

# MR01

## Particulars of a charge

001472 44642



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[www.gov.uk/companieshouse](http://www.gov.uk/companieshouse)

A fee is payable with this form  
Please see 'How to pay' on the

**What this form is for**  
You may use this form to register a charge created or evidenced by an instrument.

**What this form is NOT for**  
You may not use this form to register a charge where there is an instrument. Use form MR08.

FRIDAY



\*A6AO0VR7\*  
A06 14/07/2017 #41  
COMPANIES HOUSE

This form **must be delivered to the Registrar for registration within 21 days** beginning with the day after the date of creation of the charge. If delivered outside of the 21 days it will be rejected unless it is accompanied by a court order extending the time for delivery.

You **must** enclose a certified copy of the instrument with this form. This will be scanned and placed on the public record. **Do not send the original.**

### 1 Company details

Company number 0 3 0 3 1 8 0 1

Company name in full Benchmark Leisure Limited

For official use

#### Filing in this form

Please complete in typescript or in bold black capitals.

All fields are mandatory unless specified or indicated by \*

### 2 Charge creation date

Charge creation date d 1 d 2 m 0 m 7 y 2 y 0 y 1 y 7

### 3 Names of persons, security agents or trustees entitled to the charge

Please show the names of each of the persons, security agents or trustees entitled to the charge.

Name Abbey Commercial Investments Limited

Name

Name

Name

If there are more than four names, please supply any four of these names then tick the statement below

I confirm that there are more than four persons, security agents or trustees entitled to the charge.

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**Brief description**

Please give a short description of any land, ship, aircraft or intellectual property registered or required to be registered in the UK subject to a charge (which is not a floating charge) or fixed security included in the instrument.

Please submit only a short description. If there are a number of plots of land, aircraft and/or ships, you should simply describe some of them in the text field and add a statement along the lines of, "for more details please refer to the instrument".

Please limit the description to the available space.

Brief description

N/A

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**Other charge or fixed security**

Does the instrument include a charge (which is not a floating charge) or fixed security over any tangible or intangible or (in Scotland) corporeal or incorporeal property not described above? Please tick the appropriate box.

Yes

No

6

**Floating charge**

Is the instrument expressed to contain a floating charge? Please tick the appropriate box.

Yes Continue

No Go to Section 7

Is the floating charge expressed to cover all the property and undertaking of the company?

Yes

7

**Negative Pledge**

Do any of the terms of the charge prohibit or restrict the company from creating further security that will rank equally with or ahead of the charge? Please tick the appropriate box.

Yes

No

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**Trustee statement <sup>1</sup>**

You may tick the box if the company named in Section 1 is acting as trustee of the property or undertaking which is the subject of the charge.

<sup>1</sup> This statement may be filed after the registration of the charge (use form MR06).

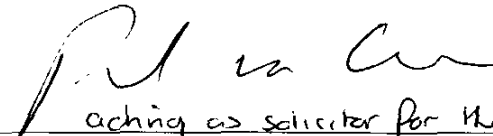
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**Signature**

Please sign the form here.

Signature

Signature

X  X  
acting as solicitor for the lender

This form must be signed by a person with an interest in the charge.

# MR01

## Particulars of a charge

### Presenter information

You do not have to give any contact information, but if you do, it will help Companies House if there is a query on the form. The contact information you give will be visible to searchers of the public record.

Contact name  
Piet van Gelder

Company name  
Spearing Waite LLP

Address  
34 Pocklingtons Walk

Post town  
Leicester

County/Region  
Leicestershire

Postcode  
L E 1 6 B U

Country  
United Kingdom

DX  
10837 Leicester 1

Telephone  
0116 242 1208

### Certificate

We will send your certificate to the presenter's address if given above or to the company's Registered Office if you have left the presenter's information blank.

### Checklist

**We may return forms completed incorrectly or with information missing.**

**Please make sure you have remembered the following:**

- The company name and number match the information held on the public Register.
- You have included a certified copy of the instrument with this form.
- You have entered the date on which the charge was created.
- You have shown the names of persons entitled to the charge.
- You have ticked any appropriate boxes in Sections 3, 5, 6, 7 & 8.
- You have given a description in Section 4, if appropriate.
- You have signed the form.
- You have enclosed the correct fee.
- Please do not send the original instrument; it must be a certified copy.

### Important information

Please note that all information on this form will appear on the public record.

### How to pay

A fee of £23 is payable to Companies House in respect of each mortgage or charge filed on paper.

Make cheques or postal orders payable to 'Companies House.'

### Where to send

You may return this form to any Companies House address. However, for expediency, we advise you to return it to the appropriate address below:

**For companies registered in England and Wales:**  
The Registrar of Companies, Companies House,  
Crown Way, Cardiff, Wales, CF14 3UZ.  
DX 33050 Cardiff.

**For companies registered in Scotland:**  
The Registrar of Companies, Companies House,  
Fourth floor, Edinburgh Quay 2,  
139 Fountainbridge, Edinburgh, Scotland, EH3 9FF.  
DX ED235 Edinburgh 1  
or LP - 4 Edinburgh 2 (Legal Post).

**For companies registered in Northern Ireland:**  
The Registrar of Companies, Companies House,  
Second Floor, The Linenhall, 32-38 Linenhall Street,  
Belfast, Northern Ireland, BT2 8BG.  
DX 481 N.R. Belfast 1.

### Further information

For further information, please see the guidance notes on the website at [www.gov.uk/companieshouse](http://www.gov.uk/companieshouse) or email [enquiries@companieshouse.gov.uk](mailto:enquiries@companieshouse.gov.uk)

This form is available in an alternative format. Please visit the forms page on the website at [www.gov.uk/companieshouse](http://www.gov.uk/companieshouse)



FILE COPY

## CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 3031801

Charge code: 0303 1801 0011

The Registrar of Companies for England and Wales hereby certifies that a charge dated 12th July 2017 and created by BENCHMARK LEISURE LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 14th July 2017.

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Given at Companies House, Cardiff on 20th July 2017



Companies House



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES

DATED 12 JULY 2017

(1) ABBEY COMMERCIAL INVESTMENTS LIMITED

and

(2) BENCHMARK LEISURE LIMITED

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DEBENTURE

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spearingwaite 

We hereby certify this to be a true copy of the original  
Spearing Waite LLP, 34 Pocklingtons Walk, Leicester LE1 6BU

  
.....

**Spearing Waite LLP**  
34 Pocklingtons Walk, Leicester, LE1 6BU

+44 (0)116 242 1208  
+44 (0)771 835 1844  
piet.vangelder@spearingwaite.com

THIS DEBENTURE DEED is made on 12 JULY 2017

**BETWEEN**

- (1) **ABBEY COMMERCIAL INVESTMENTS LIMITED** (Company Number 00442441) whose registered office is at Devonshire House, 1 Devonshire Street, London, W1W 5DR ("**ACI**"); and
- (2) **BENCHMARK LEISURE LIMITED** (Company Number 03031801) whose registered office is at Devonshire House, 1 Devonshire Street, London, W1W 5DR ("**BLL**").

