



Registration of a Charge

Company Name: **CARNABY GROUP HOLDINGS LTD**

Company Number: **13677206**



Received for filing in Electronic Format on the: **26/10/2021**

XAFWNAHL

Details of Charge

Date of creation: **20/10/2021**

Charge code: **1367 7206 0002**

Persons entitled: **FDC DEBT LP ACTING BY ITS GENERAL PARTNER, FDC GENERAL PARTNER LIMITED**

Brief description:

Contains fixed charge(s).

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

Contains negative pledge.

Authentication of Form

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

Authentication of Instrument

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

Certified by: **SQUIRE PATTON BOGGS (UK) LLP**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 13677206

Charge code: 1367 7206 0002

The Registrar of Companies for England and Wales hereby certifies that a charge dated 20th October 2021 and created by CARNABY GROUP HOLDINGS LTD was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 26th October 2021 .

Given at Companies House, Cardiff on 27th October 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**

EXECUTION VERSION

DATED

20 October

2021

(1) FDC DEBT LP acting by its general partner, **FDC GENERAL PARTNER LIMITED**

- and -

(2) CARNABY GROUP HOLDINGS LTD

DEBENTURE

This Debenture is subject to the terms of an intercreditor agreement made between, amongst others, (1) Shawbrook Bank Limited (2) FDC Debt LP acting by its general partner FDC General Partner Limited and (3) Carnaby Group Holdings Ltd dated on or around the date of this Debenture.

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THIS DEBENTURE is made on

20 October

2021

BETWEEN

- (1) **FDC DEBT LP** (established in England and Wales under registered number LP020217) the registered office of which is at 11th Floor, 45 Church Street, Birmingham, West Midlands, B3 2RT acting by its general partner, **FDC GENERAL PARTNER LIMITED** (registered in England and Wales under registered number 11958527) whose registered office is at 11th Floor, 45 Church Street, Birmingham, West Midlands, B3 2RT ("**FDC**"); and
- (2) **CARNABY GROUP HOLDINGS LTD** a company incorporated and registered under the laws of England and Wales with limited liability and registered with the number 13677206 with its registered office at Lancaster Road, Carnaby Industrial Estate, Carnaby, Bridlington, Yorkshire, United Kingdom, YO15 3QY ("**Chargor**").

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION**1.1 Definitions**

In this Deed the following terms have the following meanings:

"**Act**" means the Law of Property Act 1925;

"**Administrator**" means any person appointed under schedule B1 to the Insolvency Act 1986 to manage the Chargor's affairs, business and property;

"**Assigned Assets**" means the Security Assets expressed to be assigned pursuant to clause 4.2 (*Security assignments*);

"**Charged Investments**" means the Securities and all present and future Securities Rights accruing to all or any of the Securities;

"**Default**" means an Enforcement Event or any event or circumstance specified in clause 13 (*When Security becomes enforceable*) which would with the expiry of a grace period, the giving of notice, the making of any determination or any combination of the foregoing be an Enforcement Event;

"**Default Interest Rate**" means the rate of interest payable in accordance with the terms of any Finance Document in relation to any amount which is not paid on the due date for payment or if none, or if FDC is unable to determine which rate otherwise applies at the relevant time, the rate which is 4% (four per cent) above the Bank of England's published base rate from time to time;

"**Disruption Event**" means either or both of:

- (a) a material disruption to those payment or communications systems or to those financial markets which are, in each case, required to operate in order for payments to be made in connection with the facilities made available pursuant to the Funding Agreement (or otherwise in order for the transactions contemplated by the Finance Documents to be carried out) which disruption is not caused by, and is beyond the control of, any of the Parties; or

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- (b) the occurrence of any other event which results in a disruption (of a technical or systems-related nature) to the treasury or payments operations of a Party preventing that, or any other Party:
 - (i) from performing its payment obligations under the Finance Documents; or
 - (ii) from communicating with other Parties in accordance with the terms of the Finance Documents,

and which (in either such case) is not caused by, and is beyond the control of, the Party whose operations are disrupted.

"Enforcement Event" means each of the events listed in clause 13 (*When Security becomes enforceable*);

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

"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, without limitation, air within natural or man-made structures, whether above or below ground);
- (b) water (including, without limitation, territorial, coastal and inland waters, water under or within land and water in drains and sewers); and
- (c) land (including, without limitation, land under water);

"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, without limitation, any waste;

"Finance Documents" has the meaning given to that term in the Funding Agreement;

"Funding Agreement" means the mezzanine facility agreement made between Carnaby Group Holdings Ltd and FDC and dated on or about the date of this Deed (as amended, novated, supplemented, extended or restated from time to time) setting out the terms of, or constituting any of, the Secured Obligations;

"Insolvency Proceedings" means, in relation to any person:

- (a) any commercial rent arrears recovery, attachment, injunction, execution, sequestration, diligence or other legal process is levied, enforced or sued on or against all or any part of the assets of that person;
- (b) any petition or proposal is presented or a meeting is convened with a view to a composition, assignment or arrangement with any creditors of that person;

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- (c) a meeting of that person (or its directors or members) is convened for the purpose of considering any resolution for (or to petition for) its winding-up or for its administration or any such resolution is passed;
- (d) a notice of intention to appoint an Administrator or notice of appointment of an Administrator is given or filed with the court by any person or an Administrator is appointed;
- (e) an encumbrancer takes possession, or a receiver or manager or administrative receiver is appointed, of the whole or any part of the assets of that person;
- (f) any person presents a petition for the administration or winding-up or bankruptcy of a person;
- (g) an order for the winding-up or administration or bankruptcy of that person is made;
- (h) a moratorium pursuant to section 1A of and schedule A1 to the Insolvency Act 1986 or pursuant to paragraph 1A of schedule 1 to the Insolvent Partnerships Order 1994 is established;
- (j) any petition or proposal is presented, any application is made or a meeting is convened with a view to the rehabilitation, administration, receivership, custodianship, liquidation, winding-up or dissolution of that person (other than for the purpose of an amalgamation or reconstruction whilst solvent), or any other Insolvency Proceedings involving that person;
- (k) a proposal is made for a composition in satisfaction of the person's debts or a scheme of arrangement of its affairs including a voluntary arrangement within either of the meanings given in the Insolvency Act 1986; or
- (l) any analogous steps or proceedings are taken in respect of, by or against such person in any other jurisdiction,

provided that paragraphs (a) to (l) shall not apply to any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within 14 days of commencement

"Insolvent" means, in relation to any person:

- (a) such person is, or is deemed for the purposes of any law to be, unable to pay its debts within the meaning of the Insolvency Act 1986 or to be insolvent, or admits its inability to pay its debts as they fall due;
- (b) such person ceases to trade or notifies the Chargor or FDC of its intention to cease to trade or the Chargor or FDC otherwise becomes aware of such intention through a source reasonably considered to be reliable; or
- (c) any Insolvency Proceedings have occurred or are continuing in relation to such person,

and **"Insolvency"** shall be construed accordingly.

