



## Registration of a Charge

LLP name: **STIRLING PARTNERS REAL ESTATE LLP**

LLP number: **OC388930**



X3BTM5A2

Received for Electronic Filing: **10/07/2014**

## Details of Charge

Date of creation: **25/06/2014**

Charge code: **OC38 8930 0001**

Persons entitled: **COLBY CAPITAL II S.A.R.L**

Brief description: **(1) BY WAY OF FIRST LEGAL MORTGAGE: BY WAY OF FIRST LEGAL MORTGAGE THE STIRLING PARTNERS REAL ESTATE LLP'S SHARES IN CITRON ESTATES LIMITED; (2) BY WAY OF FIRST EQUITABLE MORTGAGE: (2.1) ALL DIVIDENDS, DISTRIBUTIONS, INTEREST AND OTHER INCOME PAID OR PAYABLE ON THE SHARES LISTED AT (1) ABOVE; (2.2) ALL SHARES OR OTHER PROPERTY DERIVED FROM ANY SHARE LISTED AT (1) ABOVE; (2.3) AND ALL OTHER ALLOTMENTS, ACCRETIONS, RIGHTS, BENEFITS, AND ADVANTAGES OF ALL KINDS ACCRUING, OFFERED OR OTHERWISE DERIVED FROM OR INCIDENTAL TO ANY SHARE LISTED AT (1) ABOVE; (3) AND TO THE EXTENT NOT VALIDLY AND EFFECTIVELY CHARGED BY WAY OF MORTGAGE PURSUANT TO (1) AND (2) ABOVE, BY FIRST FIXED CHARGE THE CHARGED ASSETS DESCRIBED AT (1) AND (2) ABOVE.**

**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.**

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## Authentication of Instrument

Certification statement: **I CERTIFY THAT SAVE FOR MATERIAL REDACTED PURSUANT TO S.859G OF THE COMPANIES ACT 2006 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: **NEIL SARGENT**



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

LLP number: OC388930

Charge code: OC38 8930 0001

The Registrar of Companies for England and Wales hereby certifies that a charge dated 25th June 2014 and created by STIRLING PARTNERS REAL ESTATE 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 July 2014 .

Given at Companies House, Cardiff on 11th July 2014

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



EVERSHEDS

Dated

25 JUNE

2014

- (1) STIRLING PARTNERS REAL ESTATE LLP as Chargor
- (2) COLBY CAPITAL II S.Á.R.L. as Lender

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Charge over Shares

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CERTIFIED TO BE A TRUE COPY  
OF THE ORIGINAL  
*Eversheds LLP*  
-----  
EVERSHEDS LLP  
SOLICITORS  
1 WOOD STREET  
LONDON EC2V 7WS  
DATE. 10 JUL 2014

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24 June 2014

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This Deed is made on 25 JUNE between:

- (1) **STIRLING PARTNERS REAL ESTATE LLP** (registered number OC288930) whose registered office is at Thorpe Arch Grange, Walton Road, Wetherby, West Yorkshire LS23 7BA (the "**Chargor**"); and
- (2) **COLBY CAPITAL II S.A.R.L.**, a private limited liability company (*société à responsabilité limitée*) established and existing under Luxembourg law, having its registered address at 65, boulevard Grande-Duchesse Charlotte, L-1331 Luxembourg, Grand-Duchy of Luxembourg which is registered with the RCS Luxembourg under number B 174282 (the "**Lender**").

## 1. **INTERPRETATION**

### 1.1 **Expressly defined terms**

In this Deed, the following words and phrases have the specified meanings:

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

**"Borrower"** means Citron Estates Limited, a company limited by shares incorporated under the laws of Jersey having its registered address at Elizabeth House, 9 Castle Street, St Helier, Jersey JE2 3RT with registered number 115807.

**"Delegate"** means any delegate, agent, attorney or trustee appointed by the Lender.

**"Discharge Date"** means the date with effect from which all the Secured Obligations have been unconditionally and irrevocably paid and discharged in full and all relevant commitments of the Lender cancelled.

**"Distribution Rights"** means:

- (a) all dividends, distributions, interest and other income paid or payable on any Share;
- (b) all shares or other property derived from any Share (whether by way of conversion, consolidation, subdivision, substitution, redemption, bonus, preference, option or otherwise); and
- (c) all other allotments, accretions, rights, benefits and advantages of all kinds accruing, offered or otherwise derived from or incidental to any Share.

**"Enforcement Party"** means any of the Lender, a Receiver or a Delegate.

**"Event of Default"** means the occurrence of any of the events or circumstances defined in the Facility Agreement as an Event of Default.

**"Facility Agreement"** means the facility agreement dated on or around the date of this Deed and made between the Borrower and the Lender.

**"Insolvency Act"** means Insolvency Act 1986.

**"LPA"** means Law of Property Act 1925.

**"Party"** means a party to this Deed.

**"Receiver"** means any one or more receivers and managers or (if the Lender so specifies in the relevant appointment) receivers appointed by the Lender pursuant to this Deed in respect of the Chargor or in respect of the Secured Assets or any of them.

**"Secured Assets"** means the assets charged at **clause 3** (*Charging clause*) and includes any part or parts of them.

**"Secured Obligations"** means all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally or in any other capacity whatsoever) of the Borrower and the Chargor to the Lender under or in connection with any of the Finance Documents or otherwise, whatever their nature or basis, in any currency or currencies, and however they are described, together with all costs, charges and expenses incurred by the Lender in connection with the protection, preservation or enforcement of its rights, under the Finance Documents or any other document evidencing or securing any such liabilities, PROVIDED THAT **"Secured Obligations"** shall not include any obligation or liability to the extent that if it were so included this Deed (or any part of it) would give rise to financial assistance within the meaning of section 677(1) of the Companies Act unless such financial assistance is not prohibited by virtue of the provisions of sections 678, 679, 681 and 682 of the Companies Act.

