

MR01

Particulars of a charge

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28/03/2015  
COMPANIES HOUSE

#216

☒ What this form is for  
You may use this form to register  
a charge created or evidenced by  
an instrument

☒ What this form is NOT for  
You may not use this form to  
register a charge where the  
instrument Use form MR01

This form **must be delivered to the Registrar for registration within  
21 days** beginning with the day after the date of creation of the charge. If  
delivered outside of the 21 days it will be rejected unless it is accompanied by a  
court order extending the time for delivery

☒ You **must** enclose a certified copy of the instrument with this form. This will be  
scanned and placed on the public record. **Do not send the original**

1 Company details

Company number 09439166 ✓  
Company name in full LONDON AND FULHAM LIMITED ✓

For official use  
Filing in this form  
Please complete in typescript or in  
bold black capitals  
All fields are mandatory unless  
specified or indicated by \*

2 Charge creation date

Charge creation date 26/03/2015 ✓

3 Names of persons, security agents or trustees entitled to the charge

Please show the names of each of the persons, security agents or trustees  
entitled to the charge

Name PROPERTY LENDING LLP ✓

Name

Name

Name

If there are more than four names, please supply any four of these names then  
tick the statement below

☐ I confirm that there are more than four persons, security agents or  
trustees entitled to the charge

MR01

Particulars of a charge

4

Brief description

Please give a short description of any land, ship, aircraft or intellectual property registered or required to be registered in the UK subject to a charge (which is not a floating charge) or fixed security included in the instrument

Please submit only a short description. If there are a number of plots of land, aircraft and/or ships, you should simply describe some of them in the text field and add a statement along the lines of, "for more details please refer to the instrument"

Brief description

Freehold property known as 73, 75 and 77, Britannia Road, London SW6 2JR as the same is registered at the Land Registry with freehold title absolute under title number LN28513

Please limit the description to the available space

5

Other charge or fixed security

Does the instrument include a charge (which is not a floating charge) or fixed security over any tangible or intangible or (in Scotland) corporeal or incorporeal property not described above? Please tick the appropriate box

☒ Yes

☐ No

6

Floating charge

Is the instrument expressed to contain a floating charge? Please tick the appropriate box

☒ Yes Continue

☐ No Go to Section 7

Is the floating charge expressed to cover all the property and undertaking of the company?

☒ Yes

7

Negative Pledge

Do any of the terms of the charge prohibit or restrict the company from creating further security that will rank equally with or ahead of the charge? Please tick the appropriate box

☒ Yes

☐ No

8

Trustee statement <sup>1</sup>

You may tick the box if the company named in Section 1 is acting as trustee of the property or undertaking which is the subject of the charge

☐

<sup>1</sup> This statement may be filed after the registration of the charge (use form MR06)

9

Signature

Please sign the form here

Signature

Signature

X  X

This form must be signed by a person with an interest in the charge

# MR01

## Particulars of a charge



### Presenter information

You do not have to give any contact information, but if you do, it will help Companies House if there is a query on the form. The contact information you give will be visible to searchers of the public record.

Contact name  
DANIELLE KEEN-O'BOYLE (P220/12)

Company name  
BRECHER

Address  
4TH FLOOR

64 NORTH ROW

LONDON

Post town

County/Region

Postcode  
W 1 K 7 D A

Country

DX  
DX 42701 OXFORD CIRCUS NORTH

Telephone  
020 7563 1000



### Certificate

We will send your certificate to the presenter's address if given above or to the company's Registered Office if you have left the presenter's information blank.



### Checklist

We may return forms completed incorrectly or with information missing.

Please make sure you have remembered the following:

- ☒ The company name and number match the information held on the public Register
- ☒ You have included a certified copy of the instrument with this form
- ☒ You have entered the date on which the charge was created
- ☒ You have shown the names of persons entitled to the charge
- ☒ You have ticked any appropriate boxes in Sections 3, 5, 6, 7 & 8
- ☒ You have given a description in Section 4, if appropriate
- ☒ You have signed the form
- ☒ You have enclosed the correct fee
- ☒ Please do not send the original instrument, it must be a certified copy



### Important information

Please note that all information on this form will appear on the public record.