**IT IS AGREED**

**1. DEFINITIONS AND INTERPRETATION**

**1.1. Definitions**

In this Deed:

<b>'Account'</b>	has the meaning given to it in clause 3.4.6 (First fixed charges).
<b>'Accounting Principles'</b>	means generally accepted accounting principles in the United Kingdom.
<b>'Authorisation'</b>	means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration, or any other similar permission.
<b>'Business Day'</b>	means a day (other than a Saturday or Sunday) on which banks are open for general business in London.
<b>'Chattels'</b>	has the meaning given to it in clause 3.4.4 (First fixed charges).
<b>'Collection Account'</b>	means the Account or Accounts as BLL and ACI may agree in writing from time to time.
<b>'Debts'</b>	has the meaning given to it in clause 3.4.5 (First fixed charges).
<b>'Direction'</b>	has the meaning given to it in clause 10.1.4 (Planning directions).
<b>'Environmental Law'</b>	means any applicable law or regulation which relates to:

- (a) the pollution or protection of the environment;
- (b) harm to or the protection of human health;
- (c) the conditions of the workplace; or
- (d) any emission or substance capable of causing harm to any living organism or the environment.

**'Finance Documents'**

has the meaning given to it in the Main Agreement.

**'Financial  
Indebtedness'**

means any or all indebtedness for or in respect of:

- (a) monies borrowed pursuant to the Finance Documents;
- (b) any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with the *Accounting Principles*, be treated as a finance or capital lease;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (f) any Treasury Transaction (and, when calculating the value of that Treasury Transaction, only the marked to market value as at the relevant date on which Financial Indebtedness is calculated (or, if any actual amount is due as a result of the termination or closeout of that Treasury Transaction, that amount) shall be taken into account);
- (g) any counter-indemnity obligation in respect of a guarantee, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution;
- (h) any amount of any liability under an advance or deferred purchase agreement if (a) one of the primary reasons behind entering into the agreement is to raise finance or (b) the agreement is in respect of the supply of assets or services and payment is due more than 60 Business Days after the date of supply;
- (i) any amount raised under any other transaction (including any forward sale or purchase agreement

and any sale and leaseback arrangement) having the commercial or economic effect of a borrowing; and

- (j) the amount of any liability in respect of any guarantee for any of the items referred to in paragraphs (a) to (i).

**'Fixtures'** means in respect of any Secured Property, all fixtures and fittings (including trade fixtures and fittings) and fixed plant and machinery now or at any time after the date of this Deed on the Secured Property.

**'Floating Charge Assets'** means all the assets and undertaking from time to time subject to the floating charge created under clause 3.5 (Floating charge).

**'Insurance Policies'** means, in respect of BLL, all policies of insurance present and future in which it has an interest.

**'Intellectual Property'** means:

- (a) any patents, trade marks, service marks, designs, business names, copyrights, design rights, moral rights, inventions, confidential information, know-how and other intellectual property rights and interests, whether registered or unregistered; or
- (b) the benefit of all applications and rights to use such assets of BLL;

**'Legal Mortgage'** means the legal mortgage to be entered into between (1) BLL and (2) ACI dated on or about the date of this Deed.

**'Main Agreement'** means the Agreement between (1) BLL and (2) ACI dated on or about the date of this Deed.

**'Month'** means, unless a contrary contention appears, a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, except that:

- (a) (subject to paragraph (b)) if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day; and
- (b) if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month,



the above rules will only apply to the last month of any period. **Monthly** shall be construed accordingly.

- 'Occupational Lease'** means, in respect of BLL, a lease of a Secured Property in respect of which it is landlord.
- 'Party'** means a party to this Deed.
- 'Permitted Security'** means:
- (a) any Security arising under the Security Documents;
  - (b) any lien arising by operation of law and in the ordinary course of trading and not as a result of any default or omission by BLL;
  - (c) any Security arising under any retention of title, hire purchase or conditional sale arrangement or arrangements having similar effect in respect of goods supplied to BLL in the ordinary course of trading and on the supplier's standard or usual terms and not arising as a result of any default or omission by BLL;
  - (d) any Security arising as a consequence of any finance or capital and lease of vehicles, plant, equipment or computers approved in writing by ACI; or
  - (e) any Security permitted by ACI in writing.
- 'Planning Acts'** means the Town and Country Planning Acts 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990, the Planning (Hazardous Substances) Act 1990, the Planning (Consequential Provisions) Act 1990, the Planning and Compensation Act 1991, the Planning and Compulsory Purchase Act 2004 and any regulations or subordinate legislation made under any of the foregoing and any other statute or regulation governing or controlling the use or development of land and buildings.
- 'Premises'** means any building on a Secured Property.
- 'Properties'** mean the property listed in Schedule 1 (Properties).
- 'Real Property'** means:
- (a) any freehold, leasehold, common hold or immovable property; and
  - (b) any buildings, fixtures, fittings, fixed plant or machinery from time to time situated on or forming part of that freehold, leasehold, commonhold or immovable property.

<b>'Receiver'</b>	means any receiver, manager or administrative receiver appointed by ACI in respect of BLL or any of the Secured Assets.
<b>'Relevant Agreements'</b>	means any agreement otherwise designated as such by ACI to BLL in writing.
<b>'Relevant Policies'</b>	means all Insurance Policies (other than policies in respect of third party liability) together with all moneys payable in respect of those policies.
<b>'Secured Assets'</b>	means, in respect of BLL, all of its assets and undertaking the subject of any Security created by or under this Deed in favour of ACI, and " <b>Secured Asset</b> " shall be construed accordingly.
<b>'Secured Obligations'</b>	means in respect of BLL all moneys and liabilities now or after the date of this Deed due, owing or incurred by BLL to ACI, whether pursuant to the Main Agreement or otherwise, including the benefit of all debts and other payments assigned to ACI pursuant to any of the Finance Documents, in any manner and in any currency or currencies and whether present or future, actual or contingent, whether incurred solely or jointly with any other person and whether as principal or surety, together with all interest accruing on such moneys and liabilities.
<b>'Secured Property'</b>	means at any time the Properties and all other freehold, leasehold or commonhold property which is subject to a Security created by or under this Deed.
<b>'Security'</b>	means a mortgage, charge, pledge, lien, assignment or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.
<b>'Security Documents'</b>	means each of this Deed and any other document entered into by any Party creating or expressed to create any Security over all or any part of its assets in respect of the Secured Obligations, and " <b>Security Document</b> " shall be construed accordingly.
<b>'Security Period'</b>	means the period beginning on the date of this Deed and ending on the date on which ACI is satisfied that the Secured Obligations have been irrevocably and unconditionally satisfied in full.
<b>'Subsidiary'</b>	means a subsidiary undertaking within the meaning of section 1159 of the Companies Act 2006.
<b>'Treasury Transaction'</b>	means any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price.
<b>'Unpaid Sum'</b>	means any sum due and payable but remaining unpaid, pursuant to the Finance Documents.

## 1.2. Interpretation

1.2.1. A term defined in this Deed has the same meaning when used in any notices, *acknowledgements or other documents issued under or in connection with this Deed.*

1.2.2. In this Deed the term **dispose** includes any sale, lease, licence, transfer or loan.

## 1.3. Third party rights

1.3.1. A person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Deed or any other document entered into under or in connection with it.

1.3.2. The consent of any person who is not a Party is not required to rescind or vary this Deed or any other document entered into under or in connection with it.

## 1.4. Administration

1.4.1. Any reference in this Deed, or any other document entered into or in connection with it, to the making of an administration order shall be treated as including a reference to the appointment of an administrator under paragraph 14 (by the holder of a qualifying floating charge in respect of BLL's assets) or 22 (by BLL or the officers of BLL) of Schedule B1 to the Insolvency Act 1986 or any steps taken toward such order or appointment.

1.4.2. Any reference in this Deed or any other document entered into or in connection with it, to making an application for an administration order by petition shall be treated as including a reference to making an administration application to the court under Schedule B1 to the Insolvency Act 1986, appointing an administrator under paragraph 14 or 22 of that Schedule, or giving notice under paragraph 15 or 26 of that Schedule of intention to appoint an administrator or any steps taken towards such application or notice.

