



Registration of a Charge

Company name: **JOHN CLARK (PROPERTIES) LIMITED**

Company number: **SC106596**



X93XY9HT

Received for Electronic Filing: **28/04/2020**

Details of Charge

Date of creation: **27/04/2020**

Charge code: **SC10 6596 0018**

Persons entitled: **BMW FINANCIAL SERVICES (GB) LIMITED**

Brief description: **ALL AND WHOLE THAT PLOT OR AREA OF GROUND AT KINGS CROSS ROAD, DUNDEE SHOWN TINTED BLUE ON THE PLAN ANNEXED AND SIGNED AS RELATIVE TO THE STANDARD SECURITY, WHICH SUBJECTS FORM PART AND PORTION OF THE SUBJECTS KNOWN AS PLOT C, EXTENDING TO 1.72 HECTARES OR THEREBY AT KINGS CROSS ROAD, DUNDEE, COLOURED RED AND LABELLED "PLOT C" ON THE PLAN ANNEXED TO THE DISPOSITION BY DUNDEE CITY COUNCIL IN FAVOUR OF JOHN CLARK (PROPERTIES) LIMITED DATED 21 FEBRUARY 2018 ("PLOT C"), DECLARING THAT THE BOUNDARY OF PLOT C ON OR TOWARDS THE SOUTH-WEST IS THE MID POINT OF A STONE WALL WHICH EXTENDS 149.5 METRES OR THEREBY, WHICH PLOT C FORMS PART AND PORTION OF THE SUBJECTS CURRENTLY UNDERGOING REGISTRATION IN THE LAND REGISTER OF SCOTLAND UNDER TITLE NUMBER ANG79001**

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: **MORTON FRASER LLP**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 106596

Charge code: SC10 6596 0018

The Registrar of Companies for Scotland hereby certifies that a charge dated 27th April 2020 and created by JOHN CLARK (PROPERTIES) LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 28th April 2020 .

Given at Companies House, Edinburgh on 29th April 2020

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

Standard Security

by

JOHN CLARK (PROPERTIES) LIMITED

in favour of

BMW FINANCIAL SERVICES (GB) LIMITED

2020

KM19/ASM/40546/00001

MORTON FRASER 
LAWYERS

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STANDARD SECURITY

by

JOHN CLARK (PROPERTIES) LIMITED (incorporated and registered in Scotland under company number SC106596) whose registered office is at Alliance Centre Greenwell Road, East Tullos Industrial Estate, Aberdeen, AB12 3AX (the **Company**);

in favour of

BMW FINANCIAL SERVICES (GB) LIMITED (incorporated and registered in England and Wales under company number 1288537) whose registered office is at Summit One, Summit Avenue, Farnborough, GU14 0FB (**BMW FS**).

WHEREAS

- (A) BMW FS, pursuant to the Facility Letter, has provided the Company with a term loan facility on a secured basis.
- (B) Under this Standard Security, the Company provides security to BMW FS for (*inter alia*) its liabilities under the Facility Letter.

IT IS AGREED AND DECLARED AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

The following definitions apply to this Standard Security:

BMW Base Rate means the rate as calculated and advised monthly based on:

- (a) Market Rate;
- (b) Credit Spread; and
- (c) Internal Risk Premium.

Borrower means John Clark (Holdings) Limited (incorporated and registered in Scotland under company number SC098411) whose registered office is at Alliance Centre Greenwell Road, East Tullos Industrial Estate, Aberdeen, AB12 3AX.

Business Days means a day (not being Saturday or Sunday) on which clearing banks are open in London for normal business.

Credit Spread means the BMW AG credit default swap costs over the previous calendar month (Source: BMW AG Treasury Department).

Dangerous Substance means any radioactive emissions and any natural or artificial substance whether in solid or liquid form or in the form of a gas or vapour and whether alone or in combination with any other substance capable of causing harm to man or any other living organism or damaging the environment or public health or welfare, including any controller, special, hazardous, toxic, radioactive or dangerous waste.

Default Rate means 5% per annum above the BMW Base Rate from time to time (provided that no reduction in the BMW Base Rate below 3% shall be taken into account).

Encumbrance means any mortgage, standard security, charge, pledge, lien, assignment, assignation, hypothecation, security, interest, preferential right or trust arrangement or other encumbrance, security agreement or arrangement of any kind or any right conferring a priority of payment.

Environmental Law means any law, regulation, code of practice, circular, guidance notice or the like whether in the United Kingdom or elsewhere concerning the protection of human health or the environment or the conditions of the work place or the generation, transportation, storage, treatment or disposal of Dangerous Substances.

Environmental Licence means any permit, licence, authorisations, consent or other approval required by any Environmental Law.

Environmental Matters means:

- (a) the deposit, keeping, treatment, handling, processing, presence or manufacture of any waste (as defined in the Environmental Protection Act 1990) or any Dangerous Substance at or near the Property;
- (b) nuisance, defective premises, health and safety at work or elsewhere; and
- (c) the pollution, conservation or protection of the environment (both natural and built) or of man or any living organism supported by the environment or any other matter whatsoever affecting the environment or any part of it.

Event of Default means the occurrence of any of the events or circumstances described in paragraph 28 (*Events of Default*) of the Facility Letter.

Expenses means all interest, commission, fees and legal and other costs, charges and expenses which BMW FS may charge or incur in relation to this Standard Security and the preparation, negotiation and creation of this Standard Security and/or in relation to the Property and/or breach of any provision of, and the protection, realisation or enforcement of, this Standard Security in each case on a full indemnity basis.

