



Registration of a Charge

Company name: **OCTOPUS AIF MANAGEMENT LIMITED**

Company number: **08802172**



X70RG2I2

Received for Electronic Filing: **28/02/2018**

Details of Charge

Date of creation: **16/02/2018**

Charge code: **0880 2172 0002**

Persons entitled: **SILICON VALLEY BANK**

Brief description:

Contains fixed charge(s).

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: **WE CERTIFY THAT, SAVE FOR MATERIAL REDACTED PURSUANT TO S.859 OF THE COMPANIES ACT 2006, THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION IS A CORRECT COPY OF THE PART OF THE CHARGING INSTRUMENT SIGNED BY OR ON BEHALF OF THE CHARGER, AND A CORRECT COPY OF THE SIGNATURE PAGE TO EACH OTHER PART OF SUCH CHARGING INSTRUMENT.**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 8802172

Charge code: 0880 2172 0002

The Registrar of Companies for England and Wales hereby certifies that a charge dated 16th February 2018 and created by OCTOPUS AIF MANAGEMENT LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 28th February 2018 .

Given at Companies House, Cardiff on 5th March 2018

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**



Assignment

in respect of rights to the undrawn capital commitments of Limited Partners in **Octopus Commercial Real Estate Debt Fund II LP**

Dated 16 FEBRUARY 2018

- (1) Octopus Commercial Real Estate Debt Fund II LP
- (2) Commercial Real Estate Debt Fund (England) GP LLP
- (3) Octopus AIF Management Limited
- (4) Silicon Valley Bank

Dentons UKMEA Legal Services
One Fleet Place
London EC4M 7WS
United Kingdom
DX 242

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Assignment

Dated 16 FEBRUARY 2018

Between

- (1) **Octopus Commercial Real Estate Debt Fund II LP**, a limited partnership registered in England and Wales with registered number LP018098 whose principal place of business is at 6th Floor, 33 Holborn, London EC1N 2HT, acting by the General Partner (the **Borrower**);
- (2) **Commercial Real Estate Debt Fund (England) GP LLP**, a limited liability partnership incorporated in England and Wales with registered number OC393592 whose registered office is at 6th Floor, 33 Holborn, London EC1N 2HT (the **General Partner**);
- (3) **Octopus AIF Management Limited**, a limited company incorporated in England and Wales with registered number 8802172 whose registered office is at 6th Floor, 33 Holborn, London EC1N 2HT (the **Manager**); and
- (4) **Silicon Valley Bank**, registered in England and Wales under numbers BRO14561 and FCO29579 of Alphabeta, 14-18 Finsbury Square, London EC2A 1BR as lender (the **Lender**).

Recitals

- A The Lender has agreed to make credit facilities available to the Borrower on the terms of the Finance Documents.
- B The Assignors and the Lender entered into an assignment by way of security dated 6 October 2017 (the **First Security Assignment**) in respect of the Assigned Rights. The First Security Assignment has not been released and shall continue to secure the liabilities and obligations expressed to be secured therein.
- C The Assignors have agreed to assign the Assigned Rights to the Lender under this Assignment further to secure the payment and discharge of the Secured Liabilities.
- D The Assignors each acknowledge that the Lender requires this Assignment to be entered into as a condition to the Lender making credit facilities available under the Finance Documents.

This deed witnesses

1 Definitions and construction

1.1 Definitions

Words and expressions defined in the Facility Agreement shall have the same meanings in this Assignment unless they are expressly defined in it and, in addition, in this Assignment:

Act means the Law of Property Act 1925.

Assigned Rights means in respect of the Borrower and each other Assignor, all its rights, title, powers, benefit, interest, privileges and remedies, in each case present and future, in, to, under and relative to the Investor Commitments and all other payment obligations of each Limited Partner under the Partnership Agreement and all of its other rights relative thereto under the Partnership Agreement including, without limitation:

- (a) the rights to issue and deliver or procure the issue and delivery of Drawdown Notices;
- (b) the rights, titles, interests and privileges in and to receive payments from Limited Partners, including the Investor Commitments; and
- (c) the rights to demand and enforce payments to be made by Limited Partners and to pursue all rights and remedies in connection with all of the foregoing.

Assignor means each of the Borrower, the General Partner and the Manager and **Assignors** means all of them.

