



**Registration of a Charge**

Company name: **NETWORK RAIL INFRASTRUCTURE LIMITED**

Company number: **02904587**



X836OP89

Received for Electronic Filing: **11/04/2019**

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**Details of Charge**

Date of creation: **26/03/2019**

Charge code: **0290 4587 0021**

Persons entitled: **DEPRIST PROPERTY LIMITED**

Brief description: **THE FREEHOLD PROPERTY AT 22 LANSDOWNE ROAD, CROYDON, CR0 2BD AND LAND LYING TO THE EAST OF LANSDOWNE ROAD, CROYDON AND REGISTERED AT LAND REGISTRY WITH ABSOLUTE TITLE UNDER TITLE NUMBERS SGL589067 AND SGL613509.**

**Contains negative pledge.**

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**Authentication of Form**

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

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**Authentication of Instrument**

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

Certified by:

**ADDLESHAW GODDARD LLP**



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

Company number: 2904587

Charge code: 0290 4587 0021

The Registrar of Companies for England and Wales hereby certifies that a charge dated 26th March 2019 and created by NETWORK RAIL INFRASTRUCTURE LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 11th April 2019 .

Given at Companies House, Cardiff on 12th April 2019

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



**Companies House**



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES

DATED

26 March 2019

**LEGAL MORTGAGE OVER PROPERTY FROM A COMPANY  
SECURING SPECIFIC MONIES**

between

**NETWORK RAIL INFRASTRUCTURE LIMITED**

and

**DEPRIST PROPERTY LIMITED**

**Joelson**

Joelson JD LLP  
30 Portland Place  
London  
W1B 1LZ  
(Reference: JS.D329.1)

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This deed is dated

26 March 2019

## **PARTIES**

- (1) **Network Rail Infrastructure Limited** incorporated and registered in England and Wales with company number 02904587 the registered office of which is at 1 Eversholt Street, London, NW1 2DN (**Borrower**).
- (2) **Deprist Property Limited** incorporated and registered in England and Wales with company number 09649469 the registered office of which is at 22 Lansdowne Road, Croydon, CR0 2BD (**Lender**).

## **BACKGROUND**

- (A) The Borrower has on the date of this deed purchased the Property from the Lender and is granting this security in respect of its payment of the sums due under clauses 15.2 to 15.4 (inclusive) of the Contract for Sale.
- (B) The Borrower owns the Property.

## **AGREED TERMS**

### **1. DEFINITIONS AND INTERPRETATION**

#### **1.1 Definitions**

The following definitions apply in this deed:

**Business Day:** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**Contract for Sale:** the contract for the purchase of the Property of even date with this deed and made between (1) Deprist Property Limited (2) Network Rail Infrastructure Limited and (3) The Southern Motor Group Limited.

**Delegate:** any person appointed by the Lender or any Receiver under clause 14 and any person appointed as attorney of the Lender, Receiver or Delegate.

**Equitable Charge:** the equitable charge contained in the Conveyance dated 8 November 1996 referred to at entry C6 of title SGL589067 as at 16:03:57 on 9 May 2018.

**Environment:** the natural and man-made environment including all or any of the following media, namely air, water and land (including air within buildings and other natural or man-made structures above or below the ground) and any living organisms (including man) or systems supported by those media.

**Environmental Law:** all 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 the Environment.

**Environmental Licence:** any authorisation, permit or licence necessary under Environmental Law in respect of any part of the Property.

**Event of Default:** any of the following:

- (a) the Borrower fails to pay any sum payable by it under the Contract for Sale (and, for the avoidance of doubt, any overage payments which may become payable pursuant to the transfer of the property to the Buyer as referred to in clause 16 of the Contract for Sale are not sums payable by the Buyer under the Contract for Sale) or this deed, unless its failure to pay is caused solely by an administrative error or technical problem and payment is made within five Business Days of its due date;
- (b) the Borrower fails to comply with any provision of this deed and (if the Lender considers, acting reasonably, that the default is capable of remedy) such default is not remedied within 14 days of the earlier of:
  - (i) the Lender notifying the Borrower of the default and the remedy required; and
  - (ii) the Borrower becoming aware of the default;
- (c) the Borrower repudiates or rescinds or shows an intention to repudiate or rescind this deed or either of them;
- (d) the Borrower stops or suspends payment of any of its debts or is unable to, or admits its inability to, pay its debts as they fall due;
- (e) the Borrower commences negotiations, or enters into any composition, compromise, assignment or arrangement, with one or more of its creditors (excluding the Lender) with a view to rescheduling any of its indebtedness (because of actual or anticipated financial difficulties);
- (f) a moratorium is declared in respect of any indebtedness of the Borrower;
- (g) any action, proceedings, procedure or step is taken in relation to:
  - (i) the suspension of payments, a moratorium of any indebtedness, winding up, dissolution, administration or reorganisation (using a voluntary arrangement, scheme of arrangement or otherwise) of the Borrower;
  - (ii) the composition, compromise, assignment or arrangement with any creditor of the Borrower; or
  - (iii) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of the Borrower or any of its assets;
- (h) the value of the Borrower's assets is less than its liabilities (taking into account contingent and prospective liabilities);
- (i) any event occurs in relation to the Borrower that is analogous to those set out in points (d) to (h) above (inclusive) in any jurisdiction.

**Insurance Policy:** each contract and policy of insurance effected or maintained by the Borrower from time to time relating to the Property.

**Lease:** has the meaning given to that term in the Contract for Sale.

**LPA 1925:** the Law of Property Act 1925.

**Property:** the freehold property at 22 Lansdowne Road, Croydon, CR0 2BD and Land lying to the East of Lansdowne Road, Croydon and registered at Land Registry with absolute title under title numbers SGL589067 and SGL613509.

