



**Registration of a Charge**

Company name: **DOBBIES GARDEN CENTRES LIMITED**

Company number: **SC010975**

Received for Electronic Filing: **31/10/2018**



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**Details of Charge**

Date of creation: **29/10/2018**

Charge code: **SC01 0975 0035**

Persons entitled: **ARES MANAGEMENT LIMITED (AS SECURITY TRUSTEE FOR THE SECURED PARTIES (AS THAT TERM IS DEFINED IN THE INSTRUMENT))**

Brief description:

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

**Contains negative pledge.**

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**Authentication of Form**

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

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**Authentication of Instrument**

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





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

Company number: 10975

Charge code: SC01 0975 0035

The Registrar of Companies for Scotland hereby certifies that a charge dated 29th October 2018 and created by DOBBIES GARDEN CENTRES LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 31st October 2018 .

Given at Companies House, Edinburgh on 1st November 2018

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



**Companies House**



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES

**FLOATING CHARGE**

by

**(1) DOBBIES GARDEN CENTRES LIMITED**

In favour of

**(2) ARES MANAGEMENT LIMITED**  
**as Security Agent**

**BRODIES** <sup>LLP</sup>  
Brodies LLP  
110 Queen Street  
Glasgow G1 3BX  
T: 0141 248 4672  
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DX GW 11

CERTIFIED A TRUE  
COPY SAVE FOR THE  
MATERIAL REDACTED  
PURSUANT TO S859G  
OF THE COMPANIES  
ACT 2006

BRODIES LLP  
Solicitors

31 OCTOBER 2018

Ref: ARE/2.3

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For the purposes of the Legal Writings (Counterparts and Delivery) (Scotland) Act 2015, this Floating Charge is delivered on **29 OCTOBER** 2018

by

- (1) **DOBBIES GARDEN CENTRES LIMITED** a company incorporated in Scotland (registered number SC010975) whose registered office is at Melville Nurseries, Lasswade, Midlothian EH18 1AZ (the "Company");

In favour of

- (2) **ARES MANAGEMENT LIMITED** (as security trustee for the Secured Parties (as defined below)), (in such capacity, the "Security Agent").

## **1 Definitions And Interpretation**

### **1.1 Definitions**

In this Charge unless the context requires otherwise:

"**Act**" means the Insolvency Act 1986 as amended by the Insolvency Act 2000 and the Enterprise Act 2002 or, where the context so requires, any of those enactments;

"**Charge**" means these presents (and, as the context may require or imply, the floating charge hereby created) as amended or supplemented from time to time;

"**Declared Default**" means an Event of Default or a Material Event of Default in respect of which any notice has been issued or rights exercised by the Agent under clause 26.19 (Acceleration) or clause 26.20 (Revolving Facility Acceleration) of the Senior Facilities Agreement;

"**Default Rate**" means the rate of interest determined in accordance with clause 12.3 (Default interest) of the Senior Facilities Agreement;

"**Delegate**" means any delegate, sub-delegate, agent, attorney or co-trustee appointed by the Security Agent or by a Receiver;

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

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

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

- (a) the pollution or protection of the Environment;
- (b) the conditions of the workplace; or
- (c) the generation, handling, storage, use, release or spillage of any substance which, alone or in combination with any other, is capable of causing harm to the Environment, including, without limitation, any waste;

**"Event of Default"** means each Event of Default as defined in the Senior Facilities Agreement;

**"First Amendment and Restatement Agreement"** means the amendment and restatement agreement to the Senior Facilities Agreement dated 7 October 2018 and entered into between, amongst others, (1) the companies listed therein as Obligors, (2) Ares Management Limited as Agent and (3) Ares Management Limited as Security Agent;

**"Intellectual Property Rights"** means all know-how, patents, patent applications, trade marks, immunity trade marks, service marks, trade names, brand names, business names, domain names, moral rights, inventions, registered designs, copyright and all other industrial and intellectual property rights and any interests (including by way of licence) in any of the foregoing (in each case whether registered or not and including all applications for and rights to use the same) which may now or in the future subsist;

