



**Registration of a Charge**

Company name: **FLAT CAP HOTELS LIMITED**

Company number: **09571307**

Received for Electronic Filing: **30/11/2018**



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**Details of Charge**

Date of creation: **28/11/2018**

Charge code: **0957 1307 0005**

Persons entitled: **SANCUS (JERSEY) LIMITED**

Brief description: **NONE**

**Contains fixed charge(s).**

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

**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 THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by: **ANDY MCNISH**



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

Company number: 9571307

Charge code: 0957 1307 0005

The Registrar of Companies for England and Wales hereby certifies that a charge dated 28th November 2018 and created by FLAT CAP HOTELS LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 30th November 2018 .

Given at Companies House, Cardiff on 4th December 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

28 November 2018

DEBENTURE

between

FLAT CAP HOTELS LIMITED (1)

and

SANCUS (JERSEY) LIMITED (2)  
(as Security Agent)

Certified to be a true copy  
of the original seen by me  
Andrew Marsh *AM*  
Solicitor  
90 Deansgate  
Manchester  
0161 832 3304  
30/11/18

We hereby certify that this is a true  
copy of the original  
DAVIS BLANK FURNISS LLP  
90 Deansgate  
Manchester  
M3 2QJ

THIS DEED is dated 28 November 2018

## PARTIES

- (1) **FLAT CAP HOTELS LIMITED** incorporated and registered in England and Wales with company number 09571307 whose registered office is situate at The Vicarage, Knutsford Road, Cranage, Cheshire, CW4 8EF ("the **Borrower**").
- (2) **SANCUS (JERSEY) LIMITED**, a company incorporated in Jersey with registered number 113391 and having its registered office at Windward House, La Route de la Liberation, St Helier, Jersey JE2 3BQ ("the **Security Agent**").

## BACKGROUND

This debenture provides security which the Borrower has agreed to give the Security Agent (acting as trustee for and on behalf of itself and all Co-Funders) for the indebtedness due to the Security Agent and the Co-Funders under the Loan Agreement or otherwise.

## AGREED TERMS

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

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

**Administrator:** an administrator appointed to manage the affairs, business and property of the Borrower pursuant to paragraph 15 of Schedule 5.

**Book Debts:** all present and future book and other debts, and monetary claims due or owing to the Borrower, and the benefit of all security, guarantees and other rights of any nature enjoyed or held by the Borrower in relation to any of them.

**Business Day:** a day (other than a Saturday or Sunday) on which commercial banks are open for general business in London.

**Charged Property:** all the assets, property and undertaking for the time being subject to the security interests created by this debenture (and references to the Charged Property include references to any part of it).

**Co-Funders:** as defined in the Loan Agreement.

**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.

**Designated Account:** any account of the Borrower nominated by the Security Agent as a designated account for the purposes of this deed.

**Encumbrance:** 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.

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

**Financial Collateral:** shall have 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*).

**Insurance Policy:** each contract and policy of insurance effected or maintained by the Borrower from time to time in respect of its assets or business (including, without limitation, any contract or policy of insurance relating to the Properties or the Equipment).

**Intellectual Property:** the Borrower's present and future patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Investments:** all present and future certificated stocks, shares, loan capital, securities, bonds and investments (whether or not marketable) for the time being owed (at law or in equity) by the Borrower, including any:

- dividend, interest or other distribution paid or payable in relation to any of the Investments; and
- right, money, shares or property accruing, offered or issued at any time in relation to any of the Investments by way of redemption, substitution, exchange, conversion, bonus, preference or otherwise, under option rights or otherwise.

**Legal Charge:** as defined in the Loan Agreement.

**Loan Agreement:** the loan agreement dated on or about today's date between (1) the Borrower (as borrower), (2) Stephen James Cliff, Dominic Heywood, Oliver Heywood and The Bridge Cheshire Ltd (as guarantors), (3) the Security Agent (as facility agent and security agent) and (4) the Original Co-Funders as defined in the Loan Agreement (including any variation of it or replacement loan agreement agreed between the parties to it from time to time).

