



Registration of a Charge

Company name: **Osprey Supermarket 1 Limited**

Company number: **08002364**



X60N1SW9

Received for Electronic Filing: **20/02/2017**

Details of Charge

Date of creation: **03/02/2017**

Charge code: **0800 2364 0002**

Persons entitled: **THE ROYAL BANK OF SCOTLAND PLC AS SECURITY AGENT FOR THE SECURED PARTIES (SECURITY AGENT)**

Brief description: **NOT APPLICABLE.**

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:

ADDLESHAW GODDARD LLP



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 8002364

Charge code: 0800 2364 0002

The Registrar of Companies for England and Wales hereby certifies that a charge dated 3rd February 2017 and created by Osprey Supermarket 1 Limited was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 20th February 2017 .

Given at Companies House, Cardiff on 21st February 2017

The above information was communicated by electronic means and authenticated by the Registrar of Companies under section 1115 of the Companies Act 2006



Companies House



THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES



Dated 3 February 2017

AG LLP
OSPREY SUPERMARKET INCOME 1 LIMITED
as Chargor

OSPREY SUPERMARKET INCOME AND GROWTH 1 LIMITED PARTNERSHIP
as Borrower

THE ROYAL BANK OF SCOTLAND PLC
as Security Agent

SHAREHOLDER'S SECURITY
AGREEMENT – SHARES AND
SUBORDINATED DEBT

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This Deed is made on

3 February

2017

Between

- (1) **Osprey Supermarket 1 Limited** (registered in England and Wales with number 08002364) (**Chargor**);
- (2) **Osprey Supermarket Income and Growth 1 Limited Partnership** (registered in England and Wales under the Limited Partnerships Act 1907 with partnership number LP014958) acting by its only general partner the General Partner (as defined below) (**Borrower**); and
- (3) **The Royal Bank of Scotland plc** as security agent for itself and the other Secured Parties (**Security Agent**, which term shall include any person appointed as security agent or as an additional agent in accordance with the terms of the Facility Agreement).

It is agreed

1 Definitions and interpretation

1.1 Definitions

In this Deed:

Facility Agreement means the facility agreement dated on or about the date of this Deed between, amongst others, Osprey Supermarket Income and Growth 1 LP as Borrower, Osprey Supermarket Income 1 GP Limited as General Partner, the entities listed in part 1 of schedule 1 therein as Guarantors and The Royal Bank of Scotland Plc as Arranger, Original Lender, Original Hedger Counterparty, Agent, Security Agent and Account Bank under which the Original Lenders agree to make available to the Borrower a £20,500,000 term loan facility

General Partner means Osprey Supermarket Income 1 GP Limited (registered in England and Wales with company number 07852989)

Party means a party to this Deed

Receiver means any receiver appointed over any Secured Assets or the Chargor whether under this Deed or by order of the court on application by the Security Agent and includes a receiver and manager

Relevant Jurisdiction means, in relation to the Chargor:

- (a) its jurisdiction of incorporation
- (b) any jurisdiction where any asset subject to or intended to be subject to the Transaction Security to be created by it is situated
- (c) any jurisdiction where it conducts its business and
- (d) the jurisdiction whose laws govern the perfection of any of the Security Documents entered into by it

Secured Assets means all of the assets the subject of any Security created by or under this Deed in favour of the Security Agent

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.

Security Period means the period beginning on the date of this Deed and ending on the date on which the Security Agent is satisfied that the Secured Liabilities have been irrevocably and unconditionally satisfied in full and all facilities made available by the Secured Parties (or any of them) under the Finance Documents (or any of them) have been cancelled

Share Related Rights means in respect of any Share:

- (a) all monies paid or payable in respect of that Share (whether as income, capital or otherwise)
- (b) all shares, investments or other assets derived from that Share and
- (c) all rights derived from or incidental to that Share

Shares means all shares in the General Partner present and future held by the Chargor, including the 1 share of £1.00 in the General Partner registered in the name of the Chargor on the date of this Deed

Subordinated Loans means the aggregate of all and any loans made available or to be made available by the Chargor to the Borrower from time to time (and whether pursuant to a Subordinated Loan Agreement or otherwise)

Subordinated Loan Agreements means any subordinated loan agreement entered into from time to time between the General Partner and the Borrower

Subordinated Loan Related Rights means, in relation to any Subordinated Loan Agreement and/or any Subordinated Loan:

- (a) the proceeds of sale of any part of that asset
- (b) all rights, powers, benefits, claims, causes of action, contracts, warranties, remedies, security, guarantees, indemnities or covenants of title in respect of that asset and
- (c) all monies and proceeds paid or payable in respect of that asset

1.2 Interpretation

- (a) Unless otherwise defined in this Deed, a term defined in the Facility Agreement has the same meaning when used in this Deed or any notices, acknowledgements or other documents issued under or in connection with this Deed.
- (b) In this Deed, the term:
 - (i) **dispose** includes any sale, lease, licence, transfer or loan; and
 - (ii) **assets** includes present and future properties, revenues and rights of every description (including any right to receive such revenues).
- (c) Clause [1.2] (Construction) of the Facility Agreement is incorporated in this Deed as if set out here in full but so that each reference in that clause to this Agreement shall be read as a reference to this Deed.

