



**Registration of a Charge**

Company name: **JOHN MCGAVIGAN LIMITED**

Company number: **SC144766**

Received for Electronic Filing: **15/10/2018**



X7GMPGEZ

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**Details of Charge**

Date of creation: **08/10/2018**

Charge code: **SC14 4766 0009**

Persons entitled: **THE ROYAL BANK OF SCOTLAND PLC**

Brief description:

**Contains fixed charge(s).**

**Contains negative pledge.**

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**Authentication of Form**

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

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**Authentication of Instrument**

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

Certified by: **CMS CAMERON MCKENNA NABARRO OLSWANG LLP**



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

Company number: 144766

Charge code: SC14 4766 0009

The Registrar of Companies for Scotland hereby certifies that a charge dated 8th October 2018 and created by JOHN MCGAVIGAN LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 15th October 2018 .

Given at Companies House, Edinburgh on 15th October 2018

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



**Companies House**



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES

**DATED 8 OCTOBER 2018**

**(1) THE CHARGORS**

**(2) THE ROYAL BANK OF SCOTLAND PLC**  
**(as Lender)**

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**ASSIGNMENT BY WAY OF SECURITY OF KEYMAN  
POLICIES**

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**This Deed is subject to the terms of the Intercreditor  
Agreement**

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THIS DEED is made on

8 OCTOBER 2018

**BETWEEN**

- (1) **THE COMPANIES** whose names and registered offices are set out in Schedule 1, each a "Chargor" and together the "Chargors"); and
- (2) **THE ROYAL BANK OF SCOTLAND PLC** (the "Lender") as agent and trustee for itself and the Secured Finance Party (as defined below).

**RECITALS**

- (A) The Secured Finance Party has agreed to make credit facilities available to the Company on the terms and conditions set out in the Facilities Agreement (as is defined below).
- (B) The Chargors have agreed to enter into this Deed to provide Security over their rights in the Assigned Keyman Insurances, to which it is a party, to the Lender to hold on trust for itself and the Secured Finance Party.

**IT IS AGREED** as follows:-

**1. DEFINITIONS AND INTERPRETATION**

**1.1 In this Deed:-**

<b>"Assigned Keyman Insurances"</b>	means the Keyman Insurances specified in Schedule 3 ( <i>Assigned Keyman Insurances</i> ) (including any renewal, substitution or replacement of such Insurance) and any other Keyman policy agreed by the Lender (Acting on the instructions of the Secured Finance Party) and the Parent in writing to be Assigned Keyman insurances
<b>"Default Rate"</b>	means the rate specified in clause 10.4-10.6 ( <i>Default interest</i> ) of the Facilities Agreement
<b>"Facilities Agreement"</b>	means the facilities agreement dated 28 December 2017 between, among others, the Company, the Parent and the Lender
<b>"Intercreditor Agreement"</b>	means the intercreditor agreement dated 28 December 2017 and made between the Company, the Parent, the Lender, RBS Invoice Finance Limited, the Management Loan Noteholders. The Investor Loan Noteholders, Maven Capital Partners UK LLP and Francis Paul Duffin (all as defined in the Intercreditor Agreement)
<b>"LPA"</b>	means the Law of Property Act 1925
<b>"Notice of Assignment"</b>	means a notice of assignment in the form set out in Schedule 2 (Form of Notice of Assignment)
<b>"Party"</b>	means a party to this Deed
<b>"Receiver"</b>	means any receiver, receiver and manager or, to the extent permitted by law, an administrative receiver (whether appointed pursuant to this Deed or any statute, by a court or otherwise) of the whole or any part of the Secured Assets
<b>"Related Rights"</b>	means in relation to any Secured Asset:-

	<p>(a) the proceeds of sale of all or any part of that Secured Asset;</p> <p>(b) allotments, rights, money or property arising from that Secured Asset, by way of conversion, exchange, redemption, bonus, preference, option or otherwise;</p> <p>(c) all rights, powers, benefits, claims, contracts, warranties, remedies, security, guarantees, indemnities or covenants for title in respect of that Secured Asset; and</p> <p>any moneys and proceeds or income paid or payable in respect of that Secured Asset</p>
<b>"Secured Assets"</b>	means all the assets and undertaking of each Chargor which from time to time are, or purport to be, the subject of the Security created in favour of the Lender by or pursuant to this Deed
<b>"Secured Finance Documents"</b>	means the Finance Documents
<b>"Secured Finance Party"</b>	means a Senior Creditor (as defined in the Intercreditor Agreement), as the case may be or as the context requires
<b>"Secured Liability"</b>	means all present and future obligations and liabilities expressed to be due, owing or payable by any Chargor under or in connection with any of the Secured Finance Documents (whether present or future, actual or contingent and whether incurred solely or jointly (or jointly and severally) with any other person) (together the <b>"Secured Liabilities"</b> )
<b>"Security"</b>	means a mortgage, charge, pledge, lien or any other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect
<b>"Security Period"</b>	means the period beginning on the date of this Deed and ending on the date which:- <p>(d) all of the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full; and</p> <p>(e) no Secured Finance Party has any further commitment, obligation or liability under or pursuant to the Secured Finance Documents</p>
<b>"Transaction Security"</b>	means the Security created or expressed to be created in favour of the Lender pursuant to the Transaction Security Documents
<b>"Transaction Security Documents"</b>	has the meaning given in the Intercreditor Agreement

## **1.2 Incorporation of terms**

Unless the context otherwise requires or unless defined in this Deed, all words and expressions defined or whose interpretation is provided for in the Facilities Agreement have the same meanings in this Deed.

