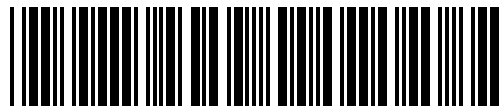




Registration of a Charge

LLP name in full: **NAKASHI LLP**

LLP Number: **OC432516**



Received for filing in Electronic Format on the: **22/12/2023**

XCIY4DE3

Details of Charge

Date of creation: **21/12/2023**

Charge code: **OC43 2516 0002**

Persons entitled: **SANTANDER UK PLC (AS SECURITY AGENT)**

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 AS APPLIED BY THE LIMITED LIABILITY PARTNERSHIPS (APPLICATION OF COMPANIES ACT 2006) REGULATIONS 2009 THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by: **OSBORNE CLARKE LLP**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

LLP number: OC432516

Charge code: OC43 2516 0002

The Registrar of Companies for England and Wales hereby certifies that a charge dated 21st December 2023 and created by NAKASHI LLP was delivered pursuant to Part 25 of the Companies Act 2006 as applied by The Limited Liability Partnerships (Application of Companies Act 2006) (Amendment) Regulations 2013 on 22nd December 2023 .

Given at Companies House, Cardiff on 29th December 2023

The above information was communicated by electronic means and authenticated
by the Registrar of Companies under the Limited Liability Partnership
(Application of the Companies Act 2006) Regulations 2009 SI 2009/1804



Companies House



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

EXECUTION VERSION



Charge over shares and assignment of Subordinated Debt

- (1) Nakashi LLP as Chargor
- (2) Santander UK Plc as Security Agent

Dated 21 December 2023

We certify that, save for material redacted pursuant to s. 859G of the Companies Act 2006, this copy instrument is a correct copy of the original instrument.

Dated this 22 December 2023

Signed *Osborne Clarke LLP*

Osborne Clarke LLP
One London Wall
London
EC2Y 5EB

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This Deed is made on

21 December 2023

Between:

- (1) **Nakashi LLP**, a limited liability partnership incorporated in England and Wales with registration number OC432516 (the "**Chargor**")
- (2) **Santander UK Plc** as security trustee for the Secured Parties (the "**Security Agent**").

This Deed witnesses as follows:

1. **Definitions and interpretation**

- 1.1 Unless otherwise defined in this Deed, terms defined in the Facility Agreement shall have the same meanings when used in this Deed and, unless the context otherwise requires, the following definitions shall apply:

"Charged Investments" means:

- (a) all Shares;
- (b) all Derivative Assets; and
- (c) all Related Rights in respect of paragraphs (a) to (b) (inclusive).

"Collateral Liabilities" in relation to any of the Subordinated Debt means:

- (a) any claim for damages or restitution in the event of rescission of any such liabilities or otherwise in connection with the Subordinated Debt;
- (b) any claim against any Obligor flowing from any recovery by an Obligor of a payment or discharge in respect of the Subordinated Debt on the grounds of preference or otherwise; and
- (c) any amounts (including post-insolvency interest) which would be included in any of the above but for any discharge, non-provability, unenforceability or non-allowability of the same in any insolvency or other proceedings.

"Derivative Asset" means all allotments, rights, benefits and advantages (including all voting rights) at any time accruing, offered or arising in respect of or incidental to the Shares and all money or property accruing or offered at any time by way of conversion, redemption, bonus, preference, option, dividend, distribution, interest or otherwise in respect of the Shares.

"Facility Agreement" means an agreement dated on or about the date of this Deed and made between, amongst others, the Obligors as borrowers and the Security Agent as security agent under which the Original Lender has made available a certain loan facility to the Obligors as the same may be amended, novated, supplemented, extended or restated from time to time.

"Finance Documents" means the Finance Documents as defined in the Facility Agreement and in each case as amended, novated, supplemented, extended or restated from time to time.

"Leigh Borrower" means Leigh Retail Properties Limited, a company incorporated in England and Wales with registration number 14946974.

"LPA" means the Law of Property Act 1925.

"Milton Keynes Borrower" means Milton Keynes Retail Properties Limited, a company incorporated in England and Wales with registration number 14947180.

"Obligors" means each of the Leigh Borrower, the Milton Keynes Borrower and the Sutton Borrower.

"Party" means a party to this Deed.

"Related Rights" means, where used in relation to an asset, the following:

- (a) the proceeds of sale and/or other realisation of that asset (or any part thereof or interest therein); and
- (b) all Security, Authorisations, options, agreements, rights, benefits, indemnities, guarantees, warranties or covenants for title in respect of such asset.

"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 Assets" means the Charged Investments and the Subordinated Debt.

"Security Period" means the period from the date of this Deed until the date on which all of the Secured Liabilities have been irrevocably and unconditionally paid and discharged in full and that no commitment is outstanding.

"Subordinated Debt" means all present and future sums, liabilities and obligations whatsoever (actual or contingent) payable, owing due or incurred by the Obligors to the Chargor together with any Collateral Liabilities relating thereto and any Related Rights in respect of any of the foregoing.

