



Registration of a Charge

Company Name: **TOPGOLF LIMITED**

Company Number: **03724493**



Received for filing in Electronic Format on the: **21/07/2023**

XC88JAF7

Details of Charge

Date of creation: **19/07/2023**

Charge code: **0372 4493 0008**

Persons entitled: **BANK OF AMERICA, N.A.**

Brief description: **INTELLECTUAL PROPERTY SEE CLAUSE 3.1.7 OF THE DEBENTURE WHICH CREATES A FIXED CHARGE OVER ALL INTELLECTUAL PROPERTY (AS DEFINED IN THE DEBENTURE), INCLUDING ALL THE RIGHT TO SUE AND RECOVER FOR ANY PAST, PRESENT OR FUTURE INFRINGEMENTS OF, VIOLATIONS OF, DILUTION OF OR OTHER DAMAGES OR INJURIES TO ANY INTELLECTUAL PROPERTY.**

Contains fixed charge(s).

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 SAVE FOR MATERIAL REDACTED PURSUANT TO S.859G OF THE COMPANIES ACT 2006 THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION**

**FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL
INSTRUMENT.**

Certified by:

NORTON ROSE FULBRIGHT LLP



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 3724493

Charge code: 0372 4493 0008

The Registrar of Companies for England and Wales hereby certifies that a charge dated 19th July 2023 and created by TOPGOLF LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 21st July 2023 .

Given at Companies House, Cardiff on 24th July 2023

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**

Dated 19 July **2023**

TOPGOLF LIMITED
(as Chargor)

and

BANK OF AMERICA, N.A.
(as Agent)

DEBENTURE

I certify that, save for material redacted pursuant to s.859G of the Companies Act 2006, this copy instrument is a correct copy of the electronic copy of the original instrument.

Norton Rose Fulbright LLP

Date: 21 July 2023

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THIS DEED is made on 19 July 2023

BETWEEN:

- (1) **TOPGOLF LIMITED**, a limited company registered in England and Wales with number 03724493 whose registered office is at Unit 8 Shepperton Business Park, Govett Avenue, Shepperton, United Kingdom, TW17 8BA (the **Chargor**); and
- (2) **BANK OF AMERICA, N.A.**, a national banking association of the United States of America, as trustee and agent for the Secured Parties (defined below) on the terms and conditions set out in this Deed and in the Loan Agreement (defined below) (in such capacity the **Agent**).

WHEREAS:

- (A) The Chargor enters into this Deed in connection with a fifth amended and restated loan and security agreement dated 16 March 2023 (as the same may have been, or may from time to time be, restated, varied, amended, supplemented, novated or assigned) (the **Loan Agreement**), between, amongst others, (1) Topgolf Callaway Brands Corp., Callaway Golf Sales Company, Callaway Golf Ball Operations, Inc., Oglo International Inc., TravisMathew, LLC, Jack Wolfskin North America, Inc. and Top Golf USA Inc. (as U.S. Borrowers and Guarantors), (2) Callaway Golf Canada Ltd (as Canadian Borrower and Guarantor), (3) Jack Wolfskin Austrustung Fur Draussen GmbH & Co. KGAA (as German Borrower and Guarantor), (4) Callaway Golf EU B.V. (as Dutch Borrower and Guarantor), (5) Callaway Golf Europe Ltd. (as U.K. Borrower and Guarantor), (6) the financial institutions party thereto from time to time (as Lenders) and (7) Bank of America, N.A. (as Agent).
- (B) The board of directors of the Chargor is satisfied that the giving of the security contained or provided for in this Deed is in the interests of the Chargor and the board has passed a resolution to that effect.

NOW IT IS AGREED as follows:

1. Definitions and Interpretation

Specific Definitions

- 1.1 Terms defined in the Loan Agreement shall, unless otherwise defined in this Deed, have the same meanings when used in this Deed and in addition the following words and expressions shall have the following meanings:

Account: a right to payment of a monetary obligation, whether or not earned by performance, (a) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (b) for services rendered or to be rendered, or (c) arising out of the use of a credit or charge card or information contained on or for use with the card.

Account Bank: in relation to a Deposit Account, the bank whose name is set out opposite such Deposit Account in Schedule 1 (*Deposit Accounts*), or, where a Deposit Account is not set out in Schedule 1 (*Deposit Accounts*), the bank or financial institution with which that Deposit Account is held.

Authorisations: an approval, consent, exemption, authorisation, notice to or filing with any Governmental Authority.

BoA Collection Accounts: those Collection Accounts that are held with Bank of America, N.A., London Branch and, in addition, any account or accounts opened by the Chargor with Bank of America, N.A., London Branch after the date of this Deed with respect to which a Deposit Account Control Agreement has been entered into between the Chargor, Bank of

America N.A., London Branch and the Agent providing for springing control of such account or accounts by the Agent.

Collection Accounts: those Deposit Accounts of the Chargor listed in Part 1 of Schedule 1 (*Collection Accounts (including BoA Collection Accounts)*) and, for the avoidance of doubt, excluding the Other Accounts.

Delegate: any person appointed by the Agent or any Receiver pursuant to Clause 15.2 (*Delegation*) and any person appointed as attorney of the Agent and/or any Receiver or Delegate.

Excluded Asset: means any Excluded Property and any Deposit Account that is not opened at any bank or financial institution in England and Wales.

LPA: the Law of Property Act 1925.

Other Accounts: those Deposit Accounts of the Chargor listed in Part 2 of Schedule 1 (*Other Accounts*) and/or such other bank accounts of the Chargor as the Agent may designate or approve by notice in writing to the Chargor as an Other Account.

Receiver: a receiver, or receiver and manager or administrative receiver of the whole or any part or parts of the Security Assets.

Scottish Assets: means (i) such of the undertaking, property and assets, present and future, of the Chargor which from time to time are located in Scotland; (ii) such contractual and other rights and other incorporeal moveable property, present and future, of the Chargor which are governed by the laws of Scotland; and (iii) the undertaking, property and assets of the Chargor where the creation and/or enforcement of any Lien over such undertaking, property and assets is governed by the law of Scotland.

Secured Liabilities: the Obligations of the U.K./Dutch Domiciled Obligors (including in their capacity as guarantors of the Canadian Facility Obligations, German Facility Obligations and U.K./Dutch Facility Obligations, but excluding, for the avoidance of doubt, the Obligations of the U.S. Domiciled Obligors as guarantors of any U.S. Facility Obligations).

Security Assets: all the assets of the Chargor that from time to time are the subject of any Lien created or expressed to be created in favour of the Agent by or pursuant to this Deed.

General Definitions

1.2 Any reference in this Deed to:

- 1.2.1 the "**Agent**", the "**Chargor**" or the "**Secured Parties**" shall be construed so as to include its or their successors, permitted transferees and permitted assigns, whether immediate or derivative, and, in the case of the Agent, shall include any person for the time being appointed as Agent or as the additional Agent for the purpose of, and in accordance with, the Loan Agreement;
- 1.2.2 the "**assets**" of any person shall include the undertaking, property, revenues, rights and assets (present and future) of whatsoever nature of such person;
- 1.2.3 "**indebtedness**" includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
- 1.2.4 a "**regulation**" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
- 1.2.5 a "**Clause**" or a "**Schedule**" is, unless otherwise provided, a reference to a Clause or a Schedule of this Deed; and

- 1.2.6 a "person" shall include any person, firm, company, partnership, corporation or unincorporated body of persons or any state or government or any agency or delegate of them.

