



Registration of a Charge

Company name: **OCHIL DEVELOPMENTS (UK) LIMITED**

Company number: **SC231707**

Received for Electronic Filing: **17/04/2018**



X7437AXL

Details of Charge

Date of creation: **12/04/2018**

Charge code: **SC23 1707 0008**

Persons entitled: **WEST ONE LOAN LIMITED**

Brief description:

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

Contains negative pledge.

Authentication of Form

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

Authentication of Instrument

Certification statement: **I CERTIFY THAT THE ELECTRONIC COPY INSTRUMENT
DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION
IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by: **HARPER MACLEOD LLP**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 231707

Charge code: SC23 1707 0008

The Registrar of Companies for Scotland hereby certifies that a charge dated 12th April 2018 and created by OCHIL DEVELOPMENTS (UK) LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 17th April 2018 .

Given at Companies House, Edinburgh on 18th April 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

12th April 2018

Ochil Developments (UK) Limited

as Borrower

West One Loan Limited

as Lender

Floating Charge

FLOATING CHARGE

12th April 2019

GRANTED BY

- (1) **OCHIL DEVELOPMENTS (UK) LIMITED** a company registered in Scotland (Company Registration Number: SC231707) whose registered office is Kirkton Farm, Near Auchterarder, Perthshire, United Kingdom, PH4 1RF (the "**Borrower**");

in favour of

- (2) **WEST ONE LOAN LIMITED** a company registered in England and Wales (Company Registration Number: 5385677) whose registered office is at 3rd Floor Premiere House, Elstree Way, Borehamwood, Hertfordshire WD6 1JH (the "**Lender**")

Agreed terms

1. Definitions and Interpretation

1.1 Definitions

In this Instrument the definitions and rules of interpretation in this clause apply.

"Administrator" an administrator appointed to manage the affairs, business and property of the Borrower pursuant to paragraph 13 of Part 4 of the Schedule.

"Business Day" a day (other than a Saturday or Sunday) on which commercial banks are open for general business in London and deposits are dealt with on the London Interbank Market.

"Charged Assets" the whole, assets, property and rights of the Borrower (including, without limitation, uncalled capital) which is or may be from time to time while this Instrument is in force comprised in the property and undertaking of the Borrower (and references to the Charged Assets include references to any part thereof).

"Costs" all costs, charges, expenses and liabilities of any kind including, without limitation, costs and damages in connection with litigation, professional fees, disbursements and any value added tax charged on such costs, charges, expenses and liabilities.

"Encumbrance" any standard security, charge (whether fixed or floating), pledge, lien, assignation by way of security, hypothec, or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

"Environment" the natural and man-made environment including all or any of the following media, namely air, water and land (including air within buildings and other natural or man-made structures above or below the ground) and any living organisms (including man) or systems supported by those media.

"Environmental Law" all applicable laws, statutes, regulations, secondary legislation, bye-laws, common law, directives, treaties and other measures, judgments and decisions of any court or tribunal, codes of practice and guidance notes in so far as they relate to or apply to the Environment.

"Environmental Licence" any authorisation, permit or licence necessary under Environmental Law in respect of any of the Charged Assets.

"Equipment" all present and future equipment, plant, machinery, tools, vehicles, furniture, fittings, installations and apparatus and other tangible moveable property from time to time owned by the Borrower, including any part of it and all spare parts, replacements, modifications and additions.

"Event of Default" means any event which falls within the definition of an Event of Default in any of the Facility Letters.

"Facility Letter" means the facility letter dated on or around the date of this Instrument between the Lender and the Borrower for the provision of the loan facilities secured by this Instrument as amended from time to time and all other existing and/or future agreements, deeds or documents, as amended from time to time.

"Financial Collateral" shall have the meaning given to that expression in the Financial Collateral Regulations.

"Insurance Policy" each contract or policy of insurance effected or maintained from time to time in respect of the relating to the whole or any part of the Charged Property.

"Financial Collateral Regulations" the Financial Collateral Arrangements (No. 2) Regulations 2003 (*SI 2003/3226*).

"Instrument" means this floating charge.

"Planning Acts" means the Planning etc (Scotland) Act 2006, Town and Country Planning (Scotland) Act 1997, the Planning (Listed Buildings & Conservation Areas) (Scotland) Act 1997, the Planning (Hazardous Substances) (Scotland) Act 1997 and the Planning (Consequential Provisions) (Scotland) Act 1997 and all statutes referred to therein or any local or public statute, re-enacting or modifying or replacing the same, and all statutory instruments, rules, orders, notices, directions and regulations made thereunder.

"Properties" means all heritable and leasehold properties (whether registered or unregistered), now or in the future (and from time to time) owned by the Borrower or in which the Borrower holds an interest and Property means any of them.

"Receiver" a receiver, receiver and manager or administrative receiver of any or all of the Charged Assets appointed under paragraph 4 of Part 4 of the Schedule.

"Schedule" means the schedule in six parts annexed to, and forming part of, this Instrument.

"Secured Liabilities" all present and future monies, obligations and liabilities owed by the Borrower to the Lender, whether actual or contingent and whether owed jointly or severally, as principal or cautioner and/or in any other capacity whatsoever under or in connection with the Facility Letter or this Instrument together with all interest (including, without limitation, default interest) accruing in respect of such monies, obligations or liabilities.

"Security Financial Collateral Arrangement" shall have the meaning given to that expression in the Financial Collateral Regulations.

"Security Period" the period starting on the date of this Instrument and ending on the date on which all the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full and no further Secured Liabilities are capable of being outstanding.

