

DATED

2019

(1) [INSERT SPV NAME]

- and -

(2) GODWIN CAPITAL NO. 6 LIMITED

WAKALA AGREEMENT

THIS AGREEMENT is dated

2019

PARTIES

- (1) [INSERT SPV NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (the “Agent”); and
- (2) **GODWIN CAPITAL NO. 6 LIMITED** incorporated and registered in England and Wales under company number 11705252 whose registered office is at 4 Castle House, Kirtley Drive, Castle Marina, Nottingham NG7 1LD (the “Principal”).
- (3) (together the “Parties” and each a “Party”).

BACKGROUND

- (A) The Agent is a subsidiary of the Principal.
- (B) The Principal has entered into a Wakala arrangement with certain investors for an aggregate principal investment amount of £20,000,000 constituted by the Wakala Note Instruments for the purpose of (among others) funding the acquisition and Development of the Property (all defined below).
- (C) Accordingly, the Principal wishes to appoint the Agent as the Principal’s sub-agent to perform and duly discharge the duties and responsibilities required for the acquisition and Development of the Property in accordance with the terms and conditions of this agreement.

AGREED TERMS

1. Definitions and interpretation

1.1 Definitions

The following definitions apply in this agreement.

“2 Year Deferred Income Wakala Instrument”	the investment instrument based on Wakala constituting the 2 Year Deferred Income Wakala Notes dated [INSERT DATE];
“2 Year Deferred Income Wakala Notes”	the Wakala Notes 2019 constituted by the 2 Year Deferred Income Wakala Instrument;
“2 Year Biannual Income Wakala Instrument”	the investment instrument based on Wakala constituting the 2 Year Biannual Income Wakala Notes dated [INSERT DATE];
“2 Year Biannual Income Wakala Notes”	the Wakala Notes 2019 constituted by the 2 Year Biannual Income Wakala Instrument;
“AAOIFI”	a not-for-profit international standard-setting body that issues Shariah, governance, accounting, auditing and ethics Standards for the Islamic finance industry;
“Actual Profit”	the profit actually generated by the Agent in respect of the Investment;
“Advance Profit Payment”	the amount payable periodically by the Agent to the Principal on account towards the Actual Profit;

“Availability Period”	the period in which the Investment Amount is available for draw down as agreed in writing by the Parties;
“Business Day”	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;
“Development”	the development of the Property by the Agent;
“Expected Profit”	the profit amount expected to be generated by the Agent from the Investment, calculated based on the Expected Profit Rate and Investment Amount;
“Expected Profit Rate”	the annual rate of return anticipated to be generated from the Investment by the Agent, being [INSERT %];
Facility	the finance facility made available under this agreement;
“Investment Documents”	this agreement, the Wakala Note Instrument Document, the Information Memorandum of the Wakala Note Instruments, the relevant trust deed, Security documents in respect of the Investment and any other document designated as such by the Principal and the Agent;
“Investment Amount”	the principal amount drawn or to be drawn by the Agent under this agreement or (as the context requires) the principal amount outstanding with the Agent for the time being under the Investment;
“Investment”	the utilisation of the Investment Amount for the Development with the aim of generating profit in accordance with the terms of this agreement;
“Shariah Compliance”	the adherence to Shariah requirements as defined by the Shariah Standards of AAOIFI and the resolutions of the Shariah Scholar;
“Shariah Scholar”	an independent scholar specialised in Islamic jurisprudence and able to opine on the Shariah compliance matters of the Wakala Note Instruments. For the avoidance of doubt, the appointed Shariah Scholar for the Wakala Note Instruments is Sheikh Dr. Mohamed Ali Elgari;
“Wakala”	an agency arrangement where one party (Principal) appoints the other party (Agent) to undertake a certain activity of the Principal’s behalf in accordance with the Shariah Compliance requirements;
“Wakala Note Instruments”	together the: <ul style="list-style-type: none"> (a) 2 Year Deferred Income Wakala Instrument; and (b) 2 Year Biannual Income Wakala Instrument
“Wakala Notes Period”	the published tenor of the Wakala Note Instruments which is two years;
“Maturity Date”	the last Business Day of the Wakala Notes Period, being [INSERT DATE];

“Maturity Proceeds”	the amount payable to the Principal on the Maturity Date, being the sum of the Investment Amount and the Actual Profit, capped at the Expected Profit;
“Property”	the property known as [INSERT DETAILS OF PROPERTY];
“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;
“Sterling” and “£”	the lawful currency of the UK;
“Total Facility Amount”	the maximum principal amount made available by the Principal as specified in clause 7.1.

