due in respect of the Senior Facility Agreement after payment of all other claims ranking in priority to the Senior Facility Agreement in accordance with the Post-Enforcement Priority of Payments and the resulting shortfall would be greater than the shortfall arising upon disposal of the Charged Property; and

- 13.3.3 the Security Trustee shall not be bound to seek the advice referred to in sub-clause 13.3.2 unless the Security Trustee shall have been indemnified and/or secured and/or prefunded to its satisfaction against all Liabilities to which it may thereby become liable or which it may incur by so doing.

#### **13.4 Security Trustee Rights upon Enforcement**

In addition to any other rights expressly provided in this Deed, for the period commencing upon the service of an Enforcement Notice and terminating upon the notification to the Secured Creditors by the Security Trustee that all Secured Amounts have been satisfied in full, save as otherwise expressly provided in this Deed or as required by the Security Trustee, all payments under or arising from this Deed and all amounts payable to the Borrower by any party to this Deed under any Transaction Document shall be paid to the Security Trustee or to its order to be applied in accordance with the Post-Enforcement Priority of Payments.

#### **13.5 Enforcement when not all monies are enforceable**

If the Security is enforced at a time when no amount is immediately due and payable in respect of the Secured Amounts or any of the Secured Amounts are contingent or future, the Security Trustee or any Receiver may pay the proceeds of any recoveries effected by it into any interest-bearing account to be held by it as security and applied in accordance with the terms of the Cash Management Agreement and this Deed.

### **14. POST-ENFORCEMENT PRIORITY OF PAYMENTS**

#### **14.1 Post-Enforcement Priority of Payments**

After an Enforcement Notice is delivered by the Security Trustee (which has not been revoked), the Post-Enforcement Amounts shall be applied in payment by the Security Trustee (or the Cash Manager on its behalf), in the amounts required, in accordance with the Post-Enforcement Priority of Payments.

#### **14.2 Monies not required for Secured Amounts**

Any monies held by the Receiver or the Security Trustee after application of monies received or recovered after delivery of an Enforcement Notice and not required for application in discharge of the Secured Amounts in accordance with Clause 14.1 (*Post-Enforcement Priority of Payments*) shall be paid by the Receiver or the Security

Trustee to the Borrower for application in or towards meeting the Obligations of the Borrower, which do not constitute Secured Amounts, as such Obligations fall due.

#### 14.3 **Application of Amounts in Respect of Swap Excluded Payments and Third Party Amounts**

Swap Excluded Payments and Third Party Amounts shall be paid directly to the Interest Rate Swap Provider or replacement swap provider or third party (as the case may be), respectively, without regard to the Priorities of Payment and in accordance with the terms of this Deed and the Interest Rate Swap Agreement.

#### 14.4 **Set Off**

14.4.1 If, at the time a payment is proposed to be made to any Secured Creditor pursuant to Clause 14.1 (*Post-Enforcement Priority of Payments*), that Secured Creditor is in default under any of its obligations to make a payment under any of the Transaction Documents to which it is party (the "**Defaulted Payment**"), then the amount of the payment which may be made to that Secured Creditor pursuant to Clause 14.1 (*Post-Enforcement Priority of Payments*) shall be reduced by there being withheld from such payment an amount equal to the amount of such Defaulted Payment. Any amount so withheld shall not be available for any other person and shall be paid to that Secured Creditor as and when (and *pro rata* to the extent that) the Defaulted Payment is duly made by it.

14.4.2 The Security Trustee shall not be liable to the Borrower or any Secured Creditor for any loss or damage suffered by the Borrower or any Secured Creditor as a result of a failure to exercise the right to withhold set out in this Clause 14.4 unless the Security Trustee and the Cash Manager have received not less than 7 Business Days' actual notice in writing of the relevant Defaulted Payment from the Borrower.

**SECTION E**  
**SECURITY TRUSTEE'S POWERS**

**15. EXTENSION AND VARIATION OF THE LPA**

**15.1 Extension of Powers**

The statutory powers of leasing conferred on the Security Trustee are extended so as to authorise the Security Trustee to lease, make agreements for leases, accept surrenders of leases and grant options as the Security Trustee may think fit and without the need to comply with any provision of Section 99 or 100 of the LPA.

From the date of this Deed but subject to Clause 15.2 (*Powers Exercised on delivery of Enforcement Notice*) below, the provisions of the LPA relating to the power of sale and the other powers conferred by Sections 101 (1) and (2) of the LPA are extended to authorise the Security Trustee upon such terms as the Security Trustee may think fit:

- 15.1.1 to sell, exchange, licence or otherwise dispose of or otherwise deal with the Charged Property or any interest in the same, and to do so for shares, debentures or any other securities whatsoever, or in consideration of an agreement to pay all or part of the purchase price at a later date or dates, or an agreement to make periodical payments, whether or not the agreement is secured by an Encumbrance or a guarantee, or for such other consideration (if any) and upon such terms whatsoever as the Security Trustee may think fit, and also to grant any option to purchase;
- 15.1.2 with a view to, or in connection with, the management or disposal of the Charged Property to carry out any transaction, scheme or arrangement which the Security Trustee may in its absolute discretion consider appropriate;
- 15.1.3 to take possession of, get in and collect the Charged Property;
- 15.1.4 to carry on and/or manage and/or concur in managing the business of the Borrower as it thinks fit and to demand, sue for and collect and get in all monies due to the Borrower as it thinks fit;
- 15.1.5 to appoint, discharge or engage managers, agents and advisers upon such terms as to remuneration and otherwise and for such periods as it may determine, and to dismiss them;
- 15.1.6 to bring, defend, submit to arbitration, negotiate, compromise, abandon and settle any claims and proceedings concerning the Charged Property;
- 15.1.7 to transfer all or any of the Charged Property and/or any of the liabilities of the Borrower to any other company or body corporate whether or not formed or acquired for the purpose and whether or not an affiliate of the Security Trustee, the Borrower or the Servicer;
- 15.1.8 to call up all or any portion of the uncalled capital (if any) of the Borrower;