## 1.5. Incorporated terms

The terms of all of the documents relating to the Secured Obligations are incorporated into this Deed to the extent required for any purported disposition of any Secured Assets contained in this Deed to be a valid disposition in accordance with section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989.

## 1.6. Clawback

If ACI considers that an amount paid by BLL in respect of the Secured Obligations is capable of being avoided or otherwise set aside on the liquidation or administration of BLL or otherwise, then that amount shall not be considered to have been irrevocably paid for the purposes of this Deed.

## 2. COVENANT TO PAY

BLL covenants that it will on demand pay and discharge any or all of the Secured Obligations when due together with interest to the date of payment at such rates and upon such terms as are contained in the Finance Documents.

### **3. CHARGING PROVISIONS**

#### **3.1. General**

All Security created by BLL under clauses 3.2 (First legal mortgage) to 3.5 (Floating charge) inclusive is:

- 3.1.1. a continuing security for the payment and discharge of the Secured Obligations;
- 3.1.2. granted with full title guarantee; and
- 3.1.3. granted in respect of all the right, title and interest (if any), present and future in and to the relevant Secured Asset.

#### **3.2. First legal mortgage**

BLL charges:

- 3.2.1. by way of first legal mortgage the Properties; and
- 3.2.2. by way of first legal mortgage all other interests and estates in freehold, leasehold or commonhold property,

and, in each case, all Premises and Fixtures on such property for the time being.

#### **3.3. Assignments**

3.3.1. BLL assigns:

- 3.3.1.1. the Relevant Policies; and
- 3.3.1.2. the Relevant Agreements.

3.3.2. BLL shall remain liable to perform all its obligations under the Relevant Policies and the Relevant Agreements.

3.3.3. Notwithstanding the other terms of this clause 3.3, prior to ACI demanding repayment of the Secured Obligations (or any part thereof), BLL may continue to exercise all and any of its rights under and in connection with the Relevant Agreements.

#### **3.4. First fixed charge**

BLL charges by first fixed charge other than specific assets effectively charged by way of legal mortgage or assigned under clause 3.2 (First legal mortgage) or clause 3.3 (Assignments):

- 3.4.1. all other interests and estate in any freehold, leasehold or commonhold property;

- 3.4.2. the proceeds of sale of its Secured Property and all licences to enter on or use any Secured Property;
- 3.4.3. the benefit of all other agreements, instruments and rights relating to its Secured Property;
- 3.4.4. all plant, machinery, vehicles, computers, office and other equipment, all furniture, furnishings, equipment and tools and any removals or replacement of them, (together **Chattels**) present and future and the benefit of all contracts, licences, warranties, maintenance contracts relating to them and any renewals and replacements of them;
- 3.4.5. all book and other debts due to BLL and their proceeds (both collected and uncollected) (together **Debts**) and all rights, guarantees, security or other collateral in respect of the Debts (or any of them) and the benefit of any judgment or order to pay a sum of money and all rights to enforce the Debts (or any of them);
- 3.4.6. all moneys from time to time standing to the credit of each account held by BLL with any bank, building society, financial institution or other person (each an **Account**);
- 3.4.7. all its Intellectual Property;
- 3.4.8. all its goodwill and uncalled capital;
- 3.4.9. the benefit of all Authorisations held or utilised by it in connection with its business or the use of any of its assets and the right to recover and receive compensation payable in respect of any of them; and
- 3.4.10. to the extent that any assignment in clause 3.3 (Assignments) is ineffective as an assignment, the assets referred to in that clause.

### 3.5. **Floating charge**

BLL charges by way of first floating charge all its assets and undertaking wherever located both present and future other than any assets effectively charged by way of legal mortgage or fixed charge or assigned under clauses 3.1 (General), 3.2 (First legal mortgage), 3.3 (Assignments) or 3.4 (First fixed charges).

### 3.6. **Qualifying floating charge**

This Deed contains a qualifying floating charge and paragraph 14 of Schedule B1 of the Insolvency Act 1986 applies to the floating charge created by or under this Deed.

### 3.7. **Conversion of floating charge to a fixed charge**

ACI may at any time by notice in writing to BLL convert the floating charge created under clause 3.5 (Floating charge) into a fixed charge as regards any Floating Charge Asset as it shall specify in the notice if:

- 3.7.1. it has demanded repayment of all or any part of the Secured Obligations; or

- 3.7.2. in the opinion of ACI that Floating Charge Asset is in danger of being seized or any legal process or execution is being enforced against that Floating Charge Asset.

**3.8. Automatic conversion of floating charge to a fixed charge**

If:

- 3.8.1. BLL creates or attempts to create any Security over any of its Floating Charge Assets (unless the creation of such Security is permitted in writing by ACI);
- 3.8.2. any person levies or attempts to levy any distress, attachment, execution or other legal process against any Floating Charge Asset; or
- 3.8.3. any corporate action, legal proceedings or other procedures or steps are taken for the winding up, dissolution, administration or reorganisation of BLL,

the floating charge created by this Deed will automatically and immediately without notice be converted into a fixed charge over the relevant assets or, in the circumstances described in clause 3.8.3, over all of the Floating Charge Assets.

**3.9. Small company moratorium**

Where BLL is an eligible company within the meaning of paragraphs 2 to 4 (inclusive) of Schedule A1 of the Insolvency Act 1986, then the obtaining of a moratorium, including any preliminary decision, or investigation in terms of paragraph 43 of Schedule A1 of the Insolvency Act 1986 shall not cause the floating charge created by this Deed to crystallise into a fixed charge, nor cause restrictions which would not otherwise apply to be imposed on the disposal of its property and assets by BLL.

**4. CONTINUING SECURITY**

- 4.1. The Security constituted by this Deed shall be continuing security and shall remain in full force and effect regardless of any intermediate payment or discharge by BLL or any other person of the whole or any part of the Secured Obligations.

**4.2. Recourse**

The Security constituted by this Deed:

- 4.2.1. is in addition to any other Security which ACI may hold at any time for the Secured Obligations (or any of them); and
- 4.2.2. may be enforced without first having recourse to any other rights of ACI.

**5. NEGATIVE PLEDGE**

- 5.1. BLL shall not create or permit to subsist any Security over any of its assets.
- 5.2. BLL shall not:

- 5.2.1. sell, transfer or otherwise dispose of any of its receivables on recourse terms;
- 5.2.2. enter into any arrangement under which money or the benefit of a bank or other account may be applied, setoff or made subject to a combination of accounts; or
- 5.2.3. enter into any other preferential arrangement having a similar effect,

in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.

- 5.3. Clauses 5.1 and 5.2 do not apply to any Security or arrangement which is Permitted Security.

## **6. RESTRICTIONS ON DISPOSALS**

BLL shall not enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, transfer or otherwise dispose of any Secured Assets.

## **7. FURTHER ASSURANCE**

- 7.1. BLL shall promptly do all such acts and execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as ACI may reasonably specify (and in such form as ACI may reasonably require) in favour of ACI or its nominee(s):
  - 7.1.1. to create, perfect, protect and maintain the Security created or intended to be created under or evidenced by this Deed or for the exercise of any rights, powers and remedies of ACI provided by or pursuant to this Deed or by law;
  - 7.1.2. to confer on ACI Security over any property and assets of BLL located in any jurisdiction equivalent or similar to the Security intended to be conferred by or pursuant to this Deed; and/or
  - 7.1.3. to facilitate the realisation of the assets which are, or are intended to be, the subject of the Security created by or under this Deed.
- 7.2. BLL shall take all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Security conferred or intended to be conferred on ACI by or pursuant to this Deed.
- 7.3. Any document required to be executed by BLL under this clause 7 will be prepared at the cost of BLL.

