



**Registration of a Charge**

Company Name: **THE BORDERS DISTILLERY COMPANY LIMITED**

Company Number: **SC445020**



Received for filing in Electronic Format on the: **22/02/2023**

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**Details of Charge**

Date of creation: **13/02/2023**

Charge code: **SC44 5020 0007**

Persons entitled: **SANTANDER UK PLC AS SECURITY TRUSTEE**

Brief description: **ALL AND WHOLE THE SUBJECTS CURRENTLY UNDERGOING REGISTRATION IN THE LAND REGISTER OF SCOTLAND UNDER TITLE NUMBER ROX15839 COMPRISING ALL AND WHOLE THAT AREA OF LAND LYING TO THE SOUTH OF HAMILTON ROAD, HAWICK (FOR MORE DETAILS PLEASE REFER TO THE INSTRUMENT).**

**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: **DARREN A. CRAIG FOR AND ON BEHALF OF CMS CAMERON MCKENNA NABARRO OLSWANG LLP**



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

Company number: 445020

Charge code: SC44 5020 0007

The Registrar of Companies for Scotland hereby certifies that a charge dated 13th February 2023 and created by THE BORDERS DISTILLERY COMPANY LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 22nd February 2023 .

Given at Companies House, Edinburgh on 22nd February 2023

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

## IMPORTANT INFORMATION

By entering into this standard security, you are giving security for your liabilities to Santander UK plc and/or other members of its group.

You should seek independent legal advice before entering into this document.

## STANDARD SECURITY

By

- (1) **The Borders Distillery Company Limited** (registered in Scotland with number SC445020) whose registered office is at The Borders Distillery, Commercial Road, Hawick TD9 7AQ (**Chargor**);

in favour of

- (2) **Santander UK plc** (registered in England with number 2294747) whose registered office is at 2 Triton Square, Regent's Place, London NW1 3AN as security trustee for each of itself and each Secured Party (**Santander**, which expression shall include its successors in title, assigns and transferees).

it is agreed

### 1 Definitions and interpretation

- 1.1 In this Standard Security, including the introduction and the schedule, the following definitions apply unless the context otherwise requires:

**Administrator** means any person appointed to be an administrator of the Chargor pursuant to Schedule B1 to the IA 1986

**Affiliate** means, in relation to a person, a Subsidiary of that person, a Holding Company of that person or any other Subsidiary of that Holding Company, in each case, from time to time

**Authorisation** means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration

**Business Day** means a day (other than a Saturday or Sunday) on which banks are open for general business in London

**CA 2006** means the Companies Act 2006

**Environment** means humans, animals, plants and all other living organisms including the ecological systems of which they form, part and the following media:

- (a) air (including, without limitation, air within natural or man-made structures, whether above or below ground)
- (b) water (including, without limitation, territorial, coastal and inland waters, water under or within land and water in drains and sewers) and

- (c) land (including, without limitation, land under water)

**Environmental Law** means any applicable law or regulation which relates to:

- (a) the pollution or protection of the Environment
- (b) the conditions of the workplace or
- (c) the generation, handling, storage, use, release or spillage of any substance which, alone or in combination with any other, is capable of causing harm, to the Environment, including, without limitation, any waste

**Event of Default** means any event of default (howsoever defined) under any Finance Document and any failure by the Chargor to satisfy any demand for payment under any Finance Document

**Finance Document** means this Standard Security, any document governing or evidencing the terms of the Secured Liabilities and any other document designated as a Finance Document by Santander and the Chargor

**Holding Company** means, in relation to a person, any person in respect of which it is a Subsidiary

**IA 1986** means the Insolvency Act 1986

**Leases** means:

- (a) any occupational leases of the Property (or parts of the Property) particulars of which appear in Part 2 of the Schedule and
- (b) any further leases or licences granted in respect of the Property (or parts of the Property) by the Chargor with the prior written consent of Santander and **Lease** means any one of them

**Moveables** means any furniture, goods, equipment, motor vehicles, stock, or other moveable property, whether of a personal or business nature

**Plan 1** means the plan annexed and executed as relative hereto

**Plan 2** means the plan annexed and executed as relative hereto

**Property** means the subjects detailed in Part 1 of the Schedule

**Receiver** means any Administrator, receiver, administrative receiver, manager, trustee in bankruptcy or any equivalent officer appointed in respect of the Chargor

**Schedule** means the schedule in 3 parts attached to and forming part of this Standard Security

**Secured Liabilities** means all monies and liabilities now or after the date of this Standard Security due, owing or incurred by the Chargor to any Secured Party whatsoever, in any manner and in any currency or currencies and whether present or future, actual or contingent, whether incurred solely or jointly with any other person and whether as principal or surety, together with all interest accruing on such monies and liabilities and all costs, charges and expenses incurred by any Secured Party, except for any obligation which, if it were included here, would constitute unlawful financial assistance, or its equivalent in any other jurisdiction

**Secured Party** means Santander and each of its Affiliates

**Security** means a mortgage, charge, pledge, trust, assignment by way of security, assignation in security, standard security, lien, hypothecation or other encumbrance, arrangement or security interest securing any obligation of any person or any other agreement or arrangement having a similar effect or any title retention rights or set-off rights created by agreement

**Security Period** means the period beginning on the date of this standard security and ending on the date on which Santander is satisfied that the Secured Liabilities have been irrevocably and unconditionally satisfied in full and all facilities made available by any Secured Party to the Chargor have been cancelled

**Standard Conditions** means the standard conditions specified in Schedule 3 to the Conveyancing and Feudal Reform (Scotland) Act 1970, a copy of which is reproduced in Part 3 of the Schedule, and any lawful variation to them operative for the time being

**Standard Security** means this standard security including the Schedule

**Subsidiary** means a subsidiary undertaking within the meaning of section 1162 of the CA 2006

**Taxes** means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same)

## 1.2 Interpretation

- (a) Unless a contrary indication appears, a reference in this Standard Security to:
- (i) Santander, any Affiliate of Santander, any Secured Party, the Chargor, or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees and, in the case of Santander, any person for the time being appointed as security trustee for the Secured Parties;
  - (ii) if the Chargor includes more than one person, their obligations are joint and several;
  - (iii) **assets** includes present and future properties, revenues and rights of every description (including any right to receive such revenues);
  - (iv) a Finance Document or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, novated, supplemented or restated (however fundamentally) or replaced;
  - (v) a **person** includes any individual person, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality) or any other entity or body of any description;
  - (vi) a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law but if not having the force of law, then being a type with which persons to which it applies customarily comply) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;