**Receiver:** a receiver or receiver and manager appointed by the Lender under clause 12.

**Secured Liabilities:** all present and future obligations and liabilities of the Borrower to the Lender, whether actual or contingent and whether owed jointly or severally, as principal or surety or in any other capacity, under or in connection with clauses 15.2 to 15.4 (inclusive) of the Contract for Sale or this deed, together with all interest (including, without limitation, default interest) accruing in respect of those monies, obligations or liabilities.

**Security:** any mortgage, charge (whether fixed or floating, legal or equitable), pledge, lien, assignment by way of security or other security interest securing any obligation of any person, or any other agreement or arrangement having a similar effect.

**Security Period:** the period starting on the date of this deed and ending on the date on which the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full and no further Secured Liabilities are capable of being outstanding.

**VAT:** value added tax or any equivalent tax chargeable in the UK or elsewhere.

## 1.2 Interpretation

In this deed:

- (a) clause headings shall not affect the interpretation of this deed;
- (b) a reference to a **person** shall include a reference to an individual, firm, company, corporation, partnership, unincorporated body of persons, government, state or agency of a state or any association, trust, joint venture or consortium (whether or not having separate legal personality);
- (c) unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;
- (d) unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;
- (e) a reference to a party shall include that party's successors, permitted assigns and permitted transferees and this deed shall be binding on, and enure to the benefit of, the parties to this deed and their respective personal representatives, successors, permitted assigns and permitted transferees;



- (f) a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;
- (g) a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision;
- (h) a reference to **writing** or **written** includes email;
- (i) an obligation on a party not to do something includes an obligation not to allow that thing to be done;
- (j) a reference to **this deed** (or any provision of it) or to any other agreement or document referred to in this deed is a reference to this deed, that provision or such other agreement or document as amended (in each case, other than in breach of the provisions of this deed) from time to time;
- (k) unless the context otherwise requires, a reference to a clause is to a clause of this deed;
- (l) any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;
- (m) a reference to an **amendment** includes a novation, re-enactment, supplement or variation (and **amend** and **amended** shall be construed accordingly);
- (n) a reference to **assets** includes present and future properties, undertakings, revenues, rights and benefits of every description;
- (o) a reference to an **authorisation** includes an approval, authorisation, consent, exemption, filing, licence, notarisation, registration and resolution;
- (p) a reference to **continuing** in relation to an Event of Default means an Event of Default that has not been remedied or waived;
- (q) a reference to **determines** or **determined** means, unless the contrary is indicated, a determination made at the absolute discretion of the person making it; and
- (r) a reference to a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation.

### 1.3 Clawback

If the Lender considers that an amount paid by the Borrower in respect of the Secured Liabilities is capable of being avoided or otherwise set aside on the liquidation or administration of the Borrower or otherwise, then that amount shall not be considered to have been irrevocably paid for the purposes of this deed.

#### **1.4 Nature of security over real property**

A reference in this deed to a **charge or mortgage of or over the Property** includes:

- (a) all buildings that are situated on or form part of the Property at any time;
- (b) the proceeds of the sale of any part of the Property and any other monies paid or payable in respect of or in connection with the Property;
- (c) the benefit of any covenants for title given, or entered into, by any predecessor in title of the Borrower in respect of the Property, and any monies paid or payable in respect of those covenants; and
- (d) all rights under any licence, agreement for sale or agreement for lease in respect of the Property.

#### **1.5 Law of Property (Miscellaneous Provisions) Act 1989**

For the purposes of section 2 of the Law of Property (Miscellaneous Provisions) Act 1989, the terms of the Contract for Sale and of any side letters between any parties in relation to the Contract for Sale are incorporated into this deed.

#### **1.6 Perpetuity period**

If the rule against perpetuities applies to any trust created by this deed, the perpetuity period shall be 125 years (as specified by section 5(1) of the Perpetuities and Accumulations Act 2009).

### **2. COVENANT TO PAY**

The Borrower shall, on demand, pay to the Lender and discharge the Secured Liabilities when they become due.

### **3. GRANT OF SECURITY**

As a continuing security for the payment and discharge of the Secured Liabilities, the Borrower with limited title guarantee charges to the Lender by way of a first legal mortgage, the Property.

### **4. PERFECTION OF SECURITY**

#### **4.1 Registration of legal mortgage at the Land Registry**

The Borrower consents to an application being made by the Lender to the Land Registrar for the following restriction in Form P to be registered against its title to the Property:

*"No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by the proprietor for the time being of the charge dated 26 March 2019 in favour of Deprist Property Limited referred to in the charges register or their conveyancer."*

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#### 4.2 Cautions against first registration and notices

- (a) Whether or not title to the Property is registered at the Land Registry, if any caution against first registration or any notice (whether agreed or unilateral) is registered against the Borrower's title to the Property, the Borrower shall provide the Lender with full particulars of the circumstances relating to such caution or notice as soon as reasonably practicable after becoming aware of it.
- (b) If such caution or notice was registered to protect a purported interest the creation of which is not permitted under this deed, the Borrower shall as soon as reasonably practicable after becoming aware of it, and at its own expense, take such steps as the Lender may require to ensure that the caution or notice, as applicable, is withdrawn or cancelled.

### 5. LIABILITY OF THE BORROWER

#### 5.1 Liability not discharged

The Borrower's liability under this deed in respect of any of the Secured Liabilities shall not be discharged, prejudiced or affected by:

- (a) any security, guarantee, indemnity, remedy or other right held by, or available to, the Lender that is, or becomes, wholly or partially illegal, void or unenforceable on any ground;
- (b) the Lender renewing, determining, varying or increasing any facility or other transaction in any manner or concurring in, accepting or varying any compromise, arrangement or settlement, or omitting to claim or enforce payment from any other person; or
- (c) any other act or omission that, but for this clause 5.1, might have discharged, or otherwise prejudiced or affected, the liability of the Borrower.