Declared Default an Event of Default which has resulted in the Lender exercising any of its rights under clause 19.19 (*Acceleration following an Event of Default*) of the Facility Agreement

Default Rate means the rate of interest specified in, and calculated in accordance with, Clause 9.3 (*Default interest*) of the Facility Agreement.

Facility Agreement means the facility agreement dated 6 October 2017 between, among others, the Assignors and the Lender.

Investor Commitment Proceeds means all present and future money and proceeds paid or payable by Limited Partners to the Borrower pursuant to the Partnership Agreement.

Notice of Assignment means a notice in the form set out in Schedule 1 (*Form of notice of assignment*).

Secured Liabilities means the liabilities of the Borrower to the Lender under or pursuant to the Finance Documents.

Security Period means the period starting on the date of this Assignment and ending on the date on which:

- (a) all of the Secured Liabilities have been fully and finally discharged; and
- (b) the Lender is under no commitment, obligation or liability (actual or contingent) to make advances or provide other financial accommodation to the Borrower pursuant to the Finance Documents.

1.2 Construction

1.2.1 The principles of construction set out in clause 1.2 (*Construction*) of the Facility Agreement apply to this Assignment, insofar as they are relevant to it, and subject to any necessary changes, as they apply to the Facility Agreement.

1.2.2 Unless a contrary intention appears, any reference in this Assignment to:

- (a) this **Assignment** is a reference to this Assignment as amended, varied, novated, supplemented and replaced from time to time;
- (b) an **Assignor** or the **Lender** includes any one or more of its assigns, transferees and successors in title (in the case of an Assignor, so far as any such is permitted); and

- (c) the **Lender** (except for the references in Clause 13 (*Power of attorney*)), includes its duly appointed nominees, attorneys, correspondents, trustees, advisers, agents, delegates and sub-delegates.

1.3 Conflict of terms

To the extent that there is any conflict and/or contradiction and/or inconsistency between the terms of this Deed and the terms of the Facility Agreement, the terms of the Facility Agreement shall prevail and in such circumstances compliance with the terms of the Facility Agreement (as appropriate) entered into by the Borrower shall be deemed to be compliance in full with the conflicting and/or contradictory and/or inconsistent terms of this Deed.

1.4 Limited Recourse of Representative

The signatory to this deed acting for the account of the Borrower (the **Representative**) enters into solely in its capacity as general partner acting for the account of the Borrower and not in any personal or other capacity. Accordingly all undertakings, covenants, representations and warranties are made by the Representative for and on behalf of the Borrower. The Representative's personal assets (as distinct from the assets of the Borrower) shall not be subject to any form of execution or attachment or other recourse whatsoever in respect of any liability of the Borrower under the Finance Documents.

1.5 Third party rights

- 1.5.1 Unless expressly provided to the contrary in this Assignment, a person who is not a party to this Assignment has no right under the Contracts (Rights of Third Parties) Act 1999 (the **Third Parties Act**) to enforce or to enjoy the benefit of any term of this Assignment.
- 1.5.2 The parties to this Assignment may rescind, vary, waive, release, assign, novate or otherwise dispose of all or any of their respective rights or obligations under this Assignment without the consent of any person that is not a party.
- 1.5.3 Any person described in Clause 10 (*Protection of the Lender*) may, subject to this Clause 1.5 (*Third party rights*) and the Third Parties Act, rely on any Clause of this Assignment which expressly confers rights on it.

1.6 Effect as a deed

This Assignment shall take effect as a deed even if it is signed under hand on behalf of the Lender.

2 Covenant to pay

- 2.1.1 The Borrower covenants with the Lender that it will on demand pay and discharge the Secured Liabilities when due in accordance with the Finance Documents.
- 2.1.2 The undertakings contained in this clause and the Security created pursuant to this Assignment shall not extend to or include any liability or sum which would otherwise cause any such undertakings or security to be unlawful or prohibited by any applicable law.

3 Assignment

3.1 Assignment

- 3.1.1 Subject to the First Security Assignment, each Assignor assigns the Assigned Rights absolutely by way of security to the Lender.
- 3.1.2 Until an Event of Default occurs which is continuing, but subject to Clause 5.2 (*Preservation of the Assigned Rights*) and the provisions of the Facility Agreement, each Assignor may continue to deal with the counterparties to the Partnership Agreement.