"Insurances" means all policies of insurance (and all cover notes) which are at any time held by, or written in favour of, the Chargor or in which the Chargor from time to time has an interest including, without limitation, the Insurances specified in

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part 4 of schedule 2 (*Details of Security Assets*);

"Intellectual Property" means all present and future Intellectual Property Rights;

"Intellectual Property Rights" means:

- (a) any patents, trademarks, service marks, designs, business names, copyrights, database rights, design rights, domain names, moral rights, inventions, confidential information, know-how and other intellectual property rights and interests (which may now or in the future subsist) whether registered or unregistered; and
- (b) the benefit of all applications and rights to use such assets of the Chargor (which may now or in the future subsist);

"Intercreditor Agreement" means any contract which regulates the respective rights and obligations of financiers to, or equity holders in, the Chargor including any intercreditor or subordination agreement which constitutes a Finance Document;

"Inventory" means any raw materials, work in progress and unsold finished goods owned by the Chargor, being the stock-in-trade of the Chargor;

"Other Receivables" means all present and future book debts and other debts, rentals, royalties, fees, VAT and monetary claims and all other amounts at any time recoverable or receivable by, or due or owing to, the Chargor (whether actual or contingent and whether arising under contract or in any other manner whatsoever) together with:

- (a) the benefit of all rights, guarantees, Security Interests and remedies relating to any of the foregoing (including, without limitation, negotiable instruments, indemnities, reservations of property rights, rights of tracing and unpaid vendor's liens and similar associated rights); and
- (b) all proceeds of any of the foregoing;

"Obligor" means the Chargor and any other person who (i) is, or becomes, a borrower or guarantor pursuant to the provisions of the Funding Agreement and/or (ii) grants any guarantee, security or other surety in favour of FDC in respect of all (or any) of the Secured Obligations including, without limitation, the entities set out in Schedule 1;

"P&M" means all plant, machinery, other capital equipment (excluding Inventory) owned by the Chargor from time to time wherever located and all spare parts, replacements, modifications and additions for or to the same and any manuals, logbooks or registration documents relating thereto;

"Party" means a party to this Deed;

"Permitted Security" means any Security Interest or Quasi-Security:

- (a) created or subsisting with the prior written consent of FDC; or
- (b) expressly permitted under the Funding Agreement; or
- (c) created by this Deed;

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"Quasi-Security" means an arrangement or transaction to:

- (a) sell, transfer or otherwise dispose of any of its receivables on recourse terms;
- (b) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or
- (c) enter into any other preferential arrangement having a similar effect;

"Real Property" means all estates and interests in freehold, leasehold and other immovable property (wherever situated) now or in future belonging to the Chargor, or in which the Chargor has an interest at any time, together with:

- (a) all buildings and fixtures (including trade fixtures) and fixed P&M at any time thereon;
- (b) all easements, rights and agreements in respect thereof; and
- (c) the benefit of all covenants given in respect thereof;

"Receiver" means any receiver or receiver and manager appointed by FDC under this Deed;

"Relevant Contract" means each agreement specified in

part 6 of schedule 2 (*Details of Security Assets*) together with each other agreement supplementing or amending or novating or replacing the same and any other agreement designated from time to time by FDC (acting reasonably) as a **"Relevant Contract"** for the purposes of this Deed;

"Secured Obligations" means all or any money and liabilities which shall from time to time (and whether on or at any time after demand) be due, owing or incurred to FDC by any Obligor, whether actually or contingently, solely or jointly and whether as principal or surety (or guarantor or cautioner) under each Finance Document (including any money and liabilities of any Obligor to a third party which have been assigned or novated to or otherwise vested in FDC and including interest, discount, commission and other lawful charges or expenses which FDC may in the course of its business charge or incur in respect of any of those matters or for keeping any such Obligor's account, and so that interest shall be computed and compounded according to FDC's usual rates and practice (or as otherwise specified in any applicable Finance Document) after as well as before any demand made or judgment or decree contained under or in relation to this Deed);

"Securities" means all stocks, shares, debentures, bonds, warrants, coupons, negotiable instruments, certificates of deposit or other securities or *"investments"* (as defined in part II of schedule II to the Financial Services and Markets Act 2000 as in force at the date of this Deed) now or in future owned (legally or beneficially) by the Chargor, held by a nominee on its behalf or in which the Chargor has an interest at any time;

"Securities Rights" means:

- (a) all dividends, distributions and other income paid or payable on the relevant Securities or on any asset referred to in paragraph (b) of this definition; and
- (b) all rights, monies or property accruing or offered at any time in relation to such Securities whether by way of redemption, substitution, exchange, bonus or preference, under option rights or otherwise;

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"Security" means the Security Interests created by or pursuant to this Deed;

"Security Account" means:

- (a) each account specified in
 - (b) part 5 of schedule 2 (*Details of Security Assets*) as a Security Account; or
 - (c) such other account(s) with such other bank as FDC may from time to time direct,
- together with all additions to or renewals or replacements thereof (in whatever currency);

"Security Assets" means all property and assets from time to time mortgaged, charged or assigned (or expressed to be mortgaged, charged or assigned) by or pursuant to this Deed;

"Security Interest" means any mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, trust, trust arrangement for the purposes of providing security, assignment, assignment by way of security, tracing or other equitable right, or:

- (a) any other agreement or arrangement having the effect of conferring security (including any such interest arising under or in connection with any letter of credit);
- (b) any other security interest of any kind or preferring any obligation of any person; or
- (c) any other guarantee, indemnity, warranty, agreement or arrangement having the effect of conferring security;

"Security Period" means the period beginning on the date of this Deed and ending on the date on which:

- (a) all the Secured Obligations have been unconditionally and irrevocably paid and discharged in full; and
- (b) FDC has no further commitment, obligation or liability to any Obligor (including to make any finance, credit or other accommodation available to any Obligor);

"Senior Intercreditor Agreement" means the senior intercreditor agreement made between, amongst others, (1) Shawbrook Bank Limited as senior lender (2) FDC as mezzanine lender and (3) the Chargor dated on or around the date of this Deed;

"Specified P&M" means the P&M (if any) specified in

part 2 of schedule 2 (*Details of Security Assets*);

"Specified Real Property" means the Real Property specified in part 1 of schedule 2 (*Details of Security Assets*), together with any other Real Property which FDC may designate as "Specified Real Property";

"Spot Rate of Exchange" means the spot rate of exchange for the purchase of the relevant currency with Sterling in the London foreign exchange market at or about 11.00am on a particular day of the bank used by FDC for the relevant transaction or any other rate selected or determined by FDC;

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"Subsidiary" means a subsidiary within the meaning of section 1159 of the Companies Act 2006; and

"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).

1.2 Interpretation

- (a) Unless a contrary indication appears, any reference in this Deed to:
- (i) an **"Obligor"**, the **Chargor** or **"FDC"** shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
 - (ii) **"this Deed"**, any **"Finance Document"**, any **"Funding Agreement"** or any other agreement or instrument shall be construed as a reference to this Deed, such Finance Document, such Funding Agreement or such other agreement or instrument as varied, amended, supplemented, extended, restated, novated and/or replaced in any manner from time to time (however fundamentally and even if any of the same increases the obligations of the Chargor or provides for further advances);
 - (iii) **"assets"** includes any present and future properties, revenues and rights of every description and includes uncalled capital;
 - (iv) an Enforcement Event that is **"continuing"** shall be construed as meaning an Enforcement Event that has not been waived in writing by FDC, or remedied to the satisfaction of FDC and any waiver given by FDC shall only apply to the specific occurrence of the specific event referred to in such waiver;
 - (v) **"including"** or **"includes"** means including or includes without limitation;
 - (vi) **"Secured Obligations"** includes obligations and liabilities which would be treated as such but for the liquidation or dissolution of or similar event affecting an Obligor;
 - (vii) a provision of law is a reference to that provision as amended or re-enacted; and
 - (viii) the singular includes the plural and vice versa.
- (b) References to clauses, paragraphs and schedules are to be construed, unless otherwise stated, as references to clauses, paragraphs and schedules of and to this Deed and references to this Deed include its schedules.
- (c) Clause and schedule headings are for convenience only and shall not affect the construction of this Deed.
- (d) Each undertaking of the Chargor contained in this Deed must be complied with at all times during the Security Period.
- (e) The terms of any Finance Document or side letters between any of the parties thereto are incorporated in this Deed to the extent required to ensure that any disposition of the

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property contained in this Deed is a valid disposition in accordance with section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989.

- (f) If FDC reasonably considers that an amount paid by an Obligor to FDC under this Deed or any Finance Document is capable of being avoided or otherwise set aside on the liquidation or administration of such Obligor, then that amount shall not be considered to have been irrevocably paid for the purposes of this Deed.
- (g) The Parties intend that this document shall take effect as a deed notwithstanding the fact that a Party may only execute this document under hand.
- (h) This Deed is subject to the terms of the Senior Intercreditor Agreement and in the event of a conflict between this Deed and the Senior Intercreditor Agreement the Senior Intercreditor Agreement shall prevail.