Construction

- 1.3 Any reference in this Deed to a charge or assignment of any asset shall be construed so as to include:
- 1.3.1 the benefit of any covenants for title given or entered into by any predecessor in title of the Chargor in respect of that asset and all other rights, benefits, claims, contracts, warranties, remedies, security or indemnities in respect of that asset; and
- 1.3.2 the proceeds of sale of any part of any asset subject to a fixed charge or assignment under this Deed and any other moneys paid or payable in respect of or in connection with that asset, in each case deriving from a disposal of that asset made in breach of the terms of this Deed.
- 1.4 It is intended that this Deed shall take effect as and be a deed of the Chargor notwithstanding the fact that the Agent may not execute this document as a deed.
- 1.5 Each term in any Loan Document is, to the extent not set out in or otherwise incorporated into this Deed, deemed to be incorporated into this Deed insofar as is necessary to comply with section 2 of the Law of Property (Miscellaneous Provisions) Act 1989 but, except where stated otherwise, if there is any conflict between that incorporated term and any other term of this Deed that other term shall prevail.
- 1.6 Any reference in this Deed to any Loan Document or any other agreement or other document shall be construed as a reference to that Loan Document or that other agreement or document as the same may have been, or may from time to time be, restated, varied, amended, supplemented, substituted, novated or assigned, whether or not as a result of any of the same:
- 1.6.1 there is an increase or decrease in any facility made available under that Loan Document or other agreement or document or an increase or decrease in the period for which any facility is available or in which it is repayable;
- 1.6.2 any additional, further or substituted facility to or for such facility is provided;
- 1.6.3 any rate of interest, commission or fees or relevant purpose is changed;
- 1.6.4 the identity of the parties is changed;
- 1.6.5 the identity of the providers of any security is changed;
- 1.6.6 there is an increased or additional liability on the part of any person; or
- 1.6.7 a new agreement is effectively created or deemed to be created.
- 1.7 Any reference in this Deed to "**this Deed**" shall be deemed to be a reference to this Deed as a whole and not limited to the particular Clause, Schedule or provision in which the relevant reference appears and to this Deed as the same may from time to time be restated, varied, amended, supplemented, substituted, novated or assigned.
- 1.8 References in this Deed to laws, statutes or statutory provisions shall be construed as referring to such laws, statutes or statutory provisions as respectively replaced, amended, extended, consolidated or re-enacted from time to time and shall include any order, regulation, instrument or other subordinate legislation made under the relevant law, statute or statutory provision.
- 1.9 The table of contents and headings in this Deed are inserted for convenience only and have no legal effect.

- 1.10 Unless the context otherwise requires, words denoting the singular number only shall include the plural and vice versa.
- 1.11 Any change in the constitution of any of the parties to this Deed or their absorption of or amalgamation with any other person shall not in any way prejudice or affect their rights under this Deed.
- 1.12 Where any provision of this Deed is stated to include one or more things, that shall be by way of example or for the avoidance of doubt only and shall not limit the generality of that provision.
- 1.13 In the event of any inconsistency between the provisions of this Deed and the Loan Agreement, the provisions of this Deed shall prevail.

Third Party Rights

- 1.14 Nothing in this Deed is intended to confer on any person any right to enforce or enjoy the benefit of any provision of this Deed that that person would not have had but for the Contracts (Rights of Third Parties) Act 1999.

2. Covenant to Pay

Covenant to Pay

- 2.1 The Chargor covenants with the Agent (as trustee for the Secured Parties) that it will pay, perform and discharge the Secured Liabilities as and when the same fall due for payment, performance or discharge in accordance with the terms of the Loan Documents or, in the absence of any such express terms, on demand.

3. Fixed Security

Charges

- 3.1 The Chargor, as security for the payment, performance and discharge of all the Secured Liabilities, charges in favour of the Agent by way of first fixed charge all of the Chargor's right, title and interest in and to the following assets (other than any Scottish Assets and any Excluded Assets), both present and future:

- 3.1.1 **Securities Accounts** - all securities accounts (including any and all Investment Property held therein or credited thereto);
- 3.1.2 **Monies** - all monies, whether or not in the possession or under the control of the Agent, a Lender, or a bailee or Affiliate of the Agent or a Lender that were derived from or consist of any of the Property described in this Clause 3.1, and any Cash Collateral;
- 3.1.3 **Supporting Obligations** - all Supporting Obligations of any of the Property described in this Clause 3.1;
- 3.1.4 **Instruments, Documents and Chattel Paper** - all Instruments, Documents and Chattel Paper, in each case only to the extent evidencing or governing any of the Property described in this Clause 3.1;
- 3.1.5 **Proceeds** - all accessions to, substitutions for, and all replacements, products, and cash and non-cash proceeds of the foregoing, including proceeds of and unearned premiums with respect to insurance policies, and claims against any Person for loss, damage or destruction of any of the Property described in this Clause 3.1 (the **Proceeds**);

- 3.1.6 **Books and Records** - all books and records (including customer lists, files, correspondence, tapes, computer programmes, print-outs and computer records) pertaining to any of the Property described in this Clause 3.1, and any General Intangibles to the extent evidencing or governing any of the Property described in this Clause 3.1;
- 3.1.7 **Intellectual Property** – all Intellectual Property (including the right to sue and recover for any past, present or future infringements of, violations of, dilution of or other damages or injuries to any Intellectual Property); and
- 3.1.8 **Accounts** – all Accounts not effectively assigned pursuant to Clause 3.2 (*Assignment*) below, both uncollected and collected and the proceeds of the same, but excluding the Collection Accounts and any amounts standing to the credit of any Collection Account.

Assignment

- 3.2 The Chargor, as security for the payment, performance and discharge of all the Secured Liabilities, assigns to the Agent (as trustee for the Secured Parties) by way of security all of the Chargor's right, title and interest in and to, both present and future, all Accounts (other than any Scottish Assets and any Excluded Assets).

4. Floating Charge

Creation of Floating Charge

- 4.1 The Chargor, as security for the payment, performance and discharge of all the Secured Liabilities, charges in favour of the Agent (as trustee for the Secured Parties) by way of a first floating charge all of the Chargor's undertaking and all its other property, assets and rights whatsoever, all the Inventory of the Chargor, the Collection Accounts of the Chargor, the Other Accounts of the Chargor and, the property, assets and rights (including, without limitation, its Scottish Assets) to the extent not otherwise validly and effectively charged or assigned (whether at law or in equity) by way of fixed security pursuant to Clause 3 (*Fixed Security*).

Qualifying Floating Charge

- 4.2 The provisions of paragraph 14 of Schedule B1 to the Insolvency Act 1986 shall apply to the floating charge created pursuant to Clause 4.1 above.

Conversion by Notice

- 4.3 The Agent may by notice in writing at any time to the Chargor convert the floating charge created by the Chargor pursuant to Clause 4.1 above with immediate effect into a fixed charge (either generally or specifically) as regards any assets of the Chargor specified in the notice if an Event of Default has occurred for so long as the same is continuing.