1.3 Third Party Rights

- (a) Unless expressly provided to the contrary in any Finance Document a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Deed or any other Finance Document issued or entered into under or in connection with it but this does not affect any right or remedy of a third party which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999.
- (b) Unless expressly provided to the contrary in any Finance Document, the consent of any person who is not a Party is not required to rescind or vary this Deed or any other Finance Document entered into under or in connection with it.

2 Covenant to pay

2.1 Covenant

Subject to the provisions of clause 2.2, the Chargor covenants with the Security Agent as security agent for the Secured Parties, to pay and discharge the Secured Liabilities when they become due for payment and discharge in accordance with the terms of the Finance Documents.

2.2 Limited Recourse

Notwithstanding the terms of any other provision of this Deed, the Security Agent shall have no recourse against the Chargor or its assets, whether by way of court proceedings, a winding up application or otherwise, in respect of its obligations and liabilities under this Deed except by enforcement of its security over the Secured Assets, and the liability of the Chargor shall extend only to and shall not exceed the proceeds of any such enforcement.

3 Charging provisions

3.1 General

All Security created by the Chargor under clauses 3.2 and 3.3 is:

- (a) a continuing security for the payment and discharge of the Secured Liabilities;
- (b) granted with full title guarantee;
- (c) granted in respect of all the right, title and interest (if any), present and future, of the Chargor in and to the relevant Secured Assets; and
- (d) granted in favour of the Security Agent as security agent for the Secured Parties.

3.2 Assignment

- (a) The Chargor assigns all of its rights, benefits, title, claim and interest in and to each Subordinated Loan Agreement, each Subordinated Loan and all Subordinated Loan Related Rights.
- (b) The Chargor shall remain liable to perform all its obligations under each Subordinated Loan Agreement and in respect of each Subordinated Loan.

3.3 Fixed charges

The Chargor charges by fixed charge:

- (a) the Shares and all Share Related Rights; and
- (b) to the extent not validly and effectively assigned pursuant to clause 3.2 above, all its rights, benefits, title, claim and interest in and to each Subordinated Loan Agreement, each Subordinated Loan and all Subordinated Loan Related Rights.

4 General security provisions

4.1 Continuing security

The Security constituted by this Deed shall be continuing security and shall remain in full force and effect regardless of any intermediate payment or discharge by the Chargor or any other person of the whole or any part of the Secured Liabilities.

4.2 Additional security

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.

4.3 Settlements conditional

- (a) If the Security Agent (acting reasonably) believes that any amount paid by any person in respect of the Secured Liabilities is capable of being avoided or set aside for any reason, then for the purposes of this Deed, such amount shall not be considered to have been paid. For the avoidance of doubt, no interest shall accrue on any such amount so paid and no Event of Default shall occur as a result of any such amount being deemed not to have been paid.
- (b) Any settlement, discharge or release between the Chargor and any Secured Party shall be conditional upon no Security or payment to or for that Secured Party by the Chargor or any other person being avoided or set aside or ordered to be refunded or reduced by virtue of any law relating to bankruptcy, insolvency or liquidation or otherwise.

4.4 Waiver of defences

The liability of the Chargor under this Deed will not be affected by an act, omission, matter or thing which, but for this clause 4.4, would reduce, release or prejudice any of its liability under this Deed (without limitation and whether or not known to it or any Secured Party) including:

- (a) any time, waiver or consent granted to, or composition with, any Transaction Obligor or other person;
- (b) the release of any Transaction Obligor or any other person under the terms of any composition or arrangement with any creditor of any Transaction Obligor;
- (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 Transaction Obligor 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 Transaction Obligor or any other person;
- (e) any amendment (however fundamental) or replacement of a Finance Document or any 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.

4.5 Chargor intent

Without prejudice to the generality of clause 4.4, the Chargor expressly confirms that it intends that this Security 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) 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
- (i) any fees, costs and/or expenses associated with any of the foregoing.

4.6 Immediate recourse

The 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 enforcing its rights under this Deed. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

4.7 Appropriations

Until all amounts which may be or become payable by the Transaction 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:

- (a) refrain from applying or enforcing any other monies, 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 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.

4.8 Deferral of Chargor's rights

Until all amounts which may be or become payable by the Transaction Obligors under or in connection with the Finance Documents 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:

- (a) to be indemnified by any Transaction Obligor;
- (b) to claim any contribution from any guarantor of, or person providing Security for, any Transaction Obligor's obligations under the Finance Documents; and/or
- (c) 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.

5 Notices of assignment and Borrower Confirmations

5.1 Pursuant to this clause 5, the Chargor notifies the Borrower that, pursuant to this Deed, the Chargor has assigned all of its benefits rights, titles, claims and interests in and to each Subordinated Loan Agreement, each Subordinated Loan and all Subordinated Loan Related Rights.