**"Security Period"** means the period beginning on the date of this Deed and ending on the Discharge Date.

**"Shares"** means all shares (if any) specified in **Schedule 1** (*Shares*) and also all other shares now or in the future owned by the Chargor in the Borrower from time to time.

**"Third Parties Act"** means the Contracts (Rights of Third Parties) Act 1999.

## 1.2 **Definitions contained in Facility Agreements**

Except where this Deed expressly states otherwise, each term used in this Deed which is defined in the Facility Agreement has the same meaning as in the Facility Agreement.

## 1.3 **Construction**

In this Deed:

### 1.3.1 any reference to:

1.3.1.1 **"assets"** includes present and future properties, revenues, rights and interests of every kind and reference to an **"asset"** includes any part or parts of such asset;

1.3.1.2 **"guarantee"** includes any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to pay any deposit on behalf of, or make an investment in, or loan to, any person or to purchase assets of any person, where, in each case, such obligation is assumed in order

- to maintain or assist the ability of such person to meet its indebtedness;
- 1.3.1.3 **"indebtedness"** includes any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
  - 1.3.1.4 **"person"** includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality);
  - 1.3.1.5 **"regulation"** includes any regulation, rule, official directive, request or guideline (in each case, whether or not having the force of law) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
  - 1.3.1.6 **"set-off"** includes analogous rights and obligations in jurisdictions other than England and Wales; and
  - 1.3.1.7 the **"Chargor"**, the **"Borrower"**, the **"Lender"** or any **"Party"** shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
- 1.3.2 where something (or a list of things) is introduced by the word **"including"**, or by the phrase **"in particular"**, or is followed by the phrase **"or otherwise"**, the intention is to state an example (or examples) and not to be exhaustive (and the same applies when other similar words or phrases are used);
  - 1.3.3 unless this Deed expressly states otherwise or the context requires otherwise, (a) each reference in this Deed to any provision of any statute or of any subordinate legislation means, at any time, the relevant provision as in force at that time (even if it has been amended or re-enacted since the date of this Deed) and (b) each reference in this Deed to any provision of any statute at any time includes any subordinate legislation made pursuant to or in respect of such provisions as in force at such time (whether made before or after the date of this Deed and whether amended or re-enacted since the date of this Deed);
  - 1.3.4 each reference to this Deed (or to any other agreement, instrument or deed) means, at any time, this Deed (or as applicable such other agreement, instrument or deed) as amended, novated, supplemented, extended, or restated, at that time, provided that the relevant amendment, novation, supplement, extension, substitution or restatement does not breach any term of this Deed or of any of the Finance Documents;
  - 1.3.5 the index and Clause and Schedule headings are for ease of reference only;
  - 1.3.6 an Event of Default is **"continuing"** if it has not been waived; and



- 1.3.7 references to any Security "**created ..... by this Deed**" are to be deemed to include such Security created, constituted, given, made or extended by, under or pursuant to this Deed.

#### 1.4 **Third Party Rights**

No person has any right under the Third Parties Act to enforce or enjoy the benefit of any term of this Deed, other than an Enforcement Party, which may do so, or any other person, to the extent that this Deed or any other of the Finance Documents expressly provides for it to do so. No consent of any person who is not a Party is required to rescind or vary this Deed at any time. This Clause 1.4 does not affect any right or remedy of any person which exists, or is available, otherwise than pursuant to the Third Parties Act.

#### 1.5 **Incorporation of other terms**

- 1.5.1 The terms of the other Finance Documents under which the Secured Obligations arise and of any side letters between the Chargor and the Lender or any of them relating to the Secured Obligations are incorporated into this Deed to the extent required for any purported disposition of the Secured Assets contained in this Deed to be a valid disposition in accordance with section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989.
- 1.5.2 Without prejudice to the operation of any applicable term of the Facility Agreement or any other Finance Document, without prejudice to the operation of any applicable term of the Facility Agreement or any other Finance Document, the provisions of clauses 10.3 (*Default Interest*), 22.5 (*Currency of Account*), 24.1 (*Communications in writing*), 24.3 (*Delivery*), 24.5 (*Electronic communication*), 24.6 (*English Language*), 28 (*Amendments and waivers*) and 30 (*Counterparts*) of the Facility Agreement shall apply (*mutatis mutandis*) to this Deed as if set out in this Deed in full and as if any reference in any such clause to "this Agreement" were a reference to "this Deed"; and

### 2. **COVENANT TO PAY**

The Chargor hereby, as primary obligor and not merely as surety, covenants with the Lender that it will pay, discharge and perform the Secured Obligations on demand and in the manner provided in the Finance Documents.

### 3. **LIMITED RECOURSE**

- 3.1 Notwithstanding any other provision of any Finance Document, the maximum amount recoverable by the Lender in respect of the obligations and liabilities owed by the Chargor under this Deed will not exceed the aggregate net proceeds of any sale or enforcement (the "**Sale Proceeds**") of the Secured Assets as a result of:
- 3.1.1 the exercise by the Lender of a power of sale (or other right) pursuant to this Deed; and/or
- 3.1.2 the exercise or performance by a duly appointed Receiver of his duties or functions under this Deed or any administrator or liquidator under any relevant law or statute.

- 3.2 If the Sale Proceeds are insufficient to satisfy the Secured Obligations, the Chargor shall have no liability to make up such insufficiencies.

#### 4. **CHARGING CLAUSE**

##### 4.1 **Grant of security**

The Chargor, as a continuing security for the payment, discharge and performance of the Secured Obligations, charges and agrees to charge in favour of the Lender:

- 4.1.1 by way of first legal mortgage, the Shares;
- 4.1.2 by way of first equitable mortgage, the Distribution Rights from time to time accruing to or on the Shares; and
- 4.1.3 to the extent not validly and effectively charged by way of mortgage pursuant to **clauses 4.1.1** or 4.1.2, by way of first fixed, charge the Secured Assets and all the Chargor's interest in the Secured Assets.

