



Registration of a Charge

Company name: **FAREHAM DEVELOPMENTS (ONE) LIMITED**

Company number: **04244373**



X5KZ9TKQ

Received for Electronic Filing: **02/12/2016**

Details of Charge

Date of creation: **29/11/2016**

Charge code: **0424 4373 0003**

Persons entitled: **OO RETAIL LIMITED**

Brief description: **THE FREEHOLD PROPERTY KNOWN AS BROADCUT AND REGISTERED AT THE LAND REGISTRY WITH TITLE NUMBER HP213354. ALL OF THE COMPANY'S FREEHOLD AND LEASEHOLD PROPERTY, PLANT AND MACHINERY, BOOK AND OTHER DEBTS AND ANY OTHER SUMS PAYABLE TO THE COMPANY, THE BENEFIT OF ALL CONTRACTS, DEEDS AND AGREEMENTS, ALL INTELLECTUAL PROPERTY RIGHTS, GOODWILL AND UNCALLED CAPITAL AND UNDERTAKING, IN EACH CASE BOTH OWNED BY THE COMPANY NOW OR IN THE FUTURE. FOR FURTHER DETAILS PLEASE REFER TO THE INSTRUMENT.**

Contains fixed charge(s).

Contains floating charge(s) (floating charge covers all the property or undertaking of the company).

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: **LUKE ADDISON, BOND DICKINSON LLP**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 4244373

Charge code: 0424 4373 0003

The Registrar of Companies for England and Wales hereby certifies that a charge dated 29th November 2016 and created by FAREHAM DEVELOPMENTS (ONE) LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 2nd December 2016 .

Given at Companies House, Cardiff on 5th December 2016

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

29 November 2016

Debenture

Fareham Developments (One) Limited ⁽¹⁾ and
OO Retail Limited ⁽²⁾

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DATE 29 November 2016

PARTIES

- (1) **Fareham Developments (One) Limited** (No. 04244373) whose registered office is Unit 7, River Court, Brighthouse Business Village, Brighthouse Road, Middlesbrough, Cleveland, TS2 1RT (**Borrower**).
- (2) **OO Retail Limited** (formerly UK New Holdco Limited) (No. 10477355) whose registered office is Unit 7, River Court, Brighthouse Business Village, Brighthouse Road, Middlesbrough, Cleveland, TS2 1RT (**Lender**).

BACKGROUND

- (A) The Lender has agreed to make loan and other credit facilities available to the Borrower and the Lender may in the future agree to provide the Borrower with other financial accommodations.
- (B) This debenture (**Debenture**) provides security which the Borrower has agreed to give the Lender in respect of loans advanced to the Borrower as at the date hereof and such other financial accommodations as it may grant to the Borrower and for all other liabilities which the Borrower may owe to the Lender at any time and from time to time.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

- 1.1 The definitions and rules of interpretation in Clause 1 apply:

Administrator	an administrator appointed to manage the affairs, business and property of the Borrower pursuant to paragraph Schedule 515 of Schedule 5.
Affiliate	in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company.
Book Debts	all present and future book and other debts, and monetary claims due or owing to the Borrower, and the benefit of all security, guarantees and other rights of any nature enjoyed or held by the Borrower in relation to any of them.
Business Day	a day (other than a Saturday or Sunday) on which commercial banks are open for general business in London and deposits are dealt with on the London Interbank Market.
Charged Property	all the assets, property and undertaking for the time being, subject to the security interests created by this debenture (and references to the Charged Property shall include references to any part of it).
Costs	all costs, charges, expenses and liabilities of any kind including, without limitation, costs and damages in connection with litigation, professional fees, disbursements and any value added tax charged on Costs.
Default Rate	the rate which is 15 per cent per annum.
Designated Account	any account of the Borrower nominated by the Lender as a designated account for the purposes of this debenture.

Encumbrance	any mortgage, charge (whether fixed or floating, legal or equitable), pledge, lien, assignment by way of security or other security interest securing any obligation of any person, or any other agreement or arrangement having a similar effect.
Environment	the natural and man-made environment including all or any of the following media, namely air, water and land (including air within buildings and other natural or man-made structures above or below the ground) and any living organisms (including man) or systems supported by those media.
Environmental Law	all applicable laws, statutes, regulations, secondary legislation, bye-laws, common law, directives, treaties and other measures, judgments and decisions of any court or tribunal, codes of practice and guidance notes in so far as they relate to or apply to the Environment.
Equipment	all present and future equipment, plant, machinery, tools, vehicles, furniture, fittings, installations and apparatus and other tangible moveable property for the time being owned by the Borrower, including any part of it and all spare parts, replacements, modifications and additions.
Financial Collateral	shall have the meaning given to that expression in the Financial Collateral Regulations.
Financial Collateral Regulations	the Financial Collateral Arrangements (No 2) Regulations 2003 (<i>SI 2003/3226</i>).
Holding Company	in relation to a person, any other person in respect of which it is a subsidiary.
Insurance Policies	all the contracts and policies of insurance effected or maintained by the Borrower from time to time in respect of its assets or business (including, without limitation, any insurances relating to the Properties or the Equipment) other than death in service insurance policies effected or maintained by the Borrower from time to time for the benefit of its employees.
Intellectual Property	the Borrower's present and future patents, trade marks, service marks, trade names, designs, copyrights, inventions, topographical or similar rights, confidential information and know-how and any interest in any of these rights, whether or not registered, including all applications and rights to apply for registration and all fees, royalties and other rights derived from, or incidental to, these rights.
Investments	all present and future stocks, shares, loan capital, securities, bonds and investments (whether or not marketable) for the time being owned (at law or in equity) by the Borrower, including all rights accruing or incidental to those investments from time to time.
Permitted Encumbrances	any mortgage, charge (whether fixed or floating, legal or equitable), pledge, lien, assignment by way of security or other security interest securing any obligation of any person, or any other agreement or arrangement having a similar effect granted by the Borrower with the prior written consent of the Lender.

Properties	all freehold and leasehold properties (whether registered or unregistered) and all commonhold properties, now or in the future (and from time to time) owned by the Borrower, or in which the Borrower holds an interest (including (but not limited to) the properties specified in Schedule 1) and Property means any of them.
Receiver	a receiver, manager or receiver and manager of any or all of the Charged Property appointed under paragraph Schedule 56 of Schedule 5.
Secured Liabilities	all present and future monies, obligations and liabilities owed by the Borrower to the Lender, whether actual or contingent and whether owed jointly or severally, as principal or surety and/or in any other capacity whatsoever (and whether originally owed by the Borrower to the Lender or purchased or otherwise acquired by the Lender) together with all interest (including, without limitation, default interest) accruing in respect of such monies or liabilities.
Security Financial Collateral Arrangement	shall have the meaning given to that expression in the Financial Collateral Regulations.
Security Period	the period starting on the date of this debenture and ending on the date on which all the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full and no further Secured Liabilities are capable of being outstanding.
Subsidiary	a subsidiary undertaking within the meaning of section 1162 of the Companies Act 2006 and a subsidiary within the meaning of section 1159 of the Companies Act 2006.