## **1.3 Interpretation**

- 1.3.1 The principles of interpretation set out in clause 1.2 (*Construction*) of the Facilities Agreement and clause 1.2 of the Intercreditor Agreement shall apply to this Deed insofar as they are relevant to it.
- 1.3.2 Unless the context otherwise requires, a reference to a "**Secured Finance Document**" or any other agreement, deed or instrument is a reference to that Secured Finance Document or other agreement, deed or instrument as amended, novated, supplemented, restated or replaced (however fundamentally) and includes any increase in, extension of, or change to, any facility made available under that Secured Finance Document or other agreement, deed or instrument and includes any increase in, extension of or change to any facility made available under that Secured Finance Document or other agreement, deed or instrument.

## **1.4 Acknowledgement**

Each Chargor acknowledges that the Lender enters into this Deed for itself and as trustee for the Secured Finance Party who shall be entitled to the full benefit of this Deed and solely as instructed and directed by the Secured Finance Party. For the avoidance of doubt, this Deed does not impose any additional liabilities on the Lender.

## **1.5 Effect as a deed**

This Deed shall take effect as a deed even if it is signed under hand on behalf of the Lender.

## **1.6 Third party rights**

- 1.6.1 Each Secured Finance Party, any Receiver and their respective officers, employees and agents may enforce any term of this Deed which purports to confer a benefit on that person, but no other person who is not a Party has any right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Deed.
- 1.6.2 Notwithstanding any term of any Secured Finance Document, the Parties and any Receiver may rescind, vary, waive, release, assign, novate or otherwise dispose of all or any of their respective rights or obligations under this Deed without the consent of any person who is not a Party.

## **2. COVENANT TO PAY**

### **2.1 Secured Liabilities**

Each Chargor covenants that it will on demand pay and discharge the Secured Liabilities when the same fall due for payment or discharge in accordance with the terms of the Secured Finance Documents.

### **2.2 Interest**

Each Chargor covenants to pay interest at the Default Rate to the Lender on any sum not paid in accordance with Clause 2.1 (*Secured Liabilities*) until payment (both before and after judgment).

## **3. SECURITY**

### **3.1 Assignment**

As a continuing security for payment of the Secured Liabilities, each Chargor with full title guarantee:-

- 3.1.1 assigns all its present and future right, title and interest in and to, and all benefits accruing under or in connection with the Assigned Keyman Insurances and all Related Rights in respect of any Assigned Keyman Insurances absolutely in favour of the Lender subject to a proviso for reassignment on redemption; and

- 3.1.2 to the extent not assigned or effectively assigned by Clause 3.1.1, charges by way of first fixed charge in favour of the Lender all its present and future right, title and interest in and to, and all benefits accruing under or in connection with any Assigned Keyman Insurances and all Related Rights in respect of any Assigned Keyman Insurances.

## 3.2 Trust

If or to the extent that for any reason the assignment of any Secured Asset is prohibited, the relevant Chargor shall:-

- 3.2.1 hold it on trust for the Lender as security for the payment and discharge of the Secured Liabilities; and
- 3.2.2 take such steps as the Lender may require to remove the impediment to assignment or charging it.

## 3.3 Nature of Security created

The Security created under this Deed is created:

- 3.3.1 as a continuing security to secure the payment and discharge of the Secured Liabilities and shall not be released or discharged by any intermediate payment or settlement of all or any of the Secured Liabilities;
- 3.3.2 in favour of the Lender as trustee for the Secured Finance Party; and
- 3.3.3 with full title guarantee.

## 4. PERFECTION OF SECURITY

### 4.1 Notices of assignment

- 4.1.1 The Chargors must deliver notices of assignment in relation to each Assigned Keyman Insurance which is subject to an assignment under this Deed:-

- (a) within one (1) Business Day of the date on which the assignment is granted, by issuing a notice in the form set out in Schedule 2 (*Form of notice of assignment of Assigned Keyman Insurances*) addressed to the relevant insurer; and
- (b) if any Chargor renews, substitutes or replaces any Assigned Keyman Insurance, by issuing, on or within 5 Business Days of the date of the renewal, substitution or replacement, a notice in the form set out in Schedule 2 (*Form of notice of assignment of Assigned Keyman Insurances*) addressed to the relevant insurer;

- 4.2 The Chargors shall use all reasonable endeavours to procure that each notice of assignment delivered pursuant to Clause 3.1 above is acknowledged by the party to whom it is addressed.

- 4.3 Each Chargor will deliver to the Lender:-

- 4.3.1 a copy of each notice of assignment, within 5 Business Days of delivery to the relevant counterparty; and
- 4.3.2 a copy of each acknowledgment of a notice of assignment, within 5 Business Days of receipt from the relevant counterparty.

## 5. UNDERTAKINGS

The covenants in this Clause 5 (*Undertakings*) remain in force from the date of this Deed until the end of the Security Period.