3.2 Trust

If or to the extent that the assignment of any Assigned Right is prohibited, each Assignor holds it on trust for the Lender.

4 Nature of Security created

The Security created under this Assignment is created:

- (a) as a continuing security to secure the payment and discharge of the Secured Liabilities;
- (b) in favour of the Lender; and
- (c) subject to the First Security Assignment, with full title guarantee.

5 Positive covenants

The covenants in this Clause 5 remain in force from the date of this Assignment until the expiry of the Security Period.

5.1 Notice of Assignment

The Assignors shall deliver, or procure the delivery of, a duly completed Notice of Assignment:

- (a) immediately following execution of this Assignment, to all Limited Partners on the date hereof; and
- (b) at the time of admission, to all Limited Partners subsequently admitted to the Borrower,

and shall use reasonable endeavours to procure that each Limited Partner promptly acknowledges that notice in the form set out in Schedule 2 (*Form of acknowledgement and confirmation*), or in any other form agreed by the Lender (acting reasonably).

5.2 Preservation of the Assigned Rights

Each Assignor shall:

- (a) provide the Lender with all information which the Lender reasonably requests relating to the Assigned Rights;

- (b) hold on trust for the Lender and separately from its own assets any Assigned Right which fails to vest in the Lender under this Assignment; and
- (c) at its own cost, defend any proceedings brought by a third party relating to any Assigned Right.

5.2.2 Unless the Lender otherwise agrees, from the date of this Assignment until the expiry of the Security Period the Manager shall:

- (a) use reasonable endeavours to ensure that each Drawdown Notice clearly contains an irrevocable instruction to the addressee to pay all amounts payable under that Drawdown Notice into the Bank Account;
- (b) use reasonable endeavours to ensure that each Investor is instructed to pay all investor Commitment Proceeds into the Bank Account; and
- (c) not substantially amend or change those payment instructions or give any other instructions to an Investor with respect to the Investor Commitment Proceeds that are inconsistent with those payment instructions or with any of the other terms of this Assignment.

5.3 Third party claims

The Assignors shall as soon as reasonably practicable, inform the Lender of any claim or notice relating to any Assigned Right which it receives from any third party.

5.4 Payments without deduction

Each Assignor covenants with the Lender that all payments to be made by it under this Assignment shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

6 Negative covenants

The covenants in this Clause 6 remain in force from the date of this Assignment until the expiry of the Security Period.

6.1 Disposals

At any time following an Event of Default that is continuing, save as permitted under the Facility Agreement or as permitted by the Lender, no Assignor shall enter into a single transaction or a series of transactions (whether related or not), whether voluntary or involuntary and whether at the same time or over a period of time, to sell, lease, license, transfer, loan or otherwise dispose of any Assigned Right or enter into an agreement to make any such disposal other than a Permitted Disposal.

6.2 Negative pledge

Except as permitted by the Facility Agreement, no Assignor shall create or permit to subsist any Security over any Assigned Right.

6.3 Preservation of the Assigned Rights

No Assignor shall without the prior written consent of the Lender or as otherwise expressly permitted under the Facility Agreement:

- (a) enter into any onerous obligation or restriction affecting any Assigned Rights;
- (b) take any Security in connection with its liabilities under this Assignment from any guarantor of, or provider of Security for, any of the Secured Liabilities;
- (c) consent or agree to any waiver or release of any obligation of any party in relation to the Assigned Rights (other than in accordance with the Partnership Agreement);
- (d) permit any Assigned Right to be set off against any liabilities of an Assignor or be subject to counterclaim; or
- (e) do or permit to be done anything which may in any material way depreciate, jeopardise or otherwise prejudice the value of the Assigned Rights.

7 Enforcement

7.1 When Security becomes enforceable

The Security created by this Assignment shall become enforceable:

- (a) on the occurrence of a Declared Default which is continuing; or
- (b) if any Assignor so requests to the Lender in writing.

7.2 Powers on enforcement

At any time after the Security created by this Assignment has become enforceable the Lender may (without prejudice to any other of its rights and remedies and without notice to any Assignor) do all or any of the following:

- (a) exercise all the powers and rights which may be exercisable by a beneficial owner of the Assigned Rights and all other powers conferred on mortgagees by the Act, as varied and extended by this Assignment, without the restrictions contained in sections 103 or 109(1) of the Act; and
- (b) subject to Clause 8.1.1 (*Method of appointment and removal*), appoint one or more persons to be a Receiver or Receivers of all or any of the Assigned Rights.