1.2 Interpretation

1.2.1 In this agreement:

- (a) clause and paragraph headings shall not affect the interpretation of this agreement;
- (b) 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) and that person's personal representatives, successors, permitted assigns and permitted transferees;
- (c) a reference to a **holding company** or a **subsidiary** means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006 and a company shall be treated, for the purposes only of the membership requirement contained in sections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee) by way of security or in connection with the taking of security, or (b) its nominee. In the case of a limited liability partnership which is a subsidiary of a company or another limited liability partnership, section 1159 of the Companies Act 2006 shall be amended so that: (a) references in sections 1159(1)(a) and (c) to voting rights are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and (b) the reference in section 1159(1)(b) to the right to appoint or remove a majority of its board of directors is to the right to appoint or remove members holding a majority of the voting rights;
- (d) unless the context otherwise requires, words in the singular shall include the plural and, in the plural, shall include the singular;
- (e) unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;
- (f) a reference to a party shall include that party's successors, permitted assigns and permitted transferees;

- (g) a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;
- (h) a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision;
- (i) a reference to a time of day is to London time;
- (j) a reference to **writing** or **written** includes fax and email;
- (k) an obligation on a party not to do something includes an obligation not to allow that thing to be done;
- (l) a reference to a **Finance Document** (or any provision of it) or to any other agreement or document referred to in any Finance Document is a reference to Finance Document, that provision or such other agreement or document as amended (in each case, other than in breach of the provisions of this agreement) from time to time;
- (m) unless the context otherwise requires, a reference to a clause is to a clause of this agreement;
- (n) 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;
- (o) a reference to **directly** or **indirectly** means (without limitation) either alone or jointly with any other person, whether on his own account or in partnership with another (or others) as the holder of any interest in or as officer, employee or agent of or consultant to any other person;
- (p) a reference to an **amendment** includes a novation, re-enactment, supplement or variation (and **amended** shall be construed accordingly);
- (q) a reference to **assets** includes present and future properties, undertakings, revenues, rights and benefits of every description;
- (r) a reference to an **authorisation** includes an approval, authorisation, consent, exemption, filing, licence, notarisation, registration and resolution;
- (s) a reference to a **certified copy** of a document means a copy certified to be a true, complete and up-to-date copy of the original document, in writing and signed by a director or the secretary of the party delivering the document;
- (t) a reference to **continuing** in relation to an Event of Default means an Event of Default that has not been remedied or waived;
- (u) a reference to **determines** or **determined** means, unless the contrary is indicated, a determination made at the discretion of the person making it;
- (v) a reference to a **disposal** of any asset, undertaking or business includes a sale, lease, licence, transfer, loan or other disposal by a person of that asset, undertaking or business (whether by a voluntary or involuntary single transaction or series of transactions); and
- (w) 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.

2. Appointment of Agent

- 2.1 The Principal hereby appoints the Agent as its agent to invest the Investment Amount in accordance with the terms and conditions of the Investment Documents.
- 2.2 The Agent shall invest the Investment Amount with the aim of generating, at minimum, the Expected Profit on the basis of restricted Wakala. Therefore, the Agent shall use the Investment Amount only to fund the acquisition and the Development of the Property.
- 2.3 In return for the Agent's services under this agreement, the Agent shall be entitled to any profit that exceeds the Expected Profit as an incentive and reward for achieving the Expected Profit.

3. Appointment of Sub-agent(s)

- 3.1 The Agent is entitled, as it deems fit, to appoint sub-agent(s) to assist in performing and duly discharging, part or all, of the duties and responsibilities required for the acquisition and Development of the Property, strictly in accordance with the terms and conditions of the Investment Documents.
- 3.2 In return for any services provided by sub-agent(s) in relation to the acquisition and Development of the Property, the sub-agent(s) will be allowed to charge a fee to the Agent, the amount of which will be based on the complexity and scale of the rendered services and will be at an arms-length market rate.
- 3.3 The Principal acknowledges and agrees with the appointment(s) of sub-agent(s) at the Agent's discretion in accordance with clauses 3.1 and 3.2.

