



Registration of a Charge

Company Name: **BERKLEY ESTATES LONDON LIMITED**

Company Number: **02670273**



Received for filing in Electronic Format on the: **15/02/2022**

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Details of Charge

Date of creation: **08/02/2022**

Charge code: **0267 0273 0016**

Persons entitled: **MOUNT STREET MORTGAGE SERVICING LIMITED**

Brief description:

Contains fixed charge(s).

Contains negative pledge.

Authentication of Form

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

Authentication of Instrument

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

Certified by: **POLLY LOCKHART**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 2670273

Charge code: 0267 0273 0016

The Registrar of Companies for England and Wales hereby certifies that a charge dated 8th February 2022 and created by BERKLEY ESTATES LONDON LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 15th February 2022 .

Given at Companies House, Cardiff on 16th February 2022

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**

We certify this document as a true copy of the original save
for material redacted pursuant to section 859G Companies
Act 2006

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Execution Version

Dated: 8 February 2022

- (1) THE COMPANIES NAMED IN THIS DEED as Chargors
 - (2) MOUNT STREET MORTGAGE SERVICING LIMITED as Security Agent
-

Subordinated Creditors' Security Agreement

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THIS DEED is made on 8 February 2022 between:

- (1) **THE COMPANIES** listed in Schedule 1 (*The Chargors*) (each a "**Chargor**" and together the "**Chargors**"); and
- (2) **MOUNT STREET MORTGAGE SERVICING LIMITED** as security trustee for the Secured Parties (the "**Security Agent**").

IT IS AGREED as follows:

1. **DEFINITIONS AND INTERPRETATION**

1.1 **Definitions**

In this Deed:

"**Associated Benefits**" means, in respect of any asset:

- (a) all monies including (where relevant) all distributions, profits, compensation, damages, income or interest paid or payable relating to that asset; and
- (b) all Authorisations, rights, benefits, claims or property at any time relating to that asset.

"**BCA**" means the BVI Business Companies Act, 2004 (as amended).

"**Borrower**" means Arindel Properties Limited a company limited by shares incorporated in the British Virgin Islands with registration number 525876.

"**Delegate**" means any delegate, agent, attorney or co-trustee appointed by the Security Agent.

"**Event of Default**" has the meaning given to that term in the Facility Agreement.

"**Facility Agreement**" means the facility agreement dated on or about the date of this Deed between, amongst others, the Borrower and the Security Agent.

"**Finance Document**" has the meaning given to that term in the Facility Agreement.

"**Finance Party**" means the Agent, the Security Agent, the Arranger or a Lender.

"**Insolvency Act**" means the Insolvency Act 1986.

"**Insolvency Event**" means any corporate action, legal proceedings or other procedure or step is taken in relation to:

- (a) the suspension of payments, a moratorium of any indebtedness, liquidation, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of any Chargor;
- (b) a composition, compromise, assignment or arrangement with any creditor of any Chargor;
- (c) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer (including, without limitation, any receiver or receiver and manager or administrative receiver, appointed in the British Virgin Islands) in respect of any Chargor or any of its assets;
- (d) any action is taken to strike-off any Chargor from the Register of Companies maintained by the BVI registrar of Corporate Affairs; or

(e) the enforcement of any Security over any assets of any Chargor, or any analogous procedure or step is taken in any jurisdiction.

"LPA" means the Law of Property Act 1925.

"Original Jurisdiction" means the jurisdiction under whose laws a Chargor is incorporated as at the date of this Deed.

"Receiver" means a receiver or receiver and manager or administrative receiver (including, without limitation, any receiver, or receiver and manager or administrative receiver, appointed in the British Virgin Islands) of the whole or any part of the Secured Property.

"Relevant Jurisdiction" means, in relation to any Chargor, its Original Jurisdiction and any jurisdiction where it conducts its business.

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

"Secured Party" means a Finance Party, a Receiver or any Delegate.

"Secured Property" means the assets of each Chargor which from time to time are, or are expressed to be, the subject of any Security created by this Deed.

"Subordinated Debt" has the meaning given to that term in the Facility Agreement.

"Subordinated Debt Document" means any document, agreement or instrument evidencing or recording any Subordinated Debt or its terms, including any specified in Schedule 2 (*Subordinated Debt Documents*).

"Tax Deduction" means a deduction or withholding for or on account of Tax from a payment under a Finance Document.

1.2 Construction

1.2.1 Unless a contrary indication appears, in this Deed:

1.2.1.1 terms defined in the Facility Agreement have the same meaning in this Deed;

1.2.1.2 the provisions of clause 1.2 (*Construction*) of the Facility Agreement (with the exception of clause 1.2.4) apply to this Deed as if set out in full in this Deed, except that references to the Facility Agreement shall be construed as references to this Deed; and

1.2.1.3 all provisions in the Facility Agreement that are deemed to apply to the Finance Documents apply to this Deed as if set out in full in this Deed.