**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 Borrower or in which the Borrower holds an interest, and **Property** means any of them.

**Receiver:** a receiver and/or manager of any or all of the Charged Property appointed under paragraph 6 of Schedule 5.

**Secured Liabilities:** all monies, obligations and liabilities owed by the Borrower to any one or more of the Security Agent and the Co-Funders, under the Loan Agreement or otherwise howsoever arising (including, without limitation, those arising under clauses 9.1 or 12.3) together with all interest (including, without limitation, default interest) accruing in respect of such monies or liabilities.

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

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

## 1.2 Interpretation

Unless the context otherwise requires, in this debenture:

- (a) any reference to any statute or statutory provision includes a reference to any subordinate legislation made under that statute or statutory provision, to any modification, re-enactment or extension of that statute or statutory provision and to any former statute or statutory provision which it consolidated or re-enacted before the date of this debenture;
- (b) a reference to one gender includes a reference to the other genders;
- (c) words in the singular include the plural and in the plural include the singular;
- (d) unless the context otherwise requires, a reference to a clause or Schedule is to a clause or Schedule of or to this debenture;

- (e) a reference to **this debenture** (or any specified provision of it) or any other document shall be construed as a reference to this debenture, that provision or that document as in force for the time being and as amended or novated from time to time;
- (f) a reference to a **person** shall be construed as including a reference to an individual, firm, corporation, unincorporated body of persons or any state or any agency of a person;
- (g) a reference to an **amendment** includes a supplement, variation, novation or re-enactment (and **amended** shall be construed accordingly);
- (h) a reference to **assets** includes present and future properties, undertakings, revenues, rights and benefits of every description;
- (i) a reference to an **authorisation** includes an authorisation, consent, licence, approval, resolution, exemption, filing, registration and notarisation;
- (j) 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; and
- (k) the headings do not form part of this debenture or any part of it and do not affect its interpretation.

### 1.3 Nature of security over real property

A reference in this debenture to a charge or mortgage of any freehold, leasehold or commonhold property includes:

- (a) all buildings and fixtures (including trade and tenant's fixtures) which are at any time situated on that property;
- (b) the proceeds of sale of any part of that property; and
- (c) the benefit of any covenants for title given or entered into by any predecessor in title of the Borrower in respect of that property or any monies paid or payable in respect of those covenants.

### 1.4 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 Agreement and of any side letters between any parties in relation to the Loan Agreement are incorporated in this debenture.

## **1.5 Insolvency Act 1986**

Paragraph 14 of Schedule B1 to the Insolvency Act 1986 (as inserted by section 248 of, and Schedule 16 to, the Enterprise Act 2002) applies to the floating charge created by this debenture.

## **1.6 Security Agent as Security Trustee**

The Security Agent holds all security under, arising from and in connection with this debenture for and on behalf of itself and all Co-Funders.

## **2. COVENANT TO PAY**

The Borrower shall on demand pay to the Security Agent 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, the Borrower with full title guarantee by way of a first fixed charge:

- (a) charges to the Security Agent, all the Properties;
- (b) charges to the Security Agent:
  - (i) all Properties acquired by the Borrower in the future;
  - (ii) all present and future interests of the Borrower not effectively mortgaged or charged under the preceding provisions of this clause 3 in or over freehold or leasehold property;
  - (iii) all present and future rights, licences, guarantees, rents, deposits, contracts, covenants and warranties relating to the Properties;
  - (iv) all licences, consents and authorisations, statutory or otherwise held or required in connection with the Borrower's business or the use of any Charged Property and all rights in connection with them;
  - (v) all present and future goodwill and uncalled capital for the time being of the Borrower; and
  - (vi) all Equipment;
  - (vii) all the Intellectual Property;
  - (viii) all the Book Debts;



- (ix) all the Investments;
  - (x) all monies from time to time standing to the credit of its accounts with any bank, financial institution or other person (including each Designated Account), together with all other rights and benefits accruing to or arising in connection with each account (including, but not limited to, entitlements to interest);
  - (xi) all rights in respect of each Insurance Policy, including all claims, the proceeds of all claims and all returns of premium in connection with each Insurance Policy;
  - (xii) all its rights in respect of all agreements, instruments and rights relating to the Charged Property; and
- (c) charges to the Security Agent, by way of a first floating charge, all the undertaking, property, assets and rights of the Borrower at any time not effectively mortgaged, charged or assigned pursuant to clause 3.1(a) and clause 3.1(b).