Automatic Conversion

- 4.4 Notwithstanding Clause 4.3 (*Conversion by Notice*) and without prejudice to any law that may have a similar effect, the floating charge created by Clause 4.1 (*Creation of Floating Charge*) will automatically be converted (without notice) with immediate effect into a fixed charge as regards all of the undertaking and assets (other than any Scottish Assets) subject to that floating charge if:
 - 4.4.1 the Chargor creates or attempts to create any Lien over any of the Security Assets (except as expressly permitted by the terms of the Loan Agreement or this Deed);
 - 4.4.2 any person levies or attempts to levy any distress, execution or other process against any of the Security Assets; or

- 4.4.3 a resolution is passed or an order is made for the winding-up, dissolution, administration or re-organisation of the Chargor.

5. Perfection of Security

Further Advances

- 5.1 The Agent covenants with the Chargor that it shall procure that the U.K./Dutch Lenders perform their obligations to make advances to the U.K./Dutch Borrowers under the Loan Agreement (including any obligation to make available further advances).

Notices of Assignment and Charge – Collection Accounts

- 5.2 The Chargor shall, with respect to any Collection Account (but excluding any Excluded Deposit Account and/or any Excluded Asset) open at the date of this Deed:

5.2.1 promptly enter into a Deposit Account Control Agreement with Bank of America, N.A., London Branch and the Agent in respect of any BoA Collection Account which Deposit Account Control Agreement shall provide for springing control by the Agent in respect of any BoA Collection Account;

5.2.2 promptly deliver to each Account Bank with which a Collection Account (other than a BoA Collection Account) is held that is open as at the date of this Deed, a notice in substantially the form of Part 1 of Schedule 2 (*Collection Account Notices and Acknowledgements*) duly executed on behalf of the Chargor; and

5.2.3 use reasonable endeavours to promptly deliver to the Agent a notice in substantially the form of Part 2 of Schedule 2 (*Collection Account Notices and Acknowledgements*) duly executed by the relevant Account Bank at which any Collection Account other than a BoA Collection Account is open as at the date of this Deed.

- 5.3 Where any Collection Account (but excluding any Excluded Deposit Account and/or any Excluded Asset) is opened at any bank or financial institution after the date of this Deed, the Chargor shall:

5.3.1 (where that Collection Account is opened with Bank of America, N.A., London Branch) promptly enter into a Deposit Account Control Agreement with Bank of America, N.A., London Branch and the Agent which Deposit Account Control Agreement shall provide for springing control by the Agent in respect of that Collection Account; and

5.3.2 (where that Collection Account is not opened with Bank of America, N.A., London Branch):

(a) promptly deliver to the Account Bank at which that Collection Account is opened, a notice in substantially the form of Part 1 of Schedule 2 (*Collection Account Notices and Acknowledgements*) duly executed on behalf of the Chargor with respect to that Collection Account; and

(b) use reasonable endeavours to promptly deliver to the Agent a notice in substantially the form of Part 2 of Schedule 2 (*Collection Account Notices and Acknowledgements*) duly executed by the Account Bank in respect of that Collection Account.

6. Further Assurance

Further Assurance

6.1 The Chargor shall, at its own expense, take whatever action the Agent or any Receiver may reasonably require for:

6.1.1 preserving, perfecting or protecting any Security Asset or the Lien constituted or intended to be constituted by this Deed over any Security Asset;

6.1.2 facilitating the realisation of any Security Asset; and/or

6.1.3 facilitating the exercise of all rights and powers of the Agent or any Receiver or Delegate provided by or pursuant to this Deed or by law in respect of any Security Asset,

including, without limitation, the execution of any transfer, conveyance, assignment or assurance of all or any of the assets forming part of, or intended to form part of, the Security Assets (whether to the Agent or to its nominee(s)) and the giving of any notice, order or direction and the making of any registration that, in any such case, the Agent may think expedient.

Implied Covenants for Title

6.2 Each of the charges and assignments granted by the Chargor under this Deed are granted with full title guarantee in accordance with the Law of Property (Miscellaneous Provisions) Act 1994, save that the covenants set out in section 2(1)(a), section 3 and section 4 of that Act shall extend to the Chargor without, in each case, the benefit of section 6(2) of that Act.

7. Representations

General

7.1 The Chargor makes the representations and warranties set out in this Clause 7 to the Agent on the date of this Deed and at the times provided for in section 6.2(b) (*Conditions Precedent to All Credit Extensions*) of the Loan Agreement.

Non-conflict with Other Obligations

7.2 The entry into and performance by it of, and the transactions contemplated by, this Deed and the granting of the security under this Deed do not and will not conflict with:

7.2.1 any law or regulation applicable to it;

7.2.2 its constitutional documents; or

7.2.3 any agreement or instrument binding upon it or any of its assets or constitute a default or termination event (however described) under any such agreement or instrument.

nor (except as provided in this Deed) result in the existence or imposition of, or oblige it to create, any Lien in favour of any person over all or any of its assets.

Validity and Admissibility in Evidence

7.3 All Authorisations required or desirable to:

7.3.1 enable it lawfully to enter into, exercise its rights and comply with its obligations in this Deed;

7.3.2 make this Deed admissible in evidence in its jurisdiction of incorporation; and

7.3.3 enable it to create any security expressed to be created by it by or pursuant to, or, as the case may be, any security expressed to have been created by it and to be

evidenced in, this Deed and to ensure that such security has the priority and ranking it is expressed to have,

have been obtained or effected and are in full force and effect, except for any registrations and filings referred to in Clause 7.4 below.

No Filing or Stamp Taxes

- 7.4 Under the law of its jurisdiction of incorporation it is not necessary that this Deed be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration, notarial or similar taxes or fees be paid on or in relation to this Deed or the transactions contemplated by this Deed, except registration of particulars of this Deed at the Companies Registration Office in England and Wales under Section 860 of the Companies Act 2006 and payment of associated fees, which registrations, filings and fees will be made and paid promptly after the date of this Deed.

Creation of Security

- 7.5 This Deed creates or, as applicable, evidences in favour of the Agent the security that it purports to create or evidence with, except as expressly permitted by the terms of the Loan Agreement, the ranking and priority that it is expressed to have.
- 7.6 Without limiting Clause 7.5 above, its payment obligations under this Deed rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.
- 7.7 Except as expressly permitted by the terms of the Loan Agreement, no Lien exists over all or any of its assets and no arrangement or transaction as described in Clause 9.1 below has been entered into by it and is outstanding.

Good Title to Assets

- 7.8 It is the sole legal and beneficial owner of the assets over which it purports to grant security under this Deed.

8. Deposit Accounts

Withdrawals

- 8.1 During any Dominion Trigger Period, the Chargor shall not withdraw or transfer any monies received into or standing to the credit of any Collection Account without the prior written consent of the Agent (subject to Clause 8.3 (*Collection Accounts*)), which may be granted or withheld in the sole discretion of the Agent without the need for reasons to be provided therefor.

Restrictions on dealing with Deposit Accounts

- 8.2 Notwithstanding Clause 9.1 (*Negative Pledge*) and Clause 9.2 (*Restriction on Disposals*) except as expressly permitted by the terms of the Loan Agreement:
- 8.2.1 the Chargor shall not create or permit to subsist any Lien over all or any part of any of its Deposit Accounts other than:
- (a) the Liens created under or in connection with this Deed; and
 - (b) any banker's right of lien, set-off and/or combination; and
- 8.2.2 the Chargor shall not enter into a single transaction or a series of transactions to transfer assign or otherwise dispose of all or any part of any of its Deposit Accounts.