- (vii) a provision of law is a reference to a provision of any treaty, legislation, regulation, decree, order or by-law and any secondary legislation enacted under a power given by that provision, as amended, applied or re-enacted or replaced (whether with or without modification) whether before, on or after the date of this Standard Security;
  - (viii) a time of day is a reference to London time;
  - (ix) **dispose** includes any sale, lease, licence, transfer or loan;
  - (x) references to a **fixed security** mean a fixed security as defined by section 486 of the Companies Act 1985; and
  - (xi) 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.
- (b) Clause and schedule headings are for ease of reference only.
  - (c) Any word importing the singular shall include the plural and vice versa.
  - (d) An Event of Default is **continuing** if it has not been waived to the satisfaction of Santander.
  - (e) A term defined in this Standard Security has the same meaning when used in any notices, acknowledgements or other documents issued under or in connection with this Standard Security.

## 2 **Covenant to pay**

The Chargor covenants with Santander as security trustee for itself and each Secured Party to pay and discharge the Secured Liabilities when they become due for payment and discharge.

## 3 **Standard Security**

As a continuing Security for the due and punctual payment and discharge of the Secured Liabilities, the Chargor grants a standard security over the Property in favour of Santander as security trustee for itself and each Secured Party.

## 4 **Negative pledge**

4.1 The Chargor covenants with Santander that, unless agreed in writing by Santander:

- (a) the Chargor shall not create any fixed security or floating charge over any part of the Property except any fixed or floating security in favour of Santander; and
- (b) this Standard Security shall rank in priority to any fixed security or other floating charge created by the Chargor after its execution of this Standard Security except any fixed security in favour of Santander.

4.2 The Chargor shall not:

- (a) sell, transfer or otherwise dispose of any of its assets and/or property on terms whereby they are or may be leased to or re-acquired by the Chargor or any Affiliate of the Chargor;

- (b) sell, transfer or otherwise dispose of any of its receivables on recourse terms;
- (c) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or
- (d) enter into any other preferential arrangement having a similar effect,

in circumstances where the arrangement or transaction is entered into primarily as a method of raising finance or of financing the acquisition of an asset.

## **5 Standard Conditions**

The Standard Conditions apply except to the extent that they are varied by the terms of this Standard Security and without limitation the Chargor agrees that the Standard Conditions will be varied in accordance with the following provisions of this clause 5. For the avoidance of doubt references in the Standard Conditions to the debtor are references to the Chargor and references to the creditor are references to Santander.

### **5.1 Insurance**

- (a) The insurance to be effected in terms of Standard Condition 5(a) will provide cover to the extent of the full reinstatement value of the Property and not its market value and will provide cover for (i) loss of rent under each Lease for a three year period or, if longer, the period provided for in that Lease and (ii) terrorism. Such insurance will be in an amount and in a form and with an insurance company or underwriters acceptable to Santander (acting reasonably).
- (b) Where required by Santander in writing, the Chargor will procure that Santander is named as composite insured in respect of its own separate insurable interest under the insurance referred to in clause 5.1(a), but without liability on the part of Santander for any premium in relation to that insurance (unless Santander has expressly and specifically requested to be made liable in respect of any increase in premium or unpaid premium in respect of such insurances).
- (c) The Chargor will procure that the insurance referred to in clause 5.1(a) complies with the following:
  - (i) the insurance will contain:
    - (A) a non-invalidating and non-vitiating clause under which the insurance will not be vitiated or avoided as against any insured party as a result of any circumstances beyond the control of that insured party or any misrepresentation, non-disclosure, or breach of any policy term or condition, on the part of any insured party or any agent of any insured party;
    - (B) a waiver of rights of subrogation of the insurer as against the Chargor, Santander and any tenants of the Property other than any such rights arising in connection with any fraud or criminal offence committed by any of those persons in respect of the Property or any insurance; and
    - (C) a loss payee clause under which Santander is named as first loss payee (other than in respect of any claim under any public liability and third party liability insurances).

- (ii) the insurers will give at least 30 days' notice to Santander if any insurer proposes to repudiate, rescind or cancel the insurance policy, to treat it as avoided in whole or in part, to treat it as expired due to non-payment of premium or otherwise decline any valid claim under it by or on behalf of any insured party and must give the opportunity to rectify any such non-payment of premium within the notice period; and
  - (iii) the Chargor will be free to assign all amounts payable to it under the insurance and all its rights in connection with those amounts in favour of Santander.
- (d) The Chargor will promptly notify Santander of:
  - (i) the proposed terms of any future renewal of the insurance;
  - (ii) any amendment, supplement, extension, termination, avoidance or cancellation of the insurance made or, to its knowledge, threatened or pending;
  - (iii) any claim, and any actual or threatened refusal of any claim, under the insurance; and
  - (iv) any event or circumstance which has led or may lead to a breach by the Chargor of any term of this clause.
- (e) Subject to the terms of the Leases, all sums paid under the policies of insurance referred to in clause 5.1(a) will be applied in making good the loss or damage in respect of which such monies become payable or, if Santander so requires, in or towards the discharge of the Secured Liabilities.
- (f) The Chargor will not do and will not allow anything to be done which might prejudicially affect any insurance policy in respect of the Property. In the event that the Chargor fails to insure the property, Santander is entitled but not bound to effect such insurance and to recover the costs from the Chargor.

## 5.2 Use

The Chargor will not (without the prior written consent of Santander) alter the use of the Property.

## 5.3 Restrictions on dealings with the Property

The Chargor will not (without the prior written consent of Santander):

- (a) part with occupation of the Property or any part of it or grant any lease or licence over the Property or any part of it; or
- (b) convey or otherwise transfer the Property or any part of it; or
- (c) make directly or indirectly any application for planning permission in relation to the Property or any part of it; or
- (d) make an application for an improvement grant or other grant in respect of the Property or any part of it; or
- (e) create or agree to create any servitude or real burden over the Property or any part of it.