1.3 Third party rights

A person who is not a Party shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Deed.

2. COVENANT TO PAY

2.1 Covenant to pay

The Chargor, as principal obligor and not merely as surety, covenants in favour of FDC that it will pay and discharge the Secured Obligations from time to time when they fall due.

2.2 Default interest

- (a) Any amount which is not paid under this Deed when due shall bear interest (both before and after judgment and payable on demand) from the due date until the date on which such amount is unconditionally and irrevocably paid and discharged in full at the Default Interest Rate from time to time.
- (b) Default interest will accrue from day to day and will be compounded at such intervals as FDC states are appropriate.

3. GRANT OF SECURITY

3.1 Nature of Security

All Security Interests and dispositions created or made by or pursuant to this Deed are created or made:

- (a) in favour of FDC;
- (b) with full title guarantee in accordance with the Law of Property (Miscellaneous Provisions) Act 1994; and
- (c) as continuing security for payment of the Secured Obligations.

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Paragraph 14 of schedule B1 to the Insolvency Act 1986 applies to any floating charge created by or pursuant to this Deed (and each such floating charge is a qualifying floating charge for the purposes of the Insolvency Act 1986).

4. FIXED SECURITY**4.1 Fixed charges - general**

The Chargor charges and agrees to charge all of its present and future right, title and interest in and to the following assets which are at any time owned by it, or in which it from time to time has an interest:

- (a) by way of first legal mortgage the Specified Real Property;
- (b) by way of first fixed charge:
 - (i) all Real Property and all interests in Real Property not charged by clause 4.1(a));
 - (ii) all licences to enter upon or use land and the benefit of all other agreements relating to land; and
 - (iii) the proceeds of sale of all Real Property other than Specified Real Property;
- (c) by way of first fixed charge all Specified P&M;
- (d) by way of first fixed charge the benefit of all contracts, licences and warranties relating to the Specified P&M;
- (e) by way of first fixed charge all P&M (not charged by clauses 4.1(c) or 4.1(d)) and the benefit of all contracts, licences and warranties relating to the same;
- (f) by way of first fixed charge:
 - (i) all computers, vehicles, office equipment and other equipment (not charged by clause 4.1(c)); and
 - (ii) the benefit of all contracts, licences and warranties relating to the same, other than any which are for the time being part of the Chargor's Inventory;
- (g) by way of first fixed charge all Securities;
- (h) by way of first fixed charge (A) all Securities Rights from time to time accruing to those Securities and (B) all rights which the Chargor may have at any time against any clearance or settlement system or any custodian in respect of any Securities;
- (i) by way of first fixed charge:
 - (i) any Security Accounts and all monies at any time standing to the credit of those Security Accounts; and

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- (ii) all accounts of the Chargor at any time not charged by clause 4.1(i)(i) and all monies at any time standing to the credit of such accounts,

in each case, together with all interest from time to time accrued or accruing on such monies, any investment made out of such monies or account and all rights to repayment of any of the foregoing;

- (j) by way of first fixed charge the Intellectual Property (if any) specified in
- (k) part 3 of schedule 2 (*Details of Security Assets*);
- (l) by way of first fixed charge all Intellectual Property (if any) not charged by clause 4.1(j);
- (m) to the extent that any Assigned Asset is not effectively assigned under clause 4.2 (*Security assignments*), by way of first fixed charge, such Assigned Asset;
- (n) by way of first fixed charge (to the extent not otherwise charged or assigned in this Deed):
 - (i) the benefit of all licences, consents, agreements and authorisations held or used in connection with the business of the Chargor or the use of any of its assets; and
 - (ii) any letter of credit issued in favour of the Chargor and all bills of exchange and other negotiable instruments held by it; and
- (o) by way of first fixed charge all of the goodwill and uncalled capital of the Chargor.

4.2 Security assignments

The Chargor assigns and agrees to assign absolutely (subject to a proviso for reassignment on redemption) all its present and future right, title and interest in and to:

- (a) the proceeds of the sale of any Specified Real Property;
- (b) the proceeds of the sale of any Specified P&M;
- (c) the proceeds of the sale of any Securities;
- (d) the proceeds of the sale of any Intellectual Property specified in
- (e) part 3 of schedule 2 (*Details of Security Assets*);
- (f) the Insurances, all claims under the Insurances and all proceeds of the Insurances;
- (g) in respect of the Relevant Contracts:
 - (i) the Relevant Contracts themselves and all rights and remedies in connection with the Relevant Contracts; and
 - (ii) all proceeds and claims arising from them;

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- (h) any Security Accounts and all monies at any time standing to the credit of those Security Accounts, together with all interest from time to time accrued or accruing on such monies, any investment made out of such monies or account and all rights to repayment of any of the foregoing;
- (i) any accounts which are not Security Accounts and all monies at any time standing to the credit of those accounts, together with all interest from time to time accrued or accruing on such monies, any investment made out of such monies or account and all rights to repayment of any of the foregoing; and
- (j) the Other Receivables (not assigned under clauses 4.2(a) to 4.2(i) (inclusive) above).

To the extent that any Assigned Asset described in clauses 4.2(a) to 4.2(j) inclusive is not assignable, the assignment which that clause purports to effect shall operate as an assignment of all present and future rights and claims of the Chargor to any proceeds of an Assigned Asset.

4.3 Notice of assignment and/or charge - immediate notice

Immediately upon execution of this Deed (and immediately upon the obtaining of any Insurance or the execution of any Relevant Contract or the opening or designation of any Security Account (as relevant) after the date of this Deed) the Chargor shall:

- (a) in respect of each of its Insurances, deliver a duly completed notice of assignment to each other party to that Insurance, and shall use its reasonable endeavours to procure that each such party executes and delivers to FDC an acknowledgement, in each case in a form agreed by FDC;
- (b) in respect of each Relevant Contract, deliver a duly completed notice of assignment to each other party to that Relevant Contract, and procure that each such party executes and delivers to FDC an acknowledgement, in each case a form agreed by FDC; and
- (c) in respect of each Security Account assigned by way of security under clause 4.2(h) above, deliver a duly completed notice to the relevant account bank and procure that the account bank executes and delivers to FDC an acknowledgement, in each case in a form agreed by FDC.

4.4 Proceeds of the sale of certain Securities, P&M, Real Property and Intellectual Property

If the proceeds of sale referred to in clause 4.2 are required to be dealt with in a particular way pursuant to the Funding Agreement, the Chargor undertakes to deal with such proceeds of sale in accordance with the terms of such Funding Agreement or otherwise, in accordance with the terms of any consent or direction issued by FDC to the Chargor in relation to any such Security Asset.

4.5 Assigned Assets

FDC is not obliged to take any steps necessary to preserve any Assigned Asset, to enforce any term of a Relevant Contract against any person or make any enquiries as to the nature or sufficiency of any payment received by it pursuant to this Deed.

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5. FLOATING CHARGE

The Chargor charges and agrees to charge by way of first floating charge all of its present and future:

- (a) assets and undertaking (wherever located) which are not effectively charged by way of first fixed mortgage or charge or assigned pursuant to clause 4.1 (*Fixed charges - general*), clause 4.2 (*Security assignments*) or any other provision of this Deed; and
- (b) (whether or not effectively so charged or assigned) heritable property and all other property and assets in Scotland.

6. CONVERSION OF FLOATING CHARGE

6.1 Conversion by notice

FDC may, by written notice to the Chargor, convert the floating charge created under this Deed into a fixed charge as regards all or any of the assets the Chargor specified in the notice if:

- (a) an Enforcement Event has occurred and is continuing; or
- (b) FDC (acting reasonably) considers any Security Assets (whether or not those specified in the notice) to be in danger of being seized or sold under any form of distress, attachment, execution or other legal process or to be otherwise in jeopardy.

6.2 Small companies

No floating charge created under this Deed by the Chargor shall convert into a fixed charge solely by reason of a moratorium being obtained under the Insolvency Act 2000 (or anything done with a view to obtaining such a moratorium) in respect of the Chargor.