"Shares" means:

- (a) 1000 ordinary shares in the Leigh Borrower;
- (b) 1000 ordinary shares in the Milton Keynes Borrower;
- (c) 1000 ordinary shares in the Sutton Borrower; and
- (d) all other stocks, shares, warrants or other equity securities issued by an Obligor now or in the future owned by the Chargor from time to time or any in which it has an interest.

"Sutton Borrower" means Sutton Retail Properties Limited, a company incorporated in England and Wales with registration number 14947182.

1.2 **Construction**

- (a) Unless a contrary intention appears, sub-clause 1.2 (*Construction*) and sub-clause 1.4 (*Third party rights*) of the Facility Agreement apply to this Deed, and shall be deemed to be incorporated into this Deed, mutatis mutandis, as though set out in full in this Deed, with any reference to this **"Agreement"** being deemed to be a reference to this **"Deed"**, subject to any necessary changes.
- (b) Any references to the Security Agent or any Receiver shall include its Delegate.
- (c) Unless a contrary indication appears, references to clauses and schedules are to clauses of and schedules to this Deed and references to sub-clauses and paragraphs are references to sub-clauses and paragraphs of the clause or schedule in which they appear.

1.3 ***Implied covenants for title***

The obligations of the Chargor under this Deed shall be in addition to the covenants for title deemed to be included in this Deed by virtue of Part I of the Law of Property (Miscellaneous Provisions) Act 1994.

1.4 ***Effect as a deed***

This Deed is intended to take effect as a deed notwithstanding that the Security Agent may have executed it under hand only.

1.5 ***Trusts***

(a) The Security Agent holds the benefit of this Deed on trust for the Secured Parties in accordance with the terms of clause 27.1 (*The Agent and the Security Agent*) of the Facility Agreement.

(b) The perpetuity period for any trusts created by this Deed is 125 years.

1.6 ***Finance documents***

This Deed is a Finance Document.

2. ***Covenant to pay***

The Chargor as primary obligor covenants with the Security Agent (as trustee of the Secured Parties) that it will on demand pay to the Security Agent the Secured Liabilities when the same fall due for payment.

3. ***Security Assets***

3.1 ***Security***

(a) The Chargor, as security for the payment of the Secured Liabilities, charges, by way of mortgage, in favour of the Security Agent, with full title guarantee, the Charged Investments.

(b) As security for the payment of the Secured Liabilities, the Chargor assigns, by way of security, with full title guarantee to the Security Agent all its rights, title and interest in the Subordinated Debt.

3.2 ***Limited recourse***

Notwithstanding clause 2 (*Covenant to pay*):

(a) the liability of the Chargor to the Secured Parties under this Deed shall be:

(i) limited in aggregate to an amount equal to that recovered by the Secured Parties as a result of the enforcement of this Deed with respect to the Security Assets; and

(ii) satisfied only from the proceeds of sale or other disposal or realisation of the Security Assets pursuant to this Deed; and

(b) the Secured Parties shall not have any recourse under this Deed to any assets of the Chargor other than the Security Assets.

4. **Nature of Security**

4.1 ***Continuing security***

- (a) The Security created by this Deed is to be a continuing security notwithstanding any intermediate payment or settlement of all or any part of the Secured Liabilities or any other matter or thing.
- (b) If any purported obligation or liability of any Transaction Obligor to the Secured Parties which if valid would have been the subject of any obligation or charge created by this Deed is or becomes unenforceable, invalid or illegal on any ground whatsoever whether or not known to any Secured Party, the Chargors shall nevertheless be liable in respect of that purported obligation or liability as if the same were fully valid and enforceable and the Chargor was the principal debtor in respect thereof. The Chargor hereby agrees to keep the Secured Parties fully indemnified against all damages, losses, costs and expenses arising from any failure of any Transaction Obligor to carry out any such purported obligation or liability.
- (c) The obligations and liabilities of the Chargor under this Deed will not be affected by an act, omission, matter or thing which, but for this paragraph, would reduce, release or prejudice any of its obligations or liabilities under this Deed (without limitation and whether or not known to any Secured Party) including:
 - (i) any time, waiver or consent granted to, or composition with, any Transaction Obligor or other person;
 - (ii) the release of any Transaction Obligor or any other person under the terms of any composition or arrangement with any creditor of any person;
 - (iii) 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 any assets of any Transaction 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;
 - (iv) 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;
 - (v) any amendment (however fundamental) or replacement of any Finance Document or any other document or Security;
 - (vi) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or Security; or
 - (vii) any insolvency or similar proceedings.
- (d) Until the Security Period has ended 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 this Deed:
 - (i) to be indemnified by any other Transaction Obligor (including any rights it may have by way of subrogation);
 - (ii) to claim any contribution from any guarantor of any other Transaction Obligor of the obligations under the Finance Documents;
 - (iii) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any right of the Security Agent or any of the other Secured Parties

under any Finance Document or of any other guarantee or Security taken pursuant to, or in connection with, the Finance Documents;