**"Receiver"** means any receiver or administrative receiver appointed in respect of the Secured Assets under this Charge and includes joint receivers;

**"Second Amendment and Restatement Agreement"** means the amendment and restatement agreement to the Senior Facilities Agreement dated on or around the date hereof and entered into between, amongst others, (1) the companies listed therein as Obligors, (2) Ares Management Limited as Agent and (3) Ares Management Limited as Security Agent;

**"Secured Assets"** means the whole of the property (including uncalled capital) which is or may from time to time, while this Charge is in force, be comprised in the property and undertaking of the Company;

**"Secured Obligations"** means all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally or alone or in any other capacity whatsoever) of the Company to the Security Agent and/or the Secured Parties (or any of them) under or pursuant to any Finance Document, and all or any monies, liabilities and obligations undertaken to be paid under this Charge;

**"Secured Parties"** has the meaning given to that term in the Intercreditor Agreement;

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

- (a) all the Secured Obligations have been unconditionally and irrevocably paid and discharged in full; and
- (b) no Secured Party has any further commitment, obligation or liability under or pursuant to the Finance Documents; and

**"Senior Facilities Agreement"** means the senior term and revolving facilities agreement originally dated 17 June 2016 as amended on 29 November 2016 and as amended and restated pursuant to the First Amendment and Restatement Agreement and as amended and restated pursuant to the Second Amendment and Restatement Agreement made between (1) Dobbies Garden Centres Group Limited (formerly known as DanAtAugusta Midco Limited) as Parent, (2) DanAtAugusta Bidco Limited as Company, (3) the entities listed in part 1 of schedule 1 to it as Original Borrowers, (4) the entities listed in part 1 of schedule 1 to it as Original Guarantors, (5) Ares Management Limited as Arranger, (6) the entities listed in parts 2 and 3 of schedule 1 to it as Original Lenders, (7) Ares Management Limited as Agent, and (8) Ares Management Limited as Security Agent (as the same may be amended, supplemented, novated and/or restated from time to time).

## 1.2 Senior Facilities Agreement definitions

In this Charge, terms defined in, or construed for the purposes of, the Senior Facilities Agreement have the same meanings when used in this Charge (unless the same are otherwise defined in this Charge).

## 1.3 Interpretation

- 1.3.1 Unless a contrary indication appears in this Charge, the provisions of clause 1.2 of the Senior Facilities Agreement apply to this Charge as though they were set out in full in this Charge, except that references to "this Agreement" will be construed as references to this Charge.
- 1.3.2 In this Charge unless the context requires otherwise:
  - 1.3.2.1 words importing the singular shall include the plural and vice versa;
  - 1.3.2.2 references to this Charge or any other document shall be constituted as references to this Charge or such other document as amended, varied, restated, supplemented or novated from time to time;
  - 1.3.2.3 references to any statute or statutory provision (including any subordinate legislation) shall include any statute or statutory provision for the time being in force which amends, extends, consolidates or replaces the same and shall include any orders, regulations, instruments or other subordinate legislation made under the relevant statute or statutory provision;



- 1.3.2.4 references to a "**person**" shall include any individual, firm, company, corporation, body, trust or foundation, or any association, partnership or unincorporated body (whether or not having separate legal personality);
- 1.3.2.5 references to a "**fixed security**" mean a fixed security as defined by section 486 of the Companies Act 1985;
- 1.3.2.6 any reference to the Security Agent includes its permitted successors, transferees and assignees;
- 1.3.2.7 references to a document "**in the agreed form**" means a document in a form agreed by the Company and the Security Agent and initialled by, or on behalf of, each of them for the purpose of identification as such; and
- 1.3.2.8 "**tax**" means all forms of taxation, duties, imposts and levies whatsoever in the nature of taxation whenever and wherever imposed, including (but without limitation) all stamp duties, imposts, duties, capital and revenue taxes and value added tax, and "**taxes**" and "**taxation**" shall be construed accordingly.

