Companies House

MR01(ef)

Registration of a Charge

Company name: **MCLAGAN INVESTMENTS LIMITED**

Company number: **02127156**

Received for Electronic Filing: **19/02/2021**

X9YOF8QW

Details of Charge

Date of creation: **17/02/2021**

Charge code: **0212 7156 0033**

Persons entitled: **BARCLAYS BANK PLC (AS SECURITY AGENT)**

Brief description: **ALL AND WHOLE SUBJECTS AT ST JAMES WORKS NEW ROAD, FORFAR DD8 2AE BEING 2.51 HECTARES IN MEASUREMENT ON THE ORDNANCE MAP AND BEING THE SUBJECTS REGISTERED IN THE LAND REGISTER OF SCOTLAND UNDER TITLE NUMBER ANG44700. 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: **JONATHAN HEANEY**

CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 2127156

Charge code: 0212 7156 0033

The Registrar of Companies for England and Wales hereby certifies that a charge dated 17th February 2021 and created by MCLAGAN INVESTMENTS LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 19th February 2021 .

Given at Companies House, Cardiff on 22nd February 2021

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

MCLAGAN INVESTMENTS LIMITED
as Chargor

and

BARCLAYS BANK PLC
as Security Agent for the Secured Parties

STANDARD SECURITY
in respect of subjects at St James Works New Road, Forfar DD8 2AE

For and on behalf of Burness Paull LLP, I certify that, save for the material redacted pursuant to section 859G of the Companies Act 2006, this copy instrument is a correct copy of the original instrument.

At: Glasgow

On: 18 February 2021

TABLE OF CONTENTS

Clause		Page No.
1	DEFINITIONS AND INTERPRETATION	1
2	CHARGE AND LIMITED RECOURSE	5
3	STANDARD CONDITIONS	6
4	PROVISIONS AS TO SECURITY	6
5	FURTHER ASSURANCE	7
6	ENFORCEMENT	7
7	NOTICE OF SUBSEQUENT CHARGE	8
8	APPLICATION OF ENFORCEMENT PROCEEDS	8
9	PROPERTY UNDERTAKINGS	8
10	CHARGOR'S UNDERTAKINGS	10
11	PROTECTION OF SECURITY	10
12	PROTECTION OF PURCHASERS	14
13	SET-OFF	14
14	ASSIGNATION BY THE SECURITY AGENT	14
15	MANDATORY AND ATTORNEY	15
16	RELEASE OF SECURITY	15
17	NOTICES	16
18	EXPENSES AND INDEMNITY	18
19	DISCRETION AND DELEGATION	19
20	BAIL-IN	20
21	GOVERNING LAW AND JURISDICTION	21
22	COUNTERPARTS	22
23	WARRANDICE AND CONSENT TO REGISTRATION	22

For the purposes of the Legal Writings (Counterparts and Delivery) (Scotland) Act 2015, this Standard Security is delivered on ....16 February....... 2021

INSTRUMENT

by

(1) **MCLAGAN INVESTMENTS LIMITED**, a company incorporated in England and Wales under the Companies Acts with registered number 02127156 and having its registered office at Asda House, Southbank, Great Wilson Street, Leeds, LS11 5AD (the **"Chargor"**);

in favour of

(2) **BARCLAYS BANK PLC**, a company incorporated in England and Wales under the Companies Acts with registered number 01026167 and having its registered office at 1 Churchill Place, London E14 5HP as security trustee for each of the Secured Parties on the terms and conditions set out in the Facility Agreement referred to below (the **"Security Agent"**).

CONSIDERING THAT:

(A) the Secured Parties have agreed to make a loan facility available under the Facility Agreement (as defined below); and

(B) one of the conditions to the availability of the facility referred to in paragraph (A) above is that the Chargor grants to the Security Agent this standard security.

NOW IT IS HEREBY AGREED AND DECLARED as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 In this Instrument:

"1970 Act" means the Conveyancing and Feudal Reform (Scotland) Act 1970 (as amended, and any lawful variation thereof operative for the time being);

"Agent" means Barclays Bank PLC as agent of the other Finance Parties;

"Asda Lease" means the lease granted by the Chargor in respect of the Security Subjects to ASDA Stores Limited (or an affiliate of ASDA Stores Limited) as such lease may be varied, supplemented or assigned 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, Jersey and New York;

"Charged Account" means each of the bank accounts opened or maintained by the Chargor for the purposes of collecting Rental Income under the Asda Lease, which from time to time are, or are expressed to be, the subject of Security in favour of the Security Agent;

"CMA Approval" means approval by the UK Competition Market Authority of the acquisition of the entire issued share capital of ASDA Group Limited;

"CMA Clearance Date" means the date on which the UK Competition Market Authority provides the CMA Approval;

"Collateral Rights" means all rights, powers and remedies of the Security Agent provided by or pursuant to this Instrument or by law;

"Event of Default" means any event or circumstance specified as such in clause 26 (*Events of Default*) of the Facility Agreement;

"Facility Agreement" means the Facility Agreement dated on or about the date of delivery of this Instrument between, amongst others, Bellis Noncore 2 Limited as borrower, the Arranger, the Agent, the Security Agent and the Original Lenders (each as defined in that agreement as amended, varied, novated or supplemented from time to time);

