

Dated

2017

Hubb Development HS112 Ltd

- and -

Noteholders

Debenture



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This Agreement is made on 2017

Parties

- (1) Hubb Development HS112 Ltd incorporated and registered in England and Wales with company number 10719462 whose registered office is at 28 Queen Square, Bristol BS1 4ND (“the **Company**”); and
- (2) The several persons whose names and addresses are set out in Schedule 1 (“the **Noteholders**”).

Background

- (A) The Noteholders agree, pursuant to the Loan Note Instrument and Loan Notes, to provide the Company with loan facilities on a secured basis.
- (B) Under this Deed, the Company provides security to the Noteholders for the loan facilities made available under the Loan Note Instrument.

Agreed terms

1. Definitions and interpretation

1.1 Definitions

Terms defined in the Loan Note Instrument shall, unless otherwise defined in this Deed, have the same meaning in this Deed. In addition, the following definitions apply in this Deed:

“**Administrator**”: an administrator appointed to manage the affairs, business and property of the Company pursuant to clause 7.6.

“**Board**”: the board of directors from time to time of the Company.

“**Business Day**”: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

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

“**Deed of Priority**”: a deed recording the priority of the Prior Charge on terms required by the holder of the Prior Charge.

“**Event of Default**”: has the meaning given to that expression in the Loan Note Instrument, to include default under the Prior Charge.

“**Financial Collateral**”: has the meaning given to that expression in the Financial Collateral Regulations.

“Financial Collateral Regulations”: the Financial Collateral Arrangements (No 2) Regulations 2003 (*SI 2003/3226*).

“Loan Note Instrument”: the loan note instrument executed by the Company as the issuer of the Loan Notes dated day of 2017.

“Loan Notes”: the loan note of the Noteholders secured by this Deed and issued with the benefit of and subject to the provisions contained in the Loan Note Instrument.

“LPA 1925”: the Law of Property Act 1925.

“Prior Charge”: any charge approved by the Board in favour of the Company’s bankers.

“Properties”: all freehold and leasehold properties (whether registered or unregistered) and all commonhold properties, now or in the future (and from time to time) owned by the Company, or in which the Company holds an interest, and **Property** means any of them.

“Receiver”: a receiver, receiver and manager or administrative receiver of any or all of the Secured Assets appointed by the Noteholders under clause 9.

“Secured Assets”: all the assets, property and undertaking for the time being subject to the Security created by, or pursuant to, this Deed (and references to the Secured Assets shall include references to any part of them).

“Secured Liabilities”: all present and future monies, obligations and liabilities of the Company to the Noteholders, whether actual or contingent and whether owed jointly or severally, as principal or surety or in any other capacity, under or in connection with the Loan Note, Loan Note Instrument or this Deed (including, without limitation, those arising under clause 21.3.2), together with all interest (including, without limitation, default interest) accruing in respect of those monies, obligations or liabilities.

“Security Financial Collateral Arrangement”: has the meaning given to that expression in the Financial Collateral Regulations.

“Security”: any mortgage, charge (whether fixed or floating, legal or equitable), pledge, lien, assignment by way of security or other security interest securing any obligation of any person, or any other agreement or arrangement having a similar effect.

“Security Period”: the period starting on the date of this Deed and ending on the date on which the Noteholders is satisfied that all the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full and no further Secured Liabilities are capable of being outstanding.