Collection Accounts

- 8.3 The Agent and the Chargor agree that, during any Dominion Trigger Period:
- 8.3.1 all funds deposited into any Collection Account will be dealt with in accordance with section 5.7.3 of the Loan Agreement;
 - 8.3.2 all funds deposited into any Deposit Account (other than a Collection Account) representing any payment received by it with respect to Accounts will be dealt with in accordance with Section 8.2.5 of the Loan Agreement; and
 - 8.3.3 from the date upon which the floating charge created by Clause 4 (*Floating Charge*) of this Deed has converted to a fixed charge pursuant to Clause 4.2 (*Conversion by Notice*) or Clause 4.3 (*Automatic Conversion*), all funds deposited into the Other Accounts will only be applied against the Secured Liabilities in accordance with the terms of this Deed and the Loan Agreement.

9. General Undertakings

Negative Pledge

- 9.1 The Chargor shall not create or extend or permit to arise or subsist any Lien over the whole or any part of the Security Assets, except as expressly permitted by the terms of the Loan Agreement or with the prior written consent of the Agent.

Restriction on Disposals

- 9.2 The Chargor shall not (or shall not agree to) sell, factor, discount, transfer, assign, lease or otherwise dispose of the whole or any part of the Security Assets (whether in a single transaction or in a series of transactions whether related or not), except for any disposal in the ordinary course of trading (as conducted by the Chargor at the date of this Deed) of any Security Asset that is subject only to the floating charge created by Clause 4.1 (*Creation of Floating Charge*) or except as expressly permitted by the terms of the Loan Agreement or this Deed.

Operation of Secured Accounts

- 9.3 Subject to clause 8.3, until notified by the Agent in writing to the contrary upon the occurrence of an Event of Default that is continuing, the Chargor shall be entitled to operate the Collection Accounts and the Other Accounts provided that:
- 9.3.1 the Chargor shall comply with Section 8.2.5 of the Loan Agreement with respect to its Deposit Accounts and any other deposit accounts and security accounts maintained by the Chargor; and
 - 9.3.2 the Chargor shall comply with Section 8.5 of the Loan Agreement with respect to all payments on Accounts of the Chargor or otherwise relating to Collateral of the Chargor.

10. Incorporation of Terms

The provisions of sections 5.9 (*Taxes*), 8.2 (*Administration of Accounts*), 8.3 (*Administration of Inventory*), 8.5 (*Administration of Deposit Accounts*) and 8.6 (*General Provisions*) of the Loan Agreement shall apply to this Deed as if set out in full in this Deed, with such changes as are appropriate to fit this context, such that by entering into this Deed, the Chargor is deemed to give the covenants contained in those sections.

11. Enforcement of Security

When Security becomes Enforceable

- 11.1 The security constituted by this Deed shall become immediately enforceable and the power of sale and other powers conferred by section 101 of the LPA, as varied or extended by this Deed, shall be immediately exercisable upon and at any time after the occurrence of an Event of Default for so long as the same is continuing. After the security constituted by this Deed has become enforceable, the Agent may in its absolute discretion enforce all or any part of that security at the times, in the manner and on the terms it thinks fit and take possession of and hold or dispose of all or any part of the Security Assets.

Right of Appropriation

- 11.2 To the extent that any of the Security Assets constitute “financial collateral” and this Deed and the obligations of the Chargor under this Deed constitute a “security financial collateral arrangement” (in each case as defined in, and for the purposes of, the Financial Collateral Arrangements (No. 2) Regulations 2003 (the **Regulations**)), the Agent shall have the right, at any time after the security constituted by this Deed has become enforceable, to appropriate all or any part of such financial collateral in or towards discharge of the Secured Liabilities. For this purpose, the parties agree that the value of such financial collateral shall be (in the case of cash) the amount standing to the credit of each bank account of the Chargor, together with any accrued but unpaid interest, at the time the right of appropriation is exercised and (in the case of Securities) the market price of such Securities determined by the Agent by reference to a public index or by such other process as the Agent may select, including independent valuation. In each case, the parties agree that the manner of valuation provided for in this Clause 11.2 shall constitute a commercially reasonable manner of valuation for the purposes of the Regulations.

Redemption of Prior Liens

- 11.3 At any time that the security constituted by this Deed is enforceable in accordance with Clause 11.1 (*When Security becomes Enforceable*), the Agent may at any time:
- 11.3.1 redeem any prior Lien against any Security Asset; or
 - 11.3.2 procure the transfer of that Lien to itself; or
 - 11.3.3 settle and pass the accounts of the person or persons entitled to such Lien (and any accounts so settled and passed shall be conclusive and binding on the Chargor).
- 11.4 All principal moneys, interest, costs, charges and expenses of and incidental to any such redemption or transfer shall be paid by the Chargor to the Agent on demand and shall be secured by this Deed.

12. Extension and Variation of the LPA

General

- 12.1 For the purposes of all powers implied by the LPA, such powers shall arise (and the Secured Liabilities shall be deemed to have become due and payable for that purpose) on the date of this Deed.
- 12.2 Section 103 of the LPA (restricting the power of sale) and section 93 of the LPA (restricting the right of consolidation) shall not apply to the security constituted by this Deed.
- 12.3 The statutory powers of leasing conferred on the Agent are extended so as to authorise the Agent and any Receiver at any time after the security constituted by this Deed has become enforceable to make any lease or agreement for lease, accept surrenders of leases and/or grant

options on such terms as it or he shall think fit, without the need to comply with any restrictions imposed by sections 99 and 100 of the LPA.

Privileges

- 12.4 Each Receiver and the Agent is entitled to all the rights, powers, privileges and immunities conferred by the LPA on mortgagees and receivers.

13. Appointment of Receiver and Administrator

Appointment

- 13.1 At any time that the security constituted by this Deed is enforceable in accordance with Clause 11.1 (*When Security becomes Enforceable*) or if the Chargor so requests the Agent in writing (in which case, the security constituted by this Deed shall become immediately enforceable), the Agent may without prior notice to the Chargor:

13.1.1 appoint free from the restrictions imposed by section 109(1) of the LPA either under seal or in writing under its hand any one or more persons to be a Receiver of the whole or any part or parts of the Security Assets in like manner in every respect as if the Agent had become entitled under the LPA to exercise the power of sale conferred under the LPA; or

13.1.2 appoint one or more persons to be an administrator of the Chargor.

Removal

- 13.2 The Agent may by writing under its hand (or by an application to the court where required by law):

13.2.1 remove any Receiver appointed by it; and

13.2.2 may, whenever it deems it expedient, appoint any one or more persons to be a new Receiver in the place of or in addition to any Receiver.

Statutory Powers of Appointment

- 13.3 The powers of appointment of a Receiver conferred by this Deed shall be in addition to all statutory and other powers of appointment of the Agent under the LPA (as extended by this Deed) or otherwise and such powers shall be and remain exercisable from time to time by the Agent in respect of any part or parts of the Security Assets.

Capacity of Receiver

- 13.4 Each Receiver shall be deemed to be the agent of the Chargor for all purposes. The Chargor alone shall be responsible for a Receiver's contracts, engagements, acts, omissions, defaults and losses and for liabilities incurred by him.

- 13.5 The agency of each Receiver shall continue until the Chargor goes into liquidation and after that the Receiver shall act as principal and shall not become the agent of the Agent.

- 13.6 If there is more than one Receiver holding office at the same time, each Receiver shall (unless the document appointing him states otherwise) be entitled to act (and to exercise all of the powers conferred on a Receiver under this Deed) individually or together with any other person appointed or substituted as Receiver.