7.3 Application of moneys

7.3.1 The Lender or any Receiver shall apply moneys received by them under this Assignment after the Security created under this Assignment has become enforceable in the following order:

- (a) **firstly**, in or towards the payment pro rata of, or the provision pro rata for:
 - (i) all costs and expenses incurred by the Lender under or in connection with this Assignment; and
 - (ii) all sums owing to a Receiver;

- (b) **secondly**, in or towards the discharge of the Secured Liabilities in accordance with the Facility Agreement;
- (c) **thirdly**, in the payment of any surplus to the Assignors or other person entitled to it, and section 109(8) of the Act shall not apply.

7.3.2 Clause 7.3.1 shall override any appropriation made by the Assignors.

8 Appointment and powers of Receivers

8.1 Method of appointment and removal

- 8.1.1 The Lender may not appoint a Receiver by reason only of a moratorium being obtained, or anything being done with a view to a moratorium being obtained, under section 1A of the Insolvency Act 1986.
- 8.1.2 Every appointment or removal of a Receiver, of any delegate or of any other person by the Lender pursuant to this Assignment, may be made in writing under the hand of any officer or manager of the Lender.

8.2 Powers of Receiver

Every Receiver shall have all the powers:

- (a) of the Lender under this Assignment;
- (b) conferred by the Act on mortgagees in possession and on receivers appointed under the Act;
- (c) which are specified in Schedule 1 of the Insolvency Act 1986 in relation to, and to the extent applicable to, the Assigned Right or any of them (whether or not the Receiver is an administrative receiver within the meaning of that Act); and
- (d) in relation to any Assigned Right, which he would have if he were its absolute beneficial owner.

8.3 Joint or several

If two or more persons are appointed as Receivers of the same assets, they may act jointly and/or severally so that (unless any instrument appointing them specifies to the contrary) each of them may exercise individually all the powers and discretions conferred on Receivers by this Assignment.

8.4 Receiver as agent

Every Receiver shall be the agent of the relevant Assignor which shall be solely responsible for his acts and defaults and for the payment of his remuneration other than defaults arising as a result of gross negligence, fraud or wilful neglect of the Receiver.

8.5 Receiver's remuneration

Every Receiver shall be entitled to remuneration for his services at a rate to be fixed by agreement between him and the Lender, and the maximum rate specified in section 109(6) of the Act shall not apply.

9 Protection of purchasers

No purchaser or other person dealing with the Lender or any Receiver shall be bound or concerned:

- (a) to see or enquire whether the right of the Lender or any Receiver to exercise any of the powers conferred by this Assignment has arisen or not;
- (b) with the propriety of the exercise or purported exercise of those powers; or
- (c) with the application of any moneys paid to the Lender, to any Receiver or to any other person.

10 Protection of the Lender and others

10.1 Exclusion of liability

None of the Lender or any of its respective officers or employees shall have any responsibility or liability:

- (a) for any action taken or any failure to take action in relation to all or any of the Assigned Rights;
- (b) to account as mortgagee in possession or for any loss on realisation of any Assigned Right;
- (c) for any loss resulting from any fluctuation in exchange rates in connection with any purchase of currencies under Clause 14 (*Currency*);
- (d) for the loss or destruction of, or damage to, any of the Assigned Rights, or to any documents of or evidencing title to them, which are in the possession or held to the order of any such person (and which will be held by such persons at the expense and risk of the Assignors); or
- (e) for any other default or omission in relation to all or any Assigned Right for which a mortgagee in possession might be liable,

except in the case of gross negligence, fraud or wilful misconduct on the part of that person.

10.2 General indemnity

The Borrower shall indemnify the Lender, any Receiver and their respective officers and employees against all actions, proceedings, demands, claims, costs, expenses, and other liabilities reasonably incurred by them in respect of carrying out or purporting to carry out any of the rights, powers and discretions conferred on them by or permitted under this Assignment, except in the case of fraud, gross negligence or wilful misconduct on the part of that person.