### 3.2 Automatic conversion of floating charge

The floating charge created by clause 3.1(c) shall automatically and immediately (without notice) be converted into a fixed charge over the relevant Charged Property if:

- (a) the Borrower:
  - (i) creates, or attempts to create, over all or any part of the Charged Property an Encumbrance without the prior written consent of the Security Agent or any trust in favour of another person; or
  - (ii) disposes or attempts to dispose of all or any part of the Charged Property (other than property subject only to the floating charge while it remains uncrystallised which property may be disposed of in the ordinary course of business); or
- (b) a receiver is appointed over all or any of the Charged Property that is subject to the floating charge; or
- (c) any person levies or attempts to levy any distress, attachment, execution or other process against all or any part of the Charged Property; or
- (d) the Security Agent receives notice of the appointment of, or a proposal or an intention to appoint, an administrator of the Borrower.

### 3.3 Conversion of floating charge by notice

At any time after this Debenture has become enforceable pursuant to Clause 8.1, the Security Agent may in its sole discretion by written notice to the Borrower convert the floating charge created under this debenture into a fixed charge as regards any part of the Charged Property specified by the Security Agent in that notice.

### 3.4 Assets acquired after any floating charge crystallisation

Any asset acquired by the Borrower after any crystallisation of the floating charge created under this debenture which but for such crystallisation would be subject to a floating charge shall (unless the Security Agent confirms in writing to the contrary) be charged to the Security Agent by way of fixed charge.

### 3.5 Reconversion of floating charge

3.6 Any floating charge which has crystallised under Clause 3.2 (*Automatic conversion of floating charge*) or Clause 3.3 (*Conversion of floating charge by notice*) may be, by notice in writing given at any time by the Security Agent to the Borrower, be reconverted into a floating charge under clause 3.1 (*Charging clause*) in relation to the assets, rights and property specified in such notice.

## 4. LIABILITY OF BORROWER

### 4.1 Liability not discharged

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

- (a) any security, guarantee, indemnity, remedy or other right held by or available to the Security Agent being or becoming wholly or partially illegal, void or unenforceable on any ground; or
- (b) the Security Agent 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
- (c) any other act or omission which but for this provision might have discharged or otherwise prejudiced or affected the liability of the Borrower.

#### **4.2 Immediate recourse**

The Borrower waives any right it may have of requiring the Security Agent to enforce any security or other right or claim any payment from or otherwise proceed against any other person before enforcing this debenture against the Borrower.

#### **5. REPRESENTATIONS AND WARRANTIES**

The Borrower warrants to the Security Agent in the terms set out in Schedule 2.

#### **6. COVENANTS**

The Borrower covenants with the Security Agent during the continuance of the security constituted by this debenture in the terms set out in Schedule 3.

#### **7. POWERS OF THE SECURITY AGENT**

The Security Agent shall have the powers set out in Schedule 4.

#### **8. ENFORCEMENT**

##### **8.1 Enforcement events**

The security constituted by this debenture shall be immediately enforceable in any of the circumstances set out in paragraph 1 of Schedule 5. The parties to this debenture agree that the provisions of Schedule 5 shall apply to this debenture and shall be binding between them.

##### **8.2 Receiver's powers**

A Receiver shall have, in addition to the powers conferred on receivers by statute, the further powers set out in Schedule 6.