Remuneration of Receiver

- 13.7 The Agent may fix the remuneration of any Receiver appointed by it without any restriction imposed by section 109(6) of the LPA and the remuneration of the Receiver shall be a debt secured by this Deed that shall be due and payable immediately upon its being paid by the Agent.

14. Powers of Receiver

General

- 14.1 Each Receiver has, and is entitled to exercise, all of the rights, powers and discretions set out below in this Clause 14 in addition to those conferred by law.
- 14.2 Without prejudice to the generality of this Clause 14, each Receiver shall have all the rights, powers and discretions of an administrative receiver under Schedule 1 to the Insolvency Act 1986 whether he falls within the statutory definition of an administrative receiver or not.

Specific Powers

- 14.3 Each Receiver shall have the following powers (and every reference in this Clause 14.3 to the "**Security Assets**" shall be read as a reference to that part or parts of the Security Assets in respect of which that Receiver was appointed):
- 14.3.1 power to purchase or acquire land and purchase, acquire or grant any interest in or right over land as he thinks fit;
 - 14.3.2 power to take immediate possession of, get in and collect any Security Asset;
 - 14.3.3 power to carry on the business of the Chargor as he thinks fit;
 - 14.3.4 power (but without any obligation to do so) to:
 - (a) make and effect all repairs, alterations, additions and insurances and do all other acts that the Chargor might do in the ordinary conduct of its business as well for the protection as for the improvement of the Security Assets;
 - (b) commence or complete any building operations on any freehold, leasehold or commonhold property;
 - (c) apply for and maintain any planning permission, building regulation approval or any other permission, consent or licence; and
 - (d) negotiate for compensation with any authority that may intend to acquire or be in the process of acquiring all or any part of the Security Assets and make objections to any order for the acquisition of all or any part of the Security Assets and represent the Chargor at any enquiry to be held to consider such objections or otherwise relating to any such acquisition,in each case as he thinks fit;
 - 14.3.5 power to appoint and discharge managers, officers, agents, advisers, accountants, servants, workmen, contractors, surveyors, architects, lawyers and others for the purposes of this Deed upon such terms as to remuneration or otherwise as he thinks fit and power to discharge any such persons appointed by the Chargor (and the costs incurred by any Receiver in carrying out such acts or doing such things shall be reimbursed to that Receiver by the Chargor on demand and until so reimbursed shall carry interest at the rate specified in Clause 3 (*Interest, Fees and Charges*) of the

Loan Agreement from the date of payment by the Agent until reimbursed (after as well as before any judgment));

- 14.3.6 power to raise and borrow money either unsecured or (with the prior consent of the Agent) on the security of any Security Asset either in priority to the security constituted by this Deed or otherwise and generally on any terms and for whatever purpose he thinks fit;
- 14.3.7 power to sell, exchange, convert into money and realise any Security Asset by public auction or private contract and generally in any manner and on any terms as he thinks fit;
- 14.3.8 power to sever and sell separately any fixtures from the property containing them without the consent of the Chargor;
- 14.3.9 power to let any Security Asset for any term and at any rent (with or without a premium) as he thinks fit and power to accept a surrender of any lease or tenancy of any Security Asset on any terms that he thinks fit (including the payment of money to a lessee or tenant on a surrender);
- 14.3.10 power to 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 the Chargor or relating in any way to any Security Asset;
- 14.3.11 power to bring, prosecute, enforce, defend and abandon all actions, suits and proceedings in relation to any Security Asset or in relation to the Chargor that may seem to him to be expedient;
- 14.3.12 power to give valid receipts for all moneys and execute all assurances and things that may be proper or desirable for realising any Security Asset;
- 14.3.13 power to form a subsidiary of the Chargor and transfer to that subsidiary any Security Asset;
- 14.3.14 power to do all such acts as may seem to him to be necessary or desirable in order to initiate or continue any development of any Security Assets and for these purposes to appoint and to enter into such contracts with such building and engineering contractors or other contractors and professional advisers as he may think fit;
- 14.3.15 power to call any meeting of the members or directors of the Chargor in order to consider such resolutions or other business as he thinks fit;
- 14.3.16 power to exercise in relation to any Security Assets all the powers and rights that he would be capable of exercising if he were the absolute beneficial owner of the same;
- 14.3.17 power to do all other acts and things that he may consider desirable or necessary for realising any Security Asset or incidental or conducive to any of the rights, powers or discretions conferred on a Receiver under or by virtue of this Deed; and
- 14.3.18 power to exercise any of the above powers in the name of or on behalf of the Chargor or in his own name and, in each case, at the cost of the Chargor.

Agent's Powers

- 14.4 To the fullest extent permitted by law, any right, power or discretion conferred by this Deed (either expressly or impliedly) upon a Receiver may after the security constituted by this Deed has become enforceable be exercised by the Agent in relation to any Security Asset, irrespective of whether or not it has taken possession of any Security Asset and without first appointing a Receiver or notwithstanding the appointment of a Receiver.

15. Discretions and Delegation

Discretion

- 15.1 Any liberty or power that may be exercised or any determination that may be made under this Deed by the Agent or any Receiver may be exercised or made in its absolute and unfettered discretion without any obligation to give reasons.

Delegation

- 15.2 Each of the Agent and any Receiver may delegate (either generally or specifically) by power of attorney or in any other manner to any person any right, power, authority or discretion conferred on it by this Deed (including the power of attorney).
- 15.3 Any such delegation may be made upon such terms and conditions (including the power to sub-delegate) as the Agent or any Receiver (as the case may be) shall think fit.
- 15.4 Neither the Agent nor any Receiver shall be in any way liable or responsible to the Chargor for any loss or liability arising from any act, default, omission or misconduct on the part of any Delegate.

16. Power of Attorney

Appointment and Powers

- 16.1 The Chargor, by way of security, irrevocably appoints the Agent, every Receiver and every Delegate severally and independently to be its attorney and in its name, on its behalf and as its act and deed to execute, deliver and perfect all documents and do all things that the attorney may consider to be required or desirable for:
- 16.1.1 carrying out any obligation imposed on the Chargor by this Deed; and
- 16.1.2 enabling the Agent or any Receiver or Delegate to exercise, or delegate the exercise of, any of the rights, powers, authorities and discretions conferred on it or him by or pursuant to this Deed or by law (including the exercise of any right of an absolute legal or beneficial owner of the Security Assets).

Ratification

- 16.2 The Chargor shall ratify and confirm whatever any attorney does or purports to do pursuant to its appointment under Clause 16.1 (*Appointment and Powers*).

17. Protection of Purchasers

Consideration

- 17.1 The receipt of the Agent or any Receiver or Delegate shall be a conclusive discharge to a purchaser and, in making any sale or other disposal of any of the Security Assets (including a disposal by a Receiver or Delegate to any subsidiary of the Chargor) or in making any acquisition in the exercise of their respective powers, the Agent, every Receiver and every Delegate may do so for such consideration, in such manner and on such terms as it or he thinks fit.

Protection of Third Parties

- 17.2 No person (including a purchaser) dealing with the Agent, any Receiver or any Delegate shall be bound to enquire:

- 17.2.1 whether the Secured Liabilities have become payable; or
 - 17.2.2 whether any power that the Agent or any Receiver or Delegate is purporting to exercise has arisen or become exercisable; or
 - 17.2.3 whether any money remains due under the Loan Documents; or
 - 17.2.4 how any money paid to the Agent or to any Receiver or Delegate is to be applied,
- or shall be concerned with any propriety, regularity or purpose on the part of the Agent or any Receiver or Delegate in such dealings or in the exercise of any such power.