5.2 The Borrower enters into this Deed to:

- (a) acknowledge to the Security Agent and the Chargor that it has notice of the assignments referred to in clause 5.1 above;
- (b) confirm to the Security Agent that the Borrower has not claimed or exercised, has no outstanding right to claim or exercise and will not exercise any right of set off, counter claim or other right relating to any payment to be made by the Borrower in respect of any Subordinated Loan Agreement, any Subordinated Loan and/or any Subordinated Loan Related Right; and
- (c) acknowledge that the Security Agent shall not be under any obligation in relation to any Subordinated Loan Agreement and/or any Subordinated Loan as a consequence of this Deed and the Chargor shall at all times remain liable to perform all obligations expressed to be assumed by it in respect of each Subordinated Loan Agreement and/or each Subordinated Loan.

6 Negative pledge

6.1 The Chargor shall not create nor permit to subsist any Security, other than Security arising under this Deed, over any of the Secured Assets.

6.2 Clause 6.1 does not apply to any Security or arrangement which is security expressly permitted under the Finance Documents.

- 6.3 The Chargor shall not sell, transfer or otherwise dispose of any of the Secured Assets on terms whereby they are or may be re-acquired by the Chargor or any Transaction Obligor in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.

7 Restrictions on disposals

The Chargor shall not enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, transfer, assign, lend, factor, pledge, charge, exchange or otherwise dispose of any of the Secured Assets nor permit any other person to do any such thing.

8 Further assurance

- 8.1 The Chargor shall promptly do all such acts and execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Security Agent or any Receiver may reasonably specify (and in such form as the Security Agent or any Receiver may reasonably require) in favour of the Security Agent or its nominee(s):

- (a) to create, perfect, protect and maintain the Security created or intended to be created under or evidenced by this Deed or for the exercise of any rights, powers and remedies of the Security Agent or the Secured Parties provided by or pursuant to this Deed or by law; and/or
- (b) (if an Event of Default is continuing) to facilitate the realisation of the assets which are, or are intended to be, the subject of the Security created by or under this Deed.

- 8.2 The Chargor shall take all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Security conferred or intended to be conferred on the Security Agent or the Secured Parties by or pursuant to this Deed.

- 8.3 Any document required to be executed by the Chargor under this clause 8 will be prepared at the cost of the Chargor.

9 Representations

The Chargor makes the representations set out in this clause 9 to the Security Agent for the benefit of each Secured Party.

9.1 Status

- (a) It is a limited liability corporation, duly incorporated and validly existing under the law of its jurisdiction of incorporation.
- (b) It has the power to own its assets and carry on its business as it is being conducted.

9.2 Binding obligations

- (a) The obligations expressed to be assumed by it in this Deed are, subject to the Legal Reservations, legal, valid, binding and enforceable obligations.
- (b) Without limiting the generality of clause 9.2(a), this Deed creates the Security which this Deed purports to create and the Security is valid and effective.

9.3 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 contemplated by 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 to an extent which has or is reasonably likely to have a Material Adverse Effect.

9.4 Power and authority

- (a) 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.
- (b) No limit on its powers will be exceeded as a result of the grant of the Security contemplated by this Deed.

9.5 Validity and admissibility in evidence

Subject to the Perfection Requirements, all Authorisations required or desirable:

- (a) to enable it lawfully to enter into, exercise its rights and comply with its obligations in this Deed; and
 - (b) to make this Deed admissible in evidence in its Relevant Jurisdictions,
- have been obtained or effected and are in full force and effect.

9.6 Acting as principal

It is acting in all matters relating to this Deed as principal for its own account and not as agent or trustee or in any other capacity whatsoever on behalf of any third party.

9.7 Governing law and enforcement

- (a) The choice of English law as the governing law of this Deed will be recognised and enforced in its Relevant Jurisdictions.
- (b) Any judgment obtained in England in relation to this Deed will be recognised and enforced in its Relevant Jurisdictions.

9.8 No filing or stamp taxes

Subject to the Perfection Requirement, it is not necessary under the laws of its Relevant Jurisdictions that this Deed be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration or similar tax be paid on or in relation to this Deed or the transactions contemplated by this Deed except registration of a statement of particulars and a certified copy of this Deed at Companies House under the Companies Act 2006 and payment of associated fees, which registrations and filings will be made and paid promptly after the date of this Deed.

9.9 Good title to assets

It has a good, valid and marketable title to the Secured Assets, in each case, free from Security (other than that created by or pursuant to this Deed or otherwise permitted under the Facility Agreement).

9.10 Legal and beneficial ownership

- (a) The Chargor is the sole legal of the assets over which it purports to grant Security.
- (b) Each Secured Asset is legally and beneficially owned by the Chargor free from any claims, third party rights or competing interests other than Security created under the Security Documents or otherwise permitted under the Facility Agreement.
- (c) No breach of any law or regulation is outstanding which adversely affects or might adversely affect the value of any Secured Asset.

9.11 Shares

- (a) The Shares constitute all of the issued share capital of the General Partner and are fully paid.
- (b) No Share or Share Related Right is subject to any option to purchase or similar rights.
- (c) As at the date of this Deed, none of the Shares is in an uncertificated form.
- (d) The constitutional documents of the General Partner do not restrict or inhibit any transfer of the Shares and/or Share Related Rights on creation or enforcement of this Security.