"Finance Document" means the Facility Agreement, the Non-Core Bridge Commitment Letter, the Security Documents, the Subordination Deed, the Payment Direction Letters and any Fee Letter (in each case, as defined in the Facility Agreement) and any other document designated as such by the Agent and Bellis Noncore 1 Limited;

"Finance Parties" means the Agent, the Arranger, the Security Agent and the Lenders (in each case, as defined in the Facility Agreement);

"Group" means the Obligors and their Subsidiaries (as defined in the Facility Agreement) for the time being;

"Obligors" means Bellis Noncore 1 Limited, Bellis Noncore 2 Limited, Bellis Select Warehouse Holdings Limited and Bellis Select Warehouse Limited;

"Party" means a party to this Instrument;

"Rental Income" means:

(a) in respect of the period from the grant of the Asda Lease up to but not including the CMA Clearance Date, the aggregate of all amounts paid or payable to the Chargor as rent under the Asda Lease and any sum paid or payable under any policy of insurance in respect of loss of rent and any interest paid or payable due to late payment of rent; and

(b) in respect of the period on and after the CMA Clearance Date, the aggregate of all amounts paid or payable to the Chargor as rent under the Asda Lease and any sum paid or payable under any policy of insurance in respect of loss of rent and any interest paid or payable due to late payment of rent;

"Secured Obligations" means all present and future obligations and liabilities at any time due, owing or incurred by the Obligors to the Security Agent (whether for its own account or as trustee for the Secured Parties) or any other Secured Party under or pursuant to the Finance Documents, whether actual or contingent, whether originally incurred by the Obligors or by any other person and whether incurred solely or jointly and as principal or surety or in any other capacity, including any liability in respect of any further advances made under the Finance Documents, except for any obligation or liability which, if it were included, would cause that obligation or liability or any of the Security in respect thereof, to be unlawful, prohibited or invalid by or under any applicable law;

"Secured Parties" means the Security Agent, the Agent, each Lender (as defined in the Facility Agreement) and the Arranger (as defined in the Facility Agreement) from time to time party to the Facility Agreement;

"Security" means a standard security, mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect;

"Security Period" means the period beginning on the date of this Instrument and ending on the earlier of:

(a) the date on which the Security Agent is satisfied that the Secured Obligations have been irrevocably and unconditionally paid or discharged in full and no Secured Party is under any further actual or contingent obligation to make advances or provide other financial accommodation to the Obligors or any other person under any of the Finance Documents; and

(b) in respect of the Chargor, the date on which the Security Agent releases the Chargor from its obligations under this Instrument pursuant to the terms of the Facility Agreement;

the **"Security Subjects"** means ALL and WHOLE subjects at St James Works New Road, Forfar DD8 2AE being 2.51 hectares in measurement on the Ordnance Map and being the subjects registered in the Land Register of Scotland under Title Number ANG44700 together with (One) the whole buildings and erections thereon (Two) the fittings and fixtures therein and thereon (Three) the parts, privileges and pertinents thereof (Four) the whole rights common, mutual and exclusive effeiring thereto and (Five) the Chargor's whole right, title and interest, present and future, therein and thereto;

"Standard Conditions" means the standard conditions specified in Schedule 3 to the 1970 Act as amended and any lawful variation thereof operative for the time being; and

"Tax" 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 **Construction**

1.2.1 Unless a contrary indication appears, any reference in this Instrument to:

(a) the **"Security Agent"**, the **"Secured Parties"**, the **"Finance Parties"**, the **"Chargor"** or any **"Obligor"** shall be construed so as to include its or their (and any subsequent) successors in title, permitted assignees and permitted transferees in accordance with their respective interests and, in the case of the Security Agent, any person for the time being appointed as Security Agent in accordance with the Facility Agreement;

(b) a **"Finance Document"** or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, extended, novated, supplemented, replaced or restated;

(c) **"including"** and **"include"** shall mean including and include "without limitation" and any words following such terms shall be construed as illustrative and shall not limit the meaning or scope of the phrase or words preceding such terms;

(d) **"indebtedness"** includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;

(e) a **"person"** includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);

(f) a **"regulation"** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation; and

(g) a provision of law is a reference to that provision as amended or re-enacted from time to time;

1.2.2 Section, Clause and Schedule headings are for ease of reference only and references in this Instrument to any Clause shall be to a Clause contained in this Instrument unless otherwise stated.

1.2.3 An Event of Default is "continuing" if it has not been remedied or waived.

1.2.4 For cross-references in this Instrument, where a clause number is referred to, along with the clause heading and there is an inconsistency between the clause number and the heading, the clause heading shall prevail.

1.2.5 Any calling-up notice or notice of default (as each such term is referred to in the 1970 Act) shall be served in accordance with sections 19 and 21, respectively, of the 1970 Act.

1.3 **Third party rights**

1.3.1 Unless expressly provided to the contrary in this Instrument, this Instrument does not confer on any person who is not a Party any right to enforce or otherwise invoke this Instrument or any part of it under the Contract (Third Party Rights) (Scotland) Act 2017.

1.3.2 Notwithstanding any term of this Instrument, the consent of any person who is not a Party is not required to rescind or vary this Instrument at any time.

1.4 **Security Agent assumes no obligation**

Subject to the 1970 Act, the Security Agent shall not be under any obligation in relation to the Security Subjects as a consequence of this Instrument and the Chargor shall at all times during the Security Period remain liable to perform all obligations in respect of the Security Subjects.