1.3.3 Each undertaking of the Company (other than a payment obligation) contained in this Charge:

- 1.3.3.1 must be complied with at all times during the Security Period; and
- 1.3.3.2 is given by the Company for the benefit of the Security Agent and each other Secured Party.

## 1.4 Headings

The table of contents and the headings in this Charge are included for convenience only and shall be ignored in construing this Charge.

## 1.5 Conflict

If there is any conflict between the provisions of this Charge and the provisions of the Intercreditor Agreement, the provisions of the Intercreditor Agreement shall prevail.

## 2 Floating Charge

### 2.1 Payment

The Company undertakes to the Security Agent that it will pay and discharge the Secured Obligations from time to time when they fall due.

## **2.2 Default Interest**

Any amount which is not paid under this Charge when due shall bear interest on a daily basis (both before and after judgment and payable on demand) at the Default Rate from the due date until the date on which such amount is unconditionally and irrevocably paid and discharged in full.

## **2.3 Floating Charge**

In security for the payment and discharge of the Secured Obligations, the Company hereby grants a floating charge over the Secured Assets in favour of the Security Agent.

## **2.4 Qualifying floating charge**

Paragraph 14 of Schedule B1 to the Act applies to the floating charge created by or pursuant to this Charge (and such floating charge is a qualifying floating charge for the purposes of the Act).

## **2.5 Negative pledge and ranking**

Unless otherwise agreed in writing by the Security Agent and subject to section 464(2) of the Companies Act 1985:

2.5.1 the Company shall not create any fixed security or other floating charge over any part of the Secured Assets after its execution of this Charge other than a Permitted Security as permitted by the Senior Facilities Agreement; and

2.5.2 this Charge shall rank in priority to any fixed security or other floating charge created by the Company after its execution of this Charge.

## **3 Protection Of Security**

### **3.1 Continuing security**

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

### **3.2 No prejudice**

This Charge is in addition to, without prejudice to, and shall not merge with, any other right, remedy, guarantee or Security which the Security Agent and/or any other Secured Party may at any time hold for all or any part of the Secured Obligations.

### **3.3 Right to enforce**

This Charge may be enforced against the Company without the Security Agent and/or any other Secured Party first having recourse to any other right, remedy, guarantee or Security held by or available to it or any of them.

### 3.4 Non impairment

The Company agrees that none of its obligations or the Security Agent's rights, powers and discretions under this Charge shall be reduced, discharged or otherwise adversely affected by:

- 3.4.1 any variation, extension, discharge, compromise, dealing with, exchange or renewal of any Security or any right or remedy which the Security Agent may have now or in the future from or against the Company or any other person in respect of any of the Secured Obligations; or
- 3.4.2 any failure, act or omission by the Security Agent or any other person in taking up, perfecting or enforcing any Security or guarantee from or against the Company or any other person in respect of the Secured Obligations; or
- 3.4.3 any increase in or waiver or discharge of the Secured Obligations or any termination, amendment, variation, supplement, restatement, novation or replacement of the Senior Facilities Agreement or the other Finance Documents; or
- 3.4.4 any grant of time, indulgence, waiver or concession to the Company or any other person; or
- 3.4.5 any of the administration, receivership, liquidation, winding-up, insolvency, bankruptcy, incapacity, limitation, disability, discharge by operation of law or any change in the constitution, name or style of the Company or any other person; or
- 3.4.6 any invalidity, illegality, unenforceability, irregularity or frustration of the Secured Obligations; or
- 3.4.7 anything done or omitted to be done by the Security Agent or any other person which but for this provision might operate to exonerate or discharge or otherwise reduce or extinguish the liability of the Company under this Charge.

## 4 Enforcement

### 4.1 Enforceable

This Charge shall be enforceable immediately upon the occurrence of a Declared Default.