- (iv) to claim, rank, prove or vote as a creditor of any other Transaction Obligor or its estate in competition with the Security Agent or any of the other Secured Parties; and/or
- (v) receive, claim or have the benefit of any payment, distribution or security from or on account of any other Transaction Obligor, or exercise any right of set-off against any other Transaction Obligor.
- (e) The Chargor shall hold on trust for and promptly pay or transfer to the Security Agent any payment or distribution or benefit of Security received by it contrary to this sub-clause.
- (f) The Chargor waives any right it may have of first requiring the Security Agent to proceed against or enforce any other rights or Security or claim payment from any person before claiming from a Transaction Obligor under a Finance Document. This waiver applies irrespective of any law or any provision of the Finance Document to the contrary.
- (g) Until the Security Period has ended, the Security Agent may refrain from applying or enforcing any other moneys, Security or rights held or received by the Security Agent 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.
- (h) Without prejudice to the generality of clause 4.1(c), the Chargor expressly confirms that it intends that the Security constituted by this Deed shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to the Secured Liabilities as a result of the amendment and/or restatement of the Facility Agreement and/or any of the other Finance Documents and/or any additional facility or amount which is made available under any of the Finance Documents for the purposes of or in connection with any of the following: business acquisitions of any nature; increasing working capital; enabling investor 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 such facility or amount might be made available from time to time; and any fees, costs and/or expenses associated with any of the foregoing.

4.2 ***Non-merger of Security***

The Security created by this Deed is to be in addition to and shall neither be merged with nor in any way exclude or prejudice or be affected by any other Security or other right which the Security Agent may now or after the date of this Deed hold for any of the Secured Liabilities, and this Deed may be enforced against the Chargor without first having recourse to any other rights of the Security Agent.

5. **Further assurances and protection of priority**

5.1 ***General***

- (a) The Chargor shall, at its own expense, promptly do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Security Agent may reasonably specify (and in such form as the Security Agent may reasonably require in favour of the Security Agent or its nominee(s)):
 - (i) to perfect or protect the Security created or intended to be created under, or evidenced by, this Deed (which may include the execution of a mortgage, charge, assignment or other Security over all or any of the assets which are, or

are intended to be, the subject of this Deed) or for the exercise of any rights, powers and remedies of the Secured Parties provided by or pursuant to this Deed or by law;

- (ii) to confer on the Security Agent or confer on the Secured Parties, Security over any assets of the Chargor, located in any jurisdiction, equivalent or similar to the Security intended to be conferred by or pursuant to this Deed and, pending the conferring of such Security, hold such assets upon trust (or in any manner required by the Security Agent) for the Secured Parties; and/or
 - (iii) to facilitate the realisation or enforcement of the assets which are, or are intended to be, the subject of the Security created, or intended to be created, by this Deed.
- (b) The Chargor shall take all such action (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 Secured Parties by or pursuant to this Deed.

5.2 **Notices**

The Chargor shall:

- (a) promptly give notice of the assignment of the Subordinated Debt to the Obligors in the form set out in Schedule 1 (*Form of notice of assignment*); and
- (b) procure that the Obligors on whom a notice is served, execute and deliver to the Security Agent an acknowledgement of that notice in the form set out in Schedule 1 (*Form of notice of assignment*).

6. **Representations and warranties**

The Chargor makes the representations and warranties listed below in favour of each of the Secured Parties.

6.1 **Status**

It is a duly incorporated limited liability partnership and validly existing under the laws of its jurisdiction of formation.

6.2 **Binding obligations**

Subject to the Legal Reservations and Perfection Requirements, this Deed constitutes its legal, binding, valid and enforceable obligations.

6.3 **Non-conflict with other obligations**

- (a) It has the power to enter into and perform, and has taken all necessary action to authorise the entry into, performance and delivery of, this Deed.
- (b) The entry into and performance by it of, and the transactions contemplated by, this Deed do not and will not:
 - (i) conflict with any law or regulation or judicial or official order applicable to it in any material respect; or
 - (ii) conflict with its constitutional documents; or

- (iii) conflict with any material agreement or material document which is binding upon it or any of its assets and it has obtained all necessary consents and authorisations for the performance by it of this Deed.

6.4 **Security Assets**

- (a) Immediately prior to the date of this Deed it was the legal and beneficial owner of the Security Assets with the right to transfer with full title guarantee all or any part of the Security Assets and has good marketable title to the Security Assets.
- (b) Save in respect of any Security Assets legally assigned to the Security Agent pursuant to this Deed, it is the legal and beneficial owner of the Security Assets with the right to transfer with full title guarantee all or any part of the Security Assets and has good marketable title to the Security Assets.
- (c) The Subordinated Debt is not subject to any set-off, counterclaim or other defence.
- (a) The Subordinated Debt is governed by English law.
- (b) The Shares are fully paid and none are subject to any option to purchase or similar rights.
- (c) It has not appointed any nominee to exercise or enjoy all or any of its rights in relation to the Charged Investments.
- (d) The constitutional documents of each Obligor do not and could not restrict or prohibit any transfer of the Shares on creation or on enforcement of that Security.

6.5 ***Pari passu ranking***

Its payment obligations under this Deed rank at least pari passu with all its other present and future unsecured payment obligations, except for obligations mandatorily preferred by law.

