

MR01

Particulars of a charge

153653/13

Laserform

A fee is payable with this form.
Please see 'How to pay' on the
last page

You can use the WebFiling service to file this form online
Please go to www.companieshouse.gov.uk

☒ **What this form is for**
You may use this form to register
a charge created or evidenced by
an instrument

☒ **What this form is NOT for**
You may not use this form to
register a charge where there is no
instrument Use form MR02

For further information, please
refer to our guidance at
www.companieshouse.gov.uk

This form **must be delivered to the Registrar for registration within 21 days** beginning with the day after the date of creation of the charge. If the form is delivered outside of the 21 days it will be rejected unless it is accompanied by a court order extending the time for delivery

☒ You **must** enclose a certified copy of the instrument with this form.
scanned and placed on the public record **Do not send the original**



LD2 08/07/2015 #97
COMPANIES HOUSE

WEDNESDAY

1 Company details

Company number 0 2 6 7 0 2 7 3

Company name in full Berkley Estates London Limited

For official use

→ **Filing in this form**
Please complete in typescript or in
bold black capitals

All fields are mandatory unless
specified or indicated by *

2 Charge creation date

Charge creation date 0 3 / 0 7 / 2 0 1 5

3 Names of persons, security agents or trustees entitled to the charge

Please show the names of each of the persons, security agents or trustees
entitled to the charge

Name Lloyds Bank plc (as security agent)

Name

Name

Name

If there are more than four names, please supply any four of these names then
tick the statement below

☐ I confirm that there are more than four persons, security agents or
trustees entitled to the charge

MR01

Particulars of a charge

4

Brief description

Please give a short description of any land, ship, aircraft or intellectual property registered or required to be registered in the UK subject to a charge (which is not a floating charge) or fixed security included in the instrument

Brief description

None

Please submit only a short description if there are a number of plots of land, aircraft and/or ships, you should simply describe some of them in the text field and add a statement along the lines of, "for more details please refer to the instrument"

Please limit the description to the available space

5

Other charge or fixed security

Does the instrument include a charge (which is not a floating charge) or fixed security over any tangible or intangible or (in Scotland) corporeal or incorporeal property not described above? Please tick the appropriate box

☐ Yes

☒ No

6

Floating charge

Is the instrument expressed to contain a floating charge? Please tick the appropriate box

☐ Yes Continue

☒ No Go to **Section 7**

Is the floating charge expressed to cover all the property and undertaking of the company?

☐ Yes

7

Negative Pledge

Do any of the terms of the charge prohibit or restrict the company from creating further security that will rank equally with or ahead of the charge?
Please tick the appropriate box

☒ Yes

☐ No

8

Trustee statement ①

You may tick the box if the company named in Section 1 is acting as trustee of the property or undertaking which is the subject of the charge

☐

① This statement may be filed after the registration of the charge (use form MR06)

9

Signature

Please sign the form here

Signature

Signature

X BERWIN LEIGHTON PAISNER LLP X

This form must be signed by a person with an interest in the charge

MR01**Particulars of a charge****Presenter information**

You do not have to give any contact information, but if you do, it will help Companies House if there is a query on the form. The contact information you give will be visible to searchers of the public record.

Contact name ABHA/ERBT/L0200 00167

Company name Berwin Leighton Paisner LLP

Address Adelaide House

London Bridge

Post town London

County/Region

Postcode E C 4 R 9 H A

Country

DX 92 LONDON/CHANCERY LN

Telephone +44 (0)20 3400 4196

**Certificate**

We will send your certificate to the presenter's address if given above or to the company's Registered Office if you have left the presenter's information blank.

**Checklist**

We may return forms completed incorrectly or with information missing.

Please make sure you have remembered the following

- ☐ The company name and number match the information held on the public Register
- ☐ You have included a certified copy of the instrument with this form
- ☐ You have entered the date on which the charge was created
- ☐ You have shown the names of persons entitled to the charge
- ☐ You have ticked any appropriate boxes in Sections 3, 5, 6, 7 & 8
- ☐ You have given a description in Section 4, if appropriate
- ☐ You have signed the form
- ☐ You have enclosed the correct fee
- ☐ Please do not send the original instrument, it must be a certified copy

**Important information**

Please note that all information on this form will appear on the public record.

**How to pay**

A fee of £13 is payable to Companies House in respect of each mortgage or charge filed on paper.

Make cheques or postal orders payable to 'Companies House'

**Where to send**

You may return this form to any Companies House address. However, for expediency, we advise you to return it to the appropriate address below.