9.12 No adverse consequences

- (a) It is not necessary under the laws of its Relevant Jurisdictions:
 - (i) in order to enable the Security Agent to enforce its rights under this Deed; or
 - (ii) by reason of the execution of any Finance Document or the performance by it of its obligations under this Deed,

that the any Secured Party should be licensed, qualified or otherwise entitled to carry on business in any Relevant Jurisdiction of the Chargor.
- (b) No Secured Party is or will be deemed to be resident, domiciled or carrying on business in any Relevant Jurisdiction of the Chargor by reason only of the execution, performance and/or enforcement of this Deed.

9.13 Repetition

The representations and warranties in this clause 9 are deemed to be made by the Chargor by reference to the facts and circumstances then existing on:

- (a) the date of this Deed;
- (b) the date of each Utilisation Request;
- (c) the Utilisation Date; and

- (d) the first day of each Interest Period.

10 Undertakings

10.1 Duration

The Chargor undertakes to the Security Agent for the benefit of the Secured Parties in accordance with this clause 10. The undertakings in this clause 10 shall remain in force during the Security Period.

10.2 Authorisations

It shall promptly:

- (a) obtain, comply with and do all that is necessary to maintain in full force and effect; and
- (b) supply certified copies to the Security Agent of,

any Authorisation required under any law or regulation of a Relevant Jurisdiction to enable it to perform its obligations under this Deed and to ensure the legality, validity, enforceability or admissibility in evidence of this Deed.

10.3 Shares

- (a) On the later of:
 - (i) the date of this Deed; and
 - (ii) the date of acquisition by the Chargor of any Shares or Share Related Rights,
 the Chargor shall:
 - (A) deliver to the Security Agent all certificates of title and other documents of title or evidence of ownership in respect of its Shares and the Share Related Rights; and
 - (B) deliver to the Security Agent such transfer documents (with the transferee left blank) or any other documents as the Security Agent may require in respect of its Shares and Share Related Rights.
- (b) Until the Security Agent takes any steps under clause 10.4(a) or takes any enforcement action under clause 12.2 (Acts of enforcement), the Chargor shall be entitled to receive and retain all dividends, distributions and other monies receivable in respect of the Shares and Share Related Rights.
- (c) The Chargor shall not exercise its voting and other rights in respect of the Shares and Share Related Rights in a manner which is likely to be prejudicial to the interests of the Secured Parties.
- (d) The Chargor shall make all payments which may become due and payable in respect of any of the Shares and Share Related Rights. If the Chargor fails to make any such payments, the Security Agent may but shall not be obliged to make such payment on behalf of the Chargor. Any sums so paid by the Security Agent shall be repayable by the Chargor to the Security Agent on demand.

- (e) The Chargor shall remain liable to observe and perform all of the conditions and obligations assumed by it in respect of the Shares and Share Related Rights and the Security Agent shall not be required to perform or fulfil any obligation of any Chargor in respect of the Shares or Share Related Rights.
- (f) The Chargor shall comply with any notice served on it under the Companies Act 2006 or pursuant to the articles of association or any other constitutional document of the General Partner in respect of or in connection with the Shares or Share Related Rights and will promptly provide to the Security Agent a copy of that notice.
- (g) The Chargor shall ensure that none of the Shares are converted into uncertificated form without the prior written consent of the Security Agent.
- (h) Immediately on conversion of any Shares or Share Related Rights from a certificated to an uncertificated form, and on the acquisition of any Shares or Share Related Rights in an uncertificated form, the Chargor shall give such instructions or directions and take such other steps and enter into such documentation as the Security Agent may require in order to protect or preserve the Security intended to be created by this Deed.

10.4 Following an Event of Default

- (a) If an Event of Default is continuing, the Chargor shall on request by the Security Agent:
 - (i) deliver to the Security Agent such stock transfer forms or other transfer documents as the Security Agent may require to enable the Security Agent or its nominee or nominees to be registered as the owner of, and to obtain legal and beneficial title to, the Shares and/or Share Related Rights referred to in such request;
 - (ii) provide to the Security Agent certified copies of all resolutions and authorisations approving the execution of such transfer forms and registration of such transfers as the Security Agent may reasonably require;
 - (iii) procure that each such transfer is promptly registered by the General Partner;
 - (iv) procure that, immediately on their issue, all share certificates or other documents of title in the appropriate form, in respect of the relevant Shares and/or Share Related Rights, are delivered to the Security Agent in each case showing the registered holder as the Security Agent or its nominee or nominees (as applicable); and/or
 - (v) exercise all voting rights in respect of the Shares and Share Related Rights only in accordance with the instructions of the Security Agent.
- (b) If the Chargor receives any dividends, distributions or other monies in respect of the Shares and Share Related Rights at a time when the Security Agent has made a request under clause 10.4(a) or taken any enforcement steps under clause 12.2 (Acts of enforcement), the Chargor shall immediately pay such sums received directly to the Security Agent for application in accordance with clause 30 (Sharing among the Finance Parties) of the Facility Agreement and shall hold all such sums on trust for the Security Agent pending payment of them to such account as the Security Agent shall direct.

- (c) At any time while an Event of Default is continuing, the Security Agent may complete the transfer documents delivered to it under clause 10.3 or take any other necessary steps to vest the Shares and Share Related Rights in itself or such other person or nominee as it shall select.