### 4.2 Appointment of Receiver or administrator

4.2.1 At any time after this Charge has become enforceable (or if so requested by the Company by written notice at any time) the Security Agent shall be entitled:

- 4.2.1.1 to appoint one or more persons as a Receiver or Receivers in respect of the Secured Assets, or apply to the Court for such appointment;

- 4.2.1.2 to appoint one or more persons as an administrator of the Company;
- 4.2.1.3 to make an administration application in respect of the Company; or
- 4.2.1.4 to give notice of intention to appoint an administrator in respect of the Company.

4.2.2 The appointment of a Receiver or Receivers or an administrator, or the giving of notice of intention to appoint an administrator shall be effected by the Security Agent by written instrument or notice in accordance with and in such form as may be prescribed under the Act. If any such person so appointed as Receiver or administrator is removed from office by the Court or otherwise ceases to act, the Security Agent shall be entitled (subject to the provisions of the Act) to appoint a replacement in the same manner.

#### 4.3 Powers of Receiver

A Receiver appointed under this Charge shall have the following powers in addition to those specified in Schedule 2 of the Act:

- 4.3.1 to promote or procure the incorporation of any new company (whether or not a subsidiary of the Company), to transfer any part of the Secured Assets to such company for any form of consideration (including shares, debentures, loan stock or loan capital in such company), and/or to subscribe for or otherwise acquire shares, debentures, loan stock or loan capital in such company in name of the Company, or the Receiver, or its or his/her nominee or trustee;
- 4.3.2 subject to the articles of association, to convene extraordinary general meetings of the Company;
- 4.3.3 generally, without prejudice to the other provisions of this clause to exercise all the rights, powers and discretions in respect of the Secured Assets it would be entitled to exercise if it were the absolute owner thereof and to do all acts and things the Receiver may consider necessary or expedient for the realisation of the Secured Assets and the application of the proceeds in or towards satisfaction of or their retention as continuing security for the Secured Obligations; and
- 4.3.4 In respect of any of the Secured Assets situated in England and Wales (or any other jurisdiction) to exercise in addition to the foregoing powers, all the powers conferred by the Act or any other enactment or rule of law on receivers or receivers and managers (or analogous officers) in that jurisdiction.

#### **4.4 Agent of Company**

The Receiver shall be the agent of the Company for all purposes of and in all respects arising under this Charge and, except as otherwise provided by the Act, the Company alone shall be responsible for his/her acts, omissions, neglects and defaults and for all liabilities and obligations incurred by him/her, and his/her remuneration costs, charges and expenses.

#### **4.5 Balance**

The rights powers and discretions conferred on the Receiver under this clause are subject only to his/her obligation to account to the Company or any other person entitled thereto for any balance of the Secured Assets or their proceeds remaining in his/her hands after the Secured Obligations have been fully and unconditionally paid and discharged.

#### **4.6 Third parties**

4.6.1 No purchaser from or other person dealing with the Receiver in relation to the Secured Assets shall be concerned to enquire whether any of the powers exercised or purported to be exercised by him/her hereunder has become exercisable, whether any of the Secured Obligations remains outstanding, or generally as to the propriety or validity of the exercise or purported exercise of any power hereunder.

4.6.2 The receipt or discharge of the Receiver shall be an absolute discharge to any purchaser or other person dealing with the Receiver in relation to the Secured Assets and any such purchaser or third party shall not have any obligation to enquire after or see to the application of any payments made by it to the Receiver or at its direction.

### **5 Application of Proceeds and Intercreditor Agreement**

#### **5.1 Application**

All monies received by the Security Agent or any Receiver after this Charge has become enforceable shall (subject to the rights and claims of any person having a security ranking in priority to the Charge be applied in accordance with and subject to the terms of the Intercreditor Agreement.

#### **5.2 Contingencies**

If this Charge is enforced at a time when no amounts are due under the Finance Documents (but at a time when amounts may become so due), the Security Agent or a Receiver may pay the proceeds of any recoveries effected by it into a blocked suspense account (bearing interest at such rate (if any) as the Security Agent usually grants for accounts of that size and nature.