1.2 Interpretation

In this Deed:

- 1.2.1 clause, Schedule and paragraph headings shall not affect the interpretation of this Deed;
- 1.2.2 a reference to a **person** shall include a reference to an individual, firm, company, corporation, partnership, unincorporated body of persons, government, state or agency of a state or any association, trust, joint venture or consortium (whether or not having separate legal personality);
- 1.2.3 unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;
- 1.2.4 unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;
- 1.2.5 a reference to a party shall include that party's successors, permitted assigns and permitted transferees and this Deed shall be binding on, and enure to the benefit of, the parties to this Deed and their respective personal representatives, successors, permitted assigns and permitted transferees;
- 1.2.6 a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;
- 1.2.7 a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision;
- 1.2.8 a reference to **writing** or **written** excludes email and fax;
- 1.2.9 an obligation on a party not to do something includes an obligation not to allow that thing to be done;
- 1.2.10 a reference to **this Deed** (or any provision of it) or to any other agreement or document referred to in this Deed is a reference to this Deed, that provision or such other agreement or document as amended (in each case, other than in breach of the provisions of this Deed) from time to time;
- 1.2.11 unless the context otherwise requires, a reference to a clause or Schedule is to a clause of, or Schedule to, this Deed;
- 1.2.12 any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;
- 1.2.13 a reference to an **amendment** includes a novation, re-enactment, supplement or variation (and amended shall be construed accordingly);
- 1.2.14 a reference to **assets** includes present and future properties, undertakings, revenues, rights and benefits of every description;

- 1.2.15 a reference to an **authorisation** includes an approval, authorisation, consent, exemption, filing, licence, notarisation, registration and resolution;
- 1.2.16 a reference to **continuing** in relation to an Event of Default means an Event of Default that has not been remedied or waived;
- 1.2.17 a reference to **determines** or **determined** means, unless the contrary is indicated, a determination made at the absolute discretion of the person making it; and
- 1.2.18 a reference to a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation.

1.3 **Clawback**

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

1.4 **Nature of security over real property**

A reference in this Deed to a charge or mortgage of or over any Property includes:

- 1.4.1 all buildings and fixtures and fittings that are situated on or form part of that Property at any time;
- 1.4.2 the proceeds of the sale of any part of that Property; and
- 1.4.3 the benefit of any covenants for title given, or entered into, by any predecessor in title of the Company in respect of that Property, and any monies paid or payable in respect of those covenants.

1.5 **Law of Property (Miscellaneous Provisions) Act 1989**

For the purposes of section 2 of the Law of Property (Miscellaneous Provisions) Act 1989, the terms of the Loan Note, Loan Note Instrument and of any side letters between any parties in relation to those documents are incorporated into this Deed.

1.6 **Perpetuity period**

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

1.7 Schedules

The Schedules form part of this Deed and shall have effect as if set out in full in the body of this Deed. Any reference to this Deed includes the Schedules.

2. Covenant to pay

The Company shall, on demand, pay to the Noteholders and discharge the Secured Liabilities when they become due.

3. Grant of security

3.1 Charging clause

As a continuing security for the payment and discharge of the Secured Liabilities, subject to the Prior Charge, the Company with full title guarantee charges to the Noteholders by way of:

3.1.1 a fixed charge:

- (a) all Properties acquired by the Borrower;
- (b) all present and future interests of the Company not effectively mortgaged or charged under the preceding provisions of this clause 3 in, or over, freehold or leasehold property;
- (c) all present and future rights, licences, guarantees, rents, deposits, contracts, covenants and warranties relating to each Property;
- (d) all licences, consents and authorisations (statutory or otherwise) held or required in connection with the Company's business or the use of any Secured Asset, and all rights in connection with them;
- (e) all its present and future goodwill;
- (f) all its uncalled capital; and

3.1.2 a floating charge, all the undertaking, property, assets and rights of the Company at any time not effectively mortgaged, charged or assigned pursuant to clause 3.1.1. Paragraph 14 of Schedule B1 to the Insolvency Act 1986 shall apply to the floating charge created by this clause 3.1.2.