##### **8.3 Right of appropriation**

To the extent that the Charged Property constitutes Financial Collateral and this debenture and the obligations of the Borrower hereunder constitute a Security Financial Collateral Arrangement, the Security Agent shall have the right, at any time after the security constituted by this debenture has become enforceable, to appropriate all or any of that Charged Property in or towards the payment and/or discharge of the Secured Liabilities in such order as the Security Agent in its absolute discretion may from time to time determine. The

value of any Charged Property appropriated in accordance with this clause shall be the price of that Charged Property at the time the right of appropriation is exercised as listed on any recognised market index, or determined by such other method as the Security Agent may select (including independent valuation). The Borrower agrees that the methods of valuation provided for in this clause are commercially reasonable for the purposes of the Financial Collateral Regulations.

## **9. COSTS**

### **9.1 Costs**

The Borrower shall pay to or reimburse the Security Agent and any Receiver on demand, all reasonable Costs incurred by the Security Agent and/or any Receiver in relation to:

- (a) protecting, perfecting, preserving or enforcing (or attempting to do so) any of the Security Agent's or the Receiver's rights under this debenture; or
- (b) suing for, or recovering, any of the Secured Liabilities,

(including, without limitation, the Costs of any proceedings in relation to this debenture or the Secured Liabilities).

## **10. RELEASE**

### **10.1 Release**

Subject to clause 12.3, upon the expiry of the Security Period (but not otherwise) the Security Agent shall, at the request and cost of the Borrower, take whatever action is necessary to release the Charged Property from the security constituted by this debenture.

## **11. ASSIGNMENT AND TRANSFER**

### **11.1 Assignment by Security Agent**

The Security Agent may at any time, without the prior written consent of the Borrower, assign or transfer the whole or any part of the Security Agent's rights and/or obligations under this debenture to any person.

## **11.2 Assignment by Borrower**

The Borrower may not assign any of its rights or transfer any of its obligations under this debenture or enter into any transaction, which would result in any of those rights or obligations passing to another person, without prior consent of the Security Agent.

## **12. FURTHER PROVISIONS**

### **12.1 Independent security**

This debenture shall be in addition to and independent of every other security or guarantee which the Security Agent (or any Co-Funders) may at any time hold for any of the Secured Liabilities and no prior security held by the Security Agent (or any Co-Funders) over the whole or any part of the Charged Property shall merge in the security created by this debenture.

### **12.2 Continuing security**

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

### **12.3 Discharge conditional**

Any release, discharge or settlement between the Borrower and the Security Agent (or any Co-Funder) shall be deemed conditional upon no payment or security received by the Security Agent (or any Co-Funder) 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 and, notwithstanding any such release, discharge or settlement:

- (a) the Security Agent or its nominee shall be at liberty to retain this debenture and the security created by or pursuant to this debenture, including all certificates and documents relating to the whole or any part of the Charged Property, for such period as the Security Agent shall deem necessary to provide the Security Agent and the Co-Funders with security against any such avoidance, reduction or order for refund; and
- (b) the Security Agent (and the Co-Funders) shall be entitled to recover the value or amount of such security or payment from the Borrower

subsequently as if such release, discharge or settlement had not occurred.

#### **12.4 Certificates**

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

#### **12.5 Rights cumulative**

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

#### **12.6 Waivers**

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

#### **12.7 Further exercise of rights**

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

#### **12.8 Delay**

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

#### **12.9 Single or partial exercise**

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

#### **12.10 Consolidation**

The restriction on the right of consolidation contained in section 93 of the Law of Property Act 1925 shall not apply to this debenture.

#### **12.11 Partial invalidity**

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

#### **12.12 Counterparts**

This debenture may be executed and delivered in any number of counterparts, each of which is an original and which together have the same effect as if each party had signed the same document.

#### **12.13 Third party rights**

Subject always to clause 1.6 above and as provided elsewhere in this debenture, a person who is not a party to this debenture shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce, or to enjoy the benefit of, any term of this debenture. This does not affect any right or remedy of a third party which exists, or is available, apart from the Act.

