



Registration of a Charge

LLP name: **A SHADE GREENER LOAN LLP**

LLP number: **OC385713**

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Details of Charge

Date of creation: **05/02/2015**

Charge code: **OC38 5713 0008**

Persons entitled: **U.S. BANK TRUSTEES LIMITED AS SECURITY AGENT**

Brief description:

Contains fixed charge(s).

Contains negative pledge.

Authentication of Form

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

Authentication of Instrument

Certification statement: **I CERTIFY THAT SAVE FOR MATERIAL REDACTED PURSUANT TO S.859G OF THE COMPANIES ACT 2006 AS APPLIED BY THE LIMITED LIABILITY PARTNERSHIPS (APPLICATION OF COMPANIES ACT 2006) REGULATIONS 2009 THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by:

PINSENT MASONS LLP



CERTIFICATE OF THE REGISTRATION OF A CHARGE

LLP number: OC385713

Charge code: OC38 5713 0008

The Registrar of Companies for England and Wales hereby certifies that a charge dated 5th February 2015 and created by A SHADE GREENER LOAN LLP was delivered pursuant to Part 25 of the Companies Act 2006 as applied by The Limited Liability Partnerships (Application of Companies Act 2006) (Amendment) Regulations 2013 on 10th February 2015 .

Given at Companies House, Cardiff on 11th February 2015

The above information was communicated by electronic means and authenticated
by the Registrar of Companies under the Limited Liability Partnership
(Application of the Companies Act 2006) Regulations 2009 SI 2009/1804



Companies House



**THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES**

DATED 05 FEBRUARY 2015

(1) A SHADE GREENER LOAN LLP and A SHADE GREENER MEMBER LLP
(as Chargors)

(2) A SHADE GREENER (F16) LLP
(as F16 LLP)

(3) U.S. BANK TRUSTEES LIMITED
(as Security Agent)

MEMBERS ASSIGNMENT AGREEMENT


Pinsent Masons

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THIS DEED is made on 05 FEBRUARY 2015

BETWEEN:-

- (1) A SHADE GREENER LOAN LLP and A SHADE GREENER MEMBER LLP (the "Chargors");
- (2) A SHADE GREENER (F16) LLP (the "F16 LLP");
- (3) U.S. BANK TRUSTEES LIMITED (the "Security Agent") as agent and trustee for itself and each of the Secured Parties (as defined below).

THIS DEED WITNESSES as follows:-

1. INTERPRETATION

1.1 Definitions

In this Deed:-

"Assigned Property"	means all the assets and undertaking of the Chargors which from time to time are, or purport to be, the subject of the security created in favour of the Security Agent by or pursuant to this Deed
"Deed of Adherence"	has the meaning given to it in the Specific Contract
"Default Rate"	means the rate specified in Clause 2.2
"Designated Member"	has the meaning given to it in the Specific Contract
"Event of Default"	has the meaning given to that term in the Facility Agreement
"F16 LLP Agreement"	means the limited liability partnership agreement dated on or around the date of this Deed and entered into between the Chargors in respect of F16 LLP
"Facility Agreement"	means the revolving credit facility agreement originally dated 9 August 2013 between, among others, A Shade Greener Loan LLP as Borrower and the Security Agent
"LPA"	means the Law of Property Act 1925
"Monetary Claims"	means all book and other debts and monetary claims now or in the future owing to the Chargors under the Specific Contract (whether alone or jointly with any other person), whenever payable and whether liquidated or unliquidated, certain or contingent together with all cheques, bills of exchange, negotiable instruments, credits and securities at any time given in relation to, or to secure payment of, any such debt
"Member"	has the meaning given to it in the Specific Contract
"New Member"	means the Security Agent and/or any a person nominated by the Security Agent to become a Member

"Obligor"	pursuant to Clause 8.3 (<i>Assumption</i>) has the meaning given to it in the Facility Agreement
"Party"	means a party to this Deed
"Receiver"	means any receiver, receiver and manager or administrative receiver of the whole or any part of the Assigned Property
"Regulations"	means the Financial Collateral Arrangements (No2) Regulations 2003 (S.I.2003/2336) or equivalent legislation in any applicable jurisdiction bringing into effect Directive 2002/47/EC on financial collateral arrangements, and " Regulation " means any of them
"Related Rights"	means in relation to any Assigned Property: (a) the proceeds of sale of any part of that Assigned Property; (b) all rights under any agreement for sale in respect of that Assigned Property; (c) all rights, benefits, claims, contracts, warranties, remedies, security, indemnities or covenants for title in respect of that Assigned Property; and (d) any moneys and proceeds paid or payable in respect of that Assigned Property
"Resignation Date"	means the date specified in a Resignation Notice as the date on which the relevant Chargor or Chargors shall resign
"Resignation Notice"	means written notice given by the Security Agent to the Chargors and F-16 LLP pursuant to Clause 8.4 (<i>Resignation</i>) notifying them that the Security created by this Deed has become enforceable and it requires one or more of the Chargors to resign as Members and specifying the Chargors that it requires to resign and the date of such resignation;
"Secured Obligations"	has the meaning given to it in the Facility Agreement
"Secured Party"	has the meaning given to it in the Facility Agreement
"Security"	means a mortgage, charge, pledge, lien or any other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect
"Security Agent"	includes the Security Agent's successors in title and any successor appointed in accordance with the Security Trust and Intercreditor Deed
"Security Trust and Intercreditor Deed"	means the security trust and intercreditor deed dated on or around the date of this Deed and made between, among others, the Security Agent, A Shade Greener