3.2 Automatic crystallisation of floating charge

The floating charge created by clause 3.1.2 shall automatically and immediately (without notice) convert into a fixed charge over the assets subject to that floating charge if:

3.2.1 the Company:

- (a) creates, or attempts to create, over all or any part of the Secured Assets a Security without the prior written consent of the Noteholders, or any trust in favour of another person (except in relation to the Prior Charge, as expressly permitted by the terms of this Deed or the Loan Note Instrument); or
 - (b) disposes, or attempts to dispose of, all or any part of the Secured Assets (other than Secured Assets that are only subject to the floating charge while it remains uncrystallised which property may be disposed of in the ordinary course of business);
- 3.2.2 a receiver is appointed over all or any of the Secured Assets that is subject to the floating charge;
- 3.2.3 any person levies (or attempts to levy) any distress, attachment, execution or other process against all or any part of the Secured Assets; or
- 3.2.4 the Noteholders receives notice of the appointment of, or a proposal or an intention to appoint an administrator of the Company.

3.3 Crystallisation of floating charge by notice

The Noteholders may, in its sole discretion, at any time and by written notice to the Company, convert the floating charge created under this Deed into a fixed charge as regards any part of the Secured Assets specified by the Noteholders in that notice.

3.4 Assets acquired after any floating charge has crystallised

Any asset acquired by the Company after any crystallisation of the floating charge created under this Deed which, but for that crystallisation, would be subject to a floating charge, shall (unless the Noteholders confirms otherwise to the Company in writing to the contrary) be charged to the Noteholders by way of a fixed charge.

4. Liability of the Company

4.1 Liability not discharged

The Company's liability under this Deed in respect of any of the Secured Liabilities shall not be discharged, prejudiced or affected by:

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

4.1.3 any other act or omission that, but for this clause 4.1, might have discharged, or otherwise prejudiced or affected, the liability of the Company, save that for the avoidance of doubt the parties acknowledge that the Company's liability under this Deed shall be irrevocably discharged on the expiry of the Security Period.

4.2 **Immediate recourse**

The Company waives any right it may have to require the Noteholders to enforce any security or other right, or claim any payment from, or otherwise proceed against, any other person before enforcing this Deed against the Company.

5. **Representations and warranties**

The Company represents and warrants to the Noteholders that:

5.1.1 So far as it is aware, the Company is the sole legal and beneficial owner of the Secured Assets.

5.1.2 So far as it is aware, there is no breach of any law or regulation that materially and adversely affects the Secured Assets.

5.1.3 So far as it is aware, no Security expressed to be created under this Deed is liable to be avoided, or otherwise set aside, on the liquidation or administration of the Company or otherwise.

6. **Covenants**

The Company covenants that:

6.1.1 It shall, promptly on becoming aware of any of the same, notify the Noteholders in writing of any breach of:

- (a) any representation or warranty set out in clause 5; and
- (b) any breach of any covenant set out in this clause 6.

6.1.2 It shall insure and keep insured of its undertaking and assets with reputable and responsible insurers.

7. **Powers of the Noteholders**

7.1 **Power to remedy**

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

7.2 Exercise of rights

The rights of the Noteholders under clause 7.1 are without prejudice to any other rights of the Noteholders under this Deed and the exercise of those rights shall not make the Noteholders liable to account as a mortgagee in possession.

7.3 Power to dispose of chattels

7.3.1 At any time after the security constituted by this Deed has become enforceable, the Noteholders or any Receiver may, as agent for the Company, dispose of any chattels or produce found on any Property.

7.3.2 Without prejudice to any obligation to account for the proceeds of any disposal made under clause 7.3.1, the Company shall indemnify the Noteholders and any Receiver against any liability arising from any disposal made under clause 7.3.1.

7.4 Conversion of currency

7.4.1 For the purpose of, or pending the discharge of, any of the Secured Liabilities, the Noteholders may convert any monies received, recovered or realised by it under this Deed (including the proceeds of any previous conversion under this clause 7.4) from their existing currencies of denomination into any other currencies of denomination that the Noteholders may think fit.

7.4.2 Any such conversion shall be effected at the Noteholders' bank's then prevailing spot selling rate of exchange for such other currency against the existing currency.