### **5.3 Appropriation, Intercreditor Agreement and suspense account**

- 5.3.1 Subject to the Intercreditor Agreement and clause 5.1 (Application), the Security Agent shall apply all payments received in respect of the Secured Obligations in reduction of any part of the Secured Obligations in any order or manner which it may determine.
- 5.3.2 Any such appropriation shall override any appropriation by the Company.
- 5.3.3 All monies received, recovered or realised by the Security Agent under or in connection with this Charge may at the discretion of the Security Agent be credited to a separate interest-bearing suspense account for so long as the Security Agent determines (with interest accruing thereon at such rate (if any) as the Security Agent usually grants for accounts of that size and nature without the Security Agent having any obligation to apply such monies and interest or any part of it in or towards the discharge of any of the Secured Obligations unless such monies would clear all Secured Obligations in full.

## **6 Liability of Receiver and Security Agent**

The Receiver and the Security Agent shall not in any circumstances be liable to the Company or any other person for any losses, damages, liabilities or expenses arising from or in connection with the application or enforcement of this Charge or any realisation, appropriation or application of the Secured Assets or from any act, default or omission of the Receiver or the Security Agent, or his/her or its officers, employees or agents in relation to the Secured Assets or otherwise in connection with this Charge, except to the extent caused by the gross negligence or wilful default of the Receiver or the Security Agent or his/her or its officers, employees or agents.

## **7 Set-Off**

### **7.1 Set-off rights**

The Security Agent and each other Secured Party may (but shall not be obliged to) set off any obligation which is due and payable by the Company and unpaid (whether under the Finance Documents or otherwise) against any obligation (whether or not matured) owed by the Security Agent or such other Secured Party to the Company, regardless of the place of payment, booking branch or currency of either obligation.

### **7.2 Set-off rights after Security is enforceable**

At any time after this Charge has become enforceable (and in addition to its rights under clause 7.1 (Set-off rights)) the Security Agent and each other Secured Party may (but shall not be obliged to) set-off any contingent liability owed by the Company under any Finance Document against any obligation (whether or not matured) owed by the Security Agent or such other Secured Party to the Company, regardless of the place of payment, booking branch or currency of either obligation.

### **7.3 Currency conversion for the purposes of set-off**

If the obligations are in different currencies, the Security Agent or such other Secured Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

### **7.4 Unliquidated or unascertained liabilities**

If either obligation referred to in this clause is unliquidated or unascertained, the Security Agent or such other Secured Party may set off in an amount estimated by it in good faith to be the amount of that obligation.

## **8 Delegation**

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

## **9 Further Assurances**

### **9.1 Further action**

Subject to the Agreed Security Principles the Company shall, at its own expense, promptly do all acts and execute all documents as the Security Agent or a Receiver may reasonably specify (and in such form as the Security Agent or a Receiver may reasonably require) for:

- 9.1.1 creating, perfecting or protecting the Security intended to be created by this Charge;
- 9.1.2 creating any fixed security or charge over any of the Secured Assets;
- 9.1.3 facilitating the realisation of any Secured Asset;
- 9.1.4 facilitating the exercise of any rights, powers and remedies exercisable by the Security Agent, any other Secured Party or any Receiver or any Delegate in respect of any Secured Asset or provided by or pursuant to the Finance Documents or by law; or
- 9.1.5 creating and perfecting Security in favour of the Security Agent or the Secured Parties over any property and assets of the Company located in any jurisdiction outside Scotland equivalent or similar to the Security intended to be created by or pursuant to this Charge.

## 9.2 Finance Documents

The Company shall take all such action as is available to it (including making all filings and registrations) as is necessary for the purpose of the creation, perfection, protection or maintenance of any Security conferred or intended to be conferred on the Security Agent or the Secured Parties by or pursuant to this Charge.