Loan LLP and A Shade Greener Member LLP and A Shade Greener (F16) LLP

- "Specific Contract" means the F16 LLP Agreement
- "Security Documents" has the meaning given to it in the Facility Agreement
- "Transaction Security" means the Security created or expressed to be created in favour of the Security Agent pursuant to the Security Documents

1.2 **Incorporation of terms**

Unless the context otherwise requires or unless defined in this Deed, all words and expressions defined or whose interpretation is provided for in the Security Trust and Intercreditor Deed shall have the same meanings in this Deed.

1.3 **Interpretation**

The principles of interpretation set out in clause 1.2 of the Security Trust and Intercreditor Deed shall apply to this Deed insofar as they are relevant to it and in this Deed, unless the context otherwise requires, a reference to a "Finance Document" or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, novated, supplemented, restated or replaced (however fundamentally) and includes any increase in, extension of, or change to, any facility made available under that Finance Document or other agreement or instrument and includes any increase in, extension of or change to any facility made available under that Finance Document or other agreement or instrument.

1.4 **Acknowledgement**

The Chargors acknowledge that the Security Agent enters into this Deed for itself and as trustee for the Secured Parties who shall be entitled to the full benefit of this Deed.

1.5 **Effect as a deed**

This Deed shall take effect as a deed even if it is signed under hand on behalf of the Security Agent.

1.6 **Third party rights**

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

2. **COVENANT TO PAY**

2.1 **Secured Obligations**

The Chargors covenant that they will on demand of the Security Agent pay and discharge any or all of the Secured Obligations when due.

2.2 **Interest**

The Chargors covenant to pay interest to the Security Agent upon any sum demanded in accordance with Clause 2.1 (*Secured Obligations*) until payment (both before and after any judgment) at two per cent. above the rate applicable to that sum immediately before demand (or, if there was no such applicable rate, at two per cent. above the Security Agent's base rate).

2.3 **Limited recourse**

2.3.1 The liability of the A Shade Greener Member LLP to the Security Agent under Clause 2.1 (*Secured Obligations*) shall be:

(a) limited in aggregate to an amount equal to the aggregate (A) recovered by the Security Agent as a result of the enforcement of the obligations of A Shade Greener Member LLP under this Deed and (B) that received by the Security Agent from any party that becomes a New Member pursuant to Clause 8.3 (*Assumption*); and

(b) satisfied only from the proceeds of sale or other disposal or realisation of the Specific Contract pursuant to this Deed or consideration received from any New Member.

2.3.2 Nothing in this Clause 2.3 (*Limited recourse*) shall limit the recourse of the Security Agent to the Chargers with respect to any breach by the Chargers of any of their other obligations under this Deed and/or any representation given by the Chargers under this Deed.

3. ASSIGNMENTS

3.1 Assignments

As continuing security for payment and discharge of the Secured Obligations, each Chargor with full title guarantee assigns absolutely in favour of the Security Agent, but subject to the right of the Chargor to redeem such assignment upon the full payment or discharge of the Secured Obligations, its right, title and interest from time to time in the Specific Contract together with all Related Rights in respect of such Assigned Property, provided that the Chargor is entitled until the occurrence of an Event of Default which is continuing to exercise all rights assigned under this Clause 3.1 (*Assignments*) (subject to the terms of the Finance Documents).

3.2 Trust

If or to the extent that for any reason the assignment or charging of any Assigned Property is prohibited, the relevant Chargor shall hold it on trust for the Security Agent.

4. PERFECTION OF SECURITY

4.1 Notice of Assignment

4.1.1 Each Chargor hereby notifies the terms of this Deed to each other Chargor and confirms that, until the Security Agent notifies such other Chargor that an Event of Default has occurred and is continuing it shall remain liable to perform all of its obligations and entitled to exercise all its rights, powers and discretions under the F16 LLP Agreement and Related Rights.

4.1.2 Each Chargor hereby notifies the terms of this Deed to the F16 LLP and confirms that, until the Security Agent notifies F16 LLP that an Event of Default has occurred and is continuing it shall remain liable to perform all of its obligations and entitled to exercise all its rights, powers and discretions under the F16 LLP Agreement and the Related Rights.