### How to pay

A fee of £13 is payable to Companies House in respect of each mortgage or charge filed on paper.

Make cheques or postal orders payable to 'Companies House'.



### Where to send

You may return this form to any Companies House address. However, for expediency, we advise you to return it to the appropriate address below.

**For companies registered in England and Wales**  
The Registrar of Companies, Companies House,  
Crown Way, Cardiff, Wales, CF14 3UZ  
DX 33050 Cardiff

**For companies registered in Scotland**  
The Registrar of Companies, Companies House,  
Fourth floor, Edinburgh Quay 2,  
139 Fountainbridge, Edinburgh, Scotland, EH3 9FF  
DX ED235 Edinburgh 1  
or LP - 4 Edinburgh 2 (Legal Post)

**For companies registered in Northern Ireland**  
The Registrar of Companies, Companies House,  
Second Floor, The Linenhall, 32-38 Linenhall Street,  
Belfast, Northern Ireland, BT2 8BG  
DX 481 N R Belfast 1



### Further information

For further information, please see the guidance notes on the website at [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk) or email [enquiries@companieshouse.gov.uk](mailto:enquiries@companieshouse.gov.uk)

This form is available in an alternative format. Please visit the forms page on the website at [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk)



FILE COPY

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

Company number: 9439166

Charge code: 0943 9166 0001

The Registrar of Companies for England and Wales hereby certifies that a charge dated 26th March 2015 and created by LONDON AND FULHAM LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 28th March 2015

Given at Companies House, Cardiff on 10th April 2015



Companies House



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES

WE CERTIFY THIS TO BE  
A TRUE COPY OF THE ORIGINAL

*Brecher*  
BRECHER SOLICITORS

27/3/15  
DATED

## Security Agreement

between

- (1) LONDON AND FULHAM LIMITED
- (2) PROPERTY LENDING LLP

Dated 26 March 2015

PROPERTY LENDING LLP



COMPANIES HOUSE

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This Deed is made on 26 March 2015

**Between:**

- (1) **LONDON AND FULHAM LIMITED** incorporated and registered in England & Wales with company number 09439166 whose registered office is at 15 Woodlands, London NW11 9QJ ("**Borrower**"), and
- (2) **PROPERTY LENDING LLP** incorporated and registered in England & Wales with company number OC376724 whose registered office is at 6th Floor, 338 Euston Road, London NW1 3BG ("**Lender**")

**Background:**

The Lender has agreed, pursuant to the Facility Letter, to provide the Borrower with a loan facility on a secured basis

Under this agreement, the Borrower provides security to the Lender for the loan facility made available under the Facility Letter

**Agreed terms**

**1 Definitions and interpretation**

**1.1 Definitions**

In this agreement, unless a contrary indication appears, the definitions and rules of interpretation used in the Facility Letter also apply in this agreement and the following capitalised terms have the following meanings

**"Administrator"** means an administrator appointed to manage the affairs, business and property of the Borrower pursuant to Paragraph 15 of Schedule 6

**"Assigned Agreement"** means an agreement specified in Schedule 1

**"Book Debts"** means 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"** means 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"** means all the assets, property and undertaking for the time being, subject to the security interests created by this agreement (and references to the Charged Property shall include references to any part of it)

**"Costs"** means 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

**"Designated Account"** means any account of the Borrower nominated by the Lender as a designated account for the purposes of this agreement (including without limitation the Construction Retention Account and the Exchanged Deposit Account)

**"Environment"** means 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"** means all laws and regulations of any relevant jurisdiction which relate to air, water, land and living organisms (including the ecological systems of which they form part), Hazardous Substances or health and safety matters