##### 4.2 **Full title guarantee and implied covenants**

All the security created or given under this Deed is made with full title guarantee in accordance with the Law of Property (Miscellaneous Provisions) Act 1994.

#### 5. **DEPOSIT OF CERTIFICATES AND TRANSFERS**

##### 5.1 The Chargor must:

- 5.1.1 promptly deposit with the Lender on the date of this Deed (or, in relation to any Secured Assets acquired by it, or in which it has acquired an interest, after the date of this Deed, on the date that it beneficially acquires such Secured Assets or interest) all share certificates or other documents of title or evidence of ownership in relation to any Share or to the Distribution Rights; and
- 5.1.2 at the same time that it deposits the certificates or documents referred to in **clause 5.1.1**, deliver to the Lender instruments of transfer in respect of the relevant Shares executed in blank (except for the number and class of Shares and the name of the transferor) and left undated.

- 5.2 The Lender may retain any certificates, documents or instruments of transfer delivered to it pursuant to this Deed until the Discharge Date and if, for any reason it ceases to hold any such certificate, document or instrument before such time, it may by notice to the Chargor require that the relevant certificate, document or instrument be redelivered to it and the Chargor must immediately comply (or procure compliance) with such notice.

- 5.3 The Lender may at any time following the occurrence of an Event of Default which is continuing complete the instruments of transfer on behalf of such Chargor in favour of itself or such other person as it shall select, and such Chargor shall procure that such instruments of transfer are forthwith registered in the relevant company and that share certificates in the name of the Lender and/or its nominee(s) in respect of the Shares to which such instrument of transfer relates are delivered to the Lender as soon as reasonably practicable, but in any event no later than 5 days after the date upon which the Lender has

delivered the relevant instrument of transfer. The Lender or its nominee, having been registered as the transferee of such Shares, may at any time thereafter re-transfer such Shares to the Chargor, and the Chargor shall procure that the relevant instrument of transfer is forthwith registered in the relevant company and that the share certificate(s) in the name of the Chargor together with a further instrument of transfer executed in accordance with **clause 5.1.2** relating to such Shares, are forthwith delivered to the Lender.

## **6. NEGATIVE PLEDGE AND DISPOSAL RESTRICTIONS**

### **6.1 Negative pledge**

The Chargor is not to create, extend or permit to subsist any security over any of the Secured Assets.

### **6.2 Restrictions on disposals**

The Chargor is not to sell, transfer or otherwise dispose of its interest (whether legal or beneficial) in the Secured Assets.

### **6.3 Exceptions**

**Clauses 6.1** (*Negative pledge*) and **Clause 6.2** (*Restrictions on disposals*) do not apply:

6.3.1 to the security created or required to be created by this Deed;

6.3.2 to any security or transaction to which the Lender has given its written consent; or

6.3.3 to any other security or transaction which is permitted pursuant to the terms of the Facility Agreement.

## **7. REPRESENTATIONS AND WARRANTIES**

The Chargor represents and warrants to the Lender on the date of this Deed and on each subsequent date upon which the representations and warranties set out in the Facility Agreements are repeated and upon which there are Secured Obligations outstanding as follows:

### **7.1 Status**

it is a limited liability partnership, duly incorporated and validly existing under the laws of England and Wales and has the power to own its assets and carry on its business and other activities as they are being conducted;

### **7.2 Power and enforceability**

the Chargor has the power to enter into this Deed and to perform its obligations and exercise its rights under it and the obligations expressed to be assumed by it under this Deed are (and at all relevant times have been) legal, valid, binding and enforceable obligations (subject to the principle that equitable remedies are discretionary and to any applicable insolvency laws);

### 7.3 **No Event of Default**

- 7.3.1 no Event of Default has occurred or is continuing or might reasonably be expected to result from the execution of this Deed or from effect being given to its provisions;
- 7.3.2 no person who holds any other security over the Secured Assets or over any other asset of the Chargor has enforced or given notice of its intention to enforce such security;

### 7.4 **Non-conflict with other obligations**

neither the execution of this Deed by the Chargor, nor the Chargor's compliance with its terms will:

- 7.4.1 conflict with or result in any breach of any law or regulation applicable to it;
- 7.4.2 cause any limitation on any of its powers or on the right or ability of its directors to exercise those powers to be exceeded; nor
- 7.4.3 constitute a default, acceleration of payment or termination event (however described) under any agreement or instrument binding upon it;

### 7.5 **Authorisations**

all Authorisations required or desirable for the execution, delivery, issue, validity or enforceability of this Deed or of the performance of the Chargor's obligations or the exercise of its rights under this Deed have been obtained and have not been (and the Chargor is not aware of any circumstance having arisen whereby they might be) withdrawn;

### 7.6 **Priority of security**

the legal and equitable mortgages and fixed charges contained in **Clause 4.1** (*Grant of security*) constitute first priority security over the assets which are expressed to be secured by such mortgages and charges and those assets are not subject to any prior or pari passu security; and

### 7.7 **Matters relating to the Shares**

- 7.7.1 the Shares specified in **Schedule 1** (*Shares*) are at the date of this Deed the only Shares legally and beneficially owned by it in the Borrower;
- 7.7.2 it is and will remain the sole beneficial owner of the Secured Assets and (save where the Shares have been registered in the name of the Lender or its nominee pursuant to the provisions of this Deed) it and/or its nominee is and will remain the absolute legal owner of the Shares subject to the provisions of this Deed;
- 7.7.3 the Shares are fully paid and none of the Secured Assets is subject to any lien, charge, equity, encumbrance, option to purchase or similar rights of any person other than the Lender;

7.7.4 the Lender is entitled to be registered or to require a nominee to be registered as member of each of the relevant companies to which the Shares relate without any right of the board of directors of any such company to refuse registration or to consent to such registration only subject to satisfaction of conditions; and

7.7.5 it has not nominated another person or persons to enjoy or exercise all or any of its rights as the registered holder of the Shares.