6.3 Automatic conversion

A floating charge created under this Deed shall (in addition to the circumstances in which the same will occur under general law) automatically convert into a fixed charge:

- (a) in relation to any Security Asset which is subject to that floating charge if:
 - (i) the Chargor creates (or attempts or purports to create) any Security Interest on or over the relevant Security Asset without the prior written consent of FDC;
or
 - (ii) any third party levies or attempts to levy any distress, execution, attachment or other legal process against any such Security Asset; and
- (b) over all Security Assets of the Chargor which are subject to a floating charge if an Administrator is appointed in respect of the Chargor or FDC receives notice of intention to appoint such an Administrator.

6.4 Partial conversion

The giving of a notice by FDC pursuant to clause 6.1 (*Conversion by notice*) in relation to any class of assets of the Chargor shall not be construed as a waiver or abandonment of the rights

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of FDC to serve similar notices in respect of any other class of assets or of any other right of FDC.

7. CONTINUING SECURITY

7.1 Continuing security

This Security is continuing and will extend to the ultimate balance of the Secured Obligations regardless of any intermediate payment or discharge in whole or in part. This Deed shall remain in full force and effect as a continuing security for the duration of the Security Period.

7.2 Additional and separate security

This Deed is in addition to, without prejudice to, and shall not merge with, any other right, remedy, guarantee or Security Interest which FDC may at any time hold for any Secured Obligation.

7.3 Right to enforce

This Deed may be enforced against the Chargor without FDC first having recourse to any other right, remedy, guarantee or Security Interest held by or available to it.

8. LIABILITY OF THE CHARGOR RELATING TO SECURITY ASSETS

Notwithstanding anything contained in this Deed or implied to the contrary, the Chargor remains liable to observe and perform all conditions and obligations assumed by it in relation to the Security Assets. FDC is under no obligation to perform or fulfil any such condition or obligation or to make any payment in respect of any such condition or obligation.

9. ACCOUNTS

No monies at any time standing to the credit of any account (of any type and however designated) of the Chargor with FDC or in which the Chargor has an interest (and no rights and benefits relating thereto) shall be capable of being assigned to any third party.

10. REPRESENTATIONS

10.1 General

The Chargor makes the representations and warranties set out in this clause 10 to FDC.

10.2 No Security Interests

Its Security Assets are, or when acquired will be, beneficially owned by it free from any Security Interest other than any Permitted Security.

10.3 No avoidance

This Deed creates the Security Interests which it purports to create and is not liable to be avoided or otherwise set aside on the occurrence of any Insolvency Proceedings in relation to the Chargor or otherwise.

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10.4 Ownership of Security Assets

The Chargor is the sole legal and beneficial owner of all the Security Assets identified against its name in schedule 2 (*Details of Security Assets*).

10.5 No proceedings pending or threatened

No litigation, arbitration or administrative proceedings or investigations of, or before, any court, arbitral body or agency which would result in the Chargor incurring a liability which would have a material adverse effect on the business, operations, property, condition (financial or otherwise) or prospects of the Chargor have, to the best of its knowledge and belief (having made due and careful enquiry), been started or threatened against it or any of its Subsidiaries.

10.6 Securities

All Securities are fully paid.

10.7 Real Property

In relation to the Real Property, unless otherwise agreed by FDC in writing, part 1 of schedule 2 (*Details of Security Assets*) identifies all freehold and leasehold Real Property which is beneficially owned by the Chargors at the date of this Deed.

10.8 Time when representations made

- (a) All the representations and warranties in this clause 10 are made by the Chargor on the date of this Deed and are also deemed to be made by the Chargor on the first day of each calendar month during the Security Period.
- (b) Each representation or warranty deemed to be made after the date of this Deed shall be deemed to be made by reference to the facts and circumstances existing at the date the representation or warranty is deemed to be made.

11. UNDERTAKINGS BY THE CHARGOR

11.1 Restrictions on dealing

The Chargor shall not do or agree to do any of the following without the prior written consent of FDC:

- (a) create or permit to subsist any Security Interest on any Security Assets other than Permitted Security; or
- (b) sell, transfer, lease, lend or otherwise dispose of (whether by a single transaction or a number of transactions and whether related or not) the whole or any part of its interest in any Security Asset except:
 - (i) for the sale at full market value of stock in trade in the usual course of trading as conducted by the Chargor at the date of this Deed; or
 - (ii) as permitted by the Funding Agreement.

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11.2 Security Assets generally

The Chargor shall:

- (a) permit FDC (or its designated representatives), on reasonable written notice:
 - (i) access during normal office hours to any documents and records relating to the Security Assets; and
 - (ii) to inspect, take extracts from, and make copies of, the same,and to provide (at the expense of the Chargor), such clerical and other assistance which FDC may reasonably require to do this;
- (b) notify FDC of every notice, order, application, requirement or proposal given or made by any competent authority in relation to any Security Asset specified in schedule 2 (*Details of Security Assets*) immediately upon receipt and within 14 days of receipt of the same (if required by FDC) immediately provide it with a copy and either (A) comply with such notice, order, application, requirement or proposal or (B) make such objections to the same as FDC may require or approve **PROVIDED ALWAYS** that notices in respect of limb (a) of the definition of Securities Rights shall only be dealt with in accordance with this clause 11.2(b) following the exercise by FDC of its rights in accordance with clause 11.7(b);
- (c) duly and punctually pay all rates, rents, Taxes and other outgoings owed by it in respect of the Security Assets; and
- (d) in addition to any provisions of any Finance Document (including this Deed) relating to specific Security Assets:
 - (i) comply in all material respects with all obligations in relation to the Security Assets under any present or future law, regulation, order or instrument or under any bye-laws, regulations or requirements of any competent authority or other approvals, licences or consents;
 - (ii) comply with all material covenants and obligations affecting the Security Assets (or their manner of use);
 - (iii) not, except with the prior written consent of FDC, enter into any onerous or restrictive obligation affecting any Security Asset;
 - (iv) provide FDC with all information which it may reasonably request in relation to the Security Assets; and
 - (v) not do, cause or permit to be done anything which may in any way depreciate, jeopardise or otherwise prejudice the value or marketability of any Security Asset (or make any omission which has such an effect).

11.3 Securities

- (a) The Chargor shall, immediately upon a request by FDC by way of security for the Secured Obligations:

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- (i) deposit with FDC or as FDC may direct, all certificates and other documents of title or evidence of ownership to all or any of the Securities and their Securities Rights; and
 - (ii) execute and deliver to FDC pre-stamped instruments of transfer in respect of all or any of the Securities (executed in blank and left undated) and/or such other documents as FDC shall require to enable it (or its nominees) to be registered as the owner of or otherwise to acquire a legal title to all or any of the Securities and their Securities Rights (or to pass legal title to any purchaser).
- (b) The Chargor shall immediately upon a request by FDC:
 - (i) give notice to any custodian of any agreement with the Chargor in respect of all or any of the Securities and all present and future Securities Rights accruing to the Securities, in a form FDC may require; and
 - (ii) use its reasonable endeavours to ensure that the custodian acknowledges that notice in a form FDC may require.
- (c) Without prejudice to the rest of this clause 11.3, FDC may, at the expense of the Chargor, take whatever action is required for the dematerialisation or rematerialisation of all or any of the Securities and all present and future Securities Rights accruing to the Securities.
- (d) The Chargor shall promptly pay all calls or other payments which may become due in respect of all or any of the Securities and all present and future Securities Rights accruing to the Securities.