Facility means the facility made available to the Borrower by BMW FS under the Facility Letter, such facility being guaranteed by the Company.

Facility Letter means the facility letter dated on or around the date of this Standard Security between the Borrower and BMW FS in respect of the provision of term loan

facilities to the Borrower, as varied, amended, restated, extended, supplemented or novated from time to time.

Finance Documents has the meaning given to it in the Facility Letter.

Insurances means all contracts and policies of insurance taken out by or on behalf of the Company in relation to the Property or to the extent of its interest in which the Company has an interest.

Insured Risks means fire, lightning, earthquake, explosion, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, damage by or resulting from vehicular or other impact, aircraft and other aerial devices or, in each case, articles dropped from them, riot and civil commotion, acts of terrorism, malicious damage, public liability, and, subject to such cover being available in the London insurance market on reasonable terms, such other risks as BMW FS may reasonably require to be insured from time to time, including demolition and site clearance costs and expenses, architects, surveyors and other professional fees, and all other incidental costs and expenses and loss of rents payable by the tenants or other occupiers of the Property for such period as BMW FS shall from time to time reasonably require.

Internal Risk Premium means the risk and treasury operation costs (Source: BMW AG).

Leases means, where any part of the Property is leasehold, the leases under which the Company holds that part of Property.

Market Rate means the average of the 1 month London Interbank Offer Rate (LIBOR) rates over the previous calendar month (Source: Bloomberg).

Material Adverse Effect means a material adverse effect on the Company's ability to perform all or any of its obligations under, or otherwise comply with, the terms of the Finance Documents, or on the Company's business, assets or financial condition.

Obligors means the Borrower and the Company and Obligor means either of them.

Permitted Security has the meaning given to it in the Facility Letter.

Planning Acts means the Town and Country Planning Act (Scotland) 1997, the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, the Planning (Hazardous Substances) (Scotland) Act 1997, the Town and Country Planning (Hazardous Substances) (Scotland) Regulations 2015, the Planning (Consequential Provisions) (Scotland) Act 1997, the Land Compensation (Scotland) Act 1973, the Planning etc. (Scotland) Act 2006 and the Planning (Scotland) Act 2019 and all other applicable laws, statutes, regulations, secondary legislation, bye-laws, common law, directives, treaties and other measures, judgments and decisions of any court or tribunal, codes of practice and guidance notes in so far as they relate to or apply to any subject matter of the foregoing.

Property means ALL and WHOLE that plot or area of ground at Kings Cross Road, Dundee shown tinted blue on the plan annexed and signed as relative to this Standard Security, which subjects form PART and PORTION of the subjects known as Plot C, extending to 1.72 hectares or thereby at Kings Cross Road, Dundee, coloured red and labelled "Plot C" on the plan annexed to the Disposition by Dundee City Council in favour of John Clark (Properties) Limited dated 21 February 2018 ("Plot C"), declaring that the boundary of Plot C on or towards the south-west is the mid point of a stone wall which extends 149.5 metres or thereby, which Plot C forms PART and PORTION of the subjects currently undergoing registration in the Land Register of Scotland under Title Number ANG79001 (with application number 18ANG03211) with a date of application of 7 March 2018 and any part or parts of it and including:

- (a) all rights attached or appurtenant to it and all buildings, fixtures and fittings from time to time situate on it and belonging to the Company;
- (b) all benefits in respect of the Insurances including all claims and the refund of any premiums; and
- (c) all rents and licence fees receivable from any lease or licence granted at the Property.

Standard Security means this standard security and includes any instrument supplemental to or entered into pursuant to this standard security.

Secured Liabilities means all moneys, obligations and liabilities whatsoever whether for principal, interest or otherwise which may now or at any time in the future be due, owing or incurred by the Obligors (or by either of them) to BMW FS pursuant to the Finance Documents whether present or future, actual or contingent and whether alone, severally or jointly as principal, guarantor, surety or otherwise and in whatever name or style and whether on any current or other account or in any other manner whatsoever and including, without limitation, all Expenses.

Security has the meaning given to it in the Facility Letter.

Standard Conditions means the standard conditions specified in Schedule 3 to the Conveyancing and Feudal Reform (Scotland) Act 1970 as amended by the Redemption of Standard Securities (Scotland) Act 1971 (the "Act") and any lawful variation to them operative from time to time.

Sterling means the lawful currency of the United Kingdom for the time being.

VAT has the meaning given to it in the Facility Letter.

2. INTERPRETATION

2.1 In this Standard Security:

- 2.1.1 references to **Clauses** are to be construed as references to the clauses of this Standard Security (unless otherwise stated);
- 2.1.2 terms defined in the Facility Letter and not otherwise defined herein shall have the same meaning as given to them in the Facility Letter;
- 2.1.3 references to any provisions of this Standard Security, any other Finance Document or to any other document or agreement are to be construed as references to those provisions or that document or agreement as is in force for the time being and as amended, varied, supplemented, restated, substituted or novated from time to time (however fundamentally and even if any of the same increases the obligations of a Obligor or provides for further advances);
- 2.1.4 words importing the singular are to include the plural and vice versa;
- 2.1.5 references to a person are to be construed to include references to a corporation, firm, company, partnership, joint venture, unincorporated body of persons, individual or any state or any agency of a state, whether or not a separate legal entity;
- 2.1.6 references to any person are to be construed to include that person's assignees or transferees or successors in title, whether direct or indirect;
- 2.1.7 references to any statutory provision are to be construed as references to that statutory provision as amended, supplemented, re-enacted or replaced from time to time whether before or after the date of this Standard Security and are to include any orders, regulations, instruments or other subordinate legislation made under or deriving validity from that statutory provision;
- 2.1.8 if there is any conflict between this Standard Security and the Standard Conditions the terms of this Standard Security will prevail so far as permitted by law; and
- 2.1.9 Clause headings are for ease of reference only and are not to affect the interpretation of this Standard Security.