## **8. UNDERTAKINGS**

The Chargor undertakes to the Lender in the terms of the following provisions of this **clause 8**, all such undertakings to commence on the date of this Deed and to continue throughout the Security Period:

### **8.1 Matters relating to Shares**

8.1.1 it will immediately upon receipt of the same deliver to the Lender copies of all notices, circulars, letters, reports accounts and other communications with shareholders relating to its holding of the Shares;

8.1.2 it will pay all calls or other payments due and payable in respect of any of the Secured Assets;

8.1.3 save with the prior written consent of the Lender it will not:

8.1.3.1 take any action whereby or as a consequence whereof the rights attaching to the Shares are altered or diluted or the issued capital of any of the companies whose Shares are charged by this Deed increased;

8.1.3.2 participate in any rights issue relating to the Shares;

8.1.3.3 apply for, or consent to, the conversion of any Shares held in certificated form into uncertificated form; or

8.1.3.4 nominate another person or persons to enjoy or exercise all or any of its rights as the registered holder of the Shares.

### **8.2 Not to jeopardise security**

it will not (and, without prejudice to **clause 8.1.3.4**, will procure that no nominee will) do anything or allow anything to be done which may in any way depreciate, jeopardise or otherwise prejudice the value to the Lender of the security constituted by this Deed or the priority of its ranking as expressed in this Deed;

### **8.3 Further assurance**

it will at all times (and forthwith upon the Lender's written request) but at the Chargor's own expense take all steps (including the making of all filings and registrations and the payment of all fees and taxes) and execute all documents necessary or, in the reasonable opinion of the Lender, desirable (a) to render effective and valid any security or any right or power created or intended to be created or evidenced under or by this Deed but which is or may be ineffective or invalid, (b) to perfect, protect or improve any such security or to facilitate its

enforcement or realisation, (c) to protect the Lender's position under this Deed or any other deed or document entered into pursuant to this Deed or (d) in connection with the exercise of any of any rights or powers by any Enforcement Party under or in relation to this Deed, and so that any security document required to be executed pursuant to this clause will be in such form and will contain such provisions as the Lender may reasonably require;

#### 8.4 **Power to remedy**

if the Chargor fails to comply with any of the covenants and undertakings set out or referred to in **clauses 8.1** to 8.3 inclusive it will allow (and hereby irrevocably authorises) the Lender and/or any other Enforcement Party to take such action (including the making of payments) on behalf of the Chargor as is necessary to ensure that such covenants are complied with; and

### 9. **DIVIDENDS AND VOTING RIGHTS**

#### 9.1 Until the occurrence of an Event of Default but not thereafter while such Event of Default is continuing, the Chargor:

9.1.1 will be entitled to receive and retain all dividends, distributions, interest and other monies paid on or derived from the Shares;

9.1.2 will be entitled to exercise all voting and other rights and powers attaching to the Shares, provided that it will not exercise any such voting rights or powers in a manner which would prejudice the value of, or the ability of the Lender to realise the security created by this Deed; and

9.1.3 shall give to the Lender reasonable notice of the manner in which it proposes to exercise the rights and powers referred to in **clause 9.1.2.**

#### 9.2 At any time when any Shares are registered in the name of the Lender or its nominee, and for such period as there is no Event of Default which is continuing, the Lender will (so far as is consistent with the security created by this Deed) exercise any applicable voting or other rights and powers in accordance with the directions of the Chargor and account to the relevant Chargor for any dividends, payments or other distributions attributable to such Shares, but upon the occurrence of an Event of Default and so long as it is continuing the Lender may exercise or refrain from exercising such voting or other rights and powers as it thinks fit and may retain any such dividends, payments or other distributions, but in any case the Lender will not be under any duty to ensure that any dividend, distributions or other monies payable in respect of those Shares are duly and promptly paid or received by it or its nominee or to verify that the correct amounts are paid or received by it or its nominee or to take any action in connection with the taking up of any (or any offer of any) stocks, shares, rights, monies or other property paid, distributed, accruing or offered at any time by way of interest, dividend, redemption, bonus, rights, preference, option, warrant or otherwise on or in respect of or in substitution for, any of those Shares.

#### 9.3 After the occurrence of an Event of Default, and while such Event of Default is continuing, and in the event that any Shares are registered in the name of the Chargor or its nominee, the Chargor shall and shall procure that its nominee shall:



- 9.3.1 comply with the directions of any Enforcement Party in respect of the exercise of the voting and other rights and powers attaching to the Shares and shall deliver to such Enforcement Party as directed such forms of proxy or other Authorisation as may be appropriate to allow any Enforcement Party to exercise such rights and powers; and
- 9.3.2 hold in trust for and promptly pay or deliver to the Lender any Distribution Rights received by it.

## **10. ENFORCEABILITY**

For the purposes of all powers implied by the LPA or any other applicable legislation, the Secured Obligations shall be deemed to have become due and payable and this Deed will become immediately enforceable and the powers of the Lender and any Receiver will become exercisable on the date of this Deed, but, as between the Lender and each Chargor, the power of the Lender to enforce the Security created by this Deed shall be exercisable only upon the occurrence of an Event of Default and for so long as it is continuing (unless there has been a request from such Chargor to the Lender for the appointment of a Receiver, in which case it will be exercisable at any time following the making of such request).