- 5.1 Each Chargor shall:-

- 5.1.1 deliver to the Lender, promptly following execution of the same, such documents relating to the Assigned Keyman Insurances as the Lender may reasonably require;
- 5.1.2 perform all its obligations under the Assigned Keyman Insurances in a diligent and timely manner; and



- 5.1.3 notify the Lender of any breach of or default under any of the Assigned Keyman Insurances by it or any other party and any right that arises entitling it or any other party to terminate or rescind any of the Assigned Keyman Insurances, promptly upon becoming aware of the same.
- 5.2 Each Chargor shall not, without the prior written consent of the Lender as instructed and directed by the Secured Finance Parties and subject to it being indemnified, secured or prefunded to its satisfaction):
- 5.2.1 amend, supplement, supersede or waive any provision (or agree to do to any of the foregoing) of any of the Assigned Keyman Insurances;
- 5.2.2 exercise any right to rescind, cancel, terminate or release any counterparty from any obligations (or agree to do to any of the foregoing) in respect of any of the Assigned Keyman Insurances; or
- 5.2.3 assign, transfer, charge or otherwise deal with or dispose of any of the Assigned Keyman Insurances or any of the Chargors' rights, title, interest and benefits in, to and in respect of any of the Assigned Keyman Insurances,
- except as permitted by the terms of the Secured Finance Documents.
- 5.3 Prior to the occurrence of an Event of Default which is continuing, each Chargor may exercise all its rights in respect of the Assigned Keyman Insurances to which it is a party including receiving and exercising all rights relating to proceeds of those Assigned Keyman Insurances to the extent permitted pursuant to the terms of the Secured Finance Documents.
- 5.4 **Payments without deduction**
- Each Chargor shall calculate and make all payments under this Deed without (and free and clear of any deduction for) set-off or counterclaim.
6. **RESTRICTIONS AND FURTHER ASSURANCE**
- 6.1 **Negative Pledge**
- Each Chargor undertakes that it shall not create or permit to subsist any Security over any Secured Assets, nor do anything else prohibited by clause 23.21-23.23 (*Negative Pledge*) of the Facilities Agreement, except as expressly permitted under the terms of the Secured Finance Documents.
- 6.2 **Disposals**
- Each Chargor undertakes that it shall not enter into or agree to enter into a single transaction or a series of transactions (whether related or not and whether voluntary or involuntary) to sell, lease, license, sub-license, transfer or otherwise dispose of any Secured Assets except as permitted by clause 23.24-23.25 (*Disposals*) of the Facilities Agreement.
- 6.3 **Preservation of Contracts**
- Each Chargor shall not take any Security in connection with its liability under this Deed from any guarantor of, or provider of Security for, any of the Secured Liabilities.
- 6.4 **Preservation of rights**
- Each Chargor shall not do, permit or suffer or to be done anything which may prevent the Lender (or any person claiming title through the Lender) from exercising the rights of any Chargor (including any right to receive payments) under all or any part of any of the Assigned Keyman Insurances following the occurrence of an Event of Default which is continuing.
- 6.5 **Further assurance**
- Each Chargor shall promptly do whatever the Lender reasonably requires to perfect or protect the Security created or expressed to be created by this Deed, or its priority including executing any transfer, conveyance, charge, assignment or assurance (whether to the Lender or its nominees or otherwise), making any registration and giving any notice, order or direction.

## **6.6 Protection of Secured Assets**

The Chargors shall at all times during the subsistence of this Deed:-

- 6.6.1 promptly, and in any event no later than their due date, pay all premiums and other moneys payable under all its Assigned Keyman Insurances or procure that such is done and promptly upon request, produce to the Lender a copy of each policy and evidence (acceptable to the Lender) of the payment of such sums (or procure that such is done);
- 6.6.2 comply with the terms of all Assigned Keyman Insurances;
- 6.6.3 if any Assigned Keyman Insurances become void or voidable, immediately, at its own cost, effect a new insurance policy of the same value as the void or voidable policy;
  - (a) if required by the Lender or the Secured Finance Documents, provide a copy of all Assigned Keyman Insurances to the Lender; and
  - (b) ensure that all moneys received in respect of any Assigned Keyman Insurances are applied in accordance with the terms of the Facilities Agreement and the Intercreditor Agreement.
- 6.6.4 If any Chargor defaults in complying with Clause 6.6, the Lender may effect or renew any such Assigned Keyman Insurance on such terms, in such name(s) and in such amount(s) as it considers appropriate, and all moneys expended by the Lender in doing so shall be reimbursed by the Chargors to the Lender on demand and shall carry interest from the date of payment by the Lender until reimbursed at the rate specified in Clause 2 (*Covenant to Pay*).

## **6.7 Power to remedy**

If any Chargor fails to comply with any of its obligations in relation to any of its assets subject to Security pursuant to this Deed, or the Lender reasonably considers that a Chargor has failed to comply with any such obligations, the Lender may, if it thinks fit (but without any obligation) take such steps as it deems appropriate to remedy such failure (including, without limitation, the putting in place of insurance or the payment of costs, charges or other expenses) and the Chargors will co-operate with and will grant the Lender or its agents or contractors such access as the Lender may require to the relevant assets or otherwise in order to facilitate the taking of such steps.

## **7. DEMAND AND ENFORCEMENT**

### **7.1 Enforcement**

The Security created by this Deed shall become enforceable upon:-

- 7.1.1 the occurrence of an Event of Default which is continuing; or
- 7.1.2 any request being made by any Chargor to the Lender for the appointment of a Receiver or an administrator, or for the Lender to exercise any other power or right available to it.