## **8. LAND REGISTRY**

### **8.1. Application for restriction**

- 8.1.1. In relation to land and buildings situated in England and Wales title to which is registered or is to be registered at the Land Registry, BLL consents to an application being made to the Chief Land Registrar for registration of a restriction on the register of title of all present and future registered freehold, leasehold or

commonhold property of BLL (and any unregistered properties subject to compulsory first registration at the date of this Deed).

BLL confirms that so far as any of the Secured Property is unregistered, such land is not affected by any disclosable overriding interests within the meaning of the Land Registration Act 2002 or the Land Registration Rules 2003.

#### **8.1.2. Tacking and further advances**

This security has been made for securing further advances from ACI to BLL. ACI and BLL by this Deed consent to an application being made to the Chief Land Registrar to enter a note of such obligation on the register of title to all present and future registered property of BLL (and any unregistered properties subject to compulsory first registration at the date of this Deed).

### **9. NOTICES OF ASSIGNMENTS AND CHARGES**

#### **9.1. Relevant Agreements**

9.1.1. BLL shall give notice (in a form satisfactory to ACI) to the other parties to each Relevant Agreement that BLL has assigned to ACI all its right, title and interest in that Relevant Agreement.

9.1.2. BLL shall give the notices referred to in clause 9.1.1:

9.1.2.1. in the case of each Relevant Agreement subsisting at the date of this Deed and if so requested by ACI, on the date of this Deed;

9.1.2.2. in the case of each Relevant Agreement coming into existence or being designated as such after the date of this Deed, on the later of that agreement coming into existence or being designated a Relevant Agreement; and

9.1.2.3. BLL shall use reasonable endeavours to procure that the recipient of each such notice acknowledges that notice within 5 Business Days of that notice being given.

#### **9.2. Insurance Policies**

9.2.1. In respect of each Relevant Policy BLL shall, if requested by ACI, give notice (in a form satisfactory to ACI) to the relevant insurer that BLL has assigned to ACI all its right, title and interest in that Relevant Policy.

9.2.2. BLL shall give the notices referred to in clause 9.2.1:

9.2.2.1. in the case of each Relevant Policy subsisting at the date of this Deed and if so requested by ACI, on the date of this Deed; and

9.2.2.2. in the case of each Relevant Policy coming into existence after the date of this Deed and if so requested by ACI, on that Relevant Policy being put on risk.



9.2.3. BLL shall use reasonable endeavours to procure that the recipient of each such notice acknowledges that notice within five Business Days of that notice being given.

### 9.3. Charge over accounts

9.3.1. BLL shall, if requested by ACI, give notice (in a form satisfactory to ACI) to the financial institution at which such Account is held that BLL has created a fixed charge over the balance standing to the credit of that Account.

9.3.2. BLL will give the notices referred to in clause 9.3.1:

9.3.2.1. in the case of an Account held by BLL at the date of this Deed; and

9.3.2.2. in the case of an Account opened after the date of this Deed and if so requested by ACI, on that Account being opened.

9.3.3. BLL shall use reasonable endeavours to procure that the recipient of each such notice acknowledges that notice within five Business Days of that notice being given.

### 9.4. Tangible assets

Within five Business Days of request by ACI, BLL shall affix to, and maintain in a visible place on each of its Chattels specified in such request the value of which exceeds £10,000, a notice in the following terms:

"Notice of Charge

This <> and all additions to it and ancillary equipment are subject to a first fixed charge in favour of ACI".

BLL shall not conceal, alter or remove such notice or permit it to be concealed, altered or removed.

### 9.5. Register of Trade Marks

BLL as registered proprietor hereby appoints ACI as its agent to apply for the particulars of this Deed and its interest in the Intellectual Property and any other or future trade marks or trade mark applications registered or to be registered in the United Kingdom in the name of BLL, to be made on the Register of Trade Marks under section 25(1) of the Trade Marks Act 1994. BLL hereby agrees to execute all documents and forms required to enable such particulars to be entered on the Register of Trade Marks.

## 10. UNDERTAKINGS

BLL undertakes to ACI in accordance with this clause 10. The undertakings in this clause 10 shall remain in force during the Security Period.

### 10.1. Real property

#### 10.1.1. Access

It will permit ACI and such person or persons as it shall nominate at all reasonable times and on reasonable notice to enter on any part of its Secured Property.

**10.1.2. Repair**

10.1.2.1. It shall keep the Secured Property in good and substantial repair and condition and decorative order.

10.1.2.2. It shall repair any defect or damage to any of the Secured Property promptly and if it fails to do so ACI may, but shall not be obliged to, do so.

**10.1.3. Planning**

It shall not do or allow or omit to be done anything which may infringe or contravene the Planning Acts affecting the Secured Property, nor make any application for the grant of planning permission within the meaning of the Planning Acts without the prior written consent of ACI.

**10.1.4. Planning directions**

10.1.4.1. Within five Business Days of receipt by it of any notice or order (Direction) served on or issued to it by any local or other authority (whether under the Planning Acts or otherwise) in respect of any part of the Secured Property, it shall give full particulars of the Direction to ACI and, if so requested by ACI, produce the Direction or a copy of it to ACI.

10.1.4.2. It shall advise ACI of all steps taken or proposed to be taken by it from time to time to comply with the terms of the Direction.

10.1.4.3. It shall take all necessary steps to comply with the Direction.

10.1.4.4. It shall at the request of ACI (but at the cost of BLL) make or join with ACI in making such objections, representations against, appealing against or in respect of any proposal contained in the Direction as ACI shall deem expedient in order to protect ACI's interests.

**10.1.5. Development**

10.1.5.1. It shall not carry out any development (as defined in the Planning Acts) on any part of the Secured Property without the prior written consent of ACI.

10.1.5.2. It shall not change the use of any part of the Secured Property without the prior written consent of ACI.

**10.1.6. Future acquisitions and legal mortgage**

It shall:

10.1.6.1. notify ACI immediately of its intention to acquire any freehold, leasehold or other interest in property including the proposed date of such acquisition (and for the purposes of this clause 10.1.6 the date of

exchange of contracts for such an acquisition shall be deemed the date of acquisition);

10.1.6.2. at its cost, execute and deliver to ACI on demand, a legal mortgage (in form and substance satisfactory to ACI and in substantially the same terms as the Legal Mortgage) in favour of ACI of any freehold or leasehold or other interest in property which becomes vested in it after the date of this Deed;

10.1.6.3. obtain any consents required for the Security referred to in this clause 10.1.6; and

10.1.6.4. if applicable procure that notice of this Deed is noted in the appropriate manner on the title to any property which becomes vested in it after the date of this Deed.

**10.1.7. Deposit of title deeds**

It shall deposit with ACI all deeds and documents to title relating to the Secured Property.

**10.1.8. Outgoings**

It will punctually pay and indemnify ACI and any Receiver against all present and future rents, rates, taxes, assessments and outgoings of whatsoever nature imposed on or payable in respect of the Secured Property or any part of it or payable by the owner or occupier of it.

**10.1.9. Investigation of title**

On request by ACI, it shall grant ACI or its advisers (at the cost of BLL) all facilities within its power to enable ACI or its advisers or delegates to carry out such investigations of title to and enquiries into the Secured Property or other Secured Assets as may be carried out by a prudent mortgagee or chargee.