2.2 This Standard Security is a Finance Document.

3. UNDERTAKING TO PAY

- 3.1 The Company undertakes to BMW FS that the Company shall pay to BMW FS or discharge and perform all Secured Liabilities on their due date or dates for payment, discharge or performance or, in the absence of an agreed or specified due date, on demand by BMW FS.

- 3.2 If the Company fails to discharge or perform any Secured Liability when due the Company shall pay to BMW FS on demand interest on such Secured Liability at the Default Rate, in the case of Expenses from the date on which the relevant Expense was incurred and in the case of any other Secured Liability from the date on which the Secured Liability became due until payment or discharge (both before and after judgement) which interest shall accrue from day to day and may be compounded in accordance with the usual practice of BMW FS to the extent that it shall remain unpaid.

4. SECURITY

- 4.1 The Company hereby grants in favour of BMW FS a standard security over the Property as continuing security for the payment, discharge and performance of the Secured Liabilities.

- 4.2 The Company shall:

4.2.1 deposit with BMW FS all deeds and documents of title relating to all or any of the Property; and

4.2.2 promptly on demand and at its own cost execute and do all such assurances, acts and things including without limitation execute all transfers, conveyances assignments and assurances of the Property and give all notices, orders and directions which BMW FS may require for perfecting or protecting this Standard Security or the priority of this Standard Security or for facilitating the realisation of the Property or the exercise of any of the rights vested in BMW FS.

5. DISCHARGE

- 5.1 Upon BMW FS being satisfied that all Secured Liabilities have been unconditionally and irrevocably paid and discharged in full and no further Secured Liabilities are capable of being outstanding, BMW FS at the request and cost of the Company shall duly discharge this Standard Security.

- 5.2 Any release, discharge or settlement between the Company and BMW FS shall be deemed conditional on no payment or security received by BMW FS in respect of the Secured Liabilities being avoided, reduced or ordered to be refunded under any law relating to insolvency, bankruptcy, winding-up, administration, receivership or otherwise.

6. RESTRICTIONS AND RANKING

- 6.1 Unless otherwise agreed in writing by BMW FS, this Standard Security shall rank in priority to any Security created by the Company after its execution of this Standard Security.

- 6.2 The Company shall not without the prior written consent of BMW FS:
- 6.2.1 create, grant, incur or permit to subsist or arise any Security or any right or option on the Property or any part of the Property ranking in priority to or equally with this Standard Security after its execution of this Standard Security except any Permitted Security;
 - 6.2.2 sell, convey, assign or transfer any of the Property or any interest in it or otherwise part with or dispose of any of the Property or assign or otherwise dispose of any moneys payable to the Company in relation to the Property or agree to do any of the foregoing;
 - 6.2.3 exercise any of the powers of leasing or agreeing to lease vested in or conferred on heritable creditors by common law or by statute or accept the renunciation of any lease, sub-lease or tenancy or agree to do any of the foregoing; or
 - 6.2.4 part with or share possession or occupation of the Property or any part of it or grant any tenancy or licence to occupy the Property or agree to do any of the foregoing.

7. VARIATION OF STANDARD CONDITIONS AND UNDERTAKINGS BY THE COMPANY

- 7.1 The Standard Conditions shall apply to this Standard Security, except to the extent that they are varied by the terms of this Standard Security and without limitation, the Company agrees that the Standard Conditions will be varied in accordance with the following provisions of this Clause 7. For the avoidance of doubt references in the Standard Conditions to the debtor are references to the Company and references to the creditor are references to BMW FS.

- 7.2 The Company undertakes to BMW FS at all times during the continuance of this security:

7.2.1 Repair

To keep the buildings, installations and structures whether fully built or in course of construction and all fixtures and fittings therein or thereon and other erections from time to time upon the Property in good and substantial repair and condition to the satisfaction of BMW FS (fair wear and tear excepted in the case of plant and machinery) and fully protected from damage or deterioration as a result of weather or malicious damage or any other cause and to replace any fixtures and fittings which have become worn out or otherwise unfit for use by others of a like nature and equal value.

7.2.2 Insurance

- (a) To maintain, or procure the maintenance of, such insurances of the Company's assets as a prudent investor in property would maintain in respect of its own assets, such insurances to include in any event, without limitation, insurance of the Property:
 - (i) against the Insured Risks in the full reinstatement value (as contained in the most recent valuation at such time (or any higher valuation of the Property received at any time)) and against employers' liability, public liability in such amount as a prudent investor in property would maintain in respect of its own assets;
 - (ii) with an insurer of repute reasonably approved by BMW FS (such approval not to be unreasonably withheld or delayed); and
 - (iii) with BMW FS and the Company each named as a co-insured a co-payee on each such policy,and to procure that any reasonable recommendation given by BMW FS in respect of such insurances is promptly implemented in full.
- (b) At any time when reasonably requested by BMW FS, to provide, or procure the provision of, a copy of each relevant policy of insurance and the endorsements made to it together with documentary evidence of its renewal.
- (c) In the event of the Property being destroyed or damaged by the Insured Risks, to procure that all monies payable under each relevant insurance policy shall be applied in making good the loss or damage to the Property or, following the occurrence of an Event of Default that is continuing, towards discharge of the Facility.