4.1.3 Each Chargor (the "**Relevant Chargor**") agrees and notifies each other Chargor and F16 LLP that following the Security Agent's notification to such other Chargor and/or F16 LLP (the "**Relevant Party**") that an Event of Default has occurred and is continuing:

(a) all payments by the Relevant Party to the Relevant Chargor under or arising from the Specific Contract should be made to the

Security Agent or to its order as it may specify in writing from time to time;

- (b) all remedies provided for in the Specific Contract or available at law or in equity are exercisable by the Security Agent;
- (c) all rights to compel performance of the Specific Contract are exercisable by the Security Agent although the Relevant Chargor shall remain liable to perform all the obligations assumed by it under the Specific Contract;
- (d) all rights, interests and benefits whatsoever accruing to or for the benefit of the Relevant Chargor arising from the Specific Contract belong to the Security Agent and no changes may be made to the terms of the Specific Contract nor may the Specific Contract be terminated without the Security Agent's consent; and
- (e) the Relevant Party is authorised and instructed, without requiring further approval from the Relevant Chargor, to provide the Security Agent with such information relating to the Specific Contract as it may from time to time request and to send it copies of all notices issued by the Relevant Party under the Specific Contract to the Security Agent as well as to the Relevant Chargor.

4.1.4 Each Chargor and F16 LLP acknowledges and agrees to the notice from each other Chargor on the terms set out in Clauses 4.1.1 to 4.1.3.

4.1.5 Each Chargor agrees that each other Chargor and F16 LLP shall be entitled to rely and act on any notice from the Security Agent without enquiry.

4.1.6 Each Chargor and F16 LLP confirm that they have not received notice of any other assignment or security, charge or encumbrance in respect of the Specific Contract and that all claims or rights of set-off, counterclaim, deduction, lien or retention in respect of the Specific Contract are excluded.

5. REPRESENTATIONS AND WARRANTIES AND UNDERTAKINGS

Each Chargor represents and warrants to the Security Agent on each day the Repeating Representations (as defined in the Facility Agreement) are deemed to be repeated that:

5.1 it is a limited liability partnership, duly incorporated and validly existing under the law of its jurisdiction of incorporation;

5.2 it has the power to own its assets and carry on its business as it is being conducted;

5.3 subject to the Legal Reservations (as defined in the Facility Agreement):

5.3.1 the obligations expressed to be assumed by it in this Deed are legal, valid, binding and enforceable obligations; and

5.3.2 (without limiting the generality of paragraph 5.3.1 above), this Deed creates the security interests which this Deed purports to create and those security interests are valid and effective;

5.4 the entry into and performance of, and the transactions contemplated by, this Deed and the granting of the Security contained in this Deed do not and will not conflict with:

5.4.1 any law or regulation applicable to it;

- 5.4.2 the constitutional documents of it; or
- 5.4.3 any agreement or instrument binding upon it or any of its assets or constitute a material default or termination event (however described) under any such agreement or instrument;
- 5.5 it has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, this Deed and the transactions contemplated by this Deed.
- 5.6 no limit on its powers will be exceeded as a result of the granting of security or indemnities contemplated by this Deed.
- 5.7 all Authorisations (as defined in the Facility Agreement) required:
- 5.7.1 to enable it lawfully to enter into, exercise its rights and comply with its obligations in this Deed; and
- 5.7.2 to make this Deed admissible in evidence in the jurisdiction of its incorporation,
- have been obtained or effected and are in full force and effect.
- 5.8 no Security exists over all or any of the Assigned Property other than as created by this Deed;
- 5.9 it and the other Chargor are together the sole legal and beneficial owner of F16 LLP; and
- 5.10 it has not received or given any notice (written or verbal) of termination, rescission, suspension, breach or alleged breach in respect of the Specific Contract.

6. RESTRICTIONS AND FURTHER ASSURANCE

6.1 Security

Each Chargor undertakes that it shall not create or permit to subsist any Security over any Assigned Property.

6.2 Disposal

Each Chargor undertakes that it shall not enter into or agree to enter into a single transaction or a series of transactions (whether related or not and whether voluntary or involuntary) to sell, lease, license, sub-license, transfer or otherwise dispose of any Assigned Property.

6.3 Change of LLP ownership

Each Chargor undertakes that, together with the other Chargor, it will at all times be the sole legal and beneficial owner of F16 LLP.

6.4 Specific Contract

6.4.1 Each Chargor undertakes that unless otherwise agreed in writing by the Security Agent it shall not:

- (a) waive, or fail or delay to enforce, any of its material rights under the Specific Contract or rescind or terminate the Specific Contract or agree, conditionally or unconditionally, to do so; or

- (b) materially amend, supplement or novate the terms of the Specific Contract or agree, conditionally or unconditionally, to do so.