1.2 Interpretation

Unless the context otherwise requires, in this Instrument:

- 1.2.1 any reference to any statute or statutory provision includes a reference to any subordinate legislation made under that statute or statutory provision, to any modification, re-enactment or extension of that statute or statutory provision and to any former statute or statutory provision which it consolidated or re-enacted before the date of this Instrument,
- 1.2.2 a reference to one gender includes a reference to the other genders,
- 1.2.3 words in the singular include the plural and in the plural include the singular,
- 1.2.4 a reference to a clause or Schedule is to a clause of, or Schedule to, this Instrument and references to paragraphs are to paragraphs of the relevant Schedule, unless the context otherwise requires,
- 1.2.5 the reference to "**continuing**" in relation to any of the events mentioned in paragraph 1 of Part 4 of the Schedule means an event which has not been remedied or waived,
- 1.2.6 a reference to "**this Instrument**" (or any specified provision of it) or any other document shall be construed as a reference to this Instrument, that provision or that document as in force from time to time and as amended or novated from time to time,
- 1.2.7 a reference to a "**person**" shall include a reference to an individual, firm, company, partnership, corporation, unincorporated body of persons, or any state or any agency of any person,
- 1.2.8 a reference to an "**amendment**" includes a supplement, variation, novation or re-enactment (and amended shall be construed accordingly),
- 1.2.9 a reference to "**assets**" includes present and future properties, undertakings, revenues, rights and benefits of every description,
- 1.2.10 a reference to an "**authorisation**" includes an authorisation, consent, licence, approval, resolution, exemption, filing, registration and notarisation,
- 1.2.11 a reference to a "**lease**" includes a reference to a tenancy,
- 1.2.12 a reference to a "**regulation**" includes any regulation, rule, official directive, request or guideline (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,
- 1.2.13 a reference to the "**Borrower**" or the "**Lender**" shall include its successors, permitted transferees and permitted assignees,
- 1.2.14 where the Borrower comprises more than one person the liabilities and obligations under this Instrument of the persons comprising the Borrower shall be joint and several,
- 1.2.15 where there is any conflict between the terms of this Instrument and the Facility Letters, the terms of the Facility Letters shall prevail, and
- 1.2.16 clause, Schedule and paragraph headings shall not affect the interpretation of this Instrument.
- 1.3 Clawback

If the Lender considers that an amount paid by the Borrower in respect of the Secured Liabilities is capable of being avoided, reduced or otherwise set aside on the liquidation, administration, scheme of arrangement or company voluntary arrangement of the Borrower or otherwise, then

that amount shall not be considered to have been irrevocably paid for the purposes of this Instrument.

1.4 Nature of security over real property

A reference in this Instrument to any Property includes:

- 1.4.1 all buildings and fixtures and fittings (including trade and tenant's fixtures and fittings) that are situated on or form part of that Property at any time,
- 1.4.2 the proceeds of the sale of any part of that Property and any other monies paid or payable in respect of or in connection with that Property,
- 1.4.3 the benefit of any servitude, burdens or other rights in respect of that Property, and any monies paid or payable in respect thereof, and
- 1.4.4 all rights under any licence, agreement for sale or agreement for lease in respect of that Property.

1.5 Insolvency Act 1986

Paragraph 14 of Schedule B1 to the Insolvency Act 1986 applies to the floating charge created by this Instrument.

2. Covenant to Pay

The Borrower shall on demand pay to the Lender and discharge the Secured Liabilities when they become due.

3. Grant of Security

As a continuing security for the payment and discharge of the Secured Liabilities, the Borrower grants in favour of the Lender a floating charge over the Charged Assets.

4. Ranking

The floating charge created by this Instrument shall, if the Borrower grants another Encumbrance in breach of paragraph 1.1 of Part 2 of the Schedule, subject to section 464(2) of the Companies Act 1985, rank in priority to any other fixed security which shall be created by the Borrower after its execution of this Instrument (other than a fixed security in favour of the Lender) and to any other floating charge which be created by the Borrower after its execution of this Instrument and (subject as aforesaid) no such fixed security or other floating charge shall rank in priority to or equally with the floating charge hereby created.

5. Liability of Borrower

5.1 Liability not discharged

The liability of the Borrower under this Instrument in respect of any of the Secured Liabilities shall not be discharged, prejudiced or affected by:

- 5.1.1 any security, guarantee, indemnity, remedy or other right held by or available to the Lender that is or becomes wholly or partially illegal, void or unenforceable on any ground, or
- 5.1.2 the Lender renewing, determining, varying or increasing any facility or other transaction in any manner or concurring in, accepting or varying any compromise, arrangement or settlement or omitting to claim or enforce payment from any other person, or

- 5.1.3 any other act or omission which but for this Clause 5.1 might have discharged or otherwise prejudiced or affected the liability of the Borrower.

5.2 Immediate recourse

The Borrower waives any right it may have to require the Lender to enforce any security or other right or claim any payment from or otherwise proceed against any other person before enforcing this Instrument against the Borrower.

6. Representations and Warranties

The Borrower represents and warrants to the Lender in the terms set out in Part 1 of the Schedule. The representations and warranties set out in Part 1 of the Schedule are made by the Borrower on the date of this Instrument shall be deemed to be made by the Borrower on each day of the Security Period with reference to the facts and circumstances then existing.

7. Covenants

The Borrower covenants with the Lender during the continuance of the security constituted by this Instrument in the terms set out in Part 2 of the Schedule.

8. Powers of the Lender

The Lender shall have the powers set out in Part 3 of the Schedule.

9. Enforcement

9.1 Enforcement events

The security constituted by this Instrument shall be immediately enforceable if any of the events set out in paragraph 1 of Part 4 of the Schedule occurs. The parties to this Instrument agree that the provisions of Part 4 of the Schedule shall apply to this Instrument and shall be binding between them.

9.2 Receiver's powers

An Administrator or a Receiver shall have, in addition to the powers conferred on receivers by statute, the further powers set out in Part 5 of the Schedule.

9.3 Right of appropriation

To the extent that the Charged Assets constitutes Financial Collateral and this Instrument and the obligations of the Borrower hereunder constitute a Security Financial Collateral Arrangement, the Lender shall have the right, at any time after the security constituted by this Instrument has become enforceable, to appropriate all or any of that Charged Assets in or towards the payment and/or discharge of the Secured Liabilities in such order as the Lender in its absolute discretion may from time to time determine. The value of any Charged Assets appropriated in accordance with this clause shall be the price of that Charged Assets at the time the right of appropriation is exercised as listed on any recognised market index, or determined by such other method as the Lender may select (including independent valuation). The Borrower agrees that the methods of valuation provided for in this clause are commercially reasonable for the purposes of the Financial Collateral Regulations.