11.4 Dealings with and realisation of Other Receivables and operation of Security Accounts

- (a) The Chargor shall:
 - (i) without prejudice to clause 11.1 (*Restrictions on dealing*) (but in addition to the restrictions in that clause), not, without the prior written consent of FDC, sell, assign, charge, factor or discount or in any other manner deal with any Other Receivable; and
 - (ii) collect all Other Receivables promptly in the ordinary course of trading in accordance with the terms of the Funding Agreement or otherwise in accordance with the instructions of FDC from time to time and (if required by FDC) pay all monies which it receives in respect of the Other Receivables into a Security Account and hold all monies so received on trust for FDC.
- (b) The Chargor shall deal with the Other Receivables (both collected and uncollected) and the Security Accounts in accordance with any directions given in writing from time to time by FDC and, in default of and subject to such directions, in accordance with this Deed.
- (c) The Chargor shall deliver to FDC such information as to the amount and nature of its Other Receivables as FDC may from time to time reasonably require.

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11.5 Operation of Security Accounts

- (a) The Chargor shall not whilst an Enforcement Event is continuing, withdraw, attempt or be entitled to withdraw (or direct any transfer of) all or any part of the monies in any Security Account without the prior written consent of FDC and FDC shall be entitled (in its absolute discretion) to refuse to permit any such withdrawal or transfer.
- (b) If the right of the Chargor to withdraw the proceeds of any Other Receivables standing to the credit of a Security Account results in the charge over that Security Account being characterised as a floating charge, that will not affect the nature of any other fixed security created by the Chargor under this Deed on all its outstanding Other Receivables.

11.6 Relevant Contracts

- (a) The Chargor shall not, except with the prior written consent of FDC, amend or waive any term of any Relevant Contract, terminate any Relevant Contract or release any other party from its obligations under any Relevant Contract.
- (b) The Chargor shall duly perform its obligations under each Relevant Contract, shall notify FDC of any material default by it or any other party under any Relevant Contract and shall not take any action which will reduce or impede recoveries in respect of any Assigned Asset.
- (c) The Chargor shall provide to FDC, as soon as practicable upon receipt, copies of all notices and information received by it from any other party to any Relevant Contract.

11.7 Rights in respect of Securities and Securities Rights

- (a) Until an Enforcement Event occurs, the Chargor shall be entitled to:
 - (i) receive and retain all dividends, distributions and other monies paid on or derived from its Securities; and
 - (ii) exercise all voting and other rights and powers attaching to its Securities, provided that it must not do so in a manner which (A) has the effect of changing the terms of such Securities (or any class of them) or of any Securities Rights or (B) which is prejudicial to the interests of FDC.
- (b) At any time following the occurrence of an Enforcement Event which is continuing, FDC may complete the instrument(s) of transfer for all or any Securities on behalf of the Chargor in favour of itself or such other person as it may select.
- (c) At any time when any Securities are registered in the name of FDC or its nominee, FDC shall be under no duty to:
 - (i) ensure that any dividends, distributions or other monies payable in respect of such Securities are duly and promptly paid or received by it or its nominee; or
 - (ii) verify that the correct amounts are paid or received; or
 - (iii) take any action in connection with the taking up of any (or any offer of any) Securities Rights in respect of or in substitution for any such Securities.

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11.8 Intellectual Property

Unless FDC (acting reasonably) is of the opinion that the relevant Intellectual Property is of minor importance to the Chargor, the Chargor shall:

- (a) do all acts as are reasonably practicable to maintain, protect and safeguard (including, without limitation, registration with all relevant authorities) its Intellectual Property and not discontinue the use of any of its Intellectual Property; and
- (b) take all such reasonable steps, including the commencement of legal proceedings, as may be necessary to safeguard and maintain the validity, reputation, integrity, registration or subsistence of its Intellectual Property.

11.9 Insurance

The Chargor shall:

- (a) effect and maintain insurances at its own expense in respect of the Security Assets (save for manuals, logbooks or registration documents) with insurers previously approved by FDC in writing and such insurances shall:
 - (i) provide cover against (A) all risks which are normally insured against by other prudent companies owning or possessing similar assets and carrying on similar businesses and (B) all other risks which FDC may from time to time specify;
 - (ii) be in such amounts as would in the circumstances be prudent for such companies and shall include an entitlement to receive the full replacement value from time to time of any Security Assets destroyed or otherwise becoming a total loss; and
 - (iii) where requested by FDC, comply with any requirement that FDC be included as a joint-insured, co-insured or composite insured party and/or as sole first loss payee;
- (b) at all times comply with any provisions relating to Insurance in the Funding Agreement.

12. POWER TO REMEDY

12.1 Power to remedy

If at any time the Chargor does not comply with any of its obligations under this Deed, FDC (without prejudice to any other rights arising as a consequence of such non-compliance) shall be entitled (but not bound) to rectify that default. The Chargor irrevocably authorises FDC and its employees and agents by way of security to do all things (including entering the property of such Chargor) which are necessary or desirable to rectify that default.

12.2 Mortgagee in possession

The exercise of the powers of FDC under this clause 12 shall not render it liable as a mortgagee in possession.

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The Chargor shall pay to FDC on demand any monies which are expended by FDC in exercising its powers under this clause 12, together with interest at the Default Interest Rate from the date on which those monies were expended by FDC (both before and after judgment) and otherwise in accordance with clause 2.2 (*Default interest*).

13. WHEN SECURITY BECOMES ENFORCEABLE**13.1 When enforceable**

This Security shall become immediately enforceable upon the occurrence of an event of default or termination event (each howsoever defined or described) in the Funding Agreement and shall remain so for so long as such event is continuing.

13.2 Statutory powers

The power of sale and other powers conferred by section 101 of the Act (as amended or extended by this Deed) shall be immediately exercisable upon and at any time after the occurrence of any Enforcement Event and for so long as such Enforcement Event is continuing.

13.3 Enforcement

After this Security has become enforceable, FDC may in its absolute discretion enforce all or any part of the Security in such manner as it sees fit.

14. ENFORCEMENT OF SECURITY**14.1 General**

For the purposes of all powers implied by statute, the Secured Obligations are deemed to have become due and payable on the date of this Deed. Sections 93 and 103 of the Act shall not apply to the Security. The statutory powers of leasing conferred on FDC are extended so as to authorise FDC to lease, make agreements for leases, accept surrenders of leases and grant options as FDC may think fit and without the need to comply with section 99 or 100 of the Act.

14.2 Powers of FDC

- (a) At any time after the Security becomes enforceable, FDC may without further notice (unless required by law):
 - (i) appoint any person or persons to be a Receiver of all or any part of the Security Assets and/or of the income of the Security Assets; and/or
 - (ii) appoint or apply for the appointment of any person who is appropriately qualified as Administrator of the Chargor; and/or
 - (iii) exercise all or any of the powers conferred on mortgagees by the Act (as amended or extended by this Deed) and/or all or any of the powers which are conferred by this Deed on a Receiver, in each case without first appointing a Receiver or notwithstanding the appointment of any Receiver; and/or
 - (iv) exercise (in the name of the Chargor and without any further consent or authority of the Chargor) any voting rights and any powers or rights which may

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be exercised by the person(s) in whose name the Charged Investments are registered, or who is the holder of any of them.

- (b) FDC is not entitled to appoint a Receiver in respect of any Security Assets of the Chargor which are subject to a charge which (as created) was a floating charge solely by reason of a moratorium being obtained under the Insolvency Act 2000 (or anything done with a view to obtaining such a moratorium) in respect of the Chargor.

14.3 Redemption of prior mortgages

- (a) At any time after the Security has become enforceable, FDC may:
 - (i) redeem any prior Security Interest against any Security Asset; and/or
 - (ii) procure the transfer of that Security Interest to itself; and/or
 - (iii) settle and pass the accounts of the holder of any prior Security Interest and any accounts so settled and passed shall be conclusive and binding on the Chargor.
- (b) All principal, interest, costs, charges and expenses of and incidental to any such redemption and/or transfer shall be paid by the relevant Chargor to FDC on demand.