10.5 Subordinated Loans

The Chargor shall not take, or omit to take, any action which might result in:

- (a) the alienation or impairment of any rights in any Subordinated Loan; or
- (b) any right to terminate a Subordinated Loan Agreement becoming exercisable by any party to that agreement.

10.6 Information

The Chargor shall provide to the Security Agent such documents or information relating to the Secured Assets as the Security Agent (acting reasonably) may from time to time request and shall promptly deliver to the Security Agent a copy of any notice or proceedings served by any person on the Chargor concerning any Secured Asset or alleging any breach of its obligations relating to any Secured Asset.

10.7 Retention of documents

The Security Agent may retain any document delivered to it pursuant to clause 10.3 or otherwise until the Security created by this Deed is released and if for any reason it ceases to hold any such document before such time, it may by notice to the Chargor require that the relevant document be redelivered to it and the Chargor shall immediately comply (or procure compliance) with such notice.

10.8 General

The Chargor shall not do or cause or permit to be done anything which would be reasonably likely in any way to materially depreciate, jeopardise or otherwise prejudice the value to the Secured Parties of the Security created by or under this Deed.

11 Security power of attorney

The Chargor, by way of security, irrevocably and severally appoints the Security Agent, each Receiver and any of their delegates or sub-delegates to be its attorney to take any action which the Chargor is obliged to take under this Deed. The Chargor ratifies and confirms whatever any attorney properly does or purports to do pursuant to its appointment under this clause 11.

12 Enforcement of security

12.1 When security is enforceable

On the occurrence of any Event of Default which is continuing, the Security created by and under this Deed is immediately enforceable.

12.2 Acts of enforcement

The Security Agent may, in its absolute discretion, at any time when the Security created by or under this Deed is enforceable:

- (a) enforce all or any part of the Security created by or under this Deed in any manner it sees fit;
- (b) exercise its rights and powers conferred upon mortgagees by the Law of Property Act 1925, as varied and extended by this Deed and rights or powers conferred on a Receiver by this Deed whether or not it has taken possession of, or appointed a Receiver to any of, the Secured Assets;
- (c) appoint one or more persons to be a Receiver to all or any part of the Secured Assets;
- (d) exercise its power of sale under section 101 of the Law of Property Act 1925 (as amended by this Deed);
- (e) sell all or any of the Secured Assets in any manner permitted by law and on such terms as the Security Agent shall in its absolute discretion determine; and/or
- (f) apply all dividends and other monies received in respect of the Secured Assets as though they were proceeds of sale.

12.3 Right of Appropriation

To the extent that the Security created by this Deed constitutes a "security financial collateral arrangement" and the Secured Assets constitute "financial collateral" for the purpose of the Financial Collateral Arrangements (No 2) Regulations 2003 (**Regulations**), the Security Agent shall have the right on giving prior notice to the Chargor, at any time after the Security becomes enforceable, to appropriate all or any part of those Secured Assets in or towards discharge of the Secured Liabilities. The parties agree that the value of the appropriated Secured Assets shall be determined by the Security Agent by reference to any available publicly available market price in the absence of which by such other means as the Security Agent (acting reasonably) may select including, without limitation, an independent valuation. For the purpose of Regulation 18(1) of the Regulations, the Chargor agrees that any such determination by the Security Agent will constitute a valuation "in a commercially reasonable manner".

12.4 Statutory Powers - General

- (a) For the purposes of all powers implied by statute, the Secured Liabilities are deemed to have become due and payable on the date of this Deed.
- (b) Section 103 of the Law of Property Act 1925 and section 93 of the Law of Property Act 1925 do not apply to the Security constituted by or under this Deed.
- (c) Each Receiver and the Security Agent is entitled to all the rights, powers, privileges and immunities conferred by the Law of Property Act 1925 and the Insolvency Act 1986 on mortgagees and receivers.

12.5 Contingencies

If the Security Agent enforces the Security constituted by or under this Deed at a time when no amounts are due to the Secured Parties under the Finance Documents but at a time when amounts may or will become so due, the Security Agent (or the Receiver) may pay the proceeds of any recoveries effected by it into an interest bearing suspense account.

12.6 Mortgagee in possession - no liability

Neither the Security Agent nor any Receiver shall be liable to account as mortgagee in possession or for any loss on realisation or for any default or omission for which a mortgagee in possession might otherwise be liable.

12.7 Redemption of prior mortgages

At any time after the Security created by or under this Deed has become enforceable, the Security Agent may, at the sole cost of the Chargor (payable to the Security Agent on demand):

- (a) redeem any prior form of Security over any Secured Asset; and/or
- (b) procure the transfer of that Security to itself; and/or
- (c) settle and pass the accounts of any prior mortgagee, chargee or encumbrancer which once so settled and passed shall be conclusive and binding on the Chargor.