#### 5.2 Immediate recourse

The Borrower waives any right it may have to require the Lender to enforce any security or other right, or claim any payment from, or otherwise proceed against, any other person before enforcing this deed against the Borrower.

**6. REPRESENTATIONS AND WARRANTIES**

**6.1 Times for making representations and warranties**

The Borrower makes the representations and warranties set out in this clause 6 (**Representations and Warranties**) to the Lender on the date of this deed and the Representations and Warranties are deemed to be repeated on each day of the Security Period with reference to the facts and circumstances existing at the time of repetition provided that the Representations and Warranties are not given to the extent that:

(a) they relate to any period prior to the date of this deed or anything which first occurred prior to the date of this deed; and

(b) any third party (including but not limited to the tenant under the Lease and/or any authorised occupier under the Lease or those with the express or implied authority of the tenant under the Lease) action or inaction would amount to a breach of the Representations and Warranties had they (but for this clause 6.1(b)) been given.

**6.2 No Security**

The Property is free from any Security other than:

(a) the Security created by this deed; and

(b) the Charges (as defined in the Contract for Sale) to the extent that the Lender as seller under the Contract for Sale fails to comply with its obligation to transfer the Property to the Borrower free from the Charges; and

(c) the Equitable Charge to the extent that it is subsisting.

**6.3 No adverse claims**

The Borrower has not received, or acknowledged notice of, any adverse claim by any person in respect of the Property or any interest in it.

**6.4 No breach of laws**

There is no breach of any law or regulation that materially and adversely affects the Property.

**6.5 No interference in enjoyment**

No facility necessary for the enjoyment and use of the Property is subject to terms entitling any person to terminate or curtail its use.

**6.6 No prohibitions or breaches**

There is no prohibition on the Borrower assigning its rights in the Property (save as set out in the transfer of the Property to the Buyer pursuant to the Contract for Sale) and the entry into this deed by the Borrower does not, and will not, constitute a breach of any policy, agreement, document, instrument or obligation binding on the Borrower or its assets.

**6.7 Avoidance of security**

No Security expressed to be created under this deed is liable to be avoided, or otherwise set aside, on the liquidation or administration of the Borrower or otherwise.

**6.8 Enforceable security**

This deed constitutes and will constitute the legal, valid, binding and enforceable obligations of the Borrower and is, and will continue to be, effective security over all and every part of the Property in accordance with its terms.

**7. GENERAL COVENANTS**

**7.1 Negative pledge and disposal restrictions**

The Borrower shall not (other than the grant of the Lease) at any time:

- (a) create, purport to create or (save in the case of the Equitable Charge and (to the extent that the Lender as seller under the Contract for Sale fails to comply with its obligation to transfer the Property to the Borrower free from the Charges (as defined in the Contract for Sale), the Charges)) permit to subsist any Security on, or in relation to, the Property other than any Security created by this deed;
- (b) sell, assign, transfer, part with possession of, or otherwise dispose of in any manner (or purport to do so), all or any part of, or any interest in, the Property; or
- (c) create or grant (or purport to create or grant) any interest in the Property in favour of a third party,

other than with the consent of the Lender (not to be unreasonably withheld or delayed).

**7.2 Preservation of Property**

The Borrower shall not do, or permit to be done (save pursuant to the Lease or as a result of any breach of covenant on the part of the tenant under the Lease), any act or thing that would or might depreciate, jeopardise or otherwise prejudice the security held by the Lender or materially diminish the value of any of the Property or the effectiveness of the security created by this deed.

**7.3 Compliance with laws and regulations**

The Borrower shall not, without the Lender's prior written consent (not to be unreasonable withheld or delayed), use or permit the Property to be used in any way contrary to law.

**7.4 Enforcement of rights**

The Borrower shall use its reasonable endeavours to:

- (a) procure the prompt observance and performance by the relevant counterparty to any agreement or arrangement with the Borrower and forming part of the Property of the covenants and other obligations imposed on such counterparty; and
- (b) enforce any rights and institute, continue or defend any proceedings relating to the Property that the Lender may require from time to time.

**7.5 Notice of misrepresentation and breach**

The Borrower shall, promptly on becoming aware of any of the same, notify the Lender in writing of:

- (a) any representation or warranty set out in this deed that is incorrect or misleading in any material respect when made or deemed to be repeated; and
- (b) any breach of any covenant set out in this deed.

**8. PROPERTY COVENANTS**

**8.1 Leases and licences affecting the Property**

Other than the grant of the Lease or as a result of any breach of covenant on the part of the tenant under the Lease the Borrower shall not, without the prior written consent of the Lender (which consent, in the case of clause 8.1(d), is not to be unreasonably withheld or delayed in circumstances in which the Borrower may not unreasonably withhold or delay its consent):

- (a) grant any licence or tenancy affecting the whole or any part of the Property, or exercise the statutory powers of leasing or of accepting surrenders under

section 99 or section 100 of the LPA 1925 (or agree to grant any such licence or tenancy, or agree to exercise the statutory powers of leasing or of accepting surrenders under section 99 or section 100 of the LPA 1925);

- (b) in any other way dispose of, accept the surrender of, surrender or create any legal or equitable estate or interest in the whole or any part of the Property (or agree to dispose of, accept the surrender of, surrender or create any legal or equitable estate or interest in the whole or any part of the Property);
- (c) let any person into occupation, or share occupation, of the whole or any part of the Property; or
- (d) grant any consent or licence under any lease or licence affecting the Property.