For companies registered in England and Wales
The Registrar of Companies, Companies House,
Crown Way, Cardiff, Wales, CF14 3UZ
DX 33050 Cardiff

For companies registered in Scotland:
The Registrar of Companies, Companies House,
Fourth floor, Edinburgh Quay 2,
139 Fountainbridge, Edinburgh, Scotland, EH3 9FF
DX ED235 Edinburgh 1
or LP - 4 Edinburgh 2 (Legal Post)

For companies registered in Northern Ireland:
The Registrar of Companies, Companies House,
Second Floor, The Linenhall, 32-38 Linenhall Street,
Belfast, Northern Ireland, BT2 8BG
DX 481 N R Belfast 1

**Further information**

For further information, please see the guidance notes on the website at www.companieshouse.gov.uk or email enquiries@companieshouse.gov.uk

This form is available in an alternative format. Please visit the forms page on the website at www.companieshouse.gov.uk



FILE COPY

CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 2670273

Charge code: 0267 0273 0011

The Registrar of Companies for England and Wales hereby certifies that a charge dated 3rd July 2015 and created by BERKLEY ESTATES LONDON LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 8th July 2015.

DL

Given at Companies House, Cardiff on 15th July 2015



Companies House



**THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES**

We hereby certify this to be
a true copy of the original

DATED 3 July 2015

BERWIN LEIGHTON PAISNER LLP
Berwin Leighton Paisner LLP
Adelaide House
London Bridge
London EC4R 9HA

BERKLEY ESTATES LONDON LIMITED

as Chargor

LLOYDS BANK PLC

as Security Agent

ASSIGNMENT OF SUBORDINATED LOAN AGREEMENTS



Berwin Leighton Paisner LLP
Adelaide House London Bridge London EC4R 9HA
Tel +44 (0)20 3400 1000 Fax +44 (0)20 3400 1111

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DATED 3 July 2015

PARTIES

- (1) **BERKLEY ESTATES LONDON LIMITED** (company number 02670273) whose registered office is at 55 Baker Street, London W1U 7EU (the "**Chargor**")
- (2) **LLOYDS BANK PLC** as security trustee for the Finance Parties (the "**Security Agent**")

BACKGROUND

- (A) The Finance Parties have agreed to arrange the advance or to continue to arrange the advance of monies or otherwise arrange credit or afford other financial facilities to the Borrowers and/or others on the security created by this Deed
- (B) The Chargor has agreed to charge certain of its assets as security to the Finance Parties as set out in this Deed

OPERATIVE PROVISIONS

1 **DEFINITIONS AND INTERPRETATION**

1.1 **Definitions**

In this Deed

"**Act**" means the Law of Property Act 1925

"**Borrowers**" means each of the Senior Borrowers and the Mezzanine Borrowers

"**Charged Assets**" means each and all of the assets, property, undertaking and other interests from time to time assigned or charged or intended to be assigned or charged by this Deed and the subject matter of each of them.

"**Deed of Subordination**" means the deed of subordination dated on or around the date of this Deed made between the Security Agent (1), the Borrowers (2) and the Chargor (3)

"**Event of Default**" means each of a Senior Event of Default or a Mezzanine Event of Default.

"**Finance Document**" means each of a Senior Finance Document and a Mezzanine Finance Document.

"**Finance Party**" means each Senior Finance Party and each Mezzanine Finance Party

"**Intercreditor Agreement**" means an intercreditor agreement dated on or about the date of this Deed between, amongst others, (1) the Security Agent and (2) the Chargor and any agreement entered into under or supplemental to it or amending, restating or novating it.

"**Mezzanine Borrowers**" means each party listed in Schedule 1 (*Borrowers*)

"Mezzanine Event of Default" means an "Event of Default" under and as defined in the Mezzanine Facility Agreement

"Mezzanine Facility Agreement" means a facility agreement dated on or about the date of this Deed and made between, amongst others, (1) the Mezzanine Lenders and (2) the Mezzanine Borrowers and any agreement entered into under or supplemental to it or amending, restating or novating it

"Mezzanine Finance Document" means a "Finance Document" under and as defined in the Mezzanine Facility Agreement

"Mezzanine Finance Party" means a "Finance Party" under and as defined in the Mezzanine Facility Agreement

"Mezzanine Lenders" means the "Original Lenders" listed in Schedule 1, Part II (*The Original Lenders*) in the Mezzanine Facility Agreement

"Mezzanine Obligor" means a "Transaction Obligor" under and as defined in the Mezzanine Facility Agreement.

"Obligor" means each of a Senior Obligor and a Mezzanine Obligor

"Party" means a party to this Deed

"Receiver" means a receiver or receiver and manager, administrator or administrative receiver of the whole or any part of the Charged Assets and appointed by the Security Agent under this Deed (whether sole, joint and/or several and including any substitute)

"Secured Liabilities" means all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally or in any capacity whatsoever) of each Obligor to any Finance Party under each Finance Document.

"Security" means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect

"Senior Borrowers" means each party listed Schedule 1 (*Borrowers*).