1.2.2 Unless a contrary indication appears, any reference in this Deed to:

1.2.2.1 any **"asset"** includes present and future properties, revenues and rights of every description, all proceeds of sale of such asset, all rights under any agreement for the sale, lease or licence of such asset and any monies paid or payable in respect of such asset;

1.2.2.2 any **"disposal"** includes a sale, transfer, assignment, grant, lease, licence, declaration of trust or other disposal, whether voluntary or involuntary, and **"dispose"** will be construed accordingly; and

1.2.2.3 a "**Finance Document**" or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, novated, supplemented, extended, restated or replaced from time to time.

1.2.3 Where this Deed includes the words "**including**", "**in particular**" or "**or otherwise**" (or similar words or phrases), the intention is to state examples and not to be exhaustive.

1.2.4 References to any Security "**created by this Deed**" are to be deemed to include such Security created or intended to be created, constituted, given, made or extended by, under or evidenced by this Deed.

1.3 Security Agent Provisions

1.3.1 The Security Agent executes this Deed in the exercise of the rights, powers and authority conferred and vested in it under the Facility Agreement and any other Finance Document for and on behalf of the Secured Parties for whom it acts. It will exercise its powers, rights, duties and authority under this Deed in the manner provided for in the Facility Agreement and, in so acting, it shall have the protections, immunities, limitations of liability, rights, powers, authorisations, indemnities and benefits conferred on it under and by the Facility Agreement and the other Finance Documents.

1.3.2 The Security Agent shall not owe any fiduciary duties to any party to this Deed or any of their directors, employees, agents or affiliates.

1.3.3 Notwithstanding any other provisions of this Deed, in acting under and in accordance with this Deed the Security Agent is entitled to seek instructions from the relevant Finance Parties in accordance with the provisions of the Facility Agreement and at any time, and where it so acts or refrains from acting on the instructions of a Finance Party or Finance Parties entitled to give it instructions, the Security Agent shall not incur any liability to any person for so acting or refraining from acting.

1.4 Third party rights

1.4.1 Unless expressly provided to the contrary in this Deed, a person who is not a party to this Deed has no right under the Contracts (Rights of Third Parties) Act 1999 (the "**Third Parties Act**") to enforce or enjoy the benefit of any term of this Deed.

1.4.2 Notwithstanding any term of this Deed, the consent of any person who is not a party to this Deed is not required to rescind or vary this Deed at any time.

1.4.3 Any Receiver, Delegate or any person described in clause 29.11.2 (*Exclusion of liability*) of the Facility Agreement may, subject to this Clause 1.4 and the Third Parties Act, rely on any clause of this Deed which expressly confers rights on it.

2. COVENANT TO PAY

2.1 Subject to Clause 2.2 below, each Chargor, as principal debtor and not just as surety, covenants with the Security Agent to pay or discharge the Secured Liabilities.

2.2 The total amount recoverable by the Secured Parties from each Chargor in relation to the Secured Liabilities shall be limited to the amount realised from the proceeds of sale or other disposal or realisation of the Secured Property together with all costs, expenses, interest and other amounts payable by each Chargor under the terms of this Deed.

2.3 Clause 2.2 shall only limit the liability of each Chargor for the discharge of the Secured Liabilities and shall not:

- 2.3.1 reduce or discharge the Secured Liabilities themselves or limit or restrict the accrual of interest (including default interest) on any amount; or
- 2.3.2 limit the rights of any Secured Party to recover any amount from any person other than a Chargor under or in connection with the Finance Documents.

3. GRANT OF SECURITY

3.1 Fixed charges

Each Chargor charges by way of first fixed charge:

- 3.1.1 all the Subordinated Debt, to the extent not effectively assigned under Clause 3.2 (*Assignment*);
- 3.1.2 all the Subordinated Debt Documents, to the extent not effectively assigned under Clause 3.2 (*Assignment*); and
- 3.1.3 all Associated Benefits relating to the Secured Property, to the extent not effectively assigned under Clause 3.2 (*Assignment*).

3.2 Assignment

Each Chargor assigns by way of security:

- 3.2.1 all the Subordinated Debt; and
- 3.2.2 all the Subordinated Debt Documents,

in each case, together with all Associated Benefits relating to such Secured Property.

3.3 General

All Security created by this Deed:

- 3.3.1 is created in favour of the Security Agent, as security trustee for the Secured Parties;
- 3.3.2 unless specifically stated otherwise, is created over the present and future assets of each Chargor to the extent of its rights, title and interest in, under and to such assets at any time; and
- 3.3.3 is created with full title guarantee in accordance with the Law of Property (Miscellaneous Provisions) Act 1994.

3.4 Continuing security

The Security created by this Deed is continuing security for the payment and discharge of the Secured Liabilities. The provisions of this Deed will apply at all times:

- 3.4.1 regardless of the date on which any of the Secured Liabilities were incurred;
- 3.4.2 notwithstanding any intermediate payment or discharge; and
- 3.4.3 in respect of the full amount of the Secured Liabilities at the relevant time even if the amount of the Secured Liabilities had previously been less than that amount or had been nil at any time.