#### 5.4 Restrictions on dealings with Leases

In relation to the Leases, the Chargor will:

- (a) observe and perform the landlord's obligations at all times;
- (b) enforce the performance and observance of the tenant's obligations at all times;
- (c) not vary the Leases, whether by formal or informal writing, personal waiver, back letter, acquiescence or otherwise without obtaining the prior written consent of Santander;
- (d) not waive or release, nor agree to waive or release, any obligations incumbent on the tenant under the Leases without obtaining the prior written consent of Santander;
- (e) timeously and efficiently implement any provisions in the Leases for the review of rent unless such review is likely to lead to a reduction in the rent payable under the Leases;
- (f) not agree, and will not by default be deemed to have agreed, any rent reviews under the Leases without obtaining the prior written consent of Santander;
- (g) not assign or create a security interest over or otherwise deal with the rent payable under the Leases;
- (h) not grant nor agree to grant any consent to:
  - (i) an assignation of the tenant's interest under the Leases; nor
  - (ii) a sub-letting of the Property or any part of it,without obtaining the prior written consent of Santander.
- (i) not irritate nor exercise any right to terminate the Leases without obtaining the prior written consent of Santander;
- (j) not accept a surrender of the tenant's interest under the Leases without obtaining the prior written consent of Santander; and
- (k) from time to time, on demand, supply to Santander such information in relation to the matters specified in clause 5.4 as Santander requires.

#### 5.5 Compulsory purchase order

If the Property or any part is compulsorily purchased or requisitioned or is the subject of a notice to treat for the purposes of compulsory acquisition all claims and rights of the Chargor to compensation by reason of such acquisition will be held to be assigned to Santander, with full power to Santander to negotiate, agree and adjust the amount of any such compensation.

#### 5.6 Moveables

- (a) If Santander exercises any of the remedies available to it under the Conveyancing and Feudal Reform (Scotland) Act 1970 and the Chargor fails to remove from the Property any Moveables, after being called upon by Santander by notice in writing to remove the same within 14 days, Santander will be entitled and is irrevocably authorised as agent of the Chargor to remove, sell, store or otherwise deal with or dispose of the Moveables in such manner and upon such terms as Santander may in its sole discretion think fit,

subject only to an obligation to account to the Chargor for the net proceeds of any sale of the Moveables, after deducting all expenses incurred by Santander.

- (b) Without prejudice to the provisions of clause 6, Santander will not be liable for any loss or damage suffered by or caused to the Chargor by the exercise of these rights available to Santander and the Chargor will be bound to indemnify Santander against all expenses incurred by it in connection with or incidental to the removal, sale, storage or other dealing with or disposal of the Moveables and against all claims by or liability to any third party asserting ownership of any item.

## **5.7 Environmental**

- (a) The Chargor will not do or omit to do anything, or permit anything to be done or omitted, on, at, under, over, from or to the Property or any part of it which could lead to the Chargor incurring any costs or liabilities or committing any offence under any Environmental Law.
- (b) Without prejudice to the provisions of clause 6, the Chargor will indemnify Santander and its officers, employees and agents against all costs, liabilities and expenses which may be suffered or incurred by it arising out of or in connection with any such act, omission, or permission, any actual or threatened breach of Environmental Law or the presence of any hazardous substances on, at, under, over, or migrating to or from the Property.
- (c) The Chargor will ensure that it complies in all material respects with the terms of all Environmental Laws and will notify Santander immediately upon becoming aware of any environmental issues which may have a prejudicial effect on the value of the Property and immediately following receipt of any notices or upon becoming aware of any actual or threatened claims in connection with any environmental matters directly or indirectly associated with the Property.

## **5.8 Summary ejection**

Santander may, at any time after it has become entitled to enter into possession of the Property, serve notice upon the Chargor requiring it to vacate the Property within a period of seven days and the Chargor will upon the expiry of that period vacate the Property so far as occupied by it or others for whom it is responsible, and the Chargor agrees that a warrant of summary ejection may competently proceed against it in the Sheriff Court of the District in which the Property is situated at the request of Santander.

## **5.9 Default**

For the purposes of Standard Condition 9.1 the Chargor will be held to be in default upon the occurrence of an Event of Default and in the event of the Chargor being in default as aforesaid, then without prejudice to any other rights and remedies available to Santander by virtue of the Standard Conditions or any other Security or undertaking or in any other manner Santander will be entitled to exercise any of the remedies available to a creditor on default of a debtor by virtue of the provisions of the Conveyancing and Feudal Reform (Scotland) Act 1970.

## **5.10 Power to remedy**

- (a) If the Chargor defaults at any time in complying with any of its obligations contained in this Standard Security, Santander will, without prejudice to any other rights arising as a consequence of such default, be entitled (but not bound) to make good such default

and the Chargor hereby irrevocably authorises Santander by way of security to do all such things necessary or desirable in connection herewith. Any monies so expended by Santander will be repayable by the Chargor to Santander on demand together with interest thereon at the rate and in the manner as set out in the underlying facility agreement from the date of payment by Santander until such repayment, both before and after judgment.

- (b) Santander will not be required to give any notice of its exercise of the right of entry referred to in Standard Condition 7.2.

#### **5.11 Tenant's interest in leasehold Property**

Where the Property is held by the Chargor under a lease (**Chargor's Lease**) the provisions of this clause 5.11 will apply.

- (a) If the Chargor's Lease prohibits the Chargor from complying with any obligation under this Standard Security in respect of insurance cover, endorsement of insurance policies or assignment and application of insurance proceeds, the Chargor will still procure that the Property is insured in accordance with the provisions of the Chargor's Lease.
- (b) The Chargor will:
  - (i) comply fully with all tenant's obligations under the Chargor's Lease at all times;
  - (ii) enforce full compliance by the landlord with its obligations under the Chargor's Lease at all times;
  - (iii) not waive or release any landlord's obligations under the Chargor's Lease;
  - (iv) not surrender or otherwise terminate the Chargor's Lease;
  - (v) immediately copy to Santander any notices of threatened or actual irritancy of the Chargor's Lease; and
  - (vi) supply to Santander, on demand, any information required by it.
- (c) The Chargor will not without the prior written consent of Santander:
  - (i) vary the Chargor's Lease; or
  - (ii) agree or otherwise be bound by any rent review under the Chargor's Lease.