7.2.3 Outgoings

To pay when due all rents, rent charges (if any), rates, taxes, charges, duties, assessments, impositions and other outgoings whatsoever charged, assessed, levied or imposed on the Property or on the owner or occupier of it or payable in respect of the Property.

7.2.4 Undertakings and burdens

To perform and observe all undertakings, covenants, restrictions, stipulations, burdens, servitudes, provisions, regulations and conditions affecting the Property or its use or enjoyment.

7.2.5 Alterations

Not without the previous written consent of BMW FS to demolish, pull down, remove or permit or suffer to be demolished, pulled down or removed any building, installation or structure for the time being on the Property or; except in connection with their renewal or replacement, any fixtures or erect or make or suffer to be erected or made on the Property any building, installation, structure or alteration or a change of use of any of them within the meaning of the Planning Acts or otherwise commit any waste on or destroy or injure in any manner or by any means lessen or suffer to be lessened the value of the Property.

7.2.6 Development

Where at the date of this Standard Security or at any time during the continuance of this Standard Security, the Property or any part of it is intended to be developed or is in the course of development, to proceed diligently and to the satisfaction of BMW FS and any competent authority with such development in all respects in conformity with all applicable planning and bye-law consents, to produce all plans and specifications in relation to the development to BMW FS for approval and not to amend those plans and specifications in any manner which might diminish the finished value or increase the cost to a material extent without BMW FS's approval.

7.2.7 Planning

- (a) To comply in all respects with the Planning Acts and all licences, consents, permissions or conditions granted or imposed under them.
- (b) Not to make any application for planning permission without the prior consent of BMW FS and not to enter into or agree to enter into any agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997 (as amended) or Section 69 of the Local Government (Scotland) Act 1973 or Section 16, 18, 48 and 96 of the Roads (Scotland) Act 1994 or any similar provision of any other Planning Act.
- (c) To comply with the requirements of any valid enforcement or other notice or order whether issued under the Planning Acts or any other statute within any time limit specified in it or if no time is specified within any period required by BMW FS and to pay to BMW FS in reduction of the Secured Liabilities any compensation received as a result of any such notice or order.

7.2.8 Right of entry

To permit representatives of BMW FS with or without workmen or others to enter the Property at all reasonable times after at least twenty-four hours prior notice except in case of emergency to view the state of repair and condition of the Property.

7.2.9 Notices

Within seven days of receipt to produce to BMW FS a copy of any notice, order, direction, permission or proposal affecting the Property or its use or value and to comply promptly with its terms or if BMW FS so requires or approves and at the Company's cost to make such objections or representations against or in respect of such notice, order, proposal, permission or consent as aforesaid as BMW FS may reasonably require, in each case where such notice, order, proposal, permission or consent could reasonably be expected to have a Material Adverse Effect.

7.2.10 Information

On request to produce to or provide for BMW FS such documents or information relating to the Property or its development as BMW FS may reasonably require.

7.2.11 Statutes

To comply with all obligations imposed under any present or future statute, regulation, order or instrument or under any bye-laws, regulations or requirements of any competent authority or approvals, licences or consents relative to the Property or its use or enjoyment where such a statute, regulation, order or instrument or under any bye-laws, regulations or requirements of any competent authority or approvals, licences or consents could reasonably be expected to have a Material Adverse Effect.

7.2.12 Leases

Where any part of the Property is leasehold or subject to any lease, agreement for lease or tenancy (referred to below as the 'occupational lease'):

- (a) To perform and observe all undertakings, covenants and conditions contained in the Lease to be performed and observed by the lessee and contained in any occupational lease to be observed by the lessor.
- (b) To enforce the due observance and performance of all obligations of all other parties to the Lease and any occupational lease.

- (c) Not to waive, release or vary any of the terms of the Lease or any occupational lease or exercise any power to determine or extend the same or grant any consent or licence or conclude any rent review under the same without, in each case, the consent of BMW FS which consent is not to be unreasonably withheld or delayed in circumstances in which the Company may not unreasonably withhold or delay its consent.
- (d) If any proceedings shall be commenced for irritancy of the Lease or any superior headlease or the landlord or any superior or head landlord shall attempt to re-enter under the provisions of the Lease or any superior or headlease the Company shall give immediate notice of that event in writing to BMW FS and at the request of BMW FS and at the expense of the Company take such steps as BMW FS may in its absolute discretion require.

7.2.13 Indemnity

To keep BMW FS fully and effectively indemnified from and against all actions, proceedings, costs, charges, claims, demands, expenses and liabilities whatsoever including, without limitation, any taxes, including value added tax, and professional fees incurred or to be incurred by BMW FS in connection with this Standard Security including without limitation in respect of any breach or non-observance or non-performance of any undertakings, covenants, obligations, warranties or undertakings on the part of the Company contained in this Standard Security or the making good of any such breach or non-observance or non-performance and to keep BMW FS indemnified against any failure or delay in paying any amounts due under this indemnity including any arising from any actual or alleged breach by any person of any Environmental Law or Environmental Licence.

7.2.14 Value Added Tax

The Company undertakes that it shall not make an election pursuant to paragraph 2 of Schedule 10 to the Value Added Tax Act 1994 in relation to land and/or buildings comprising the Property without the prior written consent of BMW FS, and such consent is hereby given by BMW FS.