4. Wakala Terms

- 4.1 The Agent shall arrange for payment and collection of the funds arising from the making and realisation of Investment transactions on behalf of the Principal and is authorised to execute and deliver any purchase agreements, sale agreements or other instruments, contracts or transfers necessary or desirable in connection therewith, in accordance with the Shariah Compliance requirements.
- 4.2 For the purpose of calculating the Actual Profit, the Agent shall deduct all relevant costs and expenses pertaining to the Investment subject to furnishing appropriate evidence of payment for such costs and expenses (e.g. invoices, receipts etc.) to the Principal.
- 4.3 In connection with its powers, discretions, authorities and duties under this agreement, the Agent shall act solely as the agent of the Principal to the extent expressly provided herein and shall not otherwise be regarded as agent for and on behalf of the Principal in any other respect whatsoever. Except as expressly provided for in this agreement or where required by law, the Agent shall not have any authority to represent or bind the Principal, or purport to do so.
- 4.4 The Agent undertakes to the Principal that, in performing its obligations under this agreement, it shall:
 - 4.4.1 look after the interests of the Principal and act dutifully and in good faith;
 - 4.4.2 administer the Investment with the same degree of care as it exercises with regard to similar investments which it would administer on its own account;
 - 4.4.3 not enter into any transaction that may, in its reasonable judgment, return a profit lower than the Expected Profit; and

4.4.4 not do, or refrain from doing, any action that may adversely affect the achievement of the Expected Profit.

4.5 The Principal acknowledges that it, as principal, shall bear all the risks and shall be fully liable for any losses associated with any Investment, including the total loss of the Investment Amount, provided that all the actions of the Agent are lawfully performed and made in accordance with the Investment Documents.

5. Profit Monitoring

5.1 The Agent will monitor the performance of the Investment on a daily basis to ensure that the Actual Profit remains equal to, or higher than, the Expected Profit. If at any time the Agent believes that the Actual Profit will be less than the Expected Profit, the Agent shall notify the Principal immediately, offering either:

5.1.1 to pay within 14 Business Days the Investment Amount and any profit accrued as at the date of such notice; or

5.1.2 to continue with the Investment with a lower expected profit (the “**Revised Expected Profit**”).

5.2 If the Principal accepts the Agent’s offer to terminate the Investment in accordance with clause 5.1.1, it shall notify the Agent in writing of its acceptance within [15] Business Days from the date of the Agent’s notification and the Investment shall be terminated. If the Agent does not receive the Principal’s acceptance of the Agent’s offer by the end of the period stipulated in the notice, the Principal shall be deemed to have agreed to the Revised Expected Profit.

5.3 If the Agent reasonably believes, at any point of time, that the Investment Amount is at high risk of loss, the Agent shall immediately inform the Principal, take all relevant measures to prevent the losses and, return the full Investment Amount, together with the accrued but unpaid profit to the Principal.

6. Profit Payments

6.1 For the 2 Year Biannual Income Wakala Notes, the Agent shall make biannual Advance Profit Payments, on account towards the Actual Profit, to the Principal throughout the Wakala Notes Period. The Agent shall pay the Advance Profit Payments on [INSERT DATES] in each year. The Agent’s payment of the Advance Profit Payments will constitute its confirmation that the Expected Profit is achievable.

6.2 For the avoidance of doubt, the Advance Profit Payment shall be calculated according to the following formula:

$$\text{Advance Profit Payment} = \frac{IA \times EPR \times N}{365}$$

Where

“IA” means ‘Investment Amount’

“EPR” means ‘Expected Profit Rate’

“N” is the no. of days in the period for which the Advance Profit Payment is being made

6.3 On the Maturity Date, the Agent shall pay the Maturity Proceeds to the Principal taking into account the Advance Profit Payments (if any) paid by the Agent during the Wakala Notes Period. This agreement shall be terminated thereafter.

7. Draw down

- 7.1 Subject to the provisions hereof, the Agent may draw down the Investment Amount in a single amount on any Business Day. To do this, the Agent shall give the Principal at least one Business Day's prior notice of the date on which the Agent wants to draw down the Investment Amount. The Investment Amount shall not exceed the Total Facility Amount of £ [INSERT AMOUNT].

8. Conditions of Drawdown

- 8.1 The Principal shall only be obliged to comply with clause 7 if the Principal has received from the Agent in form and substance satisfactory to it a copy of a resolution of the Agent's board of directors:
- 8.1.1 approving the terms of and the transactions contemplated by, the Investment Documents;
 - 8.1.2 authorising a specified person or persons to execute the Investment Documents to which it is a party (where applicable); and
 - 8.1.3 authorising a specified person or persons, on its behalf, to sign and/or dispatch all documents and notices (including any drawdown request) to be signed and/or despatched by it under or in connection with the Investment Documents to which it is a party (where applicable).