#### **5.12 Jeopardy**

The Chargor will not do, or cause or permit to be done, anything which may materially depreciate, jeopardise or otherwise prejudice the value to Santander or any other Secured Party of the Property without the prior written consent of Santander.

#### **5.13 Authorisations**

The Chargor will at all times acquire and maintain all Authorisations required by its ownership, use or occupation of the Property or for the conduct of any business operated on or from the Property and will comply with all terms and conditions relating to such Authorisations and with all other applicable laws and will not do or permit any act or omission whereby any such Authorisations would be liable to be varied or revoked.

#### **5.14 Information**

The Chargor will produce to Santander such documents or information relating to the Property as Santander may from time to time reasonably request and promptly deliver to Santander a copy of any notice or proceedings served by any person on the Chargor concerning the Property or alleging any breach of its obligations relating to the Property.

### **6 Liability of Santander**

#### **6.1 Liability**

Santander will not in any circumstances be liable to the Chargor or any other person for losses, damages, liabilities or expenses arising from or in connection with the application or enforcement of this Standard Security or any realisation, appropriation or application of the Property or from any act, default or omission of Santander or its officers, employees or agents in relation to the Property or otherwise in connection with this Standard Security.

#### **6.2 Indemnity**

Santander and every attorney, manager, agent, employee or other person appointed by Santander under or in connection with this Standard Security will be and is hereby indemnified by the Chargor in respect of all liabilities, costs, losses and expenses incurred by them or him in the execution (or purported execution) of any of the powers, authorities or discretions vested in them or him pursuant to the terms of this Standard Security (or by any law or regulation) and against all actions, proceedings, costs, claims and demands in respect of any matter or thing done or omitted in any way in connection with or relating to all or any of the Property and Santander or any such other person may retain and pay all sums in respect of the same out of money received under the powers conferred by this Standard Security.

### **7 Protection of Security**

#### **7.1 Continuing Security**

- (a) This Standard Security will be in addition to, and without prejudice to and will not merge with, any other right, remedy, guarantee or Security which Santander may at any time hold in respect of any of the Secured Liabilities and this Standard Security may be enforced against the Chargor without Santander first having recourse to any other right, remedy, guarantee or Security held or available to it.
- (b) This Standard Security will remain in full force and effect as a continuing security until Santander has certified in writing that the Secured Liabilities have been discharged in full.

#### **7.2 Waiver of rights**

The obligations of the Chargor under this Standard Security and the rights, powers and discretions of Santander under this Standard Security will not be reduced, discharged or otherwise affected by:

- (a) any time, waiver or consent granted to, or composition with the Chargor or any other person;
- (b) the release of the Chargor or any other person under the terms of any composition or arrangement with any creditor of the Chargor;

- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights or remedies against, or Security over assets of the Chargor or any other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument;
- (d) Santander failing to realise the full value of any Security held by it;
- (e) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Chargor or any other person or any defective or excessive exercise of the Chargor's powers or authority;
- (f) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) termination or replacement of the Secured Liabilities or any document, guarantee or Security related to the Secured Liabilities including any change in the purpose of, any extension of or increase in any facility or the addition of any new facility or other document or Security;
- (g) any unenforceability, illegality, invalidity, irregularity or frustration of any obligation (actual or purported) of any person under this Standard Security or any other document, guarantee or Security held in connection with the Secured Liabilities;
- (h) any claim or enforcement of payment from the Chargor or any other person;
- (i) any insolvency, bankruptcy, liquidation, administration, winding-up, incapacity, dissolution, limitation, disability, the discharge by operation of law or any similar proceedings in respect of the Chargor or any other person;
- (j) any change in the constitution, name or style of the Chargor or any other person, or if such other person is a partnership or other unincorporated organisation, its dissolution or any change in its status or membership; or
- (k) anything done or omitted to be done by Santander or any other person which but for this provision might operate to exonerate or discharge or otherwise reduce or extinguish the liability of the Chargor under this Standard Security.

### 7.3 Santander's protections

- (a) Santander may make one or more demands under this Standard Security.
- (b) This Standard Security will be in addition to, and without prejudice to and will not merge with, any other right, remedy, guarantee or Security which Santander may at any time hold in respect of any of the Secured Liabilities and this Standard Security may be enforced without Santander first having:
  - (i) recourse to any other right, remedy, guarantee or Security held or available to it;
  - (ii) to take action or obtain judgment in any court against the Chargor or any other person;
  - (iii) to make or file any claim in a bankruptcy, liquidation, administration or insolvency of the Chargor or any other person; or

- (iv) to make demand, enforce or seek to enforce any claim, right or remedy against the Chargor or any other person.
- (c) The Chargor's liability under this Standard Security will not be discharged or affected by anything that would not have discharged or affected it if the Chargor had been a principal debtor instead of a chargor under this Standard Security.

#### **7.4 Further assurance**

- (a) The Chargor shall promptly do all such acts and execute all such documents (including, without limitation, any assignment, transfer, conveyance, assurance, mortgage, charge, notice and instruction) as Santander may specify (and in such form as Santander may require) in favour of Santander or its nominee(s) to:
  - (i) create, perfect, protect and maintain the security created or intended to be created under or evidenced by this Standard Security or for the exercise of any rights, powers and remedies of Santander provided by or pursuant to this Standard Security or by law;
  - (ii) to confer on Santander security over any property and assets of the Chargor located in any jurisdiction equivalent or similar to the security intended to be conferred by or pursuant to this Standard Security; and/or
  - (iii) (if an Event of Default is continuing) to facilitate the realisation of the assets which are, or are intended to be, the subject of the security created by or under this Standard Security.
- (b) Any document required to be executed by the Chargor under this clause 7.4 will be prepared at the cost of the Chargor.

#### **7.5 Power of attorney**

The Chargor irrevocably and severally appoints Santander, each Receiver and any of their delegates or sub-delegates to be its attorney to take any action which the Chargor is obliged to take under this Standard Security. The Chargor ratifies and confirms whatever any attorney does or purports to do pursuant to its appointment under this clause 7.5.

