



Registration of a Charge

Company name: **ECHO HOTEL LIMITED**

Company number: **SC097869**



X8KGXT5D

Received for Electronic Filing: **16/12/2019**

Details of Charge

Date of creation: **10/12/2019**

Charge code: **SC09 7869 0026**

Persons entitled: **CBRE LOAN SERVICES LIMITED AS COMMON SECURITY AGENT FOR
THE COMMON SECURED PARTIES**

Brief description:

Contains floating charge(s) .

Contains negative pledge.

Authentication of Form

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

Authentication of Instrument

Certification statement: **I CERTIFY THAT SAVE FOR MATERIAL REDACTED PURSUANT
TO S.859G OF THE COMPANIES ACT 2006 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: 97869

Charge code: SC09 7869 0026

The Registrar of Companies for Scotland hereby certifies that a charge dated 10th December 2019 and created by ECHO HOTEL LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 16th December 2019 .

Given at Companies House, Edinburgh on 16th December 2019

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**



SHEPHERD+ WEDDERBURN

Bond and Floating Charge

by

ECHO HOTEL LIMITED

in favour of

CBRE LOAN SERVICES LIMITED as Common Security Agent

THIS BOND AND FLOATING CHARGE is made by:

- (1) **ECHO HOTEL LIMITED**, a company incorporated under the Companies Acts in Scotland with company number SC097869 and having its registered office at Crown Plaza Glasgow, Congress Road, Glasgow G3 8QT (the "**Chargor**");

in favour of:

- (2) **CBRE LOAN SERVICES LIMITED**, a company incorporated under the Companies Acts in England and Wales with company number 05469838 and having an office at Henrietta House, Henrietta Place, London W1G 0NB, United Kingdom as common security agent and trustee for the Common Secured Parties (as defined in the Senior Facility Agreement defined below) (the "**Common Security Agent**").

WHEREAS:

The Chargor enters into this Bond and Floating Charge in connection with the Senior Facility Agreement, the Mezzanine Facility Agreement and the Intercreditor Agreement (as defined below).

IT IS AGREED as follows:

1. INTERPRETATION

1.1 Definitions

In this Bond and Floating Charge:

"**Common Secured Obligations**" has the meaning given to it in the Intercreditor Agreement;

"**Common Security Agreement**" means the English law common security agreement dated on or about the effective date of this Bond and Floating Charge between (among others) BPH Finance Number 1 Limited and the Chargor in favour of the Common Security Agent;

"**English Floating Charge**" means the floating security granted in favour of the Common Security Agent pursuant to the Common Security Agreement;

"**Event of Default**" means:

- (a) prior to the Senior Discharge Date, a Senior Event of Default; and
- (b) on or after the Senior Discharge Date, a Mezzanine Event of Default;

"**Fixed Scottish Security**" means any fixed Security Interest governed by Scots law granted by a Chargor (as such term is used in the Common Security Agreement) in favour of the Common Security Agent as security for the Common Secured Obligations;

"**Intercreditor Agreement**" means the intercreditor agreement dated on or about the effective date of this Bond and Floating Charge, between, among others, the Chargor, the Common Security Agent, the Senior Agent, the Original Senior Lender, the Mezzanine Agent, the Original Mezzanine Lender and the Mezzanine Borrower;

"**Receiver**" means a receiver, receiver and manager, administrative receiver or Scottish receiver, in each case, appointed under this Bond and Floating Charge;

"**Scottish Assets**" means all the present and future assets and undertaking of the Chargor located in Scotland or otherwise governed by Scots law;

"**Security Interest**" means any mortgage, standard security, charge, pledge, lien, assignment, assignation, hypothecation or security interest securing any obligation of any person or any other agreement or arrangement having a similar effect;

"**Security Period**" means the period beginning on the effective date of this Bond and Floating Charge and ending on the date on which all the Common Secured Obligations have been unconditionally and irrevocably paid and discharged in full; and

"**Senior Facility Agreement**" means the senior term loan facility agreement dated on or about the effective date of this Bond and Floating Charge between (among others) the Chargor and the Common Security Agent.