6.6 ***No filing or stamp taxes***

No stamp or registration duty or similar Tax or charge is payable in its jurisdiction of incorporation in respect of this Deed and it is not necessary that this Deed be filed, recorded or enrolled with any court or other authority in any jurisdiction, save for registration of particulars of this Deed at the Companies Registration Office under the Companies Act 2006 and payment of associated fees, which registration, filing and fees will be made and paid promptly after the date of this Deed.

6.7 ***Information***

To the best of its knowledge and belief, all written factual information supplied by it or on its behalf in connection with or pursuant to this Deed was true and accurate in all material respects as at the date it was provided or as at the date (if any) it was stated and nothing was omitted from such information that results in such information being untrue or misleading in any material respect.

6.8 ***No proceedings pending or threatened***

No litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency which would reasonably be expected to be adversely determined against it and as a consequence would be reasonably expected to have a materially adverse effect on its ability to comply with its obligations under this Deed have (to the best of its knowledge and belief) been started or threatened against it.

6.9 ***Immunity***

The execution by it of this Deed constitutes, and the exercise by it of its rights and performance of its obligations under this Deed will constitute, private and commercial acts performed for private and commercial purposes and it will not be entitled to claim immunity from suit, execution, attachment or other legal process in any proceedings taken in its jurisdiction of incorporation in relation to this Deed.

6.10 ***Insolvency***

- (a) It is not unable nor has admitted inability to pay its debts as they fall due, suspended making payments on any of its debts, or, by reason of actual or anticipated financial difficulties, commenced negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness.
- (b) The value of its assets is not less than its liabilities (taking into account contingent and prospective liabilities).
- (c) No moratorium has been declared in respect of any its indebtedness.

6.11 ***Choice of jurisdiction and law***

- (a) it is not necessary under the laws of its jurisdiction of incorporation:
 - (i) in order to enable a Secured Party to enforce its rights under this Deed; or
 - (ii) by reason of the execution of this Deed or the performance by it of its obligations under this Deed,

that a Secured Party should be licensed, qualified or otherwise entitled to carry on business in its jurisdiction of incorporation and nor will it be deemed to be resident, domiciled or carrying on business in its jurisdiction of incorporation by reason only of execution, performance and/or enforcement of this Deed.
- (b) its:
 - (i) irrevocable submission under this Deed to the jurisdiction of the courts of England; and
 - (ii) agreement that this Deed is governed by English law,

are legal, valid and binding under the laws of its jurisdiction of incorporation and any judgment obtained in England will be recognised and be enforceable by the courts of its jurisdiction of incorporation.

6.12 ***Ranking of Security***

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

6.13 ***Repetition***

The representations in this clause 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.

7. ***Undertakings***

7.1 ***Duration of undertakings***

The Chargor undertakes to the Security Agent in the terms of this clause for the duration of the Security Period.

7.2 **General undertakings**

(a) *Negative pledge and disposal restrictions*

It will not:

- (i) create or agree to create or permit to subsist or arise any Security over all or any part of the Security Assets; or
- (ii) dispose of all or any part of the Security Assets or agree or attempt to do the same,

except with the prior written consent of the Security Agent.

(b) *Deposit of documents or title deeds*

It will deposit with the Security Agent:

- (i) to the extent that the relevant documents have not been deposited with a clearance system, settlement system or custodian acceptable to the Security Agent, all deeds, documents of title (or documents evidencing title or the right to title) and agreements relating to a Security Asset;
- (ii) any stock transfer forms or other instruments of transfer duly completed to the Security Agent's satisfaction; and
- (iii) any other document which the Security Agent may require for the purpose of perfecting the Security created by this Deed.

(c) *Calls*

It shall duly and promptly pay all calls, instalments or other payments which may be due and payable in respect of any Charged Investments and, for the avoidance of doubt, no Secured Party shall incur any liability in respect of any amounts due from the Chargor in respect of any Charged Investments.

(d) *Compliance with laws*

It shall at all times comply in all material respects with all laws and regulations applicable to it and will obtain and maintain in full force and effect all Authorisations which may at any time be required with respect to any of the Security Assets.

(e) *Information*

It shall supply promptly to the Security Agent:

- (i) such information in relation to the Security Assets as the Security Agent may reasonably request; and
- (ii) all documents dispatched by a Borrower to it in connection with a Security Asset.

7.3 **Charged investments**

(a) *Exercise of rights*

- (i) Prior to an Event of Default which is continuing, it may exercise or refrain from exercising (or direct the same) any of the powers or rights conferred upon or exercisable by the legal or beneficial owner of the Charged Investments unless such exercise or refrain from exercising (or direction to do the same):
 - (A) breaches, or might reasonably be expected to breach, any term of the Facility Agreement; or
 - (B) would, or might reasonably be expected to, have a material adverse effect on the value of any of the Security Assets or otherwise prejudice any Transaction Security; or
 - (C) would, or might reasonably be expected to, materially and adversely effect any rights or powers of the Chargor arising from its legal and/or beneficial ownership of the Charged Investments.
- (ii) On and following an Event of Default which is continuing, it shall not, without the prior written consent of the Security Agent, exercise or refrain from exercising (or direct the same) any of the powers or rights conferred upon or exercisable by the legal or beneficial owner of the Charged Investments.