13 Receiver

13.1 Appointment of Receiver

- (a)
 - (i) At any time after any Security created by or under this Deed is enforceable, the Security Agent may appoint a Receiver to all or any part of the Secured Assets in accordance with clause 12.2(c) (Acts of enforcement).
 - (ii) At any time if so requested in writing by the Chargor, without further notice, the Security Agent may appoint one or more persons to be a Receiver of all or any part of the Secured Assets as if the Security Agent had become entitled under the Law of Property Act 1925 to exercise the power of sale conferred under the Law of Property Act 1925.
- (b) Any Receiver appointed under this Deed shall be the agent of the Chargor and the Chargor shall be solely responsible for his acts or defaults and for his remuneration and liable on any contracts or engagements made or entered into by him and in no circumstances whatsoever shall the Security Agent be in any way responsible for any misconduct, negligence or default of the Receiver.
- (c) Where the Chargor is an eligible company within the meaning of paragraphs 2 to 4 (inclusive) of Schedule A1 of the Insolvency Act 1986 (a) obtaining a moratorium, or (b) anything done with a view to obtaining a moratorium including any preliminary decision or investigation in terms of paragraph 43 of Schedule A1 of the Insolvency Act 1986 shall not be grounds for appointment of a Receiver.

13.2 Removal

The Security Agent may by written notice remove from time to time any Receiver appointed by it and, whenever it may deem appropriate, appoint a new Receiver in the place of any Receiver whose appointment has terminated.

13.3 Powers of Receiver

- (a) General

- (i) In addition to those conferred by the Law of Property Act 1925 on any Receiver appointed under that Act, each Receiver has, and is entitled to exercise, all of the rights, powers and discretions set out in this clause 13.3.
 - (ii) If there is more than one Receiver holding office at the same time, unless the document appointing him states otherwise, each Receiver may exercise all of the powers conferred on a Receiver under this Deed or under the Insolvency Act 1986 individually and to the exclusion of any other Receivers.
 - (iii) A Receiver may, (in the name of the Chargor):
 - (A) do all other acts and things which he may consider expedient for realising any Secured Asset; and
 - (B) exercise in relation to any Secured Asset all the powers, authorities and things which he would be capable of exercising if he were its absolute beneficial owner.
- (b) Borrow monies

A Receiver may raise and borrow money (either unsecured or on the security of any Secured Asset, either in priority to the security constituted by this Deed or otherwise) on any terms and for whatever purpose which he thinks fit. No person lending that money need enquire as to the propriety or purpose of the exercise of that power or to check the application of any monies so raised or borrowed.
- (c) Compromise

A Receiver may settle, adjust, refer to arbitration, compromise and arrange any claims, accounts, disputes, questions and demands with or by any person who is or claims to be a creditor of the Chargor relating in any way to any Secured Asset.
- (d) Delegation

A Receiver may delegate his powers in accordance with clause 15 (Delegation).
- (e) Employees

For the purposes of this Deed, a Receiver as he thinks appropriate, on behalf of the Chargor or for itself as Receiver, may:

 - (i) appoint and discharge managers, officers, agents, accountants, servants, workmen and others upon such terms as to remuneration or otherwise as he may think proper; and
 - (ii) discharge any such persons appointed by the Chargor.
- (f) Legal actions

A Receiver may bring, prosecute, enforce, defend and abandon all actions, suits and proceedings or submit to arbitration or any form of alternative dispute resolution in the name of the Chargor in relation to any Secured Asset as he considers expedient.
- (g) Possession

A Receiver may take immediate possession of, get in and collect any Secured Asset.

(h) Receipts

A Receiver may give valid receipts for all monies and execute all assurances and things which may be expedient for realising any Secured Asset.

(i) Sale of assets

A Receiver may sell, exchange, convert into monies and realise any Secured Asset by public auction or private contract in any manner and on any terms which he thinks proper. The consideration for any such transaction may consist of cash, debenture or other obligations, shares, stock or other valuable consideration and any such consideration and any such consideration may be payable in a lump sum or by instalments spread over such period as he thinks fit.

(j) Deal with Secured Assets

A Receiver may, without restriction vary the terms of or otherwise dispose of or deal with, all or any part of the Secured Assets without being responsible for loss or damage, and so that any such disposition may be made for cash payable by instalments, loan stock or other debt obligations or for shares or securities of another company or other valuable consideration, and the Receiver may form and promote, or concur in forming and promoting, a company or companies to purchase or otherwise acquire interests in all or any of the Secured Assets or otherwise, arrange for such companies to trade or cease to trade and to purchase or otherwise acquire all or any of the Secured Assets on such terms and conditions whether or not including payment by instalments secured or unsecured as he may think fit.

(k) Security

A Receiver may redeem any prior Security and settle and pass the accounts of the person entitled to the prior Security so that any accounts so settled and passed shall (subject to any manifest error) be conclusive and binding on the Chargor and the monies so paid shall be deemed to be an expense properly incurred by the Receiver.

(l) Incidental Matters

A Receiver may do all other acts and things including without limitation, signing and executing all documents and deeds as may be considered by the Receiver to be incidental or conducive to any of the matters or powers listed here or granted by law or otherwise incidental or conducive to the preservation, improvement or realisation of the Secured Assets and to use the name of the Chargor for all the purposes set out in this clause 13.

13.4 Remuneration

The Security Agent may from time to time fix the remuneration of any Receiver appointed by it.