1.2 Construction

- (a) Capitalised terms defined in the Intercreditor Agreement have, unless expressly defined in this Bond and Floating Charge, the same meaning in this Bond and Floating Charge.

- (b) The provisions of Clauses 1.2 (*Construction*) to 1.4 (*Scottish Terms*) of the Intercreditor Agreement apply to this Bond and Floating Charge as though they were set out in full in this Bond and Floating Charge except that references to the Intercreditor Agreement will be construed as references to this Bond and Floating Charge.
- (c) A Finance Document or other agreement or instrument includes (without prejudice to any prohibition on amendments) any amendment to or consent under that Finance Document or other agreement or instrument, including any change in the purpose of, any extension of or any increase in the amount of a facility or any additional facility;
 - (i) the term this Security means any security created by this Bond and Floating Charge; and
 - (ii) a reference to any asset includes present and future properties, revenues and rights of every description.
- (d) Any undertaking of the Chargor under this Bond and Floating Charge (other than a payment obligation) remains in force during the Security Period.
- (e) If the Common Security Agent considers that an amount paid to a Secured Party under a Finance Document is capable of being avoided or otherwise set aside on the liquidation or administration of the payer or otherwise, then that amount will not be considered to have been irrevocably paid for the purposes of this Bond and Floating Charge.
- (f) Unless the context otherwise requires, a reference to a Scottish Asset includes the proceeds of sale of that Scottish Asset.

1.3 Intercreditor Agreement

This Bond and Floating Charge is subject to the terms of the Intercreditor Agreement. Notwithstanding anything to the contrary in this Bond and Floating Charge, to the extent that any provision of this Bond and Floating Charge conflicts with any of the terms of the Intercreditor Agreement, the parties agree that the terms of the Intercreditor Agreement shall prevail.

2. CREATION OF SECURITY

2.1 General

- (a) All the security created under this Bond and Floating Charge:
 - (i) is created in favour of the Common Security Agent;
 - (ii) is created over present and future assets of the Chargor;
 - (iii) is security for the payment and satisfaction of all the Common Secured Obligations; and
 - (iv) is made with absolute warrandice.
- (b) The Common Security Agent holds the benefit of this Bond and Floating Charge on trust for the Common Secured Parties under the terms of the Intercreditor Agreement.

2.2 Floating charge

- (a) As continuing security for the payment, discharge and satisfaction of the Common Secured Obligations, the Chargor hereby grants in favour of the Common Security Agent a floating charge over all of the Scottish Assets whether or not effectively secured, mortgaged, charged or assigned by way of standard security, mortgage, fixed charge or assignation under this Clause or any other Security Document.
- (b) The floating charge created by this Clause shall be deferred in point of priority to any Fixed Scottish Security, but shall rank prior to the English Floating Charge.
- (c) The floating charge created by this Clause is a qualifying floating charge for the purpose of paragraph 14 of Schedule B1 to the Insolvency Act 1986.

3. REPRESENTATIONS - GENERAL

3.1 Nature of security

The Chargor represents and warrants to each Common Secured Party that this Bond and Floating Charge creates those Security Interests it purports to create and is not liable to be avoided or otherwise set aside on the liquidation or administration of the Chargor or otherwise.

3.2 Times for making representations

- (a) The representations and warranties set out in this Bond and Floating Charge (including in this Clause) are made on the effective date of this Bond and Floating Charge.
- (b) Unless a representation or warranty is expressed to be given at a specific date, each representation or warranty under this Bond and Floating Charge is deemed to be repeated by the Chargor, by reference to the facts and circumstances existing:
 - (i) on the date during the Security Period on with the Repeating Representations are deemed to be repaid in accordance with the Senior Facility Agreement; and
 - (ii) on or after the Senior Discharge Date to the Mezzanine Discharge Date in accordance with the Mezzanine Facility Agreement.
- (c) When a representation or warranty is repeated, it is applied to the circumstances existing at the time of repetition.