**"Equipment"** means 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

**"Facility Letter"** means the facility letter dated 17 March 2015 issued by the Lender to the Borrower for the provision of the loan facilities secured by this agreement, together with any subsequent amendments thereto or replacements thereof agreed between the Lender and the Borrower, together with the standard terms and conditions incorporated therein

**"Financial Collateral"** means shall have the meaning given to that expression in the Financial Collateral Regulations

**"Financial Collateral Regulations"** means the Financial Collateral Arrangements (No 2) Regulations 2003 (*SI 2003/3226*)

**"Hazardous Substance"** means any waste, pollutant, contaminant or other substance that may be harmful to human health or the environment or a nuisance or that may make the use or ownership of any land or property more costly

**"Headlease"** means a lease pursuant to which a Property is held

**"Insurance Policies"** means 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)

**"Intellectual Property"** means 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"** means 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

**"Lease"** means any lease, underlease, tenancy, licence or other right of occupation to which a Property is from time to time subject together with any agreement to grant any such interest or right and any related guarantee or other security for the performance of the lessee's obligations

**"Perfection Requirements"** means the making of the appropriate registrations, filings or notifications of the Finance Documents as specifically contemplated by any legal opinion delivered under the Finance Documents.

**"Practical Completion"** means the date practical completion of the Development in accordance with the Agreed Plans as certified by the Project Monitoring Surveyor

**"Properties"** means 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 2) and **"Property"** means any of them

**"Receiver"** means a receiver, manager or receiver and manager of any or all of the Charged Property appointed under Paragraph 6 of Schedule 6.



**"Secured Liabilities"** means 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 or in any other capacity, under or in connection with the Facility Letter, the Finance Documents or this agreement (including, without limitation, those arising under Clause 12 3(b)), together with all interest (including, without limitation, default interest) accruing in respect of those monies or liabilities

**"Security Financial Collateral Arrangement"** means shall have the meaning given to that expression in the Financial Collateral Regulations

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

**"Security Period"** means the period starting on the date of this agreement 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

**"Target Completion Date"** means 15 June 2016  
(being the date which is 15 months from and including the date of this agreement)

**"Transaction Documents"** means the Finance Documents and the Construction Documents

## 12 Interpretation

Unless the context otherwise requires, in this agreement

- (a) 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 agreement,
- (b) a reference to one gender includes a reference to the other genders,
- (c) words in the singular include the plural and in the plural include the singular,
- (d) a reference to a clause or Schedule is to a clause of, or Schedule to, this agreement, and references to paragraphs are to paragraphs of the relevant Schedule,
- (e) a reference to **this agreement** (or any specified provision of it) or any other document shall be construed as a reference to this agreement, that provision or that document as in force for the time being and as amended or novated from time to time,
- (f) 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,
- (g) a reference to an **amendment** includes a supplement, variation, novation or re-enactment (and **amended** shall be construed accordingly),
- (h) a reference to **assets** includes present and future properties, undertakings, revenues, rights and benefits of every description,
- (i) a reference to an **authorisation** includes an authorisation, consent, licence, approval, resolution, exemption, filing, registration and notariation,
- (j) 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,

- (k) a reference to the **Borrower** or the **Lender** shall include its successors, permitted transferees and permitted assigns, and
- (l) clause, schedule and paragraph headings shall not affect the interpretation of this agreement

### **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 agreement

### **1 4 Nature of security over real property**

A reference in this agreement to a charge or mortgage of any freehold, leasehold or commonhold property includes

- (a) all buildings and fixtures (including trade and tenant's fixtures) that are situated on that property at any time,
- (b) the proceeds of the sale of any part of that property, and
- (c) 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**

For the purposes of section 2 of the Law of Property (Miscellaneous Provisions) Act 1989, the terms of the Finance Documents and of any side letters between any parties in relation to the Finance Documents are incorporated into this agreement

### **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 agreement.

### **1 7 Perpetuity period**

If the rule against perpetuities applies to any trust created by this agreement, 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 agreement, which is a qualifying floating charge for such purposes