10.3 Indemnity out of the Assigned Rights

The Lender and its officers and employees shall be entitled to be indemnified out of the Assigned Rights in respect of the actions, proceedings, demands, claims, costs, expenses and liabilities referred to in Clause 10.2 (*General indemnity*).

11 Preservation of Security

11.1 Reinstatement

If any payment by an Assignor or any other person or discharge given by the Lender (whether in respect of the obligations of any Obligor or any Security for those obligations or otherwise) is avoided or reduced as a result of insolvency, liquidation, administration or any similar event:

- (a) the liabilities of that Assignor and the Security created by this Assignment shall continue as if the payment, discharge, avoidance or reduction had not occurred; and
- (b) the Lender (acting reasonably and on the basis of legal advice received by it for this purpose) shall be entitled to recover the value or amount of that Security or payment from that Assignor, as if the payment, discharge, avoidance or reduction had not occurred.

11.2 Waiver of defences

Neither the Security created by this Assignment nor the obligations of any Assignor under this Assignment shall be affected by an act, omission, matter or thing which, but for this Clause, would reduce, release or prejudice that Security or any of those obligations (whether or not known to the relevant Assignor or the Lender) including:

- (a) any time, waiver or consent granted to, or composition with, any Assignor or other person;
- (b) the release of any Fund Party or any other person under the terms of any composition or arrangement with any person;
- (c) the taking, variation, compromise, exchange, renewal, enforcement or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or Security over, assets of any Assignor 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;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of a Fund Party or any other person;
- (e) any amendment (however fundamental), replacement, variation, novation, assignment or the avoidance or termination of a Finance Document or any other document or Security;
- (f) any unenforceability, illegality or invalidity of any obligation of, or any Security created by, any person under any Finance Document or any other document; or
- (g) any insolvency, liquidation, administration or similar procedure.

11.3 Assignor intent

Without prejudice to the generality of Clause 11.2 (*Waiver of defences*), each Assignor expressly confirms that it intends that the Security created by this Assignment shall extend from time to time to any (however fundamental) 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:

- (a) acquisitions of any nature;
- (b) increasing working capital;
- (c) enabling investor distributions to be made;
- (d) carrying out restructurings;
- (e) refinancing existing facilities;
- (f) refinancing any other indebtedness;
- (g) making facilities available to new borrowers;
- (h) any other variation or extension of the purposes for which any such facility or amount might be made available from time to time; and
- (i) any fees, costs and/or expenses associated with any of the foregoing.

11.4 Immediate recourse

Each Assignor waives any right it may have of first requiring the Lender (or any trustee or agent on its behalf) to proceed against or enforce any other rights or Security or claim payment from any person before claiming from that Assignor under this Assignment. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

11.5 Appropriations

During the Security Period the Lender may:

- (a) refrain from applying or enforcing any moneys, Security or rights held or received by it (or any trustee or agent on its behalf) pursuant to this Assignment in respect of the Secured Liabilities, or, subject to Clause 7.3.1 (*Application of moneys*), apply and enforce the same in such manner and order as it sees fit (whether against the Secured Liabilities or otherwise) and no Assignor shall be entitled to the benefit of the same; and
- (b) hold in an interest-bearing suspense account any moneys received from each Assignor or on account of the Secured Liabilities.

11.6 Deferral of Assignors' rights

During the Security Period and unless the Lender otherwise directs, no Assignor shall exercise any rights which it may have by reason of performance by it of its obligations under this Assignment or the enforcement of the Security created by this Assignment:

- (a) to receive or claim payment from, or be indemnified by a Fund Party;
- (b) to claim any contribution from any guarantor of, or provider of Security in respect of, any Fund Party'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 the Lender under any Finance Document or of any guarantee or Security taken pursuant to, or in connection with, the Finance Documents by the Lender;
- (d) to exercise any right of set-off against any Fund Party; and/or
- (e) to claim or prove as a creditor of any Fund Party in competition with the Lender.

11.7 Additional Security

This Assignment is in addition to, is not in any way prejudiced by and shall not merge with any contractual right or remedy or other Security now or in the future held by or available to the Lender.