1.2 Interpretation

Unless the context otherwise requires, in this debenture:

- 1.2.1 a reference to a statute or statutory provision includes a reference to any subordinate legislation made under that statute or statutory provision, to any modification, re-enactment or extension of that statute or statutory provision and to any former statute or statutory provision that it consolidated or re-enacted before the date of this debenture;
- 1.2.2 a reference to one gender includes a reference to the other genders;
- 1.2.3 words in the singular include the plural and in the plural include the singular;
- 1.2.4 a reference to a clause or Schedule is to a clause of, or Schedule to, this debenture, and references to paragraphs are to paragraphs of the relevant Schedule;
- 1.2.5 a reference to **this debenture** (or any specified provision of it) or any other document shall be construed as a reference to this debenture, that provision or that document as in force for the time being and as amended or novated from time to time;
- 1.2.6 a reference to a **person** shall include a reference to an individual, firm, corporation, unincorporated body of persons, or any state or any agency of a person;
- 1.2.7 a reference to an **amendment** includes a supplement, variation, novation or re-enactment (and **amended** shall be construed accordingly);
- 1.2.8 a reference to **assets** includes present and future properties, undertakings, revenues, rights and benefits of every description;

- 1.2.9 a reference to an **authorisation** includes an authorisation, consent, licence, approval, resolution, exemption, filing, registration and notarisation;
- 1.2.10 a reference to a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation; and
- 1.2.11 clause, schedule and paragraph headings shall not affect the interpretation of this debenture.
- 1.3 Clawback
- If the Lender considers that an amount paid by the Borrower in respect of the Secured Liabilities is capable of being avoided or otherwise set aside on the liquidation or administration of the Borrower or otherwise, then that amount shall not be considered to have been irrevocably paid for the purposes of this debenture.
- 1.4 Nature of security over real property
- A reference in this debenture to a charge or mortgage of any freehold, leasehold or commonhold property includes:
- 1.4.1 all buildings and fixtures (including trade and tenant's fixtures) that are situated on that property at any time;
- 1.4.2 the proceeds of the sale of any part of that property; and
- 1.4.3 the benefit of any covenants for title given, or entered into, by any predecessor in title of the Borrower in respect of that property, and any monies paid or payable in respect of those covenants.
- 1.5 Law of Property (Miscellaneous Provisions) Act 1989
- The terms of all other documents entered into between the Borrower and the Lender are incorporated into this debenture to the extent required to ensure that any disposition of Properties contained in this debenture is a valid disposition in accordance with section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989.
- 1.6 Third party rights
- A third party has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce, or to enjoy the benefit of, any term of this debenture.
- 1.7 Perpetuity period
- If the rule against perpetuities applies to any trust created by this debenture, the perpetuity period shall be 125 years (as specified by section 5(1) of the Perpetuities and Accumulations Act 2009).
- 1.8 Insolvency Act 1986
- Paragraph 14 of Schedule B1 of the Insolvency Act 1986 (as inserted by section 248 of, and Schedule 16 to, the Enterprise Act 2002) applies to the floating charge created by this debenture.
- 1.9 Schedules
- The Schedules form part of this debenture and shall have effect as if set out in full in the body of this debenture. Any reference to this debenture includes the Schedules.

2. COVENANT TO PAY

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

3. GRANT OF SECURITY

3.1 Charging clause

As a continuing security for the payment and discharge of the Secured Liabilities, the Borrower with full title guarantee:

- 3.1.1 charges to the Lender, by way of first legal mortgage, all the Properties specified in Schedule 1;
- 3.1.2 charges to the Lender, by way of first fixed charge:
 - (a) all Properties acquired by the Borrower in the future;
 - (b) all present and future interests of the Borrower not effectively mortgaged or charged under the preceding provisions of this clause 3 in, or over, freehold or leasehold property;
 - (c) all and any proceeds of sale received by or on behalf of or payable to or on behalf of the Borrower in respect of any Property;
 - (d) all present and future rights, licences, guarantees, rents, deposits, contracts, covenants and warranties relating to each Property;
 - (e) all licences, consents and authorisations (statutory or otherwise) held or required in connection with the Borrower's business or the use of any Charged Property, and all rights in connection with them;
 - (f) all its present and future goodwill and uncalled capital;
 - (g) all the Equipment;
 - (h) all the Intellectual Property;
 - (i) all the Book Debts;
 - (j) all the Investments; and
 - (k) all monies from time to time standing to the credit of its accounts with any bank, financial institution or other person (including each Designated Account).
- 3.1.3 assigns to the Lender absolutely, subject to a proviso for reassignment on irrevocable discharge in full of the Secured Liabilities, all its rights in each Insurance Policy;
- 3.1.4 charges to the Lender, by way of first floating charge, all the undertaking, property, assets and rights of the Borrower at any time not effectively mortgaged, charged or assigned pursuant to clause 3.1.1 to clause 3.1.3 inclusive.

3.2 Automatic conversion of floating charge

The floating charge created by clause 3.1.4 shall automatically and immediately (without notice) be converted into a fixed charge over the relevant Charged Property if:

- 3.2.1 the Borrower:

- (a) creates, or attempts to create, without the prior written consent of the Lender, an Encumbrance or a trust in favour of another person on all or any part of the Charged Property; or
 - (b) disposes, or attempts to dispose of, all or any part of the Charged Property (other than Charged Property that is only subject to the floating charge while it remains uncrystallised);
 - 3.2.2 a receiver is appointed over all or any of the Charged Property that is subject to the floating charge;
 - 3.2.3 any person levies (or attempts to levy) any distress, attachment, execution or other process against all or any part of the Charged Property; or
 - 3.2.4 the Lender receives notice of the appointment of, or a proposal or an intention to appoint, an administrator of the Borrower.
- 3.3 Conversion of floating charge by notice

The Lender may, in its sole discretion, at any time and by written notice to the Borrower, convert the floating charge created under this debenture into a fixed charge as regards any part of the Charged Property specified by the Lender in that notice.

3.4 Assets acquired after any floating charge crystallisation

Any asset acquired by the Borrower after any crystallisation of the floating charge created under this debenture which, but for that crystallisation, would be subject to a floating charge under this debenture, shall (unless the Lender confirms otherwise to the Borrower in writing) be charged to the Lender by way of first fixed charge.

4. LIABILITY OF THE BORROWER

4.1 Liability not discharged

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

- 4.1.1 any security, guarantee, indemnity, remedy or other right held by, or available to, the Lender that is, or becomes, wholly or partially illegal, void or unenforceable on any ground;
- 4.1.2 the Lender renewing, determining, varying or increasing any facility or other transaction in any manner or concurring in, accepting or varying any compromise, arrangement or settlement, or omitting to claim or enforce payment from any other person; or
- 4.1.3 any other act or omission, which but for this clause 4.1 might have discharged, or otherwise prejudiced or affected, the liability of the Borrower.