"Senior Event of Default" means an "Event of Default" under and as defined in the Senior Facility Agreement

"Senior Facility Agreement" means a facility agreement dated on or about the date of this Deed and made between, amongst others, (1) the Security Agent and (2) the Senior Borrowers and any agreement entered into under or supplemental to it or amending, restating or novating it

"Senior Finance Document" means a "Finance Document" under and as defined in the Senior Facility Agreement

"Senior Finance Party" means a "Secured Party" under and as defined in the Senior Facility Agreement.

"Senior Obligor" means a "Transaction Obligor" under and as defined in the Senior Facility Agreement.

"Subordinated Debt" has the meaning given to it in the Deed of Subordination

"Subordinated Loan Agreement" means each loan agreement details of which are specified in Schedule 2 (*Subordinated Loan Agreements*) and any other loan agreement between the Chargor (as lender) and any Borrower (as borrower)

1 2 Construction

1.2 1 Unless the contrary intention is expressed, defined or interpreted all defined terms in the Senior Facility Agreement shall have the same meaning here

1 2 2 The construction provisions set out at clause 1 2 (Interpretation) and clause 1 3 (Currency symbols and definitions) of the Senior Facility Agreement shall apply equally to this Deed.

1 2 3 Unless the contrary intention appears, references in this Deed to **"insolvency"** includes any of the following or any steps in relation to the following:

- (a) any insolvency, bankruptcy, liquidation, reorganisation, administration or dissolution,
- (b) any voluntary arrangement or assignment for the benefit of creditors; or
- (c) any similar event

1 2 4 If any provision of this Deed shall conflict with any term of the Senior Facility Agreement the relevant term of the Senior Facility Agreement shall prevail

2 COVENANT FOR PAYMENT

2 1 Covenant to pay

Subject to Clause 12.2 (*Limited recourse*), the Chargor covenants with the Security Agent that it will

- (a) on demand, pay and discharge each and all of the Secured Liabilities when due and payable in accordance with the terms of the Finance Documents; and
- (b) within three Business Days' of demand, indemnify and keep each Finance Party indemnified against any cost, loss or liability incurred by any of them as a result of a failure by the Chargor to pay any amount due under this Deed on its due date

2.2 Survival of obligations

The payment obligations of the Chargor under the Finance Documents shall survive the enforcement of any part of the Charged Assets

3 SECURITY

3 1 General

All the security created under this Deed is created in favour of the Security Agent as continuing security for the payment and discharge of the Secured Liabilities with full title guarantee.

3 2 **Subordinated Debt**

The Chargor assigns absolutely subject to the provisions of Clause 10 (*Discharge*) all of its rights and interests including all rights of enforcement of the same.

- (a) in respect of the Subordinated Debt, and
- (b) under each Subordinated Loan Agreement

4 **PERFECTION OF SECURITY**

Further assurance

The Chargor shall execute and do at its own cost and in such form as is reasonably required by the Security Agent

- (a) such further additional mortgages, charges, assignments, transfers and conveyances; and
- (b) such assurances, deeds, documents, acts and things,

as the Security Agent may reasonably require to perfect or protect the security created or intended to be created by this Deed and/or to facilitate or effect any dealing with the Charged Assets in connection with this Deed

5 **REPRESENTATIONS AND WARRANTIES**

The Chargor makes the representations and warranties set out in this Clause 5 (*Representations and warranties*) to the Security Agent

5 1 **Status**

- 5 1 1 It is a corporation, duly incorporated and validly existing under the law of its jurisdiction of incorporation
- 5 1 2 It has the power to own its assets and carry on its business as it is being conducted

5 2 **Binding obligations**

The obligations expressed to be assumed by it in this Deed are, subject to the Legal Reservations, legal, valid, binding and enforceable obligations

5 3 **Non-conflict**

The entry into and performance by it of, and the transactions contemplated by, this Deed and the granting of the Security created or evidenced or expressed to be created or evidenced under this Deed do not and will not conflict with:

- (a) any law or regulation applicable to it,
- (b) its constitutional documents; or
- (c) any agreement or instrument binding upon it or any of its assets or constitute a default or termination event (however described) under any such agreement or instrument, in a manner which could reasonably be

expected to adversely affect the interests of the Finance Parties under this Deed.