- 15.1.9 generally to carry out, or cause or authorise to be carried out, any transaction, scheme or arrangement whatsoever, whether or not similar to any of the foregoing, in relation to the Charged Property which it may consider expedient as effectually as if it were the absolute, sole legal and beneficial owner of the Charged Property, subject to any restrictions in the Transaction Documents;
- 15.1.10 to pay and discharge, out of the profits and income of the Charged Property and the monies to be made by it in carrying on the business of the Borrower, the expenses incurred in and about the carrying on and management of any such business or in the exercise of any of the powers conferred by this sub-clause 15.1.10 (*Extension of Powers*) or otherwise in respect of the Charged Property and all outgoings which it shall think fit to pay and apply the residue of such profits and income in accordance with the Post-Enforcement Priority of Payments;
- 15.1.11 to exercise any of the powers and perform any of the duties conferred on the Borrower by or pursuant to any of the Transaction Documents or any statute, deed or contract;
- 15.1.12 to exercise, or permit any other person to exercise, any rights, powers or privileges of the Borrower in respect of the Charged Property;
- 15.1.13 to exercise any powers, discretions, voting, conversion or other rights or entitlements in relation to any of the Charged Property or incidental to the ownership of or rights in or to any of the Charged Property and to disclaim, discharge, abandon, disregard, alter or amend on behalf of the Borrower all or any outstanding contracts of the Borrower except where such amendment is proscribed by the terms of any Transaction Document and allow time for payment of any monies either with or without security;
- 15.1.14 to sanction or confirm anything suffered by the Borrower and concur with the Borrower in any dealing not specifically mentioned above;
- 15.1.15 in connection with the exercise of any of its powers, to execute or do, or cause or authorise to be executed or done, on behalf of or in the name of the Borrower or otherwise, as it may think fit, all documents, acts or things which it may consider appropriate or incidental or conducive to the exercise of any of the powers referred to above;
- 15.1.16 to use the name of the Borrower for all or any of the foregoing purposes;
- 15.1.17 to let any Charged Property for any term and at any rent (with or without a premium) which he thinks fit and may accept a surrender of any lease or tenancy or any Charged Property on any terms which he thinks fit (including the payment of money to a lessee or tenant on a surrender);
- 15.1.18 to give a valid receipt for any moneys and execute any assurance or thing which may be proper or desirable for realising any Charged Property;

15.1.19 to effect any repair or insurance and do any other act which the Borrower might do in the ordinary conduct of its business to protect or improve any Charged Property as he thinks fit;

15.1.20 to commence and/or complete any building operation as he thinks fit; and

15.1.21 to apply for and maintain any planning permission, building regulation approval or any other authorisation as he thinks fit.

## **15.2 Powers Exercised on delivery of Enforcement Notice**

The statutory powers of sale and of appointing a receiver which are conferred upon the Security Trustee, as varied and extended by this Deed, and all other powers shall, in favour of any purchaser, be deemed to arise and be exercisable immediately after the execution of this Deed but shall only be exercised upon and following the delivery of a Security Protection Notice or an Enforcement Notice.

## **15.3 Restrictions**

The restrictions contained in Section 93 and Section 103 of the LPA shall not apply to this Deed or to the exercise by the Security Trustee of its right to consolidate all or any of the Security with any other security in existence at any time or to its power of sale, which powers may be exercised by the Security Trustee without notice to the Borrower on or at any time after the delivery of an Enforcement Notice.

## **15.4 Borrowing Powers**

The Security Trustee may raise and borrow money on the security of the Charged Property or any part of the Charged Property for the purpose of prefunding or defraying any monies, costs, charges, losses and expenses paid, to be paid or incurred by it in relation to this Deed (including the costs of realisation of any or all of the Charged Property and the remuneration of the Security Trustee). The Security Trustee may raise and borrow such money at such rate of interest and generally on such terms and conditions as it shall think fit and may secure the repayment of the money so raised or borrowed with interest on the same by mortgaging or otherwise charging the Charged Property or any of it and either in priority to the Security or otherwise and generally in such manner as the Security Trustee shall think fit and for such purposes may execute and do all such assurances and things as it shall think fit.

## **15.5 Powers Additional to LPA and Insolvency Act Powers**

The powers conferred by this Deed in relation to the Security on the Security Trustee or on any Receiver of the Charged Property or any part of the Charged Property shall be in addition to and not in substitution for the powers conferred on mortgagees or receivers under the LPA and the Insolvency Act, where there is any ambiguity or conflict between the powers contained in any of such Acts and those conferred by this Deed, the terms of this Deed shall prevail.

## **15.6 Right of appropriation**

To the extent that the provisions of the Financial Collateral Arrangements (No. 2) Regulations 2003, as amended, (the "**Regulations**") apply to any of the Charged

Property, the Security Trustee shall have the right to appropriate all or any part of such Charged Property in or towards the payment or discharge of the Secured Obligations and may exercise such right to appropriate upon giving written notice to the Borrower. For this purpose, the parties agree that the value of that Charged Property shall be, in the case of cash, the amount standing to the credit of each of the Borrower Accounts, together with any accrued but unposted interest, at the time of appropriation. The parties agree that the method of valuation provided for in this Deed shall constitute a commercially reasonable method of valuation for the purposes of the Regulations.

## 16. PROVISIONS SUPPLEMENTAL TO TRUSTEE ACTS 1925 AND 2000

Section 1 of the Trustee Act 2000 shall not apply to the duties of the Security Trustee in relation to the trusts constituted by this Deed. Where there are any inconsistencies between the Trustee Acts and the provisions of this Deed, the provisions of this Deed will, to the extent allowed by law, prevail and, in the case of any such inconsistency with the Trustee Act 2000, the provisions of this Deed will constitute a restriction or exclusion for the purposes of that Act. In addition to the trusts, powers, authorities and discretions conferred on the Security Trustee by applicable law, the Security Trustee shall have the following powers, authorities and discretions:

- 16.1 **Discretion:** the Security Trustee shall (except as expressly provided otherwise in this Deed or the other Transaction Documents to which it is a party) have absolute discretion as to the exercise or performance or non-exercise or non-performance of each of the rights, trusts, powers, authorities, duties, discretions and obligations under this Deed and each of the other Transaction Documents to which it is a party or conferred on it by operation of law and the exercise or performance or non-exercise or non-performance of those rights, trusts, powers, authorities, duties, discretions and obligations shall, as between itself and the Secured Creditors, be conclusive and binding on the Secured Creditors provided that the Security Trustee has regard to the interests of the Instructing Party, and in the event of a conflict between the interests of the Instructing Party and the other Secured Creditors, the Security Trustee shall have regard only to the interests of the Instructing Party in accordance with and as provided in this Clause 16;
- 16.2 **Determinations:** without prejudice to the specific terms of the Transaction Documents, the Security Trustee, as between itself and the Secured Creditors, shall have full power to determine all questions arising in relation to any of the provisions of this Deed and the other Transaction Documents in respect of any security interest created under this Deed or any other Transaction Document and every such determination shall, as between itself and the Secured Creditors, be conclusive and binding on the Security Trustee and the Secured Creditors provided that the Security Trustee has regard to the interests of the Instructing Party, and in the event of a conflict between the interests of the Instructing Party and the other Secured Creditors, the Security Trustee shall have regard only to the interests of the Instructing Party in accordance with and as provided in this Clause 16;
- 16.3 **Instructions:** the Security Trustee shall not be liable to any person for any action it may take in accordance with any instructions received in accordance with the Transaction Documents (including, without limitation, pursuant to Clause 13.2 of this Deed) even though subsequent to its acting it may be found that there was some

defect in the relevant instructions. The Security Trustee shall be entitled to seek clarification from the Instructing Party with regard to such instructions and may in its discretion elect not to act pending receipt of such clarification to its satisfaction from such relevant Instructing Party and shall not be liable to any person for any loss occasioned thereby.