14 Distressed Disposal

- 14.1 If a Distressed Disposal is being effected, the Security Agent is irrevocably authorised (at the cost of the Borrower and without any consent, sanction, authority or further confirmation from the Borrower or the Chargor), to release the Borrower from all or any part of the Subordinated Loans.

14.2 The net proceeds of a Distressed Disposal shall be paid to the Security Agent for application in accordance with clause 16 (Application of monies) as if those proceeds were monies received by the Security Agent or any Receiver under this Deed.

14.3 For the purposes of this clause 14, a **Distressed Disposal** shall mean a disposal of the shares in Borrower which is (i) being effected in circumstances where the Transaction Security has become enforceable, (ii) being effected by enforcement of the Transaction Security or (iii) being effected by the Chargor after the enforcement of any Transaction Security or after service by the Agent of a notice under clause 24.17(b) (Acceleration) of the Facility Agreement or after the Agent has served a demand following service of a notice under clause 24.17(c) (Acceleration) of the Facility Agreement.

15 Delegation

15.1 The Security Agent and any Receiver may delegate by power of attorney or in any other manner all or any of the powers, authorities and discretions which are for the time being exercisable by the Security Agent and the Receiver (as appropriate) under this Deed to any person or persons as it shall think fit. Any such delegation may be made upon such terms and conditions (including the power to sub-delegate) as the Security Agent and Receiver (as appropriate) may think fit.

15.2 The Security Agent and any Receiver will not be liable or responsible to the Chargor or any other person for any losses, liabilities or expenses arising from any act, default, omission or misconduct on the part of any delegate.

16 Application of monies

16.1 Sections 109(6) and (8) (Appointment, powers, remuneration and duties of receiver) of the Law of Property Act 1925 shall not apply to a Receiver appointed under this Deed.

16.2 All monies received by the Security Agent or any Receiver under this Deed shall be applied in the following order:

- (a) in discharging any sums owing to the Security Agent, any Receiver or any Delegate;
- (b) in payment of all costs and expenses incurred by the Agent or any Secured Party in connection with any realisation or enforcement of the Transaction Security taken in accordance with the terms of the Facility Agreement and any other Finance Document;
- (c) in or to the Agent to be applied in or toward payment of the Secured Liabilities in the following order:
 - (i) first, in or towards payment pro rata of any unpaid fees, costs and expenses of, and other amounts owing to, the Agent, the Security Agent, any Receiver or any Delegate under the Finance Documents;
 - (ii) secondly, in or towards payment pro rata of any accrued interest on any Property Protection Loans due but unpaid under the Facility Agreement;
 - (iii) thirdly, in or towards payment pro rata of any principal of Property Protection Loans due but unpaid under the Facility Agreement;
 - (iv) fourthly, in or towards payment pro rata of:

- (A) any accrued interest and fees due but unpaid to the Lenders under the Facility Agreement; and
 - (B) any periodical payments (not being payments as a result of termination or closing out) due but unpaid under the Hedging Agreements;
 - (v) fifthly, in or towards payment pro rata of:
 - (A) any principal due but unpaid to the Lenders under the Facility Agreement; and
 - (B) any payments as a result of termination or closing out due but unpaid under the Hedging Agreements; and
 - (vi) sixthly, in or towards payment pro rata of any other sum due but unpaid under the Finance Documents; and
 - (d) the balance (if any) will be applied as required by law.
- 16.3 The Security Agent and any Receiver may place any money received, recovered or realised pursuant to this Deed in or at an interest bearing suspense account and it may retain the same for such period as it considers expedient without having any obligation to apply the same or any part of it in or towards discharge of the Secured Liabilities.

17 Protection of third parties

- 17.1 No person (including a purchaser) dealing with the Security Agent or its agents has an obligation to enquire of the Security Agent, any Receiver or others:
- (a) whether the Secured Liabilities have become payable;
 - (b) whether any power purported to be exercised has become exercisable;
 - (c) whether any Secured Liabilities or other monies remain outstanding;
 - (d) how any monies paid to the Security Agent or any other Secured Party or to the Receiver shall be applied; or
 - (e) the status, propriety or validity of the acts of the Receiver or the Security Agent.
- 17.2 The receipt by the Security Agent or any Receiver shall be an absolute and a conclusive discharge to a purchaser and shall relieve him of any obligation to see to the application of any monies paid to or by the direction of the Security Agent or any other Secured Party or any Receiver.
- 17.3 In clauses 17.1 and 17.2 **purchaser** includes any person acquiring, for monies or monies worth, any lease of, or Security over, or any other interest or right whatsoever in relation to, the Secured Assets or any of them.

18 Subsequent Security

If the Security Agent or any Secured Party receives notice of any other subsequent Security or other interest affecting all or any of the Secured Assets, in each case other than Security permitted by the Facility Agreement, it may open a new account or accounts for the Chargor, the Borrower or the General Partner in its books. If it does not do so then, unless it gives

express written notice to the contrary to the Chargor, as from the time of receipt of such notice by the Security Agent, all payments made by the Chargor to the Security Agent or to any other Secured Party shall not be treated as having been applied in reduction of the Secured Liabilities.

19 Payments

19.1 Currency of account

Subject to Clause 19.2, sterling is the currency of account and payment for any sum due from the Chargor under this Deed.