6.4.2 Each Chargor undertakes that unless otherwise agreed in writing by the Security Agent it shall:

- (a) take such steps as may be commercially reasonable to procure the due and punctual performance by the other party or parties to the Specific Contract of its obligations thereunder;
- (b) duly and punctually perform its material obligations under the Specific Contract;
- (c) notify the Security Agent promptly of the occurrence of any material event of default under or any material breach by it or any other party of the Specific Contract and of any event or circumstances which alone or in conjunction with any other event or circumstances or with the passage of time would or is likely to constitute a material event of default or material breach and promptly forward to the Security Agent a copy of any notice or demand served on it in respect of any of the foregoing; and
- (d) forward promptly to the Security Agent a copy (or if verbal notify it in writing of the terms) of any notice of termination, rescission, suspension, material breach or alleged breach received or given by it in respect of the Specific Contract

6.5 Further assurance

The Chargor shall promptly do whatever the Security Agent requires to:-

- 6.5.1 perfect or protect the Security created or expressed to be created by this Deed, or its priority; or
- 6.5.2 facilitate the realisation of the Assigned Property or the exercise of any rights vested in the Security Agent or any Receiver,

including executing any transfer, conveyance, charge, assignment or assurance of the Assigned Property (whether to the Security Agent or its nominees or otherwise), making any registration and giving any notice, order or direction.

7. MONETARY CLAIMS

The Chargor shall not at any time during the subsistence of this Deed, without the prior written consent of the Security Agent sell, factor, discount, transfer, assign, lend or otherwise dispose of any of the Monetary Claims or enter into any agreement to do any of the foregoing.

8. DEMAND AND ENFORCEMENT

8.1 Enforcement

The Security created by this Deed shall become enforceable upon:-

- 8.1.1 the occurrence of an Event of Default which is continuing; or
- 8.1.2 any request being made by the Chargor to the Security Agent for the appointment of a Receiver or an administrator, or for the Security Agent to exercise any other power or right available to it.

8.2

Powers on enforcement

At any time after the Security created by this Deed has become enforceable, the Security Agent may (without prejudice to any other rights and remedies and without notice to the Chargor) do all or any of the following:-

- 8.2.1 exercise the power of sale under section 101 of the LPA together with all other powers and rights conferred on mortgagees by the LPA, as varied and extended by this Deed, without the restrictions contained in sections 103 or 109(1) of the LPA;
- 8.2.2 to the extent that any Assigned Property constitutes Financial Collateral, as defined in the Regulations, appropriate it and transfer the title in and to it to the Security Agent insofar as not already transferred, subject to paragraphs (1) and (2) of Regulation 18; and
- 8.2.3 subject to Clause 9.1 (*Method of appointment or removal*), appoint one or more persons to be a Receiver or Receivers of all or any of the Assigned Property, and
- 8.2.4 appoint an administrator of the Chargor.

8.3

Assumption

- 8.3.1 Without prejudice to the terms of Clauses 8.2 (*Powers on enforcement*), 8.4 (*Resignation*) and 9.3 (*Powers*), at any time after the Security created by this Deed has become enforceable, the Security Agent shall be entitled to require the Chargors to enter into a Deed of Adherence.
- 8.3.2 Each Chargor shall, within 3 Business Days of receiving a Deed of Adherence from the Security Agent and notice from the Security Agent that it requires the Chargor to do so, execute that Deed of Adherence (duly executed by a New Member or New Members) so that:
 - (a) such New Members shall assume all rights of a Member and, at the option of the New Member, a Designated Member under and pursuant to the Specific Contract; and
 - (b) such New Members shall observe, be bound by and perform all the obligations under the Specific Contract to the intent and effect that the New Members shall be deemed with effect from the date of the Deed of Adherence, to be party to the Specific Contract.

8.4

Resignation

- 8.4.1 Without prejudice to the terms of Clauses 8.2 (*Powers on enforcement*), 8.3 (*Assumption*) and 9.3 (*Powers*) and notwithstanding clause 16 (*Death, and resignation of members*) of the Specific Contract, but subject to Clause 8.4.2, at any time after the Security created by this Deed has become enforceable, the Security Agent shall be entitled, to notify any Chargor (a "**Resigning Chargor**") that it requires such Resigning Chargor to resign as a Member under the Specific Contract. The Resigning Chargor shall be deemed to have notified each other Chargor and F16 LLP of its resignation with effect from the Resignation Date and on the Resignation Date, shall be released and discharged (save for any antecedent breach) from all its rights and obligations under the Specific Contract and shall, with effect from the Resignation Date, cease to be party to the Specific Contract.
- 8.4.2 The Security Agent shall not exercise its rights pursuant to Clause 8.4.1 if following the relevant resignation, there would be less than two Members.