4.2 Immediate recourse

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

4.3 Representations and warranties

The Borrower makes the representations and warranties set out in Schedule 2 to the Lender. The representations and warranties set out in Schedule 2 are made by the Borrower on the date of this debenture and the representations and warranties contained in Schedule 2 are deemed to be

made by the Borrower on each day of the Security Period with reference to the facts and circumstances then existing.

5. COVENANTS

The Borrower covenants with the Lender in the terms set out in Schedule 3.

6. POWERS OF THE LENDER

The Lender shall have the powers set out in Schedule 4.

7. ENFORCEMENT

7.1 Enforcement events

The security constituted by this debenture shall be immediately enforceable if any of the events set out in paragraph 1 of Schedule 5 occurs. The parties to this debenture agree that the provisions of Schedule 5 shall apply to this debenture and shall be binding between them.

7.2 Receiver's powers

A Receiver shall have, in addition to the powers conferred on receivers by statute, the further powers set out in Schedule 6.

7.3 Right of appropriation

7.3.1 To the extent that:

- (a) the Charged Property constitutes Financial Collateral; and
- (b) this debenture and the obligations of the Borrower hereunder constitute a Security Financial Collateral Arrangement,

the Lender shall have the right, at any time after the security constituted by this debenture has become enforceable, to appropriate all or any of that Charged Property in or towards the payment or discharge of the Secured Liabilities in such order as the Lender may, in its absolute discretion, determine.

7.3.2 The value of any Charged Property appropriated in accordance with this clause shall be the price of that Charged Property at the time the right of appropriation is exercised as listed on any recognised market index, or determined by such other method as the Lender may select (including independent valuation).

7.3.3 The Borrower agrees that the methods of valuation provided for in this clause are commercially reasonable for the purposes of the Financial Collateral Regulations.

8. COSTS AND INDEMNITY

8.1 Costs

The Borrower shall pay to, or reimburse, the Lender and any Receiver on demand, on a full indemnity basis, all Costs incurred by the Lender or any Receiver in connection with:

- 8.1.1 this debenture or the Charged Property;
- 8.1.2 protecting, perfecting, preserving or enforcing (or attempting to do so) any of the Lender's or Receiver's rights under this debenture;
- 8.1.3 suing for, or recovering, any of the Secured Liabilities,

(including, without limitation, the Costs of any proceedings in connection with this debenture or the Secured Liabilities), together with interest on any amount due under clause 8.1.2 and clause 8.1.3 at the Default Rate.

8.2 Indemnity

The Lender and any Receiver, and their respective employees and agents, shall be indemnified on a full indemnity basis out of the Charged Property in respect of all actions, liabilities and Costs incurred or suffered in or as a result of:

- 8.2.1 the exercise, or purported exercise, of any of the powers, authorities or discretions vested in them under this debenture;
- 8.2.2 any matter or thing done, or omitted to be done, in relation to the Charged Property under those powers; or
- 8.2.3 any default or delay by the Borrower in performing any of its obligations under this debenture.

9. RELEASE

Subject to clause 11.3, on the expiry of the Security Period (but not otherwise), the Lender shall, at the request and cost of the Borrower, take whatever action is necessary to release the Charged Property from the security constituted by this debenture.

10. ASSIGNMENT AND TRANSFER

10.1 Assignment by Lender

The Lender may assign (absolutely or by way of security and in whole or in part), transfer, mortgage, charge or deal in any other manner with the benefit of any or all of any other party's obligations or any benefit arising under this debenture:

- 10.1.1 to any Affiliate of the Lender on or before 28 February 2018; or
- 10.1.2 after 28 February 2018, to any person.

10.2 Assignment by Borrower

The Borrower may not assign any of its rights, or transfer any of its obligations, under this debenture, or enter into any transaction that would result in any of those rights or obligations passing to another person.

11. FURTHER PROVISIONS

11.1 Independent security

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

11.2 Continuing security

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

11.3 Discharge conditional

Any release, discharge or settlement between the Borrower and the Lender shall be deemed conditional on no payment or security received by the Lender in respect of the Secured Liabilities being avoided, reduced or ordered to be refunded pursuant to any law relating to insolvency, bankruptcy, winding-up, administration, receivership or otherwise. Despite any such release, discharge or settlement:

11.3.1 the Lender or its nominee may retain this debenture and the security created by or pursuant to it, including all certificates and documents relating to the whole or any part of the Charged Property, for such period as the Lender deems necessary to provide the Lender with security against any such avoidance, reduction or order for refund; and

11.3.2 the Lender may recover the value or amount of such security or payment from the Borrower subsequently as if such release, discharge or settlement had not occurred.

11.4 Certificates

A certificate or determination by the Lender as to any amount for the time being due to it from the Borrower shall (in the absence of any manifest error) be conclusive evidence of the amount due.

11.5 Rights cumulative

The rights and remedies of the Lender conferred by this debenture are cumulative, may be exercised as often as the Lender considers appropriate, and are in addition to its rights and remedies under the general law.

11.6 Variations and waivers

Any waiver or variation of any right or remedy by the Lender (whether arising under this debenture or under the general law), or any consent given under this debenture, is only be effective if it is in writing and signed by the waiving, varying or consenting party, and applies only in the circumstances for which it was given, and shall not prevent the party giving it from subsequently relying on the relevant provision.

11.7 Further exercise of rights

No act or course of conduct or negotiation by, or on behalf of, the Lender shall, in any way, preclude the Lender from exercising any right or remedy under this debenture or constitute a suspension or variation of any such right or remedy.

11.8 Delay

No delay or failure to exercise any right or remedy under this debenture shall operate as a waiver of that right or remedy.

11.9 Single or partial exercise

No single or partial exercise of any right or remedy under this debenture shall prevent any further or other exercise of that right or remedy, or the exercise of any other right or remedy under this debenture.

11.10 Consolidation

The restriction on the right of consolidation contained in section 93 of the Law of Property Act 1925 shall not apply to this debenture.

11.11 Partial invalidity

The invalidity, unenforceability or illegality of any provision (or part of a provision) of this debenture under the laws of any jurisdiction shall not affect the validity, enforceability or legality of the other provisions. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with any modification necessary to give effect to the commercial intention of the parties.

11.12 Counterparts

This debenture may be executed and delivered in any number of counterparts, each of which is an original and which together have the same effect as if each party had signed the same document.

12. NOTICES

12.1 Service

Each notice or other communication required to be given under, or in connection with, this debenture shall be:

12.1.1 in writing, delivered personally or sent by pre-paid first-class letter or fax; and

12.1.2 sent:

(a) to the Borrower at:

Unit 7, River Court, Brighthouse Business Village, Brighthouse Road, Middlesbrough, Cleveland, TS2 1RT

Fax: 020 7317 2051

Attention: Inca Ross

(b) to the Lender at:

Unit 7, River Court, Brighthouse Business Village, Brighthouse Road, Middlesbrough, Cleveland, TS2 1RT

Fax: 020 7317 2051

Attention: Inca Ross

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

12.2 Receipt by Borrower

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

12.2.1 if sent by fax, when received in legible form;

12.2.2 if given by hand, at the time of actual delivery; and

12.2.3 if posted, on the second Business Day after the day it was sent by pre-paid first-class post.