- 16.4 **Consents:** any consent given by the Security Trustee for the purposes of this Deed or any of the other Transaction Documents may be given on such terms and subject to such conditions (if any), including but not limited to being indemnified and/or secured and/or prefunded to its satisfaction, as the Security Trustee in its absolute discretion considers appropriate and the Security Trustee may subsequently ratify anything for which its prior consent was required but not obtained. Without prejudice to the generality of the foregoing, if a Transaction Document specifies that the Security Trustee is required to give its consent to any event, matter or thing if certain specified conditions are met, the Security Trustee shall give its consent to that event, matter or thing upon it being satisfied, in its absolute discretion, that those specified conditions have been met;
- 16.5 **Reliance on certificates of other parties:** the Security Trustee may call for and place full reliance on a certificate of the Borrower (signed by two Authorised Signatories of the Borrower) or any other party to the Transaction Documents as to any fact or matter which the Security Trustee believes is within the knowledge of the persons providing the certificate or in respect of which the Security Trustee believes to be genuine, as sufficient evidence of that fact or matter. The Security Trustee shall not be bound in any such case to call for further evidence or be responsible for any loss, liability, costs, damages, expenses or inconvenience that may be caused by it failing to do so;
- 16.6 **Expert advice:** the Security Trustee may in relation to this Deed and the other Transaction Documents:
- 16.6.1 at any time, at the expense of the Borrower, appoint or seek advice from any person which the Security Trustee believes has the relevant expertise to advise it in writing on any matter relevant to the discharge of its rights, trusts, powers, authorities, duties, discretions and obligations under this Deed and each of the other Transaction Documents to which it is a party if the Security Trustee in its absolute discretion considers it appropriate; and
- 16.6.2 act on the written opinion or advice of, or a certificate addressed to or not addressed to the Security Trustee or any other information in writing which it is entitled to rely on obtained from, any person which the Security Trustee believes has the relevant expertise to advise it on any matter relevant to the discharge of its rights, trusts, powers, authorities, duties, discretions and obligations under this Deed and each of the other Transaction Documents to which it is a party (whether obtained by the Borrower, the Security Trustee or any other person and whether or not such opinion, advice, certificate or information contains a cap or other limitation (monetary or otherwise) on the liability of any person),

and the Security Trustee shall not be responsible for any Liability occasioned by so acting or relying;

- 16.7 **Agents, delegates or nominees:** the Security Trustee may, for the purpose of exercising or performing each of its rights, trusts, powers, authorities, duties, discretions or obligations under this Deed and the other Transaction Documents, instead of acting personally, employ and pay an agent, delegate or nominee whether or not a lawyer or other professional person, to do so on its behalf on such terms and conditions (including, among other things, the power to sub delegate) as the Security Trustee in its absolute discretion considers appropriate. The Security Trustee shall give prompt notice to the Borrower of the appointment of any agent, delegate or nominee. The Security Trustee shall not be under any obligation to supervise the proceedings or acts of any such agent, delegate or nominee or, provided the Security Trustee has exercised due care in the appointment of any such agent, delegate or nominee, be in any way responsible for any Liability incurred by reason of any act, misconduct, omission or default on the part of any such agent, delegate or nominee;
- 16.8 **Illegality:** notwithstanding anything to the contrary, no provision of this Deed or any other Transaction Document to which it is a party shall require the Security Trustee to do or omit to do anything which may in its opinion be illegal or contrary to applicable law or regulation or which would or might render it liable to any other person and it may take any action or step (including modified compliance or non-compliance with this Deed or any other Transaction Document to which it is a party) which, in its opinion, is necessary to comply with any such law or regulation or to avoid any such liability or potential liability;
- 16.9 **Performance:** except as expressly provided otherwise in this Deed or the Transaction Documents to which it is a party, the Security Trustee may, unless expressly notified in writing in accordance with the Transaction Documents, assume without enquiry and shall be under no obligation to monitor or supervise that each party is duly performing and observing all of the provisions of those documents binding on or relating to it, has satisfied any conditions contained in them and that no event has happened which constitutes an Event of Default or similar event contained in them. The Security Trustee shall not be bound to take any steps to ascertain whether any event which causes or may cause a right on the part of it under or in relation to any Transaction Document to become exercisable has happened;
- 16.10 **Confidential information:** the Security Trustee shall not (unless required pursuant to any Requirement of Law or any Regulatory Direction or ordered so to do by a court of competent jurisdiction) be required to disclose to any Secured Creditor or any other person confidential information or other information made available to the Security Trustee by the Borrower in connection with this Deed or the other Transaction Documents and no Secured Creditor or any other person shall be entitled to take any action to obtain from the Security Trustee any such information;
- 16.11 **Expenditure:** the Security Trustee may refrain from taking any action or exercising any right, power, authority or discretion vested in it under the Transaction Documents, the Charged Property or any other agreement relating to the transactions herein or therein contemplated or from taking any action to enforce the Security until it has been indemnified and/or secured and/or prefunded to its satisfaction against any and all Liabilities which might be brought, made or conferred against or suffered, incurred or sustained by it as a result (which may include payment on account). Nothing contained in the Transaction Documents shall require the Security Trustee to expend or risk its own funds or otherwise incur any financial liability in the



performance of its duties or the exercise of any right, power, authority or discretion hereunder if it has any grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it in its sole opinion;