5.4 Power and authority

5.4.1 It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, this Deed and the transactions contemplated by this Deed.

5.4.2 No limit on its powers will be exceeded as a result of the grant of security contemplated by this Deed

5.5 Validity and admissibility in evidence

Each authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration required

(a) to enable it lawfully to enter into, exercise its rights and comply with its obligations under this Deed, and

(b) to make this Deed admissible in evidence in its jurisdiction of incorporation and in England and Wales,

has been obtained or effected and is in full force and effect

5.6 Governing law and enforcement

5.6.1 The choice of English law will be recognised and enforced in its jurisdiction of incorporation

5.6.2 Any judgment obtained in England in relation to a Finance Document will be recognised and enforced in its jurisdiction of incorporation

5.7 No proceedings pending or threatened

No litigation, arbitration or administrative proceedings or investigations of, or before any court, arbitral body or agency which, if adversely determined are reasonably likely to have a Material Adverse Effect, have (to the best of its knowledge and belief (having made due and careful enquiry)) been started or threatened against it

5.8 Solvency

To the best of its knowledge and belief, no action has been taken or is pending, no other steps have been taken by any person and no legal proceedings have been commenced, are threatened or are pending for:

(a) the winding up, liquidation, dissolution, administration or reorganisation of the Chargor;

(b) the Chargor to enter into any composition or arrangement with its creditors generally; or

(c) the appointment of a receiver, administrator, administrative receiver, trustee or similar officer in respect of the Chargor or any of its property, undertaking or assets

5.9 Legal and beneficial ownership

It is the sole legal and beneficial owner of the Charged Assets free from any encumbrance or Security except as created by this Deed or any other Finance Document

5.10 Subordinated Debt

5.10.1 No payment to it by any other party to a Subordinated Loan Agreement is subject to any right of set-off or similar right

5.10.2 Subject to the Legal Reservations, each Subordinated Loan Agreement, to which it is a party, is legally binding, valid, and enforceable

5.10.3 Neither it nor (so far as it is aware) any other party to a Subordinated Loan Agreement is in default of any of its material obligations under that Subordinated Loan Agreement.

5.10.4 There is no prohibition on assignment in respect of any of the Subordinated Debt or its rights under any Subordinated Loan Agreement.

5.11 Centre of main interests and establishments

For the purposes of The Council of the European Union Regulation No 1346/2000 on Insolvency Proceedings (the "**Regulation**"), its centre of main interest (as that term is used in Article 3(1) of the Regulation) is situated in its jurisdiction of incorporation and it has no "establishment" (as that term is used in Article 2(h) of the Regulations) in any other jurisdiction

5.12 Ranking of Security

The security conferred by this Deed constitutes a first priority security interest over the Charged Assets and the Charged Assets are not subject to any prior or *pari passu* Security

5.13 Repetition of representations

The representations and warranties set out in this Clause 5 (*Representations and warranties*) are made by the Chargor on the date of this Deed and are deemed to be made by the Chargor by reference to the facts and circumstances then existing on the date of the Utilisation Request, the Utilisation Date and the first day of each Interest Period.

6 COVENANTS

The Chargor gives the undertakings in this Clause 6 (*Covenants*) which remain in force from the date of this Deed until this Deed is discharged

6.1 Information

It shall supply to the Security Agent (in sufficient copies for all the Finance Parties, if the Security Agent so requests) such information regarding the Charged Assets as any Finance Party (through the Security Agent) may reasonably request.

6.2 Negative pledge

Subject to the terms of the Finance Documents, it shall not create or permit to subsist any Security over any of the Charged Assets save for the Security created pursuant to this Deed or any other Finance Document

6.3 Disposals

Subject to the terms of the Finance Documents, it shall not sell, lease, transfer or otherwise dispose of any Charged Asset (save as otherwise permitted under the Finance Documents)

6.4 Subordinated Loan Agreements

6.4.1 It shall, subject to the terms of the Deed of Subordination, duly and promptly perform its obligations under each Subordinated Loan Agreement

6.4.2 After the security created by this Deed has become enforceable, the Security Agent may exercise, without any further consent or authority on the part of the Chargor and irrespective of any direction given by the Chargor, the Chargor's rights under each Subordinated Loan Agreement

6.5 Pari passu ranking

Its payment obligations under the Finance Documents rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally

7 RIGHTS OF ENFORCEMENT

7.1 Enforcement

7.1.1 The Secured Liabilities shall be deemed to have become due for the purposes of section 101 of the Act immediately upon the date of this Deed

7.1.2 Subject to the terms of the Intercreditor Agreement, the enforcement powers of the Security Agent in connection with this Deed shall be immediately exercisable upon an Event of Default which is continuing or, at the Security Agent's discretion, at the request of the Chargor.

7.1.3 Clause 7.1.2 shall not apply by reason only of a moratorium being obtained, or anything being done with a view to a moratorium being obtained, under section 1A of the Insolvency Act 1986

7.1.4 The restrictions imposed by section 103 of the Act shall not apply to the security created by this Deed

7.1.5 In addition to all other protection afforded by statute, every purchaser (as defined by section 205 of the Act) or other party dealing with the Security Agent or any Receiver shall be entitled to assume without enquiry that an Event of Default has occurred and that the Secured Liabilities are outstanding and have become due

7.2 Security Agent's and Receiver's powers and rights

7.2.1 The Security Agent shall have the power to appoint a Receiver of the whole or any part of the Charged Assets and (so far as the law allows) to remove and/or substitute any such appointee.