10. Costs and Indemnity

10.1 Costs

The Borrower shall pay to or reimburse the Lender, any Administrator and any Receiver on demand, on a full indemnity basis, all Costs incurred by the Lender, any Administrator and/or any Receiver in connection with:

- 10.1.1 this Instrument or the Charged Assets, or
- 10.1.2 taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) any of the Lender's or the Receiver's rights under this Instrument, or
- 10.1.3 suing for, or recovering, any of the Secured Liabilities, or
- 10.1.4 the release or discharge of the Charged Assets from the security constituted by this Instrument

(including, without limitation, the Costs of any proceedings in relation to this Instrument or the Secured Liabilities) together with interest on the amount due which shall accrue and be payable from the date on which the relevant Cost has been incurred until full discharge of that Cost (whether before or after judgment) at the rate and in the manner applying from time to time under the most recent Facility Letter or as otherwise agreed in writing between the Lender and the Borrower.

10.2 Indemnity

The Lender, any Administrator and any Receiver and their respective employees and agents shall be indemnified on a full indemnity basis out of the Charged Assets in respect of all actions, liabilities and Costs incurred or suffered in or as a result of:

- 10.2.1 the exercise or purported exercise of any of the powers, authorities or discretions vested in them under this Instrument, or
- 10.2.2 any matter or thing done or omitted to be done in relation to the Charged Assets under those powers, or
- 10.2.3 any default or delay by the Borrower in performing any of its obligations under this Instrument.

Any past or present employee or agent may enforce the terms of this *clause 10.2* subject to and in accordance with the provisions of the Contract (Third Party Rights) (Scotland) Act 2017.

11. Release

Subject to clause 13.3, upon the expiry of the Security Period (but not otherwise) the Lender shall, at the request and cost of the Borrower, take whatever action is necessary to release the Charged Assets from the security constituted by this Instrument.

12. Assignment and Transfer

12.1 Assignment by Lender

The Lender may at any time, without the consent of the Borrower, assign, transfer and/or otherwise dispose of the whole or any part of the Lender's rights, benefits, obligations and/or liabilities under this Instrument to any person.

12.2 Assignment by Borrower

The Borrower may not assign, transfer and/or otherwise dispose of any of its rights, benefits, obligations and/or liabilities under this Instrument or enter into any transaction that would result in any of those rights, benefits, obligations and/or liabilities passing to another person.

13. Further Provisions

13.1 Independent security

This Instrument shall be in addition to and independent of every other security or guarantee which the Lender may at any time hold for any of the Secured Liabilities and no prior security held by the Lender over the whole or any part of the Charged Assets shall merge in the security created by this Instrument.

13.2 Continuing security

This Instrument shall remain in full force and effect as a continuing security for the Secured Liabilities, notwithstanding any settlement of account or intermediate payment or other matter or thing whatsoever, unless and until the Lender discharges this Instrument in writing.

13.3 Discharge conditional

Any release, discharge or settlement between the Borrower and the Lender shall be deemed conditional upon no right, payment, security, disposition or consideration received by the Lender in respect of the Secured Liabilities being avoided, set aside, reduced or ordered to be refunded pursuant to any law, in any jurisdiction, relating to insolvency, winding-up, administration, receivership, administrative receivership or otherwise and, notwithstanding any such release, discharge or settlement:

13.3.1 the Lender or its nominee shall be at liberty to retain this Instrument and the security created by or pursuant to this Instrument, including all certificates and documents relating to the whole or any part of the Charged Assets, for such period as the Lender shall deem necessary to provide the Lender with security against any such avoidance, reduction or order for refund, and

13.3.2 the Lender shall be entitled to recover the value or amount of such security or payment from the Borrower subsequently as if such release, discharge or settlement had not occurred.

13.4 Certificates

A certificate or determination by the Lender as to any amount from time to time due to it from the Borrower shall (in the absence of any manifest error) be conclusive evidence of the amount due.

13.5 Rights cumulative

The rights and powers of the Lender conferred by this Instrument are cumulative, may be exercised as often as the Lender considers appropriate, and are in addition to its rights and powers under the general law.

13.6 Waivers

Any waiver or variation of any right by the Lender (whether arising under this Instrument or under the general law) shall only be effective if it is in writing and signed by the Lender and applies only in the circumstances for which it was given and shall not prevent the Lender from subsequently relying on the relevant provision.

13.7 Further exercise of rights

No act or course of conduct or negotiation by or on behalf of the Lender shall in any way preclude the Lender from exercising any right or power under this Instrument or constitute a suspension or variation of any such right or power.

13.8 Delay

No delay or failure to exercise any right or power under this Instrument shall operate as a waiver.

13.9 Single or partial exercise

No single or partial exercise of any right under this Instrument shall prevent any other or further exercise of that or any other such right.

13.10 Partial invalidity

The invalidity, unenforceability or illegality of any provision (or part of a provision) of this Instrument under the laws of any jurisdiction shall not affect the validity, enforceability or legality of the other provisions. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with any modification necessary to give effect to the commercial intention of the parties.

13.11 Third party rights

This Instrument does not create any rights in favour of third parties under the Contract (Third Party Rights) (Scotland) Act 2017 to enforce or otherwise invoke any provision of this Instrument or otherwise.

14. Notices

14.1 Service

Any notice or other communication given under this Instrument shall be in writing and shall be served by delivering it personally or by sending it by pre-paid first-class post, by fax or by e mail to the address, fax number or e mail address and for the attention of the relevant party as set out Part 6 of the Schedule or such other address, fax number or e mail address as may be notified in writing from time to time by the relevant party to the other party.

14.2 Receipt

Receipt of any notice, given under clause 14.1 above, shall be deemed to be:

14.2.1 if delivered personally, at the time of delivery, or

14.2.2 in the case of pre-paid first-class letter, 48 hours from the date of posting, or

14.2.3 in the case of a fax or e mail when transmitted,

but if deemed receipt occurs:

(a) before 9:00 am on a Business Day, the notice shall be deemed to have been received at 9:00 am on that day, or

(b) after 5:00 pm on a Business Day or on a day that is not a Business Day, the notice shall be deemed to have been received at 9:00 am on the next Business Day.