## **8.2 No restrictive obligations**

The Borrower shall not, without the prior written consent of the Lender (not to be unreasonably withheld or delayed), enter into any onerous or restrictive obligations affecting the whole or any part of the Property or create or permit to arise any overriding interest, easement or right whatever in or over the whole or any part of the Property (save for the grant of the Lease or as a result of any breach of covenant on the part of the tenant under the Lease).

## **8.3 Proprietary rights**

The Borrower shall procure that, other than pursuant to the grant of the Lease or as a result of any breach of covenant on the part of the tenant under the Lease, no person shall become entitled to assert any proprietary or other like right or interest over the whole or any part of the Property, without the prior written consent of the Lender (not to be unreasonably withheld or delayed).

## **8.4 Notices or claims relating to the Property**

- (a) The Borrower shall:
  - (i) give full particulars to the Lender of any notice, order, direction, designation, resolution, application, requirement or proposal given or made by any public or local body or authority (**Notice**) that specifically applies to the Property, or to the locality in which it is situated, within 10 Business Days after becoming aware of the relevant Notice; and
  - (ii) (if the Lender so requires and save where compliance is the responsibility of the tenant under the Lease or the Borrower is prevented by virtue of the terms of the Lease or the tenant under the Lease) promptly, and at the cost of the Borrower, take all reasonable and necessary steps to comply with any Notice, and

make, or join with the Lender in making, any objections or representations in respect of that Notice that the Lender thinks fit.

- (b) The Borrower shall give full particulars to the Lender of any claim, notice or other communication served on it in respect of any modification, suspension or revocation of any Environmental Licence or any alleged breach of any Environmental Law, in each case relating to the Property.

#### **8.5 Inspection**

The Borrower shall permit (subject to the terms of the Lease) the Lender, any Receiver and any person appointed by either of them to enter on and inspect the Property on reasonable prior notice.

#### **8.6 VAT option to tax**

The Borrower shall not, without the prior written consent of the Lender (not to be unreasonably withheld or delayed):

- (a) exercise any VAT option to tax in relation to the Property; or
- (b) revoke any VAT option to tax exercised, and disclosed to the Lender in writing, before the date of this deed.

### **9. POWERS OF THE LENDER**

#### **9.1 Power to remedy**

- (a) Subject to the Borrower being afforded a reasonable period of time to first remedy any breach by it of any of its obligations under this deed, the Lender shall be entitled (but shall not be obliged) to remedy, at any time, a breach by the Borrower of any of its obligations contained in this deed.
- (b) The Borrower irrevocably authorises the Lender and its agents to do all things that are necessary or desirable for that purpose.
- (c) Any monies expended by the Lender in remedying a breach by the Borrower of its obligations contained in this deed shall be reimbursed by the Borrower to the Lender on a full indemnity basis and shall carry interest in accordance with clause 16.1.
- (d) In remedying any breach in accordance with this clause 9.1, the Lender, its agents and their respective officers, agents and employees shall be entitled to enter onto the Property and to take any action as the Lender may reasonably consider necessary or desirable including, without limitation, carrying out any repairs, other works or development.

#### **9.2 Exercise of rights**



The rights of the Lender under clause 9.1 are without prejudice to any other rights of the Lender under this deed. The exercise of any rights of the Lender under this deed shall not make the Lender liable to account as a mortgagee in possession.

**9.3 Lender has Receiver's powers**

To the extent permitted by law, any right, power or discretion conferred by this deed (either expressly or impliedly) or by law on a Receiver may, after the security constituted by this deed has become enforceable, be exercised by the Lender in relation to the Property whether or not it has taken possession of the Property and without first appointing a Receiver or notwithstanding the appointment of a Receiver.

**9.4 Indulgence**

The Lender may, at its discretion, grant time or other indulgence, or make any other arrangement, variation or release with any person not being a party to this deed (whether or not any such person is jointly liable with the Borrower) in respect of any of the Secured Liabilities or of any other security for them without prejudice either to this deed or to the liability of the Borrower for the Secured Liabilities.

**10. WHEN SECURITY BECOMES ENFORCEABLE**

**10.1 Security becomes enforceable on Event of Default**

The security constituted by this deed shall become immediately enforceable if an Event of Default is continuing.

**10.2 Discretion**

After the security constituted by this deed has become enforceable, the Lender may, in its absolute discretion, enforce all or any part of that security at the times, in the manner and on the terms it thinks fit, and take possession of and hold or dispose of all or any part of the Property.

**11. ENFORCEMENT OF SECURITY**

**11.1 Enforcement powers**

- (a) For the purposes of all powers implied by statute, the Secured Liabilities are deemed to have become due and payable on the date of this deed.
- (b) The power of sale and other powers conferred by section 101 of the LPA 1925 (as varied or extended by this deed) shall be immediately exercisable at any time after the security constituted by this deed has become enforceable under clause 10.1.

- (c) Section 103 of the LPA 1925 does not apply to the security constituted by this deed.

#### **11.2 Extension of statutory powers of leasing**

The statutory powers of leasing and accepting surrenders conferred on mortgagees under the LPA 1925 and by any other statute are extended so as to authorise the Lender and any Receiver, at any time after the security constituted by this deed has become enforceable, whether in its own name or in that of the Borrower, to:

- (a) grant a lease or agreement for lease;
- (b) accept surrenders of leases; or
- (c) grant any option in respect of the whole or any part of the Property with whatever rights relating to other parts of it,

whether or not at a premium and containing such covenants on the part of the Borrower, and on such terms and conditions (including the payment of money to a lessee or tenant on a surrender), as the Lender or Receiver thinks fit, without the need to comply with any of the restrictions imposed by sections 99 and 100 of the LPA 1925.