2 **CHARGE AND LIMITED RECOURSE**

2.1 The Chargor as continuing security for the payment and discharge of all the Secured Obligations hereby grants a standard security in favour of the Security Agent over the Security Subjects.

2.2 Notwithstanding any other provision of this Instrument or the Finance Documents, the recourse of the Security Agent against the Chargor in respect of this Instrument is limited to the rights of enforcement and recovery against the Security Subjects charged by the Chargor under this Instrument and, accordingly, the Security Agent agrees that the total amount recoverable against the Chargor under this Instrument shall be limited to the proceeds received by the Security Agent after realising the Security Subjects in accordance with this Instrument.

2.3 In respect of this Instrument, no Secured Party:

2.3.1 shall have any recourse to any assets of the Chargor other than the Security Subjects; or

2.3.2 may seek to recover from the Chargor any shortfall between the amount of the proceeds received by the Security Agent after realising the Security Subjects in accordance with this Instrument and the Secured Obligations including by proving or otherwise claiming in the Chargor's insolvency proceedings; or

2.3.3 may sue or commence, join or bring any action or proceeding against the Chargor or apply to have the Chargor wound up or made subject to insolvency proceedings in relation to any shortfall referred to in sub-clause 2.3.2 above or any other grounds permitted under the Insolvency Act 1986.

3 STANDARD CONDITIONS

The Standard Conditions shall apply and the Chargor agrees that the Standard Conditions shall be varied to the effect that:

3.1 except as permitted under the Facility Agreement the Chargor shall not at any time during the Security Period create or permit to subsist any Security over all or any part of the Security Subjects or dispose of or otherwise deal with any part of the Security Subjects;

3.2 the insurance to be effected in terms of Standard Condition 5(a) shall provide cover to the extent of the reinstatement value of the Security Subjects and not their open market value and shall otherwise be in accordance with Clause 10 of this Instrument;

3.3 subject to Clause 3.4 below, wherever and to the extent that the Standard Conditions are inconsistent with or more onerous than the terms of this Instrument, the terms of this Instrument shall prevail and that to such extent the Standard Conditions shall be varied by the terms of this Instrument; and

3.4 wherever and to the extent that the Standard Conditions or the terms of this Instrument are inconsistent with or more onerous than the terms of the Facility Agreement which would apply to or relate to the Security Subjects, the terms of the Facility Agreement shall prevail and that to such extent the Standard Conditions and this Instrument shall be varied by the terms of the Facility Agreement.

4 PROVISIONS AS TO SECURITY

The Chargor shall:

4.1 on the date of this Instrument deposit with the Security Agent (or procure the deposit pursuant to the terms of the Facility Agreement of) all titles, certificates and other documents constituting or evidencing title to the Security Subjects; and

4.2 at any time thereafter deposit with the Security Agent (or procure the deposit of) any further such titles, certificates and other documents, promptly upon coming into possession of any of those items; or

4.3 in place of either Clauses 4.1 or 4.2 above, procure that such titles, certificates and other documents are held by the Chargor's lawyers pursuant to an undertaking in favour of the Security Agent,

to the extent any such items are not held at the Land Register of Scotland.

5 FURTHER ASSURANCE

5.1 The Chargor shall promptly, at its own cost, take all such action (including making all filings, registrations and notarisations) and execute all such documents as the Security Agent may specify (and in such form as the Security Agent may require) in favour of the Security Agent or its nominee(s) to create, perfect, protect and/or maintain the Security created or intended to be created in respect of the Security Subjects or for the exercise of the Collateral Rights.

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

6 ENFORCEMENT

Any time after the occurrence of:

6.1 an Event of Default (as long as it is continuing); or

6.2 a request from the Chargor to the Security Agent that it exercise any of its powers under this Instrument,

the Security Agent may, without notice to the Chargor or prior authorisation from any court (but without prejudice to the requirement for the Security Agent and/or any Secured Party to comply with the provisions of the 1970 Act or other applicable law in respect of the enforcement of the Security created by or pursuant to this Instrument), in its absolute discretion hold the Chargor to be in default within the meaning of Standard Condition 9(1)(b) of the Standard Conditions and the Security Agent may take immediate possession thereof at any time after the Security Agent has become entitled to enter into possession of the Security Subjects, and the Chargor agrees that a warrant of summary ejection may proceed competently against it in the Sheriff Court of the Sheriff Court District in which the Security Subjects are situated at the request or instance of the Security Agent, for the purposes of obtaining possession of the Security Subjects; the Security Agent may at any time after entering into possession of the Security Subjects relinquish such possession on giving written notice to this effect to the Chargor.

7 NOTICE OF SUBSEQUENT CHARGE

If the Security Agent (acting in its capacity as trustee or otherwise) or any of the other Secured Parties at any time receives or is deemed to have received notice of any subsequent Security, assignation or transfer affecting all or any part of the Security Subjects which is prohibited by the terms of any Finance Document, all payments thereafter made by or on behalf of the Chargor to the Security Agent (whether in its capacity as trustee or otherwise) or any of the other Secured Parties will (in the absence of any express contrary appropriation by the Chargor) be treated as having been credited to a new account of the Chargor and not as having been applied in reduction of the Secured Obligations at the time that notice was received.