14.3 Proof of service

In proving service of a notice, it shall be sufficient to prove that the envelope containing such notice was addressed to the address of the relevant party as set out in Part 6 of the Schedule (or as otherwise notified by that party under clause 14.1 above) and delivered either:

14.3.1 to that address, or

14.3.2 into the custody of the postal authorities as a pre-paid recorded delivery first-class letter.

15. Counterparts and Delivery

15.1 This Instrument may be executed in any number of counterpart and by each of the parties on separate counterparts.

15.2 Where executed in counterparts:

15.2.1 this will not take effect until each of the counterparts has been delivered;

15.2.2 each counterpart will be held as undelivered until the parties agree a date on which the counterparts are to be treated as delivered; and

15.2.3 the date of delivery may be inserted in the testing clause in the blank provided for the delivery date.

16. Consent to registration

The Borrower consents to the registration of this Instrument and of the certificate referred to in clause 13.4 above for preservation and execution.

17. Governing Law and Jurisdiction

17.1 Governing law

This Instrument and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of Scotland.

17.2 Jurisdiction

The parties to this Instrument irrevocably agree that, subject as provided below, the courts of Scotland shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Instrument or its subject matter or formation (including non-contractual disputes or claims). Nothing in this clause shall limit the right of the Lender to take proceedings against the Borrower in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

The Borrower irrevocably consents to any process in any proceedings being served on it in accordance with the provisions of this Instrument relating to service of notices. Nothing contained in this Instrument shall affect the right to serve process in any other manner permitted by law.

IN WITNESS WHEREOF these present consisting of this and the preceding 9 pages together with the Schedule are executed as follows, with a date of delivery of 12 April 2018:-

by

[Signature] *Authorised Signatory/Director/Company Secretary
KHAUD MOHAMMED MAHDI ALTAJR Full Name of Signatory (Please Print)

at TAYLOR WESSING LLP, 5 NEW STREET SQUARE, LONDON, EC4A 3TW
on 5 APRIL 2018

before

before Mustafa Hussain Witness (Signature)
MUSTAFA HUSSAIN Witness Name (Please Print)
5 New St Sq Witness Address
London EC4A 3TW

by

by SP-009
Stephen Henry Evans. Jors

AEbnyng
*Authorised Signatory/Director/Company Secretary
Full Name of Signatory (Please Print)

on

before

Witness (Signature)
Witness Name (Please Print)
Witness Address

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This is the schedule referred to in the foregoing floating charge by Orchil Developments (UK) Limited in favour of West One Loan Limited with a delivery date of 12th April 2018

SCHEDULE

PART 1 – REPRESENTATIONS AND WARRANTIES

1. Ownership of Charged Assets

The Borrower is the legal and beneficial owner of the Charged Assets free from any Encumbrance other than the Encumbrances created by this Instrument.

2. Adverse Claims

The Borrower has not received or acknowledged notice of any adverse claim by any person in respect of the Charged Assets or any interest in it.

3. Adverse Covenants

There are no covenants, servitudes, burdens, agreements, reservations, conditions, interests, rights or other matters whatever, which materially adversely affect the Charged Assets.

4. No Breach of Laws

There is no breach of any law or regulation, which materially adversely affects the Charged Assets.

5. No Interference in Enjoyment

No facility necessary for the enjoyment and use of the Charged Assets is subject to terms entitling any person to terminate or curtail its use.

6. No Overriding Interests

Nothing has arisen or has been created or is subsisting, which would be an overriding interest in any Property.

7. Avoidance of Security

No Encumbrance expressed to be created by this Instrument is liable to be avoided or otherwise set aside on the insolvency, liquidation or administration of the Borrower or otherwise.

8. Environmental Compliance

The Borrower has at all times complied in all material respects with all applicable Environmental Law and Environmental Licences.

PART 2 - COVENANTS

1. Negative Pledge and Disposal Restrictions

The Borrower shall not at any time, except with the prior written consent of the Lender:

- 1.1 create, purport to create or permit to subsist any Encumbrance on, or in relation to, any Charged Assets other than any Encumbrances created by this Instrument, or
- 1.2 sell, assign, transfer, part with possession of or otherwise dispose of in any manner (or purport to do so) all or any part of, or any interest in, the Charged Assets, except for the disposal in the ordinary course of business of any of the Charged Assets subject to the floating charge created under this Instrument, or
- 1.3 create or grant (or purport to create or grant) any interest in any Charged Assets in favour of a third party.

2. Trading and Preservation of Charged Assets

The Borrower shall:

- 2.1 carry on its trade and business in accordance with the standards of good management from time to time current in such trade or business on those parts (if any) of the Properties as are, or may be, used for the purposes of trade or business, and
- 2.2 not do, or permit to be done, any act or thing, which will or might depreciate, jeopardise or otherwise prejudice the security held by the Lender or materially diminish the value of any of the Charged Assets or the effectiveness of the security created by this Instrument.

3. Statutory Compliance

The Borrower shall comply with all statutes, byelaws and regulations relating to its trade or business and the whole or any part of the Charged Assets.

4. Provision of Information

The Borrower shall:

- 4.1 promptly provide to the Lender whatever information, documents or papers relating to the Charged Assets as the Lender may from time to time request, and
- 4.2 inform the Lender promptly of any acquisition by the Borrower of, or contract made by the Borrower to acquire, any freehold, leasehold or other interest in property.