11.8 New accounts

If the Lender receives notice (actual or otherwise) of any subsequent Security over or affecting any Assigned Right it may open a new account or accounts in the name of an Assignor and, if it does not do so, it shall nevertheless be treated as if it had done so at the time when it received or was deemed to have received notice of that subsequent Security, and as from that time all payments made by or on behalf of that Assignor to the Lender:

- (a) shall be credited or be treated as having been credited to the new account of the Borrower; and
- (b) shall not operate to reduce the Secured Liabilities at the time when the Lender received or was deemed to have received such notice.

12 Tacking

For the purposes of section 94(1) of the Act, the Lender shall make further advances to the Borrower on the terms and subject to the conditions of the Finance Documents.

and any such document may disapply section 93 of the Act.

13 Power of attorney

13.1 During the Security Period, each Assignor irrevocably and by way of security appoints each of:

- (a) the Lender;
- (b) any delegate or sub-delegate of, or other person nominated in writing by, an officer of the Lender (each with full power to appoint substitutes and to delegate, in each case with liberty to revoke the same); and
- (c) any Receiver,

jointly and severally as that Assignor's attorney (an **Attorney**), in that Assignor's name, on its behalf and in such manner as any Attorney in its or his absolute discretion thinks fit, or necessary at any time following the occurrence of a Declared Default which is continuing or following the failure by that Assignor to comply with a written request from the Lender (acting reasonably) to:

- (i) do anything which an Assignor is obliged to do in accordance with this Assignment and enable an Attorney to exercise (or to delegate) all or any of the rights conferred on it by this Assignment or by applicable law in relation to this Assignment or the Assigned Rights including, without limitation, to take, sign or execute any further documents which the Assignor is required to take, sign or execute in accordance with this Assignment;
 - (ii) exercise in its absolute discretion all rights, powers, remedies, duties and discretions of an Assignor (and in the case of the Manager, granted to the Manager pursuant to the Management Agreement) under:
 - (A) clause 6 (*Investor Loan Commitments*) of the Partnership Agreement; and
 - (B) any provision of the Partnership Agreement necessary to enable the exercise and/or enforcement of the rights, powers, remedies, duties and discretions under (b)(i) above including the right to serve Drawdown Notices thereunder on the Limited Partners,
- (the **Rights**); and
- (iii) do all acts and things reasonably required in connection with the Rights including, without limitation:
 - (A) to sign, execute (whether under hand or under seal or whether as a deed or otherwise) and deliver any and all documents and to give any and all notices to apply to any court, authority or person (for any orders, consents or approvals) in order to effect the Rights;
 - (B) to bring, prosecute, enforce, defend and abandon actions, suits and proceedings in relation to the Rights which an Assignor is able to bring, prosecute, enforce, defend and abandon,

provided in each case that such acts were not carried out by the Lender, its delegate or the Receiver, their officers or employees (as applicable) with gross negligence, fraud or in default of the provisions of this Deed.

- 13.2 Each Assignor confirms the powers enumerated in Clause 13 (*Power of attorney*) above shall be given the widest possible interpretation and confirms this power of attorney shall be conclusive and binding upon that Assignor
- 13.3 Each Assignor ratifies and confirms and agrees to ratify and confirm whatever any Attorney lawfully does or purports to do pursuant to his appointment under this Clause 13 (*Power of Attorney*) provided that any such act is not carried out by the Attorney with gross negligence or in default of the provisions of this Deed.

- 13.4 All costs and expenses incurred by any Attorney under this Clause 13.1 (*Power of attorney*) are recoverable from the Borrower in accordance with Clause 15 (*Costs and expenses*) of the Facility Agreement.
- 13.5 The Borrower shall, within fifteen (15) Business Days of a demand by the Lender, indemnify, defend and hold each Attorney harmless against:
- (a) all obligations, demands, claims, and liabilities (collectively, **Claims**) asserted by any other party in connection with or by virtue of the exercise of the powers conferred under this Clause 13.1 (*Power of attorney*); and
 - (b) all costs and expenses incurred (including legal fees (subject to any agreed cap)), or paid by any Attorney from, following, or consequential to the lawful exercise of the powers conferred under this Clause 13.1 (*Power of attorney*), except for Claims and/or losses directly caused by such Attorney's, gross negligence, fraud or wilful misconduct.

14 Currency

14.1 The Spot Rate

In this Clause 14, the **Spot Rate** means, in relation to the Lender, the spot rate of exchange of the Lender for the purchase of any currency with any other currency in the London foreign exchange market.