8 APPLICATION OF ENFORCEMENT PROCEEDS

8.1 All monies received or recovered and any non-cash recoveries made or received by the Security Agent pursuant to this Instrument or the powers conferred by it shall (subject to the claims of any person having prior rights thereto and by way of variation of the provisions of the Standard Conditions) be applied:

8.1.1 first in the payment or other discharge of the costs, charges and expenses incurred and payments made by the Security Agent, the payment or other discharge of the Security Agent's remuneration and of any liabilities incurred by the Security Agent in, or incidental to, the exercise of any of the Security Agent's powers; and

8.1.2 thereafter shall be applied by the Security Agent (notwithstanding any purported appropriation by the Chargor) in accordance with the terms of the Facility Agreement.

8.2 All monies received, recovered or realised by the Security Agent under the Security created by or pursuant to this Instrument (including the proceeds of any conversion of currency) may in the discretion of the Security Agent be credited to any interest bearing suspense or impersonal account(s) maintained with any bank, building society, financial institution or other person which the Security Agent considers appropriate (including itself) for so long as it may think fit (the interest being credited to the relevant account) pending their application from time to time at the Security Agent's discretion, in or towards the discharge of any of the Secured Obligations and save as provided herein no party will be entitled to withdraw any amount at any time standing to the credit of any suspense or impersonal account referred to above.

9 PROPERTY UNDERTAKINGS

9.1 Lease covenants

The Chargor shall, in relation to any lease, agreement for lease or other right to occupy to which all or any part of the Security Subjects is at any time subject:

9.1.1 pay the rents (if the tenant) and observe and perform in all material respects the covenants, conditions and obligations imposed (if the landlord) on the landlord or (if the tenant) on the tenant; and

9.1.2 not do any act or thing whereby any lease or other document which gives any right to occupy any part of the Security Subjects becomes or may become subject to determination or any right of re-entry or irritancy prior to the expiry of its term.

9.2 **General property undertakings**

The Chargor shall:

9.2.1 maintain the Security Subjects in repair and condition that is not materially worse than it is in on the date on which the Security Subjects are acquired by the Chargor;

9.2.2 not at any time without the prior written consent of the Security Agent sever or remove any of the fixtures forming part of the Security Subjects or any of the plant or machinery (other than stock in trade or work in progress) on or in the Security Subjects (except for the purpose of any necessary repairs or replacement of it or if such severance or removal is accretive or neutral to value); and

9.2.3 comply with and observe and perform (a) all applicable requirements of all planning and environmental legislation, regulations and bye-laws relating to the Security Subjects, (b) any conditions attaching to any planning permissions relating to or affecting the Security Subjects and (c) any notices or other orders made by any planning, environmental or other public body in respect of all or any part of the Security Subjects, in each case where failure to do so would have a material adverse effect on the value of the Security Subjects.

9.3 **Entitlement to remedy**

9.3.1 If the Chargor fails to comply with any of the undertakings contained in this Clause 9, the Security Agent shall be entitled (with such agents, contractors and others as it sees fit), to do such things as may in the reasonable opinion of the Security Agent be required to remedy such failure and all monies spent by the Security Agent in doing so shall be reimbursed by the Chargor on demand with interest from the date of payment by the Security Agent until reimbursed in accordance with clause 8.3 (*Default Interest*) of the Facility Agreement.

9.3.2 The exercise by the Security Agent of its powers under this Clause 9.3 shall not render the Security Agent liable to account as heritable creditor in possession.

10 CHARGOR'S UNDERTAKINGS

10.1 Insurance

The Chargor shall at all times during the Security Period maintain insurances (or procure that such insurances are maintained) on and in relation to its business and assets with reputable underwriters or insurance companies against those risks and to the extent as is usual for companies carrying on the same or substantially similar business;

10.2 Application of Insurance proceeds

All monies received under any insurances relating to the Security Subjects shall (subject to the rights and claims of any person having prior rights to such monies):

10.2.1 prior to the occurrence of an Event of Default which is continuing, subject to receipt of all necessary Authorisations, be applied in repairing, replacing, restoring or rebuilding the property or assets damaged or destroyed; and

10.2.2 after the occurrence of an Event of Default which is continuing, be held upon trust for the Security Agent pending payment to the Security Agent for application in accordance with Clause 8 (*Application of Enforcement Proceeds*) and the Chargor waives any right it may have to require that any such monies are applied in reinstatement of any part of the Security Subjects.

10.3 Rental Income

10.3.1 The Chargor shall pay all Rental Income in respect of the Security Subjects into a Charged Account.

10.3.2 If any Rental Income is payable under an Asda Lease prior to the date on which the relevant Charged Account is operational, the Chargor shall pay such Rental Income to the Charged Account on set-up of the Charged Account.

10.4 Charged Account

The Chargor shall procure that if any payment arising or under the Asda Lease is paid into a bank account of the Chargor other than the Charged Account the Chargor shall promptly transfer that payment into the Charged Account.

11 PROTECTION OF SECURITY

11.1 Continuing security

11.1.1 The Security created by or pursuant to this Instrument shall remain in full force and effect as a continuing security for the Secured Obligations unless and until discharged by the Security Agent in writing.

11.1.2 No part of the Security from time to time intended to be created by this Instrument will be considered satisfied or discharged by an intermediate payment, discharge or satisfaction of the whole or any part of the Secured Obligations.