**10.2. Leases**

**10.2.1. Lease and covenant compliance**

It shall:

10.2.1.1. perform all the terms on its part contained in any lease or agreement for lease under which it holds an interest in a Secured Property or to which any Secured Property is subject;

10.2.1.2. properly perform (and indemnify ACI and each Receiver for any breach of) any covenants and stipulation of whatsoever nature affecting any Secured Property;

10.2.1.3. not make any election or take any other action so as to alter the treatment of any Occupational Lease for the purposes of value added tax;

10.2.1.4. not, without the prior written consent of ACI, exercise any VAT option to tax in respect of the Secured Property, or revoke any VAT option to tax exercised prior to and disclosed to ACI in writing prior to the date of this Deed;

10.2.1.5. If ACI so requires, serve notice in respect of any fixed charge (as defined in the Landlord and Tenant (Covenants) Act 1995) in the appropriate form on any former tenant under an Occupational Lease or the guarantor of such a tenant if the fixed charge remains unpaid by such tenant four months after it shall have become due and payable; and

10.2.1.6. immediately notify ACI of any notice received by it under section 146 of the Law of Property Act 1925 or any proceedings commenced or steps taken against it for the forfeiture of any lease under which it holds an interest in a Secured Property.

#### 10.2.2. **Landlord's consent**

If under the terms of any lease under which it holds an interest in a Secured Property, BLL is not permitted to charge its interest in such Secured Property without the consent of the landlord:

10.2.2.1. BLL undertakes promptly to make an application for landlord's consent to the creation of the fixed charge contained in clause 3.4 (First fixed charges) and any charge to be created under clause 7 (Further assurance), shall use all reasonable endeavours to obtain such consent as soon as possible and shall keep ACI informed of the progress of its negotiations with such landlord;

10.2.2.2. subject to clause 10.2.2.3:

10.2.2.2.1. no breach of any representation in any document recording the Secured Obligations shall occur by virtue of BLL's failure to have obtained such landlord's consent; and

10.2.2.2.2. if the landlord indicates in writing that it proposes to commence, or commences an action of forfeiture of the lease, ACI shall release from such fixed charge, BLL's interest in the lease;

10.2.2.3. Clause 10.2.2.2 shall only apply where BLL has complied with its obligations under clause 10.2.2.1, but the landlord has not given the consent requested of it.

10.2.2.4. Upon receipt by ACI of evidence in writing of the consent of the landlord to the creation and existence of the fixed charge over BLL's interest in such lease, clause 10.2.2.2 shall cease to apply in respect of the relevant Secured Property.

#### 10.2.3. **No variation to lease**

It shall not without the prior written consent of ACI alter or vary or agree to alter or vary the terms of any lease under which it holds any Secured Property or any lease to which any Secured Property is subject.

**10.2.4. No surrender or termination**

It shall not without the prior written consent of ACI surrender or otherwise terminate any lease under which it holds a Secured Property or terminate, forfeit or accept a surrender of any lease to which any Secured Property is subject.

**10.2.5. Compliance by tenants**

It shall use reasonable endeavours to procure that each tenant under an Occupational Lease complies with the terms of that Occupational Lease.

**10.2.6. Lease or right to occupy**

It will not without the prior written consent of ACI:

10.2.6.1. grant any lease or tenancy or exercise any other power of leasing of the whole or part of any Secured Property; or

10.2.6.2. grant any person any contractual licence or the right to occupy any Secured Property or part with possession of it.

**10.2.7. Forfeiture**

It shall not do or permit anything which may render any lease or agreement for lease under which it holds an interest in a Secured Property, or to which the Secured Property is subject, liable to forfeiture or otherwise determinable.

**10.3. Chattels**

10.3.1. It will keep all Chattels comprising the Secured Assets in good and substantial repair and in good working order and condition.

10.3.2. It shall repair any defect or damage to any Chattels promptly and if it fails to do so ACI may, but shall not be obliged to, do so.

10.3.3. It shall, on the later of the date of this Deed and the date of acquisition by it of the relevant Chattel, deliver to ACI all documents of title relating to such Chattels.

**10.4. Insurance**

It shall comply with all requirements of ACI in respect of insurance as set out in all documents which record the Secured Obligations.

**10.5. Book and other debts**

It shall not set off, postpone or release any of the Debts or do or omit to do anything which may delay or prejudice the full recovery of all Debts without the prior written consent of ACI.

## **10.6. General**

It shall not do or cause or permit to be done anything which may in any way materially depreciate, jeopardise or otherwise prejudice the value to ACI of the Security created by or under this Deed.

## **11. POWER TO REMEDY**

11.1. If BLL fails to comply with any of the undertakings set out in clause 10 (Undertakings), it shall allow and irrevocably authorises ACI and/or such persons as it shall nominate to take such action on behalf of BLL as shall be necessary to ensure that it complies with those undertakings.

11.2. If BLL fails to perform any obligation or other covenant affecting the Secured Property or other Secured Asset, BLL shall permit ACI or its agents and contractors:

11.2.1. to enter on the Secured Property;

11.2.2. to comply with or object to any notice served on BLL relating to the Secured Property or other Secured Asset; and

11.2.3. to take any action ACI may reasonably consider expedient to prevent or remedy any breach of any such term or to comply with or object to any such notice.

## **12. SECURITY POWER OF ATTORNEY**

BLL, by way of security, irrevocably and severally appoints ACI, each Receiver and any of their delegates or sub-delegates to be its attorney to take any action which BLL is obliged to take under this Deed. BLL ratifies and confirms whatever any attorney does or purports to do pursuant to its appointment under this clause 12.

## **13. REPRESENTATIONS AND WARRANTIES**

BLL represents and warrants to ACI (which representations shall be deemed to be repeated on each day that BLL remains under any liability (actual or contingent) to BLL under this Deed or otherwise) as follows:-

13.1. it is and will remain (except as permitted under the terms of the Finance Documents) the legal and beneficial owner of the Secured Property;

13.2. it has not received or acknowledged notice of any adverse claim by any person in respect of the Secured Property or any interest in any of the Secured Property;

13.3. there are no covenants, agreements, reservations, conditions, interests, rights or other matters whatever which materially and adversely affect the Secured Property (other than under the terms of any of the Finance Documents);

13.4. no facility necessary for the enjoyment and use of the Secured Property is subject to terms entitling any person to terminate or curtail its use;

13.5. nothing has arisen or has been created or is subsisting which would be an overriding interest in any land; and

- 13.6. this Deed creates the Security it purports to create and is not liable to be amended or otherwise set aside on its liquidation or otherwise.