4. RESTRICTIONS ON DEALINGS

4.1 Security

Except as expressly allowed under a Finance Document, the Chargor may not create or permit to subsist any Security Interest on any Scottish Asset (except for the Transaction Security).

4.2 Disposals

Except as expressly allowed under a Finance Document, the Chargor may not sell, transfer, licence, lease or otherwise dispose of any Scottish Asset.

4.3 Acquisitions

If the Chargor acquires any heritable or long leasehold property in Scotland in accordance with the Senior Facility Agreement or the Mezzanine Facility Agreement after the effective date of this Bond and Floating Charge it must:

- (a) notify the Common Security Agent immediately;
- (b) immediately on request by the Common Security Agent and at the cost of the Chargor, execute and deliver to the Common Security Agent such Scottish Security Documents in favour of the Common Security Agent of that property in any form which the Common Security Agent may require; and
- (c) if applicable, ensure that the said Scottish Security Documents are correctly recorded with the Registers of Scotland.

5. WHEN SECURITY BECOMES ENFORCEABLE

5.1 Event of Default

This Security will become immediately enforceable if an Event of Default occurs and is continuing and the Common Security Agent gives written notice to the Chargor that this Security is enforceable.

5.2 Discretion

After this Security has become enforceable, the Common Security Agent may in its absolute discretion enforce all or any part of this Security in any manner as it sees fit or as the Instructing Group direct in each case in accordance with the terms of the Intercreditor Agreement.

6. ENFORCEMENT OF SECURITY

6.1 No liability as heritable creditor in possession

Neither the Common Security Agent nor any Receiver will be liable, by reason of entering into possession of a Scottish Asset, to account as security holder or heritable creditor in possession or for any loss on realisation or for any default or omission for which a heritable creditor in possession might be liable.

6.2 Protection of third parties

No person (including a purchaser) dealing with the Common Security Agent or a Receiver or its or his agents will be concerned to enquire:

- (a) whether the Common Secured Obligations have become payable;

- (b) whether any power which the Common Security Agent or a Receiver is purporting to exercise has become exercisable or is being properly exercised;
- (c) whether any money remains due under the Finance Documents; or
- (d) how any money paid to the Common Security Agent or to that Receiver is to be applied.

6.3 Redemption of prior mortgages

- (a) At any time after this Security has become enforceable, the Common Security Agent may:
 - (i) redeem any prior Security Interest against any Scottish Asset; and/or
 - (ii) procure the transfer of that Security Interest to itself; and/or
 - (iii) settle and pass the accounts of the prior mortgagee, heritable creditor, chargee or encumbrancer; any accounts so settled and passed will be, in the absence of manifest error, conclusive and binding on the Chargor.
- (b) The Chargor must pay to the Common Security Agent, immediately on demand, the costs and expenses incurred by the Common Security Agent in connection with any such redemption and/or transfer, including the payment of any principal or interest.

6.4 Contingencies

If this Security is enforced at a time when no amount is due under the Finance Documents but at a time when amounts may or will become due, the Common Security Agent (or the Receiver) may pay the proceeds of any recoveries effected by it into a suspense account.

7. RECEIVER

7.1 Appointment of Receiver

- (a) Except as provided below, the Common Security Agent may appoint any one or more persons to be a Receiver of all or any part of the Scottish Assets if:
 - (i) this Security has become enforceable; or
 - (ii) the Chargor so requests the Common Security Agent in writing at any time.
- (b) The Common Security Agent is not entitled to appoint a Receiver solely as a result of the obtaining of a moratorium (or anything done with a view to obtaining a moratorium) under section 1A of the Insolvency Act 1986.
- (c) The Common Security Agent may not appoint an administrative receiver (as defined in section 29(2) of the Insolvency Act 1986) over the Scottish Assets if the Common Security Agent is prohibited from so doing by section 72A of the Insolvency Act 1986 and no exception to the prohibition on appointing an administrative receiver applies.

7.2 Removal

The Common Security Agent may (subject to any requirement for an order of the court in the case of an administrative receiver) remove any Receiver appointed by it and may, whenever it thinks fit, appoint a new Receiver in the place of any Receiver whose appointment may for any reason have terminated.