11.2 **Cumulative rights**

The Security created by or pursuant to this Instrument, and the Collateral Rights, shall be cumulative, in addition to and independent of every other Security which the Security Agent or any other Secured Party may at any time hold for the Secured Obligations or any other obligations or any rights, powers and remedies provided by law and shall operate as an independent Security notwithstanding any receipt, release or discharge endorsed on or given in respect of or under any such other Security. No prior Security held by the Security Agent (whether in its capacity as trustee or otherwise) or any of the other Secured Parties over the whole or any part of the Security Subjects shall merge into the Security created by this Instrument.

11.3 **No prejudice**

The Security created by or pursuant to this Instrument, and the Collateral Rights, shall not be prejudiced by any unenforceability or invalidity of any other agreement or document or by any time or indulgence granted to the Chargor or any other person, or the Security Agent (whether in its capacity as trustee or otherwise) or any of the other Secured Parties or by any variation of the terms of the trust upon which the Security Agent holds the Security or by any other thing which might otherwise prejudice that Security or any Collateral Right.

11.4 **Remedies and waivers**

No failure on the part of the Security Agent to exercise, nor any delay on its part in exercising, any Collateral Right, shall operate as a waiver of that Collateral Right or constitute an election to affirm this Instrument. No election to affirm this Instrument on the part of the Security Agent shall be effective unless it is in writing. No single or partial exercise of any Collateral Right shall preclude any further or other exercise of that or any other Collateral Right.

11.5 **No liability**

Subject to the 1970 Act, none of the Security Agent or its nominee(s) shall be liable:

11.5.1 to account as a heritable creditor or heritable creditor in possession; or

11.5.2 for any loss arising by reason of taking any action permitted by this Instrument or any neglect or default in connection with the Security Subjects or taking possession of or realising all or any part of the Security Subjects,

except in the case of gross negligence or wilful default upon its part.

11.6 **Partial invalidity**

If, at any time, any provision of this Instrument is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Instrument nor of such provision under the laws of any other jurisdiction shall in any way be affected or impaired thereby and, if any part of the Security intended to be created by or pursuant to this Instrument is invalid, unenforceable or ineffective for any reason, that shall not affect or impair any other part of the Security.

11.7 **Waiver of defences**

The obligations assumed, and the Security created, by the Chargor under this Instrument, and the Collateral Rights, will not be affected by any act, omission, matter or thing which, but for this Clause 11.7, would reduce, release or prejudice any of its obligations under, or the Security created by, this Instrument (whether or not known to the Chargor or any Secured Party) including:

11.7.1 any time, waiver or consent granted to, or composition with, any Obligor or other person;

11.7.2 the release of any other Obligor or any other person under the terms of any composition or arrangement with any creditor of any member of the Group;

11.7.3 the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or Security over assets of, any Obligor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any Security;

11.7.4 any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of, any Obligor or any other person;

11.7.5 any amendment, novation, supplement, extension, restatement (in each case, however fundamental and whether or not more onerous) or replacement of a Finance Document or any other document or Security or of the Secured Obligations including any change in the purpose of, any extension of or increase in any facility or the addition of any new facility under any Finance Document or other document or Security;

11.7.6 any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or Security or of the Secured Obligations; and

11.7.7 any insolvency or similar proceedings.

11.8 Chargor intent

Without prejudice to the generality of Clause 11.7 (*Waiver of Defences*), the Chargor expressly confirms that it intends that the Security created under this Instrument, and the Collateral Rights, shall extend from time to time to any (however fundamental and of whatsoever nature, and whether or not more onerous) variation, increase, extension or addition of or to any of the Finance Documents and/or any facility or amount made available under any of the Finance Documents for the purposes of or in connection with any of the following: business acquisitions of any nature; increasing working capital; enabling investor distributions to be made; carrying out restructurings; refinancing existing facilities; refinancing any other indebtedness; making facilities available to new borrowers; any other variation or extension of the purposes for which any such facility or amount might be made available from time to time; and any fees, costs and/or expenses associated with any of the foregoing.

11.9 Immediate recourse

The Chargor waives any right it may have of first requiring any Secured Party (or any trustee or agent on its behalf) to proceed against or enforce any other rights or Security or claim payment from any other person before claiming from the Chargor under this Instrument or enforcing the Security created by this Instrument. This waiver applies irrespective of any law or any provision of this Instrument to the contrary.

11.10 Deferral of rights

11.10.1 Until the end of the Security Period, the Chargor will not exercise any rights which it may have by reason of performance by it of its obligations under this Instrument:

(a) to be indemnified by an Obligor or in respect of any other person;

(b) to claim any contribution from any guarantor or any other person in respect of any Obligor's obligations under the Finance Documents;

(c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of any Secured Party under the Finance Documents or of any other guarantee or Security taken pursuant to, or in connection with, the Finance Documents by any Secured Party;

(d) to bring legal or other proceedings for an order requiring any Obligor or other person to make any payment, or perform any obligation, in respect of which any Obligor or other person has given a guarantee, undertaking or indemnity under any Finance Document;

(e) to exercise any right of set-off against any Obligor or other person; and/or

(f) to claim or prove as a creditor of any Obligor or other person in competition with any Secured Party.