3.5 Additional security

The Security created by this Deed is in addition to and is not in any way prejudiced by any other guarantee or security now or subsequently held by any Secured Party. No prior Security held by any Secured Party over the whole or any of the Secured Property will merge with the Security created by this Deed.

3.6 **Validity of details of Secured Property**

The fact that incorrect or incomplete details of any Secured Property are included or inserted in Schedule 2 (*Subordinated Debt Documents*) will not affect the validity or enforceability of the Security created by this Deed.

4. **CONSENTS**

4.1 Each Chargor represents to the Security Agent on the date of this Deed that the Subordinated Debt and each Subordinated Debt Document which it has any right, title or interest in, under or to, is capable of being freely assigned by it without the consent of any other person.

4.2 Each Chargor shall ensure that any Subordinated Debt or any Subordinated Debt Document which it has any right, title or interest in, under or to after the date of this Deed is capable of being freely assigned by it without the consent of any other person.

5. **REPRESENTATIONS**

Each Chargor makes the representations and warranties set out in this Clause 5 to each Secured Party on the date of this Deed.

5.1 **Status**

5.1.1 It is a limited liability corporation (or company limited by shares, as applicable), duly incorporated, validly existing and (where applicable) in good standing under the law of its Original Jurisdiction.

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 with other obligations**

The entry into and performance by it of, and the transactions contemplated by, this Deed and the granting of the Security created by this Deed do not and will not conflict with:

5.3.1 any law or regulation applicable to it;

5.3.2 its constitutional documents; or

5.3.3 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.

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 or giving of guarantees or indemnities contemplated by this Deed.

5.5 **Validity and admissibility in evidence**

All Authorisations required or desirable:

5.5.1 to enable it lawfully to enter into, exercise its rights and comply with its obligations under this Deed; and

5.5.2 to make this Deed admissible in evidence in its Relevant Jurisdictions,

have been obtained or effected and are in full force and effect except any Authorisation referred to in Clause 5.8 (*No filing or stamp taxes*), which Authorisation(s) will be promptly obtained or effected after the date of this Deed.

5.6 **Governing law and enforcement**

5.6.1 The choice of English law as the governing law of this Deed will be recognised and enforced in its Relevant Jurisdictions.

5.6.2 Any judgment obtained in England and Wales in relation to this Deed will be recognised and enforced in its Relevant Jurisdictions.

5.7 **Deduction of Tax**

As at the date of this Deed, it is not required to make any Tax Deduction for or on account of Tax from any payment it may make under this Deed.

5.8 **No filing or stamp taxes**

5.8.1 Under the laws of its Relevant Jurisdictions it is not necessary that this Deed be registered, filed, recorded, notarised or enrolled with any court or other authority in that jurisdiction or that any stamp, registration, notarial or similar Taxes or fees be paid on or in relation to this Deed or the transactions contemplated by this Deed except:

5.8.1.1 registration of particulars of this Deed at Companies House under the Companies Act 2006 and payment of associated fees; and

5.8.1.2 registration of particulars of this Deed with the BVI Registrar of Corporate Affairs pursuant to Part VIII of the BCA and payment of associates fees,

which will be made and paid promptly after the date of this Deed.

5.9 **Information**

5.9.1 All information supplied by it or on its behalf to any Secured Party in connection with this Deed or any Secured Property was true and accurate as at the date it was provided or as at any date at which it was stated to be given.

5.9.2 It has not omitted to supply any information which, if disclosed, would make the information referred to in Clause 5.9.1 untrue or misleading in any respect.

5.9.3 As at the Utilisation Date of the Refinancing Facility, nothing has occurred since the date of the information referred to in Clause 5.9.1 which, if disclosed, would make that information untrue or misleading in any material respect.

5.10 **Pari passu ranking**

Its payment obligations under this Deed 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.

5.11 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.

5.12 Insolvency

No:

5.12.1 corporate action, legal proceeding or other procedure or step described in clause 25.7 (*Insolvency proceedings*) of the Facility Agreement; or

5.12.2 creditors' process described in clause 25.8 (*Creditors' process*) of the Facility Agreement,

has been taken or, to its knowledge, threatened in relation to it and none of the circumstances described in clause 25.6 (*Insolvency*) of the Facility Agreement applies to it.

5.13 Centre of main interests and establishments

For the purposes of Regulation (EU) 2015/848 of 20 May 2015 on Insolvency Proceedings (recast) (the "**Regulation**"), its centre of main interest (as that term is used in Article 3(1) of the Regulation) is situated in its Original Jurisdiction and it has no "establishment" (as that term is used in Article 2(10) of the Regulation) in any other jurisdiction.

5.14 Ranking of Security

The security conferred by this Deed constitutes a first priority security interest of the type described, over the assets referred to, in this Deed and those assets are not subject to any prior or pari passu Security.

