



**Registration of a Charge**

Company Name: **PERFORMANCE RETAIL (NOMINEE) LIMITED**

Company Number: **05481303**



Received for filing in Electronic Format on the: **06/08/2021**

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**Details of Charge**

Date of creation: **05/08/2021**

Charge code: **0548 1303 0008**

Persons entitled: **WELLS FARGO BANK, N.A., LONDON BRANCH**

Brief description: **FREEHOLD PROPERTY KNOWN AS THE EASTBOURNE ARNDALE CENTRE, EASTBOURNE REGISTERED AT HM LAND REGISTRY WITH TITLE NUMBER ESX41430 AND ALL THE OTHER PLOTS OF LAND LISTED IN THE INSTRUMENT. FOR MORE DETAILS PLEASE REFER TO THE INSTRUMENT.**

**Contains fixed charge(s).**

**Contains floating 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:

**ALLEN & OVERY LLP**



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

Company number: 5481303

Charge code: 0548 1303 0008

The Registrar of Companies for England and Wales hereby certifies that a charge dated 5th August 2021 and created by PERFORMANCE RETAIL (NOMINEE) LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 6th August 2021 .

Given at Companies House, Cardiff on 9th August 2021

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**

**EXECUTION VERSION**

# **CONFIRMATORY SECURITY AGREEMENT**

**DATED** 5 August **2021**

**PERFORMANCE RETAIL LIMITED PARTNERSHIP**

**and**

**CERTAIN OTHER ENTITIES NAMED HEREIN AS CHARGORS**

**and**

**WELLS FARGO BANK, N.A., LONDON BRANCH**

**relating to**  
**Arndale Centre, Eastbourne**

**ALLEN & OVERY**

**Allen & Overy LLP**

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**THIS DEED** is dated 5 August 2021 and is made

**BETWEEN:**

- (1) **PERFORMANCE RETAIL (GENERAL PARTNER) LIMITED** registered in England and Wales with registered number 5481408 and **PRLP GP LLP** registered in England and Wales with registered number OC 415218 as general partners of a limited partnership carrying on business under the name of **PERFORMANCE RETAIL LIMITED PARTNERSHIP** registered in England and Wales as a limited partnership under the Limited Partnerships Act 1907 with registration number LP 10573 (the **Borrower**);
- (2) **PERFORMANCE RETAIL (GENERAL PARTNER) LIMITED** registered in England and Wales with registered number 5481408 and **PRLP GP LLP** registered in England and Wales with registered number OC 415218 (each a **General Partner** and together the **General Partners**);
- (3) **PERFORMANCE RETAIL (NOMINEE) LIMITED** registered in England and Wales with registered number 5481303, **TERMINUS ROAD (NOMINEE 1) LIMITED** registered in England and Wales with registered number 08853035 and **TERMINUS ROAD (NOMINEE 2) LIMITED** registered in England and Wales with registered number 08853144 (each a **Nominee** and together the **Nominees**) (the Borrower, the General Partners and the Nominees being each a **Chargor** and together the **Chargors**); and
- (4) **WELLS FARGO BANK, N.A., LONDON BRANCH** (the **Security Agent**) as security trustee for the Secured Parties (as defined in the Facility Agreement defined below).

**BACKGROUND:**

- (A) Pursuant to a security agreement dated 1 June 2017 between each Chargor and the Security Agent (the **Original Security Agreement**), each Chargor created Security Interests over certain of its assets as security for, among other things, the present and future obligations and liabilities of each Obligor under the Finance Documents (as amended or supplemented).
- (B) The Facility Agreement has been amended by an amendment and restatement agreement dated on or about the date of this Deed between, among others, each Chargor and the Security Agent (the **Amendment and Restatement Agreement**).
- (C) Each Chargor and the Security Agent consider that the Security Interests created by each Chargor under the Original Security Agreement secure payment of the Secured Liabilities (as defined below), but enter into this Deed in case they do not.
- (D) This Deed is supplemental to the Original Security Agreement.
- (E) It is intended that this document takes effect as a deed notwithstanding the fact that a party may only execute this document under hand.