11.10.2 If the Chargor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to any Secured Party by the Obligors under or in connection with the Finance Documents to be repaid in full on trust for the Secured Parties and shall promptly pay or transfer the same to the Security Agent or as the Security Agent may direct for application in accordance with Clause 8 (*Application of Enforcement Proceeds*).

11.11 **Additional Security**

The Security created by the Chargor under this Instrument and the Collateral Rights are in addition to and are not in any way prejudiced by any other guarantee or Security now or subsequently held by any Secured Party.

12 **PROTECTION OF PURCHASERS**

12.1 **Consideration**

The receipt of the Security Agent shall be conclusive discharge to a purchaser and, in making any sale or disposal of any of the Security Subjects or making any acquisition, the Security Agent may do so for such consideration (whether cash or non-cash), in such manner and on such terms as it thinks fit.

12.2 **Protection of Purchasers**

No purchaser or other person dealing with the Security Agent shall be bound to inquire whether the right of the Security Agent to exercise any of its powers has arisen or become exercisable or be concerned to inquire whether that power has been properly or regularly exercised by the Security Agent in such dealings.

13 **SET-OFF**

The Chargor authorises the Security Agent (but the Security Agent shall not be obliged to exercise such right), after the Security created by or pursuant to this Instrument has become enforceable in accordance with Clause 6 (*Enforcement*), to set off against the Secured Obligations any amount or other obligation (contingent or otherwise) owing by the Security Agent to the Chargor and apply any credit balance to which the Chargor is entitled on any account with the Security Agent in accordance with Clause 8 (*Application of Enforcement Proceeds*) (notwithstanding any specified maturity of any deposit standing to the credit of any such account).

14 **ASSIGNATION BY THE SECURITY AGENT**

14.1 The Chargor may not assign any of its rights or transfer any of its rights or obligations under this Instrument.

14.2 The Security Agent may not assign all or any of its rights under this Instrument other than in accordance with the terms of the Facility Agreement. The Security Agent shall be entitled to disclose such information concerning the Chargor and this Instrument as the Security Agent considers appropriate to any actual or proposed direct or indirect assignee or to any person to whom information may be required to be disclosed by any applicable law.

14.3 This Instrument shall remain in effect despite any amalgamation or merger (however effected) relating to the Security Agent. References to the Security Agent shall include (i) any transferee, assignee or successor in title of the Security Agent, (ii) any entity into which the Security Agent is merged or converted or with which it may be consolidated, (iii) any legal entity resulting from any merger, conversion or consolidation to which such Security Agent is a party and (iv) any other person who, under the laws of its jurisdiction of incorporation or domicile, has assumed the rights and obligations of the Security Agent under this Instrument or to which, under such laws, those rights and obligations have been transferred (such person described in (i) to (iv) being a successor to the Security Agent for all purposes under the Finance Documents).

15 MANDATORY AND ATTORNEY

15.1 The Chargor irrevocably appoints the Security Agent to be its mandatory and attorney and in its name, on its behalf and as its act and deed to execute, deliver and perfect all documents and do all things which the attorney may consider to be required or desirable for:

15.1.1 carrying out any obligation imposed on the Chargor by this Instrument or any other agreement binding on the Chargor to which the Security Agent is party (including the execution and delivery of any agreements, deeds, charges, assignations or other security and any transfers of the Security Subjects and perfecting and/or releasing the Security created or intended to be created in respect of the Security Subjects); and

15.1.2 enabling the Security Agent to exercise, or delegate the exercise of, any of the Collateral Rights (including, after the occurrence of an Event of Default, the exercise of any right of a heritable proprietor of the Security Subjects).

15.2 The Chargor shall ratify and confirm all things done and all documents executed by any mandatory and attorney in the exercise or purported exercise of all or any of the attorney's powers.

16 RELEASE OF SECURITY

16.1 Release of Security

Upon the expiry of the Security Period, the Security Agent shall, at the request and cost of the Chargor, release and discharge the Security created by this Instrument, including preparing and delivering all documents and instruments (including any release or discharge agreement), revoking any powers of mandatory and attorney and performing all acts or deeds (including returning title documents and any other document belonging to the Chargor) which are, in each case, necessary to release the Security Subjects from the Security constituted by this Instrument, in each case subject to Clause 16.2 (*Clawback*) and without recourse to, or any representation or warranty by, the Security Agent or any of its nominees.

16.2 **Clawback**

If the Security Agent considers that any amount paid or credited to any Secured Party is capable of being avoided or reduced by virtue of any bankruptcy, insolvency, liquidation or similar laws, the liability of the Chargor under this Instrument and the Security created by this Instrument will continue and such amount will not be considered to have been irrevocably paid or credited.

17 NOTICES

17.1 The provisions of this Clause 17 (*Notices*) are subject to Clause 1.2.5.

17.2 **Communications in writing**

Each communication to be made under or in connection with this Instrument shall be made in writing and, unless otherwise stated, may be made by e-mail or letter.

17.3 **Addresses**

The address and e-mail address (if applicable) (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with this Instrument is:

17.3.1 in the case of the Chargor:

Original to:

Address:	Asda House Great Wilson Street Leeds LS11 5AD
Attention:	Vice President,

with a copy to:

Address:	Asda House Great Wilson Street Leeds LS11 5AD
Attention:	General Counsel, Helen Selby.