#### **11.3 Redemption of prior Security**

- (a) At any time after the security constituted by this deed has become enforceable, the Lender may:
  - (i) redeem any prior Security over the Property other than:
    - (A) the Equitable Charge; and
    - (B) the Charges (as defined in the Contract for Sale) which the Lender is, pursuant to the Contract for Sale, obliged to transfer the Property to the Borrower free from;
  - (ii) procure the transfer of that Security to itself; and
  - (iii) settle and pass the accounts of the holder of any prior Security (and any accounts so settled and passed shall, in the absence of any manifest error, be conclusive and binding on the Borrower).
- (b) The Borrower shall pay to the Lender immediately on demand all principal, interest, costs, charges and expenses of, and incidental to, any such redemption or transfer, and such amounts shall be secured by this deed as part of the Secured Liabilities.

#### **11.4 Protection of third parties**

No purchaser, mortgagee or other person dealing with the Lender, any Receiver or any Delegate shall be concerned to enquire:

- (a) whether any of the Secured Liabilities have become due or payable, or remain unpaid or undischarged;
- (b) whether any power the Lender, a Receiver or Delegate is purporting to exercise has become exercisable or is being properly exercised; or
- (c) how any money paid to the Lender, any Receiver or any Delegate is to be applied.

#### **11.5 Privileges**

Each Receiver and the Lender is entitled to all the rights, powers, privileges and immunities conferred by the LPA 1925 on mortgagees and receivers.

#### **11.6 No liability as mortgagee in possession**

Neither the Lender nor any Receiver or Delegate shall be liable, by reason of entering into possession of the Property or for any other reason, to account as mortgagee in possession in respect of all or any part of the Property, nor shall any of them be liable for any loss on realisation of, or for any act, default or omission for which a mortgagee in possession might be liable.

#### **11.7 Relinquishing possession**

If the Lender, any Receiver or Delegate enters into or takes possession of the Property, it or he/she may at any time relinquish possession.

#### **11.8 Conclusive discharge to purchasers**

The receipt of the Lender, or any Receiver or Delegate shall be a conclusive discharge to a purchaser and, in making any sale or other disposal of the Property or in making any acquisition in the exercise of their respective powers, the Lender, and every Receiver and Delegate may do so for any consideration, in any manner and on any terms that it thinks fit.

### **12. RECEIVERS**

#### **12.1 Appointment**

At any time after the security constituted by this deed has become enforceable, or at the request of the Borrower, the Lender may, without further notice, appoint by way

of deed, or otherwise in writing, any one or more persons to be a Receiver of all or any part of the Property.

#### **12.2 Removal**

The Lender may, without further notice (subject to section 45 of the Insolvency Act 1986), from time to time, by way of deed, or otherwise in writing, remove any Receiver appointed by it and may, whenever it thinks fit, appoint a new Receiver in the place of any Receiver whose appointment may for any reason have terminated.

#### **12.3 Remuneration**

The Lender may fix the remuneration of any Receiver appointed by it without the restrictions contained in section 109 of the LPA 1925 and the remuneration of the Receiver shall be a debt secured by this deed, to the extent not otherwise discharged.

#### **12.4 Power of appointment additional to statutory powers**

The power to appoint a Receiver conferred by this deed shall be in addition to all statutory and other powers of the Lender under the Insolvency Act 1986, the LPA 1925 or otherwise, and shall be exercisable without the restrictions contained in sections 103 and 109 of the LPA 1925 or otherwise.

#### **12.5 Power of appointment exercisable despite prior appointments**

The power to appoint a Receiver (whether conferred by this deed or by statute) shall be, and remain, exercisable by the Lender despite any prior appointment in respect of all or any part of the Property.

#### **12.6 Agent of the Borrower**

- (a) Any Receiver appointed by the Lender under this deed shall be the agent of the Borrower and the Borrower shall be solely responsible for the contracts, engagements, acts, omissions, defaults, losses and remuneration of that Receiver and for liabilities incurred by that Receiver.
- (b) The agency of each Receiver shall continue until the Borrower goes into liquidation and after that the Receiver shall act as principal and shall not become the agent of the Lender.

### **13. POWERS OF RECEIVER**

#### **13.1 Powers additional to statutory powers**

- (a) Any Receiver appointed by the Lender under this deed shall, in addition to the rights, powers and discretions conferred on him/her by statute, have the rights, powers and discretions set out in clause 13.2 to clause 13.20.
- (b) A Receiver has all the rights, powers and discretions conferred on a receiver (or a receiver and manager) under the LPA 1925, and shall have those rights, powers and discretions conferred on an administrative receiver under the Insolvency Act 1986 whether he/she is an administrative receiver or not.
- (c) If there is more than one Receiver holding office at the same time, each Receiver may (unless the document appointing him/her states otherwise) exercise all of the powers conferred on a Receiver under this deed individually and to the exclusion of any other Receiver.
- (d) Any exercise by a Receiver of any of the powers given by clause 13 may be on behalf of the Borrower, the directors of the Borrower or himself/herself.

#### **13.2 Repair and develop the Property**

A Receiver may undertake or complete any works of repair, alteration, building or development on the Property and may apply for and maintain any planning permission, development consent, building regulation approval or any other permission, consent or licence to carry out any of the same.

#### **13.3 Grant or accept surrenders of leases**

A Receiver may grant, or accept, surrenders of any leases or tenancies affecting the Property on any terms, and subject to any conditions, that he/she thinks fit.

#### **13.4 Employ personnel and advisers**

- (a) A Receiver may provide services and employ, or engage, any managers, officers, servants, contractors, workmen, agents, other personnel and professional advisers on any terms, and subject to any conditions, that he/she thinks fit.
- (b) A Receiver may discharge any such person or any such person appointed by the Borrower.