### **1 9 Schedules**

The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement 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

- (a) charges to the Lender, by way of first legal mortgage, all the Properties specified in Schedule 2,
- (b) charges to the Lender, by way of first fixed charge
  - (i) all Properties acquired by the Borrower in the future,
  - (ii) 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,
  - (iii) all present and future rights, licences, guarantees, rents, deposits, contracts, covenants and warranties relating to each Property (including without limitation, all Construction Documents and Material Contracts not assigned pursuant to Clause 3.1(d) below),
  - (iv) 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,
  - (v) all its present and future goodwill and uncalled capital,
  - (vi) all the Equipment,
  - (vii) all the Intellectual Property,
  - (viii) all the Book Debts,
  - (ix) all the Investments, and
  - (x) 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)
- (c) 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;
- (d) assigns to the Lender absolutely, subject to a proviso for reassignment on irrevocable discharge in full of the Secured Liabilities, to the extent it is assignable, the benefit of each Assigned Agreement and the benefit of any guarantee or security for the performance of an Assigned Agreement, and
- (e) 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(a) to Clause 3.1(d) inclusive.

### **3.2 Automatic conversion of floating charge**

The floating charge created by Clause 3 1(e) shall automatically and immediately (without notice) be converted into a fixed charge over the relevant Charged Property if

- (a) the Borrower
  - (i) creates, or attempts to create, without the prior written consent of the Lender, a Security Interest or a trust in favour of another person on all or any part of the Charged Property, or
  - (ii) 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),
- (b) a receiver is appointed over all or any of the Charged Property that is subject to the floating charge,
- (c) any person levies (or attempts to levy) any distress, attachment, execution or other process against all or any part of the Charged Property; or
- (d) 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, by written notice to the Borrower, convert the floating charge created under this agreement into a fixed charge as regards any part of the Charged Property specified by the Lender in that notice if

- (a) any of the events set out in Paragraph 1 of Schedule 6 occurs and is continuing, or
- (b) the Lender considers those assets to be in danger of being seized or sold under any form of distress, attachment, execution or other legal process or to be otherwise in jeopardy

### **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 agreement which, but for that crystallisation, would be subject to a floating charge under this agreement, shall (unless the Lender confirms otherwise to the Borrower in writing) be charged to the Lender by way of first fixed charge

### **3 5 No conversion by reason of moratorium**

Notwithstanding the remainder of this Clause 3, the floating charge contained in this debenture may not be converted into a fixed charge solely by reason of the obtaining of a moratorium, or anything done with a view to obtaining a moratorium, as a preliminary to a creditors voluntary arrangement, by an eligible company (as determined in Schedule A1 of the Insolvency Act) under the Insolvency Act 1986

## **4 Liability of the Borrower**

### **4 1 Liability not discharged**

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

- (a) any security, guarantee, indemnity, remedy or other right held by, or available to, the Lender that is, or becomes, wholly or partially illegal, void or unenforceable on any ground,

- (b) the Lender renewing, determining, varying or increasing any facility or other transaction in any manner or concurring in, accepting or varying any compromise, arrangement or settlement, or omitting to claim or enforce payment from any other person, or
- (c) any other act or omission, 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 agreement against the Borrower

#### **5 Representations and warranties**

The Borrower makes the representations and warranties set out in Schedule 3 to the Lender. The representations and warranties set out in Schedule 3 are made by the Borrower on the date of this agreement and the representations and warranties contained in paragraphs 1 to 5, 11, 13, and 15 to 20 of Schedule 3 are deemed to be made by the Borrower on each day of the Security Period with reference to the facts and circumstances then existing

#### **6 Covenants**

The Borrower covenants with the Lender in the terms set out in Schedule 4

#### **7 Powers of the Lender**

The Lender shall have the powers set out in Schedule 5.