17.3.2 in the case of the Security Agent:

Address:	1 Churchill Place, London E14 5HP
Attention:	Head of Client Management
Email:	[redacted]@barclays.com
CC:	[redacted]@barclays.com,

or any substitute address, e-mail address, or department or officer as the Party may notify to the Agent by not less than five Business Days' notice.

17.4 **Delivery**

Any communication or document made or delivered by one person to another under or in connection with this Instrument will only be effective:

17.4.1 if by way of e-mail, when received in legible form; or

17.4.2 if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post, postage prepaid in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of its address details provided under Clause 17.3 (*Addresses*), if addressed to that department or officer.

17.5 Any communication or document to be made or delivered to the Security Agent will be effective only when actually received by the Security Agent and then only if it is expressly marked for the attention of the department or officer identified above (or any substitute department or officer as the Security Agent shall specify for this purpose).

17.6 **Electronic communication**

17.6.1 Any communication to be made between the Chargor and the Security Agent under or in connection with this Instrument may be made by electronic mail or other electronic means (including, without limitation, by way of posting to a secure website) if the relevant two parties:

(a) notify each other in writing of their electronic mail address and/or any other information required to enable the transmission of information by that means; and

(b) notify each other of any change to their address or any other such information supplied by them by not less than five Business Days' notice.

17.6.2 Any such electronic communication or delivery as specified in Clause 17.6.1 above may only be made in that way to the extent that the Chargor and the Security Agent agree that, unless and until notified to the contrary, this is to be an accepted form of communication or delivery.

17.6.3 Any such electronic communication or document as specified in Clause 17.6.1 above will be effective only when actually received (or made available) in readable form and, in the case of any electronic communication or document made or delivered by the Chargor to the Security Agent, only if it is addressed in such a manner as the Security Agent shall specify for this purpose.

17.6.4 Any electronic communication or document which becomes effective, in accordance with Clause 17.6.3 above, after 5:00 p.m. in the place in which the addressee of the relevant communication or document is sent or made available has its address for the purpose of this Instrument shall be deemed only to become effective on the following day.

17.6.5 Any reference in this Instrument to a communication being sent or received or a document being delivered shall be construed to include that communication or document being made available in accordance with this Clause 17.6.

17.7 **English language**

17.7.1 Any notice given under or in connection with this Instrument must be in English.

17.7.2 All other documents provided under or in connection with this Instrument must be:

(a) in English; or

(b) if not in English, and if so required by the Security Agent, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

18 **EXPENSES AND INDEMNITY**

18.1 **Expenses**

The Chargor shall, from time to time on demand of the Security Agent, reimburse the Security Agent for all the costs and expenses (including legal fees) on a full indemnity basis together with any VAT thereon incurred by it in connection with:

18.2 the negotiation, preparation and execution of this Instrument and the completion of the transactions and perfection of the Security contemplated in this Instrument; and

18.3 the exercise, preservation and/or enforcement of any of the Collateral Rights or the Security contemplated by this Instrument or any proceedings instituted by or against the Security Agent as a consequence of taking or holding the Security or of enforcing the Collateral Rights, and shall carry interest from the date of such demand until so reimbursed in accordance with clause 8.3 (*Default Interest*) of the Facility Agreement.

18.4 **Taxes**

The Chargor shall pay all land and buildings transaction tax, registration, notarial and other taxes and fees to which this Instrument, the Security contemplated in this Instrument or any judgment given in connection with it is or at any time may be subject and shall, from time to time, indemnify the Security Agent on demand against any liabilities, costs, claims and expenses resulting from any failure to pay or delay in paying any such tax.

18.5 **Indemnity**

The Chargor shall, during the Security Period, indemnify the Security Agent, its agents and its attorneys against any action, proceeding, claims, losses, liabilities and costs which it may sustain as a consequence of any breach by the Chargor of the provisions of this Instrument, the exercise or purported exercise of any of the rights and powers conferred on them by this Instrument or otherwise relating to the Security Subjects.

18.6 **Payments free of deduction**

All payments to be made to the Security Agent under this Instrument shall be made free and clear of and without deduction for or on account of tax unless the Chargor is required to make such payment subject to the deduction or withholding of tax, in which case the sum payable by the Chargor in respect of which such deduction or withholding is required to be made shall be increased to the extent necessary to ensure that, after the making of such deduction or withholding, the person on account of whose liability to tax such deduction or withholding has been made receives and retains (free from any liability in respect of any such deduction or withholding) a net sum equal to the sum which it would have received and so retained had no such deduction or withholding been made or required to be made.

19 DISCRETION AND DELEGATION

19.1 **Discretion**

Any liberty or power which may be exercised or any determination which may be made under this Instrument by the Security Agent may, subject to the terms and conditions of the Facility Agreement, be exercised or made in its absolute and unfettered discretion without any obligation to give reasons.

19.2 **Delegation**

The Security Agent shall have full power to delegate (either generally or specifically) the powers, authorities and discretions conferred on it by this Instrument (including the power of attorney) on such terms and conditions as it shall see fit which delegation shall not preclude the subsequent exercise, any subsequent delegation or any revocation of such power, authority or discretion by the Security Agent itself.