- 16.12 **Secured Creditor appraisal of financial condition:** each Secured Creditor shall be solely responsible for making its own independent appraisal of and investigation into the financial condition, creditworthiness, affairs, status and nature of the Borrower and the other Transaction Parties and the Security Trustee shall not at any time have any responsibility for any such appraisal or investigation and no Secured Creditors shall rely on the Security Trustee in respect thereof;
- 16.13 **Deductions and withholdings:** notwithstanding anything contained in the Transaction Documents, if the Security Trustee is required by law to make any deduction or withholding for or on account of Tax from any distribution or payment made by it under the Transaction Documents or if the Security Trustee is otherwise charged to, or may become liable to, Tax (other than any taxes on the Security Trustee's own net income) as a consequence of performing its duties under the Transaction Documents, then the Security Trustee shall make such deduction or withholding or (as the case may be) be entitled to retain out of sums received by it an amount sufficient to discharge any liability to Tax which relates to sums so received or distributed or to discharge any such other liability of the Security Trustee to Tax from the funds held by the Security Trustee on the trusts of this Deed;
- 16.14 **Reliance on title to the Security:** the Security Trustee may accept without investigation, requisition or objection such right and title as the Borrower may have to any of the Charged Property and the other Security created in favour of the Security Trustee by this Deed and shall not be bound or concerned to examine or enquire into or be liable for any defect or failure in the right or title of the Borrower or any other person to all or any of the Charged Property whether such defect or failure was known to the Security Trustee or might have been discovered upon examination or enquiry and whether capable of remedy or not;
- 16.15 **Registration and perfection of the Security:** the Security Trustee shall not be liable for any failure, omission or defect in perfecting, protecting or further assuring the Security including:
- 16.15.1 any failure, omission or defect in registering or filing or procuring registration or filing of, or otherwise protecting or perfecting the Security or the priority thereof or the right or title of any person in or to the assets comprised in the Security; and
- 16.15.2 any failure or omission to require any further assurances in relation to the Security;
- 16.16 **Adequacy of security:** the Security Trustee shall not be responsible or liable for any unsuitability, inadequacy or unfitness of any Charged Property as security for the Secured Obligations and shall not be obliged to make any investigation into, and shall be entitled to assume, the suitability, adequacy and fitness of the Charged Property as security for the Secured Obligations;

- 16.17 **Insurance:** without prejudice to the provisions of any Transaction Document relating to insurance, the Security Trustee shall not be under any obligation to insure any of the Security or any deeds or documents of title or other evidence in respect of the Security or to require any other person to maintain any such insurance or monitor the adequacy of any such insurance and shall not be responsible for any Liability which may be suffered by any person as a result of the lack of or inadequacy of any such insurance;
- 16.18 **No liability for loss:** the Security Trustee will not be liable for any decline in the value nor any loss realised upon any sale or other disposition pursuant to this Deed of, any of the Charged Property. In particular and without limitation, the Security Trustee shall not be liable for any such decline or loss directly or indirectly arising from its acting or failing to act as a consequence of an opinion reached by it in good faith based on advice received by it in accordance with the Transaction Documents;
- 16.19 **Consequential Loss:** The Security Trustee shall not be liable for special, punitive, indirect or consequential damages, lost profits, loss of goodwill or reputation or loss of opportunity, whether or not foreseeable, even if the Security Trustee has been advised of the possibility of such loss or damage and regardless of the form of the claim or action or the legal theory on which it is based;
- 16.20 **Deposit:** the Security Trustee shall be at liberty to place this Deed and all deeds and other documents relating to this Deed with any bank or banking company, or lawyer or firm of lawyers believed by it to be of good repute, in any part of the world, and the Security Trustee shall not be responsible for or be required to insure against any loss incurred in connection with any such deposit;
- 16.21 **Unsecured methods:** if the Security Trustee is requested to act on instructions or directions delivered by fax, email or any other unsecured method of communication, the Security Trustee shall have no duty or obligation to verify or confirm that the person who sent such instructions or directions is, in fact, a person authorised to give instructions or directions on behalf of the Borrower;
- 16.22 **Currency:** where it is necessary or desirable for any purpose in connection with this Deed to convert any sum from one currency to another it shall (unless otherwise provided by this Deed or required by law) be converted at such rate or rates in accordance with such method and as at such date for the determination of such rate of exchange, as may be specified by the Security Trustee in its absolute discretion but having regard to current rates of exchange if available and the Security Trustee shall not be liable for any loss occasioned by the said conversion;
- 16.23 **Change of name:** This Deed shall remain valid and enforceable notwithstanding any change in the name, composition or constitution of the Security Trustee or the Borrower or any amalgamation or consolidation by the Security Trustee or the Borrower with any other corporation (whether, in the case of the Borrower, permitted by the Transaction Documents or not);
- 16.24 **Commercial Transaction:** The Security Trustee shall not, and no director, officer or employee of any corporation being a trustee hereof shall, by reason of the fiduciary position of the Security Trustee, be in any way precluded from making any contracts or entering into any transactions in the ordinary course of business with the any other

party to the Transaction Documents or from accepting the trusteeship of any stock, shares, debenture stock, debentures or securities of any such person.

Where any holding company, Subsidiary or associated company of the Security Trustee or any director or officer of the Security Trustee acting other than in his capacity as such a director or officer has any information, the Security Trustee will not thereby be deemed also to have knowledge of such information and, unless it has actual knowledge of such information, it will not be responsible for any loss suffered by the Secured Creditors resulting from the Security Trustee's failing to take such information into account in acting or refraining from acting under or in relation to this Deed or any other Transaction Document;

16.25 **No transfer of obligations:** Notwithstanding anything else in this Deed, the Security Trustee does not assume and will not be obliged to perform any obligations of any other party; and

16.26 **Responsibility:** the Security Trustee will not have any responsibility for, or have any duty to make any investigation in respect of, or in any way be liable whatsoever for:

16.26.1 the execution, delivery, legality, validity, adequacy, admissibility in evidence, enforceability, genuineness, effectiveness or suitability of any Transaction Document or any other document entered into in connection therewith or of any transfer, security or trust effected or constituted or purported to be effected or constituted by any Transaction Document or any other document entered into in connection therewith;

16.26.2 the scope or accuracy of any recital, representation, warranty or statement made by or on behalf of any person in any Transaction Document or any other document entered into in connection therewith;

16.26.3 the failure by any person to obtain or comply with any licence, consent or other authority in connection with any Transaction Document;

16.26.4 the failure to call for delivery of documents of title to or require any transfers, legal mortgages, charges or other further assurances pursuant to this Deed or the provisions of any other Transaction Document; or

16.26.5 any accounts, books, records or files maintained by any person in connection with or in respect of the Charged Property.