19.2 Change of currency

- (a) Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:
 - (i) any reference in this Deed to, and any obligations arising under this Deed in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the Security Agent; and
 - (ii) any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the Security Agent (acting reasonably).
- (b) If a change in any currency of a country occurs, this Deed will, to the extent the Security Agent (acting reasonably) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the London interbank market and otherwise to reflect the change in currency.

19.3 No set-off by the Chargor

All payments to be made by the Chargor under this Deed shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

20 Miscellaneous

20.1 Certificates and determinations

Any certification or determination by a Secured Party of a rate or amount under any Finance Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

20.2 Partial invalidity

If, at any time, any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

20.3 Remedies and waivers

- (a) No failure to exercise, nor any delay in exercising, on the part of the Security Agent, any right or remedy under this Deed shall operate as a waiver of any such right or remedy or constitute an election to affirm this Deed. No election to affirm this Deed on the part of the Security Agent shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall 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 rights or remedies provided by law.
- (b) A waiver given or consent granted by the Security Agent under this Deed will be effective only if given in writing and then only in the instance and for the purpose for which it is given.

20.4 Releases

Upon the expiry of the Security Period, the Security Agent shall, at the request and cost of the Chargor, take whatever action is necessary to release and reassign to the Chargor its rights arising under this Deed and the Secured Assets from the Security created by and under this Deed and return all documents or deeds of title delivered to the Security Agent under this Deed.

21 Notices

21.1 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 by letter.

21.2 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 the Chargor, that identified with its name below;
- (b) in the case of the Borrower, that identified with its name below; and
- (c) in the case of the Security Agent, that identified with its name below,

or any substitute address, fax number or department or officer as that Party may notify to the Security Agent (or the Security Agent may notify to the other Parties if a change is made by the Security Agent)] by not less than 5 Business Days' notice.

21.3 Delivery

- (a) Any communication or document made or delivered by one person to another under or in connection with this Deed will only be effective:
 - (i) if by way of fax, when received in legible form; or
 - (ii) if by way of letter, when it has been left at the relevant address or 5 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 21.2, if addressed to that department or officer.

- (b) 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).
- (c) Any communication or document which becomes effective, in accordance with clauses 21.3(a) and/or 21.3(b), after 5.00 pm in the place of receipt shall be deemed only to become effective on the following day.

21.4 Notification of address and fax number

Promptly upon receipt of notification of an address or fax number or change of address or fax number pursuant to clause 21.2 or changing its own address or fax number, the Security Agent shall notify the other Party.

21.5 Electronic communication

- (a) Any communication to be made between any two Parties under or in connection with this Deed may be made by electronic mail or other electronic means to the extent that those two Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication and if those two Parties:
 - (i) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
 - (ii) notify each other of any change to their address or any other such information supplied by them by not less than 5 Business Days' notice.
- (b) Any electronic communication made between those two Parties will be effective only when actually received in readable form and in the case of any electronic communication made by a Party to the Security Agent only if it is addressed in such a manner as the Security Agent shall specify for this purpose.
- (c) Any electronic communication which becomes effective, in accordance with clause 21.5(b), after 5.00 pm in the place of receipt shall be deemed only to become effective on the following day.

21.6 English language

- (a) Any notice given under or in connection with this Deed must be in English.
- (b) All other documents provided under or in connection with this Deed must be:
 - (i) in English; or
 - (ii) if not in English, and if so required by the Security Agent, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

22 Assignment

The Security Agent may assign or otherwise transfer all or any part of its rights under this Deed or any Security created by or under it in accordance with the terms of the Finance Documents.

23 Counterparts

This Deed or any Finance Document entered into under or in connection with this Deed may be executed in any number of counterparts, and by each party on separate counterparts. Each counterpart is an original, but all counterparts shall together constitute one and the same instrument. Delivery of a counterpart of this Deed or any such Finance Document entered into under or in connection with this Deed by e-mail attachment or telecopy shall be an effective mode of delivery.

24 Governing law

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

25 Enforcement and jurisdiction**25.1 Jurisdiction of English courts**

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute relating to the existence, validity or termination of this Deed or any non-contractual obligation arising out of or in connection with this Deed) (**Dispute**).
- (b) The Parties 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.
- (c) This clause 25 is for the benefit of the Security Agent. As a result, the Security Agent shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Security Agent may take concurrent proceedings in any number of jurisdictions.

This Deed has been signed on behalf of the Security Agent and executed as a deed by the Chargor and the Borrower and is delivered on the date given at the beginning of this Deed.

SIGNATURES TO THE DEED

Chargor

Executed as a deed by
Osprey Supermarket 1 Limited
acting by a director in the presence of

) 
)
) Director

.....
Signature of witness

Name *Megan Third*

Address
.....

Borrower

Executed as a deed by
Osprey Supermarket Income and Growth 1 LP acting
by its general partner, **Osprey Supermarket Income 1**
GP Limited
acting by a director in the presence of

) 
)
) Director

.....
Signature of witness

Name *Megan Third*

Address
.....

Security Agent

The Royal Bank of Scotland plc

By: *Ross Davies*.

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