14.2 Conversion of moneys received

The Lender (acting reasonably) may convert any moneys received, recovered or realised in any currency under this Assignment (including the proceeds of any previous conversion under this Clause 14) from their existing currency into any other currency, by purchasing the that other currency at the Spot Rate.

15 Re-assignment of Assigned Rights

15.1 Time of re-assignment

Upon the irrevocable and unconditional payment and discharge in full of the Secured Liabilities, unless, to the knowledge of the Lender, any third party has any subrogation or other rights in respect of the Security created by this Assignment at that time, the Lender (acting reasonably) shall, or shall procure that its appointees will, as soon as is reasonably practicable at the request and cost of the Borrower, re-assign all interest in the Assigned Rights absolutely to the Assignors and execute and deliver such further deeds or documents as an Assignor may reasonably require in order to give effect to this clause. Section 93 of the Act shall not apply to this Assignment.

15.2 Representations on re-assignment

The Lender shall make and give no representations, warranties or covenants in relation to any Assigned Right re-assigned pursuant to Clause 15.1 (*Time of re-assignment*) except that it has not itself created any Security over them.

16 Governing law and enforcement

16.1 Governing law

English law governs this Assignment, its interpretation and any non-contractual obligations arising from or connected with it.

16.2 Jurisdiction

16.2.1 The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Assignment (including a dispute regarding the existence, validity or termination of this Assignment) (a **Dispute**).

16.2.2 The parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no party will argue to the contrary.

16.2.3 This Clause 16.2 is for the benefit of the Lender only. As a result, the Lender shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Lender may take concurrent proceedings in any number of jurisdictions.

Executed as a deed and delivered on the date appearing at the beginning of this Assignment.

Schedule 1- Form of notice of assignment

To: [Limited Partner]

[insert address of Limited Partner]

Date: [***]

Dear Sirs,

Agreement in relation to Octopus Commercial Real Estate Debt Fund II LP (the "Borrower") dated [29 September 2017] (the "Agreement")

All words and expressions defined in the Agreement shall have the same meanings when used in this letter unless the context otherwise requires.

We hereby give you notice that, without prejudice to the notice dated [***] 2017 sent to you in respect of an assignment by way of security dated 6 October 2017 in relation to the Agreement in favour of Silicon Valley Bank, each of (i) the Borrower acting through the General Partner, (ii) Commercial Real Estate Debt Fund (England) GP LLP (the **General Partner**) and (iii) Octopus AIF Management Limited (each an **Assignor**, together the **Assignors**) in each case assigned by way of security to Silicon Valley Bank (the **Lender**) pursuant to an assignment dated [***] 2018 (the **Assignment**), all its right, title, powers, benefit, interest, privileges and remedies, in each case present and future in, to, under and relative to all present and future money and proceeds paid or payable by Limited Partners to the Borrower pursuant to the Agreement including, without limitation:

- (a) the rights to issue and deliver or procure the issue and delivery of Drawdown Notices;
- (b) the rights, titles, interests and privileges in and to receive payments from Limited Partners, including the Investor Commitments; and
- (c) the rights to demand and enforce payments to be made by Limited Partners and to pursue all rights and remedies in connection with all of the foregoing,

(the Rights).

We further notify you that:

- (i) you are authorised to disclose information in relation to the Rights to the Lender on request by the Lender;
- (ii) you must comply with the terms of any written notice or instructions in any way relating to or purporting to relate to the Rights which you may receive from the Lender; and
- (iii) the provisions of this letter may only be revoked with the written consent of the Lender.

This letter, its interpretation and any non-contractual obligations arising from or connected with it are governed by English law.

Yours faithfully

.....
Octopus Commercial Real Estate Debt Fund II LP acting by its general partner, Commercial Real Estate Debt Fund (England) GP LLP

Schedule 2 - Form of acknowledgement and confirmation

To: Silicon Valley Bank as Lender

From: [Limited Partner]

We hereby acknowledge receipt of a notice (**Notice**) dated [***] addressed to us by Octopus Commercial Real Estate Debt Fund II LP (acting by its general partner, Commercial Real Estate Debt Fund (England) GP LLP) (a copy of which is annexed to this document).