16.27 So long as any Secured Amount is outstanding and there is a conflict between the interests of (i) the Senior Lenders (or at such time all amounts outstanding under the Senior Facility Agreement, including without limitation all costs, fees, expenses and interest are paid in full and the Total Commitments have been reduced to zero, the Subordinated Lender), and (ii) the other Secured Creditors, except as otherwise expressly provided in this Deed, the Security Trustee shall have regard to the interests of only the Senior Lenders as regards the exercise and performance of all powers, rights, trusts, authorities, duties and discretions of the Security Trustee in respect of the Charged Property, under this Deed or any other Transaction Document or in respect of the rights or benefits which are comprised in the Charged Property (except where specifically provided otherwise).

**SECTION F**  
**ADMINISTRATOR AND RECEIVER**

**17. APPOINTMENT AND REMOVAL OF ADMINISTRATOR AND RECEIVER**

**17.1 Appointment of an Administrator**

17.1.1 At any time after the delivery of an Enforcement Notice or if any person who is entitled to do so presents a petition or an application for the appointment of an administrator of the Borrower, gives notice of intention to appoint an administrator of the Borrower, or files such a notice with the court, the Security Trustee may appoint one or more persons to be an administrator of the Borrower.

17.1.2 The Security Trustee is not liable for any failure to appoint an administrator or Receiver in respect of the Borrower and, for the avoidance of doubt:

- (i) nothing in this Clause 17 (*Appointment and Removal of Administrator and Receiver*) shall be construed so as to impose on the Security Trustee any obligation to indemnify any administrative receiver appointed by it pursuant to this Clause 17 (*Appointment and Removal of Administrator and Receiver*) except to the extent of (and from) the cash and assets comprising the Security held by the Security Trustee at such time; and
- (ii) the Security Trustee shall have no liability if, having used its reasonable endeavours, it is unable to find a person who is willing to be appointed as an administrative receiver on the terms as to indemnification referred to in paragraph (i) above.

17.1.3 The Borrower waives any claims against the Security Trustee in respect of any appointment not made pursuant to this clause.

**17.2 Appointment of a Receiver**

17.2.1 At any time after the delivery of an Enforcement Notice or if any person who is entitled to do so presents a petition or an application for the appointment of an administrator of the Borrower, gives notice of intention to appoint an administrator of the Borrower, or files such a notice with the court the Security Trustee may appoint such person or persons (including an officer or officers of the Security Trustee) as it thinks fit to be a Receiver or Receivers of the Charged Property or any part thereof to act jointly or jointly and severally as receiver, manager, receiver or manager, administrative receiver, compulsory or interim manager or other similar officer as the Security Trustee shall determine.

17.2.2 Except as otherwise provided in this Deed, any restriction imposed by law on the right of a mortgagee to appoint a Receiver (including under section 109(1) of the LPA) does not apply to this Deed.

### **17.3 Waiver no prejudice to Future Appointment**

No delay or waiver of the right to exercise the power to appoint a Receiver shall prejudice the future exercise of such power.

### **17.4 Insolvency Act Requirements**

The Security Trustee shall comply with any requirement under the Insolvency Act that the person appointed to be a Receiver be a licensed insolvency practitioner.

### **17.5 Removal of Receiver**

The Security Trustee may (subject to Section 45 of the Insolvency Act) remove any Receiver whether or not appointing another in his place and the Security Trustee may also appoint another receiver if the Receiver resigns.

### **17.6 Exclusion of part of Charged Property**

The exclusion of any part of the Charged Property from the appointment of any Receiver shall not preclude the Security Trustee from subsequently extending his appointment (or that of the Receiver replacing him) to that part.

### **17.7 Statutory Powers of Appointment**

The power of appointing a Receiver shall be in addition to all statutory and other powers of appointment of the Security Trustee under the LPA (as extended by this Deed) or otherwise and such powers shall remain exercisable from time to time by the Security Trustee in respect of any of the Charged Property.

## **18. PROVISIONS RELATING TO RECEIVER**

### **18.1 Receiver Agent of Borrower**

Any Receiver shall, so far as the law permits, be the agent of the Borrower and (subject to applicable law) the Borrower shall be solely responsible for any Receiver's acts and defaults and liable on any contracts or engagements made or entered into by any Receiver; and in no circumstances shall the Security Trustee or the Secured Creditors be in any way responsible for any Breach of Duty by any Receiver.

### **18.2 Exercise of Powers**

Any Receiver shall, so far as the law permits, exercise his powers in accordance with the direction of the Security Trustee.

### **18.3 Remuneration of Receiver**

The remuneration of any Receiver may be fixed by the Security Trustee (and may be or include a commission calculated by reference to the gross amount of all money received or otherwise) but such remuneration shall be payable by the Borrower alone and the amount of such remuneration shall form part of the Secured Amounts, shall be secured on the Charged Property under the Security and paid in accordance with the Post-Enforcement Priority of Payments.

#### **18.4 Security from Receiver**

The Security Trustee may from time to time and at any time require any Receiver to give security for the due performance of his duties as Receiver and may fix the nature and amount of the security to be so given but the Security Trustee shall not be bound in any case to require any such security.

#### **18.5 Monies Payable to Security Trustee**

Except as otherwise directed by the Security Trustee or as otherwise required by law, all monies from time to time received by any Receiver shall be paid over to the Security Trustee to be applied by it in accordance with the Post-Enforcement Priority of Payments.

#### **18.6 Payments by Security Trustee to Receiver**

The Security Trustee may pay over to any Receiver any monies constituting part of the Charged Property so that such monies may be applied for the purposes of this Deed by such Receiver and the Security Trustee may from time to time determine what funds any Receiver shall be at liberty to keep in hand with a view to the performance of his duties as Receiver.

#### **18.7 Sections 109(6) and (8) of LPA**

Sections 109(6) and (8) of the LPA (relating to the application of monies received by a receiver) shall not apply in relation to any Receiver.

#### **18.8 LPA Restrictions Inapplicable**

None of the restrictions imposed by the LPA in relation to appointment of receivers or as to the giving of notice or otherwise shall apply to this Deed of Charge.