### **7.2 Powers on enforcement**

At any time after the Security created by this Deed has become enforceable, the Lender may (without prejudice to any other rights and remedies and without notice to any Chargor) do all or any of the following:-

- 7.2.1 exercise the power of sale under section 101 of the LPA together with all other powers and rights conferred on mortgagees by the LPA, as varied and extended by this Deed, without the restrictions contained in sections 103 or 109(1) of the LPA;
- 7.2.2 apply any sums payable under any contract in or towards satisfaction of the Secured Liabilities); and
- 7.2.3 subject to Clause 8.1 (*Method of appointment or removal*), appoint one or more persons to be a Receiver or Receivers of all or any of the Secured Assets.

### **7.3 Disposal of the Charged Property**

In exercising the powers referred to in Clause 7.2 (*Powers on enforcement*), the Lender or any Receiver may sell or dispose of all or any of the Secured Assets at the times, in the manner and order, on the terms and conditions and for the consideration determined by it.

#### **7.4 Same rights as Receiver**

Any rights conferred by any Secured Finance Document upon a Receiver may be exercised by the Lender, or to the extent permitted by law, an administrator, after the Security created by this Deed has become enforceable, whether or not the Lender shall have taken possession or appointed a Receiver of the Secured Assets.

#### **7.5 Delegation**

The Lender may delegate in any manner to any person any rights exercisable by the Lender under any Secured Finance Document. Any such delegation may be made upon such terms and conditions (including power to sub-delegate) as the Lender thinks fit.

### **8. RECEIVERS**

#### **8.1 Method of appointment or removal**

Every appointment or removal of a Receiver, any delegate or any other person by the Lender under this Deed shall be in writing under the hand of any officer or manager of the Lender (subject to any requirement for a court order in the case of the removal of an administrative receiver).

#### **8.2 Removal**

The Lender may (subject to the application of section 45 of the Insolvency Act 1986) remove any person from office in relation to all or any part of the Secured Assets of which he is the Receiver and at any time (before or after any person shall have vacated office or ceased to act as Receiver in respect of any of such Secured Assets) appoint a further or other Receiver or Receivers over all or any part of such Secured Assets.

#### **8.3 Powers**

Every Receiver shall have and be entitled to exercise all the powers:-

- 8.3.1 of the Lender under this Deed;
- 8.3.2 conferred by the LPA on mortgagees in possession and on receivers appointed under the LPA (in each case as extended by this Deed);
- 8.3.3 in relation to, and to the extent applicable to, the Secured Assets or any of them, of an administrative receiver set out in Schedule 1 to the Insolvency Act 1986, whether or not the Receiver is an administrative receiver;
- 8.3.4 in relation to any Secured Assets, which he would have if he were its only beneficial owner; and
- 8.3.5 to do all things incidental or conducive to any functions, powers, authorities or discretions conferred or vested in the Receiver.

#### **8.4 Receiver as agent**

The Receiver shall be the agent of the relevant Chargor (which shall be solely liable for his acts, defaults, remuneration, losses and liabilities) unless and until such Chargor goes into liquidation, from which time he shall act as principal and shall not become the agent of the Lender.

#### **8.5 Joint or several**

If two or more persons are appointed as Receivers of the same assets, they may act jointly and/or severally so that (unless any instrument appointing them specifies to the contrary) each of them may exercise individually all the powers and discretions conferred on Receivers by this Deed.

#### **8.6 Receiver's remuneration**

Every Receiver shall be entitled to remuneration for his services at a rate to be fixed by the Lender and the maximum rate specified in section 109(6) of the LPA shall not apply.

### **9. APPLICATION OF MONEYS**

- 9.1.1 All sums received by virtue of this Deed and/or any other Transaction Security Documents by the Lender or any Receiver shall, subject to the payment of any claim having priority to this Deed, be paid or applied in accordance with clause 16 (*Application of Proceeds*) of the Intercreditor Agreement.

9.1.2 Insofar as the Intercreditor Agreement is not in full force and effect, all sums received by the Lender or any Receiver after the Security created pursuant to this Deed has become enforceable shall (subject to the rights and claims of any person having a security ranking in priority to this Deed) be applied in the following order of priority:-

- (a) **first**, in or towards satisfaction pro rata of, or the provision pro rata for, all costs, charges and expenses incurred and payments made by the Lender as agent for the Secured Finance Party and/or as trustee in relation to the Transaction Security Documents, or by any Receiver (including legal expenses), together with interest at the Default Rate (both before and after judgment) from the date those amounts became due until the date they are irrevocably paid in full;
- (b) **secondly**, in or towards the payment pro rata of, or the provision pro rata for, any unpaid fees, commission or remuneration of the Lender or any Receiver;
- (c) **thirdly**, in or towards payment of the Secured Liabilities;
- (d) **fourthly**, in the payment of the surplus (if any), to the relevant Chargor concerned or any other person entitled to it,

and section 109(8) of the LPA shall not apply to this Deed.