#### **12.14 Perpetuity period**

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

### **13. NOTICES**

#### **13.1 Service**

Any notice or other communication given under this debenture shall be in writing and shall be served by delivering it personally or by sending it by pre-paid first-class post or reputable international courier or by fax to the address or fax number and for the attention of the relevant party as set out in

Schedule 1 or such other address or fax number as may be notified in writing from time to time by the relevant party to the other party.

### **13.2 Receipt**

Receipt of any notice, given under clause 13.1 above, shall be deemed to be:

- (a) if delivered personally, at the time of delivery; or
- (b) in the case of pre-paid first-class letter or reputable international courier, 3 days from the date of posting; or
- (c) in the case of a fax, when received in legible form,  
but if deemed receipt occurs:
  - (i) before 9:00 am on a Business Day, the notice shall be deemed to have been received at 9:00 am on that day; or
  - (ii) after 5:00 pm on a Business Day or on a day that is not a Business Day, the notice shall be deemed to have been received at 9:00 am on the next Business Day.

### **13.3 Proof of service**

In proving service of a notice, it shall be sufficient to prove that the envelope containing such notice was addressed to the address of the relevant party as set out in Schedule 1 (or as otherwise notified by that party under clause 13.1 above) and delivered either:

- (a) to that address, or
- (b) into the custody of the postal authorities as a pre-paid first-class letter.

### **13.4 E-mail invalid**

Notice given under this debenture shall not be validly served if sent by e-mail.

## **14. GOVERNING LAW AND JURISDICTION**

### **14.1 Governing law**

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



#### **14.2 Jurisdiction**

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

#### **14.3 Other service**

The Borrower irrevocably consents to any process in any proceedings being served on it in accordance with the provisions of this debenture relating to service of notices. Nothing contained in this debenture 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 Notice details

The Borrower:

Flat Cap Hotels Limited  
The Vicarage,  
Knutsford,  
Cranage,  
Cheshire,  
CW4 8EF

For the attention of: Dominic Heywood  
and Oliver Heywood (Directors)

The Security Agent

Sancus (Jersey) Limited  
Windward House,  
La Route de la Liberation,  
St Helier,  
Jersey,  
E2 3BQ

For the attention of: Emilie Golding

## Schedule 2 Warranties

**1. OWNERSHIP OF CHARGED PROPERTY**

The Borrower is the legal and beneficial owner of the Charged Property free from any Encumbrance other than the Encumbrances created by this debenture and the Legal Charge, and the Encumbrances registered on the wholly owned subsidiaries of the Borrower at the date hereof.

**2. ADVERSE CLAIMS**

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

**3. ADVERSE COVENANTS**

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

### Schedule 3 Covenants

#### 1. NEGATIVE PLEDGE AND DISPOSAL RESTRICTIONS

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

- (a) create, purport to create or permit to subsist any Encumbrance on, or in relation to, any Charged Property other than any Encumbrances created by this debenture and the Legal Charge and the Encumbrances registered on the wholly owned subsidiaries of the Borrower at the date hereof; or
- (b) sell, assign, transfer, part with possession of or otherwise dispose of in any manner (or purport to do so) all or any part of, or any interest in, the Charged Property, except for the disposal in the ordinary course of business of any of the Charged Property subject to the floating charge created under this debenture; or
- (c) create or grant (or purport to create or grant) any interest in any Charged Property in favour of a third party.

#### 2. INSURANCE

##### 2.1 The Borrower shall:

- (a) insure and keep insured all of its undertaking and assets with reputable and responsible insurers previously approved by the Security Agent in such manner and to such extent as is reasonable and customary for an enterprise engaged in the same or similar business and in the same or similar localities against such risks and contingencies as the Security Agent shall from time to time request;
- (b) procure that the interest of the Security Agent is noted on all its policies of insurance in such manner as the Security Agent may in its absolute discretion require; and
- (c) duly and punctually pay all premiums and any other monies necessary for maintaining its insurance in full force and effect.