7.3 Remuneration

Subject to the provisions of the Insolvency Act 1986 and the Insolvency (Scotland) Rules 1986, the Common Security Agent may fix the remuneration of any Receiver appointed by it.

7.4 Agent of each Chargor

- (a) A Receiver will be deemed to be the agent of the Chargor for all purposes and accordingly will be deemed to be in the same position as a Receiver duly appointed by a mortgagee under the Act. The Chargor alone is responsible for the contracts, engagements, acts, omissions, remuneration, defaults and losses of a Receiver and for liabilities incurred by a Receiver.
- (b) No Secured Party will incur any liability (either to the Chargor or to any other person) by reason of the appointment of a Receiver or for any other reason.

7.5 Relationship with Common Security Agent

To the fullest extent allowed by law, any right, power or discretion conferred by this Bond and Floating Charge (either expressly or impliedly) or by law on a Receiver may after this Bond and Floating Charge becomes enforceable be exercised by the Common Security Agent in relation

to any Scottish Asset without first appointing a Receiver and notwithstanding the appointment of a Receiver.

8. POWERS OF RECEIVER

8.1 General

- (a) A Receiver has all of the rights, powers and discretions set out below in this Clause in addition to those conferred on it by any law, this includes in the case of an administrative receiver, all the rights powers and discretions conferred on an administrative receiver and a Scottish receiver under the Insolvency Act 1986.
- (b) If there is more than one Receiver holding office at the same time, each Receiver may (unless the document appointing him states otherwise) exercise all of the powers conferred on a Receiver under this Bond and Floating Charge individually and to the exclusion of any other Receiver.

8.2 Possession

A Receiver may take immediate possession of, get in and collect any Scottish Asset.

8.3 Carry on business

A Receiver may carry on any business of the Chargor in any manner he thinks fit.

8.4 Employees

- (a) A Receiver may appoint and discharge managers, officers, agents, accountants, servants, workmen and others for the purposes of this Bond and Floating Charge upon such terms as to remuneration or otherwise as he thinks fit.
- (b) A Receiver may discharge any person appointed by the Chargor.

8.5 Borrow money

A Receiver may raise and borrow money either unsecured or on the security of any Scottish Asset either in priority to this Security or otherwise and generally on any terms and for whatever purpose which he thinks fit.

8.6 Sale of assets

- (a) A Receiver may sell, exchange, convert into money and realise any Scottish Asset by public auction, roup or private contract and generally in any manner and on any terms which he thinks fit.
- (b) The consideration for any such transaction may consist of cash, debentures or other obligations, shares, stock or other valuable consideration and any such consideration may be payable in a lump sum or by instalments spread over any period which he thinks fit.
- (c) Fixtures, other than landlord's fixtures, may be severed and sold separately from the property containing them without the consent of the Chargor.

8.7 Leases

A Receiver may let any Scottish Asset for any term and at any rent (with or without a premium) which he thinks fit and may accept a surrender or renunciation of any lease or tenancy of any Scottish Asset on any terms which he thinks fit (including the payment of money to a lessee or tenant on a surrender).

8.8 Compromise

A Receiver may settle, adjust, refer to arbitration, compromise and arrange any claim, account, dispute, question or demand with or by any person who is or claims to be a creditor of the Chargor or relating in any way to any Scottish Asset.

8.9 Legal actions

A Receiver may bring, prosecute, enforce, defend and abandon any action, suit or proceedings in relation to any Scottish Asset which he thinks fit.

8.10 Receipts

A Receiver may give a valid receipt for any moneys and execute any assurance or thing which may be proper or desirable for realising any Scottish Asset.

8.11 Subsidiaries

A Receiver may form a Subsidiary of the Chargor and transfer to that Subsidiary any Scottish Asset.

8.12 Delegation

A Receiver may delegate his powers in accordance with this Bond and Floating Charge.

8.13 Lending

A Receiver may lend money or advance credit to any customer of the Chargor.