7.4.3 Each reference in this clause 7.4 to a currency extends to funds of that currency and, for the avoidance of doubt, funds of one currency may be converted into different funds of the same currency.

7.5 Indulgence

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

7.6 Appointment of an Administrator

7.6.1 The Noteholders may, without further notice to the Company, appoint any one or more persons to be an Administrator of the Company pursuant to Paragraph 14 of Schedule B1 of the Insolvency Act 1986 if the security constituted by this Deed becomes enforceable.

7.6.2 Any appointment under this clause 7.6 shall:

- (a) be in writing signed by a duly authorised signatory of the Noteholders; and
- (b) take effect, in accordance with paragraph 19 of Schedule B1 of the Insolvency Act 1986.

7.6.3 The Noteholders may apply to the court for an order removing an Administrator from office and may by notice in writing in accordance with this clause 7.6 appoint a replacement for any Administrator who has died, resigned, been removed or who has vacated office upon ceasing to be qualified.

8. Enforcement of security

8.1 Enforcement

8.1.1 The security constituted by this Deed shall become immediately enforceable if an Event of Default occurs.

8.1.2 After the security constituted by this Deed has become enforceable, the Noteholders 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 Secured Assets, subject to the rights of the holder of the Prior Charge.

8.2 Enforcement powers

8.2.1 For the purposes of all powers implied by statute, the Secured Liabilities are deemed to have become due and payable on the date of this Deed.

8.2.2 The power of sale and other powers conferred by section 101 of the LPA 1925 (as varied or extended by this Deed) shall be immediately exercisable at any time after the security constituted by this Deed has become enforceable under clause 8.1.1.

8.2.3 Section 103 of the LPA 1925 does not apply to the security constituted by this Deed.

8.3 Extension of statutory powers

The statutory powers of sale, leasing and accepting surrenders conferred on mortgagees under the LPA 1925 and by any other statute are extended so as to authorise the Noteholders and any Receiver, at any time after the security constituted by this Deed has become enforceable, whether in its own name or in that of the Company, to:

8.3.1 grant a lease or agreement to lease;

8.3.2 accept surrenders of leases; or

8.3.3 grant any option of the whole or any part of the Secured Assets with whatever rights relating to other parts of it,

whether or not at a premium and containing such covenants on the part of the Company, and on such terms and conditions (including the payment of money to a lessee or tenant on a surrender) as the Noteholders or Receiver thinks fit, subject to the rights of the holder of the Prior Charge, without the need to comply with any of the restrictions imposed by sections 99 and 100 of the LPA 1925.

8.4 Prior Security

8.4.1 At any time after the security constituted by this Deed has become enforceable, or after any powers conferred by any Prior Charge or other Security having priority to this Deed shall have become exercisable, the Noteholders may:

- (a) redeem that Prior Charge or any other prior Security;
- (b) procure the transfer of that Prior Charge or Security to it; and
- (c) settle and pass any account of the holder of any Prior Charge or such other prior Security.

8.4.2 The settlement and passing of any such account passed shall, in the absence of any manifest error, be conclusive and binding on the Company. All monies paid by the Noteholders to the holder of the Prior Charge or other encumbrancer in settlement of any of those accounts shall, as from its payment by the Noteholders, be due from the Company to the Noteholders on current account and shall bear interest at the rate of interest specified in the Loan Note Instrument and be secured as part of the Secured Liabilities.

8.5 Protection of third parties

Except in the case of the Prior Charge Holder, no purchaser, mortgagee or other person dealing with the Noteholders or any Receiver shall be concerned to enquire:

8.5.1 whether any of the Secured Liabilities have become due or payable, or remain unpaid or undischarged;

8.5.2 whether any power the Noteholders or a Receiver is purporting to exercise has become exercisable or is properly exercisable; or

8.5.3 how any money paid to the Noteholders or any Receiver is to be applied.