**IT IS AGREED** as follows:

**1. INTERPRETATION**

- (a) In this Deed:

**Facility Agreement** means the facility agreement originally dated 1 June 2017 between, amongst others, the Chargors and the Security Agent (as amended and/or restated or supplemented from time to time, including pursuant to the Amendment and Restatement Agreement); and

**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 Obligor to any Secured Party under each Finance Document including those obligations and liabilities as they are amended by the Amendment and Restatement Agreement.

- (b) Capitalised terms defined in the Facility Agreement and the Original Security Agreement have, unless expressly defined in this Deed, the same meaning in this Deed.
- (c) The provisions of clause 1.2 (Construction) of the Facility Agreement apply to this Deed as though they were set out in full in this Deed except that references to the Facility Agreement will be construed as references to this Deed.
- (d) Any reference in this Deed to:
  - (i) a **Finance Document** or **Transaction Document** or any other agreement or instrument is a reference to that Finance Document or Transaction Document or other agreement or instrument as amended, novated, supplemented, extended or restated;
  - (ii) any **rights** in respect of an asset includes:
    - (A) all amounts and proceeds paid or payable;
    - (B) all rights to make any demand or claim; and
    - (C) all powers, remedies, causes of action, security, guarantees and indemnities,in each case, in respect of or derived from that asset;
  - (iii) any **share, stock, debenture, bond** or **other security** or **investment** includes:
    - (A) any dividend, interest or other distribution paid or payable; and
    - (B) any right, money or property accruing or offered at any time by way of redemption, substitution, exchange, bonus or preference, under option rights or otherwise;in each case, in relation to that share, stock, debenture, bond or other security or investment; and
  - (iv) the term **this Security** means any security created by this Deed.
- (e) Any covenant of a Chargor under this Deed (other than a payment obligation which has been discharged) remains in force during the Security Period.
- (f) The terms of the other Finance Documents and of any other agreement or instrument between any Parties in relation to any Finance Document are incorporated in this Deed to the extent required to ensure that any purported disposition, or any agreement for the disposition, of any freehold or leasehold property contained in this Deed is a valid disposition in accordance with section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989.
- (g) If the Security Agent considers that an amount paid to a Secured Party under a Finance Document is capable of being avoided or otherwise set aside on the liquidation or administration of the payer or

otherwise, then that amount will not be considered to have been irrevocably paid for the purposes of this Deed.

- (h) Unless the context otherwise requires, a reference to a **Security Asset** includes the proceeds of any disposal of that Security Asset.

## **1.2 Third party rights**

- (a) Unless expressly provided to the contrary in a Finance Document, a person who is not a party to this Deed has no right under the Third Parties Act to enforce or to enjoy the benefit of any term of this Deed.
- (b) Notwithstanding any term of any Finance Document, 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.
- (c) Any Receiver may enforce and enjoy the benefit of any Clause which expressly confers rights on it, subject to paragraph (b) above and the provisions of the Third Parties Act.

## **2. CREATION OF SECURITY**

### **2.1 General**

- (a) Each Chargor must pay or discharge the Secured Liabilities in the manner provided for in the Finance Documents.
- (b) All the security created under this Deed:
  - (i) is created in favour of the Security Agent;
  - (ii) is created over present and future assets of each Chargor;
  - (iii) is security for the payment of all the Secured Liabilities; and
  - (iv) is made with full title guarantee in accordance with the Law of Property (Miscellaneous Provisions) Act 1994.
- (c)
  - (i) If the rights of a Chargor under any Relevant Contract (together, the **Documents**) cannot be secured by the Effective Date without the consent of any third party:
    - (A) that Chargor must notify the Security Agent promptly;
    - (B) this Security will constitute security over all proceeds and other amounts which a Chargor may receive, or has received, under the relevant Document but will exclude a Chargor's other rights under that Document; and
    - (C) unless the Security Agent otherwise requires, a Chargor must use its reasonable endeavours to obtain the required consent or satisfy the relevant condition.
  - (ii) If a Chargor obtains the required consent or satisfies the relevant condition:
    - (A) a Chargor must notify the Security Agent promptly;
    - (B) all of that Chargor's rights under that Document will immediately be secured in accordance with Clause 2.9 (Other contracts); and



(C) clause 9 (Other Contracts) of the Original Security Agreement will apply to that Document.