## **11. ENFORCEMENT OF SECURITY**

- 11.1 At any time after the Lender's power of sale has become exercisable, the Lender may, without further notice, (a) appoint one or more than one person to be Receiver in respect of the Secured Assets or any of them and, if more than one person is appointed as Receiver, such appointees may act jointly and severally or individually, (b) take possession of the Secured Assets, and/or (c) in its absolute discretion enforce all or any part of the Security created by this Deed in such other lawful manner as it thinks fit. The Lender may remove any person from appointment as Receiver and may appoint another person as Receiver. The Lender may also appoint an additional Receiver.
- 11.2 The Receiver will, so far as the law permits, be the agent of the Chargor in respect of which the Receiver is appointed and the Chargor alone will be responsible for the acts or defaults of the Receiver and will be liable on any contracts or obligations made or entered into by the Receiver. The Lender will not be responsible for any misconduct, negligence or default of the Receiver. The powers of the Receiver will continue in full force and effect following any liquidation of the Chargor.
- 11.3 The remuneration of the Receiver may be fixed by the Lender but will be payable by the relevant Chargor. The amount of the remuneration will form part of the Secured Obligations.
- 11.4 The Receiver will have the power, on behalf and at the cost of the Chargor in respect of which the Receiver is appointed, (a) to do or omit to do anything which he considers appropriate in relation to the Secured Assets and (b) to exercise all or any of the powers conferred on the Receiver or the Lender under this Deed or conferred upon administrative receivers by the Insolvency Act (even if he is not an administrative receiver), or upon receivers by the LPA or any other statutory provision (even if he is not appointed under the LPA or such other statutory provision) but so that if there is any ambiguity or conflict between the powers contained in such legislation and those contained in this Deed, those contained in this Deed shall prevail.

- 11.5 Without prejudice to the general powers set out in Clause 11.4, a Receiver will also have the powers and discretions set out in Schedule 2 (*Receiver's specific powers*).
- 11.6 If (notwithstanding any representation or warranty to the contrary contained in this Deed) there shall be any Security affecting the Secured Assets or any of them which ranks in priority to the Security created by this Deed and the holder of such prior Security takes any steps to enforce such Security, the Lender or any Receiver may, at its option, take a transfer of, or repay the indebtedness secured by, such Security.
- 11.7 The Lender may, at any time after this Deed has become enforceable pursuant to Clause 10 (*Enforceability*), exercise, to the fullest extent permitted by law, all or any of the powers, authorities and discretions conferred on a Receiver by this Deed, whether as attorney of the Chargor or otherwise and whether or not a Receiver has been appointed.
- 11.8 The Lender may, in writing, either in its appointment of a Receiver or by subsequent notice to that Receiver, restrict the right of such Receiver to exercise all or any of the powers conferred on a Receiver by this Deed.

## 12. APPLICATION OF PROCEEDS

- 12.1 **Calculations** - The Lender's calculation of any amount payable by any Chargor under this Deed at any time will be conclusive (unless it has made an obvious mistake).
- 12.2 **Recoveries by Receiver** - The proceeds arising from the exercise of the powers of the Receiver will, subject to any claims ranking in priority to the Secured Obligations, be applied by or at the direction of the Receiver in or towards discharging or satisfying the following amounts in the following order of priority: (a) the costs, charges and expenses of and incidental to the Receiver's appointment and the payment of his remuneration; (b) any costs, charges, expenses and liabilities of or incurred by any Enforcement Party in the exercise of any of its powers including all rents, Taxes, rates and outgoings whatever affecting the Secured Assets, all premiums on Insurances properly payable under this Deed or any applicable legislation, the cost of executing necessary or proper repairs to the Secured Assets, and the payment of annual sums or other payments, and the interest on all principal sums, having priority to the Secured Obligations; (c) the remaining Secured Obligations, in accordance with the provisions of the Finance Documents; and (d) the claims of those persons entitled to any surplus.
- 12.3 **Tax gross-up** - The provisions of clause 12 (*Tax gross-up and indemnities*) of the Facility Agreement shall apply to any payments made by the Chargor under or pursuant to this Deed.
- 12.4 **Currency of payment** - No payment to the Lender (whether under any judgment or court order or otherwise) shall discharge the obligation or liability of the Chargor in respect of which it was made unless and until the Lender shall have received payment in full in the relevant currency specified in the Facility Agreement. 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, the Lender shall have a further separate cause of action against the Chargor and shall be entitled to enforce the Security created by this Deed to recover the amount of the shortfall.



12.5 **Currency conversion** - All money received or held by the Lender or any Receiver under this Deed may be converted into such other currency as the Lender considers necessary to cover the obligations and liabilities comprised in the Secured Obligations in that other currency at the Lender's spot rate of exchange then prevailing for purchasing that other currency with the existing currency

12.6 **Right of appropriation**

The Lender is entitled to appropriate money and/or assets to Secured Obligations in such manner or order as it thinks fit and any such appropriation shall override any appropriation by the Chargor.

12.7 **Suspense Account**

The Lender may place (for such time as it thinks prudent) any money received by it pursuant to this Deed to the credit of a suspense account (without liability to account for interest thereon) for so long and in such manner as the Lender may from time to time determine without having any obligation to apply that money or any part of it in or towards discharge of the Secured Obligations.

12.8 **New account** - If the Lender receives notice of a subsequent mortgage or charge relating to the Secured Assets, it will be entitled to close any account and to open a new account in respect of the closed account. If the Lender does not open such new account, it will in any event be treated as if it had done so at the time when it received such notice.

12.9 **Calculations** - The Lender's calculation of any amount payable by the Chargor under this Deed at any time will be conclusive (unless it has made an obvious mistake).

13. **PROTECTION OF THIRD PARTIES**

13.1 **No duty to enquire**

A buyer from or other person dealing with any Enforcement Party will not be concerned to enquire whether any of the powers which such Enforcement Party has exercised or purported to exercise have arisen or become exercisable and may assume that such Enforcement Party is acting in accordance with this Deed.

13.2 **Receipt conclusive**

Receipt by the Lender or any Receiver shall be an absolute and a conclusive discharge to a purchaser of the Secured Assets and shall relieve such purchaser of any obligation to see to the application of any monies paid to or by the direction of the Lender or any Receiver.

14. **PROTECTION OF LENDER**

14.1 **Lender's receipts**

The Lender shall not be obliged to account to the Chargor, nor to any other person, for anything other than its own actual receipts which have not been distributed or paid to the person entitled (or whom the Lender, acting

reasonably, believes to be entitled) in accordance with the requirements of this Deed.

#### **14.2 Exclusion of liability**

14.2.1 No Enforcement Party will be liable to the Chargor for any expense, loss liability or damage incurred by the Chargor arising out of the exercise of its rights or powers or any attempt or failure to exercise those rights or powers except any expense, loss, liability or damage arising from its gross negligence, fraud or wilful misconduct.