### **19. POWERS OF A RECEIVER**

#### **19.1 Powers of a Receiver**

Every Receiver shall (subject to any restrictions in the instrument appointing him) have and be entitled to exercise in relation to the Charged Property in respect of which he is appointed, and as varied and extended by the provisions of this Deed (in the name of or on behalf of the Borrower or in his own name and, in each case, at the cost of the Borrower):

- 19.1.1 all the powers conferred by the LPA on mortgagees and on mortgagees in possession and on receivers;
- 19.1.2 all powers of an administrative receiver set out in Schedule 1 of the Insolvency Act (whether or not the Receiver is an administrative receiver);
- 19.1.3 all powers and rights of an absolute owner and power to do or omit to do anything which the Borrower itself could do or omit to do; and

19.1.4 power to do all things (including bringing or defending proceedings in the name or on behalf of the Borrower) which seem to the Receiver to be incidental or conducive to:

- (a) any of the functions, powers, authorities or discretions conferred on or vested in him;
- (b) the exercise of any or all of his rights under this Deed; or
- (c) the collection or getting in of the Charged Property.

## **19.2 Receiver and Transaction Documents**

No Receiver shall have any power to take any action in relation to the Charged Property which the Security Trustee is prohibited from taking by the terms of any Transaction Document.

## SECTION G PROTECTIVE PROVISIONS

### 20. PROTECTION OF THIRD PARTIES

#### 20.1 Protection of third parties

No purchaser from, or other person dealing with, the Security Trustee and/or any Receiver shall be concerned to enquire:

20.1.1 whether any of the powers which they have exercised or purported to exercise has arisen or become exercisable; or

20.1.2 whether the Secured Amounts remain outstanding; or

20.1.3 whether any event has occurred to authorise the Security Trustee and/or any Receiver to act; or

20.1.4 as to the propriety or validity of the exercise or purported exercise of any such powers,

and the title of such a purchaser and the position of such other person shall not be impeachable by reference to any of those matters.

#### 20.2 Receipt absolute discharge

The receipt of the Security Trustee or the Receiver shall be an absolute and conclusive discharge to a purchaser or other such person as is referred to in Clause 20.1 (*Protection of third parties*) and shall relieve such purchaser or other person of any obligation to see to the application of any monies paid to or at the direction of the Security Trustee or the Receiver.

#### 20.3 Purchaser Defined

In Clauses 20.1 (*Protection of third parties*) and 20.2 (*Receipt absolute discharge*) "**purchaser**" includes any person acquiring in good faith, for money or money's worth, any of the Charged Property or the benefit of any Encumbrance over, or any other interest or right whatsoever in relation to, the Charged Property.

### 21. PROTECTION OF SECURITY TRUSTEE AND RECEIVER

#### 21.1 Protection of Security Trustee and Receiver

The Security Trustee shall not nor shall any directors, employees, officers, Receiver, attorney or agent of the Security Trustee by reason of taking possession of the Charged Property or any part thereof or for any other reason whatsoever and whether as mortgagee or heritable creditor in possession or on any other basis whatsoever:

21.1.1 be liable to account to the Borrower or any other person whatsoever for anything except actual receipts in respect of the Charged Property; or



21.1.2 be liable to the Borrower or any other person whatsoever for any loss or damage arising from realisation of the Charged Property or any part thereof or from any act, default or omission in relation to the Security or any part thereof or from any exercise or non-exercise by it of any power, authority or discretion conferred upon it in relation to the Security or any part thereof or otherwise,

unless such loss or damage shall be caused by its own gross negligence, wilful default or fraud.

## **21.2 Entry into possession**

Without prejudice to the generality of Clause 21.1 (*Protection of Security Trustee and Receiver*), entry into possession of the Charged Property or any part thereof shall not render the Security Trustee or the Receiver liable to account as mortgagee or heritable creditor in possession or liable for any loss on realisation or for any default or omission for which a mortgagee or heritable creditor in possession might be liable.

## **21.3 Going out of possession**

If and whenever the Security Trustee or the Receiver enters into possession of the Charged Property, it shall be entitled at any time at its discretion to go out of such possession.

## **21.4 Mortgagee in possession**

Neither the Security Trustee, the Receiver, nor the Secured Creditors shall, by reason of any assignment or other Security made under this Deed, be or be deemed to be a mortgagee in possession, nor shall they take any action (other than, with the Security Trustee's prior written consent) which would be likely to lead to the Security Trustee, the Receiver or the other Secured Creditors becoming a mortgagee (or, if applicable, heritable creditor) in possession in respect of any Charged Property.

## **22. EVIDENCE OF INDEBTEDNESS**

In any action proceedings or claim relating to this Deed or the Security, any statement (which will contain information in reasonable detail in support thereof) as to:

- (a) any amount due to any Secured Creditor;
- (b) all or any part of the Secured Amounts: or
- (c) any amounts which have been notified to the Security Trustee as being amounts due to any Secured Creditor,

in each case, which is certified as being correct by an officer of the Security Trustee, an officer of the relevant Secured Creditor or the Auditors will be conclusive evidence that such amount is in fact due and payable.

## **SECTION H SECURITY TRUSTEE**

### **23. APPOINTMENT, RETIREMENT AND REMOVAL OF THE SECURITY TRUSTEE**

#### **23.1 Appointment**

Subject as provided in Clause 23.2 (*Retirement and Removal*) below, the Borrower has the power of appointing a new Security Trustee but no-one may be so appointed unless previously approved by the Senior Lenders (or if the Senior Loan does not remain outstanding, the Subordinated Lender, or if the Subordinated Loan does not remain outstanding, the Secured Creditors). A trust corporation will at all times be a Security Trustee and may be the sole Security Trustee. Any appointment of a new Security Trustee will be notified by the Borrower to the Senior Lenders and the Secured Creditors. Such a person shall (subject always to the provisions of these presents) have such trusts, rights, powers, authorities and discretions (not exceeding those conferred on the Security Trustee by these presents) and such duties and obligations as shall be conferred or imposed by the instrument of appointment.

#### **23.2 Retirement and Removal**

Subject to a trustee remaining at all times, any Security Trustee may retire at any time on giving at least three months' written notice to the Borrower without giving any reason or being responsible for any costs occasioned by such retirement and the Senior Lenders (or if the Senior Loan does not remain outstanding, the Subordinated Lender, or if the Subordinated Loan does not remain outstanding, the Secured Creditors) may remove any Security Trustee provided that the retirement or removal of a sole Security Trustee will not be effective until a successor Security Trustee is appointed. If a sole Security Trustee gives notice of retirement or the Senior Lenders (or if the Senior Loan does not remain outstanding, the Subordinated Lender, or if the Subordinated Loan does not remain outstanding, the Secured Creditors) requires the sole Security Trustee to be removed, the Borrower will use all reasonable endeavours to procure that another Security Trustee is appointed as soon as reasonably practicable thereafter. If it fails to do so before the expiry of such three-month notice period, the Security Trustee shall have the power to appoint a new Security Trustee provided that any such new Security Trustee is a lending bank or investment banking firm or trust corporation.