5.15 Anti-corruption law

It has conducted its businesses in compliance with applicable anti-corruption, anti-bribery and anti-money laundering laws and has instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

5.16 Sanctions

Neither it nor any of its Affiliates, nor any of their respective directors, officers or employees, nor (to the best of their knowledge and belief) any of their respective agents or representatives, is a Sanctioned Person, or located, organised or resident in a Sanctioned Jurisdiction.

5.17 Secured Property

It is the sole legal and beneficial owner of, and has good and marketable title to, the Secured Property, in each case, free from Security or restrictions (other than those created by or pursuant to the Finance Documents).

5.18 Repetition

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

6. UNDERTAKINGS

The undertakings in this Clause 6 remain in force from the date of this Deed for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

6.1 Negative pledge

No Chargor may create or permit to subsist any Security over any Secured Property other than as permitted under the Facility Agreement.

6.2 Disposals

No Chargor shall enter into a single transaction or a series of transactions (whether related or not and whether voluntary or involuntary) to dispose of all or any part of any Secured Property, other than as permitted under the Facility Agreement.

6.3 Information relating to Secured Property

Each Chargor shall promptly supply to the Security Agent such further information regarding its Secured Property as the Security Agent may reasonably request.

6.4 Further assurance

Each Chargor shall promptly take all such actions, including executing all such documents, notices and instructions in such form as the Security Agent may reasonably require:

- 6.4.1 to create, perfect, protect and (if necessary) maintain the Security created by this Deed or for the exercise of any rights, powers and remedies of the Secured Parties provided by or under this Deed or by law or regulation;
- 6.4.2 to confer on the Secured Parties security interests in or over any of its assets located in any jurisdiction other than England and Wales equivalent or similar to the Security created by this Deed; and/or
- 6.4.3 to facilitate the realisation of the assets which are, or are intended to be, the subject of the Security created by this Deed.

6.5 General action

Within five Business Days of the date of this Deed, each Chargor registered in the British Virgin Islands shall update its internally held register of relevant charges in accordance with section 162 of the BCA and shall provide to the Security Agent a certified copy of its update register of charges.

6.6 Power to remedy

If any Chargor fails to comply with any of its obligations under this Deed, the Security Agent (or its nominee) may (at that Chargor's expense) take such action as is necessary to protect any assets against the consequences of that Chargor's non-compliance and/or to ensure compliance with such obligations. The Security Agent is not obliged to perform any obligation of the relevant Chargor nor to take any action which it may be entitled to take under this Deed.

6.7 Power of attorney

- 6.7.1 As security for the performance of its obligations under this Deed, each Chargor irrevocably appoints the Security Agent, each Receiver and each Delegate to be its attorney, with full power of substitution.
- 6.7.2 Following the occurrence of an Event of Default which is continuing, each attorney may, in the name of the relevant Chargor and on its behalf and at its expense, do anything which that Chargor is obliged to do under any Finance

Document to which it is a party but has failed to do or which the Security Agent, Receiver or Delegate may in their absolute discretion consider appropriate in connection with the exercise of any of their rights, powers, authorities or discretions in relation to the Secured Property or under or otherwise for the purposes of any Finance Document or any law or regulation.

- 6.7.3 Each Chargor ratifies and confirms anything done by any attorney under this Clause 6.7. Each Chargor agrees to indemnify each attorney against all actions, claims, demands and proceedings taken or made against it and all costs, damages, expenses, liabilities and losses incurred by each attorney as a result of or in connection with anything lawfully done by it under or in connection with this power of attorney.

7. RIGHTS OF ENFORCEMENT

7.1 Secured Liabilities deemed payable

For the purposes of all rights and powers implied by statute, the Secured Liabilities are due and payable on the date of this Deed.

7.2 When Security enforceable

The Security created by this Deed is enforceable at any time while an Event of Default is continuing.

7.3 Enforcement powers

At any time (a) when the Security created by this Deed is enforceable or (b) following a request by any Chargor, the Security Agent may, without further notice:

- 7.3.1 sell, appropriate, realise or transfer, including to itself or to any other person, all or any part of the Secured Property;
- 7.3.2 appoint one or more persons to be a Receiver of all or any part of the Secured Property;
- 7.3.3 exercise any of the powers, authorities and discretions conferred on mortgagees, administrators or receivers, under the LPA, the Insolvency Act, the Insolvency Act 2003 of the British Virgin Islands, any other legislation or regulation or under this Deed; and/or
- 7.3.4 take such further action as it sees fit to enforce all or any part of the Security created by this Deed.

7.4 Rights in relation to a Receiver

The Security Agent may remove any Receiver appointed under this Deed, appoint another person as Receiver or appoint additional Receivers. Each Receiver will be deemed to be the agent of the relevant Chargor who alone will be responsible for the acts and defaults of the Receiver and for any liabilities incurred by the Receiver. The Security Agent may fix the remuneration of a Receiver which will be payable by the relevant Chargor and form part of the Secured Liabilities.