- 8.5 **Disposal of the Assigned Property**
- In exercising the powers referred to in Clause 8.2 (*Powers on enforcement*), the Security Agent or any Receiver may sell or dispose of all or any of the Assigned Property at the times, in the manner and order, on the terms and conditions and for the consideration determined by it.
- 8.6 **Same rights as Receiver**
- Any rights conferred by any Finance Document upon a Receiver may be exercised by the Security Agent, or to the extent permitted by law, an administrator, after the Security created by this Deed has become enforceable, whether or not the Security Agent shall have taken possession or appointed a Receiver of the Assigned Property.
- 8.7 **Delegation**
- The Security Agent may delegate in any manner to any person any rights exercisable by the Security Agent under any Finance Document. Any such delegation may be made upon such terms and conditions (including power to sub-delegate) as the Security Agent thinks fit and provided always that the Security Agent shall have exercised due care in the selection of such a delegate, it shall not be bound to supervise and shall have no liability for any act or omission on the part of such delegate.
9. **RECEIVERS**
- 9.1 **Method of appointment or removal**
- Every appointment or removal of a Receiver, any delegate or any other person by the Security Agent under this Deed shall be in writing under the hand of any officer or manager of the Security Agent (subject to any requirement for a court order in the case of the removal of an administrative receiver).
- 9.2 **Removal**
- The Security Agent may (subject to the application of section 45 of the Insolvency Act 1986) remove any person from office in relation to all or any part of the Assigned Property of which he is the Receiver and at any time (before or after any person shall have vacated office or ceased to act as Receiver in respect of any of such Assigned Property) appoint a further or other Receiver or Receivers over all or any part of such Assigned Property.
- 9.3 **Powers**
- Every Receiver shall have and be entitled to exercise all the powers:-
- 9.3.1 of the Security Agent under this Deed;
 - 9.3.2 conferred by the LPA on mortgagees in possession and on receivers appointed under the LPA;
 - 9.3.3 of an administrative receiver set out in Schedule 1 to the Insolvency Act 1986, whether or not the Receiver is an administrative receiver;
 - 9.3.4 in relation to any Assigned Property, which he would have if he were its only beneficial owner; and
 - 9.3.5 to do all things incidental or conducive to any functions, powers, authorities or discretions conferred or vested in the Receiver.

- 9.4 **Receiver as agent**
- The Receiver shall be the agent of the relevant Chargor (which shall be solely liable for his acts, defaults, remuneration, losses and liabilities) unless and until the Chargor goes into liquidation, from which time he shall act as principal and shall not become the agent of the Security Agent.
- 9.5 **Joint or several**
- If two or more persons are appointed as Receivers of the same assets, they may act jointly and/or severally so that (unless any instrument appointing them specifies to the contrary) each of them may exercise individually all the powers and discretions conferred on Receivers by this Deed.
- 9.6 **Receiver's remuneration**
- Every Receiver shall be entitled to remuneration for his services at a rate to be fixed by the Security Agent and the maximum rate specified in section 109(6) of the LPA shall not apply.
10. **APPLICATION OF MONEYS**
- 10.1 **Application of moneys**
- All sums received by virtue of this Deed and/or any other Security Documents and/or or from any New Member that becomes a Member pursuant to Clause 8.3 (*Assumption*) by the Security Agent or any Receiver shall, subject to the payment of any claim having priority to this Deed, be paid or applied in the following order of priority:-
- 10.1.1 **first**, in or towards satisfaction pro rata of, or the provision pro rata for, all costs, charges and expenses incurred and payments made by the Security Agent as agent for the Secured Parties and/or as trustee in relation to the Security Documents or by any Receiver (including legal expenses), together with interest at the Default Rate (both before and after judgment) from the date those amounts became due until the date they are irrevocably paid in full;
- 10.1.2 **secondly**, in or towards the payment pro rata of, or the provision pro rata for, any unpaid fees, commission or remuneration of the Security Agent or any Receiver;
- 10.1.3 **thirdly**, in or towards payment of the Secured Obligations in accordance with the Security Trust and Intercreditor Deed;
- 10.1.4 **fourthly**, in the payment of the surplus (if any), to the Chargor concerned or any other person entitled to it,
- and section 109(8) of the LPA shall not apply.
11. **POWER OF ATTORNEY**
- 11.1 **Appointment**
- Each Chargor irrevocably and by way of security appoints:-
- 11.1.1 the Security Agent (whether or not a Receiver has been appointed);
- 11.1.2 any delegate or sub delegate of, or other person nominated in writing by, an officer of the Security Agent; and

11.1.3 (as a separate appointment) each Receiver,

severally as the Chargor's attorney and attorneys with power, following the occurrence of an Event of Default which is continuing, to do any act and execute and deliver any deed or other document, on behalf of and in the name of the Chargor, which the Chargor could be required to do or execute under any provision of this Deed, or which the Security Agent in its sole opinion may consider necessary or desirable for perfecting its title to any of the Assigned Property or enabling the Security Agent or the Receiver to exercise any of its rights or powers under this Deed.

11.2 **Ratification**

Each Chargor ratifies and confirms and agrees to ratify and confirm whatever any attorney appointed pursuant to Clause 11.1 (*Appointment*) does or purports to do in the exercise or purported exercise of all or any of the powers, acts or other matters referred to in Clause 11.1 (*Appointment*).

12. **CONSOLIDATION**

12.1 **Combination of accounts**

In addition to any general lien, right to combine accounts, right of set-off or other right which it may at any time have, the Security Agent and each Secured Party may at any time after this Deed has become enforceable, without notice to the Chargor, combine or consolidate all or any accounts which it then has in relation to the Chargor (in whatever name) and any Secured Obligations owed by the Chargor to the Security Agent or that Secured Party, and/or set-off or transfer any amounts standing to the credit of one or more accounts of the Chargor in or towards satisfaction of any Secured Obligations owed it on any other account or otherwise.