5. Insurance

5.1 The Borrower shall:

- 5.1.1 insure and keep insured all of its undertaking and assets with reputable and responsible insurers previously approved by the Lender in such manner and to such extent as is reasonable and customary for an enterprise engaged in the same or similar business and in the same or similar localities against such risks and contingencies as the Lender shall from time to time request,
- 5.1.2 procure that the interest of the Lender is noted on all its policies of insurance in such manner as the Lender may in its absolute discretion require, and

- 5.1.3 duly and punctually pay all premiums and any other monies necessary for maintaining its insurance in full force and effect; and
- 5.1.4 (if the Lender so requires) give to the Lender copies of the receipts for all premiums and other payments necessary for effecting and keeping up each Insurance Policy (or where, in the case of leasehold property, insurance is effected by the landlord, such evidence of the payment of premiums as the Borrower is entitled to obtain from the landlord under the terms of the relevant lease).
- 5.2 All monies payable at any time under any Insurance Policy (whether or not the security constituted by this Instrument has become enforceable) shall:
 - 5.2.1 be paid immediately to the Lender,
 - 5.2.2 if they are not paid directly to the Lender by the insurers be held, pending such payment, by the Borrower as trustee of the same for the benefit of the Lender, and
 - 5.2.3 at the option of the Lender, be applied in making good or recouping expenditure in respect of the loss or damage for which such monies are received or in or towards discharge or reduction of the Secured Liabilities.
- 6. No Invalidation of Insurance
- 7. The Borrower shall not do or omit to do, or permit to be done or omitted, anything that may invalidate or otherwise prejudice any Insurance Policy.
- 8. Repair
 - The Borrower shall:
 - 8.1 at all times keep in good and substantial repair and condition all the Charged Assets including, without limitation, all buildings, erections, structures and fixtures and fittings on and in the Properties and shall keep all premises adequately and properly painted and decorated and replace any fixtures and fittings which have become worn out or otherwise unfit for use by others of a like nature and equal value,
 - 8.2 keep all Equipment in good repair, working order and condition and fit for its purpose, and
 - 8.3 where it is uneconomic to repair any part of the Charged Assets, replace such part by another similar asset of equal or greater quality and value.
- 9. No Alterations
 - 9.1 The Borrower shall not, without the prior written consent of the Lender:
 - 9.1.1 pull down or remove the whole or any part of any building forming part of any Property nor permit the same to occur, or
 - 9.1.2 make or permit to be made any material alterations to a Property or sever or remove or permit to be severed or removed any of its fixtures or fittings (except to make any necessary repairs or renew or replace the same in accordance with paragraph 8 of Part 2 of the Schedule).
 - 9.2 The Borrower shall promptly give notice to the Lender if the premises or fixtures or fittings forming part of a Property are destroyed or damaged.
- 10. Development Restrictions

The Borrower shall not, without the prior written consent of the Lender:

10.1 make or, in so far as it is able, permit others to make any application for planning permission or development consent in respect of a Property, or

10.2 carry out or permit or suffer to be carried out on a Property any development as defined in the Planning Acts or change or permit or suffer to be changed the use of the Property.

11. Planning Information

The Borrower shall:

11.1 give full particulars to the Lender of any notice, order, direction, designation, resolution or proposal given or made by any planning authority or other public body or authority (Planning Notice) that specifically applies to any Property, or to the locality in which it is situated, within seven days after becoming aware of the relevant Planning Notice; and

11.2 (if the Lender so requires) immediately, and at the cost of the Borrower, take all reasonable and necessary steps to comply with any Planning Notice, and make, or join with the Lender in making, such objections

12. Property Information

The Borrower shall inform the Lender promptly of any acquisition by the Borrower of, or contract made by the Borrower to acquire, any freehold, leasehold or other interest in any Property.

13. Leases and Licences Affecting a Property

The Borrower shall not, without the prior written consent of the Lender (which consent, in the case of paragraph 13.3 of this Part 2 of the Schedule is not to be unreasonably withheld or delayed in circumstances in which the Borrower may not unreasonably withhold or delay its consent):

13.1 grant any licence or lease affecting the whole or any part of any Property (or accept any surrender of any such lease or licence or agree to grant such lease or licence or agree to accept any surrender thereof);

13.2 in any other way dispose of, accept the surrender of, surrender or create any legal or equitable estate or interest in the whole or any part of the Property (or agree to dispose of, accept the surrender of, surrender or create any legal or equitable estate or interest in the whole or any part of any Property),

13.3 let any person into occupation of or share occupation of the whole or any part of any Property, or

13.4 grant any consent or licence under any lease or licence affecting any Property.

14. No Restrictive Obligations

The Borrower shall not, without the prior written consent of the Lender, enter into any onerous or restrictive obligations affecting the whole or any part of any Property or create or permit to arise any overriding interest, easement or right whatever in or over the whole or any part of the Property.

15. Proprietary Rights

The Borrower shall procure that no person shall become entitled to assert any proprietary or other like right or interest over the whole or any part of any Property without the prior written consent of the Lender.

16. Notice of Breach

The Borrower shall promptly upon becoming aware of the same give the Lender notice in writing of any breach of:

16.1 any representation or warranty set out in Part 1 of the Schedule, and

16.2 any covenant set out in this Part 2 of the Schedule.

17. Title Documents

The Borrower shall on the execution of this Instrument (or, if later, the date of acquisition of the relevant Charged Assets) deposit with the Lender and the Lender shall during the continuance of this Instrument be entitled to hold all deeds and documents of title relating to the Charged Assets which are in the possession or control of the Borrower (and, if not within the possession and/or control of the Borrower, the Borrower undertakes to obtain possession of all such deeds and documents of title).

18. Compliance With and Enforcement of Covenants

The Borrower shall:

18.1 observe and perform all covenants, servitudes, burdens, stipulations and conditions to which any Property, or the use of it, is or may be subject and (if the Lender so requires) produce to the Lender evidence sufficient to satisfy the Lender that those covenants, servitudes, burdens, stipulations and conditions have been observed and performed, and

18.2 diligently enforce all covenants, servitudes, burdens, stipulations and conditions benefiting the Property and shall not (and shall not agree to) waive, release or vary any of the same.

19. Notices or Claims Relating to any Property

19.1 The Borrower shall:

19.1.1 give full particulars to the Lender of any notice, order, direction, designation, resolution, application, requirement or proposal given or made by any public or local body or authority (a Notice) that specifically applies to any Property, or to the locality in which it is situated, within seven days after becoming aware of the relevant Notice, and

19.1.2 (if the Lender so requires) immediately, and at the cost of the Borrower, take all reasonable and necessary steps to comply with any Notice, and make, or join with the Lender in making, such objections or representations in respect of any such Notice as the Lender thinks fit.