7.2.2 The Security Agent (without becoming a mortgagee in possession) and/or any Receiver (without personal liability) shall have the power to

- (a) exercise all statutory and other powers and rights (including the powers conferred upon an administrative receiver by schedule 1 to the Insolvency Act 1986 whether or not the Security Agent and/or any Receiver is an administrative receiver), and
- (b) the power and rights specified in Schedule 3 (*Security Agent's and Receiver's powers*),

and may exercise them in the name of the Chargor and in such manner and on such terms as the person exercising them shall in its sole absolute discretion consider appropriate

7.3 Receiver as agent

So far as the law allows, a Receiver shall be the agent of the Chargor, who shall be solely liable for his acts, defaults and remuneration, but the Security Agent shall be entitled to agree the fees and expenses of and the mode of payment to the Receiver.

7.4 Further powers

If the Chargor defaults in the observance and performance of any obligation to the Security Agent, the Security Agent or its agents (without any of them becoming a mortgagee in possession) may at any time (but shall not be obliged to) do such things as it considers necessary to remedy the default

7.5 Power of attorney

7.5.1 The Chargor by way of security irrevocably appoints the Security Agent and every Receiver jointly and severally to be its attorney (with full power of substitution) in its name and on its behalf to execute and deliver any documents and do or perfect anything which the Chargor is to execute or do pursuant to this Deed but:

- (a) the Chargor has not done so promptly following a request by the Security Agent, or
- (b) at any time when a Default is continuing or when the Security Agent believes in its sole discretion that the Charged Assets may be in jeopardy or in danger of being seized, attached, charged, taken possession of or sold under any form of legal process,

and which the Security Agent and/or the Receiver shall consider appropriate for perfecting, maintaining, preserving or (at any time when the security created by this Deed has become enforceable) enforcing the security created by this Deed and/or the value of any of the Charged Assets and/or for the purpose of enforcing the performance of the Chargor's obligations in connection with this Deed

7.5.2 The Chargor ratifies and confirms all things done and all documents executed by any attorney in the exercise or purported exercise of all or any of its powers

8 APPLICATION OF RECEIPTS

8.1 Priority of payment

Subject to sums secured by Security having priority to the Security created by this Deed, all monies received by the Security Agent and/or any Receiver in the enforcement of this Deed shall (subject as follows) be applied in the following order, in payment:

- (a) **firstly**, of all fees, costs, charges, taxes, liabilities and expenses in relation to any enforcement of this Deed (including in relation to any Receiver whether on its own behalf or on behalf of the Chargor or otherwise),
- (b) **secondly**, (insofar as not contemplated by Clause 8.1(a)) of all fees, costs, charges, taxes, liabilities and expenses and other sums of the Security Agent (in its capacity as trustee) in relation to the Finance Documents, and
- (c) **thirdly**, for distribution in accordance with clause 15 (*Application of Proceeds*) of the Intercreditor Agreement

8.2 Crediting to suspense account

The Security Agent or any Receiver may credit any monies received from the enforcement of this Deed to any suspense account in any manner and for such period as the Security Agent or that Receiver thinks fit.

9 NOTICES

9.1 Communications in writing

Any communication to be made under or in connection with this Deed shall be made in writing and, unless otherwise stated, may be made by fax or letter

9.2 Addresses

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with this Deed is.

- (a) in the case of a person which is a Party on the date of this Deed, that identified with its name below; or
- (b) in the case where a person becomes a Party after the date of this Deed, that notified in writing to the Security Agent on or prior to the date on which that person becomes a Party,

or any substitute address, fax number or department or officer as the party to this Deed may notify the Security Agent (or the Security Agent may notify the Chargor if the change is made by the Security Agent) by not less than five Business Days' notice

9.3 Delivery

- 9.3.1 Any communication or document made or delivered by one person to another person in connection with this Deed will only be effective

- (a) if by way of fax, when received in legible form, or
- (b) if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post, postage prepaid, in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of its address, details provided under Clause 9 2 (*Addresses*), if addressed to that department or officer.

9 3 2 Any notice or communication to be made or delivered to the Security Agent shall be effective when actually received by the Security Agent and then only if it is expressly marked for the attention of the department or officer identified with the Security Agent's signature below (or any substitute department or officer as the Security Agent shall specify for this purpose)

9 3 3 Any communication or document which becomes effective, in accordance with this Clause 9 3 (*Delivery*), after 5 00 pm in the place of receipt shall be deemed only to become effective on the following day

10 **DISCHARGE**

10 1 If the Security Agent is satisfied that the Secured Liabilities have been unconditionally and irrevocably paid, repaid and discharged in full, the Security Agent will, at the request and cost of the Chargor, discharge this Deed

10 2 No discharge will be of any effect if any security or payment given or made in respect of the Secured Liabilities is rescinded, avoided, reduced or invalidated whether in respect of any insolvency or otherwise