## **10. Power of Attorney**

### **10.1 Appointment**

Each Chargor irrevocably and by way of security appoints:-

- 10.1.1 the Lender (whether or not a Receiver has been appointed);
- 10.1.2 any delegate or sub delegate of, or other person nominated in writing by, an officer of the Lender; and
- 10.1.3 (as a separate appointment) each Receiver,

severally as such Chargor's attorney and attorneys with power to do any act, and execute and deliver any deed or other document, on behalf of and in the name of such Chargor, which such Chargor could be required to do or execute under any provision of this Deed, or which the Lender in its sole opinion may consider necessary or desirable for perfecting its title to any of the Secured Assets or enabling the Lender or the Receiver to exercise any of its rights or powers under this Deed provided that the power of attorney granted in this Clause 10.1 shall only be exercisable: (a) if an Event of Default has occurred and is continuing; or (b) following a failure by a Chargor to comply with its obligations under this Deed within three (3) Business Days of being notified of that failure by the Lender.

### **10.2 Ratification**

Each Chargor ratifies and confirms and agrees to ratify and confirm whatever any attorney appointed pursuant to Clause 10.1 (*Appointment*) does or purports to do in the exercise or purported exercise of all or any of the powers, acts or other matters referred to in Clause 10.1 (*Appointment*).

## **11. CONSOLIDATION**

### **11.1 Combination of accounts**

In addition to any general lien, right to combine accounts, right of set-off or other right which it may at any time have, the Lender and each Secured Finance Party may at any time after this Deed has become enforceable, without notice to the relevant Chargor, combine or consolidate all or any accounts which it then has in relation to such Chargor (in whatever name) and any Secured Liabilities owed by such Chargor to the Lender or that Secured Finance Party, and/or set-off or transfer any amounts standing to the credit of one or more accounts of such Chargor in or towards satisfaction of any Secured Liabilities owed it on any other account or otherwise.

## **11.2 Application**

The Lender's and each Secured Finance Party's rights under Clause 11.1 (*Combination of accounts*) apply:-

- 11.2.1 whether or not any demand has been made under this Deed, or any liability concerned has fallen due for payment;
- 11.2.2 whether or not any credit balance is immediately available or subject to any restriction;
- 11.2.3 irrespective of the currencies in which any balance or liability is denominated, and the Lender and the relevant Secured Finance Party may for the purpose of exercising its right elect to convert any sum or liability in one currency into any other at its spot rate applying at or about 11.00am on the date of conversion; and
- 11.2.4 in respect of any Secured Liabilities owed by the relevant Chargor, whether owed solely or jointly, certainly or contingently, presently or in the future, as principal or surety, and howsoever arising.

## **12. PROTECTION OF THIRD PARTIES**

### **12.1 Statutory powers**

In favour of any purchaser, the statutory powers of sale and of appointing a Receiver which are conferred upon the Lender, as varied and extended by this Deed, and all other powers of the Lender, shall be deemed to arise (and the Secured Liabilities shall be deemed due and payable for that purpose) immediately after the execution of this Deed.

### **12.2 Purchasers**

No purchaser from or other person dealing with the Lender, any person to whom it has delegated any of its powers, or the Receiver shall be concerned:-

- 12.2.1 to enquire whether any of the powers which the Lender or a Receiver have exercised has arisen or become exercisable;
- 12.2.2 to enquire whether the Secured Liabilities remain outstanding or whether any event has happened to authorise the Receiver to act;
- 12.2.3 as to the propriety or validity of the exercise of those powers; or
- 12.2.4 with the application of any moneys paid to the Lender, any Receiver or to any other person,

and the title and position of a purchaser or such person shall not be impeachable by reference to any of those matters.

### **12.3 Receipts**

All the protection to purchasers contained in sections 104 and 107 of the LPA, section 42(3) of the Insolvency Act 1986 or in any other applicable legislation shall apply to any person purchasing from or dealing with the Lender, any other Secured Finance Party, any Receiver or any person to whom any of them have delegated any of their powers.

## **13. PROTECTION OF THE LENDER AND ANY RECEIVER**

### **13.1 No obligation**

Notwithstanding anything contained in this Deed or implied to the contrary, each Chargor remains liable to observe and perform all conditions and obligations assumed by it in relation to the Secured Assets. None of the Secured Finance Parties, the Lender or any Receiver is under any obligation to perform or fulfil any such condition or obligation or to make any payment in respect of any such condition or obligation.

### **13.2 No liability**

None of the Lender, the other Secured Finance Parties, any Receiver or any of their respective officers, employees or delegates shall be liable in respect of any cost, liability, expense, loss or damage which arises out of the exercise, or attempted or purported exercise of, or the failure to exercise, any of their respective rights under this Deed.

### **13.3 Indemnity**

Each Chargor shall indemnify and keep indemnified the Lender, each other Secured Finance Party, any Receiver, and their respective officers, employees and delegates, against all claims, costs, expenses and liabilities incurred by them in respect of all or any of the following:-

- 13.3.1 any act or omission by any of them in relation to all or any of the Secured Assets;
- 13.3.2 any payment relating to or in respect of all or any of the Secured Assets which is made at any time by any of them;
- 13.3.3 any stamp, registration or similar Tax or duty which becomes payable in connection with the entry into, or the performance or enforcement of, this Deed;
- 13.3.4 exercising or purporting to exercise or failing to exercise any of the rights, powers and discretions conferred on them or permitted under this Deed; and
- 13.3.5 any breach by any Chargor of any of its covenants or other obligations to the Lender or any other Secured Finance Party,

except in the case of gross negligence or wilful default on the part of that person.