14.4 Privileges

- (a) Each Receiver and FDC is entitled to all the rights, powers, privileges and immunities conferred by the Act on mortgagees and receivers when such receivers have been duly appointed under the Act, except that section 103 of the Act does not apply.
- (b) To the extent that the Security Assets constitute "*financial collateral*" and this Deed and the obligations of the Chargor under this Deed constitute a "*security financial collateral arrangement*" (in each case for the purpose of and as defined in the Financial Collateral Arrangements (No. 2) Regulations 2003 (SI 2003 No. 3226)) each Receiver and FDC shall have the right after the Security has become enforceable to appropriate all or any part of that financial collateral in or towards the satisfaction of the Secured Obligations.
- (c) For the purpose of clause 14.4(b), the value of the financial collateral appropriated shall be such amount as the Receiver or FDC reasonably determines having taken into account advice obtained by it from an independent investment or accountancy firm of national standing selected by it.

14.5 No liability

- (a) Neither FDC nor any Receiver shall be liable (i) in respect of all or any part of the Security Assets or (ii) for any loss or damage which arises out of the exercise or the attempted or purported exercise of, or the failure to exercise any of, its or his respective powers (unless such loss or damage is caused by its or his gross negligence or wilful misconduct).
- (b) Without prejudice to the generality of clause 14.5(a), neither FDC nor any Receiver shall be liable, by reason of entering into possession of a Security Asset, to account as mortgagee in possession or for any loss on realisation or for any default or omission for which a mortgagee in possession might be liable.

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14.6 Protection of third parties

No person (including a purchaser) dealing with FDC or any Receiver or its or his agents will be concerned to enquire:

- (a) whether the Secured Obligations have become payable; or
- (b) whether any power which FDC or the Receiver is purporting to exercise has become exercisable; or
- (c) how any money paid to FDC or to the Receiver is to be applied.

15. RECEIVER

15.1 Removal and replacement

FDC may from time to time remove any Receiver appointed by it (subject, in the case of an administrative receivership, to section 45 of the Insolvency Act 1986) and, whenever it may deem appropriate, may appoint a new Receiver in the place of any Receiver whose appointment has terminated.

15.2 Multiple Receivers

If at any time there is more than one Receiver of all or any part of the Security Assets and/or the income of the Security Assets, each Receiver shall have power to act individually (unless otherwise stated in the appointment document).

15.3 Remuneration

Any Receiver shall be entitled to remuneration for his services at a rate to be fixed by agreement between him and FDC (or, failing such agreement, to be fixed by FDC).

15.4 Payment by Receiver

Only monies actually paid by a Receiver to FDC in relation to the Secured Obligations shall be capable of being applied by FDC in discharge of the Secured Obligations.

15.5 Agent of the Chargor

Any Receiver shall be the agent of the Chargor in respect of which it is appointed. The Chargor shall (subject to the Companies Act 2006 and the Insolvency Act 1986) be solely responsible for his acts and defaults and for the payment of his remuneration. FDC shall incur no liability (either to the Chargor or to any other person) by reason of the appointment of a Receiver or for any other reason.

16. POWERS OF RECEIVER

16.1 General powers

Any Receiver shall have:

- (a) all the powers which are conferred by the Act on mortgagees in possession and receivers appointed under the Act;

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- (b) (whether or not he is an administrative receiver) all the powers which are listed in schedule 1 to the Insolvency Act 1986; and
- (c) all powers which are conferred by any other law conferring power on receivers.

16.2 Additional powers

In addition to the powers referred to in clause 16.1 (*General powers*), a Receiver shall have the following powers:

- (a) to take possession of, collect and get in all or any part of the Security Assets and/or income in respect of which he was appointed;
- (b) to manage the Security Assets and the business of the Chargor as he thinks fit;
- (c) to redeem any security and to borrow or raise any money and secure the payment of any money in priority to the Secured Obligations for the purpose of the exercise of his powers and/or defraying any costs or liabilities incurred by him in such exercise;
- (d) to sell or concur in selling, leasing or otherwise disposing of all or any part of the Security Assets in respect of which he was appointed without the need to observe the restrictions imposed by section 103 of the Act. Fixtures may be severed and sold separately from the Real Property containing them, without the consent of the Chargor. The consideration for any such transaction may consist of cash, debentures or other obligations, shares, stock or other valuable consideration (and the amount of such consideration may be dependent upon profit or turnover or be determined by a third party). Any such consideration may be payable in a lump sum or by instalments spread over such period as he thinks fit;
- (e) to alter, improve, develop, complete, construct, modify, refurbish or repair any building or land and to complete or undertake or concur in the completion or undertaking (with or without modification) of any project in which the Chargor was concerned or interested before his appointment (being a project for the alteration, improvement, development, completion, construction, modification, refurbishment or repair of any building or land);
- (f) to carry out any sale, lease or other disposal of all or any part of the Security Assets by conveying, transferring, assigning or leasing the same in the name of the Chargor and, for that purpose, to enter into covenants and other contractual obligations in the name of, and so as to bind, the Chargor;
- (g) to take any such proceedings (in the name of the Chargor or otherwise) as he shall think fit in respect of the Security Assets and/or income in respect of which he was appointed (including proceedings for recovery of rent or other monies in arrears at the date of his appointment);
- (h) to enter into or make any such agreement, arrangement or compromise as he shall think fit;
- (i) to insure, and to renew any Insurances in respect of, the Security Assets as he shall think fit (or as FDC shall direct);

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- (j) to appoint and employ such managers, officers and workmen and engage such professional advisers as he shall think fit (including, without prejudice to the generality of the foregoing power, to employ his partners and firm);
- (k) to form one or more Subsidiaries of the Chargor, and to transfer to any such Subsidiary all or any part of the Security Assets;
- (l) to operate any rent review clause in respect of any Real Property in respect of which he was appointed (or any part thereof) and to apply for any new or extended lease; and
- (m) to:
 - (i) give valid receipts for all monies and to do all such other things as may seem to him to be incidental or conducive to any other power vested in him or necessary or desirable for the realisation of any Security Asset;
 - (ii) exercise in relation to each Security Asset all such powers and rights as he would be capable of exercising if he were the absolute beneficial owner of the Security Assets; and
 - (iii) use the name of the Chargor for any of the above purposes.

17. APPLICATION OF PROCEEDS

17.1 Application

Subject to the terms of any Intercreditor Agreement, all monies received by FDC or any Receiver after the Security has become enforceable shall be applied in the following order:

- (a) *first*, in satisfaction of, or provision for, all costs, charges and expenses incurred, and payments made by FDC or any Receiver and of all remuneration due to the Receiver in connection with this Deed or the Security Assets;
- (b) *secondly*, in or towards satisfaction of the remaining Secured Obligations; and
- (c) *thirdly*, in payment of any surplus to the Chargor or other person entitled to it.

17.2 Contingencies

If the Security is enforced at a time when no Secured Obligations are due (but at a time when amounts may become so due), FDC or a Receiver may pay the proceeds of any recoveries effected by it into a blocked suspense account.

18. SET-OFF

18.1 Set-off

- (a) FDC may (but shall not be obliged to) set off any obligation of the Chargor (contingent or otherwise under this Deed or which has been assigned to FDC) against any obligation (whether or not matured) owed by FDC to any Chargor or Obligor, regardless of the place of payment, booking branch or currency of either obligation.
- (b) If the obligations are in different currencies, FDC may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

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- (c) If either obligation is unliquidated or unascertained, FDC may set off in an amount estimated by it in good faith to be the amount of that obligation.

18.2 Time deposits

Without prejudice to clause 18.1(*Set-off*), if any time deposit matures on any account which the Chargor has with FDC at a time when:

- (a) this Security has become enforceable; and
- (b) no Secured Obligation is due and payable,

such time deposit shall automatically be renewed for such further maturity as FDC in its absolute discretion considers appropriate unless FDC otherwise agrees in writing.

19. DELEGATION

Each of FDC and any Receiver may delegate, by power of attorney (or in any other manner) to any person, any right, power or discretion exercisable by it under this Deed upon any terms (including power to sub-delegate) which it may think fit. Neither FDC nor any Receiver shall be in any way liable or responsible to the Chargor for any loss or liability arising from any act, default, omission or misconduct on the part of any such delegate or sub-delegate.