(b) *Registration of transfers*

If required by the Security Agent, it shall procure that the Charged Investments which are in registered form are duly registered in the name of the Security Agent or its nominee once a transfer relating to the Charged Investments is presented for that purpose.

(c) *Nominees*

It shall not appoint any nominee to exercise or enjoy all or any of its rights in relation to the Charged Investments.

7.4 **Power to remedy**

If the Chargor fails to comply with any covenant set out in sub-clause 7.2 (*General undertakings*) or sub-clause 7.3 (*Charged investments*) (inclusive), and such failure has not been remedied to the satisfaction of the Security Agent within 10 Business Days, it will allow (and irrevocably authorises) the Security Agent or any Receiver to take any action on its behalf which the Security Agent or the Receiver deems necessary to ensure that those covenants are complied with. The Chargor shall reimburse to the Security Agent and/or any Receiver, on demand, all amounts expended by the Security Agent or any Receiver in remedying such failure together with interest in accordance with sub-clause **Error! Reference source not found.** (*Default interest*) from the date of payment by the Security Agent or Receiver (as the case may be) until the date of reimbursement.

8. **Enforcement and powers of the Security Agent**

8.1 **Enforcement**

At any time when an Event of Default is continuing and a demand has been served pursuant to clause 2 (*Covenant to pay*), the Security created pursuant to this Deed shall be immediately enforceable and the Security Agent may in its absolute discretion and without notice to the Chargors or the prior authorisation of any court:

- (a) enforce all or any part of the Security created by this Deed and take possession of or dispose of all or any of the Security Assets in each case at such times and upon such terms as it sees fit; and

- (b) whether or not it has appointed a Receiver, exercise all of the powers, authorities and discretions:
 - (i) conferred from time to time on mortgagees by the LPA (as varied or extended by this Deed) or by law; and
 - (ii) granted to a Receiver by this Deed or from time to time by law.

8.2 ***Power of sale***

For the purpose of all rights and powers implied or granted by law, the Secured Liabilities are deemed to have fallen due on the date of this Deed. The power of sale and other powers conferred by section 101 of the LPA and all other enforcement powers conferred by this Deed shall be immediately exercisable at any time when an Event of Default is continuing.

8.3 ***Statutory restrictions***

The restriction on the consolidation of mortgages and on power of sale imposed by sections 93 and 103 respectively of the LPA shall not apply to the Security constituted by this Deed.

8.4 ***Appropriation***

- (a) In this Deed, "**financial collateral**" has the meaning given to that term in the Financial Collateral Arrangements (No.2) Regulations 2003.
- (b) At any time when an Event of Default is continuing, the Security Agent may appropriate all or part of the financial collateral in or towards satisfaction of the Secured Liabilities.
- (c) The Parties agree that the value of any such Security Assets appropriated in accordance with sub-clause 8.4(b) shall be the market price of such Security Assets at the time the right of appropriation is exercised as determined by the Security Agent by reference to such method or source of valuation as the Security Agent may reasonably select, including by independent valuation. The Parties agree that the methods or sources of valuation provided for in this sub-clause or selected by the Security Agent in accordance with this sub-clause shall constitute a commercially reasonable manner of valuation for the purposes of the Financial Collateral Arrangements (No.2) Regulations 2003.
- (d) The Security Agent shall notify the Chargor, as soon as reasonably practicable, of the exercise of its right of appropriation as regards such of the Security Assets as are specified in such notice.

9. ***Appointment of a Receiver***

9.1 ***Appointment***

- (a) At any time when an Event of Default is continuing, or at the request of the Chargor or its directors, the Security Agent may, without prior notice to the Chargor, in writing (under seal, by deed or otherwise under hand) appoint a Receiver in respect of the Security Assets or any part thereof and may in like manner from time to time (and insofar as it is lawfully able to do) remove any Receiver and appoint another in his place.
- (b) Nothing in sub-clause 9.1(a) shall restrict the exercise by the Security Agent of any one or more of the rights of the Security Agent under Schedule B1 to the Insolvency Act 1986 and the rules thereunder or at common law.
- (c) Section 109(1) of the LPA shall not apply to this Deed.

9.2 ***Several Receivers***

If at any time there is more than one Receiver, each Receiver may separately exercise all of the powers conferred by this Deed (unless the document appointing such Receiver states otherwise).

9.3 **Remuneration of Receiver**

The Security Agent may from time to time fix the remuneration of any Receiver appointed by it from time to time. For the purpose of this sub-clause, the limitation set out in section 109(6) of the LPA shall not apply.

9.4 **Liability of Security Agent for actions of a Receiver**

Each Receiver shall be the agent of the Chargor which shall be solely responsible for his acts or defaults, and for his remuneration and expenses, and be liable on any agreements or engagements made or entered into by him. No Secured Party shall be responsible for any misconduct, negligence or default of a Receiver.