## 10 Power Of Attorney

The Company, by way of security, irrevocably appoints the Security Agent, each Receiver and any Delegate to be its attorney to take any action whilst an Event of Default is continuing or this Charge has become enforceable, which the Company is obliged to take under this Charge, including under clause 9 (Further Assurances), or if no Event of Default is continuing, which the Company has failed to take. The Company ratifies and confirms whatever any attorney does or purports to do pursuant to its appointment under this clause.

## 11 Currency Conversion

All monies received or held by the Security Agent or any Receiver under this Charge in a currency (the "Other Currency") other than the currency in which the relevant monies are expressed to be payable (the "Required Currency") may be converted from the Other Currency into the Required Currency as the Security Agent or the Receiver considers necessary or desirable to cover the obligations and liabilities comprised in the Secured Obligations in the Required Currency at the Agent's Spot Rate of Exchange. The Company shall indemnify the Security Agent against all costs, charges and expenses incurred in relation to such conversion. Neither the Security Agent nor any Receiver shall have any liability to the Company in respect of any loss resulting from any fluctuation in exchange rates after any such conversion.

## 12 Miscellaneous

### 12.1 New accounts

12.1.1 If the Security Agent or any other Secured Party receives, or is deemed to be affected by, notice, whether actual or constructive, of any subsequent Security (other than a Permitted Security) affecting any Security Asset and/or the proceeds of sale of any Security Asset or any guarantee under the Finance Documents ceases to continue in force, it may open a new account or accounts for the Company. If it does not open a new account, it shall nevertheless be treated as if it had done so at the time when it received or was deemed to have received such notice.

12.1.2 As from that time all payments made to the Security Agent or such other Secured Party will be credited or be treated as having been credited to the new account and will not operate to reduce any amount of the Secured Obligations.



## 12.2 Assignment

12.2.1 The Security Agent may assign or transfer all or any part of its rights under this Charge pursuant to the resignation or removal of the Security Agent in accordance with the Intercreditor Agreement. The Company shall, immediately upon being requested to do so by the Security Agent, enter into such documents as may be necessary or desirable to effect such assignment or transfer.

12.2.2 The Company may not assign, transfer or otherwise deal with the benefit or burden of this Charge or any of its rights or obligations hereunder.

## 12.3 Non-reliance

Each of the parties acknowledges and agrees that in entering into this Charge it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) of any person (whether a party to this Charge or not) other than as expressly set out in this Charge.

## 12.4 Consent to registration

The Company consents to the registration of this Charge and of any certificate referred to in clause 14 (Calculations and Certificates) below for preservation and execution.

## 13 Notices

### 13.1 Senior Facilities Agreement provisions

The provisions of clause 35 (Notices) of the Senior Facilities Agreement (other than clauses 35.3(c), 35.6 (Electronic communication) and 35.7 (Use of websites)) shall apply *mutatis mutandis* to this Charge as if set out in full herein.

### 13.2 Addresses for notices

The addresses, facsimile numbers and/or email of the parties for the purposes of this clause 13 are:

#### The Security Agent

Address: 6th Floor, 10 New Burlington Street, London W1S 3BE

For the attention of: David Ribchester / Nishal Patel

Fax number: +44 207 464 6401

#### The Company

Address: 22 - 23, Fourth Floor, Old Burlington Street, London, W1S 2JJ

For the attention of: Andrew Bracey

Email: [andrew.bracey@midlothiancapitalpartners.com](mailto:andrew.bracey@midlothiancapitalpartners.com)

or such other address, facsimile number and/or email in the United Kingdom as may be notified in writing from time to time by the relevant party to the other.

#### **14 Calculations and Certificates**

Any certificate of or determination by a Secured Party or the Security Agent specifying the amount of any Secured Obligation due from the Company (including details of any relevant calculation thereof) is, in the absence of manifest error, conclusive evidence against the Company of the matters to which it relates.