11 **ASSIGNMENT AND TRANSFER**

11 1 **Assignment by the Chargor**

The Chargor may not assign, transfer or otherwise part with its rights or obligations under this Deed

11 2 **Assignment by the Finance Parties**

The Finance Parties may each at any time transfer, assign or novate all or any part of their respective rights, benefits or obligations under this Deed in accordance with the provisions of the Finance Documents

12 **GENERAL PROVISIONS**

12 1 **Trust provisions**

The undertakings and representations made by the Chargor under this Deed are made in favour of the Security Agent as security trustee for the Finance Parties

12 2 **Limited recourse**

The Security Agent agrees that its rights of enforcement under this Deed in respect of the Secured Liabilities against the Chargor shall be limited to the rights of enforcement or recovery against the Charged Assets

12.3 **Security Agent**

The Security Agent executes this Deed as security trustee for and on behalf of the Finance Parties for whom it acts, in the exercise of its powers and authority conferred and vested in it under the Intercreditor Agreement and any other Finance Document. The Security Agent will exercise its powers and authority under this Deed in the manner provided for in the Intercreditor Agreement and, in so acting, shall have the protections, immunities, rights, powers, authorisations, indemnities and benefits conferred on it under the Intercreditor Agreement and the other Finance Documents.

12.4 **Enforcement**

It shall not be necessary for the Security Agent before taking any enforcement under this Deed to enforce or seek to enforce any guarantee or other security or other rights whether from or against the Chargor or any other person. This Clause 12.4 (*Enforcement*) applies irrespective of any law or any provision of a Finance Document to the contrary.

12.5 **Exercise of powers and liability**

12.5.1 This Deed is in addition to and will not merge in or in any way be prejudiced or affected by the holding or release by the Security Agent of any other security at any time held by the Security Agent.

12.5.2 The Security Agent may, at any time after this Deed has become enforceable, redeem or transfer to itself any prior Security against the Charged Assets and may settle and pass the accounts of the prior chargee (which shall be binding on the Chargor). All principal monies, interest, costs, charges and expenses of and incidental to such redemption or transfer shall be paid by the Chargor to the Security Agent on demand.

12.5.3 None of the provisions of this Deed shall be deemed to impose on the Finance Parties or imply on their part any obligation or other liability in relation to the Charged Assets.

12.6 **Tacking**

Each Finance Party must perform its obligations under the Senior Facility Agreement or the Mezzanine Facility Agreement (including any obligation to make further advances).

12.7 **New accounts**

On receiving notice that the whole or any part of the Charged Assets has been encumbered by any Security or disposed of:

- (a) a Finance Party may close the Chargor's then subsisting account and open a new account with the Chargor, and (unless the relevant Finance Party gives the Chargor written notice otherwise) shall be deemed to have done so,
- (b) all payments made to the relevant Finance Party after that date will be credited (or be treated as having been credited) to the new account, and
- (c) no money credited or treated as credited to the new account shall reduce the Secured Liabilities.

12 8 Consolidation

The restriction on the right of consolidating mortgage securities contained in section 93 of the Act shall not apply to the security created by this Deed

12 9 Rights of third parties

12.9.1 Unless the right of enforcement is expressly granted, it is not intended that a third party should have the right to enforce a provision of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999.

12.9 2 The parties may rescind or vary this Deed without the consent of a third party to whom an express right to enforce any of its terms has been provided

12 10 Partial invalidity

The illegality, invalidity or unenforceability for whatever reason of any provision of this Deed in any jurisdiction, shall not affect the legality, validity or enforceability of that provision in any other jurisdiction or legality, validity or enforceability of the remaining provisions in any jurisdiction

12 11 Remedies and waivers

No failure to exercise, nor any delay in exercising, on the part of any Finance Party, any right or remedy under this Deed shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Deed are cumulative and not exclusive of any right or remedies provided by law

12.12 Chargor's obligations

Neither the Security created under this Deed nor the obligations of the Chargor under this Deed will be affected by any act, omission, matter or thing which, but for this Clause 12 12 (*Chargor's obligations*), would reduce, release or prejudice that security or any of its obligations under this Deed (without limitation and whether or not known to it or any Finance Party) including

- (a) any time, waiver or consent granted to, or composition with, any Borrower or other person;
- (b) the release of any Borrower or any other person under the terms of any composition or arrangement with any creditor of any member of the group of companies of the Senior Borrowers and/or the Mezzanine Borrowers,
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or Security over assets of any Borrower or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any Security;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any Borrower or any other person,
- (e) any amendment, novation, supplement, extension (whether of maturity or otherwise) or restatement (in each case, however fundamental and

whether or not more onerous), or replacement, assignment, avoidance of termination of any Finance Document or any other document or Security including any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under any Finance Document or other document or Security,

- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or Security, or
- (g) any insolvency or similar proceedings.