18. Application of Proceeds

Order of Application

- 18.1 All moneys received or recovered by the Agent, any Receiver or any Delegate pursuant to this Deed, at any time after the security constituted by this Deed has become enforceable in accordance with Clause 11.1 (*When Security becomes Enforceable*), shall (subject to the claims of any person having prior rights thereto and by way of variation of the provisions of the LPA) be applied in the following order of priority (but without prejudice to the right of the Agent to recover any shortfall from the Chargor):
 - 18.1.1 in or towards payment of all costs, losses, liabilities and expenses of and incidental to the appointment of any Receiver or Delegate and the exercise of any of his rights and powers, including his remuneration, and all outgoings paid by him;
 - 18.1.2 in or towards payment of all other Extraordinary Expenses;
 - 18.1.3 in or towards payment of all other Secured Liabilities or such part of them as is then due and payable to the Secured Parties in accordance with the order of application set out in the Loan Agreement (notwithstanding any purported appropriation by the Chargor); and
 - 18.1.4 in payment of the surplus (if any) to the Chargor or other person entitled to it.

Suspense Account

- 18.2 Until the Full Payment of the Secured Liabilities, at any time that the security constituted by this Deed is enforceable in accordance with Clause 11.1 (*When Security becomes Enforceable*), the Agent may:
 - 18.2.1 without affecting the liability of the Chargor under this Deed:
 - (a) refrain from applying or enforcing any other moneys, security or rights held or received by it in respect of the Secured Liabilities; or
 - (b) apply and enforce the same in such manner and order as it sees fit (whether against the Secured Liabilities or otherwise) and the Chargor shall not be entitled to direct the appropriation of any such moneys, security or rights or to enjoy the benefit of the same; and/or
 - 18.2.2 hold in a suspense account any moneys received from the Chargor or on account of the Chargor's liability in respect of the Secured Liabilities.
- 18.3 Amounts standing to the credit of any such suspense account shall bear interest at a rate considered by the Agent to be a fair market rate.

New Accounts

- 18.4 If the Agent at any time receives, or is deemed to have received, notice of any subsequent Lien or other interest not explicitly permitted by the Loan Agreement affecting any Security Asset, the Agent may open a new account with the Chargor.
- 18.5 If the Agent does not open a new account, it shall nevertheless be treated as if it had done so at the time when it received, or was deemed to have received, such notice. As from that time all payments made by or on behalf of the Chargor to the Agent shall be credited or be treated as having been credited to the new account of the Chargor and not as having been applied in reduction of the Secured Liabilities.

Currency Conversion

- 18.6 For the purpose of or pending the discharge of any of the Secured Liabilities, the Agent may (in its absolute discretion) convert any moneys received or recovered by it or any Receiver or Delegate pursuant to this Deed or any moneys subject to application by it or any Receiver or Delegate pursuant to this Deed from one currency to another and any such conversion shall be made at the Agent's spot rate of exchange for the time being for obtaining such other currency with the first currency and the Secured Liabilities shall be discharged only to the extent of the net proceeds of such conversion realised by the Agent. Nothing in this Deed shall require the Agent to make, or shall impose any duty of care on the Agent in respect of, any such currency conversion.

Certificate

- 18.7 Any certificate signed by an officer of the Agent as to the amount at any time owing under any Loan Document shall, in the absence of manifest error, be conclusive and binding upon the Chargor.

19. No Liability as Mortgagee in Possession

Neither the Agent nor any Receiver or Delegate shall in any circumstances (either by reason of entering into or taking possession of any Security Assets or for any other reason and whether as mortgagee in possession or on any other basis) be liable to account to the Chargor for anything, except actual receipts, or be liable to the Chargor for any costs, charges, losses, liabilities or expenses arising from the realisation of any Security Assets or from any act, default or omission of the Agent, any Receiver, any Delegate or any of their respective officers, agents or employees in relation to the Security Assets or from any exercise or purported exercise or non-exercise by the Agent or any Receiver or Delegate of any power, authority or discretion provided by or pursuant to this Deed or by law or for any other loss of any nature whatsoever in connection with the Security Assets or the Loan Documents except, in each case, as caused by the wilful misconduct or gross negligence of such Agent, Receiver or Delegate or any of their respective officers, agents or employees (as applicable).

20. Set-Off

Without limiting any other rights conferred on the Agent by law or by any other agreements entered into with the Chargor, the Agent and each other Secured Party shall have the following rights exercisable by it at any time without notice to the Chargor:

- 20.1.1 the right to set off any matured obligation whatsoever due from the Chargor under the Loan Documents (to the extent beneficially owned by the Agent) against any matured obligation whatsoever owed by the Agent to the Chargor, regardless of the place of payment, booking branch or currency of either obligation (other than any third party funds);

20.1.2 the right, where the obligations referred to in Clause 20.1.1 above are in different currencies, to convert either obligation at such market rate of exchange as the Agent shall reasonably select for the purpose of that set-off (other than any third party funds); and

20.1.3 the right, where any obligation referred to in Clause 20.1.1 above is unliquidated or unascertained, to set off in an amount estimated by it in good faith to be the amount of such obligation (other than any third party funds).

The Agent shall not be obliged to exercise any right conferred by this Clause 20.

21. Release of Security

Redemption of Security

21.1 Upon Full Payment of the Secured Liabilities and at such other times as set forth in Section 12.2.1 of the Loan Agreement, the Agent shall, at the request and cost of the Chargor, release and cancel the security constituted by this Deed and procure the assignment to the Chargor of the property and assets assigned to the Agent pursuant to this Deed, in each case subject to Clause 21.2 (*Avoidance of Payments*) and without recourse to, or any representation or warranty by, the Agent or any of its Delegates.

Avoidance of Payments

21.2 If the Agent considers that any amount paid or credited to it is capable of being avoided or reduced by virtue of any bankruptcy, insolvency, liquidation or similar laws the liability of the Chargor under this Deed and the security constituted hereby shall continue and such amount shall not be considered to have been irrevocably paid.

Other Accounts

21.3 At any time before the security constituted by this Deed shall have become enforceable, any amounts permitted by the terms of the Loan Documents to be paid into an Other Account shall upon payment into such account stand released from any assignment or fixed charge in respect of such amount created pursuant to Clause 3 (*Fixed Charge*) and shall stand subject to the floating charge created by Clause 3.1.1 (*Floating Charge*), provided that such release shall in no respect prejudice the continuance of any assignment or fixed charge created pursuant to Clause 3 (*Fixed Security*) in respect of any other amount.

22. Agent as Trustee

Declaration of Trust

22.1 The Agent hereby declares itself trustee of the security and other rights (including, but not limited to, the benefit of the covenants contained in this Deed), titles and interests constituted by this Deed and of all moneys, property and assets paid to the Agent or to its order or held by the Agent or its nominee(s) or received or recovered by the Agent or its nominee(s) pursuant to or in connection with this Deed with effect from the date of this Deed to hold the same on trust for itself and each of the other Secured Parties absolutely pro rata (save as may otherwise be agreed between the Agent and the other Secured Parties from time to time) to the moneys, obligations and liabilities of the Chargor owed to all the Secured Parties (including the Agent) from time to time secured by this Deed.