##### 2.2 The Borrower shall apply all monies received by virtue of any insurance of the whole or any part of the Charged Property:

- (a) in making good or in recouping expenditure incurred in making good any loss or damage; or
- (b) if the Security Agent in its discretion so requires, towards the discharge of the Secured Liabilities.

**3. NOTICE OF BREACH**

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

- (a) any warranty set out in Schedule 2; and
- (b) any covenant set out in this Schedule 3.

## **Schedule 4 Powers of Security Agent**

### **1. POWER TO REMEDY**

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

### **2. EXERCISE OF RIGHTS**

The rights of the Security Agent under paragraph 1 of this Schedule 4 are without prejudice to any other rights of the Security Agent under this debenture and the exercise of those rights shall not make the Security Agent liable to account as a mortgagee in possession.

### **3. POWER TO DISPOSE OF CHATTELS**

At any time after the security constituted by this debenture shall have become enforceable, the Security Agent or any Receiver:

- (a) may dispose of any chattels or produce found on any Property as agent for the Borrower; and
- (b) without prejudice to any obligation to account for the proceeds of any sale of such chattels or produce, shall be indemnified by the Borrower against any liability arising from such disposal.

### **4. PRIOR ENCUMBRANCES**

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

- (a) redeem such or any other prior Encumbrance or procure its transfer to itself; and
- (b) settle any account of the holder of any prior Encumbrance.

The settlement of any such account shall be conclusive and binding on the Borrower and all monies paid by the Security Agent to an encumbrancer in settlement of such an account shall, as from its payment by the Security Agent, be due from the Borrower to the Security Agent on current account and shall bear interest and be secured as part of the Secured Liabilities.

**5. INDULGENCE**

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

## Schedule 5 Enforcement

### 1. ENFORCEMENT EVENTS

This debenture shall be enforceable if:

- (a) any of the Secured Liabilities shall not be paid or discharged when the same ought to be paid or discharged by the Borrower (whether on demand or at scheduled maturity or by acceleration or otherwise, as the case may be); or
- (b) the Borrower shall be in breach of any of its obligations under this debenture or under any other agreement between the Borrower and the Security Agent and that breach (if capable of remedy) has not been remedied to the satisfaction of the Security Agent within 14 days of notice by the Security Agent to the Borrower to remedy the breach; or
- (c) the Borrower:
  - (i) becomes unable to pay its debts as they fall due; or
  - (ii) commences negotiations with any one or more of its creditors with a view to the general readjustment or rescheduling of its indebtedness; or
  - (iii) makes a general assignment for the benefit of, or a composition with, its creditors; or
- (d) the Borrower passes any resolution or takes any corporate action or a petition is presented or proceedings are commenced or any action is taken by any person for its winding-up, dissolution, administration or re-organisation or for the appointment of a receiver, administrative receiver, administrator, trustee or similar officer of it or of any or all of its revenues and assets; or
- (e) a distress, execution, attachment or other legal process is levied or enforced upon or sued against all or any part of the assets of the Borrower and remains undischarged for seven days,

and in any such event (whether or not the event is continuing), without prejudice to any other rights of the Security Agent, the powers of sale under the Law of Property Act 1925 shall immediately be exercisable and the Security Agent may in its absolute discretion enforce all or any part of the security created by this debenture as it sees fit.



**2. STATUTORY POWER OF SALE**

The powers of sale conferred upon mortgagees under the Law of Property Act 1925 shall, as between the Security Agent and a purchaser from the Security Agent, arise on and be exercisable at any time after the execution of this debenture, but the Security Agent shall not exercise such power of sale until the security constituted by this debenture has become enforceable under paragraph 1 of this Schedule 5.

**3. EXTENSION OF STATUTORY POWERS**

The statutory powers of sale, leasing and accepting surrenders conferred upon mortgagees under the Law of Property Act 1925 and/or by any other statute shall be exercisable by the Security Agent under this debenture and are extended so as to authorise the Security Agent whether in its own name or in that of the Borrower to make any lease or agreement for lease, accept surrenders of lease or grant any option of the whole or any part or parts of the freehold and leasehold property of the Borrower with whatever rights relating to other parts of it and containing whatever covenants on the part of the Borrower and generally on such terms and conditions (including the payment of money to a lessee or tenant on a surrender) and whether or not at a premium as the Security Agent thinks fit.