#### **23.3 Security Trustee's powers to be additional**

The powers conferred upon the Security Trustee by these presents and the Transaction Documents shall be in addition to any powers which may from time to time be vested in the Security Trustee by the general law.

### **24. REMUNERATION OF THE SECURITY TRUSTEE**

#### **24.1 Remuneration**

24.2 The Borrower shall (subject as hereinafter provided) pay to the Security Trustee annually a fee of such amount and payable on such dates as shall from time to time be

agreed in a separate fee letter by the Borrower and the Security Trustee. All such remuneration shall be payable in accordance with the Pre-Enforcement Revenue Priority of Payments or, as the case may be, the Post-Enforcement Priority of Payments. Such remuneration shall accrue from day to day and be payable up to and including the date when all of the Secured Obligations have been paid or discharged and the Security Trustee has released, reassigned, retrocessed and/or discharged the Charged Property as provided in Clause 7.1 (*Release on payment or discharge*).

- 24.3 The Borrower shall in addition pay to the Security Trustee an amount equal to the amount of VAT or similar tax chargeable in respect of sums payable to the Security Trustee by the Borrower under this Deed.

**24.4 Additional Remuneration**

In the event of an Event of Default or a Potential Event of Default occurring, the Borrower hereby agrees that the Security Trustee shall be entitled to be paid remuneration calculated at its normal hourly rate from time to time. In any other case, or in the event of the Security Trustee finding it expedient or necessary or is requested or required to undertake any duties which the Security Trustee and the Borrower agree to be of an exceptional nature or otherwise outside the scope of the normal duties of the Security Trustee under this Deed, the Borrower shall pay to the Security Trustee such properly incurred additional remuneration as shall be agreed between the Security Trustee and the Borrower (and which may be calculated by reference to the Security Trustee's normal hourly rates in force from time to time). For the avoidance of doubt, any duties in connection with investments, the granting of consents or waivers concurring in modifications, substitution of the Borrower or enforcement, or during the period post enforcement, shall be deemed to be of an exceptional nature.

**24.5 Disputes**

In the event of the Security Trustee and the Borrower failing to agree upon the amount of any remuneration from time to time pursuant to Clause 24.1 (Remuneration) or to agree in a case to which Clause 24.2 (Additional Remuneration) above applies, upon whether such duties are of an exceptional nature or otherwise outside the scope of the normal duties of the Security Trustee hereunder or upon the amount of such additional remuneration, such matters shall be determined by a person (acting as an expert and not as an arbitrator) selected by the Security Trustee and approved by the Borrower or, failing such approval, nominated by the President for the time being of the Law Society of England and Wales, the expenses being involved in such nomination and the fees of such person being payable by the Borrower, and the decision of any such person shall be final and binding on the Borrower and the Security Trustee.

**24.6 Expenses**

In addition to remuneration hereunder, the Borrower shall pay (on an indemnity basis) all other costs, charges and expenses which the Security Trustee or the Receiver of the Borrower and any other Appointee may properly incur in relation to the negotiation, preparation and execution of, the exercise or attempted exercise of its powers and the performance of its duties under, and in any other manner in relation to, this Deed, the Security and any of the other Transaction Documents to which the Security Trustee is

a party including but not limited to legal expenses and any stamp, issue, registration, documentary and other taxes or duties paid or payable by the Security Trustee or the Receiver of the Borrower in connection with any action taken or contemplated by or on behalf of the Security Trustee for enforcing, or resolving any doubt concerning, or for any other purpose in relation to, this Deed, the Security or any of the other Transaction Documents (including, in each case, any irrecoverable VAT in respect thereof).

## **25. BORROWER INDEMNITY TO THE SECURITY TRUSTEE**

25.1 The Borrower covenants with and undertakes to the Security Trustee to indemnify the Security Trustee on demand against any Liabilities which are incurred by the Security Trustee, its directors, employees or officers, or any Receiver, any Appointee or any other person appointed by the Security Trustee under the Transaction Documents to whom any right, trust, power, authority or discretion may be delegated by the Security Trustee in the execution, or the purported execution, of the rights, trusts, powers, authorities and discretions vested it by the Transaction Documents, in, or in connection with:

25.1.1 negotiation and preparation of this Deed and the other Transaction Documents;

25.1.2 the performance of the terms of the Transaction Documents;

25.1.3 anything done or purported to be done by the Security Trustee, any Appointee or any Receiver in relation to the Charged Property or under any Transaction Document;

25.1.4 the exercise, or attempted exercise by or on behalf of the Security Trustee, any Appointee or any Receiver, of any of the powers of the Security Trustee, any Appointee or, the Receiver, or any other action taken by or on behalf of the Security Trustee with a view to or in connection with enforcing any obligations of the Borrower or any other person under any Transaction Document or the recovery by the Security Trustee, any Appointee or the Receiver from the Borrower of the Secured Obligations; or

25.1.5 any payment made in respect of the Secured Obligations (whether by the Borrower or any other person) which is subsequently impeached or declared void for any reason whatsoever,

save to the extent that such Liabilities are due to the indemnified person's own gross negligence, fraud or wilful default.

25.2 The Security Trustee shall be entitled to be indemnified out of the Charged Property against all Liabilities payable pursuant to Clause 24.1 in respect of any matter or thing in any way omitted or done in any way in relation to this Deed in accordance with the Priorities of Payment and the Security Trustee may retain and pay out of the monies in its hands arising from the Charged Property all sums necessary to effect such indemnity.

- 25.3 Unless otherwise specifically stated in any discharge of this Deed, the provisions of this Clause 24 will continue in full force and effect notwithstanding discharge of this Deed, the retirement or removal of the Security Trustee.

## **SECTION I MISCELLANEOUS**

### **26. OTHER SECURITY**

The Security is in addition to, and shall neither be merged in, nor in any way exclude or prejudice or be affected by, any other Encumbrance, right or recourse or other right whatsoever which the Security Trustee may now or at any time after the date of this Deed hold or have (or would apart from the provisions of this Deed hold or have) as regards the Borrower or any other person in respect of the Secured Amounts.

### **27. APPLICATION TO COURT**

The Security Trustee may at any time apply to any court of competent jurisdiction for an order that the terms of this Deed be carried into execution under the direction of the court and for the appointment of a Receiver of the Charged Property and for any other order in relation to the administration of the terms of this Deed as the Security Trustee shall deem fit and the Security Trustee may assent to or approve any application made to the Court by the Secured Creditors and shall be secured and/or indemnified and/or prefunded by the Borrower against all costs, charges and expenses incurred by it in relation to any such application or proceedings.