8.14 Protection of assets

A Receiver may:

- (a) effect any repair or insurance and do any other act which the Chargor might do in the ordinary conduct of its business to protect or improve any Scottish Asset;
- (b) commence and/or complete any building operation; and
- (c) apply for and maintain any planning permission, building regulation approval or any other Authorisation,

in each case as he thinks fit.

8.15 Other powers

A Receiver may:

- (a) do all other acts and things which he may consider desirable or necessary for realising any Scottish Asset or incidental or conducive to any of the rights, powers or discretions conferred on a Receiver under or by virtue of this Bond and Floating Charge or law;
- (b) exercise in relation to any Scottish Asset all the powers, authorities and things which he would be capable of exercising if he were the absolute beneficial owner of that Scottish Asset; and
- (c) use the name of the Chargor for any of the above purposes.

9. APPLICATION OF PROCEEDS

All amounts from time to time received or recovered by the Common Security Agent or any Receiver after this Security has become enforceable pursuant to the terms of this Bond and Floating Charge or in connection with the realisation or enforcement of all or part of this Bond and Floating Charge will be held and applied in accordance with the Intercreditor Agreement.

10. DELEGATION

10.1 Power of Attorney

The Common Security Agent or any Receiver may delegate by power of attorney or in any other manner to any person any right, power or discretion exercisable by it under this Bond and Floating Charge.

10.2 Terms

Any such delegation may be made upon any terms (including power to sub-delegate) which the Common Security Agent or any Receiver may think fit.

10.3 Liability

Neither the Common Security Agent nor any Receiver will be in any way liable or responsible to the Chargor for any loss or liability arising from any act, default, omission or misconduct on the part of any delegate or sub-delegate.

11. FURTHER ASSURANCES

11.1 The Chargor must, at its own expense, take whatever action the Common Security Agent or a Receiver may reasonably require for:

- (a) creating, perfecting or protecting any security intended to be created by this Bond and Floating Charge; or
- (b) facilitating the realisation of any Scottish Asset, or the exercise of any right, power or discretion exercisable, by the Common Security Agent or any Receiver or any of its delegates or sub-delegates in respect of any Scottish Asset.

This includes:

- (i) the execution of any standard security, charge, transfer, conveyance, assignment, assignation or assurance of any property, whether to the Common Security Agent or to its nominee; or
- (ii) the giving of any notice, order or direction and the making of any filing or registration, which, in any such case, the Common Security Agent may think expedient.

12. COMMON SECURITY AGENT PROVISIONS

- 12.1 The Common Security Agent executes this Bond and Floating Charge as common security agent in the exercise of the rights, power and authority conferred and vested in it under the Intercreditor Agreement and any other Finance Document for and on behalf of the Common Secured Parties for whom it acts. It will exercise its powers, rights, duties and authority under this Bond and Floating Charge in the manner provided for in the Intercreditor Agreement and, in so acting, the Common Security Agent shall have the protections, immunities, rights, powers, authorisations, indemnities and benefits conferred on it under and by the Intercreditor Agreement and the other Finance Documents.
- 12.2 The Common Security Agent shall not owe any fiduciary duties to the Chargor under this Bond and Floating Charge or any of its directors, employees, agents or affiliates.
- 12.3 Notwithstanding any other provisions of this Bond and Floating Charge, in acting under and in accordance with this Bond and Floating Charge the Common Security Agent is entitled to seek instructions from the Instructing Group in accordance with the provisions of the Intercreditor Agreement and at any time, and where it so acts or refrains from acting on the instructions of the Instructing Group entitled to give it instructions, the Common Security Agent shall not incur any liability to any person for so acting or refraining from acting.

13. POWER OF ATTORNEY

The Chargor irrevocably appoints the Common Security Agent, each Receiver and any of its delegates or sub-delegates to be its mandatory and attorney to take any action which the Chargor is obliged to take under this Bond and Floating Charge and has failed to take. The Chargor ratifies and confirms whatever any attorney does or purports to do under its appointment under this Clause.