**4. PROTECTION OF THIRD PARTIES**

No purchaser, mortgagee or other person dealing with the Security Agent or any Receiver shall be concerned:

- (a) to enquire whether any of the Secured Liabilities have become due or payable or remain unpaid or undischarged, or whether the power the Security Agent or a Receiver is purporting to exercise has become exercisable; or
- (b) to see to the application of any money paid to the Security Agent or any Receiver.

**5. NO LIABILITY AS MORTGAGEE IN POSSESSION**

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

## **6. APPOINTMENT OF RECEIVER**

- 6.1 At any time after the security constituted by this debenture has become enforceable, or at the request of the Borrower, the Security Agent may without further notice:
- (a) appoint by way of deed, or otherwise in writing, any one or more person or persons to be a receiver or a receiver and manager of all or any part of the Charged Property; and
  - (b) (subject to section 45 of the Insolvency Act 1986) from time to time by way of deed, or otherwise in writing, remove any person appointed to be Receiver and may in like manner appoint another in his place.

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

- 6.2 The Security Agent may fix the remuneration of any Receiver appointed by it without the restrictions contained in section 109 of the Law of Property Act 1925 and the remuneration of the Receiver shall be a debt secured by this debenture which shall be due and payable immediately upon its being paid by the Security Agent.

## **7. POWERS ADDITIONAL**

- 7.1 The powers of sale and appointing a Receiver conferred by this debenture shall be in addition to all statutory and other powers of the Security Agent under the Insolvency Act 1986, the Law of Property Act 1925 or otherwise and shall be exercisable without the restrictions contained in sections 103 and 109 of the Law of Property Act 1925 or otherwise.
- 7.2 The power to appoint a Receiver (whether conferred by this debenture or by statute) shall be and remain exercisable by the Security Agent notwithstanding any prior appointment in respect of all or any part of the Charged Property.

## **8. AGENT OF THE BORROWER**

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

**9. POWERS OF RECEIVER**

Any Receiver appointed by the Security Agent under this debenture shall in addition to the powers conferred on him by the Law of Property Act 1925 and the Insolvency Act 1986 have power to do all such acts and things as an absolute owner could do in the management of such of the Charged Property over which the Receiver is appointed and in particular the powers set out in Schedule 6.

**10. ORDER OF APPLICATION OF PROCEEDS**

All monies received by the Security Agent or a Receiver in the exercise of any enforcement powers conferred by this debenture shall be applied:

- (a) first in paying all unpaid fees, costs and other liability incurred by or on behalf of the Security Agent (and any Receiver, attorney or agent appointed by it);
- (b) second in paying the remuneration of any Receiver (as agreed between him and the Security Agent);
- (c) third in or towards discharge of the Secured Liabilities in such order and manner as the Security Agent shall determine; and
- (d) finally in paying any surplus to the Borrower or any other person entitled to it.

**11. SECTION 109(8) LAW OF PROPERTY ACT 1925**

Neither the Security Agent nor any Receiver shall be bound (whether by virtue of section 109(8) of the Law of Property Act 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 as between any of the Secured Liabilities.

**12. SUSPENSE ACCOUNT**

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

**13. POWER OF ATTORNEY**

By way of security the Borrower irrevocably appoints the Security Agent and every Receiver separately to be the attorney of the Borrower and in its name

and on its behalf and as its act and deed to execute any documents, and do any acts and things which:

- (a) the Borrower is required to execute and do under this debenture; and/or
- (b) any attorney may deem proper or desirable in exercising any of the powers, authorities and discretions conferred by this debenture or by law on the Security Agent or any Receiver.