12.13 **Chargor intent**

Without prejudice to the generality of Clause 12.12 (*Chargor's obligations*), the Chargor expressly confirms that it intends that the Security created by this Deed shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any of the Finance Documents and/or any facility or amount made available under any of the Finance Documents for the purposes of or in connection with any of the following.

- (a) business acquisitions of any nature,
- (b) increasing working capital;
- (c) enabling investor distributions to be made;
- (d) carrying out restructurings,
- (e) refinancing existing facilities,
- (f) refinancing any other indebtedness,
- (g) making facilities available to new borrowers,
- (h) any other variation or extension of the purposes for which any such facility or amount might be made available from time to time; and/or
- (i) any fees, costs and/or expenses associated with any of the foregoing

12.14 **Appropriations**

Until the Secured Liabilities have been irrevocably paid in full, each Finance Party (or trustee or agent on its behalf) may

- (a) refrain from applying or enforcing the other monies, security or rights held or received by that Finance Party (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and the Chargor shall not be entitled to the benefit of the same, and
- (b) hold in an interest-bearing suspense account any monies received from the Chargor or on account of the Chargor's liability under this Deed

12.15 **Deferral of Chargor's rights**

- 12.15.1 Until the Secured Liabilities have been irrevocably paid in full and unless the Security Agent otherwise directs, the Chargor will not exercise any rights which it

may have by reason of performance by it of its obligations under the Finance Documents or by reason of any amount being payable, or liability arising, under this Deed

- (a) to be indemnified by any Borrower;
- (b) to claim any contribution from any other guarantor of any Borrowers' obligations under the Finance Documents,
- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Finance Parties under the Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, the Finance Documents by any Finance Party;
- (d) to bring legal or other proceedings for an order requiring any Borrower to make any payment, or perform any obligation, in respect of which the Chargor has given a guarantee, undertaking or indemnity under this Deed,
- (e) to exercise any right of set-off against any Borrower, and/or
- (f) to claim or prove as a creditor of any Borrower in competition with any Finance Party

12 15 2 If the Chargor receives any benefit, payment or distribution in relation to any rights referred to in Clause 12 15.1 it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Finance Parties by the Borrowers under or in connection with the Finance Documents to be repaid in full on trust for the Finance Parties and shall promptly pay or transfer the same to the Security Agent or as the Security Agent may direct for application in accordance with Clause 7 5 (*Power of attorney*)

13 COUNTERPARTS

This Deed may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Deed

14 LAW AND JURISDICTION

14 1 Governing law

This Deed and any non-contractual obligations arising out of or in relation to this Deed shall be governed by English law.

14 2 Jurisdiction of English courts

14 2 1 The courts of England have exclusive jurisdiction to settle any dispute, including, without limitation, disputes relating to any non-contractual obligations arising out of or in connection with this Deed (a "**Dispute**")

14 2 2 The parties to this Deed agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no party will argue to the contrary

14 2 3 This Clause 14 2 (*Jurisdiction of English courts*) is for the benefit of the Finance Parties only. As a result, no Finance Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the

extent allowed by law, the Finance Parties may take concurrent proceedings in any number of jurisdictions

This Deed has been executed as a Deed and delivered on the date stated at the beginning of this Deed.

**Schedule 1
Borrowers**

Borrowers	Jurisdiction of incorporation	Registered number
Topland Delta Limited	England and Wales	04491125
Topland Medway Limited	England and Wales	04118788
Topland Riversmeet Limited	England and Wales	04118793
Topland Summit Limited	England and Wales	04491145
Topland Tor Limited	England and Wales	04491170
Topland Valley Limited	England and Wales	04491178