#### **14. ENFORCEMENT OF SECURITY**

14.1. The security created by and under this Deed is immediately enforceable:

- 14.1.1. after any demand being made by ACI for payment of any of the Secured Obligations; or
- 14.1.2. if any step is taken by BLL or any other person to appoint an administrator of BLL including without limitation, the making of an application to court or giving or filing of notice of intention to appoint an administrator; or
- 14.1.3. if any step is taken by BLL or any other person to wind up BLL including, without limitation, the presentation of a petition for a winding up order or the giving of notice of a resolution to wind up BLL; or
- 14.1.4. if any step is taken by BLL or any other person to appoint a liquidator, provisional liquidator, trustee, receiver, Law of Property Act receiver, administrative receiver or similar officer of or in relation to BLL, or
- 14.1.5. if any step is taken by BLL or its officers to propose a voluntary arrangement, scheme of arrangement or other formal or informal arrangement with BLL's creditors; or
- 14.1.6. if so requested by BLL; or
- 14.1.7. if BLL is in breach of any of the provisions of this Deed or any of the Finance Documents; or
- 14.1.8. if any enforcement action (including without limitation distress execution, careful seizure or any remedies or proceedings with analogous effect) is taken against any of BLL's assets; or
- 14.1.9. if any event occurs or circumstances arise which in ACI's reasonable opinion gives reasonable grounds for believing that BLL may not, or may be unable to, perform or comply with any one of its obligations under this Deed or the Finance Documents; or
- 14.1.10. if BLL is, or is adjudicated or found to be, insolvent or trading on an insolvent basis, or suspends payments of its respective debts or is (or is deemed to be) unable to or admits inability to pay its respective debts as they fall due or proposes or enters into any composition or other arrangement for the benefit of its creditors generally or proceedings are commenced in relation to BLL under any law regulation or procedure relating to reconstruction or adjustment of debt.

#### **14.2. Demand for payment**

Any demand for payment to be made by ACI under this Deed, shall be in writing and may be signed by any authorised signatory on behalf of ACI, and may be made or given to BLL at any place of business of BLL, or the registered office of BLL:-

- 14.2.1. by delivering it to any such place; or
- 14.2.2. by sending it by first class post to any such place (in which case it shall be deemed received at 10.00am on the second Business Day after posting, and proof of posting shall be proof of delivery); or
- 14.2.3. by sending it by fax to any fax number of BLL (in which case it shall be deemed received when sent, and proof of sending shall be proof of receipt).

#### **14.3. Acts of enforcement**

ACI may, at its absolute discretion, at any time after the Security created by or under this Deed is enforceable:

- 14.3.1. enforce all or any part of the Security created by or under this Deed in any manner it sees fit;
- 14.3.2. exercise its rights and powers conferred upon mortgagees by the Law of Property Act 1925, as varied and extended by this Deed, and rights and powers conferred on a Receiver by this Deed, whether or not it has taken possession or appointed a Receiver to any of the Secured Assets;
- 14.3.3. appoint one or more qualified persons (as defined in clause 15.1.2) (Appointment of Receiver) to be a Receiver to all or any part of the Secured Assets;
- 14.3.4. appoint an administrator in respect of BLL and take any steps to do so;
- 14.3.5. exercise its power of sale under section 101 of the Law of Property Act 1925 (as amended by this Deed); or
- 14.3.6. if permitted by law, appoint an administrative receiver in respect of BLL.

#### **14.4. Statutory powers - general**

- 14.4.1. For the purposes of all powers implied by statute, the Secured Obligations are deemed to have become due and payable on the date of this Deed.
- 14.4.2. Section 103 of the Law of Property Act 1925 and section 93 of the Law of Property Act 1925 do not apply to the Security constituted by or under this Deed.
- 14.4.3. The statutory powers of leasing conferred on ACI are extended so that, without the need to comply with any provision of section 99 or section 100 of the Law of Property Act 1925, ACI is empowered to lease and make agreements for lease at a premium or otherwise, accept surrenders of leases and grant options or vary or reduce any sum payable under any leases or tenancy agreements as it may think fit.
- 14.4.4. Each Receiver and ACI is entitled to all the rights, powers, privileges and immunities conferred by the Law of Property Act 1925 and the Insolvency Act 1986 on mortgagees and Receivers when such Receivers have been duly appointed under the relevant Act.

#### **14.5. Contingencies**



If ACI enforces the Security constituted by or under this Deed at a time when no amounts are due to ACI but at a time when amounts may or will become so due, ACI (or the Receiver) may pay the proceeds of any recoveries effected by it into an interest bearing suspense account.

**14.6. Mortgagee in possession - no liability**

Neither ACI nor any Receiver will be liable, by reason of entering into possession of a Secured Asset, to account as mortgagee in possession or for any loss on realisation or for any default or omission for which a mortgagee in possession might otherwise be liable.

**14.7. Redemption of prior mortgages**

At any time after the Security created by or under this Deed has become enforceable, ACI may, at the sole cost of BLL (payable to ACI on demand):

- 14.7.1. redeem any prior form of Security over any Secured Asset; and/or
- 14.7.2. procure the transfer of that Security to itself; and/or
- 14.7.3. settle and pass the accounts of any prior mortgagee, chargee or encumbrancer which once so settled and passed shall be conclusive and binding on BLL.

**15. RECEIVER**

**15.1. Appointment of Receiver**

15.1.1.

15.1.1.1. At any time after any Security created by or under this Deed is enforceable, ACI may appoint a Receiver of all or any part of the Secured Assets in accordance with clause 14.3.3 (Acts of enforcement).

15.1.1.2. At any time, if so requested in writing by BLL, without further notice, ACI may appoint one or more qualified persons to be a Receiver to all or any part of the Secured Assets as if ACI had become entitled under the Law of Property Act 1925 to exercise the power of sale conferred under the Law of Property Act 1925.

15.1.2. In this Deed qualified person means a person who, under the Insolvency Act 1986, is qualified to act as a receiver of the property of any company with respect to which he is appointed.

15.1.3. Any Receiver appointed under this Deed shall be the agent of BLL and BLL shall be solely responsible for his acts or defaults and for his remuneration and liable on any contracts or engagements made or entered into by him and in no circumstances whatsoever shall ACI be in any way responsible for any misconduct, negligence or default of the Receiver.

15.1.4. Where BLL is an eligible company within the meaning of paragraphs 2 to 4 (inclusive) of Schedule A1 of the Insolvency Act 1986:

15.1.4.1. obtaining a moratorium; or

15.1.4.2. anything done with a view to obtaining a moratorium including any preliminary decision or investigation in terms of paragraph 43 of Schedule A1 of the Insolvency Act 1986,

shall not be grounds for appointment of a Receiver.

## 15.2. **Removal**

ACI may by written notice remove from time to time any Receiver appointed by it (subject to the provisions of section 45 of the Insolvency Act 1986 in the case of an administrative receiver) and, whenever it may deem appropriate, appoint a new Receiver in the place of any Receiver whose appointment has terminated.

## 15.3. **Powers of Receiver**

### 15.3.1. **General**

15.3.1.1. In addition to those conferred by the Law of Property Act 1925 on any Receiver appointed under that Act, each Receiver has, and is entitled to exercise, all of the rights, powers and discretions set out in this clause 15.3.

15.3.1.2. If there is more than one Receiver holding office at the same time, unless the document appointing him states otherwise, each Receiver may exercise all of the powers conferred on a Receiver under this Deed or under the Insolvency Act 1986 individually and to the exclusion of any other Receivers.

15.3.1.3. A Receiver who is an administrative receiver of BLL has all the rights, powers and discretions of an administrative receiver under the Insolvency Act 1986.

15.3.1.4. A Receiver may, (in the name of BLL):

15.3.1.4.1. do all other acts and things which he may consider expedient for realising any Secured Asset; and

15.3.1.4.2. exercise in relation to any Secured Asset all the powers, authorities and things which he would be capable of exercising if he were its absolute beneficial owner.

### 15.3.2. **Borrow money**

A Receiver may raise and borrow money (either unsecured or on the security of any Secured Asset, either in priority to the security constituted by this Deed or otherwise) on any terms and for whatever purpose which he thinks fit. No person lending that money need enquire as to the propriety or purpose of the exercise of that power or to check the application of any money so raised or borrowed.

### 15.3.3. **Carry on business**

A Receiver may carry on the business of BLL as he thinks fit and, for the avoidance of doubt, a Receiver may apply for such Authorisations as he considers in his absolute discretion appropriate.