#### **15 Partial Invalidity**

All the provisions of this Charge are severable and distinct from one another and if at any time any provision is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of any of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

#### **16 Remedies and Waivers**

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

#### **17 Amendments and Waivers**

Any provisions of this Charge may be amended in writing by the Security Agent and the Company or the Parent acting on their behalf and the Company irrevocably appoints the Parent as its agent for the purpose of agreeing and executing any amendment on its behalf. Any breach of this Charge may be waived before or after it occurs only if the Security Agent so agrees in writing. A waiver given or consent granted by the Security Agent under this Charge will be effective only if given in writing and then only in the instance and for the purpose for which it is given.

#### **18 Release**

##### **18.1 Release**

Upon the expiry of the Security Period (but not otherwise) the Security Agent shall, at the request and cost of the Company, take whatever action is necessary to discharge (without recourse or warranty) the Security Assets from the Security created by this Charge.

## 18.2 Reinstatement

Where any discharge (whether in respect of the obligations of the Company or any security for those obligations or otherwise) is made in whole or in part or any arrangement is made on the faith of any payment, security or other disposition which is avoided or must be restored on Insolvency, liquidation or otherwise (without limitation), the liability of the Company under this Charge shall continue as if the discharge or arrangement had not occurred. The Security Agent may concede or compromise any claim that any payment, security or other disposition is liable to avoidance or restoration.

## 19 Governing Law

This Charge and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with the law of Scotland and in so far as not already subject thereto the parties irrevocably submit to the exclusive jurisdiction of the Scottish Courts.

**IN WITNESS WHEREOF** these presents consisting of this and the 13 preceding pages are executed as follows and are delivered for the purposes of the Legal Writings (Counterparts and Delivery) (Scotland) Act 2015 on the date set out on page 1 of this document:-

**SUBSCRIBED** for and on behalf of **DOBBIES GARDEN CENTRES LIMITED**

signature of  
director/secretary/authorised signatory/witness

*MAX LACK*  
full name of above (print)

address of witness

signature of  
director/secretary/authorised signatory

*GRAEME JENKINS*  
full name of above (print) *CAPITALS / FULLNAME*

*24 OCTOBER 2018*  
date of signing

*LONDON, UK*  
place of signing

**SUBSCRIBED** for and on behalf of **ARES MANAGEMENT LIMITED**

signature of  
director/secretary/authorised signatory/witness

full name of above (print)

address of witness

signature of  
director/secretary/authorised signatory

full name of above (print)

date of signing

place of signing

## 18.2 Reinstatement

Where any discharge (whether in respect of the obligations of the Company or any security for those obligations or otherwise) is made in whole or in part or any arrangement is made on the faith of any payment, security or other disposition which is avoided or must be restored on insolvency, liquidation or otherwise (without limitation), the liability of the Company under this Charge shall continue as if the discharge or arrangement had not occurred. The Security Agent may concede or compromise any claim that any payment, security or other disposition is liable to avoidance or restoration.

## 19 Governing Law

This Charge and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with the law of Scotland and in so far as not already subject thereto the parties irrevocably submit to the exclusive jurisdiction of the Scottish Courts.

IN WITNESS WHEREOF these presents consisting of this and the 13 preceding pages are executed as follows and are delivered for the purposes of the Legal Writings (Counterparts and Delivery) (Scotland) Act 2015 on the date set out on page 1 of this document:-

**SUBSCRIBED for and on behalf of DOBBIES GARDEN CENTRES LIMITED**

signature of  
director/secretary/authorised signatory/witness

full name of above (print)

address of witness

signature of  
director/secretary/authorised signatory

full name of above (print)

date of signing

place of signing

**SUBSCRIBED for and on behalf of ARES MANAGEMENT LIMITED**

signature of  
director/secretary/authorised signatory/witness

Morwenca Underwood  
full name of above (print)

address of witness

signature of  
director/secretary/authorised signatory

John Atherton  
full name of above (print)

26 October 2018  
date of signing

London, UK  
place of signing