### **13.4 Interest**

Each Chargor shall pay interest at the Default Rate on the sums payable under this Clause 13 (*Protection of the Lender and any Receiver*) from the date on which the liability was incurred to the date of actual payment (both before and after judgment).

### **13.5 Indemnity out of the Secured Assets**

The Lender, the other Secured Finance Parties, any Receiver and their respective officers, employees and delegates shall be entitled to be indemnified out of the Secured Assets in respect of the actions, proceedings, demands, claims, costs, expenses and liabilities referred to in Clause 13.3 (*Indemnity*).

### **13.6 Continuing protection**

The provisions of this Clause 13 (*Protection of the Lender and any Receiver*) shall continue in full force and effect notwithstanding any release or discharge of this Deed or the discharge of any Receiver from office.

## **14. PROVISIONS RELATING TO THE LENDER**

### **14.1 Powers and discretions**

The rights, powers and discretions given to the Lender in this Deed:-

- 14.1.1 may be exercised as often as, and in such manner as, the Lender thinks fit;
- 14.1.2 are cumulative, and are not exclusive of any of its rights under the general law; and
- 14.1.3 may only be waived in writing and specifically, and any delay in exercising, or non-exercise of, any right, is not a waiver of it.

### **14.2 Provisions of the Intercreditor Agreement**

- 14.2.1 This Deed is subject to the terms of the Intercreditor Agreement.
- 14.2.2 The provisions of the Intercreditor Agreement shall apply to the Lender's rights and duties and the resignation of the Lender as if set out in this Deed.

### **14.3 Trusts**

The perpetuity period for any trusts constituted by this Deed shall be 125 years.

## **15. PRESERVATION OF SECURITY**

### **15.1 Continuing Security**

This Deed shall be a continuing security to the Lender and shall remain in force until expressly discharged in writing by the Lender notwithstanding any intermediate settlement of account or other matter or thing whatsoever.

## **15.2 Additional Security**

This Deed is without prejudice and in addition to, and shall not merge with, any other right, remedy or Security of any kind which the Lender or any other Secured Finance Party may have now or at any time in the future for or in respect of any of the Secured Liabilities.

## **15.3 Waiver of Defences**

Neither the Security created by this Deed nor the obligations of any Chargor under this Deed will be affected by an act, omission, matter or thing which, but for this Clause, would reduce, release or prejudice that Security or any of those obligations (whether or not known to it, the Lender or any other Finance Party) including:-

- 15.3.1 any time, waiver or consent granted to, or composition with, any Chargor or other person;
- 15.3.2 the release of any Chargor or any other person under the terms of any composition or arrangement with any person;
- 15.3.3 the taking, variation, compromise, exchange, renewal, enforcement or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or Security over, assets of any Chargor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any Security;
- 15.3.4 any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any Chargor or any other person;
- 15.3.5 any amendment (however fundamental), replacement, variation, novation, assignment or the avoidance or termination of a Secured Finance Document or any other document or Security;
- 15.3.6 any unenforceability, illegality or invalidity of any obligation of, or any Security created by, any person under any Secured Finance Document or any other document; or
- 15.3.7 an insolvency, liquidation, administration or similar procedure.

## **15.4 Immediate recourse**

Each Chargor waives any right it may have of first requiring the Lender or any other Secured Finance Party (or any trustee or agent on its behalf) to proceed against or enforce any other rights of Security or claim payment from any person before claiming from any Chargor under this Deed. This waiver applies irrespective of any law or any provision of a Secured Finance Document to the contrary.

## **15.5 Appropriations**

During the Security Period the Lender and each Secured Finance Party may:-

- 15.5.1 refrain from applying or enforcing any monies, Security or rights held or received by it (or any trustee or agent on its behalf) in respect of the Secured Liabilities, or, subject to Clause 9 (*Application of moneys*), apply and enforce the same in such manner and order as it sees fit (whether against the Secured Liabilities or otherwise) and the Chargors shall not be entitled to the same; and
- 15.5.2 hold in an interest-bearing suspense account any moneys received from any Chargor on or account of the Secured Liabilities.

## **15.6 New Accounts**

If the Lender or any other Finance Party receives notice (whether actual or otherwise) of any subsequent Security over or affecting any of the Secured Assets or if a petition is presented or a resolution passed in relation to the winding up of any Chargor, it may close the current account or accounts and/or open a new account or accounts for such Chargor. If the Lender or any other Finance Party does not open a new account or accounts immediately it shall nevertheless be treated as if it had done so at the time when the relevant event occurred, and as from that time all payments made by such Chargor to the Lender or that Secured Finance Party shall be credited or be treated as having been credited the new account or accounts and shall not operate to reduce the Secured Liabilities.

## **15.7 Tacking**

For the purposes of section 94(1) of the LPA and section 49(3) of the Land Registration Act 2002 the Lender confirms on behalf of the Secured Finance Parties that the Secured Finance Parties shall make further advances to the Chargor on the terms and subject to the conditions of the Secured Finance Documents.