#### **13.5 Make and revoke VAT options to tax**

A Receiver may make, exercise or revoke any VAT option to tax as he/she thinks fit.

#### **13.6 Charge for remuneration**

A Receiver may charge and receive any sum by way of remuneration (in addition to all costs, charges and expenses incurred by him/her) that the Lender may prescribe or agree with him/her.

**13.7 Take possession**

A Receiver may take immediate possession of the Property.

**13.8 Manage or reconstruct the Borrower's business**

A Receiver may carry on, manage, develop, reconstruct, amalgamate or diversify or concur in carrying on, managing, developing, reconstructing, amalgamating or diversifying the business of the Borrower carried out at the Property.

**13.9 Dispose of Property**

- (a) A Receiver may grant options and licences over all or any part of the Property, grant any other interest or right over, sell, exchange, assign or lease (or concur in granting options and licences over all or any part of the Property, granting any other interest or right over, selling, exchanging, assigning or leasing) all or any part of the Property in respect of which he/she is appointed for such consideration and in such manner (including, without limitation, by public auction or private sale) and generally on any terms and conditions as he/she thinks fit.
- (b) A Receiver may promote, or concur in promoting, a company to purchase the Property to be disposed of by him/her.

**13.10 Sever fixtures and fittings**

A Receiver may sever and sell separately any fixtures or fittings from the Property without the consent of the Borrower.

**13.11 Give valid receipts**

A Receiver may give a valid receipt for all monies and execute all assurances and things that may be proper or desirable for realising any part of the Property.

**13.12 Make settlements**

A Receiver may settle, adjust, refer to arbitration, compromise and arrange any claim, account, dispute, question or demand with or by any person who claims to be a creditor of the Borrower or relating in any way to the Property.

**13.13 Bring legal action**

A Receiver may bring, prosecute, enforce, defend and abandon all actions, suits and proceedings in relation to any part of the Property as he/she thinks fit.

**13.14 Insure**

A Receiver may, if he/she thinks fit, but without prejudice to the indemnity in clause 16.2, effect with any insurer any policy of insurance either in lieu or satisfaction of, or in addition to, the insurance required to be maintained by the Borrower under this deed.

**13.15 Form subsidiaries**

A Receiver may form a subsidiary of the Borrower and transfer to that subsidiary the Property.

**13.16 Borrow**

A Receiver may, for whatever purpose he/she thinks fit, raise and borrow money either unsecured or on the security of all or any part of the Property in respect of which he/she is appointed on any terms that he/she thinks fit (including, if the Lender consents, terms under which that security ranks in priority to this deed).

**13.17 Redeem prior Security**

A Receiver may redeem any prior Security and settle and pass the accounts to which the Security relates. Any accounts so settled and passed shall be, in the absence of any manifest error, conclusive and binding on the Borrower, and the monies so paid shall be deemed to be an expense properly incurred by the Receiver.

**13.18 Delegation**

A Receiver may delegate his/her powers in accordance with this deed.

**13.19 Absolute beneficial owner**

A Receiver may, in relation to any part of the Property, exercise all powers, authorisations and rights he/she would be capable of exercising as, and do all those acts and things, an absolute beneficial owner could exercise or do in the ownership and management of all or any part of the Property.

### **13.20 Incidental powers**

A Receiver may do any other acts and things that he/she:

- (a) may consider desirable or necessary for realising all or any part of the Property;
- (b) may consider incidental or conducive to any of the rights or powers conferred on a Receiver under or by virtue of this deed or law; or
- (c) lawfully may or can do as agent for the Borrower.

## **14. DELEGATION**

### **14.1 Delegation**

The Lender or any Receiver may delegate (either generally or specifically) by power of attorney or in any other manner to any person any right, power, authority or discretion conferred on it or him/her by this deed (including the power of attorney granted under clause 18.1).

### **14.2 Terms**

The Lender and each Receiver may make a delegation on the terms and conditions (including the power to sub-delegate) that it or he/she thinks fit.

### **14.3 Liability**

Neither the Lender nor any Receiver shall be in any way liable or responsible to the Borrower for any loss or liability arising from any act, default, omission or misconduct on the part of any Delegate.

## **15. APPLICATION OF PROCEEDS**

### **15.1 Order of application of proceeds**

All monies received or recovered by the Lender, a Receiver or a Delegate under this deed or in connection with the realisation or enforcement of all or part of the security constituted by this deed (other than sums received under any Insurance Policy), shall (subject to the claims of any person having prior rights and by way of variation of the LPA 1925) be applied in the following order of priority (but without prejudice to the Lender's right to recover any shortfall from the Borrower):

- (a) in or towards payment of all costs, liabilities, charges and expenses incurred by or on behalf of the Lender (and any Receiver, Delegate, attorney or agent



appointed by it) under or in connection with this deed and of all remuneration due to any Receiver under or in connection with this deed;

- (b) in or towards payment of the Secured Liabilities in any order and manner that the Lender determines; and
- (c) in payment of the surplus (if any) to the Borrower or other person entitled to it.

## **15.2 Appropriation**

Neither the Lender, any Receiver nor any Delegate shall be bound (whether by virtue of section 109(8) of the LPA 1925, which is varied accordingly, or otherwise) to pay or appropriate any receipt or payment first towards interest rather than principal or otherwise in any particular order between any of the Secured Liabilities.

## **15.3 Suspense account**

All monies received by the Lender, a Receiver or a Delegate under this deed (other than sums received under any Insurance Policy that are not going to be applied in or towards discharge of the Secured Liabilities):

- (a) may, at the discretion of the Lender, Receiver or Delegate, be credited to an interest bearing suspense account;
- (b) shall bear interest, if any, at the rate agreed in writing between the Lender and the Borrower; and
- (c) may be held in that account for so long as the Lender, Receiver or Delegate thinks fit (acting reasonably).