19.2 The Borrower shall give full particulars to the Lender of any claim, notice or other communication served on it in respect of any modification, suspension or revocation of any Environmental Licence or any alleged breach of any Environmental Law, in each case relating to any Property.

20. Payment of Rent and Outgoings

The Borrower shall:

20.1 where any Property, or part of it, is held under a lease, duly and punctually pay all rents due from time to time, and

20.2 pay (or procure payment of the same) when due all charges, rates, taxes, duties, assessments and other outgoings relating to or imposed upon any Property or on its occupier.

21. Rent Reviews

The Borrower:

21.1 shall, if any Property is subject to occupational leases or licences, implement any upwards rent review provisions and shall not, without the prior written consent of the Lender, agree to any change in rent to less than the open market rental value of the relevant part of that Property, and

21.2 shall not, without the prior written consent of the Lender, if any Property is leasehold, agree to any change in the rent payable under the lease in excess of the open market rental value and shall only agree to any upwards rent review in accordance with the terms of the lease.

22. Environment

The Borrower shall in respect of each Property:

22.1 comply in all material respects with all the requirements of Environmental Law, and

22.2 obtain and comply in all material respects with all Environmental Licences.

23. Conduct of Business on Properties

The Borrower shall carry on its trade and business on those parts (if any) of the Properties as are used for the purposes of trade or business in accordance with the standards of good management from time to time current in such trade or business.

24. Inspection

The Borrower shall permit the Lender, any Receiver, any Administrator and any person appointed by either of them to enter on and inspect any Property on reasonable prior notice.

25. Vat Option to Tax

The Borrower shall not, without the prior written consent of the Lender:

25.1 exercise any VAT option to tax in relation to any Property, or

25.2 revoke any VAT option to tax exercised prior to and disclosed to the Lender in writing prior to the date of this Instrument.

26. Collection of and Dealings with Rent and Other Income

The Borrower shall not deal with amounts payable to or for the benefit of the Borrower by way of rent, licence fee, ground rent and rent charge in respect of any part of the Properties and other monies payable to or for the benefit of the Borrower in respect of occupation or usage of any part of the Properties, including (without limitation) for display of advertisements on licence or otherwise except by getting it in and realising it in the ordinary and usual course of its business.

27. Further Assurance

The Borrower, at its own cost, shall prepare and execute such further legal or other mortgages, standard security, assignation in security, pledges, charges or transfers (containing a power of sale and such other provisions as the Lender may reasonably require) in favour of the Lender as the Lender shall in its absolute discretion from time to time require over all or any part of the Charged Assets and give all notices, orders and directions which the Lender may require in its absolute discretion for perfecting, protecting or facilitating the realisation of its security over the Charged Assets.

28. Inspection

The Borrower shall permit the Lender, any Receiver, any Administrator and any person appointed by either of them to enter upon and inspect any Property during normal business hours upon reasonable prior notice.

29. Borrower's Waiver of Set-Off

The Borrower waives any present or future right of set-off it may have in respect of the Secured Liabilities (including sums payable by the Borrower under this Instrument).

PART 3 - POWERS OF LENDER

1. Power to Remedy

The Lender shall be entitled (but shall not be bound) to remedy a breach at any time by the Borrower of any of its obligations contained in this Instrument and the Borrower irrevocably authorises the Lender and its agents to do all such things as are necessary or desirable for that purpose.

2. Exercise of Rights

The rights of the Lender under paragraph 1 of this Part 3 of the Schedule are without prejudice to any other rights of the Lender under this Instrument and the exercise of those rights shall not make the Lender liable to account as a heritable creditor in possession.

3. Power to Dispose of Charged Assets

At any time after the security constituted by this Instrument shall have become enforceable, the Lender or any Receiver:

3.1 may dispose of any Charged Assets or produce found on any Property as agent for the Borrower, and

3.2 without prejudice to any obligation to account for the proceeds of any sale of such Charged Assets or produce, shall be indemnified by the Borrower against any liability arising from such disposal.

4. Prior Encumbrances

At any time after the security constituted by this Instrument shall have become enforceable or after any powers conferred by any Encumbrance having priority to this Instrument shall have become exercisable, the Lender may:

4.1 redeem such or any other prior Encumbrance or procure its transfer to itself, and

4.2 settle any account of the holder of any prior Encumbrance.

Any accounts so settled and passed shall be, in the absence of any manifest error, conclusive and binding on the Borrower and all monies paid by the Lender to an encumbrancer in settlement of such an account shall, be paid or reimbursed by the Borrower to the Lender on demand together with interest on the amount due which shall accrue and be payable from the date on which the relevant demand is made by the Lender until full discharge (whether before or after judgment) at the rate and in the manner applying from time to time under the most recent Facility Letter or as otherwise agreed in writing between the Lender and the Borrower.

5. Conversion of Currency

For the purpose of or pending the discharge of any of the Secured Liabilities the Lender may convert any monies received, recovered or realised by the Lender under this Instrument (including the proceeds of any previous conversion under this paragraph 5 of this Part 3 of the Schedule) from their existing currencies of denomination into such other currencies of denomination as the Lender may think fit and any such conversion shall be effected at a market rate selected by the Lender. Each previous reference in this paragraph 5 of this Part 3 of the

Schedule to a currency extends to funds of that currency and, for the avoidance of doubt, funds of one currency may be converted into different funds of the same currency.

6. New Accounts

6.1 If the Lender receives notice of any subsequent Encumbrance or other interest affecting all or part of the Charged Assets, the Lender may open a new account or accounts for the Borrower in the Lender's books and (without prejudice to the Lender's right to combine accounts) no money paid to the credit of the Borrower in any such new account will be appropriated towards or have the effect of discharging any part of the Secured Liabilities.