10. **Powers of a Receiver**

A Receiver shall have (and be entitled to exercise) in relation to the Security Assets over which he is appointed the following powers (as the same may be varied or extended by the provisions of this Deed):

- (a) all of the powers of an administrative receiver set out in Schedule 1 to the Insolvency Act 1986 (whether or not the Receiver is an administrative receiver);
- (b) all of the powers conferred from time to time on receivers, mortgagors and mortgagees in possession by the LPA;
- (c) all of the powers conferred on the Security Agent under this Deed;
- (d) all the powers and rights of a legal and beneficial owner and the power to do or omit to do anything which the Chargor itself could do or omit to do;
- (e) the power to do all things which, in the opinion of the Receiver, are incidental to any of the powers, functions, authorities or discretions conferred or vested in the Receiver pursuant to this Deed or upon receivers by statute or law generally (including the bringing or defending of proceedings in the name of, or on behalf of, the Chargor; the collection and/or realisation of Security Assets in such manner and on such terms as the Receiver sees fit; and the execution of documents in the name of the Chargor (whether under hand, or by way of deed or by utilisation of the company seal of the Chargor).

11. **Application of monies**

11.1 **Order of application**

All amounts from time to time received or recovered by the Security Agent pursuant to the terms of this Deed or in connection with the realisation or enforcement of all or any part of the Security created by this Deed (for the purposes of this clause, the "**Recoveries**") shall be held by the Security Agent on trust to apply the same at any time as the Security Agent (in its discretion) sees fit, to the extent permitted by applicable law (and subject to the provisions of this clause), in the following order, after the payment of any preferential debts ranking in priority to the Secured Liabilities:

- (a) in discharging any sums owing to the Security Agent or any Receiver;
- (b) in payment of all costs and expenses incurred by any Secured Party in connection with any realisation or enforcement of the Security created by this Deed;

- (c) in payment of any Secured Liabilities; and
- (d) the balance of any Recoveries, after all amounts due under sub-clauses 11.1(a) to (c) have been paid in full, to the Chargor.

The provisions of this sub-clause will override any appropriation made by a Transaction Obligor.

11.2 ***Prospective liabilities***

The Security Agent may, in its discretion, hold any amount of the Recoveries in an interest bearing suspense or impersonal account(s) in the name of the Security Agent with such financial institution (including itself) and for so long as the Security Agent shall think fit (the interest being credited to the relevant account) for later application under sub-clause 11.1 (*Order of application*) in respect of:

- (a) any sum to a Secured Party; and
- (b) any part of the Secured Liabilities,

that the Security Agent reasonably considers, in each case, might become due or owing at any time in the future.

11.3 ***Investment of proceeds***

Prior to the application of the proceeds of the Recoveries in accordance with sub-clause 11.1 (*Order of application*) the Security Agent may, in its discretion, hold all or part of those proceeds in an interest bearing suspense or impersonal account(s) in the name of the Security Agent with such financial institution (including itself) and for so long as the Security Agent shall think fit (the interest being credited to the relevant account) pending the application from time to time of those moneys in the Security Agent's discretion in accordance with the provisions of sub-clause 11.1 (*Order of application*).

11.4 ***Currency conversion***

- (a) For the purpose of, or pending the discharge of, any of the Secured Liabilities the Security Agent may convert any moneys received or recovered by the Security Agent from one currency to another, at a market rate of exchange.
- (b) The obligations of any Transaction Obligor to pay in the due currency shall only be satisfied to the extent of the amount of the due currency purchased after deducting the costs of conversion.

11.5 ***Permitted deductions***

The Security Agent shall be entitled, in its discretion:

- (a) to set aside by way of reserve, amounts required to meet, and to make and pay, any deductions and withholdings (on account of taxes or otherwise) which it is or may be required by any applicable law to make from any distribution or payment made by it under this Deed; and
- (b) to pay all Taxes which may be assessed against it in respect of any of the Security Assets, or as a consequence of performing its duties, or by virtue of its capacity as Security Agent under any of the Finance Documents or otherwise (other than in connection with its remuneration for performing its duties under this Deed).

11.6 ***Good discharge***

- (a) Any payment to be made in respect of the Secured Liabilities by the Security Agent may be made to the Agent on behalf of the Finance Parties and any payment made in that way shall be a good discharge, to the extent of that payment, by the Security Agent.
- (b) The Security Agent is under no obligation to make the payments to the Agent under sub-clause 11.6(a) in the same currency as that in which the obligations and liabilities owing to the relevant Finance Party are denominated.

12. **Protection of third parties**

12.1 ***No obligation to enquire***

No purchaser from, or other person dealing with, a Secured Party shall be obliged or concerned to enquire whether:

- (a) the right of the Secured Party to exercise any of the powers conferred by this Deed has arisen or become exercisable or as to the propriety or validity of the exercise or purported exercise of any such power; or
- (b) any of the Secured Liabilities remains outstanding or be concerned with notice to the contrary and the title and position of such a purchaser or other person shall not be impeachable by reference to any of those matters.

12.2 ***Receipt conclusive***

The receipt of the Security Agent or any Receiver shall be an absolute and a conclusive discharge to a purchaser, and shall relieve such purchaser of any obligation to see to the application of any moneys paid to or by the direction of the Security Agent or any Receiver.

13. **Protection of the Secured Parties**

13.1 ***No liability***

No Secured Party shall be liable in respect of any of the Security Assets or for any loss or damage which arises out of the exercise or the attempted or purported exercise of, or the failure to exercise any of, their respective powers unless directly caused by its gross negligence or wilful misconduct.