### **8 Appropriation, payments and costs and expenses**

#### **8.1 Protection of third parties**

No purchaser from or other person dealing with Santander in relation to the Property will be obliged or concerned to enquire whether the right of Santander to exercise any of the powers conferred by this Standard Security in relation to the Property or any part of the Property has arisen or become exercisable by Santander, nor be concerned with notice to the contrary, nor with the propriety of the exercise or purported exercise of any such powers and the title of such a purchaser and the position of such a person will not be affected by reference to any of those matters.

#### **8.2 Notice of subsequent Security – new accounts**

- (a) If Santander receives notice (whether actual or otherwise) of any subsequent Security affecting any part of the Property and/or the proceeds of sale of the Property, it may open a new account or accounts for the Chargor in its books.

- (b) If Santander does not open a new account immediately on receipt of notice under clause 8.2(a), then (unless Santander gives express written notice to the contrary to the Chargor) all payments made by the Chargor to Santander will be treated as having been credited to a new account of the Chargor and not as having been applied in reduction of the Secured Liabilities, as from the time of receipt of the relevant notice by Santander.

### **8.3 Consolidation and set-off**

- (a) A Secured Party will be entitled without notice to the Chargor (both before and after demand):
  - (i) to combine or consolidate all or any sums of money due by that Secured Party to the Chargor with the liabilities of the Chargor to that Secured Party; and
  - (ii) to set-off, retain as cover for, apply or transfer any sum or sums due by that Secured Party to the Chargor in or towards satisfaction of any of the liabilities of the Chargor to that Secured Party.
- (b) The liabilities referred to in this clause 8.3 may be actual, contingent, primary, collateral, several or joint liabilities, and the sums and liabilities referred to in this clause 8.3 may be denominated in any currency.
- (c) If the amounts concerned are expressed in a different currency then the relevant Secured Party may exercise all such rights and is authorised to effect any necessary conversions at a market rate of exchange.
- (d) If the relevant obligation or liability is unliquidated or unascertained the relevant Secured Party may set-off the amount it estimates (in good faith) will be the final amount of such obligation or liability once it becomes liquidated or ascertained.

### **8.4 Appropriation and suspense account**

- (a) Subject to clause 8.4(c), Santander may appropriate all payments received in respect of the Secured Liabilities in reduction of any part of those liabilities as it thinks fit.
- (b) Any such appropriation will override any appropriation by the Chargor.
- (c) All monies received, recovered or realised by Santander under this Standard Security may at the discretion of Santander be credited to any suspense account for so long as Santander determines (with interest accruing thereon at such rate, if any, as Santander may determine for the account of the Chargor) without Santander having any obligation to apply such monies or any part of them in or towards the discharge of any of the Secured Liabilities.

### **8.5 Payments**

- (a) Subject to clause 8.5(b), all payments to be made by the Chargor in respect of this Standard Security, will be made in immediately available funds to the credit of such account as Santander may designate. All such payments will be made free and clear of, and without any deduction for, or on account of, any set-off or counterclaim or, except to the extent compelled by law, any deduction on account of any Taxes.
- (b) If the Chargor is compelled by law to withhold or deduct any Taxes from any sum payable hereunder to Santander, the sum so payable by the Chargor will be increased

so as to result in the receipt by Santander of a net amount equal to the full amount expressed to be payable hereunder.

- (c) Any demand, notification or certificate given by Santander specifying amounts due and payable under or in connection with any of the provisions of this Standard Security will, in the absence of manifest error, be conclusive and binding on the Chargor.

## **8.6 Costs and expenses**

- (a) The Chargor will reimburse Santander in respect of all reasonable expenses, including reasonable legal, valuation, accountancy and consultancy fees (and any value added or similar tax thereon) incurred by Santander in connection with:
  - (i) the negotiation, preparation, execution and completion of this Standard Security, or any of the documents referred to herein; and
  - (ii) any actual or proposed amendment, replacement, restatement or extension of, or any waiver or consent under, this Standard Security.
- (b) The Chargor will reimburse Santander for all costs and expenses, including legal fees (and any value added or similar tax thereon) incurred in connection with the enforcement, attempted enforcement or preservation of any of its rights under this Standard Security, or any of the documents referred to herein.
- (c) The Chargor will pay all present and future stamp, registration and similar taxes or charges which may be payable, or determined to be payable, in connection with the execution, delivery, performance or enforcement of this Standard Security or any judgment given in connection therewith and will indemnify Santander against any and all liabilities, including penalties with respect to, or resulting from, its delay or omission to pay any such stamp, registration and similar taxes or charges.

## **8.7 Assignment and transfer**

Santander and each other Secured Party may assign or transfer all or any part of its rights under this Standard Security. The Chargor may not assign, transfer, charge, make the subject of a trust or deal in any other manner with this Standard Security or any of its rights under this Standard Security or purport to do any of the same without obtaining the prior written consent of Santander.

## **8.8 Contingencies**

If this Standard Security is enforced at a time when no amounts are due to any Secured Party (but at a time when amounts may become so due), Santander may pay the proceeds of any recoveries effected by it into a blocked suspense account.

## **9 Notices**

### **9.1 Communications in writing**

All notices, demands and any consent must be in writing. Santander may serve a notice or demand on the Chargor at the Chargor's registered address. A notice or demand by Santander will be effective at the time of personal delivery or at 9.00am on the second Business Day after posting. A notice from the Chargor to Santander must be addressed to Securities Department – CCB, Santander UK plc, Alaska House, Atlantic Park, Dunnings Bridge Road, Liverpool L30



4AB and will be effective on receipt, if received before 4.00pm on a Business Day, or otherwise on the next Business Day.

## **10 General**

### **10.1 Retention of Security**

Any settlement, discharge or release between the Chargor and any Secured Party shall be conditional upon no security or payment to or for that Secured Party by the Chargor or any other person being avoided or set aside or ordered to be refunded or reduced by virtue of any law relating to bankruptcy, insolvency or liquidation or otherwise.

### **10.2 Avoidance of payments**

If Santander believes that any amount paid by the Chargor or any other person in respect of the Secured Liabilities is capable of being avoided or set aside for any reason, then for the purposes of this Standard Security, such amount shall not be considered to have been paid.

### **10.3 Amendments and waivers**

No variation to this Standard Security will be effective unless made in writing and signed by Santander and the Chargor. A waiver given or consent granted by Santander under this Standard Security will be effective only if given in writing and then only in the instance and for the purpose for which it is given.