7.5 Redemption of prior Security

Where there is any Security created over any of the Secured Property which ranks in priority to the Security created by this Deed and:

- 7.5.1 the Security created by this Deed becomes enforceable; and/or
- 7.5.2 the holder of such other Security takes any steps to enforce that Security,

the Security Agent or any Receiver may, at its sole discretion and at the cost and expense of the relevant Chargor, redeem, take a transfer of and/or repay the indebtedness secured by such other Security. All amounts paid by the Security Agent or a Receiver under this Clause will form part of the Secured Liabilities.

7.6 Appropriation of payments

Any appropriation by the Security Agent or a Receiver under this Deed will override any appropriation by any Chargor.

7.7 Financial collateral

7.7.1 To the extent that any of the assets assigned or charged under this Deed constitute "financial collateral" and this Deed constitutes a "financial collateral arrangement" (in each case, for the purpose of and as defined in the Financial Collateral Arrangements (No. 2) Regulations 2003 (the "**FC Regulations**")), the Security Agent will have the right at any time when such Security is enforceable to appropriate all or any part of that financial collateral in such manner as it sees fit in or towards the satisfaction of the Secured Liabilities.

7.7.2 Where any financial collateral is appropriated, its value shall be:

7.7.2.1 in the case of cash, its face value at the time of the appropriation;

7.7.2.2 if the financial collateral is listed or traded on a recognised exchange, the value at which it could have been sold on that exchange at the time of appropriation; and

7.7.2.3 in any other case, the amount reasonably determined by the Security Agent by such process as it may select, including independent valuation,

and each Chargor agrees that the method of valuation provided for in this Clause 7.7.2 is commercially reasonable for the purposes of the FC Regulations.

7.8 Demands

Any demand for payment made by any Secured Party shall be valid and effective even if it contains no statement of the relevant Secured Liabilities or an inaccurate or incomplete statement of them.

8. POWERS OF A RECEIVER

8.1 General powers

Any Receiver will have:

8.1.1 the rights, powers, privileges and immunities conferred on receivers, receivers and managers and mortgagees in possession under the LPA;

8.1.2 the rights, powers, privileges and immunities conferred on administrative receivers (whether or not that Receiver is an administrative receiver) under the Insolvency Act; and

8.1.3 all other rights, powers, privileges and immunities conferred by law or regulation on receivers, receivers and managers, mortgagees in possession and administrative receivers (including, but not limited to, the Insolvency Act 2003 of the British Virgin Islands and secondary legislation made under it).

8.2 Specific powers

The rights, powers and remedies provided in this Deed are in addition to any rights, powers and remedies under law or regulation. Any Receiver will have the following additional powers:

- 8.2.1 the power to do or omit to do anything which the relevant Chargor could do or omit to do in relation to the Secured Property which is the subject of the appointment;
- 8.2.2 the power to do all other acts and things which the Receiver may consider desirable or necessary for realising any of the Secured Property or incidental or conducive to any of the rights, powers and discretions conferred on a Receiver under this Deed or by law or regulation; and
- 8.2.3 the power to use the relevant Chargor's name for all the above purposes.

8.3 Variation of statutory powers

The following statutory provisions do not apply to this Deed or any Security created by this Deed:

- 8.3.1 the conditions to the exercise of a power of sale in section 103 of the LPA;
- 8.3.2 the restrictions on the application of proceeds by a mortgagee or receiver in sections 105, 107(2) and 109(8) of the LPA; and
- 8.3.3 the restrictions on the appointment of a receiver in section 109(1) of the LPA and the provisions regarding a receiver's remuneration in section 109(6) of the LPA.

9. PAYMENTS AND ACCOUNTS

9.1 Set-off and other remedies

- 9.1.1 All payments to be made by any Chargor under this Deed shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.
- 9.1.2 A Secured Party may set off any matured obligation due from any Chargor under this Deed (to the extent beneficially owned by that Secured Party) against any matured obligation owed by that Secured Party to that Chargor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Secured Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.
- 9.1.3 A Secured Party may, at any time, combine or consolidate any accounts held by it for any Chargor.

9.2 No withholding

- 9.2.1 Each Chargor shall make all payments to be made by it without any Tax Deduction, unless a Tax Deduction is required by law.
- 9.2.2 Each Chargor shall, promptly upon becoming aware that it must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction), notify the Security Agent accordingly.
- 9.2.3 If a Tax Deduction is required by law to be made by any Chargor, the amount of the payment due from that Chargor shall be increased to an amount which

(after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.

- 9.2.4 If any Chargor is required to make a Tax Deduction, the relevant Chargor shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.

9.3 VAT

Clause 12.7 (VAT) of the Facility Agreement applies to this Deed as if set out in full in this Deed, except that references to a Party shall be construed as references to a party to this Deed.