## **15.8 Deferral of Chargor's rights**

During the Security Period and unless the Lender otherwise directs, the Chargors shall not exercise any rights which it may have by reason of performance by its obligations under this Deed or the enforcement of the Security created by this Deed:-

- 15.8.1 to receive or claim payment from, or be indemnified by the Lender;
- 15.8.2 to claim any contribution from any guarantor of, or provider of Security in respect of, any Chargor's obligations under the Secured Finance Documents;
- 15.8.3 to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of any Secured Finance Party under any Secured Finance Document or of any guarantee or Security taken pursuant to, or in connection with, the Secured Finance Documents by any Secured Finance Party;
- 15.8.4 to exercise any right of set-off against any Chargor; and/or to claim or prove as a creditor of any Chargor in competition with any Secured Finance Party.

## **16. RELEASE**

### **16.1 Release**

Upon the expiration of the Security Period, the Lender shall, or shall procure that its appointees will, at the request and cost of the Chargors:-

- 16.1.1 release the Secured Assets from this Deed; and
- 16.1.2 re-assign the Secured Assets that has been assigned to the Lender under this Deed.

### **16.2 Reinstatement**

If the Lender considers that any amount paid or credited to any Secured Finance Party under any Secured Finance Document (whether in respect of the obligations of any Chargor or any Security for those obligations or otherwise) is capable of being avoided, reduced or otherwise set aside:-

- 16.2.1 that amount shall not be considered to have been paid for the purposes of determining whether the Secured Liabilities have been irrevocably and unconditionally paid and discharged; and
- 16.2.2 the liability of the Chargors and the Security created by this Deed shall continue as if that amount had not been paid or credited.

### **16.3 Consolidation**

Section 93 of the LPA dealing with the consolidation of mortgages shall not apply to this Deed.

## **17. MISCELLANEOUS PROVISIONS**

### **17.1 Severability**

If any provision of this Deed is illegal, invalid or unenforceable in any jurisdiction, that shall not affect:-

- 17.1.1 the validity or enforceability of any other provision, in any jurisdiction; or
- 17.1.2 the validity or enforceability of that particular provision, in any other jurisdiction.

### **17.2 Amendments and variations**

This Deed shall remain in full force and effect notwithstanding any amendment, restatement, novation or supplementation of the Secured Finance Documents (including any increase in the amount of the Secured Liabilities).



**17.3 Remedies and waivers**

No failure to exercise, nor any delay in exercising, on the part of the Lender, 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 provide by law.

**17.4 Information**

The Lender may from time to time seek from any other person having dealings with the Chargors such information about the Chargors and their affairs as the Lender may think fit and each Chargor agrees to request any such person to provide any such information to the Lender and agrees to provide such further authority in this regard as the Lender or any such third party may from time to time require.

**17.5 Joint and separate liability**

Unless the context otherwise requires, all covenants, agreements, representations and warranties on the part of the Chargors contained in this Deed are given by them jointly and separately and shall be construed accordingly.

**17.6 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.

**18. GOVERNING LAW**

This Deed and any non-contractual obligations arising out of or in connection with it are governed by English law.

**19. ENFORCEMENT**

19.1.1 The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute regarding the existence, validity or termination of this Deed or any non-contractual obligation arising out of or in connection with this Deed) (a "Dispute").

19.1.2 The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.

19.1.3 This Clause 19 (*Enforcement*) is for the benefit of the Secured Finance Parties only. As a result, no Secured Finance Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Secured Finance Parties may take concurrent proceedings in any number of jurisdictions.

**20. EXECUTED AND DELIVERED AS A DEED** on the date appearing at the beginning of this Deed.

**SCHEDULE 1****THE CHARGORS**

<b>Company name</b>	<b>No</b>	<b>Address for service</b>
McGavigan Corporate Limited	11107425	35-37 Cotton End Road, Wilstead, Bedfordshire, MK45 3BX
McGavigan Holdings Limited	11105062	35-37 Cotton End Road, Wilstead, Bedfordshire, MK45 3BX
Lemac No.1 Limited	07038241	35-37 Cotton End Road, Wilstead, Bedfordshire, MK45 3BX
John McGavigan Limited	SC144766	111 Westerhill Road, Bishopbriggs, Glasgow, G64 2QR
McGavigan Decorative Technologies (Suzhou) Co Limited		

## SCHEDULE 2

### FORM OF NOTICE OF ASSIGNED KEYMAN INSURANCES

To be printed on the headed notepaper of the relevant Chargor

To: [Insert name and address of relevant insurer]

Date: [ ]

Dear Sirs

**NOTICE OF ASSIGNMENT [DESCRIPTION OF RELEVANT INSURANCE POLIC[Y][IES] INCLUDING POLICY NUMBER] (THE "POLIC[Y][IES]") [refer to an attached schedule if there are a number of policies]**