A notice or other communication given as described in clause 12.2.1 or clause 12.2.2 on a day that is not a Business Day, or after normal business hours, in the place it is received, shall be deemed to have been received on the next Business Day.

12.3 Receipt by Lender

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

13. GOVERNING LAW AND JURISDICTION

13.1 Governing law

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

13.2 Jurisdiction

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

13.3 Other service

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

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

SCHEDULE 1

Property

1. Part 1 - Registered Property

The freehold land on the west side of Broadcut with registered title number HP213354

2. Part 2 - Unregistered Property

SCHEDULE 2

Representations and Warranties

1. Ownership of Charged Property

The Borrower is the legal and beneficial owner of the Charged Property.

2. No Encumbrances

The Charged Property is free from any Encumbrance other than the Permitted Encumbrances.

3. Adverse claims

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

4. Adverse covenants

There are no covenants, agreements, reservations, conditions, interests, rights or other matters whatsoever, that materially and adversely affect the Charged Property.

5. No breach of laws

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

6. No interference in enjoyment

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

7. No overriding interests

Nothing has arisen, has been created or is subsisting, which would be an overriding interest in any Property.

8. Avoidance of security

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

9. No prohibitions or breaches

There is no prohibition on assignment in any Insurance Policy and the entry into this debenture by the Borrower does not, and will not, constitute a breach of any Insurance Policy or any other agreement or instrument binding on the Borrower or its assets.

10. Environmental compliance

The Borrower has, at all times, complied in all material respects with all applicable Environmental Law.

SCHEDULE 3

Covenants

Part 1 - General Covenants

1. Negative pledge and disposal restrictions

The Borrower shall not at any time:

- 1.1.1 create, purport to create or permit to subsist any Encumbrance on, or in relation to, any Charged Property other than any Encumbrance created by this debenture;
- 1.1.2 sell, assign, transfer, part with possession of, or otherwise dispose of in any manner (or purport to do so), all or any part of, or any interest in, the Charged Property (except, in the ordinary course of business, Charged Property which is only subject to an uncrystallised floating charge); or
- 1.1.3 create or grant (or purport to create or grant) any interest in the Charged Property in favour of a third party,

other than a Permitted Encumbrance.

2. Preservation of Charged Property

The Borrower shall not do, or permit to be done, any act or thing that would or might depreciate, jeopardise or otherwise prejudice the security held by the Lender, or materially diminish the value of any of the Charged Property or the effectiveness of the security created by this debenture.

3. Enforcement of rights

The Borrower shall use its best endeavours to:

- 3.1.1 procure the prompt observance and performance of the covenants and other obligations imposed on the Borrower's counterparties; and
- 3.1.2 enforce any rights and institute, continue or defend any proceedings relating to any of the Charged Property which the Lender may require from time to time.

4. Notice of breaches

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

- 4.1.1 any representation or warranty set out in Schedule 2 which is incorrect or misleading in any material respect when made or deemed to be repeated; and
- 4.1.2 any breach of any covenant set out in this Schedule 3.

5. Title documents

The Borrower shall, on the execution of this debenture (or, if later, the date of acquisition of the relevant Charged Property), deposit with the Lender and the Lender shall, for the duration of this debenture be entitled to hold:

- 5.1.1 all deeds and documents of title relating to the Charged Property which are in the possession or control of the Borrower (and if these are not within the possession or control of the Borrower, the Borrower undertakes to use its best endeavours to obtain possession of all such deeds and documents of title);

- 5.1.2 all Insurance Policies and any other insurance policies relating to any of the Charged Property which the Borrower is entitled to possess; and
 - 5.1.3 all deeds and documents of title (if any) relating to the Book Debts as the Lender may specify from time to time.
6. Notices to be given by the Borrower
- The Borrower shall within five days of the execution of this debenture:
- 6.1.1 give notice to each insurer of the assignment of the Borrower's rights and interest in and under each Insurance Policy pursuant to clause 3.1.3 and use its best endeavours to procure that each addressee of any such notice promptly provides an acknowledgement of the Lender's interest to the Lender;
 - 6.1.2 give notice to any bank, financial institution or other person (excluding the Lender) with whom the Borrower has an account of the charging to the Lender under clause 3.1.2 of the Borrower's rights and interests under such accounts and use its best endeavours to procure that each addressee of any such notice promptly provides an acknowledgement of the Lender's interest to the Lender; and
 - 6.1.3 give notice to the landlord in relation to any leasehold Property charged pursuant to clause 3.1.1 and/or 3.1.2 in the Lender's preferred form and use its best endeavours to procure that each addressee of any such notice promptly provides an acknowledgement of the Lender's interest to the Lender.
- The Borrower shall obtain the Lender's prior approval of the form of any notice or acknowledgement to be used under this paragraph Schedule 36.
7. Further assurance
- The Borrower shall, at its own cost:
- 7.1.1 prepare and execute, in favour of the Lender and in such form as the Lender may reasonably require, such further mortgages, charges or transfers of or over all or any part of the Charged Property as the Lender may, in its absolute discretion, require from time to time; and
 - 7.1.2 give all notices, orders and directions which the Lender may require, in its absolute discretion, for perfecting, protecting or facilitating the realisation of its security over the Charged Property.
8. Appointment of accountants
- 8.1 The Borrower shall:
- 8.1.1 at its own cost, if the Lender requires (acting reasonably), appoint an accountant or firm of accountants nominated by the Lender to investigate the financial affairs of the Borrower and report to the Lender; and
 - 8.1.2 co-operate fully with any accountants so appointed and immediately provide them with all information requested.
- 8.2 The Borrower authorises the Lender (acting reasonably) to appoint, at any time (and without any further authority from the Borrower), an accountant or firm of accountants to investigate the financial affairs of the Borrower and to report to the Lender. If the Lender does appoint an accountant or firm of accountants, the Borrower shall pay the fees and expenses of those accountants but, if the Lender pays those fees and expenses on the Borrower's behalf, the Borrower shall reimburse the Lender under clause 8.

9. Borrower's waiver of set-off

The Borrower waives any present or future right of set-off it may have in respect of the Secured Liabilities (including sums payable by the Borrower under this debenture).

Part 2 - Book Debts and insurance covenants

1. Preservation of Book Debts

The Borrower shall not (except as provided by paragraph Schedule 32 of Part 2 of Schedule 3 or with the prior written consent of the Lender) release, exchange, compound, set-off, grant time or indulgence in respect of, or in any other manner deal with, all or any of the Book Debts.

2. Realising Book Debts

The Borrower shall:

- 2.1.1 as an agent for the Lender, collect in and realise all Book Debts, pay the proceeds into a Designated Account immediately on receipt and, pending that payment, hold those proceeds in trust for the Lender;
- 2.1.2 not, without the prior written consent of the Lender, withdraw any amounts standing to the credit of any Designated Account; and
- 2.1.3 if called on to do so by the Lender, execute a legal assignment of the Book Debts to the Lender on such terms as the Lender may require and give notice of that assignment to the debtors from whom the Book Debts are due, owing or incurred.