7.2.15 Environmental

- (a) To comply with the terms and conditions of all Environmental Licences applicable to it and all other Environmental Law.
- (b) Promptly upon receipt of the same, to notify BMW FS of any claim, notice or other communication served on it in respect of any alleged breach of any Environmental Law or in relation to any Environmental Matter.

- (c) To carry out properly and diligently all remedial work and improvements required at the Property to ensure that it and its use complies with all Environmental Laws.
- (d) To notify BMW FS as soon as the Company becomes aware of the presence on or at the Property of any Dangerous Substance.
- (e) If BMW FS acting reasonably requires any environmental reports or tests to be prepared or carried out in relation to the Property to ensure that all Environmental Laws are complied with, to procure that such reports and tests are prepared and carried out by a suitably qualified environmental expert acceptable to BMW FS and to pay the cost in full of such reports or tests.

8. POWER TO REMEDY

8.1 If any building operations on the Property are not carried out in accordance with the development covenants in the Facility Letter, the terms of the Building Contract and/or any other agreed business plan in relation to the Property or any development thereon to the reasonable satisfaction of BMW FS or its agent, BMW FS may (but shall not be under any obligation so to do) serve a written notice on the Company advising it of that failure, and the Company shall have such period as BMW FS may reasonably specify to remedy the failure, failing which the Company shall, after the occurrence of an Event of Default:

8.1.1 if required by written notice from BMW FS, within seven days assign to BMW FS or as it may direct all the benefit and interest of the Company in any building contract, sub-contract, appointment of professional advisers and such other contracts or agreements as the Company may have relating to the building operations and shall take or procure whatever action as is necessary or to provide BMW FS or the nominee of BMW FS with privity of contract with those parties or contractors with whom the Company may have privity of contract and take all other steps which BMW FS may reasonably require to enable BMW FS to procure the completion of the building operations; and

8.1.2 permit BMW FS at the Company's cost to complete or procure the completion of the building operations,

in each case with power for BMW FS and any persons authorised by BMW FS to enter on the Property for any of the above purposes without thereby becoming a heritable creditor in possession.

8.2 If the Company fails to perform or observe any undertaking, covenant or condition in its part contained in this Standard Security, it shall be lawful for, but not obligatory on, BMW

FS in order to make good the failure in whole or in part and at the Company's cost to (all such costs to be reasonably incurred):

- 8.2.1 enter on the Property and effect whatever repairs and other works on it as BMW FS considers necessary;
- 8.2.2 take whatever steps, give whatever notices, execute and do whatever works and things as BMW FS considers necessary (acting reasonably) to comply with any requirements of or any notice, order, direction, permission or proposal given, served or made under the Planning Acts or otherwise affecting or likely to affect the Property or its value;
- 8.2.3 insure and keep insured the Property in whatever amount and in whatever manner BMW FS considers necessary, acting reasonably; and
- 8.2.4 admit, settle, liquidate, compound or contest in whatever manner as BMW FS thinks fit, acting reasonably, any claim or liabilities in relation to the Property whether or not BMW FS is expressly indemnified in this Standard Security against them and to make whatever payments and expend or debit in account whatever moneys as BMW FS considers necessary but without thereby becoming a heritable creditor in possession.

9. ENFORCEMENT

- 9.1 The security constituted by or pursuant to this Standard Security shall become enforceable immediately upon, or at any time after the occurrence of an Event of Default, at which point the Company shall be deemed to be in default within the meaning of Standard Condition 9(1). In the event of the Company being in default as aforesaid, then without prejudice to any other rights and remedies available to BMW FS by virtue of the Standard Conditions or any other Security or undertaking or in any other manner, BMW FS will be entitled to exercise any of the remedies available to a creditor in default of a debtor by virtue of the provisions of the Act.
- 9.2 BMW FS may exercise all or any of the powers referred to in this Standard Security in such manner and to such extent as it considers appropriate (in its sole discretion) and in particular shall not be under any duty to maximise the proceeds arising from the Property.
- 9.3 BMW FS shall not be liable:
 - 9.3.1 to account to the Company except in respect of the actual receipts of BMW FS; and
 - 9.3.2 to the Company for any loss or damage arising from the exercise by BMW FS of all or any of the powers conferred by or pursuant to this Standard Security.

10. BMW FS'S LIABILITY

- 10.1 In no circumstances shall BMW FS be liable to account to the Company as a heritable creditor in possession or otherwise for any moneys not actually received unconditionally and irrevocably by BMW FS.
- 10.2 BMW FS shall be under no obligation to take any steps or institute any proceedings for the recovery of the several debts and moneys hereby charged and in no circumstances shall BMW FS be liable to the Company or any other person for any costs, charges, losses, damages, liabilities or expenses arising from or connected with any realisation of the Property or from any act, default, omission or misconduct of BMW FS its officers employees or agents in relation to the Property or in connection with this Standard Security or the Facility Letter except to the extent that they are caused by the fraud, wilful misconduct or gross negligence of BMW FS.

11. PROTECTION OF THIRD PARTIES

Any purchaser or any other person dealing with BMW FS shall not be concerned to enquire whether the Secured Liabilities have become payable or whether any power which it or he is purporting to exercise has become exercisable or whether any money is due under this Standard Security or as to the application of any money paid, raised or borrowed or as to the propriety or regularity of any sale by or other dealing with BMW FS.

12. POWERS OF LEASING

Any powers of sale, leasing and accepting renunciations exercisable by BMW FS are hereby extended so as to authorise BMW FS whether in the name of BMW FS or its nominee or in that of the Company to grant a lease or leases of the whole or any part or parts of the Property with such rights relating to other parts of it and containing such undertakings on the part of the Company and generally on such terms and conditions (including the payment of money to a lessee or tenant on a renunciation) and whether or not at a premium as BMW FS (in its absolute discretion) shall think fit.