Schedule 2
Subordinated Loan Agreements

- 1 An intergroup loan agreement dated 11 February 2009 made between (1) Fairland Limited (as lender) and (2) Topland Delta Limited (as borrower) as amended by the following agreements.
 - (i) a loan extension agreement dated 4 December 2013 and made between made between 1) Fairland Limited (as lender) and (2) Topland Delta Limited (as borrower), and
 - (ii) a transfer agreement dated 26 February 2015 and made between (1) Fairland Limited (as transferor) and (2) Berkeley Estates London Limited (as transferee)and any notice, letter or agreement entered into under or supplemental to it or amending, restating or novating it
- 2 An intergroup loan agreement dated 4 December 2013 between (1) Fairland Limited (as lender) and (2) Topland Delta Limited (as borrower) as amended by a transfer agreement dated 26 February 2015 and made between (1) Fairland Limited (as transferor) and (2) Berkeley Estates London Limited (as transferee) and any notice, letter or agreement entered into under or supplemental to it or amending, restating or novating it
- 3 An intergroup loan agreement dated 11 February 2009 made between (1) Fairland Limited (as lender) and (2) Topland Riversmeet Limited (as borrower) as amended by the following agreements:
 - (i) a loan extension agreement dated 4 December 2013 and made between made between 1) Fairland Limited (as lender) and (2) Topland Riversmeet Limited (as borrower), and
 - (ii) a transfer agreement dated 26 February 2015 and made between (1) Fairland Limited (as transferor) and (2) Berkeley Estates London Limited (as transferee)and any notice, letter or agreement entered into under or supplemental to it or amending, restating or novating it.
- 4 An intergroup loan agreement dated 11 February 2009 made between (1) Fairland Limited (as lender) and (2) Topland Summit Limited (as borrower) as amended by the following agreements
 - (i) a loan extension agreement dated 4 December 2013 and made between made between 1) Fairland Limited (as lender) and (2) Topland Summit Limited (as borrower); and
 - (ii) a transfer agreement dated 26 February 2015 and made between (1) Fairland Limited (as transferor) and (2) Berkeley Estates London Limited (as transferee)and any notice, letter or agreement entered into under or supplemental to it or amending, restating or novating it
- 5 An intergroup loan agreement dated 4 December 2013 between (1) Fairland Limited (as lender) and (2) Topland Summit Limited (as borrower) as amended by

a transfer agreement dated 26 February 2015 and made between (1) Fairland Limited (as transferor) and (2) Berkeley Estates London Limited (as transferee) and any notice, letter or agreement entered into under or supplemental to it or amending, restating or novating it.

Schedule 3
Security Agent's and Receiver's powers

1 Conduct of business

(a) Compromise claims

To compromise any claim relating to the Charged Assets

(b) Borrowing and advancing

To borrow, raise or advance money whether or not in priority to the Secured Liabilities and with or without security

(c) Employees

To employ solicitors, stockbrokers and others

2 Dealing with the Chargor's Assets

(a) Possession

To take possession of, get in, use and/or collect any Charged Asset.

(b) Payments

To pay any outgoings and payments charged on or otherwise relating to the Charged Assets or their ownership or use

(c) Receipts

To give receipts and releases for any sums received.

(d) Assumption of rights

To assume, exercise, cancel and/or vary all or any of the powers and rights conferred on the Chargor under any Charged Asset

(e) Insurance

To effect insurances on such terms as it thinks fit.

3 Disposals

To sell or otherwise realise and deal with, and transfer title to, the Charged Assets, in return for such consideration as it thinks fit and whether or not

(i) for immediate or deferred consideration;

(ii) in return for a single payment or instalments, and

(iii) for consideration wholly or partly in cash, property or securities in whatever form,

and in all cases the terms of which shall bind any subsequent mortgagee

4 General

(a) General powers

To do or abstain from doing all such things as it considers necessary or desirable for perfecting, maintaining preserving or enhancing the value of any of the Charged Assets or for or in connection with the enforcement of the Security created by this Deed or the realisation of any of the Charged Assets, whether or not in accordance with the Senior Facility Agreement or the Mezzanine Facility Agreement, including:

- (i) executing, delivering and completing all or any deeds or other documents;
- (ii) using the name of the Chargor in connection with any of the purposes in this Schedule 3 (*Security Agent's and Receiver's powers*);
- (iii) commencing, carrying out and completing any acts, matters or proceedings in relation to any Charged Asset as if it were the sole and absolute beneficial owner of the Charged Assets, and
- (iv) obtaining, entering into and maintaining any bonds, covenants, commitments, engagements, guarantees and indemnities or other like arrangements

(b) Powers and Discretions

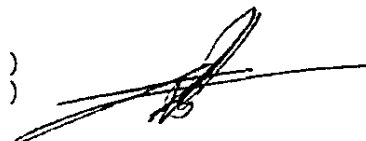
All its powers and discretions under this Deed shall be:

- (i) exercisable on such terms and conditions and otherwise as it may think fit, and
- (ii) as if it were the absolute and beneficial owner

EXECUTION PAGE

Chargor

Executed as a deed by **BERKLEY ESTATES**
LONDON LIMITED
acting by **Tom Betts**

)
) 

Director

in the presence of:

Richard William
Jones

)
) 

Signature of witness:

Address. **18 Fairfield Avenue**

Occupation **Finance Director**

Address for notices
2nd Floor
105 Wigmore Street
London
W1U 1QY

Fax. +44 (0)20 7493 4055

Attn Tom Betts

Security Agent

Executed as a deed by
LLOYDS BANK PLC
acting by.

BRAD MACALLISTER

Address

Fax

Attn

) B. Macallister
)

Director
Director/Secretary
Authorised Signatories

M. A.

MATTHEW RECORD
26 CROSMAN SQUARE
LONDON, EC2U 7HN
BANKING OFFICER

4th Floor – East Wing
Citymark
150 Fountainbridge
Edinburgh
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BERWIN LEIGHTON PRISONER CLP
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