3. Insurance

The Borrower shall insure and keep insured the Charged Property against:

- 3.1.1 loss or damage by fire or terrorist acts;
- 3.1.2 other risks, perils and contingencies that would be insured against by reasonably prudent persons carrying on the same class of business as the Borrower; and
- 3.1.3 any other risk, perils and contingencies as the Lender may reasonably require.

Any such insurance must be with an insurance company or underwriters, and on such terms, as are reasonably acceptable to the Lender, and must be for not less than the replacement value of the Charged Property.

The Borrower:

- 3.1.4 shall promptly pay all premiums in respect of each Insurance Policy and do all other things necessary to keep that policy in full force and effect
- 3.1.5 shall (if the Lender so requires) produce to, or deposit with, the Lender each Insurance Policy and the receipts for all premiums and other payments necessary for effecting and keeping up each Insurance Policy;
- 3.1.6 shall not do or omit to do, or permit to be done or omitted, any act or thing that may invalidate or otherwise prejudice any Insurance Policy, and
- 3.1.7 if requested by the Lender, procure that a note of the Lender's interest is endorsed upon each Insurance Policy maintained by it or any person on its behalf and that the

terms of each Insurance Policy require the insurer not to invalidate the policy as against the Lender by reason of the act or default of any other joint or named insured and not to cancel it without giving at least 30 days' prior written notice to the Lender.

4. Insurance Policies' proceeds

All monies payable under any Insurance Policy at any time (whether or not the security constituted by this debenture has become enforceable) shall:

- 4.1.1 immediately be paid to the Lender;
- 4.1.2 if they are not paid directly to the Lender by the insurers, be held by the Borrower as trustee of the same for the benefit of the Lender (and the Borrower shall account for them to the Lender); and
- 4.1.3 at the option of the Lender, be applied in making good or recouping expenditure in respect of the loss or damage for which those monies are received or in, or towards, discharge or reduction of the Secured Liabilities (but subject to paragraph Schedule 512 of Schedule 5).

Part 3 - Property covenants

1. Maintenance and insurance

The Borrower shall:

- 1.1.1 keep all buildings and all fixtures on each Property in good and substantial repair and condition;
- 1.1.2 insure, and keep insured, those buildings and fixtures with such insurer and against such risks, in such amounts and otherwise on such terms as the Lender may require (or, failing such requirement, in accordance with the practice in respect of items of the same type which are current amongst prudent businessmen from time to time); and
- 1.1.3 procure that the interest of the Lender is noted on all those insurance policies or, at the option of the Lender, that those insurance policies are issued in the joint names of the Lender and the Borrower.

2. Preservation of Property, fixtures and equipment

The Borrower shall not, without the prior written consent of the Lender:

- 2.1.1 pull down or remove the whole, or any part of, any building forming part of any Property;
- 2.1.2 make any material alterations to any Property, or sever or remove any of its fixtures;
- 2.1.3 remove or make any material alterations to any of the Equipment belonging to, or in use by, the Borrower on any Property (except to affect necessary repairs or replace them with new or improved models or substitutes); or
- 2.1.4 whenever any Equipment is destroyed, damaged or deteriorates, immediately repair, replace and make good the same.

3. Conduct of business on Properties

The Borrower shall carry on its trade and business on those parts (if any) of the Properties as are used for the purposes of trade or business in accordance with the standards of good management from time to time current in such trade or business .

4. Planning information

The Borrower shall:

- 4.1.1 give full particulars to the Lender of any notice, order, direction, designation, resolution or proposal given or made by any planning authority or other public body or authority (Planning Notice) that specifically applies to any Property, or to the locality in which it is situated, within seven days after becoming aware of the relevant Planning Notice; and
- 4.1.2 (if the Lender so requires) immediately, and at the cost of the Borrower, take all reasonable and necessary steps to comply with any Planning Notice, and make, or join with the Lender in making, such objections or representations in respect of any such Planning Notice as the Lender may desire.

5. Compliance with covenants and payment of rent

The Borrower shall:

- 5.1.1 observe and perform all covenants, stipulations and conditions to which each Property, or the use of it, is or may be subjected, and (if the Lender so requires) produce evidence sufficient to satisfy the Lender that those covenants, stipulations and conditions have been observed and performed; and
- 5.1.2 (without prejudice to the generality of the foregoing) where a Property, or part of it, is held under a lease, duly and punctually pay all rents due from time to time, and perform and observe all the tenant's covenants and conditions.

6. Maintenance of interests in Properties

The Borrower shall not, without the prior written consent of the Lender:

- 6.1.1 grant, or agree to grant, any licence or tenancy affecting the whole or any part of any Property, or exercise the statutory powers of leasing (or agreeing to lease) or of accepting (or agreeing to accept) surrenders under sections 99 or 100 of the Law of Property Act 1925; or
- 6.1.2 in any other way dispose of, or agree to dispose of, surrender or create any legal or equitable estate or interest in the whole or any part of any Property.

7. Registration restrictions

The Borrower shall procure that no person shall be registered under the Land Registration Acts 1925 to 2002 as proprietor of any Property without the prior written consent of the Lender. The Borrower shall be liable for the Costs of the Lender in lodging cautions against the registration of the title to the whole or any part of any Property from time to time.

8. Development restrictions

The Borrower shall not, without the prior written consent of the Lender, carry out, or permit, or suffer to be carried out on any Property any development as defined in the Town and Country Planning Act 1990 or change or permit or suffer to be changed the use of any Property.

9. Environment

The Borrower shall:

- 9.1.1 comply with all the requirements of Environmental Law both in the conduct of its general business and in the management, possession or occupation of each Property; and
- 9.1.2 obtain and comply with all authorisations, permits and other types of licences necessary under Environmental Law.

10. No restrictive obligations

The Borrower shall not, without the prior written consent of the Lender, enter into any onerous or restrictive obligations affecting the whole or any part of any Property, or create or permit to arise any overriding interest, easement or right whatever in or over the whole or any part of any Property.

11. Proprietary rights

The Borrower shall procure that no person shall become entitled to assert any proprietary or other like right or interest over the whole or any part of any Property without the prior written consent of the Lender.

12. Inspection

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

13. Property information

The Borrower shall inform the Lender promptly of any acquisition by the Borrower of, or contract made by the Borrower to acquire, any freehold, leasehold or other interest in any property.

14. Registration at the Land Registry

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

"No disposition of the registered estate by the proprietor of the registered estate [or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction] is to be registered without a written consent signed by the proprietor for the time being of the charge dated [DATE] in favour of [NAME OF PARTY] referred to in the charges register [or [their conveyancer or specify appropriate details]]."