13. POWER OF ATTORNEY

- 13.1 The Company hereby irrevocably appoints BMW FS to be the Attorney of the Company for the Company and in the name and on behalf of the Company and otherwise to sign, seal, execute and/or otherwise perfect any document, assurance, agreement, instrument or act which may be required or may be deemed proper by BMW FS for any of the purposes referred to in or otherwise in connection with this Standard Security. The Company ratifies and confirms and agrees to ratify and confirm whatever any attorney appointed under this Clause properly does or purports to do in the exercise of all or any of the powers, authorities and discretions granted or referred to in this Standard Security.

13.2 The power of attorney hereby granted is irrevocable.

14. BMW FS'S RIGHTS

14.1 The Company agrees that at any time after this Standard Security becomes enforceable:

14.1.1 on any sale or other disposition in exercise of the powers contained or implied by this Standard Security BMW FS may sever any fixtures from the Property and sell them apart from the Property without taking possession of the Property and apply the net proceeds of the sale in or towards satisfaction of the Secured Liabilities; and

14.1.2 BMW FS may as agent of the Company remove and sell any items on the Property.

14.2 BMW FS shall, on receiving notice that the Company has encumbered or disposed of the Property or any part of it or any interest in it, be entitled to close any account or accounts of the Company and to open a new account or accounts with the Company and (without prejudice to any right of BMW FS to combine accounts) no money paid into or carried to the credit of any new account shall be appropriated towards or have the effect of discharging any part of the amount due to BMW FS on any closed account. If BMW FS does not open a new account or accounts immediately on receipt of any notice it shall nevertheless be treated as if it had done so at the time when it received notice and as from that time all payments made by the Company to BMW FS shall be credited or be treated as having been credited to a new account or accounts and shall not operate to reduce the amount due from the Company to BMW FS when it received notice.

15. COSTS, EXPENSES AND CHANGE IN CURRENCY

15.1 The Company shall, within five Business Days of written demand and on a full indemnity basis, pay to BMW FS:

15.1.1 the amount of all costs and expenses (including legal and out-of-pocket expenses and any VAT on such costs and expenses) which BMW FS appointed by BMW FS incurs in connection with:

- (a) the preparation, negotiation, execution and delivery of this Standard Security, the Facility Letter and/or any of the other Finance Documents;
- (b) any stamping or registration of this Standard Security or any of the other Finance Documents;
- (c) any actual or proposed amendment of or waiver or consent under or in connection with any of the Finance Documents;

- (d) any discharge or release of any of the Finance Documents;
 - (e) the preservation or exercise (or attempted preservation or exercise) of any rights under or in connection with, and the enforcement (or attempted enforcement) of any Finance Document;
 - (f) obtaining payment of the Secured Liabilities;
 - (g) dealing with or obtaining advice about any other matter or question arising out of or in connection with any of the Finance Documents; and
 - (h) all other moneys paid by BMW FS in perfecting or otherwise in connection with this Standard Security or in respect of the Property including without limitation all moneys expended by BMW FS under Clause 6.
- 15.2 Such costs, expenses and other moneys shall be recoverable from the Company as a debt and shall bear interest accordingly at the Default Rate and shall be charged on the Property.
- 15.3 If more than one currency or currency unit is at any time recognised by the Bank of England as the lawful currency of the UK, then:
- 15.3.1 any reference in the Finance Documents to, and any obligations arising under the Finance Documents in, Sterling shall be translated into, or paid in, the currency or currency unit designated by BMW FS; and
 - 15.3.2 any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the Bank of England for the conversion of that currency or currency unit into the other, rounded up or down by BMW acting reasonably.
- 15.4 If a change in Sterling occurs (including without limitation, in consequence of European monetary union), this Standard Security shall be amended in the manner specified by BMW FS acting reasonably to reflect such change in currency and to put BMW FS in the same position, as far as possible, as it would have been in had no change in currency occurred.
16. **CONTINUING SECURITY**
- This Standard Security shall be a continuing security to BMW FS notwithstanding any settlement of account or other matter or thing whatsoever and shall be in addition to and shall not prejudice or affect or be prejudiced or affected by any security relating to the Property or to any other property or any other security which BMW FS may now or at any

time in the future hold in respect of the Secured Liabilities or any of them and shall continue in full force and effect as a continuing security until discharged.

17. SET-OFF

- 17.1 BMW FS may, without notice to the Company, apply any credit balance (whether or not then due and in whatever currency) which is at any time held by BMW FS or its nominee for the account of the Company in or towards satisfaction of the Secured Liabilities of any of them.
- 17.2 BMW FS is not obliged to exercise any of its rights under this Clause, which shall be without prejudice and in addition to any rights under the general law.
- 17.3 In this Clause 'rights under the general law' means any right of set-off, combination or consolidation of accounts, lien or similar right which BMW FS has under any applicable law.