- (d) The Security Agent holds the benefit of this Deed on trust for the Secured Parties.
- (e) All the security created under this Deed:
  - (i) is created in case the security created by the Original Security Agreement does not secure all of the Secured Liabilities; and
  - (ii) is created in addition to and does not affect the security created by the Original Security Agreement.
- (f) Where this Deed purports to create a first fixed Security Interest, that Security Interest will be a second ranking Security Interest ranking subject to the equivalent Security Interest created by the Original Security Agreement until such time as the Security Interest created by the Original Security Agreement ceases to have effect.
- (g) Where a right or asset has been assigned (subject to a proviso for re-assignment on redemption) under the Original Security Agreement and the same asset or right is purported to be assigned (subject to a proviso for re-assignment on redemption) again under this Deed, that second assignment will take effect as a fixed charge over that right or asset and will only take effect as an assignment if the relevant Security Interest created by the Original Security Agreement ceases to have effect at a time when this Deed still has effect.

## **2.2 Land**

- (a) Each Chargor charges:
  - (i) by way of a first legal mortgage all estates or interests in any freehold or leasehold property now owned by it; this includes the real property (if any) specified in schedule 1 (Real Property) to the Original Security Agreement (which is reproduced in Schedule 1 (Real Property) to this Deed); and
  - (ii) (to the extent that they are not the subject of a mortgage under paragraph (i) above) by way of a first fixed charge all estates or interests in any freehold or leasehold property now or subsequently owned by it.
- (b) A reference in this Clause 2 to a mortgage or charge of any freehold or leasehold property includes:
  - (i) all buildings, fixtures, fittings and fixed plant and machinery on that property; and
  - (ii) the benefit of any covenants for title given or entered into by any predecessor in title of a Chargor in respect of that property or any moneys paid or payable in respect of those covenants.

## **2.3 Investments**

Each Chargor:

- (a) mortgages by way of a first legal mortgage all shares in any entity (other than itself) owned by it or held by any nominee or trustee on its behalf; and

- (b) (to the extent that they are not the subject of a mortgage under paragraph (a) above) charges by way of a first fixed charge its interest in all its Investments.

## **2.4 Limited Partnership Interests**

- (a) Each General Partner charges by way of a first fixed charge all of the Limited Partnership Interests.
- (b) A reference in this Subclause to a charge of any Limited Partnership Interest includes:
  - (i) any dividends, interest, revenues, income, distributions, and proceeds of any kind, whether cash, instruments, securities, or other property, received by or distributable to it; and
  - (ii) any right, money or property accruing or offered at any time in relation to it by way of redemption, substitution, exchange, bonus or preference, under option rights or otherwise.
- (c) Other than any assets effectively charged in paragraph (a) above, each General Partner assigns and agrees to assign by way of security all of its Limited Partnership Interests, including all moneys which at any time may be or become payable to that General Partner, and the proceeds of any claims, awards and judgments which may at any time be receivable or received by that General Partner.
- (d) To the extent that any right, title or interest described in paragraph (a) or (b) above is not chargeable, assignable or capable of assignment or being charged either by reason of law or otherwise (or if the right, title or interest is deferred as a result of paragraph (e) below), the charge or assignment purported to be effected by paragraphs (a) or (c) above shall only operate as a charge or an assignment of any and all proceeds, damages, compensation, remuneration, profit, rent or income which the relevant General Partner may derive from such right, title or interest or be awarded or entitled to in respect thereof, in each case as continuing security for the payment, discharge and performance of its Secured Liabilities.
- (e) No part of any right, title or interest described in paragraph (a) or (b) above shall be charged or assigned pursuant to this Clause to the extent it would result in the Security Agent or any other person (except a General Partner) being required to be registered as a general partner of the Borrower until the later of this Security becoming enforceable and the Security Agent giving notice to the Borrower that this paragraph (e) shall cease to apply.

## **2.5 Plant and machinery**

To the extent that they are not the subject of a mortgage or a first fixed charge under Clause 2.2 (Land), each Chargor charges by way of a first fixed charge all plant and machinery owned by it and its interest in any plant or machinery in its possession.

## **2.6 Credit balances**

- (a) Each Chargor charges by way of a first fixed charge all of its rights in respect of any Account, any amount standing to the credit of any Account and the debt represented by it.
- (b) Each Chargor charges by way of a first fixed charge all of its rights in respect of any account it has with any person other than the accounts referred to in paragraph (a) above, any amount standing to the credit of any such account and the debt represented by it.