12.2 **Application**

The Security Agent's and each Secured Party's rights under Clause 12.1 (*Combination of accounts*) apply:-

12.2.1 whether or not any demand has been made under this Deed, or any liability concerned has fallen due for payment;

12.2.2 whether or not any credit balance is immediately available or subject to any restriction;

12.2.3 irrespective of the currencies in which any balance or liability is denominated, and the Security Agent and the relevant Secured Party may for the purpose of exercising its right elect to convert any sum or liability in one currency into any other at its spot rate applying at or about 11.00am on the date of conversion; and

12.2.4 in respect of any Secured Obligations owed by the relevant Chargor, whether owed solely or jointly, certainly or contingently, presently or in the future, as principal or surety, and howsoever arising.

13. **PROTECTION OF THIRD PARTIES**

13.1 **Statutory powers**

In favour of any purchaser, the statutory powers of sale and of appointing a Receiver which are conferred upon the Security Agent, as varied and extended by this Deed, and all other powers of the Security Agent, shall be deemed to arise (and the Secured Obligations shall be deemed due and payable for that purpose) immediately after the execution of this Deed.

13.2

Purchasers

No purchaser from or other person dealing with the Security Agent, any person to whom it has delegated any of its powers, or the Receiver shall be concerned:-

13.2.1 to enquire whether any of the powers which the Security Agent or a Receiver have exercised has arisen or become exercisable;

13.2.2 to enquire whether the Secured Obligations remain outstanding or whether any event has happened to authorise the Receiver to act; or

13.2.3 as to the propriety or validity of the exercise of those powers,

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

13.3

Receipts

All the protection to purchasers contained in sections 104 and 107 of the LPA, section 42(3) of the Insolvency Act 1986 or in any other applicable legislation shall apply to any person purchasing from or dealing with the Security Agent, any other Secured Party, any Receiver or any person to whom any of them have delegated any of their powers.

14.

PROTECTION OF THE SECURITY AGENT, THE SECURED PARTIES AND ANY RECEIVER

14.1

No liability

None of the Security Agent, the other Secured Parties, any Receiver or any of their respective officers, employees or delegates shall be liable in respect of:

14.1.1 any cost, liability, expense, direct, indirect or consequential loss or damage which arises out of the exercise, or attempted or purported exercise of, or the failure to exercise, any of their respective rights under this Deed;

14.1.2 the exercise of, or the failure to exercise, any judgement, discretion or power given to it by or in connection with any of the Finance Documents, the Transaction Security or any other agreement, arrangement or document entered into, made or executed in anticipation of, pursuant to or in connection with the Finance Documents or the Transaction Security; or

14.1.3 any shortfall which arises on the enforcement of the Transaction Security and in any event the Security Agent shall not be responsible for consequential losses.

14.2

Not mortgagee in possession

Without prejudice to any other provision of this Deed, entry into possession of any Assigned Property shall not render the Security Agent, any Receiver or any of their respective officers or employees liable:-

14.2.1 to account as mortgagee in possession;

14.2.2 for any loss on realisation; or

14.2.3 for any default or omission for which a mortgagee in possession might be liable,

and if and whenever the Security Agent or any Receiver enters into possession of any Assigned Property it shall be entitled at any time it or he thinks fit to relinquish possession.

14.3

Interest

The Chargor shall pay interest at the Default Rate on the sums payable under this Clause 14 (*Protection of the Security Agent, the Secured Parties and any Receiver*) from the date on which the liability was incurred to the date of actual payment (both before and after judgment).

14.4

Indemnity out of the Assigned Property

The Security Agent, the other Secured Parties, any Receiver and their respective officers, employees and delegates shall be entitled to be indemnified out of the Assigned Property in respect of the actions, proceedings, demands, claims, costs, losses, expenses and liabilities referred to in clause 12 (*Other Indemnities*) of the Security Trust and Intercreditor Deed.

14.5

No fiduciary duties

Nothing in this Deed constitutes the Security Agent as an agent, trustee or fiduciary of the Chargors or any other Member or New Member.

14.6

Continuing protection

The provisions of this Clause 14 (*Protection of the Security Agent, the Secured Parties and any Receiver*) shall continue in full force and effect notwithstanding any release or discharge of this Deed or the discharge of any Receiver from office.

15.

PROVISIONS RELATING TO THE SECURITY AGENT

15.1

Powers and discretions

The rights, powers and discretions given to the Security Agent in this Deed:-

15.1.1 may be exercised as often as, and in such manner as, the Security Agent thinks fit;

15.1.2 are cumulative, and are not exclusive of any of its rights under the general law; and

15.1.3 may only be waived in writing and specifically, and any delay in exercising, or non-exercise of, any right, is not a waiver of it.

15.2

Certificates

A certificate by an officer of the Security Agent:-

15.2.1 as to any amount for the time being due to the Secured Parties or any of them; or

15.2.2 as to any sums payable to the Security Agent under this Deed, shall (save in the case of manifest error) be conclusive and binding upon the Chargor for all purposes.