All words and expressions defined in or incorporated by reference to the Notice shall have the same meanings when used in this letter unless expressly defined herein or the context otherwise requires.

By executing this letter, we hereby:

- (a) acknowledge and consent to the security created under the Assignment in relation to the Rights;
- (b) accept the authorisations set out in the Notice;
- (c) accept the instructions set out in the Notice and undertake to comply with them;
- (d) confirm that, other than the notice sent to us by Octopus Commercial Real Estate Debt Fund II LP dated [***] 2017 in relation to an assignment by way of security in favour of Silicon Valley Bank, we have not received notice of any prior assignment nor of any other security interest of any kind whatsoever given over or in respect of all or any of the Rights or any related rights thereto;
- (e) confirm that we are not aware of any dispute nor of any other opposing or conflicting claims in relation to any of the Rights or any related rights thereto or any action whatsoever in respect of any of the Rights;
- (f) undertake not to exercise any rights of set-off, counterclaim, retention or deduction or any lien or other rights of security that we may have from time to time over all or any part of the Rights or any rights related thereto; and
- (g) undertake to inform the Lender, immediately in writing, if we become aware of any dispute, security interest of any kind whatsoever, claim or purported exercise of any rights over or in relation to all or any part of the Rights or any rights related thereto.

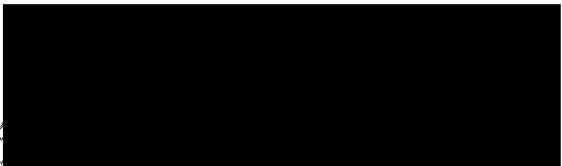
This letter, its interpretation and any non-contractual obligations arising from or connected with it are governed by English law.

Yours faithfully,

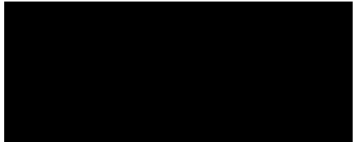
.....
[Limited Partner]

Date: [***]

EXECUTED AS A DEED by)
CHRIS HULATT)
for and on behalf of)
Octopus Commercial Real Estate Debt)
Fund II LP)
acting by its general partner,
Commercial Real Estate Debt Fund
(England) GP LLP



In the presence of:



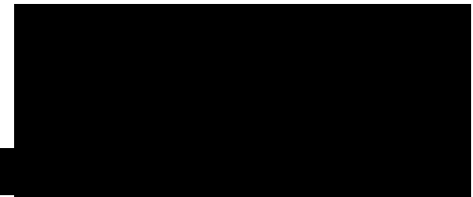
Signature of witness:

Name of witness:

TOM VERLANDER
C/O 6TH FLOOR
33 HOLBORN
LONDON EC1N 2HT

Address

EXECUTED AS A DEED by)
LUDOVIC MACKENZIE)
for and on behalf of)
Commercial Real Estate Debt Fund)
(England) GP LLP)



In the presence of:



Signature of witness:

Name of witness:

TOM VERLANDER
C/O 6TH FLOOR
33 HOLBORN
LONDON EC1N 2HT

Address

EXECUTED AS A DEED by
ALISTAIR SEABRIGHT
for and on behalf of
Octopus AIF Management Limited

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)
)
)

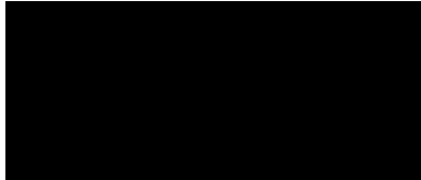


In the presence of:

Signature of witness:

Name of witness:

Address



.....TOM VERLANDER.....
.....C/O 6TH FLOOR.....
.....33 ADELPHI.....
.....LONDON EC1N 2HT.....
.....

SIGNED by
for and on behalf of
Silicon Valley Bank

)
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)
)

EXECUTED AS A DEED by

for and on behalf of
Octopus AIF Management Limited

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)

.....

In the presence of:

Signature of witness:

.....

Name of witness:

.....

Address

.....

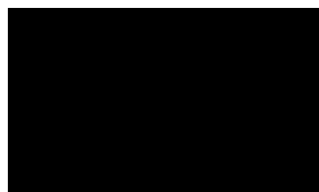
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SIGNED by

)
)
)
)

for and on behalf of
Silicon Valley Bank



Ryan Phayer