#### **8 Enforcement**

##### **8.1 Enforcement events**

The security constituted by this agreement is repayable on demand and shall be immediately enforceable if any of the events set out in Paragraph 1 of Schedule 6 occurs. The parties to this agreement agree that the provisions of Schedule 6 shall apply to this agreement and shall be binding between them

##### **8.2 Receiver's powers**

A Receiver shall have, in addition to the powers conferred on receivers by statute, the further powers set out in Schedule 7

##### **8.3 Right of appropriation**

- (a) To the extent that
  - (i) the Charged Property constitutes Financial Collateral, and
  - (ii) this agreement 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 agreement 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
- (b) 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)

- (c) The Borrower agrees that the methods of valuation provided for in this clause are commercially reasonable for the purposes of the Financial Collateral Regulations

## **9 Costs and indemnity**

### **9.1 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

- (a) this agreement or the Charged Property,
- (b) protecting, perfecting, preserving or enforcing (or attempting to do so) any of the Lender's or Receiver's rights under this agreement,
- (c) suing for, or recovering, any of the Secured Liabilities,

(including, without limitation, the Costs of any proceedings in connection with this agreement or the Secured Liabilities), together with interest on any amount due under Clause 9.1(b) and Clause 9.1(c) at the default rate of interest specified in the Facility Letter

### **9.2 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

- (a) the exercise, or purported exercise, of any of the powers, authorities or discretions vested in them under this agreement,
- (b) any matter or thing done, or omitted to be done, in relation to the Charged Property under those powers, or
- (c) any default or delay by the Borrower in performing any of its obligations under this agreement

## **10 Release**

~~Subject to Clause 12.3, 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 agreement~~

## **11 Assignment and transfer**

### **11.1 Assignment by Lender**

At any time, without the consent of the Borrower, the Lender may assign or transfer the whole or any part of its rights and obligations under this agreement to any other person

### **11.2 Assignment by Borrower**

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

## **12 Further provisions**

### **12.1 Independent security**

This agreement 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 agreement.

### **12.2 Continuing security**

This agreement 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 agreement in writing.

### **12.3 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:

- (a) the Lender or its nominee may retain this agreement 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
- (b) 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.

### **12.4 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.

### **12.5 Rights cumulative**

The rights and remedies of the Lender conferred by this agreement 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.

### **12.6 Variations and waivers**

Any waiver or variation of any right or remedy by the Lender (whether arising under this agreement or under the general law), or any consent given under this agreement, is only 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.

### **12.7 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 agreement or constitute a suspension or variation of any such right or remedy.

### **12.8 Delay**

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

**12 9 Single or partial exercise**

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

**12 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 agreement

**12 11 Partial invalidity**

The invalidity, unenforceability or illegality of any provision (or part of a provision) of this agreement 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

**12 12 Counterparts**

This agreement 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

**13. Notices**

Condition 19 (Notices) as set out in the standard terms and conditions forming part of the Facility Letter apply to this agreement, as though set out in full in it

**14 Governing law and jurisdiction**

**14 1 Governing law**

This agreement 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

**14 2 – Jurisdiction**

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this agreement (including a dispute regarding the existence, validity or termination of this agreement) (a "**Dispute**")
- (b) The Borrower agrees that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly the Borrower will not argue to the contrary
- (c) This Clause 14 2 is for the benefit of the Lender only. The Lender may take 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

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



**Schedule 1**  
**(Assigned Agreements)<sup>1</sup>**

	Contract	Date	Parties
1	None		
2			

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<sup>1</sup> Include details of any Building Contract any Appointments, any Performance Bond, and any other material contracts which warrant assignment, which are in existence at the date of this agreement

**Schedule 2**

(Property)

**Part 1**

(Registered Property)

All that freehold land and buildings known as 73, 75 and 77 Britannia Road, London SW6 2JR as is registered with title absolute at the Land Registry under Title Number LN28513

**Part 2**

(Unregistered Property)