9.4 Default interest

If any Chargor fails to pay any amount payable by it under this Deed on its due date, interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate which is two per cent. per annum higher than the rate which would have been payable if the overdue amount had, during the period of non-payment, constituted a Loan in the currency of the overdue amount for successive Interest Periods, each of a duration selected by the Agent (acting reasonably). Any interest accruing under this Clause shall be immediately payable by the relevant Chargor on demand by the Security Agent. Default interest (if unpaid) arising on an overdue amount will be compounded with the overdue amount at the end of each Interest Period applicable to that overdue amount but will remain immediately due and payable.

9.5 General

- 9.5.1 Subject to Clause 9.5.2, sterling is the currency of payment for any sum due from any Chargor under this Deed.
- 9.5.2 Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.
- 9.5.3 If any Chargor pays any amount in a different currency, it shall as an independent obligation immediately on demand indemnify each Secured Party against any cost, loss or liability arising out of or as a result of the conversion into the required currency.
- 9.5.4 All amounts payable by any Chargor under this Deed shall be paid immediately on demand by, and in accordance with the instructions of, the Security Agent.
- 9.5.5 Any certification or determination by any Secured Party of a rate or amount under this Deed is, in the absence of manifest error, conclusive evidence of the matters to which it relates.
- 9.5.6 Any demand for payment made by the Security Agent shall be valid and effective even if it contains no statement of the relevant liabilities or an inaccurate or incomplete statement of them. The Security Agent may make any number of demands under this Deed.

10. APPLICATION OF PROCEEDS

10.1 Order of priority

All amounts received by any Secured Party in connection with the enforcement of the Security created by this Deed will be applied, to the extent permitted by applicable law, in accordance with the provisions of the Facility Agreement.

10.2 New accounts

If at any time:

- 10.2.1 any obligation of a Chargor ceases to be continuing obligations for any reason;
or
- 10.2.2 a Secured Party receives or is deemed to have received notice of subsequent Security over any of the Secured Property,

each Secured Party may open a new account with the relevant Chargor. If a Secured Party does not open a new account, it will be treated as having done so at the time when the relevant Chargor's obligations cease to be continuing obligations or, as the case may be, the relevant notice of subsequent security was received and, as from that time, all payments made by or on behalf of that Chargor to that Secured Party will be credited or be treated as having been credited to the relevant new account and not as having been applied in discharge of the Secured Liabilities.

10.3 Release of Secured Property

If the Security Agent is satisfied that all the Secured Liabilities have, subject to Clauses 13.1 (*Reinstatement*) and 13.2 (*Avoidable payments*), been unconditionally and irrevocably paid and discharged in full and all facilities which might give rise to Secured Liabilities terminated, the Security Agent will, at the request and cost of that Chargor, execute such documents and take such steps necessary to release the Secured Property from the Security created by this Deed.

11. PROTECTION OF THIRD PARTIES

11.1 No buyer from, or other person dealing with, any Secured Party will be concerned to enquire whether:

- 11.1.1 any money remains due under the Finance Documents;
- 11.1.2 any power which that Secured Party is purporting to exercise has arisen or become exercisable; or
- 11.1.3 that Secured Party is validly appointed and acting within its powers in accordance with this Deed.

11.2 The receipt of any Secured Party will be an absolute and conclusive discharge to a purchaser of any of the Secured Property who will have no obligation to enquire how any monies are applied.

12. PROTECTION OF SECURITY AGENT

12.1 No liability as mortgagee in possession

No Secured Party will be liable to account to any Chargor as mortgagee in possession by reason of entering into possession of any of the Secured Property, nor for any cost, loss or liability on realisation, nor for any default or omission for which a mortgagee in possession might be liable.

12.2 Tacking

The Security created by this Deed is intended to secure any further advances which any Secured Party is obliged to make under the Finance Documents.

12.3 Discretion of the Secured Parties

Each Secured Party is entitled to exercise its rights, powers and discretions under this Deed in accordance with the terms of the Finance Documents and no Chargor has any right to control or restrict any Secured Party's exercise of any of its rights, powers or discretions under this Deed.

13. **SAVING PROVISIONS**

13.1 **Reinstatement**

If, at any time, there has been a release, settlement or discharge of any Chargor's obligations under this Deed and, as a consequence of any Insolvency Event or for any other reason:

- 13.1.1 any payment made to any person in respect of any of the Secured Liabilities is required to be repaid; and/or
- 13.1.2 any Security (or other right) held by the Secured Parties in respect of any of the Secured Liabilities (whether under this Deed or otherwise) is declared void, is set aside or is otherwise affected,

then the relevant Chargor's obligations under this Deed will continue in effect as if there had been no such release, settlement or discharge and as if the relevant payment had not been made and/or (as applicable) the relevant obligation or Security (or other right) had not been so affected; and accordingly (but without limiting the Secured Parties' other rights under this Deed) the Security Agent will be entitled to recover from such Chargor the value which the Security Agent has placed upon such Security (or other right) or the amount of any such payment as if such release, settlement or discharge had not occurred.

13.2 **Avoidable payments**

If the Security Agent, acting reasonably, considers that any amount paid by or on behalf of any Chargor in respect of the Secured Liabilities is capable of being avoided, set aside or ordered to be refunded or reduced for any reason then, for the purposes of this Deed, such amount will not be considered to have been irrevocably paid.