20. FURTHER ASSURANCES

20.1 Further action

The Chargor shall, at its own expense, promptly take whatever action FDC or a Receiver may require for:

- (a) creating, perfecting or protecting the Security Interests intended to be created by this Deed; and
- (b) facilitating the realisation of any Security Asset or the exercise of any right, power or discretion exercisable by FDC or any Receiver or any of its or his delegates or sub-delegates in respect of any Security Asset,

including the execution of any transfer, conveyance, assignment or assurance of any property whether to FDC or to its nominees, the giving of any notice, order or direction and the making of any registration which in any such case FDC may think expedient.

20.2 Specific security

Without prejudice to the generality of clause 20.1 (*Further action*), the Chargor shall forthwith at the request of FDC execute a legal mortgage, charge, assignment, assignation or other security over any Security Asset which is subject to or intended to be subject to any fixed security created by this Deed in favour of FDC (including any arising or intended to arise pursuant to clause 6 (*Conversion of floating charge*)) in such form as FDC may require.

21. POWER OF ATTORNEY

The Chargor, by way of security, irrevocably and severally appoints FDC, each Receiver and any of its or his delegates or sub-delegates to be its attorney to take any action which the Chargor is obliged to take under this Deed, including under clause 20 (*Further assurances*).

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The Chargor ratifies and confirms whatever any attorney does or purports to do pursuant to its appointment under this clause.

22. PAYMENTS

22.1 Payments

Subject to clause 22.2 (*Gross-up*), all payments to be made by the Chargor in respect of this Deed shall be made:

- (a) in immediately available funds to the credit of such account as FDC may designate; and
- (b) without (and free and clear of, and without any deduction for or on account of):
 - (i) any set-off or counterclaim; or
 - (ii) except to the extent compelled by law, any deduction or withholding for or on account of Tax.

22.2 Gross-up

If the Chargor is compelled by law to make any deduction or withholding from any sum payable under this Deed to FDC, the sum so payable by the Chargor shall be increased so as to result in the receipt by FDC of a net amount equal to the full amount expressed to be payable under this Deed.

23. STAMP DUTY

The Chargor shall:

- (a) pay all present and future stamp, registration and similar Taxes or charges which may be payable, or determined to be payable, in connection with the execution, delivery, performance or enforcement of this Deed or any judgment given in connection therewith; and
- (b) indemnify FDC and any Receiver on demand against any and all costs, losses or liabilities (including, without limitation, penalties) with respect to, or resulting from, its delay or omission to pay any such stamp, registration and similar Taxes or charges.

24. COSTS AND EXPENSES

24.1 Transaction and amendment expenses

The Chargor shall promptly on demand pay to FDC the amount of all reasonable costs, charges and expenses (including, without limitation, reasonable legal fees, valuation, accountancy and consultancy fees (and any VAT or similar Tax thereon)) incurred by FDC in connection with:

- (a) the negotiation, preparation, printing, execution, registration, perfection and completion of this Deed, the Security or any document referred to in this Deed; or
- (b) any actual or proposed amendment or extension of, or any waiver or consent under, this Deed.

EXECUTION VERSION**24.2 Enforcement and preservation costs**

The Chargor shall promptly on demand pay to FDC and any Receiver the amount of all costs, charges and expenses (including (without limitation) legal fees (and any VAT or similar Tax thereon)) incurred by the Chargor in connection with the enforcement, exercise or preservation (or the attempted enforcement, exercise or preservation) of the Chargor's rights under this Deed or any document referred to in this Deed or the Security (including all remuneration of the Receiver).

25. CURRENCIES**25.1 Conversion**

All monies received or held by FDC or any Receiver under this Deed may be converted from their existing currency into such other currency as FDC or the Receiver considers necessary or desirable to cover the obligations and liabilities comprised in the Secured Obligations in that other currency at the Spot Rate of Exchange. The Chargor shall indemnify FDC against all costs, charges and expenses incurred in relation to such conversion. Neither FDC nor any Receiver shall have any liability to the Chargor in respect of any loss resulting from any fluctuation in exchange rates after any such conversion.

25.2 Currency indemnity

No payment to FDC (whether under any judgment or court order or in the liquidation, administration or dissolution of the Chargor or otherwise) shall discharge the obligation or liability of the Chargor in respect of which it was made, unless and until FDC shall have received payment in full in the currency in which the obligation or liability was incurred and, to the extent that the amount of any such payment shall on actual conversion into such currency fall short of such obligation or liability expressed in that currency, FDC shall have a further separate cause of action against the Chargor and shall be entitled to enforce the Security to recover the amount of the shortfall.

26. INDEMNITY

The Chargor shall indemnify FDC, any Receiver and any attorney, agent or other person appointed by FDC under this Deed and FDC's officers and employees (each an "**Indemnified Party**") on demand against any cost, loss, liability or expense (however arising) incurred by any Indemnified Party as a result of or in connection with:

- (a) anything done or omitted in the exercise or purported exercise of the powers contained in this Deed;
- (b) the Security Assets or the use or occupation of them by any person (including any Environmental Claim); or
- (c) any breach by the Chargor of any of its obligations under this Deed.

27. MISCELLANEOUS**27.1 Appropriation and suspense account**

- (a) FDC may apply all payments received in respect of the Secured Obligations in reduction of any part of the Secured Obligations as it thinks fit. Any such appropriation shall override any appropriation by the Chargor.

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- (b) All monies received, recovered or realised by FDC under, or in connection with, this Deed may at the discretion of FDC be credited to a separate interest bearing suspense account for so long as FDC determines (with interest accruing thereon at such rate, if any, as FDC may determine for the account of the Chargor) without FDC having any obligation to apply such monies and interest or any part thereof in or towards the discharge of any of the Secured Obligations.

27.2 New accounts

If FDC receives, or is deemed to be affected by, notice, whether actual or constructive, of any subsequent Security Interest affecting any Security Asset and/or the proceeds of sale of any Security Asset, it may open a new account or accounts for the Chargor. If it does not open a new account, it shall nevertheless be treated as if it had done so at the time when it received or was deemed to have received such notice. As from that time all payments made to FDC will be credited or be treated as having been credited to the new account and will not operate to reduce any amount of the Secured Obligations.

27.3 Changes to the Parties

- (a) The Chargor may not assign any of its rights under this Deed.
- (b) FDC may assign or transfer all or any part of its rights under this Deed. The Chargor shall, immediately upon being requested to do so by FDC, enter into such documents as may be necessary or desirable to effect such assignment or transfer.

27.4 Memorandum and articles

The Chargor certifies that the Security does not contravene any of the provisions of its memorandum, articles of association or other constitutional documents.

27.5 The Land Registry

- (a) The Chargor shall apply to the Chief Land Registrar (and consents to such an application being made by or on behalf of FDC) for a restriction in the following terms to be entered on the Register of Title relating to any property registered at the Land Registry (or any unregistered land subject to first registration) and against which this Deed may be noted:

"No disposition of the registered estate 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 dated [] 200[] in favour of FDC Debt LP, acting by its general partner FDC General Partner Limited referred to in the charges register or, if appropriate, signed on such proprietor's behalf by its secretary or conveyancer."

- (b) The Chargor:
 - (i) authorises FDC to make any application which FDC deems appropriate for the designation of this Deed or any Finance Document as an exempt information document under rule 136 of the Land Registration Rules 2003;
 - (ii) shall use its best endeavours to assist with any such application made by or on behalf of FDC; and

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- (iii) shall notify FDC in writing as soon as it receives notice of any person's application under rule 137 of the Land Registration Rules 2003 for the disclosure of this Deed or any Finance Document following its designation as an exempt information document.
- (c) The Chargor shall not make any application under rule 138 of the Land Registration Rules 2003 for the removal of the designation of any such document as an exempt information document.
- (d) The Chargor shall promptly make all applications to and filings with the Land Registry which are necessary or desirable under the Land Registration Rules to protect the Security.
- (e) The Chargor shall not, without the prior written consent of FDC, permit any person to be or become registered under the Land Registration Act 2002 as the proprietor of a Security Asset who is not so registered under the Land Registration Act 2002 at the date of this Deed or, in the case of Real Property acquired after the date of this Deed, at the date of such acquisition.