13.2 ***Possession of Security Assets***

Without prejudice to sub-clause 13.1 (*No liability*), if a Secured Party enters into possession of the Security Assets, it will not be liable to account as mortgagee in possession and may at any time at its discretion go out of such possession.

13.3 ***No proceedings***

No Party (other than the Security Agent, a Receiver or a Delegate in respect of its own officers, employees or agents) may take any proceedings against any officer, employee or agent of a Finance Party, a Receiver or a Delegate in respect of any claim it might have against a Finance Party, a Receiver or a Delegate or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document or any Security Asset and any officer, employee or agent of a Finance Party, a Receiver or a Delegate may rely on this clause subject to sub-clause 1.4 (*Third party rights*) of the Facility Agreement and the provisions of the Third Parties Act.

14. **Cumulative powers and avoidance of payments**

14.1 ***Cumulative powers***

The powers which this Deed confers on the Security Agent and any Receiver appointed under this Deed are cumulative, without prejudice to their respective powers under the general law, and may be exercised as often as the relevant person thinks appropriate. The Security Agent or the Receiver may, in connection with the exercise of their powers, join or concur with any person in any transaction, scheme or arrangement whatsoever. The respective powers of the Security Agent and the Receiver will in no circumstances be suspended, waived or otherwise prejudiced by anything other than an express consent or amendment.

14.2 ***Amounts avoided***

If any amount paid by the Chargor in respect of the Secured Liabilities is capable of being avoided or set aside on the liquidation or administration of the Chargor or otherwise, then for the purposes of this Deed that amount shall not be considered to have been paid.

14.3 ***Discharge conditional***

Any settlement or discharge between the Chargor and the Security Agent shall be conditional upon no security or payment to the Security Agent by the Chargor or any other person being avoided, set aside, ordered to be refunded or reduced by virtue of any provision or enactment relating to insolvency and accordingly (but without limiting the other rights of the Security Agent under this Deed) the Security Agent shall be entitled to recover from the Chargor the value which the Security Agent has placed on that security or the amount of any such payment as if that settlement or discharge had not occurred.

15. **Ruling-off accounts**

If the Security Agent receives notice of any subsequent Security or other interest affecting any of the Security Assets it may open a new account for the Chargor in its books. If it does not do so then (unless it gives written notice to the contrary to the Chargor), as from the time it receives that notice, all payments made by the Chargor to it (in the absence of any express appropriation to the contrary) shall be treated as having been credited to a new account of the Chargor and not as having been applied in reduction of the Secured Liabilities.

16. **Power of attorney**

16.1 The Chargor, by way of security, irrevocably and severally appoints each of the Security Agent and any Receiver as its attorney (with full power of substitution and delegation) in its name and on its behalf and as its act and deed to execute, seal and deliver (using the company seal where appropriate) and otherwise perfect and do any deed, assurance, agreement, instrument, act or thing, in each case which:

- (a) at any time when an Event of Default has occurred and is continuing, it ought to execute and do under the terms of this Deed, or which may be required or deemed proper in the exercise of any rights or powers conferred on the Security Agent or any Receiver under this Deed or otherwise for any of the purposes of this Deed, and the Chargor covenants with each of the Security Agent and any Receiver to ratify and confirm all such acts or things made, done or executed by that attorney; or
- (b) the Chargor is obliged to execute or do under the terms of this Deed and has failed to do within any applicable grace period.

17. **Delegation**

17.1 A Secured Party may, at any time, delegate by power of attorney or otherwise to any person for any period, all or any of the rights, powers and discretions vested in it by or pursuant to this Deed.

17.2 That delegation may be made upon any terms and conditions (including the power to sub delegate) and subject to any restrictions that that Secured Party may, in its discretion, think fit in the interests of the Secured Parties and it shall not be bound to supervise, or be in any way

responsible for any loss incurred by reason of any misconduct or default on the part of any such delegate or sub delegate.

18. Redemption of prior charges

The Security Agent may redeem any prior Security on or relating to any of the Security Assets or procure the transfer of that Security to itself, and may settle and pass the accounts of any person entitled to that prior Security. Any account so settled and passed shall (subject to any manifest error) be conclusive and binding on the Chargor. The Chargor will within 10 Business Days of demand pay to the Security Agent all principal monies and interest and all losses incidental to any such redemption or transfer.

19. Set-off and other rights

19.1 Set-off rights of the Secured Party

A Secured Party may set off any matured obligation due from a Transaction Obligor under the Finance Documents (to the extent beneficially owned by that Secured Party) against any matured obligation owed by that Secured Party to a Transaction Obligor, 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 for the purpose of the set-off. The Secured Party shall notify the Chargor of any such set-off promptly following such set-off.

19.2 Unliquidated claims

If the relevant obligation or liability is unliquidated or unascertained, the Secured Party may set-off the amount which it estimates (in good faith) will be the final amount of that obligation or liability once it becomes liquidated or ascertained.