13.3 **Waiver of defences**

The obligations of each Chargor under this Deed and the Security created by this Deed will not be affected by any act, omission, matter or thing which, but for this Clause, would reduce, release or prejudice any of its obligations under this Deed or the Security created by this Deed (without limitation and whether or not known to it or any Secured Party) including:

- 13.3.1 any time, waiver or consent granted to, or composition with, any Chargor, any Obligor or any other person;
- 13.3.2 the release of any Obligor or any other person under the terms of any composition or arrangement with any creditor of any Obligor;
- 13.3.3 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 Chargor, any Obligor or any 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;
- 13.3.4 any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any Chargor, any Obligor or any other person;
- 13.3.5 any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of any Finance Document or any other document or security including without limitation 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;

13.3.6 any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security; or

13.3.7 any insolvency, liquidation, winding up, strike-off or similar proceedings.

13.4 **Chargor Intent**

Without prejudice to the generality of Clause 13.3 (*Waiver of defences*), each 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: acquisitions of any nature; increasing working capital; enabling distributions to be made; carrying out restructurings; refinancing existing facilities; refinancing any other indebtedness; making facilities available to new borrowers; any other variation or extension of the purposes for which any facility or amount might be made available from time to time; and any fees, costs and/or expenses associated with any of the foregoing.

13.5 **Immediate recourse**

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

13.6 **Appropriations**

Until all amounts which may be or become payable by the Obligors under or in connection with the Finance Documents have been irrevocably paid in full, each Secured Party (or any trustee or agent on its behalf) may:

13.6.1 refrain from applying or enforcing any other moneys, security or rights held or received by that Secured 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 no Chargor shall be entitled to the benefit of the same; and

13.6.2 hold in an interest-bearing suspense account any moneys received from any Chargor or on account of any Chargor's liability under this Deed.

13.7 **Deferral of Chargors' rights**

Until all amounts which may be or become payable by the Obligors under or in connection with the Finance Documents have been irrevocably paid in full and unless the Security Agent otherwise directs, no Chargor will 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 the Finance Documents:

13.7.1 to be indemnified by any Obligor;

13.7.2 to claim any contribution from any Obligor or guarantor of any Obligor's obligations under the Finance Documents;

13.7.3 to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Secured Parties under the Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, the Finance Documents by any Secured Party;

13.7.4 to bring legal or other proceedings for an order requiring any Obligor to make any payment, or perform any obligation, in respect of which any Chargor has given a guarantee, undertaking or indemnity;

- 13.7.5 to exercise any right of set-off against any Obligor; and/or
- 13.7.6 to claim or prove as a creditor of any Obligor in competition with any Secured Party.

If any Chargor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Secured Parties by the Obligors under or in connection with the Finance Documents to be repaid in full on trust for the Secured 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 10.1 (*Order of priority*).

14. **CHANGES TO THE PARTIES**

14.1 **No assignment by Chargors**

No Chargor may assign any of its rights or transfer any of its rights or obligations under this Deed.

14.2 **Assignment by Security Agent**

The Security Agent may assign any of its rights or transfer any of its rights or obligations under this Deed in accordance with the terms of the Facility Agreement.

15. **NOTICES**

15.1 **Communications**

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

15.2 **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 to this Deed for any communication or document to be made or delivered under or in connection with this Deed is that identified with its name below or any substitute address or fax number or department or officer as the party to this Deed may notify to the Security Agent (or the Security Agent may notify to the other parties to this Deed, if a change is made by the Security Agent) by not less than five Business Days' notice.

15.3 **Delivery**

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

- 15.3.1.1 if by way of fax, when received in legible form; or

- 15.3.1.2 if by way of letter, when it has been left at the relevant address or (if within the United Kingdom) five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address or (if outside the United Kingdom) five Business Days after dispatch by international courier 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 15.2 (*Addresses*), if addressed to that department or officer.

- 15.3.2 Any communication or document to be made or delivered to the Security Agent will be effective only 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).

- 15.3.3 Any communication or document which becomes effective, in accordance with Clauses 15.3.1 and 15.3.2, after 5:00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

15.4 English language

Any notice or document given or provided under or in connection with this Deed must be in English.

16. 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 the Deed.

17. CONTRACTUAL RECOGNITION OF BAIL-IN

Notwithstanding any other term of any Finance Document or any other agreement, arrangement or understanding between the Parties, each Party acknowledges and accepts that any liability of any Party to any other Party under or in connection with the Finance Documents may be subject to Bail-In Action by the relevant Resolution Authority and acknowledges and accepts to be bound by the effect of:

- 17.1 any Bail-In Action in relation to any such liability, including (without limitation):

17.1.1 a reduction, in full or in part, in the principal amount, or outstanding amount due (including any accrued but unpaid interest) in respect of any such liability;

17.1.2 a conversion of all, or part of, any such liability into shares or other instruments of ownership that may be issued to, or conferred on, it; and

17.1.3 a cancellation of any such liability; and

- 17.2 a variation of any term of any Finance Document to the extent necessary to give effect to any Bail-In Action in relation to any such liability.