## **16. COSTS AND INDEMNITY**

### **16.1 Costs**

The Borrower shall, promptly on demand, pay to, or reimburse, the Lender and any Receiver, on a full indemnity basis, all costs, charges, expenses, taxes and liabilities of any kind (including, without limitation, legal, printing and out-of-pocket expenses) reasonably incurred by the Lender, any Receiver or any Delegate in connection with:

- (a) this deed (but not the negotiation and completion of it) or the Property;
- (b) taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) any of the Lender's, a Receiver's or a Delegate's rights under this deed; or
- (c) taking proceedings for, or recovering, any of the Secured Liabilities,

together with interest, which shall accrue and be payable (without the need for any demand for payment being made) from the date on which the relevant cost, charge, expense, tax or liability arose until full discharge of that cost, charge, expense, tax or liability (whether before or after judgment, liquidation, winding-up or administration of the Borrower) at the rate and in the manner specified in the Contract for Sale.

## **16.2 Indemnity**

- (a) The Borrower shall indemnify the Lender, each Receiver and each Delegate, and their respective employees and agents against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or reasonably incurred by any of them arising out of or in connection with:
  - (i) the exercise or purported exercise of any of the rights, powers, authorities or discretions vested in them under this deed or by law in respect of the Property;
  - (ii) taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) the security constituted by this deed; or
  - (iii) any default or delay by the Borrower in performing any of its obligations under this deed.
- (b) Any past or present employee or agent may enforce the terms of this clause 16.2 subject to and in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999.

## **17. FURTHER ASSURANCE**

### **17.1 Further assurance**

The Borrower shall promptly (and in any event within 10 Business Days), at its own expense, take whatever action the Lender or any Receiver may reasonably require for:

- (a) creating, perfecting or protecting the security created or intended to be created by this deed;
- (b) facilitating the realisation of the Property; or
- (c) facilitating the exercise of any right, power, authority or discretion exercisable by the Lender or any Receiver in respect of the Property,

including, without limitation the execution of any mortgage, transfer, conveyance, assignment or assurance of all or any of the assets forming part of (or intended to form part of) the Property (whether to the Lender or to its nominee) and the giving of any notice, order or direction and the making of any filing or registration which, in any such case, the Lender may consider necessary or desirable.

**18. POWER OF ATTORNEY**

**18.1 Appointment of attorneys**

At any time after an Event of Default has occurred and is continuing, by way of security, the Borrower irrevocably appoints the Lender, every Receiver and every Delegate separately to be the attorney of the Borrower and, in its name, on its behalf and as its act and deed, to execute any documents and do any acts and things that:

- (a) the Borrower is required to execute and do under this deed; or
- (b) any attorney deems proper or desirable in exercising any of the rights, powers, authorities and discretions conferred by this deed or by law on the Lender, any Receiver or any Delegate.

**18.2 Ratification of acts of attorneys**

Following a request made to the Borrower by any of its attorneys appointed under clause 18.1, the Borrower agrees to ratify and confirm, anything that any of its attorneys may do in the proper and lawful exercise, or purported exercise, of all or any of the rights, powers, authorities and discretions referred to in clause 18.1.

**19. RELEASE**

**19.1 Release**

Subject to clause 26.3, at the end of the Security Period, the Lender shall, at the request and reasonable cost of the Borrower, take whatever action is necessary to:

- (a) release and reassign to the Borrower all its rights arising under this deed;
- (b) release the Property from the security constituted by this deed;
- (c) reassign the Property to the Borrower; and
- (d) return all documents of title delivered pursuant to this deed.

**20. ASSIGNMENT AND TRANSFER**

**20.1 Assignment by Lender**

- (a) At any time, without the consent of the Borrower, the Lender may assign or transfer any or all of its rights and obligations under this deed provided that the Lender may not assign or transfer any or all of its rights and obligations under this deed to The Southern Motor Group Limited (company number 00905101).

- (b) The Lender may disclose to any actual or proposed assignee or transferee any information in its possession that relates to the Borrower, the Property and this deed that the Lender considers appropriate.

**20.2 Assignment by Borrower**

The Borrower may not assign any of its rights, or transfer any of its rights or obligations, under this deed.

**21. SET-OFF**

**21.1 Lender's right of set-off**

The Lender may at any time set off any liability of the Borrower to the Lender against any liability of the Lender to the Borrower, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this deed. If the liabilities to be set off are expressed in different currencies, the Lender may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the Lender of its rights under this clause 21.1 shall not limit or affect any other rights or remedies available to it under this deed or otherwise.

**21.2 No obligation to set off**

The Lender is not obliged to exercise its rights under clause 21.1. If, however, it does exercise those rights it must promptly notify the Borrower of the set-off that has been made.

**21.3 Exclusion of Borrower's right of set-off**

All payments made by the Borrower to the Lender under this deed shall be made in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

**22. AMENDMENTS, WAIVERS AND CONSENTS**

**22.1 Amendments**

No amendment of this deed shall be effective unless it is in writing and signed by, or on behalf of, each party (or its authorised representative).

**22.2 Waivers and consents**

- (a) A waiver of any right or remedy under this deed or by law, or any consent given under this deed, is only effective if given in writing by the waiving or

consenting party and shall not be deemed a waiver of any other breach or default. 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.

- (b) A failure or delay by a party to exercise any right or remedy provided under this deed or by law shall not constitute a waiver of that or any other right or remedy, prevent or restrict any further exercise of that or any other right or remedy or constitute an election to affirm this deed. No single or partial exercise of any right or remedy provided under this deed or by law shall prevent or restrict the further exercise of that or any other right or remedy. No election to affirm this deed by the Lender shall be effective unless it is in writing.