Application of Receipts

22.2 All moneys, property and other assets received by the Agent or any Receiver or Delegate shall be held by it or them upon trust for the Agent and the other Secured Parties according to their

respective interests to apply the same in the order specified in Clause 18.1 (*Order of Application*).

Term of Trust

- 22.3 The trusts in this Deed shall remain in force until whichever is the earlier of:
- 22.3.1 the expiration of a period of 125 years from the date of this Deed; or
 - 22.3.2 receipt by the Agent of confirmation in writing from all of the Secured Parties that the Secured Liabilities are no longer outstanding.

23. Effectiveness of Security

Continuing Security

- 23.1 The security constituted by this Deed shall remain in full force and effect as a continuing security for the Secured Liabilities, unless and until discharged by the Agent, and will extend to the ultimate balance of all the Secured Liabilities, regardless of any intermediate payment or discharge in whole or in part.

Cumulative Rights

- 23.2 The security constituted by this Deed and all rights, powers and remedies of the Agent provided by or pursuant to this Deed or by law shall be cumulative, in addition to and independent of any other guarantee or other security that the Agent may at any time hold for the Secured Liabilities or any other obligations or any rights, powers and remedies provided by law.

Reinstatement

- 23.3 Where any discharge, whether in respect of the obligations of the Chargor or any security for those obligations or otherwise, is given or any arrangement is made in whole or in part on the faith of any payment, security or other disposition that is avoided or must be restored on insolvency, liquidation or otherwise, the liability of the Chargor under the guarantee and security constituted by this Deed shall continue as if the discharge or arrangement had not occurred.
- 23.4 The Agent may concede or compromise any claim that any payment, security or other disposition is liable to avoidance or restoration.

24. Payments

Manner of Payments

- 24.1 The Chargor shall make all payments to be made by it under this Deed in immediately available funds in the currency in which the relevant indebtedness is denominated or, if different, is payable and to such account and in such manner as the Agent may direct.

Payments Free of Deduction

- 24.2 All payments to be made by the Chargor under this Deed will be made without any set-off or counterclaim and free and clear of and without deduction for or on account of tax, unless the Chargor is required by law to make such payment subject to the deduction or withholding of tax, in which case the sum payable by the Chargor in respect of which such deduction or withholding is required to be made shall be increased to the extent necessary to ensure that, after the making of such deduction or withholding, the Agent receives and retains (free from any liability in respect of any such deduction or withholding) a net sum equal to the sum that it would have received and so retained had no such deduction or withholding been made or required to be made.

25. Expenses, Stamp Taxes and Indemnities

Expenses

- 25.1 Subject to and in accordance with Sections 3.4 and 14.4 of the Loan Agreement, the Chargor will immediately on demand pay to the Agent the amount of all reasonable costs and expenses (including legal fees) incurred by it or any Receiver or Delegate in connection with the negotiation, preparation, printing, execution and perfection of this Deed and any other documents referred to in this Deed and any amendment, waiver, consent or suspension of rights (or any proposal for any of the foregoing) requested by or on behalf of the Chargor and relating to this Deed in each case.
- 25.2 Subject to and in accordance with Sections 3.4 and 14.4 of the Loan Agreement, the Chargor will immediately on demand pay to the Agent the amount of all costs and expenses (including legal fees) incurred by it or any Receiver or Delegate in connection with the enforcement of, or the defence, protection and/or preservation of, the security constituted by this Deed or any of the rights, powers and remedies of the Agent or any Receiver or Delegate provided by or pursuant to this Deed or by law.
- 25.3 Notwithstanding the foregoing, absent a conflict of interest among Lenders, costs and expenses under this Deed shall not include (i) legal fees for more than one counsel to the Lenders (plus any local counsel deemed necessary by the Lenders) in addition to any counsel engaged by Agent or (ii) other costs, expenses or advances incurred by any Lender to the extent unreasonably duplicative of such costs, expenses or advances incurred by the Agent.

Stamp Taxes

- 25.4 Subject to and in accordance with Sections 3.4 and 14.4 of the Loan Agreement, the Chargor will pay, and immediately on demand indemnify, the Agent against any liability it incurs in respect of, any stamp, registration and similar tax that is or becomes payable in connection with the entry into, performance or enforcement, of this Deed, the security constituted by this Deed or any judgment given in connection with this Deed.

General Indemnity

- 25.5 Subject to and in accordance with Sections 3.4 and 14.4 of the Loan Agreement, the Chargor shall, notwithstanding the release or discharge of all or any part of the security constituted by this Deed, indemnify the Agent and every Receiver and Delegate against any cost, loss, liability or damage incurred by any of them as a result of:
- 25.5.1 any default or delay by the Chargor in the performance of any of its obligations in this Deed;
- 25.5.2 the taking, holding, protection or enforcement of the security constituted by this Deed; and
- 25.5.3 the exercise of any of the rights, powers, discretions and remedies vested in the Agent and each Receiver and Delegate by this Deed or by law in respect of the Security Assets.

except, in each case, as caused by the willful misconduct or gross negligence of such Agent, Receiver or Delegate.

Currency Indemnity

- 25.6 If any sum (a **Sum**) owing by the Chargor under this Deed or any order or judgment given or made in relation to this Deed has to be converted from the currency (the **First Currency**) in which such Sum is payable into another currency (the **Second Currency**) for the purpose of:
- 25.6.1 making or filing a claim or proof against the Chargor;

- 25.6.2 obtaining an order or judgment or decree in any court or other tribunal;
- 25.6.3 enforcing any order or judgment or decree given or made in relation to this Deed; or
- 25.6.4 applying the Sum in satisfaction of any of the Secured Liabilities,

the Chargor shall indemnify the Agent from and against any loss suffered or incurred as a result of any discrepancy between (a) the rate of exchange used for such purpose to convert such Sum from the First Currency into the Second Currency and (b) the rate or rates of exchange available to the Agent at the time of such receipt of such Sum, in each case, in accordance with the Sections 5.12 and 11.6 of the Loan Agreement except, in each case, as caused by the wilful misconduct or gross negligence of the Agent.

Value Added Tax

- 25.7 Any cost or expense referred to in this Clause 25.7 is exclusive of any value added tax or any other tax that might be chargeable in connection with that cost or expense. If any value added tax or other tax is so chargeable, it shall be paid by the Chargor at the same time as it pays the relevant cost or expense in accordance with Sections 3.4 and 14.4 of the Loan Agreement

26. Assignment

The Agent may assign, charge or transfer all or any of its rights under this Deed to a successor Agent in accordance with the terms of the Loan Agreement without the consent of the Chargor.

27. Partial Invalidity

In the case that one or more of the provisions contained in this Deed should prove to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of this Deed shall not in any way be affected or impaired thereby and, if any part of the security constituted, or intended to be constituted, by this Deed is invalid, unenforceable or ineffective for any reason, that shall not affect or impair any other part of the security.

28. Remedies and Waivers

- 28.1 No delay or omission of the Agent in exercising any right, power or privilege under this Deed shall operate to impair such right, power or privilege or be construed as a waiver of it. Any single or partial exercise of any such right, power or privilege shall not preclude any other or future exercise or the exercise of any other right, power or privilege.
- 28.2 Any waiver or consent by the Agent under this Deed must be in writing and may be given subject to any conditions thought fit by the Agent. Any waiver or consent shall be effective only in the instance and for the purpose for which it is given.

29. Notices

Notices shall be given in accordance with section 14.3 (*Notices and Communications*) of the Loan Agreement.