**14. RATIFICATION OF ACTS OF ATTORNEY**

The Borrower ratifies and confirms and agrees to ratify and confirm anything which any of its attorneys may do in the proper and lawful exercise or purported exercise of all or any of the powers, authorities and discretions referred to in paragraph 13 of this Schedule 5.

**15. APPOINTMENT OF AN ADMINISTRATOR**

15.1 The Security Agent may without notice to the Borrower appoint any one or more persons to be an administrator of the Borrower pursuant to paragraph 14 Schedule B1 of the Insolvency Act 1986 if this debenture becomes enforceable.

15.2 Any appointment under this paragraph 15 shall:

- (a) be in writing signed by a duly authorised signatory of the Security Agent, and
- (b) take effect, in accordance with paragraph 19 of Schedule B1 of the Insolvency Act 1986, when the requirements of paragraph 18 of that Schedule B1 are satisfied.

15.3 The Security Agent may (subject to any necessary approval from the court) end the appointment of an Administrator by notice in writing in accordance with this paragraph 15 and appoint under this paragraph a replacement for any Administrator whose appointment ends for any reason.

## **Schedule 6 Further powers of Receiver**

**1. TO REPAIR AND DEVELOP PROPERTIES**

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

**2. TO SURRENDER LEASES**

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

**3. TO CHARGE REMUNERATION**

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

**4. TO REALISE CHARGED PROPERTY**

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

**5. TO DISPOSE OF CHARGED PROPERTY**

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

**6. TO MAKE SETTLEMENTS**

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

**7. TO MAKE CALLS ON BORROWER MEMBERS**

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

**8. TO INSURE**

A Receiver may, if he thinks fit, but without prejudice to any indemnity contained in this agreement, effect with any insurer any policy or policies of insurance either in lieu or satisfaction of, or in addition to, such insurance.

**9. LAW OF PROPERTY ACT 1925**

A Receiver may exercise all powers provided for in the Law of Property Act 1925 in the same way as if he had been duly appointed under that act and exercise all powers provided for an administrative receiver in Schedule 1 of the Insolvency Act 1986.

**10. TO BORROW**

A Receiver may for any of the purposes authorised by this Schedule 6 raise money by borrowing from the Security Agent or from any other person on the security of all or any of the Charged Property in respect of which he is appointed upon such terms (including if the Security Agent shall consent to terms under which such security ranks in priority to this debenture) as he shall think fit.

**11. TO REDEEM PRIOR ENCUMBRANCES**

A Receiver may redeem any prior Encumbrance and settle and pass the accounts to which the Encumbrance relates and any accounts so settled and passed shall be conclusive and binding on the Borrower and the monies so paid will be deemed to be an expense properly incurred by him.

**12. INCIDENTAL POWERS**

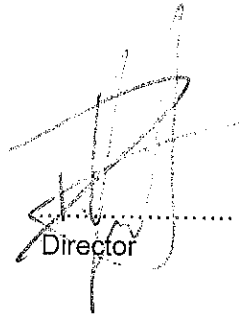
A Receiver may do all such other acts and things as he may consider incidental or conducive to any of the matters or powers in this Schedule 6 or which he lawfully may or can do as agent for the Borrower.

**13. SCOPE OF POWERS**

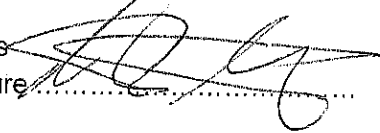
Any exercise of any of these powers may be on behalf of the Borrower, the directors of the Borrower (in the case of the power contained in paragraph 7 of this Schedule 6) or himself.

EXECUTED as a deed by  
FLAT CAP HOTELS LIMITED  
acting by  
in the presence of

)  
)  
)  
)



Director

Witness  
Signature 

Witness  
Name ... *SQUARE MITCHELL* ...

Address ... *11 PARK SQUARE, PRESTWICH*  
*MANCHESTER. M25 1EU* ...



**EXECUTED** as a deed by )  
**SANCUS (JERSEY) LIMITED** )  
acting by ) .....  
in the presence of ) Director

Witness  
Signature .....

Witness  
Name .....

Address .....