#### 15.3.4. **Compromise**

A Receiver may settle, adjust, refer to arbitration, compromise and arrange any claims, accounts, disputes, questions and demands with or by any person who is or claims to be a creditor of BLL or relating in any way to any Secured Asset.

#### 15.3.5. **Delegation**

A Receiver may delegate his powers in accordance with clause 16 (Delegation).

#### 15.3.6. **Employees**

For the purposes of this Deed, a Receiver as he thinks appropriate, on behalf of BLL or for itself as Receiver, may:

15.3.6.1. appoint and discharge managers, officers, agents, lawyers, accountants, servants, workmen and others upon such terms as to remuneration or otherwise as he may think proper; and

15.3.6.2. discharge any such persons appointed by BLL.

#### 15.3.7. **Leases**

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

#### 15.3.8. **Legal actions**

A Receiver may bring, prosecute, enforce, defend and abandon all actions, suits and proceedings or submit to arbitration or any form of alternative dispute resolution in the name of BLL in relation to any Secured Asset as he considers expedient.

#### 15.3.9. **Possession**

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

#### 15.3.10. **Protection of assets**

A Receiver may, in each case as he may think fit:

15.3.10.1. make and effect all repairs and insurances and do all other acts which BLL might do in the ordinary conduct of its business be they for the protection or for the improvement of the Secured Property;

15.3.10.2. commence and/or complete any building operations on the Secured Property or other Secured Asset; and

15.3.10.3. apply for and maintain any planning permission, building regulation approval or any other permission, consent or licence.

**15.3.11. Receipts**

A Receiver may give valid receipts for all moneys and execute all assurances and things which may be expedient for realising any Secured Asset.

**15.3.12. Sale of assets**

A Receiver may sell, exchange, convert into moneys and realise any Secured Asset by public auction or private contract in any manner and on any terms which he thinks proper. The consideration for any such transaction may consist of cash, debenture or other obligations, shares, stock or other valuable consideration and any such consideration and any such consideration may be payable in a lump sum or by instalments spread over such period as he thinks fit. Fixtures and any plant and machinery annexed to any part of the Secured Property may be severed and sold separately from the property containing them without the consent of BLL.

**15.3.13. Subsidiaries**

A Receiver may form a Subsidiary of BLL and transfer to that Subsidiary any Secured Asset.

**15.3.14. Deal with Secured Assets**

A Receiver may, without restriction sell, let or lease, or concur in selling, letting or leasing, or vary the terms of, determine, surrender or accept surrenders of, leases or tenancies of, or grant options and licences over or otherwise dispose of or deal with, all or any part of the Secured Assets without being responsible for loss or damage, and so that any such sale, lease or disposition may be made for cash payable by instalments, loan stock or other debt obligations or for shares or securities of another company or other valuable consideration. The Receiver may form and promote, or concur in forming and promoting, a company or companies to purchase, lease, licence or otherwise acquire interests in all or any of the Secured Assets or otherwise, arrange for such companies to trade or cease to trade and to purchase, lease, license or otherwise acquire all or any of the Secured Assets on such terms and conditions whether or not including payment by instalments secured or unsecured as he may think fit.

**15.3.15. Security**

A Receiver may redeem any prior Security and settle and pass the accounts of the person entitled to the prior Security so that any accounts so settled and passed shall (subject to any manifest error) be conclusive and binding on BLL and the money so paid shall be deemed to be an expense properly incurred by the Receiver.

#### **15.3.16. Acquire land**

The Receiver may purchase or acquire any land and purchase, acquire or grant any interest in or right over land.

#### **15.3.17. Development**

A Receiver may implement or continue the development of (and obtain all consents required in connection therewith) and/or complete any buildings or structures on, any real property comprised in the Secured Property and do all acts and things incidental to the Secured Property.

#### **15.3.18. Landlord's obligations**

A Receiver may on behalf of BLL and without consent of or notice BLL exercise all the powers conferred on a landlord or a tenant by any legislation from time to time in force in any relevant jurisdiction relating to rents or agriculture in respect of any part of the Secured Property.

#### **15.3.19. Uncalled capital**

A Receiver may make calls conditionally or unconditionally on the members of BLL in respect of uncalled capital.

#### **15.3.20. Incidental matters**

A Receiver may do all other acts and things including without limitation, signing and executing all documents and deeds as may be considered by the Receiver to be incidental or conducive to any of the matters or powers listed here or granted by law or otherwise incidental or conducive to the preservation, improvement or realisation of the Secured Assets and to use the name of BLL for all the purposes set out in this clause 15.

### **15.4. Remuneration**

ACI may from time to time fix the remuneration of any Receiver appointed by it.

## **16. DELEGATION**

16.1. ACI and any Receiver may delegate by power of attorney or in any other manner all or any of the powers, authorities and discretions which are for the time being exercisable by ACI and the Receiver (as appropriate) under this Deed to any person or persons as it shall think fit. Any such delegation may be made upon such terms and conditions (including the power to sub-delegate) as ACI and Receiver (as appropriate) may think fit.

16.2. ACI and any Receiver will not be liable or responsible to BLL or any other person for any losses, liabilities or expenses arising from any act, default, omission or misconduct on the part of any delegate.

## **17. APPLICATION OF MONIES**

- 17.1. Sections 109(6) and (8) (Appointment, powers, remuneration and duties of receiver) of the Law of Property Act 1925 shall not apply to a Receiver appointed under this Deed.
- 17.2. All monies received by ACI or any Receiver under this Deed shall be applied:
- 17.2.1. In or towards the payment of all costs, losses, liabilities and expenses of and incidental to the appointment of any Receiver and the exercise of any of his rights including, his remuneration and all outgoings paid by him;
- 17.2.2. In or towards the payment of the Secured Obligations; and
- 17.2.3. In payment of any surplus to any other person entitled to it.
- 17.3. ACI and any Receiver may place any money received, recovered or released pursuant to this Deed in or at any interest bearing suspense account and it may retain the same for such period as it considers expedient without having any obligation to apply the same or any part of it in or towards discharge of the Secured Obligations.

## **18. REMEDIES AND WAIVERS**

- 18.1. No failure to exercise, nor any delay in exercising, on the part of ACI or any Receiver, any right or remedy under this Deed 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 in this Deed are cumulative and not exclusive of any rights or remedies provided by law.
- 18.2. A waiver given or consent granted by ACI under this Deed will be effective only if given in writing and then only in the instance and for the purpose for which it is given.

## **19. PROTECTION OF THIRD PARTIES**

- 19.1. No person (including a purchaser) dealing with ACI or a Receiver or its or his agents has an obligation to enquire of ACI, Receiver or others:
- 19.1.1. whether the Secured Obligations have become payable;
- 19.1.2. whether any power purported to be exercised has become exercisable;
- 19.1.3. whether any Secured Obligations or other moneys remain outstanding;
- 19.1.4. how any moneys paid to ACI or to the Receiver shall be applied; or
- 19.1.5. the status, propriety or validity of the acts of the Receiver or ACI.
- 19.2. The receipt by ACI or any Receiver shall be an absolute and a conclusive discharge to a purchaser and shall relieve him of any obligation to see to the application of any moneys paid to or by the direction of ACI or any Receiver.
- 19.3. In clauses 19.1 and 19.2, **purchaser** includes any person acquiring, for money or moneys worth, any lease of, or Security over, or any other interest or right whatsoever in relation to, the Secured Assets or any of them.