30. Counterparts

This Deed may be executed in any number of counterparts each of which shall be an original and all of such counterparts taken together shall be deemed to constitute one and the same instrument.

31. Applicable Law

31.1 The law of England and Wales is the law applicable to this Deed.

31.2 For the exclusive benefit of the Agent, the parties to this Deed irrevocably agree that the courts of England and Wales are to have jurisdiction to hear and settle any dispute, suit, action, claim or proceeding (together in this Clause 31 referred to as **Proceedings**) that arises out of or in connection with this Deed, save that nothing contained in this Clause 31.2 shall limit the right of the Agent to take Proceedings against the Chargor in any other court of competent jurisdiction. The Chargor irrevocably agrees only to bring Proceedings in the courts of England and Wales.

31.3 The Chargor irrevocably waives:

31.3.1 any right it may have to the trial by jury of Proceedings in any such court as is referred to in this Clause 31;

31.3.2 any objection that it may have now or after the date of this Deed to the commencement, or to the venue, of any Proceedings in any such court; and

31.3.3 any claim that any such Proceedings should be brought in a more convenient forum,

and further irrevocably agrees that a judgment in any Proceedings brought in any competent court shall be conclusive and binding upon it and may be enforced in the courts of any other jurisdiction.

31.4 The Chargor consents generally in respect of any Proceedings arising out of or in connection with this Deed to the giving of any relief or the issue of any process in connection with such Proceedings, including, without limitation, the making, enforcement or execution against any assets whatsoever of any order or judgment that may be made or given in such Proceedings.

IN WITNESS whereof this Deed has been entered into as a deed and is intended to be and is delivered on the day and year first before written.

**Schedule 1
Deposit Accounts**

**Part 1
Collection Accounts (including BoA Collection Accounts)**

Account name	Bank name and address	Currency	Account number	Sort code	"Excluded Deposit Account" (Y/N)
Topgolf Ltd AUD	Barclays Bank plc, Leicester, Leicestershire, LE87 2BB	AUD			N
Topgolf Ltd EUR	Barclays Bank plc, Leicester, Leicestershire, LE87 2BB	EUR			N
Topgolf Ltd Watford	Barclays Bank plc, Leicester, Leicestershire, LE87 2BB	GBP			Y
Topgolf Ltd Addlestone	Barclays Bank plc, Leicester, Leicestershire, LE87 2BB	GBP			Y
Topgolf Ltd Chigwell	Barclays Bank plc, Leicester, Leicestershire, LE87 2BB	GBP			Y
Topgolf BPA	Barclays Bank plc, Leicester, Leicestershire, LE87 2BB	GBP			N
Topgolf Ltd BPA	Barclays Bank plc, Leicester, Leicestershire, LE87 2BB	GBP			Y
Topgolf Ltd	Barclays Bank plc, Leicester, Leicestershire, LE87 2BB	GBP			Y
Topgolf Ltd Glasgow	Barclays Bank plc, Leicester, Leicestershire, LE87 2BB	GBP			Y
Topgolf Ltd SEK	Barclays Bank plc, Leicester, Leicestershire,	SEK			N

Account name	Bank name and address	Currency	Account number	Sort code	"Excluded Deposit Account" (Y/N)
	LE87 2BB				
Topgolf Ltd	Barclays Bank plc, Leicester, Leicestershire, LE87 2BB	USD			N

**Part 2
Other Accounts**

Name of Chargor	Account Details	Currency	Bank	Address
None at the date of this Deed.				

Schedule 2
Collection Account Notices and Acknowledgements

Part 1
Collection Account Notice

[Date]

To: [Name of Bank]
 [Address]

Attention: [-]

Dear Sirs,

We hereby give you notice that by a debenture dated [-], we have assigned by way of security to Bank of America, N.A. all our rights, title, interest and benefit in and to the following account(s) held with yourselves and all amounts standing to the credit of such account from time to time:

Account No. [-], sort code [-]

Account No. [-], sort code [-]

(the "Collection Account[s]").

Please acknowledge receipt of this letter by returning a copy of the attached letter on your own headed notepaper with a receipted copy of this notice forthwith, to Bank of America, N.A. at [-], Attention: [-].

Yours faithfully

for and on behalf of
[Chargor]

Part 2
Collection Account Acknowledgement

[On the Headed Notepaper of Bank]

[Date]

To: Bank of America, N.A.
[•]

Attention: [•]

Dear Sirs,

[Name of Chargor] (the Company)

We refer to the notice, received today from the Company with respect to the charge that it has granted to Bank of America, N.A. over the Collection Accounts (the Notice).

Terms not defined in this letter shall have the meanings given to them in the Notice.

We hereby acknowledge that the Chargor has charged to Bank of America, N.A. by way of a first floating charge all of its rights, title, interest and benefit in and to the Collection Accounts.

We hereby irrevocably undertake to you that until receipt by us of notice from you confirming that you no longer have any interest in the Collection Accounts we shall:

- (a) promptly notify you of any renewal, renumbering or re-designation of any and all of the Collection Accounts;
- (b) upon request from you to send to you copies with respect to all the Collection Accounts of all statements together with copies of all credits, debits and notices given or made by us in connection with such accounts;
- (c) permit or effect any withdrawal or transfer from the Collection Accounts in accordance with the Chargor's mandate with us until we receive notice from you terminating the Chargor's right to operate the Collection Accounts;
- (d) comply with all instructions received by us from you from time to time with respect to the conduct of the Collection Accounts provided that such instructions are given in accordance with the terms of this letter;
- (e) upon receipt of a notice from Bank of America, N.A. that an Event of Default has occurred comply with all instructions received by us from you from time to time with respect to the movement of funds from the Collection Accounts provided that:
 - (i) all instructions are received in writing, by facsimile, to us at facsimile number [•], attention [•]; and
 - (ii) all instructions must be received by 2pm if they are to be complied with on the same Business Day. Instructions received outside such hours will be complied with on the next Business Day following such receipt. Facsimile instructions will be deemed received at the time of transmission,

and in each case we shall give notice thereof to the Chargor and you as well as reasons why (if at any time) we cannot comply with such instructions.

We are irrevocably authorised by you to follow any instructions received from you in relation to the Collection Accounts from any person that we reasonably believe is an authorised officer of Bank of America, N.A., without further enquiry as to Bank of America, N.A.'s right or authority to give such instructions and we shall be fully protected in acting in accordance with such instructions.

We note that, for the purposes of this letter, all notices, copy notices, advices and correspondence to be delivered to you shall be effectively delivered if sent by facsimile to you at number [•] or by post at the address at the top of this letter, in both cases marked for the attention of [•].

This letter, and any non-contractual obligations arising out of or in connection with it, shall be governed by and construed in accordance with English law.

Yours faithfully

.....
for and on behalf of
[Bank]

We hereby acknowledge and accept the terms of this letter

.....
for and on behalf of
Bank of America, N.A.

EXECUTION PAGE

THE CHARGOR

Executed as a deed by
TOPGOLF LIMITED
acting by a director in the presence of:

Director

Signature of witness:

Name of witness:

Address:

Brandon Trice

AGENT

BANK OF AMERICA, N.A.

By:

Name:

Title:

EXECUTION PAGE

THE CHARGOR

Executed as a deed by
TOPGOLF LIMITED
acting by a director in the presence of:

Director

Signature of witness:

Name of witness:

Address:

AGENT

BANK OF AMERICA, N.A.

By:

Name:

Title:

Jennifer Tang
SVP