18. GOVERNING LAW

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

19. ENFORCEMENT

19.1 Jurisdiction

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

19.1.2 The parties to this Deed agree that the courts of England and Wales are the most appropriate and convenient courts to settle any Dispute and accordingly no party to this Deed will argue to the contrary.

19.1.3 This Clause 19 is for the benefit of the Secured Parties only. As a result, no Secured Party will be prevented from taking proceedings relating to a Dispute in any other court with jurisdiction (including, without limitation, the British Virgin Islands). To the extent allowed by law, the Secured Parties may take concurrent proceedings in any number of jurisdictions.

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

SCHEDULE 1**The Chargors**

Name of Chargor	Registration number (or equivalent, if any)	Registered office	Jurisdiction of incorporation
Berkley Estates London Limited	02670273	55 Baker Street, London, W1U 7EU	England and Wales
Arindel Properties Limited	525876	Palm Grove house, P.O. Box 438, Road Town, Tortola, VG1110, British Virgin Islands	British Virgin Islands
Topland Chiltern Limited	04040645	55 Baker Street, London, W1U 7EU	England and Wales
Topland (Aldersgate No.1) Limited	04018760	55 Baker Street, London, W1U 7EU	England and Wales
Topland (Aldersgate No.2) Limited	04018932	55 Baker Street, London, W1U 7EU	England and Wales

SCHEDULE 2**Subordinated Debt Documents**

Brief description	Date	Parties (including address for service of notices)
£35,000,000 intercompany loan agreement	On or about the date of this agreement	(1) Berkley Estates London Limited 55 Baker Street, London W1U 7EU (2) Arindel Properties Limited Palm Grove House, P.O. Box 438, Road Town, Tortola, VG1110, British Virgin Islands

EXECUTION

The Chargers

Executed as a deed by
BERKLEY ESTATES LONDON LIMITED,
acting by one director in the presence of:

Witness signature:

Witness name: **ROBIN MANDELL**

Witness address: **105 WIGMORE STREET
LONDON W1U 1QY**

Executed as a deed by
ARINDEL PROPERTIES LIMITED
a company incorporated in
the British Virgin Islands
acting by an authorised signatory
who, in accordance with the laws of
that territory, is acting under
the authority of the company

Executed as a deed by
TOPLAND CHILTERN LIMITED,
acting by one director in the presence of:

Witness signature:

Witness name: **ROBIN MANDELL**

Witness address: **105 WIGMORE STREET
LONDON W1U 1QY**

Director

Name: **TERENCE O'BEIRNE**

Communications to be delivered to:

Address: **105 WIGMORE STREET
LONDON W1U 1QY**

Fax number:

Attention: **COMPANY SECRETARY**

Signature of authorised signatory

Name: **SOL ZAKAY**

Communications to be delivered to:

Address: **105 WIGMORE STREET
LONDON W1U 1QY**

Fax number:

Attention: **COMPANY SECRETARY**

Director

Name: **MARK KINGSTON**

Communications to be delivered to:

Address: **105 WIGMORE STREET
LONDON W1U 1QY**

Fax number:

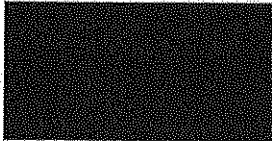
Attention: **COMPANY SECRETARY**

Executed as a deed by
TOPLAND (ALDRSGATE NO.1) LIMITED,
acting by one director in the presence of:

Witness signature:

Witness name:

Witness address:



ROBIN MANDELL

105 WIGMORE STREET
LONDON W1U 1QY

Director

Name: MARK KINGSTON

Communications to be delivered to:

Address: 105 WIGMORE STREET
LONDON W1U 1QY

Fax number:

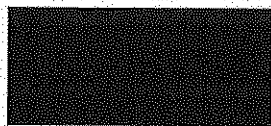
Attention: COMPANY SECRETARY

Executed as a deed by
TOPLAND (ALDRSGATE NO.2) LIMITED,
acting by one director in the presence of:

Witness signature:

Witness name:

Witness address:



ROBIN MANDELL

105 WIGMORE STREET
LONDON W1U 1QY

Director

Name: MARK KINGSTON

Communications to be delivered to:

Address: 105 WIGMORE STREET
LONDON W1U 1QY

Fax number:

Attention: COMPANY SECRETARY

The Security Agent

Executed as a deed by
**MOUNT STREET MORTGAGE SERVICING
LIMITED,**
acting by an authorised signatory in the
presence of:

Witness signature:

Witness name: *Tiana Taylor*

Witness address:

**100 Wood Street
London EC2V 7AN**

Authorised signatory

Name: **James Buncle**

Communications to be delivered to:

Address: 100 Wood Street, London, EC2V
7AN

Email: MSPS@mountstreetlpl.com

Attention: John Newton