14.2.2 The Chargor may not take any proceedings against any officer, employee or agent of the Lender in respect of any claim it might have against the Lender or in respect of any act or omission of any kind by that officer, employee or agent in relation to this Deed.

14.2.3 Any officer, employee or agent of the Lender may rely on this **clause 14** under the Third Parties Act.

#### **14.3 Effect of possession**

If the Lender or any Receiver registers itself or any nominee as the holder of the Shares or otherwise enters into possession of the Secured Assets this will not oblige either the Lender or the Receiver to account as mortgagee in possession, and if at any time the Lender enters into possession of the Secured Assets or any of them it may at any time at its discretion go out of such possession.

#### **14.4 Chargor's indemnity**

The Chargor agrees with the Lender to indemnify each Enforcement Party on demand against any costs, Taxes, loss, liabilities or damage incurred by it:

14.4.1 in respect of the taking, holding, protection or enforcement of the Security created by this Deed;

14.4.2 in respect of any exercise of the rights, powers, discretions or remedies of, or vested in, any Enforcement Party or any attempt or failure to exercise those rights, powers, discretions or remedies;

14.4.3 in respect of anything done or omitted to be done in the exercise or purported exercise of the powers under this Deed or under any appointment duly made under the provisions of this Deed; and

14.4.4 as a result of any default by the Chargor in the performance of any of the obligations expressed to be assumed by it in this Deed and in connection with the exercise by the Lender of its rights contained in *Clauses 8.4 (Power to remedy)*.

#### **14.5 Immediate recourse**

It shall not be necessary for the Lender before taking any enforcement under this Deed to enforce or seek to enforce any guarantee or other security or other rights whether from or against the Chargor or any other person.

**15. POWER OF ATTORNEY**

- 15.1 The Chargor irrevocably and by way of security appoints the Lender and each Receiver and any person nominated for the purpose by the Lender or the Receiver (in writing, under hand, signed by an officer of the Lender or by the Receiver) severally to be the attorney of the Chargor (with full power of substitution and delegation) for the purposes set out in Clause 15.2.
- 15.2 The power of attorney granted in Clause 15.2 allows the Lender, the Receiver or the relevant nominee, in the name of the Chargor, on its behalf, as its act and deed and at its expense to perfect the Security created by the Chargor under this Deed and to execute and deliver (using the Chargor's seal where appropriate) any document or do any act or thing which the Chargor may, ought or has agreed to execute or do under this Deed and has failed to do or which the attorney may in its absolute discretion consider appropriate in connection with the exercise of any of the rights, powers, authorities or discretions of the Lender or the Receiver under, or otherwise for the purposes of, this Deed.
- 15.3 The Chargor covenants with the Lender to ratify and confirm all acts or things made, done or executed by any attorney exercising or purporting to exercise the powers conferred in accordance with this Clause 15.

**16. APPLICATION, VARIATION AND EXTENSION OF STATUTORY PROVISIONS**

**16.1 Conditions applicable to power of sale etc.**

- 16.1.1 For the purposes only of section 101 of the LPA, (but otherwise subject to the provisions of **clause 10 (Enforceability)**), the conditions set out in that section as to when such powers arise do not apply and the Secured Obligations become due and the statutory power of sale and other powers of enforcement arise immediately following the execution of this Deed.
- 16.1.2 The Lender and any Receiver may exercise the statutory power of sale conferred by the LPA free from the restrictions imposed by section 103 of the LPA, which shall not apply to this Deed.

**16.2 Extension of powers of sale, etc.**

- 16.2.1 The power of sale and the other powers conferred by the LPA or otherwise are extended and varied to authorise the Lender in its absolute discretion to do all or any of the things or exercise all or any of the powers which a Receiver is empowered to do or exercise under this Deed.
- 16.2.2 The Lender and any Receiver shall also have and enjoy all the other powers, privileges, rights and protections conferred by the LPA and the Insolvency Act on mortgagees, receivers or administrative receivers (each as amended and extended by this Deed and whether or not a receiver or administrative receiver has been appointed) but so that if there is any ambiguity or conflict between the powers contained in such statutes and those contained in this Deed, those contained in this Deed shall prevail.

**16.3 Consolidation of mortgages**

The restriction on the consolidation of mortgages in Section 93 of the LPA does not apply to this Deed nor to any security given to the Lender pursuant to this Deed.

**16.4 LPA provisions relating to appointment of Receiver**

Section 109(1) of the LPA shall not apply to this Deed.

**16.5 Application of proceeds**

Sections 105, 107(2), 109(6) and 109(8) of the LPA will not apply to the Lender nor to a Receiver appointed under this Deed.

**17. OTHER MISCELLANEOUS PROVISIONS**

**17.1 Powers, rights and remedies cumulative**

The powers, rights and remedies provided in this Deed are in addition to (and not instead of), powers, rights and remedies under law.

**17.2 Exercise of powers, rights and remedies**

If an Enforcement Party fails to exercise any power, right or remedy under this Deed or delays its exercise of any power, right or remedy, this does not mean that it waives that power, right or remedy. If an Enforcement Party exercises, or partly exercises, a power, right or remedy once, this does not mean that it cannot exercise such power right or remedy again, fully or in part.

**17.3 Discretion**

17.3.1 The Lender may decide:

17.3.1.1 whether and, if so, when, how and to what extent (i) to exercise its rights under this Deed and (ii) to exercise any other right it might have in respect of the Chargor (or otherwise); and

17.3.1.2 when and how to apply any payments and distributions received for its own account under this Deed,

and the Chargor has no right to control or restrict the Lender's exercise of this discretion.

17.3.2 No provision of this Deed will interfere with the Lender's right to arrange its affairs as it may decide (or oblige it to disclose any information relating to its affairs), except as expressly stated.