1. We give you notice that we have entered into an assignment by way of security dated [ ] in favour of [LENDER] (the "Lender") (the "Assignment").
2. We give you notice that, pursuant to the terms of the Assignment, we have assigned (and, to the extent not validly or effectively assigned, we have charged by way of fixed charge) to the Lender by way of security all of our rights, title, interest and benefits in to or in respect of the Polic[y][ies] including the benefit of all claims and returns of premiums in respect thereof to which we are or may at any time become entitled.
3. If the security created by the Assignment becomes enforceable, the Lender may notify you of such event (an "Enforcement Notice").
4. Please note that following your receipt of an Enforcement Notice:-
  - 4.1 all payments and claims under or arising from the Policy are to be made to the Lender to such account (or to its order) as it may specify in writing from time to time;
  - 4.2 all remedies provided for in the Policy or available at law or in equity are to be exercisable by the Lender; and
  - 4.3 all rights to compel the performance of the Policy are to be exercisable by the Lender.
5. With effect from your receipt of an Enforcement Notice all rights, interests and benefits whatsoever accruing to or for the benefit of ourselves arising from the Policy (including all rights to compel performance) belong to and are exercisable by the Lender.
6. The authority and instructions contained in this notice cannot be revoked or varied by us without the prior written consent of the Lender.
7. By countersigning this letter, you confirm that:-
  - 7.1 you have not received notice of any previous assignments or charges of or over any of the rights, title and interests and benefits referred to in this notice;
  - 7.2 no amendment or termination of the Policy shall be effective unless you have given the Lender 30 days written notice of it or, if it is not possible to comply with such notification to the Lender in accordance with the provisions of the Policy, the notice will be provided to the Lender in relation to such termination as soon as possible; and
  - 7.3 you will not, without the Lender's prior written consent, exercise any right of set-off or counterclaim in relation to any amounts owed under or in connection with the Policy.
  - 7.4 This notice, and any dispute or claim arising out of or in connection with it, shall be governed by and construed in accordance with English law.

Please acknowledge receipt of this notice and your acknowledgement of the matters and instructions set out above within [5] days of receipt by signing, dating and returning the enclosed copy of this letter directly to the Lender at [ ] marked for the attention of [ ].

Yours faithfully,

for and on behalf of  
**[Chargor]**

**Acknowledged:**

.....  
For and on behalf of

*[Name of insurer]*

### SCHEDULE 3

#### DETAILS OF ASSIGNED KEYMAN INSURANCES

Key-man life assurance policy (in form and substance reasonably satisfactory to the Lender and with such insurer as the Lender may approve) taken out and maintained by the policy holder indicated below in respect of the death or disability or critical illness of the following individuals and in not less than the following respective amounts:-

<i>Name of individual</i>	<i>Policy Holder</i>	<i>Policy Number</i>	<i>Amount (£) not less than</i>
Mr David Taylor	John McGavigan Ltd	██████████	1,000,000.00
Mr Stephen Mathers	John McGavigan Ltd	██████████	1,000,000.00
Mr Lifeng Wang	McGavigan Corporate Limited	██████████	1,000,000.00

## EXECUTION PAGES

### The Chargors

Executed as a Deed (but not delivered until the date  
of this Deed) by **MCGAVIGAN CORPORATE  
LIMITED** acting by

FRANK DUFFIN

Full Name (Director/Authorised Signatory)  
in the presence of:

CAROLINE RONA SMITH

Full Name (Witness)

111 WESTERMILL ROAD

BISHOP CLEEVE

Glasgow G64 2QR

Address

Signature of Director/Authorised Signatory

Signature of Witness

Executed as a Deed (but not delivered until the date  
of this Deed) by **MCGAVIGAN HOLDINGS  
LIMITED** acting by

FRANK DUFFIN

Full Name (Director/Authorised Signatory)  
in the presence of:

CAROLINE RONA SMITH

Full Name (Witness)

111 WESTERMILL ROAD

BISHOP CLEEVE

Glasgow G64 2QR

Address

Signature of Director/Authorised Signatory

Signature of Witness

Executed as a Deed (but not delivered until the date  
of this Deed) by **LEMAC NO. 1 LIMITED** acting by

FRANK DUFFIN  
.....  
Full Name (Director/Authorised Signatory)  
in the presence of:

CAROLINE RENNA SMITH  
.....  
Full Name (Witness)

111 WESTERMILL ROAD  
.....  
BISHOPCARRIEE  
.....  
GLASGOW G14 2QR  
.....  
Address

  
.....  
Signature of Director/Authorised Signatory

  
.....  
Signature of Witness

Executed as a Deed (but not delivered until the date  
of this Deed) by **JOHN MCGAVIGAN LIMITED**  
acting by

DAVID FRANCH TAYLOR  
.....  
Full Name (Director/Authorised Signatory)  
in the presence of:

CAROLINE RENNA SMITH  
.....  
Full Name (Witness)

111 WESTERMILL ROAD  
.....  
BISHOPCARRIEE  
.....  
GLASGOW G14 2QR  
.....  
Address

  
.....  
Signature of Director/Authorised Signatory

  
.....  
Signature of Witness

Executed as a Deed (but not delivered until the date  
of this Deed) by **MCGAVIGAN DECORATIVE  
TECHNOLOGIES (SUZHOU) CO LIMITED** acting  
by

DAVID FRANK TAYLOR.....  
Full Name (Director/Authorised Signatory)  
in the presence of:

CAROLINE RENA SMITH.....  
Full Name (Witness)

111 WESTERHILL ROAD.....

BRIDPORT.....

GLASGOW G6 420N.....  
Address

.....  
Signature of Director/Authorised Signatory

.....  
Signature of Witness



EXECUTED for and on behalf of  
THE ROYAL BANK OF SCOTLAND PLC

)  
)



Authorised Signatory

.....  
Authorised Signatory

Address: 5TH FLOOR, KIRKSTANE HOUSE, 139 ST VINCENT STREET, GLASGOW  
Facsimile number :  
Attention: STUART DOWNIE