15.3 **Assignment**

The Security Agent may assign this Deed to any successor in title to any of the Secured Obligations or to a replacement Security Agent appointed in accordance with the provisions of the Security Trust and Intercreditor Deed, and each Secured Party may assign its interest in this Deed in whole or in part to any successor in title to any of the Secured Obligations, and the Security Agent and any Secured Party may disclose any information in its possession relating to the Chargor, its affairs or the Secured Obligations to any actual or prospective assignee.

15.4 **Trusts**

The perpetuity period for any other constituted by this Deed shall be 125 years.

15.5 **Provisions of the Security Trust and Intercreditor Deed**

The provisions of the Security Trust and Intercreditor Deed shall apply to the Security Agent's rights and duties and the resignation of the Security Agent as if set out in this Deed.

16. **PRESERVATION OF SECURITY**

16.1 **Continuing Security**

This Deed shall be a continuing security to the Security Agent and shall remain in force until expressly discharged in writing by the Security Agent notwithstanding any intermediate settlement of account or other matter or thing whatsoever.

16.2 **Additional Security**

This Deed is without prejudice and in addition to, and shall not merge with, any other right, remedy or Security of any kind which the Security Agent or any other Secured Party may have now or at any time in the future for or in respect of any of the Secured Obligations.

16.3 **Waiver of Defences**

Neither the Security created by this Deed nor the obligations of any Obligor under this Deed will be affected by an act, omission, matter or thing which, but for this Clause, would reduce, release or prejudice that Security or any of those obligations (whether or not known to it, the Security Agent or any other Secured Party) including:-

- 16.3.1 any time, waiver or consent granted to, or composition with, any Obligor or other person;
- 16.3.2 the release of any Obligor or any other person under the terms of any composition or arrangement with any person;
- 16.3.3 the taking, variation, compromise, exchange, renewal, enforcement or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or Security over, assets of any Obligor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any Security;
- 16.3.4 any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any Obligor or any other person;

16.3.5 any amendment (however fundamental), replacement, variation, novation, assignment or the avoidance or termination of a Finance Document or any other document or Security;

16.3.6 any unenforceability, illegality or invalidity of any obligation of, or any Security created by, any person under any Finance Document or any other document; or

16.3.7 an insolvency, liquidation, administration or similar procedure.

16.4 Immediate recourse

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

16.5 Appropriations

Until the Facility Discharge Date, the Security Agent and each Secured Party may:-

16.5.1 refrain from applying or enforcing any monies, Security or rights held or received by it (or any trustee or agent on its behalf) in respect of the Secured Obligations, or, subject to Clause 10.1 (*Application of moneys*), apply and enforce the same in such manner and order as it sees fit (whether against the Secured Obligations or otherwise) and the relevant Chargor shall not be entitled to the same; and

16.5.2 hold in an interest-bearing suspense account any moneys received from the relevant Chargor on or account of the Secured Obligations.

16.6 New Accounts

If the Security Agent or any other Secured Party receives notice (whether actual or otherwise) of any subsequent Security over or affecting any of the Assigned Property or if a petition is presented or a resolution passed in relation to the winding up of any Chargor, the Security Agent and the relevant Secured Party or Secured Parties may close the current account or accounts and/or open a new account or accounts for that Chargor. If the Security Agent or any other Secured Party does not open a new account or accounts immediately it shall nevertheless be treated as if it had done so at the time when the relevant event occurred, and as from that time all payments made by the relevant Chargor to the Security Agent or that Secured Party shall be credited or be treated as having been credited the new account or accounts and shall not operate to reduce the Secured Obligations.

16.7 Deferral of Chargor's rights

Until the Facility Discharge Date and unless the Security Agent otherwise directs, the Chargors shall not exercise any rights which they may have by reason of performance by its obligations under this Deed or the enforcement of the Security created by this Deed:-

16.7.1 to receive or claim payment from, or be indemnified by an Obligor;

16.7.2 to claim any contribution from any guarantor of, or provider of Security in respect of, any Obligor's obligations under the Finance Documents;

16.7.3 to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of any Secured Party under any Finance Document

or of any guarantee or Security taken pursuant to, or in connection with, the Finance Documents by any Secured Party;

- 16.7.4 to exercise any right of set-off against any Obligor; and/or
- 16.7.5 to claim or prove as a creditor of any Obligor in competition with any Secured Party.

17. RELEASE

17.1 Release

Upon the irrevocable and unconditional payment and discharge in full of the Secured Obligations and the termination of all facilities which might give rise to Secured Obligations, the Security Agent shall, or shall procure that its appointees will, at the request and cost of the relevant Chargor:-

- 17.1.1 release the Assigned Property from this Deed; and
- 17.1.2 re-assign the Assigned Property that has been assigned to the Security Agent under this Deed.