### **10.4 Severability**

Each provision of this Standard Security is severable and distinct from the others. If at any time any provision of this Standard Security is or becomes unlawful, invalid or unenforceable to any extent or in any circumstances for any reason, it will to that extent or in those circumstances be deemed not to form part of this Standard Security but (except to that extent or in those circumstances in the case of that provision) the legality, validity and enforceability of that and all other provisions of this Standard Security will not be affected in any way.

### **10.5 Illegality**

If any provision of this Standard Security is found to be illegal, invalid or unenforceable in accordance with clause 10.4 but would be legal, valid or enforceable if some part of the provision were deleted, the provision in question will apply with such modification(s) as may be necessary to make it legal, valid or enforceable.

### **10.6 Remedies and waivers**

- (a) No failure to exercise, nor any delay in exercising, on the part of Santander or any Receiver, any right or remedy under this Standard Security shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent or restrict any further exercise of that or any other right or remedy. The rights and remedies provided in this Standard Security are cumulative and not exclusive of any rights or remedies provided by law.
- (b) A waiver given or consent granted by Santander under this Standard Security will be effective only if given in writing and then only in the instance and for the purpose for which it is given.

## **10.7 Exercise of discretion**

Any right or power which may be exercised or any determination which may be made under this Standard Security by Santander may be exercised or made in its absolute and unfettered discretion and it will not be obliged to give reasons therefore.

## **10.8 Rights cumulative**

Santander's rights and remedies contained in this Standard Security are cumulative and not exclusive of any rights or remedies provided by law.

## **10.9 Delegation**

Santander may delegate, by power of attorney or in any other manner, to any person, any right, power or discretion exercisable by it under this Standard Security upon any terms (including power to sub-delegate) which it may think fit. Santander will not be in any way liable or responsible to the Chargor for any loss or liability arising from any act, default, omission or misconduct on the part of any such delegate.

## **11 Governing law and jurisdiction**

### **11.1 Governing law**

This Standard Security together with any non-contractual disputes or claims arising out of or in connection with this Standard Security will in all respects be governed by and interpreted in accordance with Scots law.

### **11.2 Jurisdiction**

- (a) The courts of Scotland have exclusive jurisdiction to settle any dispute arising out of or in connection with this Standard Security (including a dispute relating to the existence, validity or termination of this Standard Security or any non-contractual obligation arising out of or in connection with this Standard Security (**Dispute**)).
- (b) The parties to this Standard Security agree that the courts of Scotland are the most appropriate and convenient courts to settle Disputes and accordingly no party to this Standard Security will argue to the contrary.

## **12 Warrandice**

The Chargor grants warrandice excepting therefrom the Leases if any set out in Part 2 of the Schedule.

### 13 Consent to registration

The Chargor consents to the registration of this Standard Security and any certificate referred to in Clause 8.5(c) for preservation and execution:

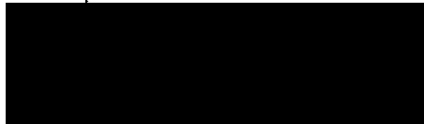
**In witness whereof** these presents consisting of this and the preceding 16 pages and the Schedule and Plans 1 and Plans 2 are executed as follows:

#### Chargor

Subscribed for and on behalf of  
**The Borders Distillery Company Limited**  
at **EDINBURGH**

on **31 JANUARY 2023**

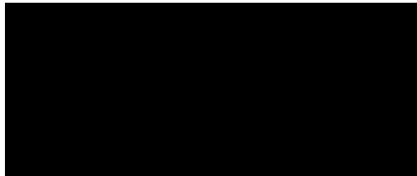
in the presence of:



Signature of witness

Full name **DRUCE STEPHEN**

Address   



)   
) Director/Secretary/Authorised  
Signatory/Member

) **LAURENCE JOHN FORBES**  
) Full Name

#### Board Approval

We hereby certify that the acceptance of, and entry into, this Standard Security was approved by a resolution of the Board of Directors of the Chargor properly passed on **31 JANUARY 2023**

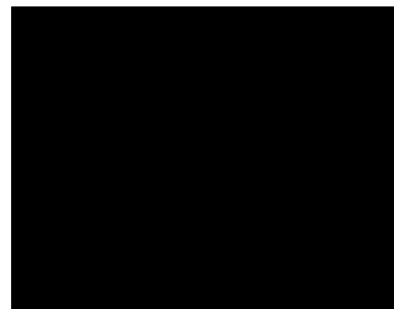
Date **January 31<sup>st</sup> 2023**

Signed  (Director)

**This is the Schedule referred to in the foregoing Standard Security between The Borders Distillery Company Limited and Santander UK Plc relating to subjects at Burnfoot Industrial Park, Hawick**

**Part 1 – The Property**

**All and whole the subjects currently undergoing registration in the Land Register of Scotland under Title Number ROX15839 comprising ALL and WHOLE** that area of land lying to the south of Hamilton Road, Hawick shown outlined in red on Plan 1 (including the areas coloured green and blue on Plan 1) part of which said area (such part being shown coloured pink on Plan 2) forms part and portion of the subjects registered in the Land Register of Scotland under Title Number ROX10711 and the other part of which forms part and portion of the lands and farm at Burnfoot in the County of Roxburgh described in and disposed by Disposition by John Charles, Duke of Buccleuch and Queensberry K.T. in favour of Gilbert Davidson recorded in the Division of the General Register of Sasines applicable to the County of Roxburgh on 20 May 1920.



— The Standard Conditions as specified in Schedule 3 to the Conveyancing and Feudal Reform (Scotland) Act 1970

**1 Maintenance and repair**

It shall be an obligation on the debtor:

- (a) to maintain the security subjects in good and sufficient repair to the reasonable satisfaction of the creditor;
- (b) to permit, after seven clear days' notice in writing, the creditor or his agent to enter upon the security subjects at all reasonable times to examine the condition thereof;
- (c) to make all necessary repairs and make good all defects in pursuance of his obligation under head (a) of this condition within such reasonable period as the creditor may require by notice in writing.

**2 Completion of buildings etc. and prohibition of alterations etc**

It shall be an obligation on the debtor:

- (a) to complete, as soon as may be practicable, any unfinished buildings and works forming part of the security subjects to the reasonable satisfaction of the creditor;
- (b) not to demolish, alter or add to any buildings or works forming part of the security subjects, except in accordance with the terms of a prior written consent of the creditor and in compliance with any consent, licence or approval required by law;
- (c) to exhibit to the creditor at his request evidence of that consent, licence or approval.