18. SECURITY RETENTION

- 18.1 If the state of account between the Company and BMW FS (by reference to which any Secured Liabilities are calculated for the purposes of this Standard Security) requires adjustment at any time because of any claim made against BMW FS by an office-holder (within the meaning of Section 234 of the Insolvency Act 1986), then, notwithstanding any other provisions of this Standard Security:
- 18.1.1 the Company's liability to BMW FS shall be correspondingly adjusted;
- 18.1.2 BMW FS may treat any release or settlement made by it with the Company before any such adjustment is required as being of no effect; and
- 18.1.3 BMW FS may recover from the Company such sum as shall place BMW FS in the same position as if such release or settlement had not been made.
- 18.2 If any claim is made against BMW FS under any insolvency law, BMW FS may agree the claim or settle it on any terms it chooses without the necessity of asking for the Company's agreement. If BMW FS does agree or settle the claim, the Company shall be liable under this Standard Security as if a court order had been made containing the terms that BMW FS has agreed. The Company shall be responsible for all costs and expenses that BMW FS properly incurs in defending such a claim.
- 18.3 Other than where the Secured Liabilities have been repaid in full on a refinancing by a third party financial institution on arms length terms, BMW FS may keep the security held by it for the Company's liability under this Standard Security in order to protect BMW FS against any claim under insolvency law (if BMW FS reasonably considers that such a

claim is possible in the circumstances) for up to seven months after all Secured Liabilities have been satisfied. If a claim is made against BMW FS within that period BMW FS may keep the security until that claim has finally been dealt with.

19. NOTICES

19.1 All notices or other communications under or in connection with this Standard Security or any of the Finance Documents shall be given in writing or by email despatched as follows:

19.1.1 if to BMW FS, to:

Summit One, Summit Avenue, Farnborough, Hants, GU14 0FB

or email: Paul.Shelton@bmwfin.com

for the attention of: Paul Shelton, Head of Credit Management

19.1.2 if to the Company, to:

John Clark (Properties)Limited, Alliance Centre Greenwell Road, Aberdeen,
AB12 3AX

or email: alan.mcintosh@john-clark.co.uk

for the attention of: Alan McIntosh, Company Secretary,

or to any other address and/or email address as may be notified in accordance with this Clause by the relevant party to the other party for this purpose.

19.2 Any notice will be deemed to be given as follows:

19.2.1 if in writing, when delivered; and

19.2.2 if by email, when received.

However, a notice given in accordance with the above but received on a day which is not a Business Day or after business hours in the place of receipt will only be deemed to be given on the next Business Day in that place.

19.3 Any notices, demands or other communication to be given by BMW FS may be made by a Manager of BMW FS or by any person or firm acting as solicitor or solicitors for BMW FS.

20. TRANSFERS

The Company may not assign, transfer, novate or dispose of any of, or any interest in, its rights and/or obligations under this Standard Security. BMW FS may assign or transfer all

or any part of our rights and/or obligations under this Standard Security. BMW FS may disclose to any person with whom BMW FS propose to enter into any kind of transfer, participation or other agreement in relation to this Standard Security and any information which BMW FS have acquired about the Company.

21. MISCELLANEOUS

21.1 BMW FS' rights under this Standard Security:

21.1.1 may be exercised as often as necessary;

21.1.2 are cumulative and not exclusive of our rights under the general law; and

21.1.3 may be waived only in writing and specifically.

Delay in exercising or non-exercise of any right is not a waiver of that right.

21.2 Any waiver of any right or consent given under this Standard Security is only effective if it is in writing and signed by duly authorised representatives of the waiving or consenting party. It only applies in the circumstances for which it is given and shall not prevent the party giving it from subsequently relying on the relevant provision.

21.3 No single or partial exercise of any right under this Standard Security shall prevent any further exercise of the same right or any other right under this Standard Security.

21.4 Rights and remedies under this Standard Security are cumulative and do not exclude any rights or remedies provided by law or otherwise.

21.5 The invalidity, unenforceability or illegality of any provision (or part of a provision) of this Standard Security under the laws of any jurisdiction shall not affect the validity, enforceability or legality of the other provisions.

21.6 If any invalid, unenforceable or illegal provision would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with whatever modification as is necessary to give effect to the commercial intention of the parties.

21.7 Any certificate or determination of BMW FS as to the amount of the Secured Liabilities shall, in the absence of manifest error, be conclusive and binding on the Company.

21.8 The Company certifies that this Standard Security does not contravene any of the provisions of its Memorandum and Articles of Association.

22. **LAW, JURISDICTION AND ENFORCEMENT**

- 22.1 This Standard Security, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, the law of Scotland.
- 22.2 The parties to this Standard Security irrevocably agree that the courts of Scotland shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Standard Security or its subject matter or formation (including non-contractual disputes or claims).
- 22.3 The Company consents to the registration of this Standard Security, and any certificate referred to in Clause 21.7, for preservation and execution.
- 22.4 The Company grants warrandice subject to the lease of part of the Property between the Company and Scottish Hydro Electric Power Distribution plc brought into effect by missives between Burness Paull LLP (on behalf of the Company) and Gillespie MacAndrew LLP (on behalf of Scottish Hydro Electric Power Distribution plc) dated 17 March, 31 March and 1 April 2020.