17.2 Reinstatement

If the Security Agent considers that any amount paid or credited to any Secured Party under any Finance Document (whether in respect of the obligations of any Obligor or any Security for those obligations or otherwise) is capable of being avoided, reduced or otherwise set aside:-

- 17.2.1 that amount shall not be considered to have been paid for the purposes of determining whether the Secured Obligations have been irrevocably and unconditionally paid and discharged; and
- 17.2.2 the liability of the relevant Chargor and the Security created by this Deed shall continue as if that amount had not been paid or credited.

17.3 Consolidation

Section 93 of the LPA dealing with the consolidation of mortgages shall not apply to this Deed.

18. MISCELLANEOUS PROVISIONS

18.1 Severability

If any provision of this Deed is illegal, invalid or unenforceable in any jurisdiction, that shall not affect:-

- 18.1.1 the validity or enforceability of any other provision, in any jurisdiction; or
- 18.1.2 the validity or enforceability of that particular provision, in any other jurisdiction.

18.2 Information

The Security Agent may from time to time seek from any other person having dealings with the Chargor such information about the Chargor and their affairs as the Security Agent may think fit and the Chargor authorises and requests any such person to provide any such information to the Security Agent and agrees to provide such further authority in this regard as the Security Agent may from time to time require.

- 18.3 **Joint and separate liability**
- Unless the context otherwise requires, all covenants, agreements, representations and warranties on the part of the Chargor contained in this Deed are given by them jointly and separately and shall be construed accordingly.
- 18.4 **Counterparts**
- This Deed may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Deed.
- 18.5 **Deeds of accession**
- Each of the parties agrees that each Deed of Accession shall be supplemental to this Deed and be binding on and enure to the benefit of all the parties to this Deed.
19. **NOTICES**
- 19.1 **Communications in Writing**
- Each communication to be made under or in connection with this Deed shall be made in writing and, unless otherwise stated, shall be made by fax or letter.
- 19.2 **Addresses**
- The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with this Deed is:
- 19.2.1 in the case of the Chargors and the F16 LLP, that identified with its name below;
- 19.2.2 in the case of the Security Agent, that identified with its name below, or any substitute address, fax number, or department or officer as the Party may notify to the Security Agent pursuant to Clause 14.3 (*Addresses*) of the Security Trust and Intercreditor Deed (or the Security Agent may notify to the other Parties, if a change is made by the Security Agent) by not less than five Business Days' notice.
- 19.3 **Delivery**
- 19.3.1 Any communication or document made or delivered by one person to another under or in connection with this Deed will only be effective:
- (a) if by way of fax, when received in legible form; or
 - (b) if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,
- and, if a particular department or officer is specified as part of its address details provided under Clause 19.2 (*Addresses*) of this Deed or Clause 14.3 (*Addresses*) of the Security Trust and Intercreditor Deed if addressed to that department or officer.
- 19.3.2 Any communication or document to be made or delivered to the Security Agent will be effective only when actually received by the Security Agent and then only if it is expressly marked for the attention of the department or officer identified with the Security Agent's signature below (or any substitute department or officer as the Security Agent shall specify for this purpose).

19.4

English language

- 19.4.1 Any notice given under or in connection with this Deed must be in English.
- 19.4.2 All other documents provided under or in connection with this Deed must be:
 - (a) in English; or
 - (b) if not in English, and if so required by the Security Agent or Agent, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

20.

GOVERNING LAW

This Deed and any non-contractual obligations arising out of or in connection with it are governed by English law.

21.

ENFORCEMENT

21.1

Jurisdiction of English Courts

- 21.1.1 The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute regarding the existence, validity or termination of this Deed or any non-contractual obligation arising out of or in connection with this Deed) (a "Dispute").
- 21.1.2 The parties to this Deed agree that the courts of England are the most appropriate and convenient courts to settle disputes and accordingly no such party will argue to the contrary.
- 21.1.3 This Clause 21.1 (*Jurisdiction of English Courts*) is for the benefit of the Secured Parties only. As a result, no Secured Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Secured Parties may take concurrent proceedings in any number of jurisdictions.

EXECUTED AND DELIVERED AS A DEED on the date set out at the beginning of this Deed.

The F16 LLP

Executed and delivered as a deed
by **A Shade Greener (F16) LLP**
acting by a member or an authorised
signatory in the presence of a witness:

Witness signature:

Name:

Address:

Occupation:

Address for service:

Attention:

Stewart Davies

The Security Agent

SIGNED for and on behalf of
U.S. BANK TRUSTEES LIMITED

Christopher Eastlake

Authorised Signatory

Amy Connolly

Authorised Signatory

Address for service:
London EC2N 1AR

Attention: Loan Agency

Fax:

The Chargors

Executed and delivered as a deed
by **A Shade Greener Loan LLP**
acting by a member or an authorised signatory in
the presence of a witness:

Witness signature:

Name:

Address:

Occupation:

Address for service:

Attention:

Stewart Davies

Executed and delivered as a deed
by **A Shade Greener Member LLP** acting
by a member or an authorised signatory in
the presence of a witness:

Witness signature:

Name:

Address:

Occupation:

Address for service:

Attention:

Stewart Davies