19.3 No deductions

All payments under this Deed by the Chargor shall be made without any set-off, counterclaim or equity and (subject to the following sentence) free from, clear of and without deduction for any taxes, duties, levies, imposts or charges whatsoever, present or future. If the Chargor is compelled by the law of any applicable jurisdiction (or by an order of any regulatory authority in such jurisdiction) to withhold or deduct any sums in respect of taxes, duties, levies, imposts or charges from any amount payable to a Secured Party under this Deed or, if any such withholding or deduction is made in respect of any recovery under this Deed, the Chargor shall pay such additional amount so as to ensure that the net amount received by that Secured Party shall equal the full amount due to it under the provisions of this Deed (had no such withholding or deduction been made).

20. Notices

20.1 Communications in writing

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

20.2 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 that identified with its name below or any substitute address, fax number or department or officer as any 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 five Business Days' notice.

20.3 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 sub-clause 20.2 (*Addresses*), 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 communications or document which becomes effective in accordance with sub-clauses 20.3(a) to (b) after 5:00pm in the place of receipt shall be deemed only to be effective on the following Business Day.

20.4 ***Electronic communications***

- (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 five 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 sub-clause 20.4(b), after 5:00 p.m. in the place of receipt shall be deemed only to become effective on the following Business Day.

20.5 ***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.

21. **Miscellaneous**

21.1 ***Assignment***

The Chargor may not assign any of its rights or transfer any of its rights or obligations under this Deed. The Security Agent may assign and transfer all or any part of its rights and obligations under this Deed.

21.2 ***Certificates conclusive***

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

21.3 ***Invalidity of any provision***

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.

21.4 ***Counterparts***

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

21.5 ***Covenant to release***

At the end of the Security Period, the Security Agent shall, at the reasonable request and cost of the Chargor, irrevocably and unconditionally release the Security Assets from the security constituted by this Deed.

21.6 ***Disclosure***

Subject to the terms of the Facility Agreement, a Secured Party may disclose to any person to whom it discloses Confidential Information in accordance with clause 39 (*Confidentiality*) of the Facility Agreement any information about the Obligors, the Chargor, the Facility Agreement or this Deed as that Secured Party shall consider appropriate.

22. ***Governing law***

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

23. ***Jurisdiction***

23.1 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) (a "**Dispute**").

23.2 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.

23.3 This clause is for the benefit of the Security Agent only. 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.

In witness this Deed is executed as a deed on the date appearing at the head of page 1.

Schedule 1

Form of notice of assignment

To: • *[insert name and address of counterparty]*

Dated: •

Dear Sirs

We notify you that we have assigned, by way of security to Santander UK Plc (the "**Security Agent**") all our right, title and interest in the Subordinated Debt (as such term is defined in an assignment of subordinated debt dated • and made between us and the Security Agent) as security for certain obligations owed by us to the Security Agent.

We further notify you that:

1. after receipt of written notice from the Security Agent, you must pay all monies which we are entitled to in connection with the Subordinated Debt directly to the Security Agent (and not to us) unless the Security Agent otherwise agrees in writing;
2. you are authorised to disclose information in relation to the Subordinated Debt to the Security Agent on request; and
3. the provisions of this notice may only be revoked or amended with the prior written consent of the Security Agent.

Please sign and return the enclosed copy of this notice to the Security Agent (with a copy to us) by way of confirmation that:

- (a) you agree to the terms set out in this notice and to act in accordance with its provisions;
- (b) you will not, without the consent of the Security Agent:
 - (i) amend in any/ way or terminate any document evidencing the Subordinated Debt;
 - (ii) waive or release any rights, interest or benefit in relation to the Subordinated Debt;
- (c) you have not received notice that we have assigned or charged our rights pursuant to the Subordinated Debt to a third party or created any other interest in relation to the Subordinated Debt in favour of a third party; and
- (d) you have not claimed or exercised, nor do you have any outstanding right to claim or exercise against us any right of set-off, counter-claim or other right relating to the Subordinated Debt.

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

Yours faithfully

.....

for and on behalf of

• *[insert the name of the Chargor]*

[On acknowledgement copy]

To: Santander UK Plc

Copy to: • *[insert the name of the Chargor]*

We acknowledge receipt of the above notice and the notifications therein, agree to abide by its terms and confirm the matters set out in paragraphs (a) to (d) (inclusive) of that notice.

.....

for and on behalf of

• *[insert name of counterparty]*

Dated: •

Signatories to this Deed

Chargor

Executed as a deed by Nakashi LLP,
acting by Ran shtarkman, member and
Gregory Katz, duly authorised by Eastgate Property 3 LLC
to sign on its behalf as member of Nakashi LLP



Member



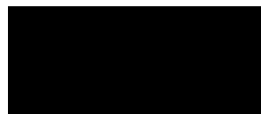
On behalf of Member

Notice Details

Address: Enterprise House, First Floor, 2 The Crest, London, United Kingdom, NW4 2HN
Email: Ran@mdsr-investments.com
Attention: Ran Shtarkman

Security Agent

Signed by)
authorised signatory)
for and on behalf of)
Santander UK Plc)



Benjamin wheeler

Notice Details

Address: Santander UK PLC, 2 Triton Square, Regents Place, London, NW1 3AN
Fax: Benjamin.wheeler@santander.co.uk
Attention: Benjamin Wheeler