**17.4 Set-off and combination of accounts**

17.4.1 No right of set-off or counterclaim may be exercised by the Chargor in respect of any payment due to the Lender under this Deed.

17.4.2 The Lender may at any time after this Deed has become enforceable and without notice to the Chargor:

- 17.4.2.1 combine or consolidate all or any of the Chargor's then existing accounts with, and liabilities to, the Lender;
- 17.4.2.2 set off or transfer any sums standing to the credit of any one or more of such accounts; and/or
- 17.4.2.3 set-off any other obligation owed by the Lender to the Chargor (whether or not matured at such time),

in or towards satisfaction of any of the Secured Obligations. The Lender is to notify the Chargor in writing that such a transfer has been made.

- 17.4.3 If any amount is in a different currency from the amount against which it is to be set off, the Lender may convert either amount (or both) at any reasonable time and at any reasonable rate.

#### **17.5 Other security**

The Chargor authorises the holder of any prior or subsequent security to provide to the Lender, and the Lender to receive from such holder details of the state of account between such holder and the Chargor.

#### **17.6 No assignment by Chargor**

The Chargor must not assign, novate or otherwise deal with its rights or obligations under or interests in this Deed, except with the prior written consent of the Lender.

#### **17.7 Transfer by Lender**

- 17.7.1 Save as otherwise provided in the Facility Agreements the Lender may at any time assign, novate or otherwise deal with any rights or obligations under or interests in this Deed.
- 17.7.2 The Lender may disclose any information about the Chargor, the Secured Assets and/or this Deed to any person to whom it proposes to assign or novate or transfer (or has assigned, novated or transferred) any rights or obligations under or interests in this Deed; or with whom it proposes to enter into (or has entered into) any other dealings in relation to any such rights, obligations or interests.
- 17.7.3 Any person to whom the benefit of all such rights has been transferred, subject to such obligations, may enforce this Deed in the same way as if it had been a Party.

#### **17.8 Avoidance of settlements and other matters**

- 17.8.1 Any payment made by the Chargor, or settlement or discharge between the Chargor and the Lender, is conditional upon no security or payment to the Lender by the Chargor or any other person being avoided or set aside or ordered to be refunded or reduced by virtue of any provision or enactment relating to bankruptcy, insolvency, administration or liquidation for the time being in force and accordingly (but without limiting the Lender's other rights under this Deed) the Lender shall be entitled to recover from the Chargor the value which the Lender has placed upon such security or the amount of any such

payment as if such payment, settlement or discharge had not occurred.

- 17.8.2 If the Lender, acting reasonably, considers that any amount paid by the Chargor in respect of the Secured Obligations is capable of being avoided or ordered to be refunded or reduced for the reasons set out in **clause 17.8.1**, then for the purposes of this Deed such amount shall not be considered to have been irrevocably paid.

## **18. COMMUNICATIONS**

- 18.1 Each notice, consent and other communication in respect of this Deed will be effective only if made by letter or fax, delivered to the relevant address or fax number specified on the execution page(s) of this Deed (or to any substitute address or fax number notified in writing by the relevant Party for this purpose) and marked for the attention of the specified department/individual, if applicable. Each communication by letter will be effective only if delivered by hand, sent by first class post (if sent from and to an address in the UK) or sent by airmail (if sent from or to an address elsewhere).
- 18.2 Each communication will become effective as follows (references to times are to times in the place of delivery of the communication):
- 18.2.1 a hand-delivered letter will be effective as soon as it is delivered (or, if it is delivered after 5pm or on a day that is not a Business Day, it will be effective at 9am on the next Business Day);
- 18.2.2 a letter sent by post from and to an address in the UK will be effective at 9am on the second Business Day after it is posted and a letter sent by airmail from or to an address elsewhere will be effective at 9am on the tenth Business Day after it is posted; and
- 18.2.3 a fax will be effective one hour after the sending fax machine (or other system) generates a confirmation that the communication has been sent in full (or, if this occurs after 5pm or on a day that is not a Business Day, it will be effective at 9am on the next Business Day).
- 18.3 Each communication to the Lender will become effective only when actually received by the Lender.

## **19. THIS DEED**

- 19.1 This Deed is a Finance Document.
- 19.2 The Chargor has entered into this Deed in consideration of the Lender or some of them agreeing to provide (or to continue to provide) finance facilities to it on the terms agreed in the Finance Documents.
- 19.3 This Deed is intended to be a deed even if any Party's execution is not in accordance with the formalities required for the execution of deeds.
- 19.4 If there is any conflict between the provisions of the Intercreditor Deed and the provisions of this Deed, the provisions of the Intercreditor Deed shall prevail.
- 19.5 If any Party is not bound by this Deed (or any part of it) for any reason, this does not affect the obligations of each other Party under this Deed (or under the relevant part).

19.6 This Deed is in addition to, and does not operate so as in any way to prejudice or affect, or be prejudiced or affected by, any other Security or guarantee which the Lender may now or at any time after the date of this Deed hold for or in respect of the Secured Obligations.

19.7 The Chargor submitting this Deed or any counterpart to The Land Registry shall, on each occasion, also submit a certified copy of this Deed and request the return of the original and upon the return of the original it shall deliver such original to the Lender.

19.8 This Deed and every counterpart is the property of the Lender.

## 20. **GOVERNING LAW AND JURISDICTION**

### 20.1 **Governing law**

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

### 20.2 **Jurisdiction of English courts**

The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute regarding the existence, validity or termination of this Deed) and any non-contractual obligations arising out of or in connection with it (a "**Dispute**"). The Parties agree that the courts of England are the most appropriate and convenient courts to settle any Dispute and accordingly no Party will argue to the contrary. This Clause 20.2 is for the benefit of the Enforcement Parties only. As a result, no Enforcement Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, each Enforcement Party may take concurrent proceedings in any number of jurisdictions.

This document is executed as a deed and delivered on the date stated at the beginning of this Deed.