## **20. ADDITIONAL SECURITY**

The Security created by or under this Deed is in addition to and is not in any way prejudiced by any guarantee or security now or subsequently held by ACI.

## **21. SETTLEMENTS CONDITIONAL**

- 21.1. If ACI (acting reasonably) believes that any amount paid by BLL or any other person in respect of the Secured Obligations is capable of being avoided or set aside for any reason, then for the purposes of this Deed, such amount shall not be considered to have been paid.
- 21.2. Any settlement, discharge or release between BLL and ACI shall be conditional upon no Security or payment to or for ACI by BLL or any other person being avoided or set aside or ordered to be refunded or reduced by virtue of any law relating to bankruptcy, insolvency or liquidation or otherwise.

## **22. SET-OFF**

ACI may, set off any matured obligation due from BLL (to the extent beneficially owned by it) against any matured obligation owed by ACI to BLL, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, ACI may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

## **23. NOTICES**

### **23.1. Delivery**

Any notice or other communication required to be given to a party under or in connection with this deed shall be:

23.1.1 in writing;

23.1.2 delivered by hand, by pre-paid first-class post or other next working day delivery service or sent by fax or (in the case of ACI only) by email; and sent to the parties' respective registered addresses any other address or fax number or email address as is notified in writing by one party to the other from time to time.

### **23.2. Receipt by BLL**

Any notice or other communication that ACI gives to BLL shall be deemed to have been received:

23.2.1 if delivered by hand, at the time it is left at the relevant address;

23.2.2 if posted by pre-paid first-class post or other next working day delivery service, on the second Business Day after posting;

23.2.3 if sent by fax, when received in legible form; and

23.2.4 if sent by email, at the time sent provided that a "Delivery Receipt" is requested.

A notice or other communication given as described in clause 23.2.1 or clause 23.2.3 or clause 23.2.4 on a day that is not a Business Day, or after normal business hours, in the place it is received, shall be deemed to have been received on the next Business Day.

**23.3. Receipt by ACI**

Any notice or other communication given to ACI shall be deemed to have been received only on actual receipt.

**23.4. Service of proceedings**

This clause 23 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

**23.5. Notice by e-mail**

A notice or other communication given under or in connection with this deed by BLL is not valid if sent by e-mail.

**24. PERPETUITY PERIOD**

If the rule against perpetuities applies to any trust created by this deed, the perpetuity period shall be 125 years (as specified by section 5(1) of the Perpetuities and Accumulations Act 2009).

**25. ASSIGNMENT**

ACI may freely assign or otherwise transfer all or any part of its rights under this Deed or any Security created by or under it.

**26. RELEASES**

Upon the expiry of the Security Period, ACI shall, at the request and cost of BLL, take whatever action is necessary to release and reassign to BLL:

26.1. its rights arising under this Deed;

26.2. the Secured Assets from the Security created by and under this Deed,  
and return all documents or deeds of title delivered to it under this Deed.

**27. CURRENCY CLAUSES**

If a payment is made to ACI under this Deed in a currency ("**Payment Currency**") other than the currency in which it is expressed to be payable ("**Contractual Currency**"), ACI may convert that payment into the Contractual Currency at the rate at which it (acting reasonably and in good faith) is able to purchase the Contractual Currency with the Payment Currency on or around the date of receipt of the payment and to the extent that the converted amount of the payment falls short of the amount due and payable BLL will remain liable for such shortfall.

**28. INDEMNITY**



## **28.1. BLL's indemnity**

28.1.1. BLL shall pay to, or reimburse, ACI and any Receiver on demand, on a full indemnity basis, all Costs incurred by ACI and/or any Receiver in relation to:

- 28.1.1.1. this debenture or the Secured Property;
- 28.1.1.2. protecting, perfecting, preserving or enforcing (or attempting to do so) any of ACI's or Receiver's rights under this debenture; and
- 28.1.1.3. suing for, or recovering, any monies owing to them pursuant to the Finance Documents,

(including, without limitation, the costs of any proceedings in relation to this Deed or the Finance Documents), together with interest on any amount due under clauses 28.1.1.2 and 28.1.1.3 at the default rate of interest specified in the Main Agreement.

28.2.1. ACI, any Receiver and their respective employees and agents shall be indemnified on a full indemnity basis out of the Secured Property in respect of all actions, liabilities and costs incurred or suffered in or as a result of:

- 28.2.1.1. the exercise, or purported exercise, of any of the powers, authorities or discretions vested in them under this Deed;
- 28.2.1.2. any matter or thing done, or omitted to be done, in relation to the Secured Property under those powers; or
- 28.2.1.3. any default or delay by BLL in performing any of its obligations under this Deed.

## **29. EXCLUSION OF LIABILITY**

### **29.1. No liability**

29.1.1. ACI will not be liable for any action taken by it (or any omission to take action) under or in connection with any or any Security Document or any document recording the Secured Obligations unless directly caused by its gross negligence or wilful misconduct.

29.1.2. Neither ACI nor any Receiver shall be liable in respect of all or any part of the Secured Assets or for any loss or damage which arises out of the exercise or the attempted or purported exercise of, or the failure to exercise any of, their respective powers unless such loss or damage is caused by its gross negligence or wilful acts of default and recklessness.

### **29.2. Officers and agents**

BLL may not take proceedings against any officer, employee or agent of ACI in respect of any claim it might have against ACI or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Security Document or other document recording the Secured Obligations and any officer, employee or agent of ACI may rely on this clause.

## **30. COUNTERPARTS**

This Deed may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Deed.

## **31. GOVERNING LAW AND JURISDICTION**

### **31.1. Governing law**

31.1.1. This Deed shall be governed by and construed in accordance with English law, and all claims and disputes between the Parties or any of them arising out of or in connection with this Deed (whether or not contractual in nature) shall be determined in accordance with English law.

31.1.2. If in any court any Party argues that a court other than the courts of England and Wales has jurisdiction to determine any dispute or difference between the Parties, or any of them, that issue shall be determined in accordance with English law, and each Party irrevocably and unconditionally waives any right it might otherwise have to rely upon the law of the forum or any other law.

### **31.2. Service of process**

Each Party agrees that, without prejudice to the validity of any other mode of service, any document in an action (including, but not limited to, any claim form, application notice or other originating process) may be served on any Party by being delivered to or left for that Party at its address for service of notices under clause 23 (Notices).

**THIS DEED** has been entered into as a deed on the date given at the beginning of this Deed.

## **SCHEDULE 1**

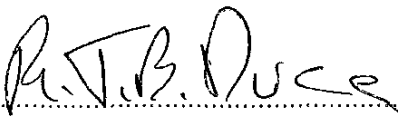
### **Properties**

Freehold premises being the Sands Development at Peasholme Gap, North Bay, Scarborough.

**SIGNATURES TO THE DEBENTURE**


**BENCHMARK LEISURE LIMITED**

Executed as a deed by

  
.....

Director

in the presence of

  
.....

Signature of witness

Name STEPHEN SIMON.....

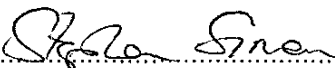
Address DEVONSHIRE HOUSE.....

1 DEVONSHIRE STREET LONDON W1W 5DR

Occupation ACCOUNTANT.....

Executed as a deed by

**ABBEY COMMERCIAL INVESTMENTS LIMITED** in the presence of

  
.....

Signature of witness

  
.....

Director

Name STEPHEN SIMON.....

Address DEVONSHIRE HOUSE.....

1 DEVONSHIRE STREET LONDON W1W 5DR

Occupation ACCOUNTANT.....

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