### **22.3 Rights and remedies**

The rights and remedies provided under this deed are cumulative and are in addition to, and not exclusive of, any rights and remedies provided by law.

## **23. SEVERANCE**

- 23.1 If any provision (or part of a provision) of this deed is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable.
- 23.2 If such modification referred to in 23.1 is not possible, the relevant provision (or part of a provision) shall be deemed deleted. Any modification to or deletion of a provision (or part of a provision) under this clause shall not affect the legality, validity and enforceability of the rest of this deed.

## **24. COUNTERPARTS**

### **24.1 Counterparts**

- (a) This deed may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute one deed.
- (b) Transmission of the executed signature page of a counterpart of this deed by email (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this deed. If either method of delivery is adopted, without prejudice to the validity of the deed thus made, each party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.
- (c) No counterpart shall be effective until each party has executed and delivered at least one counterpart.

**25. THIRD PARTY RIGHTS**

- 25.1 Except as expressly provided elsewhere in this deed, a person who is not a party to this deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce, or enjoy the benefit of, any term of this deed. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.
- 25.2 The rights of the parties to rescind or agree any amendment or waiver under this deed are not subject to the consent of any other person.

**26. FURTHER PROVISIONS**

**26.1 Independent security**

The security constituted by this deed shall be in addition to, and independent of, any other security or guarantee that the Lender may hold for any of the Secured Liabilities at any time. No prior security held by the Lender over the whole or any part of the Property shall merge in the security created by this deed.

**26.2 Continuing security**

The security constituted by this deed shall remain in full force and effect as a continuing security for the Secured Liabilities, despite any settlement of account, or intermediate payment, or other matter or thing, unless and until the Lender discharges this deed in writing.

**26.3 Discharge conditional**

Any release, discharge or settlement between the Borrower and the Lender shall be deemed conditional on no payment or security received by the Lender 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. Despite any such release, discharge or settlement:

- (a) the Lender or its nominee may retain this deed and the security created by or under it, including all certificates and documents relating to the whole or any part of the Property, for any period that the Lender deems necessary to provide the Lender with security against any such avoidance, reduction or order for refund; and
- (b) the Lender may recover the value or amount of such security or payment from the Borrower subsequently as if the release, discharge or settlement had not occurred.

**26.4 Certificates**

A certificate or determination by the Lender as to any amount for the time being due to it from the Borrower under this deed and the Contract for Sale shall be, in the absence of any manifest error, conclusive evidence of the amount due.

**26.5 Consolidation**

The restriction on the right of consolidation contained in section 93 of the LPA 1925 shall not apply to this deed.

**27. NOTICES**

**27.1 Delivery**

Any notice or other communication given to a party under or in connection with this deed shall be:

- (a) in writing;
- (b) delivered by hand, by pre-paid first-class post or other next working day delivery service or sent by email; and
- (c) sent to:
  - (i) the Borrower:
    - (A) at its registered office address from time to time; and
    - (B) by email to [notices@networkrail.co.uk](mailto:notices@networkrail.co.uk)
  - (ii) the Lender:
    - (A) at 22 Lansdowne Road, Croydon, CR0 2BD (attention Stephen Price); and
    - (B) by email to [sprice@smguk.co.uk](mailto:sprice@smguk.co.uk)

or to any other address as is notified in writing by one party to the other from time to time.

**27.2 Receipt by Borrower**

Any notice or other communication that the Lender gives to the Borrower shall be deemed to have been received:

- (a) if delivered by hand, at the time it is left at the relevant address;
- (b) if posted by pre-paid first-class post or other next working day delivery service, on the second Business Day after posting; and
- (c) if sent by email, on the next working day following despatch.

A notice or other communication given as described in clause 27.2(a) or clause 27.2(c) on a day that is not a Business Day, or after normal business hours, in the place it is received, shall be deemed to have been received on the next Business Day.

**27.3 Receipt by Lender**

Any notice or other communication given to the Lender shall be deemed to have been received only on actual receipt.

**27.4 Service of proceedings**

This clause 27 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

**28. GOVERNING LAW AND JURISDICTION**

**28.1 Governing law**

This deed and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

**28.2 Jurisdiction**

Each party irrevocably agrees that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction over any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this deed or its subject matter or formation. Nothing in this clause shall limit the right of the Lender to take proceedings against the Borrower in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

**28.3 Other service**

The Borrower irrevocably consents to any process in any legal action or proceedings under clause 28.2 being served on it in accordance with the provisions of this deed relating to service of notices. Nothing contained in this deed shall affect the right to serve process in any other manner permitted by law.



SEAL NO.  
42237

Executed as a deed by  
affixing the common seal of  
**Network Rail**  
**Infrastructure Limited** in  
the presence of:

)  
)  
)  
)  
)  
)  
)



**Senior Assistant**

**Company Secretary**

Authorised Signatory as approved  
by a resolution of the board of  
Network Rail Infrastructure Limited  
on 19 October 2015

Executed as a deed by **Deprist**  
**Property Limited** acting by a director  
in the presence of:

.....  
Director

Witness signature: .....

Witness name: .....

Witness address: .....

.....  
.....

Executed as a deed by affixing the  
common seal of Network Rail  
Infrastructure Limited in the  
presence of:

Executed as a deed by Deprist  
Property Limited acting by a  
director in the presence of:

[Redacted]

Director

[Redacted]

Witness signature:

Witness name:

JOE SALMON

Witness address:

Joelson JD LLP  
30 Portland Place  
London W1B 1LZ