20 BAIL-IN

20.1 Contractual recognition of bail-in

Notwithstanding any other term of any agreement, arrangement or understanding between the Security Agent and the Chargor, the Security Agent and the Chargor acknowledge and accept that any liability they have under or in connection with this Instrument may be subject to Bail-In Action by the relevant Resolution Authority and acknowledge and accept to be bound by the effect of:

20.1.1 any Bail-In Action in relation to any such liability, including (without limitation):

(a) a reduction, in full or in part, in the principal amount, or outstanding amount due (including any accrued but unpaid interest) in respect of any such liability;

(b) a conversion of all, or part of, any such liability into shares or other instruments of ownership that may be issued to, or conferred on, it; and

(c) a cancellation of any such liability; and

20.1.2 a variation of any term of this Instrument to the extent necessary to give effect to any Bail-In Action in relation to any such liability.

20.2 Bail-In definitions

In this Clause:

"Article 55 BRRD" means Article 55 of Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms;

"Bail-In Action" means the exercise of any Write-down and Conversion Powers;

"Bail-In Legislation" means:

(a) in relation to an EEA Member Country which has implemented, or which at any time implements, Article 55 BRRD, the relevant implementing law or regulation as described in the EU Bail-In Legislation Schedule from time to time; and

(b) in relation to any state other than such an EEA Member Country and the United Kingdom, any analogous law or regulation from time to time which requires contractual recognition of any Write-down and Conversion Powers contained in that law or regulation;

"EEA Member Country" means any member state of the European Union, Iceland, Liechtenstein and Norway;

"EU Bail-In Legislation Schedule" means the document described as such and published by the Loan Market Association (or any successor person) from time to time;

"Resolution Authority" means any body which has authority to exercise any Write-down and Conversion Powers; and

"Write-down and Conversion Powers" means:

(a) in relation to any Bail-In Legislation described in the EU Bail-In Legislation Schedule from time to time, the powers described as such in relation to that Bail-In Legislation in the EU Bail-In Legislation Schedule; and

(b) in relation to any other applicable Bail-In Legislation:

(i) any powers under that Bail-In Legislation to cancel, transfer or dilute shares issued by a person that is a bank or investment firm or other financial institution or affiliate of a bank, investment firm or other financial institution, to cancel, reduce, modify or change the form of a liability of such a person or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers; and

(ii) any similar or analogous powers under that Bail-In Legislation.

21 GOVERNING LAW AND JURISDICTION

21.1 This Instrument and all non-contractual obligations arising out of or in connection with it are governed by Scots law.

21.2 **Scottish Courts**

The Scottish courts have exclusive jurisdiction to settle any dispute arising out of, or in connection with this Instrument (including a dispute relating to the existence, validity or termination of this Instrument or the consequences of its nullity or any non-contractual obligations arising out of or in connection with this Instrument) (a **"Dispute"**).

21.3 **Convenient forum**

The Chargor agrees that the Scottish courts are the most appropriate and convenient courts to settle Disputes and, accordingly, that it will not argue to the contrary.

21.4 **Exclusive jurisdiction**

Notwithstanding Clause 21.2, the Security Agent may take proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law the Security Agent may take concurrent proceedings in any number of jurisdictions.

22 COUNTERPARTS

22.1 This Instrument may be executed in any number of counterparts and by all of the Parties on separate counterparts.

22.2 Where executed in counterparts:

22.2.1 this Instrument shall not take effect until all of the counterparts have been delivered;

22.2.2 each counterpart will be held as undelivered for the purposes of The Legal Writings (Counterparts and Delivery) (Scotland) Act 2015 until the parties agree a date (the **"agreed date"**) on which the counterparts are to be treated as delivered; and

22.2.3 the agreed date will be inserted on page 1 of this Instrument.

23 WARRANDICE AND CONSENT TO REGISTRATION

23.1 The Chargor hereby grants warrandice subject to (1) the lease by McLagan Investments Limited in favour of Scottish Hydro-Electric Power Distribution plc registered in the Land Register of Scotland under Title Number ANG58890 on 5 December 2011; (2) the Asda Lease and (3) any other leases, licences and/or rights of occupancy of any part of the Security Subjects which currently exist as at the date of execution of this Instrument

23.2 The Chargor hereby consents to the registration of this Instrument and of any certificate referred to in Clause 32.7 of the Facility Agreement for preservation:

IN WITNESS WHEREOF these presents consisting of this and the preceding 22 pages are executed as follows:

THE CHARGOR

SUBSCRIBED for and on behalf of the said MCLAGAN INVESTMENTS LIMITED

at ASDA HOUSE, GREAT WILSON STREET, LEEDS LS11 5AD

on 10 FEBRUARY 2021

by

ROGER BURNLEY [redacted]

Print Full name Director

before this witness:

RACHEL FLAVELL [redacted]

Print Full Name Witness

Address:

ADDLESHAW GODDARD LLP
3 SOVEREIGN SQUARE
SOVEREIGN STREET
LEEDS
LS1 4ER

THE SECURITY AGENT

SUBSCRIBED for and on behalf of the said BARCLAYS BANK PLC as Security Agent

at WATFORD

on 9th February 2014

by

SHANE DEMPSEY

Print Full name

[redacted]

~~Director~~ / Authorised Signatory

before this witness:

GAYLE DEMPSEY

Print Full Name

Witness [redacted]

Address: 13 MUNDEN GROVE

WATFORD

WD24 7EF