### **28. POWER OF ATTORNEY**

#### **28.1 Appointment of Attorneys and Purposes of Appointment**

The Borrower appoints the Security Trustee and any Receiver jointly and severally to be its attorneys (each, an "**Attorney**" and together, the "**Attorneys**") for the following purposes in the Borrower's name, on its behalf and as its act and deed:

- 28.1.1 to appoint an agent (as agent of the Borrower) to exercise, in the Borrower's name, the Borrower's rights, powers and discretions under the Relevant Transaction Documents, the Mortgage Loans and the Related Security and to carry out any obligation imposed on the Borrower by any Relevant Transaction Document;
- 28.1.2 to exercise, or appoint an agent (as agent of the Borrower) to exercise, in the Borrower's name, all of the Borrower's other rights, powers and discretions in respect of the Relevant Transaction Documents;
- 28.1.3 to demand, sue for and receive all monies due or payable under or in respect of the Relevant Transaction Documents, the Mortgage Loans and the Related Security;
- 28.1.4 upon payment of such monies or any part thereof to give good receipt and discharge for the same and to execute such receipts, releases, surrenders, re-assignments, instruments and deeds as may be requisite or advisable; and
- 28.1.5 to execute, deliver and perfect all documents and do all things that the Attorneys may consider to be appropriate, proper or necessary for (a) carrying out any obligations imposed on the Borrower under this Deed or (b) exercising any of the rights conferred on the Attorneys by this Deed or by law (including,

after the security constituted by this Deed has become enforceable, the exercise of any right of a legal or a beneficial owner of the Charged Property).

## **28.2 Substitution**

Each of the Attorneys may appoint one or more persons to act as substitute or substitutes in its place for all or any of the purposes referred to in Clause 28.1 (*Appointment of Attorneys and Purposes of Appointment*) and may revoke any such appointment at any time, without assigning any reason therefor.

## **28.3 Delegation**

Each of the Attorneys may delegate to one or more person all or any of the powers referred to in Clause 27.1 (*Appointment of Attorneys and Purposes of Appointment*) on such terms as it thinks fit and may revoke any such delegation at any time.

## **28.4 Ratification**

The Borrower undertakes to ratify whatever act, matter or deed the Attorneys, either of them, any substitute or any delegate may lawfully do or cause to be done under the authority or purported authority of this Clause 28 (*Power of Attorney*) to the extent that such act, matter or deed is within the power of the Borrower.

## **28.5 Security**

The power of attorney contained in this Clause 28 (*Power of Attorney*) is given by way of security to secure the proprietary interests of, and the performance of the obligations of the Borrower to, the Attorneys under this Deed.

## **28.6 Revocation**

The power of attorney contained in this Clause 28 (*Power of Attorney*) is irrevocable and accordingly, for so long as the obligations referred to in Clause 28.5 (*Security*) remain undischarged, the power of attorney contained in this Clause 28 (*Power of Attorney*) shall not be revoked:

28.6.1 by the Borrower without the consent of each of the Attorneys; or

28.6.2 on the occurrence of an Insolvency Event in respect of the Borrower.

## **28.7 Exercise of Power of Attorney**

28.7.1 The power of attorney contained in this Clause 28 (*Power of Attorney*) is capable of being exercised for the purposes stated in sub-clause 28.1.5 (*Appointment of Attorneys and Purposes of Appointment*) from the date hereof.

28.7.2 The power of attorney contained in this Clause 28 (*Power of Attorney*) shall not be capable of being exercised for the purposes stated in sub-clauses 28.1.1, 28.1.2, 28.1.3 and 28.1.4 (*Appointment of Attorneys and Purposes of Appointment*), unless and until the Security Trustee has delivered an Enforcement Notice to the Borrower in accordance with the Senior Facility Agreement.

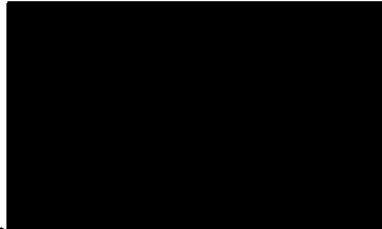
29. EXECUTION

The parties have executed this Deed as a deed and intend to deliver, and do deliver, this Deed on the date stated at the beginning of this Deed.

**Borrower**

**EXECUTED** as a **DEED** by  
**SKY FUNDING LIMITED**  
acting by two directors

)  
)  
)  
)



Intertrust Directors 1 Limited

.....

Intertrust Directors 2 Limited

.....

**Security Trustee**

**EXECUTED** and **DELIVERED** )  
as a **DEED** by )  
**INTERTRUST TRUSTEES LIMITED** )

acting by



\_\_\_\_\_  
Signature of Attorney

Martin Olcese

\_\_\_\_\_  
Name of Attorney

In the presence of:

Name: Azad Dugale

Occupation:

Address:





**Seller**

**EXECUTED** as a **DEED** by **SKY  
LUXEMBOURG S.À R.L.**  
acting by its authorised signatory

)   
) **Dominique LE GAL**  
) *Manager*

\_\_\_\_\_  
**Signature**

who, in accordance with the laws of the territory in which **SKY LUXEMBOURG S.À R.L.** is  
incorporated, is/are acting under the authority of **SKY LUXEMBOURG S.À R.L.**

**Process agent:** Pimco Europe Ltd 11 Baker Street London W1U 3AH United Kingdom

**SCHEDULE 1**  
**FORM OF SECURITY PROTECTION NOTICE**  
**INTERTRUST TRUSTEES LIMITED**

\_\_\_\_\_ 20[•]

To: SKY FUNDING LIMITED

Dear Sirs

**Deed of Charge dated on or about [•] 2017 between Sky Funding Limited (the "Borrower"), Intertrust Trustees Limited (the "Security Trustee") and Sky Luxembourg S.à r.l. (the "Seller") (the "Deed of Charge")**

We wish to notify you of the conversion with immediate effect of the floating charge created by Clause 5 (*Creation of Floating Charge*) of the Deed of Charge (the "**Floating Charge**") into a fixed charge over [all the assets of [*the Borrower*] which were the subject of the Floating Charge.]/[the assets of [*the Borrower*] specified below:]

Yours faithfully,

For and on behalf of  
**INTERTRUST TRUSTEES LIMITED**