27.6 Amendments and waivers

Any provision of this Deed may be amended only if FDC and the Chargor so agree in writing and any breach of this Deed may be waived before or after it occurs only if FDC so agrees in writing. A waiver given or consent granted by FDC under this Deed will be effective only if given in writing and then only in the instance and for the purpose for which it is given.

27.7 Calculations and certificates

A certificate of FDC specifying the amount of any Secured Obligation due from the Obligors (including details of any relevant calculation thereof) shall be prima facie evidence of such amount against the Chargor in the absence of manifest error.

27.8 Waiver, rights and remedies

No failure to exercise, nor any delay in exercising, on the part of FDC, any right or remedy under this Deed shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided are cumulative and not exclusive of any rights or remedies provided by law.

27.9 Tacking

This Deed secures advances already made and further advances to be made.

28. PROTECTIVE CLAUSES

The obligations of the Chargor under, and the security intended to be created by, this Deed shall not be impaired by any forbearance, neglect, indulgence, extension or time, release, surrender or loss of securities, dealing, amendment or arrangement by FDC which would otherwise have reduced, released or prejudiced this Security or any surety liability of the Chargor (whether or not known to it).

29. THIRD PARTY CLAUSES

29.1 Waiver of defences

The obligations of the Chargor under this Deed shall not be discharged, impaired or otherwise affected by an act, omission, matter or thing which, but for this clause 29.1, would reduce, release or prejudice any of its obligations, or the Security Interests intended to be granted, under this Deed (without limitation and whether or not known to it or FDC) including:

- (a) any time, waiver or consent granted to, or composition with, any Obligor or other person;
- (b) the release of any Obligor, any other surety or any other person under the terms of any composition or arrangement with any creditor of any Obligor or such other surety or other person;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or Security Interest over assets of, any Obligor, any other surety or any other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any Security Interest;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members, name or status or constitution of the Chargor, any Obligor or any other person;
- (e) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of a Finance Document or any other document or Security Interest including, without limitation, any change in the purpose of, any extension of or increase in any facility or the addition of any new facility under any Finance Document or other document or Security Interest;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or Security Interest; or
- (g) any insolvency, administration or similar proceedings.

29.2 Chargor intent

Without prejudice to the generality of clause 29.1 (*Waiver of defences*), the Chargor expressly confirms that it intends that this Security shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any Finance Document and/or any facility or amount made available under any Finance Document or otherwise from time to time; and any fees, costs and/or expenses associated with any of the foregoing.

29.3 Immediate recourse

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

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Until the Secured Obligations have been irrevocably paid in full, FDC (or any trustee or agent on its behalf) may refrain from applying or enforcing any other monies, Security Interest or rights held or received by FDC (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and the Chargor shall not be entitled to the benefit of the same.

29.5 Deferral of Chargor's rights

- (a) Until the end of the Security Period and unless FDC otherwise directs, the Chargor shall not exercise any rights which it may have by reason of performance by it of its obligations under this Deed:
 - (i) to be indemnified by an Obligor;
 - (ii) to claim any contribution from any guarantor of any Obligor's obligations under a Finance Document or any other person giving any Security Interest for the Secured Obligations;
 - (iii) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of FDC under a Finance Document or of any other guarantee or Security Interest taken pursuant to, or in connection with, a Finance Document or otherwise by FDC;
 - (iv) to bring legal or other proceedings for an order requiring any Obligor to make any payment, or perform any obligation, in respect of which the Chargor has given any Security under this Deed;
 - (v) to exercise any right of set-off against any Obligor; and/or
 - (vi) to claim or prove as a creditor of any Obligor in competition with FDC.
- (b) If the Chargor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to FDC by any Obligors under or in connection with a Finance Document or otherwise to be repaid in full on trust for FDC and shall promptly pay or transfer the same to FDC or as FDC may direct for application in accordance with this Deed.

30. NOTICES**30.1 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 email or letter.

30.2 Addresses

The address and email (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with this Deed is:

- (a) in the case of the Chargor, identified with its name on the execution page below or the

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Chargor's registered office; and

- (b) in the case of FDC, identified with its name on the execution page below or FDC's registered office,

or any substitute address, email or department or officer as one Party may notify to the other Party by not less than seven days' notice.

30.3 Delivery

- (a) Subject to clause 30.3(b) below, any communication or document made or delivered by one person to another under or in connection with this Deed will only be effective:

- (i) if by way of email, when sent in legible form; or
 - (ii) if by way of letter, when it has been left at the relevant address or four days following the day on which it was despatched by first-class mail postage prepaid,

and, if a particular department or officer of any Party is specified on the execution page below, if addressed to that department or officer.

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

30.4 Internet communications

The Chargor acknowledges that internet communications are not secure and may be intercepted by third parties, and, as such, FDC does not accept any responsibility, legal or otherwise, for any interception of internet communications or interference by third parties.

31. PARTIAL INVALIDITY

All the provisions of this Deed are severable and distinct from one another and if at any time any provision is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of any 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.

32. RELEASE

Upon the expiry of the Security Period (but not otherwise) FDC shall, at the request and cost of the Chargor, take whatever action is necessary to release or re-assign (without recourse or warranty) the Security Assets from the Security.

33. COUNTERPARTS

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

EXECUTION VERSION

34. GOVERNING LAW

This Deed is governed by English law.

IN WITNESS of which this Deed has been duly executed by the Chargor as a deed and duly executed by FDC and has been delivered on the first date specified on page 1 of this Deed.

EXECUTION VERSION

SCHEDULE 1
OBLIGORS

Name	Registered number	Registered office
Carnaby Group Holdings Ltd	13677206	Lancaster Road, Carnaby Industrial Estate, Carnaby, Bridlington, Yorkshire, YO15 3QY
Carnaby Caravans Group Limited	09631298	Lancaster Road, Carnaby Industrial Estate, Carnaby, Bridlington, Yorkshire, YO15 3QY
Carnaby Caravans Limited	01239687	Lancaster Road, Carnaby Industrial Estate, Carnaby, Bridlington, Yorkshire, YO15 3QY

SCHEDULE 2
Details of Security Assets
Part 1 - Specified Real Property

Registered land			
Address	Administrative Area		Title Number
Unregistered land			
Address	Document describing the Real Property		
	Date	Document	Parties

Part 2 - Specified P&M

P&M

Part 3 - Intellectual Property

Intellectual Property

Part 4 - Insurances

Insurances			
Insurer	Insured risks	Policy number	Type of Insurance

Part 5 - Security Accounts

Security Accounts			
Account holder	Account number	Account bank	Account bank branch address and sort code

Part 6 - Relevant Contracts

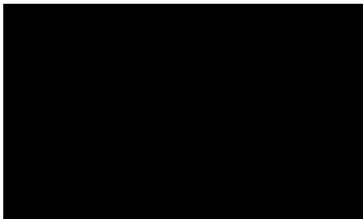
Relevant Contracts		
Date of Relevant Contract	Parties	Details of Relevant Contract
On or around the date of this Deed	(1) Carnaby Group Holdings Ltd and (2) Nigel Smailes and Tim Meadley	Share Purchase Agreement relating to the acquisition of the entire issued share capital of Carnaby Caravans Group Limited

EXECUTION PAGE

FDC

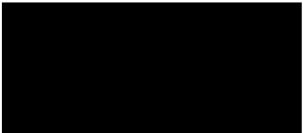
Executed as a deed, but not delivered until the first)
date specified on page 1, by **FDC DEBT LP**)
acting by its general partner, **FDC GENERAL**)
PARTNER LIMITED acting by its duly)
authorised attorneys: _____ Attorney

Attorney



THE CHARGOR

Executed as a deed, but not delivered until the first)
date specified on page 1, by **CARNABY GROUP**)
HOLDINGS LTD acting by a director in the)
presence of: _____) Director



Witness Signature _____

Witness Name _____ Nathan Hancock

Address _____

Occupation _____ CAD Engineer