None

### **Schedule 3**

#### **(Representations and warranties)**

**1 Status**

- (a) It is a limited liability corporation or partnership, duly incorporated and validly existing under the laws of its jurisdiction of incorporation
- (b) It and each of its Subsidiaries has the power to own their respective assets and carry on their respective businesses as they are being conducted

**2 Binding obligations**

Its obligations undertaken in each Finance Document and each Material Contract to which it is a party are legal, valid, binding and enforceable obligations

**3 Power and Authority**

It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, the Transaction Documents to which it is a party and the transactions contemplated by those Transaction Documents

**4 Validity and Admissibility in Evidence**

Subject to the Perfection Requirements, all Authorisations required or desirable

- (a) to enable it to lawfully enter into, exercise its rights and comply with its obligations in the Transaction Documents to which it is a party, and
- (b) to make the Transaction Documents to which it is a party admissible in evidence in the Borrower's jurisdiction of incorporation,

have been obtained or effected and are in full force and effect

**5 Non-conflict with other obligations**

The entry into and performance by the Borrower of its obligations under the Finance Documents and the granting of the Security do not and will not conflict with and do not exceed any limit contained in

- (a) any law or regulation applicable to it,
- (b) its constitutional documents, or
- (c) any agreement or instrument binding upon it or any of its assets or constitute a default or termination event (however described) under any such agreement or instrument

**6 Insolvency**

- (a) It is not unable (or capable of being deemed unable) to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or any analogous provision in any relevant jurisdiction
- (b) No Obligor has taken any corporate action nor has any legal proceeding or other procedure or step been taken, started or threatened in relation to:

- (i) the suspension of payments, a moratorium of any indebtedness, the winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of any Obligor,
- (ii) a composition, compromise, assignment or arrangement with any creditor of any Obligor,
- (iii) the expropriation, attachment, sequestration, distress or execution of any asset or assets of any Obligor,
- (iv) the appointment of a liquidator, receiver, administrator, administrative receiver, compulsory manager or other similar officer in respect of any Obligor or any of its assets, or
- (v) enforcement of any Security over any assets of any Obligor,

or any analogous procedure or step in any relevant jurisdiction

## **7 Ranking**

The Security has or will have first-ranking priority and it is not subject to any prior ranking or pari passu ranking Security Interest and the payment obligations of each Obligor under the Finance Documents rank at least pari passu with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally

## **8 Centre of main interest and establishments**

For the purposes of The Council of the European Union Regulation No 1346/2000 on Insolvency Proceedings (the "Regulation"), the Borrower's "centre of main interest" (as that term is used in article 3(1) of the Regulation) is situated in England and Wales and the Borrower has no "establishment" (as that term is used in article 2(h) of the Regulation) in any other jurisdiction

## **9 Governing law and enforcement**

- (a) The choice of law specified in each Finance Document as the governing law of the Finance Documents will be recognised and enforced in its jurisdiction of incorporation
- (b) Any judgment obtained in England in relation to a Finance Document (or in the jurisdiction of the governing law of that Finance Document) will be recognised and enforced in its jurisdiction of incorporation and, in relation to a Finance Document governed by a law other than English law, in the jurisdiction of the governing law of that Finance Document

## **10 No filing or stamp taxes**

Under the law of the Borrower's jurisdiction of incorporation it is not necessary that the Finance Documents be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration or similar Tax be paid on or in relation to the Finance Documents or the transactions contemplated by the Finance Documents, save in each case for complying with any applicable Perfection Requirements

## **11 No default**

- (a) No breach of the covenants set out in Schedule 4 is continuing or might reasonably be expected to result from the making of any utilisation of the Facility
- (b) No other event or circumstance is outstanding which constitutes a default under any other agreement or instrument which is binding on the Borrower or any Obligor or any

of their assets which might have a materially prejudicial effect on the Lender's interests under the Finance Documents

**12 No misleading information**

In relation to the information provided by the Borrower or on its behalf to the Lender or the Valuer or any adviser to either of them