6.2 If the Lender does not open a new account or accounts immediately on receipt of notice under paragraph 6.1 of this Part 3 of the Schedule, then, unless the Lender gives express written notice to the contrary to the Borrower, as from the time of receipt of the relevant notice by the Lender all payments made by the Borrower to the Lender shall be treated as having been credited to a new account of the Borrower and not as having been applied in reduction of the Secured Liabilities.

7. Lender's Set-Off Rights

If the Lender shall have more than one account for the Borrower in its books the Lender may at any time after:

7.1 the security constituted by this Instrument has become enforceable, or

7.2 the Lender has received notice of any subsequent Encumbrance or other interest affecting all or any part of the Charged Assets,

transfer, without prior notice, all or any part of the balance standing to the credit of any account to any other account which may be in debit but the Lender shall notify the Borrower of the transfer once made.

8. Indulgence

The Lender may in its discretion grant time or other indulgence or make any other arrangement, variation or release with any person or persons not being a party to this Instrument (whether or not such person or persons are jointly liable with the Borrower) in respect of any of the Secured Liabilities or of any other security for them without prejudice either to this Instrument or to the liability of the Borrower for the Secured Liabilities.

PART 4 - ENFORCEMENT

1. Enforcement Events

This Instrument shall be immediately enforceable if:

- 1.1 any of the Secured Liabilities shall not be paid or discharged when the same ought to be paid or discharged by the Borrower (whether on demand or at scheduled maturity or by acceleration or otherwise, as the case may be), or
- 1.2 the Borrower shall be in breach of any of its obligations under this Instrument or under any other agreement between the Borrower and the Lender, or
- 1.3 any representation, warranty or statement made or deemed to be made by the Borrower under this Instrument is or proves to have been incorrect or misleading in any material respect when made or deemed to be made, or
- 1.4 an Event of Default occurs, or
- 1.5 any representation, warranty or statement made or deemed to be made by the Borrower under this Instrument is or proves to have been incorrect or misleading in any material respect when made or deemed to be made.

2. Protection of Third Parties

No purchaser, chargee or other person dealing with the Lender, any Administrator or any Receiver shall be concerned:

- 2.1 to enquire whether any of the Secured Liabilities have become due or payable or remain unpaid or undischarged, or whether the power the Lender, an Administrator or a Receiver is purporting to exercise has become exercisable, or
- 2.2 to see to the application of any money paid to the Lender, any Administrator or any Receiver.

3. No Liability as Heritable Creditor in Possession

Neither the Lender nor any Receiver nor any Administrator shall be liable to account as heritable creditor in possession or otherwise in respect of all or any of the Charged Assets nor shall any of them be liable for any loss upon realisation of, or for any neglect or default of any nature whatsoever in connection with, all or any of the Charged Assets for which a heritable creditor in possession might as such be liable.

4. Appointment of Receiver

- 4.1 At any time after the security constituted by this Instrument has become enforceable, or at the request of the Borrower, the Lender may without further notice:
 - 4.1.1 appoint by way of Instrument, or otherwise in writing, any one or more person or persons to be a receiver of all or any part of the Charged Assets, and
 - 4.1.2 (subject to section 45 of the Insolvency Act 1986) from time to time by way of Instrument, or otherwise in writing, remove any person appointed to be Receiver and may in like manner appoint another in his place.

Where more than one person is appointed Receiver, they will have power to act separately (unless the appointment by the Lender specifies to the contrary).

- 4.2 The Lender may fix the remuneration of any Receiver appointed by it without restriction and the remuneration of the Receiver shall be a debt secured by this debenture which shall be due and payable immediately upon its being paid by the Lender.

5. Powers Additional

- 5.1 The powers of sale and appointing a Receiver or an Administrator conferred by this Instrument shall be in addition to all statutory and other powers of the Lender under the Insolvency Act 1986 or otherwise and shall be exercisable without restriction.

- 5.2 The power to appoint an Administrator, a Receiver (whether conferred by this Instrument or by statute) shall be and remain exercisable by the Lender notwithstanding any prior appointment in respect of the Borrower or all or any part of the Charged Assets.

6. Agent of the Borrower

Any Receiver appointed by the Lender under this Instrument shall be the agent of the Borrower and the Borrower shall be solely responsible for his acts and remuneration as well as for any defaults committed by him.

7. Powers of an Administrator or Receiver

Any Administrator or Receiver appointed by the Lender under this Instrument shall in addition to the powers conferred on him by the Insolvency Act 1986 have power to do all such acts and things as an absolute owner could do in the management and disposal of such of the Charged Assets over which the Administrator or Receiver is appointed and in particular the powers set out in Part 4 of the Schedule.

8. Order of Application of Proceeds

All monies received by the Lender, any Administrator or a Receiver in the exercise of any enforcement powers conferred by this Instrument shall be applied:

- 8.1 first in paying all unpaid fees, costs and other liability incurred by or on behalf of the Lender (and any Receiver, attorney or agent appointed by it),
- 8.2 second in paying the remuneration of any Administrator or Receiver (as agreed between him and the Lender),
- 8.3 third in or towards discharge of the Secured Liabilities in such order and manner as the Lender shall determine, and
- 8.4 finally in paying any surplus to the Borrower or any other person entitled to it.

9. Appropriation

Neither the Lender nor any Receiver shall be bound to pay or appropriate any receipt or payment first towards interest rather than principal or otherwise in any particular order as between any of the Secured Liabilities.

10. Suspense Account

All monies received by the Lender, any Administrator or a Receiver under this Instrument may, at the discretion of the Lender or Receiver, be credited to any suspense or securities realised account and shall bear interest at such rate, if any, as may be agreed in writing between the Lender and the Borrower and may be held in such account for so long as the Lender, Administrator or Receiver thinks fit.

11. Power of Attorney

The Borrower hereby irrevocably and unconditionally appoints the Lender, every Administrator and every Receiver separately to be its mandatory and attorney of the Borrower and in its name and on its behalf and as its act and deed to execute any documents, and do any acts and things which:

- 11.1 the Borrower is required to execute and do under this Instrument, and/or
- 11.2 any such person may deem proper or desirable in exercising any of the powers, authorities and discretions conferred by this Instrument or by law on the Lender, any Administrator or any Receiver.