9. Costs related to the Investment Documents

- 9.1 The Agent shall promptly on demand pay the Principal the amount of all costs and expenses of whatever nature (together with any value added tax on them) that the Principal incurs in connection with the negotiation and preparation, amendment, extension, alteration, preservation and enforcement of the Investment Documents.
- 9.2 The Agent shall pay any stamp, documentary and other similar duties and taxes to which the Investment Documents may be subject or give rise and shall indemnify the Principal against any losses or liabilities which it may incur as a result of any delay or omission by the Agent in paying any such duties or taxes.

10. Indemnity of the Agent

- 10.1 The Agent shall not be liable to the Principal in contract or tort or otherwise for any direct or indirect financial or economic losses, costs, liabilities or expenses (including, without limitation, loss of profit, loss of savings or loss of goodwill) save for those directly arising as a result of the Agent's gross negligence, wilful default, fraud or breach of any of the terms of this agreement or any Investment Document and, in particular, the Agent shall not be liable for any failure of the Principal to duly and punctually perform any of its duties or obligations under this agreement or under any Investment Document.

11. Payment Obligation

- 11.1 Subject to the provisions hereof, the Agent shall pay the Investment, all accrued but unpaid profit accrued and any other amounts outstanding under the Investment Documents on demand.

12. Payments

- 12.1 All payments made by the Agent under the Investment Documents shall be in Sterling and in immediately available cleared funds to the Principal at its bank account (account number [INSERT], sort code [INSERT], [BANK] of [ADDRESS]) or such other account as the Principal may notify the Agent.

- 12.2 If any payment becomes due on a day which is not a Business Day, the due date of such payment will be extended to the next succeeding Business Day, or if that Business Day falls in the following calendar month, such due date shall be the immediately preceding Business Day.
- 12.3 All payments made by the Agent under the Investment Documents shall be made in full, without set-off, counterclaim or condition and free and clear of and without any deduction or withholding, provided that, if the Agent is required under the Investment Documents, by law or regulation to make such deduction or withholding, it shall:
- 12.3.1 ensure that the deduction or withholding does not exceed the minimum amount legally required;
 - 12.3.2 pay to the relevant taxation, or other authorities, as appropriate, the full amount of the deduction or withholding;
 - 12.3.3 furnish to the Principal, within the period for payment permitted by the relevant law, either:
 - (a) an official receipt of the relevant taxation authorities involved in respect of all amounts so deducted or withheld; or
 - (b) if such receipts are not issued by the taxation authorities concerned on payment to them of amounts so deducted or withheld, a certificate of deduction or equivalent evidence of the relevant deduction or withholding; and

13. Representations, warranties and undertakings

- 13.1 The Agent represents and warrants, on the date of this agreement and on the date the Investment is drawn down pursuant to clause 7.1:
- 13.1.1 all necessary corporate and other action has been taken to authorise it to enter into the Investment Documents (where applicable) and perform the transactions contemplated in them;
 - 13.1.2 no limit on its powers or those of its directors will be exceeded as a result of any drawing made pursuant to this agreement or grant of Security pursuant to the Investment Documents; and
 - 13.1.3 its obligations under the Investment Documents are legal, valid, binding and enforceable;

14. Certificates

- 14.1 Subject to the provisions of this agreement, if the Principal issues any certificate, determination or notification of a rate or any amount payable under an Investment Document, it shall be conclusive evidence (in the absence of manifest error) of the matter to which it relates and shall contain reasonable details of the basis of determination.

15. Remedies, waivers, amendments and consents

- 15.1 No amendment of any Investment Document shall be effective unless it is in writing and signed by, or on behalf of, each party to it (or its authorised representative).
- 15.2 A waiver of any right or remedy under any Investment Document or by law, or any consent given under any Finance Document, is only effective if given in writing by the waiving or consenting Party and shall not be deemed a waiver of any other breach or default. It only applies in the circumstances for which it is given and shall not prevent the Party giving it from subsequently relying on the relevant provision.

15.3 A failure or delay by a Party to exercise any right or remedy provided under any Investment Document or by law shall not constitute a waiver of that or any other right or remedy, prevent or restrict any further exercise of that or any other right or remedy or constitute an election to affirm any Investment Document. No single or partial exercise of any right or remedy provided under any Investment Document or by law shall prevent or restrict the further exercise of that or any other right or remedy. No election to affirm any Investment Document by the Principal shall be effective unless it is in writing.