8.6 No liability as mortgagee in possession

Neither the Noteholders, any Receiver nor any Administrator shall be liable, by reason of entering into possession of a Security Asset or for any other reason, to account as mortgagee in possession in respect of all or any of the Secured Assets, nor shall any of them be liable for any loss on realisation of, or for any act, neglect or default of any nature in connection with, all or any of the Secured Assets for which a mortgagee in possession might be liable as such.

8.7 **Right of appropriation**

8.7.1 To the extent that:

- (a) the Secured Assets constitute Financial Collateral; and
- (b) this Deed and the obligations of the Company under it constitute a Security Financial Collateral Arrangement,

the Noteholders shall subject to the rights of the holder of the Prior Charge have the right, at any time after the security constituted by this Deed has become enforceable, to appropriate all or any of those Secured Assets in or towards the payment or discharge of the Secured Liabilities in any order that the Noteholders may, in its absolute discretion, determine.

8.7.2 The value of any Secured Assets appropriated in accordance with this clause shall be at the time the right of appropriation is exercised as listed on any recognised market index, or determined by such other method as the Sellers may select (including independent valuation).

8.7.3 The Company agrees that the methods of valuation provided for in this clause are commercially reasonable for the purposes of the Financial Collateral Regulations.

9. **Receiver**

9.1 **Appointment**

At any time after the security constituted by this Deed has become enforceable, or at the request of the Company, the Noteholders may, without further notice, appoint by way of deed, or otherwise in writing, any one or more persons to be a Receiver of all or any part of the Secured Assets.

9.2 **Removal**

The Noteholders may, without further notice (subject to section 45 of the Insolvency Act 1986 in the case of an administrative receiver), from time to time, by way of deed, or otherwise in writing, remove any Receiver appointed by it and may, whenever it thinks fit, appoint a new Receiver in the place of any Receiver whose appointment may for any reason have terminated.

9.3 **Remuneration**

The Noteholders may fix the remuneration of any Receiver appointed by it without the restrictions contained in section 109 of the LPA 1925, and the remuneration of the Receiver shall be a debt secured by this Deed, to the extent not otherwise discharged.

9.4 Power of appointment additional to statutory powers

The power to appoint a Receiver conferred by this Deed shall be in addition to all statutory and other powers of the Noteholders under the Insolvency Act 1986, the LPA 1925 or otherwise, and shall be exercisable without the restrictions contained in sections 103 and 109 of the LPA 1925 or otherwise.

9.5 Power of appointment exercisable despite prior appointments

The power to appoint a Receiver (whether conferred by this Deed or by statute) shall be, and remain, exercisable by the Noteholders despite any prior appointment in respect of all or any part of the Secured Assets.

9.6 Agent of the Company

Any Receiver appointed by the Noteholders under this Deed shall be the agent of the Company and the Company shall be solely responsible for his acts and remuneration as well as for any defaults by that Receiver. The agency of each Receiver shall continue until the Company goes into liquidation and after that the Receiver shall act as principal and shall not become the agent of the Noteholders.

10. Powers of Receiver

10.1 General

10.1.1 Any Receiver appointed by the Noteholders under this Deed shall, in addition to the powers conferred on it by statute, subject to the rights of the holder of the Prior Charge, have the powers set out in clause 10.2 to clause 10.16.

10.1.2 If there is more than one Receiver holding office at the same time, each Receiver may (unless the document appointing it states otherwise) exercise all of the powers conferred on a Receiver under this Deed individually and to the exclusion of any other Receiver.

10.1.3 Any exercise by a Receiver of any of the powers given by clause 10 may be on behalf of the Company, the directors of the Company (in the case of the power contained in clause 10.11) or itself.

10.2 Repair and develop Properties

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

10.3 Surrender leases

A Receiver may grant, or accept surrenders of, any leases or tenancies affecting any Property and subject to any conditions, that it thinks fit.