IN WITNESS WHEREOF this Standard Security consisting of this and the preceding nineteen pages together with the plan annexed is executed by the Company as follows:

SUBSCRIBED by

JOHN CLARK (PROPERTIES) LIMITED

acting by

a director

Director (Signature)

CHRISTOPHER J. CLARK

Director (Print Full Name)

at ABERDEEN

on 23 APRIL 2020

in the presence of this witness:



Witness Signature

KETH MITCHELL

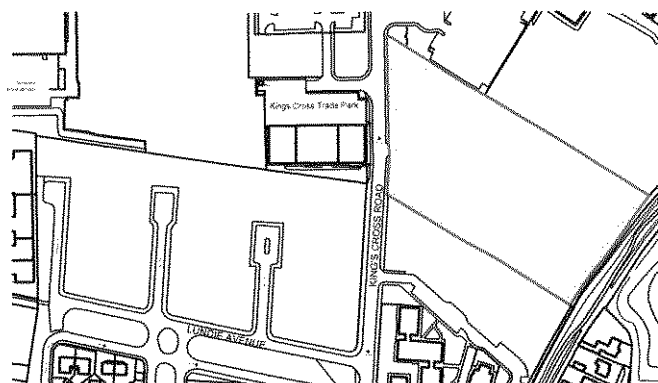
Witness Name

3 EAST LODGE DRIVE Address

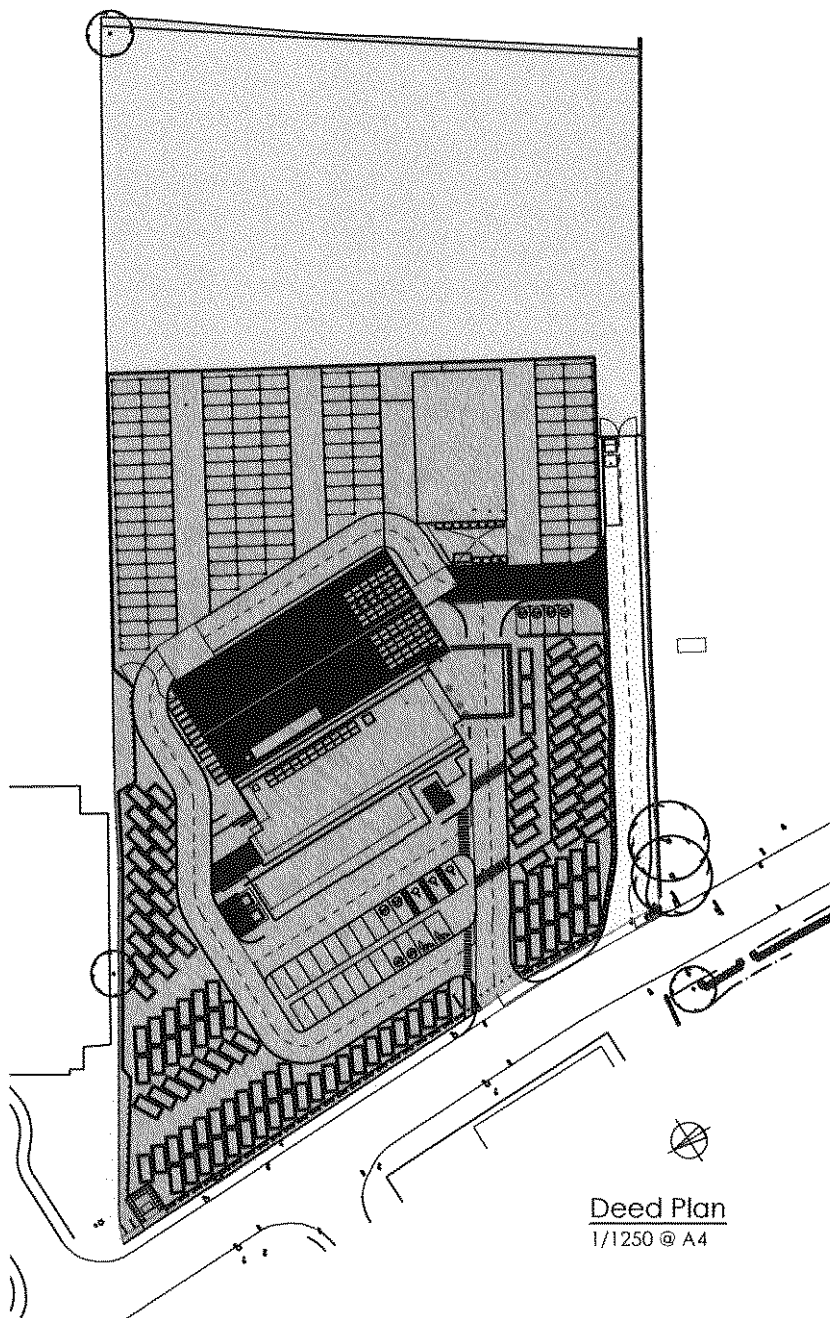
STONEHAVEN AB39 3UB

THIS IS THE PLAN REFERRED TO IN THE FOREGOING
STANDARD SECURITY BY JOHN CLARK (PROPERTIES)
LIMITED IN FAVOUR OF BMW FINANCIAL SERVICES
(GB) LIMITED




Director



Deed Location Plan
1/5000 @ A4



Deed Plan
1/1250 @ A4

-  - Rear Compound
-  - Shared access road
-  - BMW Site

0 10 20 30 40 50 METRES



Scale 1:1250

NOTES/REVISIONS

NO DIMENSIONS TO BE CALLED ALL SIZES TO BE SITE VERIFIED THIS DRAWING IS COPYRIGHT IF IN DOUBT, ASK

McLAREN MURDOCH & HAMILTON
CHARTERED ARCHITECTS

2 DUNDRE ROAD
PERTH, PH2 7ZAN

TELEPHONE 01738 927 061

229 BALGROVE ROAD
EDINBURGH, EH11 2RZ

TELEPHONE 0131 338 5550

BMW DEALERSHIP
KINGS CROSS ROAD, DUNDEE
JOHN CLARK MOTOR GROUP

DRAWING TITLE
DEED SITE PLAN

SCALE 1:1250 @ A4

DIRECTOR MJT

DATE APRIL 20

DRAWN BY SG

DRAWING NO. 2703B(DP)01