15.4 The rights and remedies provided under the Investment Documents are cumulative and are in addition to, and not exclusive of, any rights and remedies provided by law.

16. Severance

If any provision (or part of a provision) of any Investment Document 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 the Investment Documents.

17. Assignment

Neither Party may assign any of its rights or transfer any of its rights and obligations under this agreement without the written consent of the other.

18. Notices

18.1 Any notice or other communication given to a Party under or in connection with the Investment Documents shall be:

18.1.1 in writing;

18.1.2 delivered by hand, by pre-paid first-class post or other next working day delivery service or sent by fax; and

18.1.3 sent to:

(a) the Agent at its registered office address;

(b) the Principal at its registered office address,

or to any other address or fax number as is notified in writing by one Party to the other from time to time.

18.2 Any notice or other communication given by either party shall be deemed to have been received:

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

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

18.2.3 if sent by fax, when received in legible form.

A notice or other communication given as described in clause 18.2.1 on a day that is not a Business Day, or after normal business hours, in the place it is received, shall be deemed to have been received on the next Business Day.

19. Counterparts

19.1 Each Investment Document may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute one agreement.

19.2 No counterpart shall be effective until each party has executed at least one counterpart.

20. Third party rights

20.1 A person who is not a party to this agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this agreement. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

20.2 The rights of the parties to rescind or agree any amendment or waiver under this deed are not subject to the consent of any other person.

21. Disputes and Audit

21.1 The Principal shall have the right to appoint an independent auditor (at the Agent's expense) to:

21.1.1 Verify the financial accounts of the Agent or any of its books, records and profit calculations pertaining to the Wakala Note Instruments;

21.1.2 Validate whether the Agent's board of directors or any of its directors have breached any of the terms and conditions of the Investment Documents, or any relevant material contract, or made any negligent business decisions or misconduct; and

21.1.3 Provide a written report addressed to the Principal and the noteholders of the Wakala Note Instruments on the aforementioned issues. The findings of such report shall be binding on each of the Principal, the Agent and the noteholders. If the report shows that the Agent's accounts/records/calculations are incorrect, or its board of directors has breached the terms of the Investment Documents, or made any negligent business decision or misconduct, then such issues shall be corrected, and the relevant corrective action/payment shall be taken/made to reflect the correction, subject to fluffing the Shariah Compliance requirements.

21.2 The Agent shall provide, at its own cost, all such assistance, information and papers as the auditors, acting reasonably, may request.

22. Shariah Compliance

22.1 The Investment Documents have been prepared in line with AAOIFI Shariah Standards (where applicable) and the rulings and guidance given by the Shariah Scholar, to which both Parties agree to be bound.

22.2 Both Parties hereby confirm and agree that they:

22.2.1 do not have any objection, nor will they raise any objections, as to matters of Shariah Compliance in respect of or otherwise in relation to any of the provisions of any Investment Document; and

22.2.2 submit exclusively to the Shariah Scholar's interpretation of the applicable Shariah rules in relation to the Investment Documents.

22.2.3 allow the opinion of the Shariah Scholar to be implemented by the courts of competent jurisdiction (if required).

23. Governing law and jurisdiction

23.1 This agreement 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 in accordance with the law of England and Wales.

23.2 Each Party irrevocably agrees that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction over any dispute or claim that arises out of, or in connection with, this agreement or its subject matter or formation (including non-contractual disputes or claims). Nothing in this clause shall limit the right of the Principal to take proceedings against the Agent 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 The Parties to this agreement recognise and agree that the principle of the payment of interest is repugnant to Shariah and accordingly, to the extent that any legal system would (but for the provisions of this clause) impose (whether by contract or by statute) any obligation to pay interest, the Parties hereto hereby irrevocably and unconditionally expressly waive and reject any entitlement to recover interest from each other.

This agreement has been entered into on the date stated at the beginning of it.

SIGNED as a **DEED** by **GODWIN CAPITAL NO.6 LIMITED** acting by a director in the presence of:

.....

Witness signature

.....

Witness name

.....

Witness address

.....

.....

.....

Witness occupation

.....

SIGNED as a **DEED** by **[INSERT GODWIN SPV NAME]** acting by a director in the presence of:

.....

Witness signature

.....

Witness name

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Witness address

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Witness occupation

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