12. Ratification of Acts of Attorney

The Borrower ratifies and confirms and agrees to ratify and confirm anything which any of its attorneys may do in the proper and lawful exercise or purported exercise of all or any of the powers, authorities and discretions referred to in paragraph 11 of this Part 4 of the Schedule .

13. Appointment of an Administrator

- 13.1 The Lender may, without notice to the Borrower, appoint any one or more persons to be an Administrator of the Borrower pursuant to Paragraph 14 of Schedule B1 of the Insolvency Act 1986 if the security constituted by this Instrument becomes enforceable.
- 13.2 Any appointment under this paragraph 13 shall:
 - 13.2.1 be in writing signed by a duly authorised signatory of the Lender, and
 - 13.2.2 take effect, in accordance with paragraph 19 of Schedule B1 of the Insolvency Act 1986.
- 13.3 The Lender may apply to the court for an order removing an Administrator from office and may by notice in writing in accordance with this paragraph 13 of Part 4 of the Schedule appoint a replacement for any Administrator who has died, resigned, been removed or who has vacated office upon ceasing to be qualified.

PART 5 - FURTHER POWERS OF AN ADMINISTRATOR OR A RECEIVER

1. To Repair and Develop Properties

An Administrator or Receiver may undertake or complete any works of repair, building or development on the Properties.

2. To Surrender and Vary Leases

An Administrator or Receiver may grant or accept termination of any leases or tenancies affecting the Properties or vary the terms of any leases or tenancies affecting the Properties upon such terms and subject to such conditions as he thinks fit.

3. To Employ Personnel and Advisors

An Administrator or Receiver may provide services and employ, or engage, such managers contractors and other personnel and professional advisors on such terms as he deems expedient.

4. To Make Vat Elections

An Administrator or Receiver may make such elections for value added tax purposes as he thinks fit.

5. To Charge Remuneration

An Administrator or Receiver may charge and receive such sum by way of remuneration (in addition to all costs, charges and expenses incurred by him) as the Lender may prescribe or agree with him.

6. To Realise Charged Assets

A Receiver (to the extent that she/he is appointed in respect thereof) or an Administrator may collect and get in the Charged Assets in respect of which he is appointed or any part thereof and for that purpose make such demands and take any proceedings as may seem expedient and to take possession of the Charged Assets with like rights.

7. To Manage or Reconstruct the Borrower's Business

An Administrator or Receiver may carry on, manage, develop, reconstruct, amalgamate or diversify or concur in carrying on, managing, developing, reconstructing, amalgamating or diversifying the business of the Borrower.

8. To Dispose of Charged Assets

A Receiver or an Administrator may grant options and licences over all or any part of the Charged Assets, sell or concur in selling, assign or concur in assigning, lease or concur in leasing and accept or concur in accepting surrenders of leases of, all or any of the property of the Borrower in respect of which he is appointed in such manner and generally on such terms and conditions as he thinks fit (fixtures and plant and machinery may be severed and sold separately from the premises in which they are contained without the consent of the Borrower) and to carry any such sale, assignation, leasing or surrender into effect. Any such sale may be for such consideration as he shall think fit and he may promote or concur in promoting a company to purchase the property to be sold.

9. To Make Settlements

An Administrator or Receiver may make any arrangement, settlement or compromise between the Borrower and any other person which he may think expedient.

10. To Improve Equipment

A Receiver or Administrator may make substitutions of, or improvements to, the Equipment as he may think expedient.

11. To Make Calls on Borrower Members

An Administrator or Receiver may make calls conditionally or unconditionally on the members of the Borrower in respect of the uncalled capital with such and the same powers for that purpose and for the purpose of enforcing payments of any calls so made as are conferred by the articles of association of the Borrower on its directors in respect of calls authorised to be made by them.

12. To Appoint Staff and Agents

An Administrator or Receiver may appoint managers, officers, servants, workmen and agents for the aforesaid purposes at such salaries and for such periods and on such terms as he may determine.

13. To Insure

An Administrator or Receiver may, if he thinks fit, but without prejudice to the indemnity contained in clause 10, effect with any insurer any policy or policies of insurance either in lieu or satisfaction of, or in addition to, such insurance.

14. Powers

An Administrator or Receiver may exercise all powers provided for an administrator, administrative receiver and/or receiver in Schedule 1 of the Insolvency Act 1986.

15. To Borrow

A Receiver (to the extent that he/she is appointed in respect thereof) or an Administrator may for any of the purposes authorised by this paragraph raise money by borrowing from the Lender or from any other person on the security of all or any of the Charged Assets in respect of which he is appointed upon such terms (including if the Lender shall consent to terms under which such security ranks in priority to this Instrument) as he shall think fit.

16. To Redeem Prior Encumbrances

An Administrator or Receiver may redeem any prior Encumbrance and settle and pass the accounts to which the Encumbrance relates and any accounts so settled and passed shall be, in the absence of any manifest error, conclusive and binding on the Borrower and the monies so paid will be deemed to be an expense properly incurred by him.

17. Incidental Powers

An Administrator or Receiver may do all such other acts and things:

17.1 as he may consider desirable or necessary for realising any of the Charged Assets,

17.2 as he may consider incidental or conducive to any of the rights or powers conferred on a Receiver under or by virtue of this Instrument or law, or

17.3 which he lawfully may or can do as agent for the Borrower.

18. Scope of Powers

Any exercise of any of these powers may be on behalf of the Borrower, the directors of the Borrower (in the case of the power contained in paragraph 10 of this Part 5 of the Schedule) or himself.

PART 6 - NOTICE DETAILS

The Borrower:

Ochil Developments (UK) Limited of
Kirkton Farm, Near Auchterarder,
Perthshire PH4 1RF marked for the
attention of The Directors

The Lender:

West One Loan Limited of 3rd Floor
Premiere House, Elstree Way,
Borehamwood WD6 1JH marked for the
attention of The Directors

Fax number: 0333 1234 557 marked
for the attention of The Directors