**3 Observance of conditions in title, payment of duties, charges, etc., and general compliance with requirements of law relating to security subjects**

It shall be an obligation on the debtor:

- (a) to observe any condition or perform any obligation in respect of the security subjects lawfully binding on him in relation to the security subjects;
- (b) to make due and punctual payment of any ground burden, teind, stipend, or standard charge, and any rates, taxes and other public burdens, and any other payments exigible in respect of the security subjects;
- (c) to comply with any requirement imposed upon him in relation to the security subjects by virtue of any enactment.

**4 Planning notices, etc**

It shall be an obligation on the debtor:

- (a) where he has received any notice or order, issued or made by virtue of the Town and Country Planning (Scotland) Acts 1947 to 1969 or any amendment thereof, or any proposal so made for the making or issuing of any such notice or order, or any other notice or document affecting or likely to affect the security subjects, to give to the creditor, within fourteen days of the receipt of that notice, order or proposal, full particulars thereof;

- (b) to take, as soon as practicable, all reasonable or necessary steps to comply with such a notice or order or, as the case may be, duly to object thereto;
- (c) in the event of the creditor so requiring, to object or to join with the creditor in objecting to any such notice or order or in making representations against any proposal therefor.

## **5 Insurance**

It shall be an obligation on the debtor:

- (a) to insure the security subjects or, at the option of the creditor, to permit the creditor to insure the security subjects in the names of the creditor and the debtor to the extent of the market value thereof against the risk of fire and such other risks as the creditor may reasonably require;
- (b) to deposit any policy of insurance effected by the debtor for the aforesaid purpose with the creditor;
- (c) to pay any premium due in respect of any such policy, and, where the creditor so requests, to exhibit a receipt therefor not later than the fourteenth day after the renewal date of the policy;
- (d) to intimate to the creditor, within fourteen days of the occurrence, any occurrence which may give rise to a claim under the policy, and to authorise the creditor to negotiate the settlement of the claim;
- (e) without prejudice to any obligation to the contrary enforceable against him, to comply with any reasonable requirement of the creditor as to the application of any sum received in respect of such a claim;
- (f) to refrain from any act or omission which would invalidate the policy.

## **6 Restriction on letting**

It shall be an obligation on the debtor not to let, or agree to let, the security subjects, or any part thereof, without the prior consent in writing of the creditor, and "to let" in this condition includes to sub-let.

## **7 General power of creditor to perform obligations etc on failure of debtor and power to charge debtor**

- 7.1 The creditor shall be entitled to perform any obligation imposed by the standard conditions on the debtor, which the debtor has failed to perform.
- 7.2 Where it is necessary for the performance of any obligation as aforesaid, the creditor may, after giving seven clear days' notice in writing to the debtor, enter upon the security subjects at all reasonable times.
- 7.3 All expenses and charges (including any interest thereon), reasonably incurred by the creditor in the exercise of a right conferred by this condition, shall be recoverable from the debtor and shall be deemed to be secured by the security subjects under the standard security, and the rate of any such interest shall be the rate in force at the relevant time in respect of advances secured by the security, or, where no such rate is prescribed, shall be the bank rate in force at the relevant time.

## **8 Calling-up**

The creditor shall be entitled, subject to the terms of the security and to any requirement of law, to call-up a standard security in the manner prescribed by section 19 of this Act.

## **9 Default**

9.1 The debtor shall be held to be in default in any of the following circumstances, that is to say:

- (a) where a calling-up notice in respect of the security has been served and has not been complied with;
- (b) where there has been a failure to comply with any other requirement arising out of the security;
- (c) where the proprietor of the security subjects has become insolvent.

9.2 For the purposes of this condition, the proprietor shall be taken to be insolvent if:

- (a) he has become notour bankrupt, or he has executed a trust deed for behoof of, or has made a composition contract or arrangement with, his creditors;
- (b) he has died and a judicial factor has been appointed under section 11A of the Judicial Factors (Scotland) Act 1889 to divide his insolvent estate among his creditors, or his estate falls to be administered in accordance with an order under section 421 of the IA 1986;
- (c) where the proprietor is a company, a winding-up order has been made with respect to it, or a resolution for voluntary winding-up (other than a members' voluntary winding-up) has been passed with respect to it, or a receiver or manager of its undertaking has been duly appointed, or possession has been taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property of the company comprised in or subject to the charge.

## **10 Rights of creditor on default**

10.1 Where the debtor is in default, the creditor may, without prejudice to his exercising any other remedy arising from the contract to which the standard security relates, exercise, in accordance with the provisions of Part II of this Act and of any other enactment applying to standard securities, such of the remedies specified in the following sub-paragraphs of this standard condition as he may consider appropriate.

10.2 He may proceed to sell the security subjects or any part thereof.

10.3 He may enter into possession of the security subjects and may receive or recover the rents of those subjects or any part thereof.

10.4 Where he has entered into possession as aforesaid, he may let the security subjects or any part thereof.

10.5 Where he has entered into possession as aforesaid there shall be transferred to him all the rights of the debtor in relation to the granting of leases or rights of occupancy over the security subjects and to the management and maintenance of those subjects.

10.6 He may effect all such repairs and may make good such defects as are necessary to maintain the security subjects in good and sufficient repair, and may effect such reconstruction, alteration and improvement on the subjects as would be expected of a prudent proprietor to maintain the market value of the subjects, and for the aforesaid purposes may enter on the subjects at all reasonable times.

10.7 He may apply to the court for a decree of foreclosure.

## **11 Exercise of right of redemption**

11.1 The debtor shall be entitled to exercise his right (if any) to redeem the security on giving notice of his intention so to do, being a notice in writing (hereinafter referred to as a notice of redemption).

11.2 Nothing in the provisions of this Act shall preclude a creditor from waiving the necessity for a notice of redemption, or from agreeing to a period of notice of less than that to which he is entitled.

11.3

(a) A notice of redemption may be delivered to the creditor or sent by registered post or recorded delivery to him at his last known address, and an acknowledgment signed by the creditor or his agent or a certificate of postage by the person giving the notice accompanied by the postal receipt shall be sufficient evidence of such notice having been given.