## **2.7 Book debts etc.**

Each Chargor charges by way of a first fixed charge:

- (a) all of its book and other debts;
- (b) all other moneys due and owing to it; and
- (c) the benefit of all rights in relation to any item under paragraphs (a) or (b) above.

## **2.8 Insurances**

- (a) Each Chargor assigns absolutely, subject to a proviso for re-assignment on redemption, all of its rights under any contract or policy of insurance taken out by it or on its behalf or in which it has an interest (together, the **Insurance Rights**).
- (b) To the extent that they have not been effectively assigned under paragraph (a) above, each Chargor charges by way of a first fixed charge all of its Insurance Rights.

## **2.9 Other contracts**

- (a) Each Chargor:
  - (i) assigns absolutely, subject to a proviso for re-assignment on redemption, all of its rights:
    - (A) in respect of all Rental Income;
    - (B) under any guarantee of Rental Income contained in or relating to any Lease Document;
    - (C) under any hedging agreement (if any);
    - (D) under each Relevant Contract; and
    - (E) under any document, agreement or instrument to which it and any nominee or trustee is party in respect of an Investment; and
  - (ii) charges by way of a first fixed charge all of its rights under:
    - (A) each Development Document; and
    - (B) any other document, agreement or instrument to which it is a party except to the extent that it is subject to any fixed security created under any other term of this Clause 2.
- (b) To the extent that they have not been effectively assigned under paragraph (a)(i) above, each Chargor charges by way of a first fixed charge all of its rights listed under paragraph (a)(i) above.

## **2.10 Miscellaneous**

Each Chargor charges by way of first fixed charge:

- (a) its goodwill;
- (b) the benefit of any Authorisation (statutory or otherwise) held in connection with its use of any Security Asset;

- (c) the right to recover and receive compensation which may be payable to it in respect of any Authorisation referred to in paragraph (b) above;
- (d) its uncalled capital; and
- (e) the benefit of all rights in relation to any item under paragraphs (a) to (d) above

## **2.11 Floating charge**

- (a) Each Chargor charges by way of a first floating charge all its assets not otherwise effectively mortgaged, charged or assigned by way of fixed mortgage, charge or assignment under this Clause 2.
- (b) Except as provided below, the Security Agent may by notice to any Chargor convert the floating charge created by that Chargor under this Clause 2.11 (Floating charge) into a fixed charge as regards any of that Chargor's assets specified in that notice, if:
  - (i) an Event of Default is continuing; or
  - (ii) the Security Agent considers those assets to be in danger of being seized or sold under any form of distress, attachment, execution or other legal process or to be otherwise in jeopardy.
- (c) The floating charge created by this Clause 2.11 (Floating charge) may not be converted into a fixed charge solely by reason of:
  - (i) the obtaining of a moratorium; or
  - (ii) anything done with a view to obtaining a moratorium,

under Part A1 of the Insolvency Act 1986 other than in respect of any floating charge referred to in subsection (4) of section A52 of Part A1 of the Insolvency Act 1986.
- (d) The floating charge created by this Clause 2.11 (Floating charge) will (in addition to the circumstances when this may occur under the general law) automatically convert into a fixed charge over all of any Chargor's assets if an administrator is appointed or the Security Agent receives notice of an intention to appoint an administrator.
- (e) The floating charge created by this Clause 2.11 (Floating charge) is a **qualifying floating charge** for the purpose of paragraph 14 of Schedule B1 to the Insolvency Act 1986.

## **3. INCORPORATION**

The provisions of clause 2 (Confirmation of Authority), clause 4 (Restrictions on Dealings) to 19 (Release) (inclusive) (other than clauses 12.1(d) (Appointment of Receiver), 5.3 (Land Registry) and, to the extent they have already been complied with under the Original Security Agreement, clauses 5.5 (Deposit of title deeds) and 6.1 (Deposits)) of the Original Security Agreement are deemed to be incorporated into this Deed with all necessary modifications as if they were set out in full in this Deed.

## **4. H.M. LAND REGISTRY**

Each Chargor consents to a restriction in the following terms being entered into on the Register of Title relating to any Mortgaged Property registered at H.M. Land Registry:

"No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by the proprietor for the time being of the charge dated [ ] in favour of [ ] referred to in the charges register or their conveyancer. (Standard Form P)"

**5. APPOINTMENT OF RECEIVER**

The Security Agent is not entitled to appoint a Receiver solely as a result of the obtaining of a moratorium (or anything done with a view to obtaining a moratorium) under Part A1 of the Insolvency Act 1986 other than in respect of any floating charge referred to in subsection (4) of section A52 of Part A1 of the Insolvency Act 1986.