10.4 **Employ personnel and advisers**

A Receiver may appoint officers, servants, contractors, workmen, agents, other personnel and professional advisers on any terms, and subject to any conditions, that it thinks fit.

10.5 **Make VAT elections**

A Receiver may make, exercise or revoke any value added tax option to tax as it thinks fit.

10.6 **Remuneration**

A Receiver may charge and receive any sum by way of remuneration (in addition to all costs, charges and expenses incurred by it) that the Noteholders may prescribe or agree with it.

10.7 **Realise Secured Assets**

A Receiver may collect and get in the Secured Assets or any part of them in respect of which it is appointed, and make any demands and take any proceedings as may seem expedient for that purpose, and take possession of the Secured Assets with like rights.

10.8 **Manage or reconstruct the Company's business**

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

10.9 **Dispose of Secured Assets**

A Receiver may sell, exchange, convert into money and realise all or any of the Secured Assets in respect of which it is appointed in any manner (including, without limitation, by public auction or private sale) and generally on any terms and conditions as it thinks fit. Any sale may be for any consideration that the Receiver thinks fit and a Receiver may promote, or concur in promoting, a company to purchase the Secured Assets to be sold.

10.10 **Make settlements**

A Receiver may make any arrangement, settlement or compromise between the Company and any other person that it may think expedient.

10.11 **Make calls on Company members**

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

10.12 Insure

A Receiver may, if it thinks fit, but without prejudice to the indemnity in clause 12, effect with any insurer any policy of insurance either in lieu or satisfaction of, or in addition to, the insurance required to be maintained by the Company under this Deed.

10.13 Powers under the LPA 1925

A Receiver may exercise all powers provided for in the LPA 1925 in the same way as if it had been duly appointed under the LPA 1925, and exercise all powers provided for an administrative receiver in Schedule 1 to the Insolvency Act 1986.

10.14 Borrow

A Receiver may, for any of the purposes authorised by this clause 10, raise money by borrowing from the Noteholders (or from any other person) either unsecured or on the security of all or any of the Secured Assets in respect of which it is appointed on any terms that it thinks fit (including, if the Noteholders consents, terms under which that security ranks in priority to this Deed).

10.15 Redeem prior Security

A Receiver may redeem any prior Security and settle and pass the accounts to which the Security relates. Any accounts so settled and passed shall be, in the absence of any manifest error, conclusive and binding on the Company, and the monies so paid shall be deemed to be an expense properly incurred by the Receiver.

10.16 Incidental powers

A Receiver may do any other acts and things that it may consider incidental or conducive to any of the matters or powers in this clause 10 or which it lawfully may or can do as agent for the Noteholders.

11. Application of proceeds

11.1 Deed of Priority

The Noteholders undertake and covenant to execute the Deed of Priority when requested by the Board and to give further assurances pursuant to the Deed of Priority.

11.2 Order of application of proceeds

All monies received by the Noteholders or a Receiver in the exercise of any enforcement powers conferred by this Deed shall (subject to the claims of any person having prior rights and by way of variation of the LPA 1925) be applied in the following order of priority:

- 11.2.1 first in paying all unpaid fees, costs, charges and expenses incurred by or on behalf of (a) the holder of the Prior Charge and (b) the Noteholders (and any Receiver, attorney or agent appointed by it respectively);
- 11.2.2 second in paying the remuneration due to any Receiver (as agreed between it and the holder of the Prior Charge and/or the Noteholders);
- 11.2.3 third in or towards payment of or provision for the Prior Charge;
- 11.2.4 forth in or towards payment of or provision for the Secured Liabilities in any order and manner that the Noteholders determine; and
- 11.2.5 finally in payment of the surplus (if any) to the Company or other person entitled to it.

11.3 **Appropriation**

Neither the Noteholders nor any Receiver shall be bound (whether by virtue of section 109(8) of the LPA 1925, which is varied accordingly, or otherwise) to pay or appropriate any receipt or payment first towards interest rather than principal or otherwise in any particular order between any of the Secured Liabilities.