## SCHEDULE 1

### The Shares

Name of company in which Shares are held	Jurisdiction of registration and company number	Number and class of Shares (and where held by nominees names of nominees)
Citron Estates Limited	Jersey	100 ordinary shares of £1 each



## **SCHEDULE 2**

### **Receiver's specific powers**

The Receiver will have full power and authority:

**1. POSSESSION**

- 1.1 to enter upon, take possession of and generally operate and manage the Secured Assets;
- 1.2 to collect and get in all the Distribution Rights;

**2. SALE AND DISPOSAL**

without restriction, to sell, charge, grant or vary the terms or accept surrenders of options or rights over, or otherwise deal with and dispose of the Secured Assets or any assets acquired in the exercise of its powers under this Deed;

**3. ACQUISITION**

to purchase or acquire any assets or rights required or convenient for the exercise of the Receiver's powers under this Deed;

**4. BORROWING**

for the purpose of exercising any of the rights, powers, authorities and discretions conferred on the Receiver by or pursuant to this Deed and/or for defraying any costs, losses or liabilities which may be incurred by him in their exercise or for any other purpose, to raise or borrow any money from the Lender or others or to incur any other liability on such terms, whether secured or unsecured, as he may think fit, and whether to rank in priority to this security or not;

**5. APPOINTMENTS, ETC.**

to appoint and discharge employees, officers, consultants, advisers, managers, agents, solicitors, accountants or other professionally qualified persons, workmen and others for any of the purposes of this Deed or to protect the Secured Assets upon such terms as to remuneration or otherwise as he may think fit and to discharge any such persons appointed by the Chargor prior to his appointment;

**6. LEGAL ACTIONS AND COMPROMISES**

- 6.1 in the name of the Chargor, to bring, prosecute, enforce, defend and discontinue all such actions, suits and proceedings, in relation to the Chargor, the Secured Assets or any business carried on from the Property, as in any case he thinks fit;
- 6.2 to settle, adjust, refer to arbitration or expert determination, compromise and arrange any claims, accounts, disputes, questions and demands with or by any person or body who is or claims to be a creditor of the Chargor or relating in any way to the Secured Assets;

7. **RECEIPTS**

to give valid receipts for all moneys and execute all assurances and things which may be proper or desirable for realising the Secured Assets;

8. **CONTRACTS**

to enter into, vary, cancel or waive any of the provisions of any contracts relating to the Secured Assets which he shall in any case think expedient in the interests of the Chargor or the Lender;

9. **INSURANCES AND BONDS**

to insure the Secured Assets, any assets acquired by him in the exercise of his powers, and effect indemnity insurance or other similar insurance, in every case in such amounts, against such risks and with such offices as he thinks fit, and obtain bonds and give indemnities and security to any bondsmen;

10. **FORM COMPANY**

10.1 to promote or establish any company or to acquire shares in any company (whether as a subsidiary of the Chargor or otherwise) to facilitate the exercise of his powers under this Deed;

10.2 to transfer to any such company all or any of the Secured Assets or other assets acquired by him in the exercise of his powers;

10.3 to exercise or cause to be exercised all voting and other rights attaching to, and to charge, sell or otherwise transfer any shares in any such company;

11. **VOTING RIGHTS**

to exercise all voting and other rights attaching to the Shares and all other stocks, shares and securities owned by the Chargor and comprised in the Secured Assets in such manner as he may think fit;

12. **TRANSACTION**

to carry into effect and complete any transaction;

13. **REDEEM SECURITY**

to redeem any prior security (or procure the transfer of such security to himself) and settle and pass the accounts of the person entitled to the prior security so that any accounts so settled and passed shall (subject to any manifest error) be conclusive and binding on the Chargor and the money so paid shall be deemed to be an expense properly incurred by the Receiver; and

14. **GENERAL**

either in the name of the Chargor or in the name of the Receiver, to execute documents and do all other acts or things which the Receiver may consider to be incidental or conducive to any of the Receiver's powers or to the realisation or use of the Secured Assets.

## EXECUTION

### The Chargor

Executed as a deed by **STIRLING PARTNERS  
REAL ESTATE LLP**, a limited liability  
partnership incorporated in England and Wales  
acting by  
, being a designated member of **STIRLING  
PARTNERS REAL ESTATE LLP**

### Communications to be delivered to:

Address:

Fax number:

Attention:

### Designated Member

in the presence of:

Witness Signature:

Witness Name:

Witness Address:

Witness Occupation:

JAMIE BURGESS

KINGS COURT, 12 KING STREET, LEEDS

TRAINEE JOURNALIST

LS1 2HL

### The Lender

Executed as a deed by **COLBY CAPITAL II  
S.A.R.L.**, a company incorporated in  
Luxembourg acting by  
, being a person who in accordance with the  
laws of that territory, is acting under the  
authority of that company

### Communications to be delivered to:

Address:

Fax number:

Attention:

### Authorised signatory

in the presence of:

Witness Signature:

Witness Name:

Witness Address:

Witness Occupation:

## EXECUTION

### The Chargor

Executed as a deed by **STIRLING PARTNERS REAL ESTATE LLP**, a limited liability partnership incorporated in England and Wales acting by  
, being a designated member of **STIRLING PARTNERS REAL ESTATE LLP**

### Communications to be delivered to:

Address:

Fax number:

Attention:

### Designated Member

in the presence of:

Witness Signature:

Witness Name:

Witness Address:

Witness Occupation:

### The Lender

Executed as a deed by **COLBY CAPITAL II S.A.R.L.**, a company incorporated in Luxembourg acting by **Jérôme Devillet**, being a person who in accordance with the laws of that territory, is acting under the authority of that company

### Communications to be delivered to:

Address:

6, rue Eugène Ruppert  
L - 2453 Luxembourg

Fax number: + 352 26449 167

Attention: **Jérôme Devillet**

### Authorised signatory

in the presence of:

Witness Signature:

Witness Name: **Marie-Reine Barth**

Witness Address: 6, rue Eugène Ruppert  
L - 2453 Luxembourg

Witness Occupation: Relationship Officer Corporate