**6. MISCELLANEOUS**

- (a) The Original Security Agreement will remain in full force and effect.
- (b) This Deed is designated a Finance Document.

**7. GOVERNING LAW**

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

THIS DEED has been entered into as a deed on the date stated at the beginning of this Deed.

# SCHEDULE 1

## REAL PROPERTY

Property Description	Title	Title number	Registered Proprietor(s) (Chargor)	Beneficial Owner(s) (Chargor)
<p>The property known as the The Eastbourne Arndale Centre, Eastbourne</p> <p>The property known as Land on the North Side of Terminus Road, Eastbourne</p>	Freehold	<p>ESX41430 and</p> <p>ESX218883</p>	<p>Performance Retail (General Partner) Limited</p> <p>and</p> <p>Performance Retail (Nominee) Limited</p>	<p>Performance Retail Limited Partnership acting by its general partner</p> <p>Performance Retail (General Partner) Limited</p>
<p>The property known as 72, 74 and 76 Terminus Road, Eastbourne (BN21 3LX)</p> <p>The property known as 80, 82, 84, 86, 88 and 90 Terminus Road, Eastbourne</p>	Freehold	<p>EB14380 and</p> <p>EB24780</p>	<p>Performance Retail (General Partner) Limited</p> <p>and</p> <p>Performance Retail (Nominee) Limited</p>	<p>Performance Retail Limited Partnership acting by its general partner</p> <p>Performance Retail (General Partner) Limited</p>

SIGNATORIES

Chargors

EXECUTED AS A DEED by )  
PERFORMANCE RETAIL LIMITED )  
PARTNERSHIP )  
acting by its general partner PERFORMANCE )  
RETAIL (GENERAL PARTNER) LIMITED )  
acting by )  
Michael Donald Barrie )  
Director )

[Redacted]

In the presence of:

[Redacted]

Witness's signature:

Name:

JANE HILLIER

Address:

ONE COLEMAN ST, LONDON EC2R 5AA

EXECUTED AS A DEED by )  
PERFORMANCE RETAIL LIMITED )  
PARTNERSHIP acting by its general partner PRLP )  
GP LLP )  
acting by its member )  
acting by )  
Michael Donald Barrie )  
Member )

[Redacted]

In the presence of:

[Redacted]

Witness's signature:

Name:

JANE HILLIER

Address:

ONE COLEMAN ST, LONDON, EC2R 5AA

EXECUTED AS A DEED by  
PERFORMANCE RETAIL (GENERAL  
PARTNER) LIMITED

acting by

Michael Donald Barrie

Director

In the presence of:

Witness's signature:

Name: JANE HILLIAR

Address: ONE COLEMAN ST, LONDON, EC2R 5AA

EXECUTED AS A DEED by  
PRLP GP LLP

acting by its member

acting by

Michael Donald Barrie

Member

In the presence of:

Witness's signature:

Name: JANE HILLIAR

Address: ONE COLEMAN ST, LONDON, EC2R 5AA

EXECUTED AS A DEED by  
TERMINUS ROAD (NOMINEE 1) LIMITED

acting by

Michael Donald Barrie

Director

In the presence of:

Witness's signature:

Name: JANE HILLIAR

Address: ONE COLEMAN ST, LONDON, EC2R 5AA



EXECUTED AS A DEED by  
TERMINUS ROAD (NOMINEE 2) LIMITED  
acting by

Michael Donald Barrie  
Director

In the presence of:

Witness's signature:

Name: JANE HILLIER

Address: ONE COLEMAN ST, LONDON, EC2R 5AA

EXECUTED AS A DEED by  
PERFORMANCE RETAIL (NOMINEE)  
LIMITED  
acting by

Michael Donald Barrie  
Director

In the presence of:

Witness's signature:

Name: JANE HILLIER

Address: ONE COLEMAN ST, LONDON, EC2R 5AA

Security Agent

WELLS FARGO BANK, N.A., LONDON  
BRANCH

By:



CHARLES N. ROBERTS