Part 4 - Investment covenants

1. Registration of Investments

1.1 The Borrower shall:

- 1.1.1 terminate with immediate effect all nominations it may have made under sections 145 and 146 of the Companies Act 2006 in respect of any Investments and, pending that termination, procure that any person so nominated:
 - (a) does not exercise any rights in respect of any Investments without the prior written approval of the Lender; and

- (b) immediately on receipt, forward to the Lender all communications or other information received in respect of any Investments for which it has been so nominated; and
 - 1.1.2 at the direction of the Lender, immediately execute and deliver to the Lender all transfers and other documents, and do all such things, as may be necessary or desirable to register all or any of the Investments in the name of the Lender or its nominee.
- 1.2 During the Security Period, the Borrower shall not exercise any rights under sections 145 and 146 of the Companies Act 2006 to nominate any person in respect of any of the Investments.
- 2. Additional registration obligations

The Borrower shall:

 - 2.1.1 obtain all consents, waivers, approvals and permissions that are necessary, under the articles of association of any issuer that is not a public company or otherwise, for the transfer of the Investments to the Lender or its nominee, or to a purchaser on enforcement of this debenture; and
 - 2.1.2 procure the amendment of the share transfer provisions of the articles of association of each issuer that is not a public company in such manner as the Lender may require in order to permit such a transfer.
- 3. Dividends and voting rights post enforcement

After the security constituted by this debenture has become enforceable:

 - 3.1.1 all dividends and other distributions paid in respect of the Investments and received by the Borrower shall be held by the Borrower on trust for the Lender and immediately paid into a Designated Account or, if received by the Lender, shall be retained by the Lender; and
 - 3.1.2 all voting and other rights and powers attaching to the Investments shall be exercised by, or at the direction of, the Lender and the Borrower shall, and shall procure that its nominees shall, comply with any directions the Lender may give, in its absolute discretion, concerning the exercise of those rights and powers.
- 4. Calls on Investments

The Borrower shall duly and promptly pay all calls, instalments and other monies that may be payable from time to time in respect of the Investments. The Borrower acknowledges that the Lender shall not be under any liability in respect of any such calls, instalments or other monies.
- 5. No alteration of Investments

The Borrower shall not, without the prior written consent of the Lender, amend, or agree to the amendment of, the memorandum or articles of association, or any other constitutional documents, of any issuer that is not a public company, or the rights or liabilities attaching to any of the Investments.
- 6. Preservation of Investments

The Borrower shall ensure (as far as it is able to by the exercise of all voting rights, powers of control and other means available to it) that any issuer that is not a public company shall not:

 - 6.1.1 consolidate or subdivide any of its Investments, or reduce or re-organise its share capital in any way;

- 6.1.2 issue any new shares or stock; or
 - 6.1.3 refuse to register any transfer of any of its Investments that may be lodged for registration by, or on behalf of, the Lender or the Borrower in accordance with this debenture.
7. Investments information

The Borrower shall send to the Lender copies of all notices, circulars, reports, accounts and other documents, which are sent to holders of any Investments, promptly following receipt.

Part 5 - Equipment covenants

1. Maintenance of Equipment

The Borrower shall:

- 1.1.1 maintain the Equipment in good and serviceable condition (except for expected fair wear and tear); and
- 1.1.2 not permit any Equipment to be:
 - (a) used or handled other than by properly qualified and trained persons; or
 - (b) overloaded or used for any purpose for which it is not designed or reasonably suitable.

2. Payment of Equipment taxes

The Borrower shall promptly pay all taxes, fees, licence duties, registration charges, insurance premiums and other outgoings in respect of the Equipment and, on demand, produce evidence of such payment to the Lender.

3. Equipment information

The Borrower shall:

- 3.1.1 give the Lender any information concerning the location, condition, use and operation of Equipment as the Lender may require; and
- 3.1.2 permit any persons designated by the Lender to inspect and examine Equipment and the records relating to Equipment at all reasonable times.

4. Equipment insurance

The Borrower shall:

- 4.1.1 at its own expense, procure that the Equipment is covered and kept covered by insurance of a kind satisfactory to the Lender with insurers approved by the Lender (such approval not to be unreasonably withheld) for full comprehensive insurance cover, which shall include (but not be limited to) fire, theft and accident, for an amount that is not less than the aggregate cost of reinstating or replacing the Equipment;
- 4.1.2 if the Lender so requires, procure that the interest of the Lender is noted on all such insurance policies or, at the option of the Lender, that such insurance policies are issued in the joint names of the Lender and the Borrower; and

4.1.3 maintain insurance for third party liabilities in such amount, and on such terms, as is usual for users of equipment of the same type as the Equipment.

5. Notice of charge

The Borrower shall, if so requested by the Lender, place and maintain on each item of Equipment, in a conspicuous place, a clearly legible identification plate containing the following wording:

"NOTICE OF CHARGE

This [DESCRIBE ITEM] and ancillary equipment is subject to a fixed charge dated [DATE] in favour of [LENDER].".

Part 6 - Intellectual Property covenants

1. Preservation of rights

The Borrower shall take all necessary action to safeguard and maintain present and future rights in, or relating to, the Intellectual Property including (without limitation) observing all covenants and stipulations relating to such rights, and paying all applicable renewal fees, licence fees and other outgoings.

2. Registration of Intellectual Property

The Borrower shall use all reasonable efforts to register applications for the registration of any Intellectual Property, and shall keep the Lender informed of all matters relating to each such registration.

3. Maintenance of Intellectual Property

The Borrower shall not permit any Intellectual Property to be abandoned, cancelled or to lapse.

SCHEDULE 4

Powers of the Lender

1. Power to remedy

The Lender shall be entitled (but shall not be bound) to remedy, at any time, a breach by the Borrower of any of its obligations contained in this debenture, and the Borrower irrevocably authorises the Lender and its agents to do everything necessary or desirable for that purpose.

2. Exercise of rights

The rights of the Lender under paragraph 1 of this Schedule 4 are without prejudice to any other rights of the Lender under this debenture. The exercise of those rights shall not make the Lender liable to account as a mortgagee in possession.

3. Power to dispose of chattels

3.1 At any time after the security constituted by this debenture has become enforceable, the Lender or any Receiver may, as agent for the Borrower, dispose of any chattels or produce belonging to the Borrower found on any Property.

3.2 Without prejudice to any obligation to account for the proceeds of any disposal made under paragraph 3.1 of this Schedule 4, the Borrower shall indemnify the Lender and any Receiver against any liability arising from such disposal.

4. Prior Encumbrances

At any time after the security constituted by this debenture has become enforceable, or after any powers conferred by any Encumbrance having priority to this debenture shall have become exercisable, the Lender may:

4.1.1 redeem such or any other prior Encumbrance, or procure its transfer to itself; and

4.1.2 settle any account of the holder of any prior Encumbrance.

Any accounts so settled and passed shall be, in the absence of any manifest error, conclusive and binding on the Borrower. All monies paid by the Lender to the holder of an Encumbrance in settlement of such an account shall, as from its payment by the Lender, be due from the Borrower to the Lender on current account and shall bear interest at the Default Rate and be secured as part of the Secured Liabilities.

5. Conversion of currency

5.1 For the purpose of, or pending the discharge of, any of the Secured Liabilities, the Lender may convert any monies received, recovered or realised by it under this debenture (including the proceeds of any previous conversion under this paragraph Schedule 45) from their existing currencies into such other currencies as the Lender may think fit.