(b) If the address of the creditor is not known, or if the packet containing the notice of redemption is returned to the sender with intimation that it could not be delivered, a notice of redemption may be sent to the Extractor of the Court of Session and an acknowledgment of receipt by him shall be sufficient evidence of such notice having been given.

(c) A notice of redemption sent by post shall be held to have been given on the day next after the day of posting.

11.4 When a notice of redemption states that a specified amount will be repaid, and it is subsequently ascertained that the whole amount due to be repaid is more or less than the amount specified in the notice, the notice shall nevertheless be effective as a notice of repayment of the amount due as subsequently ascertained.

11.5 Where the debtor has exercised a right to redeem, and has made payment of the whole amount due, or has performed the whole obligations of the debtor under the contract to which the security relates, the creditor shall grant a discharge in the terms prescribed in section 17 of this Act.

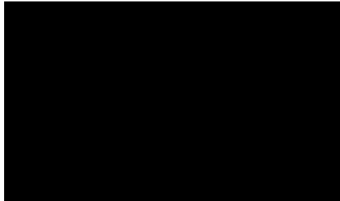
12 The debtor shall be personally liable to the creditor for the whole expenses of the preparation and execution of the standard security and any variation, restriction and discharge thereof and, where any of those deeds are registered or recorded, the registration or recording thereof, and all expenses reasonably incurred by the creditor in calling-up the security and realising or attempting to realise the security subjects, or any part thereof, and exercising any other powers conferred upon him by the security.

### *Interpretation*

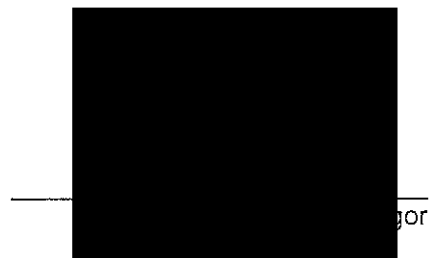


In this part of the Schedule, where the debtor is not the proprietor of the security subjects, debtor means **proprietor**, except:

- (a) in standard conditions 9.1, 10.1 and 12, and
- (b) in standard condition 11, where **debtor** includes the proprietor.

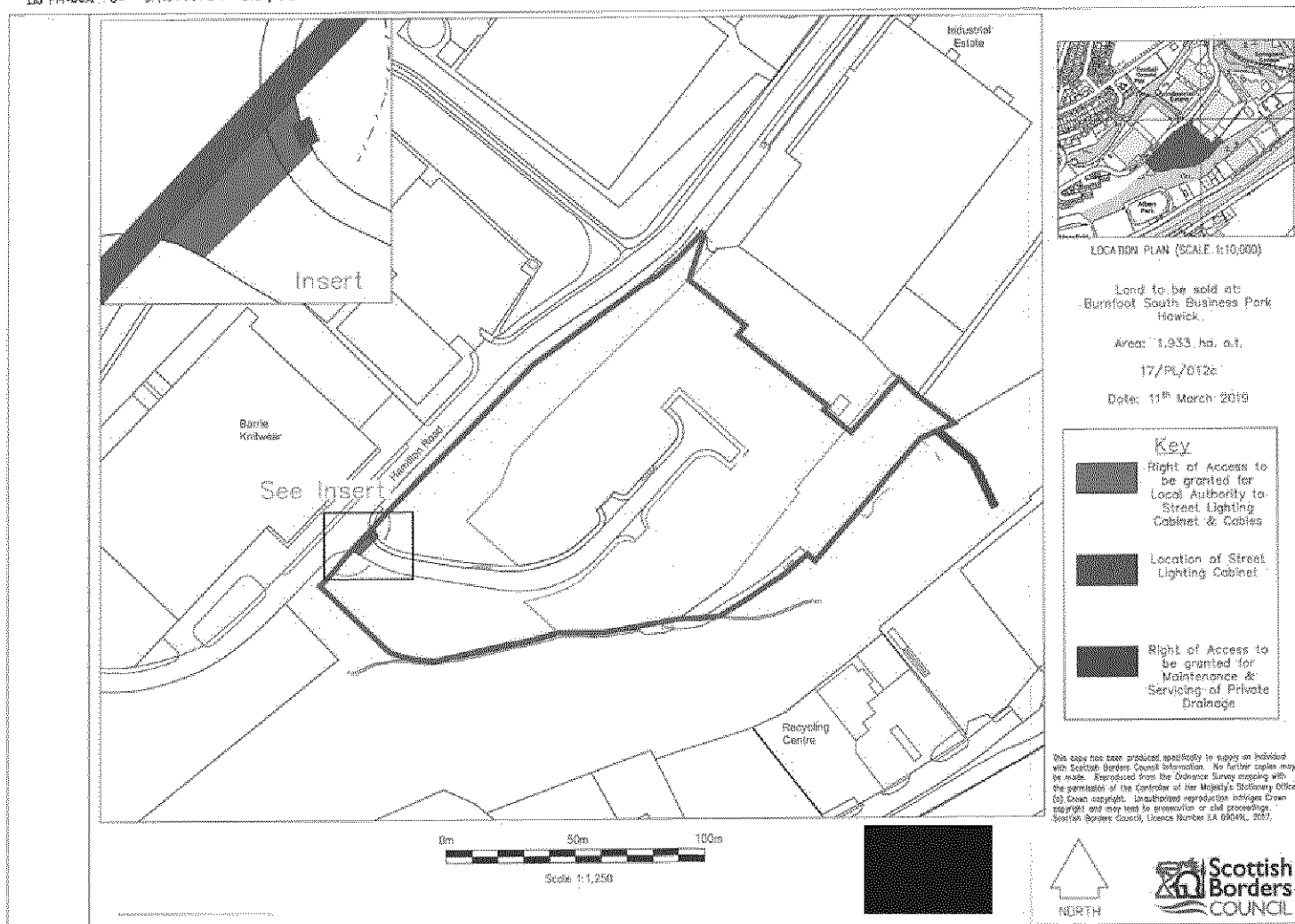
  
Chargor

### Part 3 – Plans



IN FAVOUR OF SANTANDER UN. PLC.

IN FAVOUR OF SANTANDER UN. PLC.



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