11.4 **Suspense account**

All monies received by the Noteholders or a Receiver under this Deed:

- 11.4.1 may, at the discretion of the Noteholders or Receiver be credited to any suspense or securities realised account;
- 11.4.2 shall bear interest, if any, at the rate agreed in writing between the Noteholders and the Company; and
- 11.4.3 may be held in that account for so long as the Noteholders or Receiver thinks fit.

12. **Costs and indemnity**

12.1 **Costs**

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

- 12.1.1 this Deed or the Secured Assets;
- 12.1.2 taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) any of the Noteholders' or a Receiver's rights under this Deed; or
- 12.1.3 taking proceedings for, or recovering, any of the Secured Liabilities,

together with interest, in the case of 12.1.2 and clause 12.2.3, interest on the amount due at the default rate of interest specified in the Loan Note Instrument.

12.2 Indemnity

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

- 12.2.1 the exercise or purported exercise of any of the powers, authorities or discretions vested in them under this Deed;
- 12.2.2 taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) the security constituted by this Deed; or
- 12.2.3 any default or delay by the Company in performing any of its obligations under this Deed.

13. Power of attorney

13.1 Appointment of attorneys

By way of security, the Company irrevocably appoints, until the expiry of the Security Period, the Noteholders and every Receiver separately to be the attorney of the Company and in its name, on its behalf and as its act and deed, to execute any documents and do any acts and things that:

- 13.1.1 the Company is required to execute and do under this Deed; or
- 13.1.2 any attorney deems proper or desirable in exercising any of the rights, powers, authorities and discretions conferred by this Deed or by law on the Noteholders or any Receiver.

13.2 Ratification of acts of attorneys

The Company ratifies and confirms, and agrees to ratify and confirm, anything that any of its attorneys may do in the proper and lawful exercise, or purported exercise, of all or any of the rights, powers, authorities and discretions referred to in clause 13.1.

14. Release

Subject to clause 21.3, on the expiry of the Security Period (but not otherwise), the Noteholders shall, at the request and cost of the Company, take whatever action is necessary to release and reassign the Secured Assets from the security constituted by this Deed:

15. Assignment and transfer

15.1 Assignment by Noteholders

At any time, without the consent of the Company, the Noteholders may assign or transfer any or all of its rights and obligations under this Deed to any person and it shall, within five Business Days of any such assignment or transfer, give written notice of the assignment or transfer, full details of those rights and obligations assigned or transferred, and full details of the assignee to the Company.

15.2 Assignment by Company

The Company may not assign any of its rights, or transfer any of its rights or obligations, under this Deed.

16. Noteholders's Right to Set-off

16.1 The Noteholders may at any time set off any liability of the Company to the Noteholders against any liability of the Noteholders to the Company, whether or not either liability arises under this deed. If the liabilities to be set off are expressed in different currencies, the Noteholders may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the Noteholders of its rights under this clause 16 shall not limit or affect any other rights or remedies available to it under this Deed or otherwise.

16.2 The Noteholders is not obliged to exercise its rights under clause 16.1. If, however, it does exercise those rights it must promptly notify the Company of the set-off that has been made.

17. Amendments, waivers and consents

17.1 Amendments

No amendment of this Deed shall be effective unless it is in writing and signed by, or on behalf of, each party (or its authorised representative).

17.2 Waivers

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

17.3 Rights and remedies

The rights and remedies provided under this Deed are cumulative and are in addition to, and not exclusive of, any rights and remedies provided by law.

18. Severance

18.1 If any provision (or part of a provision) of this Deed is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision (or part of a provision) shall be deemed deleted. Any modification to or deletion of a provision (or part of a provision) under this clause shall not affect the legality, validity and enforceability of the rest of this Deed.

19. Counterparts

This Deed may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute one deed.