5.2 Any such conversion shall be effected at Lloyds Bank plc's then prevailing spot selling rate of exchange for such other currency against the existing currency.

5.3 Each reference in this paragraph Schedule 45 to a currency extends to funds of that currency and, for the avoidance of doubt, funds of one currency may be converted into different funds of the same currency.

6. New accounts

6.1 If the Lender receives notice of any subsequent Encumbrance, or other interest, affecting all or part of the Charged Property, the Lender may open a new account for the Borrower in the

Lender's books. Without prejudice to the Lender's right to combine accounts, no money paid to the credit of the Borrower in any such new account shall be appropriated towards, or have the effect of discharging, any part of the Secured Liabilities.

- 6.2 If the Lender does not open a new account immediately on receipt of notice under paragraph 6.1 of this Schedule 4, then (unless the Lender gives express written notice to the contrary to the Borrower) all payments made by the Borrower to the Lender shall be treated as having been credited to a new account of the Borrower and not as having been applied in reduction of the Secured Liabilities, as from the time of receipt of the relevant notice by the Lender.

7. Lender's set-off rights

- 7.1 If the Lender has more than one account for the Borrower in its books, the Lender may at any time after:

7.1.1 the security constituted by this debenture has become enforceable; or

7.1.2 the Lender has received notice of any subsequent Encumbrance or other interest affecting all or any part of the Charged Property,

transfer, without prior notice, all or any part of the balance standing to the credit of any account to any other account that may be in debit (but the Lender shall notify the Borrower of the transfer once made).

8. Indulgence

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

9. Investments: dividends and voting rights before enforcement

Until the security constituted by this debenture becomes enforceable:

9.1.1 the Lender shall, on request by the Borrower, release and pay to the Borrower any cash dividends paid in respect of any of the Investments and received by the Lender or its nominee; and

9.1.2 the Lender shall, in exercising all voting and other rights and powers of the Lender or its nominee attaching to the Investments, act in accordance with the directions of the Borrower from time to time provided that acting in accordance with those directions would not, in the Lender's opinion, prejudice the Lender's security under this debenture or the value of the Investments, or contravene any agreement between the Lender and the Borrower.

SCHEDULE 5

Enforcement

1. Enforcement events

1.1 This debenture shall be enforceable if:

- 1.1.1 any of the Secured Liabilities are not paid or discharged when the same ought to be paid or discharged by the Borrower (whether on demand, at scheduled maturity, or by acceleration or otherwise, as the case may be) unless such failure to pay is as a result of a technical error for which the Borrower is not responsible and payment is made within 2 Business Days of its due date;
- 1.1.2 the Borrower is in breach of any of its obligations under this debenture or under any other agreement between the Borrower and the Lender and that breach (if capable of remedy) has not been remedied to the satisfaction of the Lender within 14 days of notice by the Lender to the Borrower to remedy the breach;
- 1.1.3 the Borrower:
 - (a) becomes unable to pay its debts as they fall due (and/or the value of the Borrower's assets is less than the amount of its liabilities, taking into account the Borrower's contingent and prospective liabilities);
 - (b) commences negotiations with any one or more of its creditors with a view to the general readjustment or rescheduling of its indebtedness; or
 - (c) makes a general assignment for the benefit of, or a composition with, its creditors;
- 1.1.4 the Borrower passes any resolution, takes any corporate action, a petition is presented or proceedings are commenced, or any action is taken by any person for its winding-up, dissolution, administration or re-organisation, or for the appointment of a receiver, administrative receiver, administrator, Lender or similar officer of it or of any or all of its revenues or assets;
- 1.1.5 a distress, execution, attachment or other legal process is levied, enforced on or sued against all or any part of the assets of the Borrower and remains undischarged for seven days;
- 1.1.6 any event occurs in relation to the Borrower that is analogous to those set out in paragraph 1.1.3, paragraph 1.1.4 or paragraph 1.1.5 of this Schedule 5; or
- 1.1.7 any representation, warranty or statement made, or deemed to be made, by the Borrower under this debenture is, or proves to have been, incorrect or misleading when made or deemed to be made.

- 1.2 If any of the events listed in paragraph 1.1 of this Schedule 5 occurs, without prejudice to any other rights of the Lender and whether or not such event is continuing, the powers of sale under the Law of Property Act 1925 shall immediately be exercisable and the Lender may, in its absolute discretion, enforce all or any part of the security created by this debenture as it sees fit.

2. Statutory power of sale

The statutory powers of sale conferred by the Law of Property Act 1925 shall, as between the Lender and a purchaser from the Lender, arise on and be exercisable at any time after the execution of this debenture, but the Lender shall not exercise such power of sale until the security constituted by this debenture has become enforceable under paragraph 1 of this Schedule 5.

3. Extension of statutory powers

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

- 3.1.1 grant any lease or agreement for lease;
- 3.1.2 accept surrenders of leases; or
- 3.1.3 grant any option of the whole or any part of the freehold and leasehold property of the Borrower with whatever rights relating to other parts of it,

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

4. Protection of third parties

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

- 4.1.1 whether any of the Secured Liabilities have become due or payable, or remain unpaid or undischarged;
- 4.1.2 whether any power the Lender or a Receiver is purporting to exercise has become exercisable; or
- 4.1.3 how any money paid to the Lender, any Receiver or any Delegate is to be applied.

5. No liability as mortgagee in possession

Neither the Lender, nor any Receiver nor any Administrator shall be liable to account as mortgagee in possession in respect of all or any of the Charged Property, nor shall any of them be liable for any loss on realisation of, or for any neglect or default of any nature in connection with, all or any of the Charged Property for which a mortgagee in possession might be liable as such.

6. Appointment of Receiver

6.1 At any time after the security constituted by this debenture has become enforceable, or at the request of the Borrower, the Lender may, without further notice:

- 6.1.1 appoint by way of deed, or otherwise in writing, any one or more person or persons to be a Receiver of all or any part of the Charged Property; and
- 6.1.2 (subject to section 45 of the Insolvency Act 1986) from time to time, by way of deed, or otherwise in writing, remove any person appointed to be Receiver and may, in a similar manner, appoint another in his place.

Where more than one person is appointed Receiver, each Receiver shall have power to act separately (unless the appointment by the Lender specifies to the contrary).

6.2 The Lender may fix the remuneration of any Receiver appointed by it without the restrictions contained in section 109 of the Law of Property Act 1925, and the remuneration of the Receiver shall be a debt secured by this debenture which shall be due and payable immediately upon its being paid by the Lender.

7. Power of sale additional

7.1 The powers of sale and appointing a Receiver conferred by this debenture shall be in addition to all statutory and other powers of the Lender under the Insolvency Act 1986, the Law of Property Act 1925 or otherwise, and shall be exercisable without the restrictions contained in sections 103 and 109 of the Law of Property Act 1925 or otherwise.

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

8. Agent of the Borrower

Any Receiver appointed by the Lender under this debenture shall be the agent of the Borrower, and the Borrower shall be solely responsible for his acts and remuneration, as well as for any defaults committed by him.