14. MISCELLANEOUS

- 14.1 **Covenant to pay**
The Chargor must pay or discharge the Common Secured Obligations in the manner provided for in the Finance Documents.
- 14.2 **New Accounts**
 - (a) If any subsequent charge or other interest affects any Scottish Asset, a Common Secured Party may open a new account with the Chargor.
 - (b) If the Common Secured Party does not open a new account, it will nevertheless be treated as if it had done so at the time when it received or was deemed to have received notice of that charge or other interest.
 - (c) As from that time all payments made to a Common Secured Party will be credited or be treated as having been credited to the new account and will not operate to reduce any Common Secured Obligations.
- 14.3 **Time deposits**
Without prejudice to any right of set-off any Common Secured Party may have under any other Finance Document or otherwise, if any time deposit matures on any account the Chargor has with any Common Secured Party within the Security Period when:
 - (a) this Security has become enforceable; and
 - (b) no Common Secured Obligation is due and payable,
 that time deposit will automatically be renewed for any further maturity which that Common Secured Party considers appropriate.

15. RELEASE

At the end of the Security Period, the Common Secured Parties must, at the request and cost of the Chargor, take whatever action is necessary to release the Scottish Assets from this Bond and Floating Charge.

16. GOVERNING LAW

This Bond and Floating Charge and any non-contractual obligations arising out of or in connection with it are governed by Scots Law.

17. COUNTERPARTS, DELIVERY AND EFFECTIVE DATE

17.1 This Bond and Floating Charge may be executed in any number of counterparts and by each of the parties on separate counterparts.

17.2 Where executed in counterparts:

- (a) this Bond and Floating Charge will not take effect until each of the counterparts has been delivered;
- (b) each counterpart will be held as undelivered until the parties agree a date on which the counterparts are to be treated as delivered;
- (c) the date of delivery may be inserted in the testing clause in the blank provided for the effective date of this Bond and Floating Charge.

18. JURISDICTION

- 18.1 The Scottish courts have exclusive jurisdiction to settle any dispute arising out of or in connection with this Bond and Floating Charge (including a dispute relating to the existence, validity or termination of this Bond and Floating Charge or any non-contractual obligation arising out of or in connection with this Bond and Floating Charge) (a "Dispute").
- 18.2 The Chargor agrees that the Scottish courts are the most appropriate and convenient courts to settle Disputes and accordingly will not argue to the contrary.
- 18.3 This Clause is for the benefit of the Common Secured Parties only. As a result, the Common Secured Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Common Secured Parties may take concurrent proceedings in any number of jurisdictions.

IN WITNESS WHEREOF these presents consisting of this and the preceding eight (8) pages are executed in counterpart by the parties undernoted, with an effective date of 10 December 2019.

SUBSCRIBED for and on behalf of the said
ECHO HOTEL LIMITED by

Wanmick Sunsuman
.....
Director / Authorised Signatory
(Print Full Name)

[Redacted Signature]
.....
Director / Authorised Signatory
(Signature)

Hansa Sunsuman
.....
Director / Authorised Signatory
(Print Full Name)

[Redacted Signature]
.....
Director / Authorised Signatory
(Signature)

at.....
CMS Cameron McKenna Nabarro Olswang LLP
Cannon Place
78 Cannon Street
London
EC4N 6AF
(place of signing)

on..... 10 DECEMBER 2019
(date of signing)

Before this witness:

Kerry Ndam
.....
Witness
(Print Full Name)

[Redacted Signature]
.....
Witness
(Signature)

.....
(address of witness)

.....
CMS Cameron McKenna Nabarro Olswang LLP
Cannon Place
78 Cannon Street
London
EC4N 6AF

SUBSCRIBED for and on behalf of
CBRE LOAN SERVICES LIMITED by

PIOTR TOKARSKI
Authorised Signatory

Authorised Signatory
(Print Full Name)

Authorised Signatory
(Signature)

David Martin
Authorised Signatory

DAVID COMMERFORD
MARTIN

Authorised Signatory
(Print Full Name)

Authorised Signatory
(Signature)

at London
(place of signing)

on 5/12/19
(date of signing)