20. Third party rights

A person who is not a party to this Deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce, or enjoy the benefit of, any term of this Deed. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

21. Further provisions

21.1 Independent security

The security constituted by this Deed shall be in addition to, and independent of, any other security or guarantee that the Noteholders may hold for any of the Secured Liabilities at any time. No prior security held by the Noteholders over the whole or any part of the Secured Assets shall merge in the security created by this Deed.

21.2 Continuing security

The security constituted by this Deed shall remain in full force and effect as a continuing security for the Secured Liabilities, despite any settlement of account, or intermediate payment, or other matter or thing, unless and until the Noteholders discharges this Deed in writing.

21.3 Discharge conditional

Any release, discharge or settlement between the Company and the Noteholders shall be deemed conditional on no payment or security received by the Noteholders in respect of the Secured Liabilities being avoided, reduced or ordered to be refunded pursuant to any law relating to insolvency, bankruptcy, winding-up, administration, receivership or otherwise. Despite any such release, discharge or settlement:

21.3.1 the Noteholders or its nominee may retain this Deed and the security created by or pursuant to it, including all certificates and documents relating to the whole or any part of the Secured Assets, for any period that the Noteholders deems necessary to

provide the Noteholders with security against any such avoidance, reduction or order for refund; and

21.3.2 the Noteholders may recover the value or amount of such security or payment from the Company subsequently as if the release, discharge or settlement had not occurred.

21.4 **Certificates**

A certificate or determination by the Noteholders as to any amount for the time being due to it from the Company under this Deed and the Loan Note Instrument shall be, in the absence of any manifest error, conclusive evidence of the amount due.

21.5 **Consolidation**

The restriction on the right of consolidation contained in section 93 of the LPA 1925 shall not apply to this Deed.

21.6 **Small company moratorium**

Notwithstanding anything to the contrary in this Deed, neither the obtaining of a moratorium by the Company under schedule A1 to the Insolvency Act 1986 nor the doing of anything by the Company with a view to obtaining such a moratorium (including any preliminary decision or investigation) shall be, or be construed as:

21.6.1 an event under this Deed which causes any floating charge created by this Deed to crystallise;

21.6.2 an event under this Deed which causes any restriction which would not otherwise apply to be imposed on the disposal of any property by the Company; or

21.6.3 a ground under this Deed for the appointment of a Receiver.

22. **Notices**

22.1 **Service**

Any notice or other communication given under this Deed shall be in writing and shall be served by delivering it personally or by sending it by pre-paid first-class post and for the attention of the relevant party as set out in at the start of this agreement or such other address as may be notified in writing from time to time by the relevant party to the other party.

22.2 **Receipt**

Receipt of any notice, given under clause 22.1, shall be deemed to have been received if delivered personally, at the time of deliver, or if posted by pre-paid first class post or other next working day service, on the second Business Day after posting. A notice given on a day

that is not a Business Day, or after normal business hours shall be deemed to have been received on the next Business Day.

23. Governing law and jurisdiction

23.1 Governing law

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

23.2 Jurisdiction

Each party irrevocably agrees that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction over any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Deed or its subject matter or formation. Nothing in this clause shall limit the right of the Noteholders to take proceedings against the Company in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

23.3 Other service

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

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Schedule 1- Noteholders

Name	Address	Amount of Notes held (£)

DRAFT COPY

Executed by Hubb Development HS112 Ltd
acting by Oliver Hawthorne, a director, in
the presence of: Director

SIGNATURE OF WITNESS

NAME OF WITNESS

ADDRESS OF WITNESS

OCCUPATION OF WITNESS

Executed as a deed by {NAME OF
NOTEHOLDERS} acting Oliver
Hawthorne, a director, in the presence Director
of:

SIGNATURE OF WITNESS

NAME OF WITNESS

ADDRESS OF WITNESS

OCCUPATION OF WITNESS

DRAFT COPY