9. Powers of Receiver

Any Receiver appointed by the Lender under this debenture shall, in addition to the powers conferred on him by the Law of Property Act 1925 and the Insolvency Act 1986, have;

9.1.1 the power to do all such acts and things that an absolute owner could do in the management of that part of the Charged Property over which the Receiver is appointed; and

9.1.2 the powers set out in Schedule 6.

10. Order of application of proceeds

All monies received by the Lender or a Receiver in the exercise of any enforcement powers conferred by this debenture shall be applied:

10.1.1 first, in paying all unpaid fees, costs and other liability incurred by, or on behalf of, the Lender (and any Receiver, attorney or agent appointed by it);

10.1.2 second, in paying the remuneration of any Receiver (as agreed between the Receiver and the Lender);

10.1.3 third, in or towards discharge of the Secured Liabilities in such order and manner as the Lender determines; and

10.1.4 finally, in paying any surplus to the Borrower or any other person entitled to it.

11. Appropriation

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

12. Suspense account

All monies received by the Lender or a Receiver under this debenture may, at the discretion of the Lender or Receiver, be credited to a suspense or securities realised account and be held in such account for so long as the Lender or Receiver thinks fit, and shall bear interest at such rate, if any, as may be agreed in writing between the Lender and the Borrower.

13. Power of attorney

- 13.1 By way of security, the Borrower irrevocably appoints the Lender and every Receiver separately to be the attorney of the Borrower and, in its name, on its behalf and as its act and deed, to execute any documents and do any acts and things that:
- 13.2 the Borrower is required to execute and do under this debenture, including execute any document required by the Lender under paragraph 7 of Part 1 of Schedule 3; and
- 13.3 any attorney may deem proper or desirable in exercising any of the powers, authorities and discretions conferred by this debenture or by law on the Lender or any Receiver.
14. Ratification of acts of attorney
- The Borrower ratifies and confirms, and agrees to ratify and confirm, anything that any of its attorneys may do in the proper and lawful exercise or purported exercise of all or any of the powers, authorities and discretions referred to in paragraph 13.2 of this Schedule 5.
15. Appointment of an Administrator
- 15.1 The Lender may, without notice to the Borrower, appoint any one or more persons to be an administrator of the Borrower pursuant to Paragraph 14 of Schedule B1 of the Insolvency Act 1986 if the security constituted by this debenture becomes enforceable.
- 15.2 Any appointment under this paragraph 15 shall:
- 15.2.1 be in writing signed by a duly authorised signatory of the Lender; and
- 15.2.2 take effect, in accordance with paragraph 19 of Schedule B1 of the Insolvency Act 1986, when the requirements of paragraph 18 of that Schedule B1 are satisfied.
- 15.3 The Lender may, subject to any necessary approval from the court, end the appointment of an Administrator by notice in writing in accordance with this paragraph Schedule 515 and appoint a replacement for any Administrator whose appointment ends for any reason under that paragraph.

SCHEDULE 6

Further Powers of a Receiver

1. Power to repair and develop Properties

A Receiver may undertake or complete any works of repair, building or development on the Properties.

2. Power to surrender leases

A Receiver may grant, or accept surrenders of, any leases or tenancies affecting the Properties on such terms, and subject to such conditions, as he thinks fit.

3. Power to employ personnel and advisors

A Receiver may provide services and employ, or engage, such managers, contractors and other personnel and professional advisors on such terms as he thinks fit.

4. Power to make VAT elections

A Receiver may make exercise or revoke any value added tax option to tax as he thinks fit.

5. Power to charge for remuneration

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

6. Power to realise Charged Property

A Receiver may collect and get in the Charged Property, or any part of it, in respect of which he is appointed and make such demands, and take such proceedings, as may seem expedient for that purpose, and take possession of the Charged Property with like rights.

7. Power to manage or reconstruct the Borrower's business

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

8. Power to dispose of Charged Property

A Receiver may grant options and licences over all or any part of the Charged Property, sell, assign, lease and accept surrenders of leases of (or concur in selling, assigning, leasing or accepting surrenders of leases of) all or any of the Charged Property in respect of which he is appointed for such consideration and, in such manner (including, without limitation, by public auction or private sale) and generally on such terms and conditions as he thinks fit. A Receiver may promote, or concur in promoting, a company to purchase the Charged Property to be disposed of by him.

9. Power to sever fixtures and fittings

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

10. Power to sell Book Debts

A Receiver may sell and assign all or any of the Book Debts in respect of which he is appointed in such manner, and generally on such terms and conditions, as he thinks fit.

11. Power to make settlements

A Receiver may make any arrangement, settlement or compromise between the Borrower and any other person that he may think expedient.

12. Power to improve the Equipment

A Receiver may make substitutions of, or improvements to, the Equipment as he may think expedient.

13. Power to make calls on Borrower members

A Receiver may make calls conditionally or unconditionally on the members of the Borrower in respect of uncalled capital with, for that purpose and for the purpose of enforcing payments of any calls so made, the same powers as are conferred by the articles of association of the Borrower on its directors in respect of calls authorised to be made by them.

14. Power to appoint

A Receiver may appoint managers, officers, servants, workmen and agents for the purposes of this Schedule 6 at such salaries, for such periods and on such terms as he may determine.

15. Power to insure

A Receiver may, if he thinks fit, but without prejudice to the indemnity in clause 8, effect with any insurer any policy of insurance either in lieu or satisfaction of, or in addition to, the insurance required to be maintained by the Borrower under this debenture.

16. Powers under Law of Property Act 1925

A Receiver may exercise all powers provided for in the Law of Property Act 1925 in the same way as if he had been duly appointed under that act, and exercise all powers provided for an administrative receiver in Schedule 1 of the Insolvency Act 1986.

17. Power to borrow

A Receiver may, for any of the purposes authorised by this Schedule 6, raise money by borrowing from the Lender (or from any other person) either unsecured or on the security of all or any of the Charged Property in respect of which he is appointed on such terms as he shall think fit (including, if the Lender consents, terms under which such security ranks in priority to this debenture).

18. Power to redeem prior Encumbrances

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

19. Incidental powers

A Receiver may do all such other acts and things:

19.1.1 as he may consider desirable or necessary for realising any of the Charged Property;

19.1.2 as he may consider incidental or conducive to any of the rights or powers conferred on a Receiver under or by virtue of this deed or law; or

19.1.3 which he lawfully may or can do as agent for the Borrower.

20. Scope of powers

Any exercise of any of the powers given by this Schedule 6 may be on behalf of the Borrower, the directors of the Borrower (in the case of the power contained in paragraph 13 of this Schedule 6) or himself.

Borrower

Executed as a deed by *ALAN GAMNOR*

for and on behalf of

Fareham Developments (One) Limited

in the presence of



Name *STEVEN PELL*

Address *80 NEW BOND STREET, LONDON W1S 1SB*

Occupation *CHARTERED ACCOUNTANT*

Director

Lender

Signed by **OO Retail Limited**