- (a) any factual information was true and accurate in all material respects as at the date it was provided or as at the date (if any) at which it is stated,
- (b) any financial projections have been prepared on the basis of recent historical information and on the basis of reasonable assumptions, and
- (c) nothing has occurred or been omitted from the information and no information has been given or withheld that results in the information provided being untrue or misleading in any material respect

**13 Title**

- (a) The Borrower has a good and marketable title to the Property shown in Schedule 2 and is the legal and beneficial owner of that Property
- (b) Each Obligor has good and marketable title to, or valid leases or licences of, or is otherwise entitled to use (in each case, on arm's-length terms) all material assets (other than the Property) necessary for the conduct of its business as it is being, and is proposed to be, conducted.
- (c) There are no covenants, agreements, stipulations, reservations, conditions, interests, rights or other matters whatsoever (subject to any qualifications in any relevant Certificate of Title) which adversely affect the Property
- (d) No Obligor has received any notice of any claim by any person in respect of ownership of the Property or any interest in it, nor has any acknowledgement been given to any person in respect of any person which, in either case, could be expected to adversely affect the value of the Property
- (e) The Borrower has read each Certificate of Title and is not aware of any material omission or inaccuracy in any Certificate of Title.

**14 Insurances**

- (a) The insurances required by Schedule 4 are in full force and effect
- (b) No event or circumstance has occurred, and there has been no failure to disclose a fact, which would entitle any insurer to reduce or avoid its liability under any such insurance

**15 No proceedings pending or threatened**

No litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency which, if adversely determined, might reasonably be expected to have a materially prejudicial effect on the Lender's interests under the Finance Documents have (to the best of the Borrower's knowledge and belief) been started or threatened

**16 Dangerous substances**

To the best of the Borrower's knowledge, information and belief no dangerous substance has been used, disposed of, generated, stored, dumped, released, deposited, buried or emitted at, on, from or under the Property or any premises thereon

**17 Environmental laws and licences**

The Borrower has

- (a) complied with all Environmental Laws to which it may be subject,
- (b) obtained all Authorisations required in connection with its business under Environmental Law, and
- (c) complied with the terms of those Authorisations

**18 Environmental releases**

- (a) No property currently or previously owned, leased, occupied or controlled by the Borrower is contaminated with any Hazardous Substance, and
- (b) No discharge, release, leaching, migration or escape of any Hazardous Substance into the environment has occurred or is occurring on, under or from that property

**19 Taxes**

- (a) The Borrower is not required to make any deduction for or on account of Tax from any payment the Borrower may make under any Finance Document
- (b) The Borrower is not nor will it be deemed to be resident, domiciled or carrying on business in the Borrower's jurisdiction of incorporation by reason only of the execution, performance and/or enforcement of any Finance Document
- (c) Each Obligor that has granted Security over the Property is entitled to receive the Rental Income paid to it or on its behalf free of withholding or deduction on account of Tax

**20 Investments**

- (a) The Investments are fully paid and are not subject to any option to purchase or similar rights
- (b) No constitutional document of an issuer of an Investment nor any agreement
  - (i) restricts or inhibits any transfer of the Investments on creation or enforcement of the security constituted by this agreement, or
  - (ii) contains any right of pre-emption in relation to the Investments

## **Schedule 4**

### **(Covenants)**

#### **1 General undertakings**

##### **1.1 Authorisations**

- (a) The Borrower shall promptly
  - (i) obtain, comply with and do all that is necessary to maintain in full force and effect, and
  - (ii) supply certified copies to the Lender of,  
  
any Authorisation required under any law or regulation of its jurisdiction of incorporation to enable it to perform its obligations under the Finance Documents and to ensure the legality, validity, enforceability or admissibility in evidence in its jurisdiction of incorporation of any Finance Document
- (b) The Borrower shall ensure that the Perfection Requirements are complied with promptly and in any event before the final date on which it is necessary to carry out any such Perfection Requirement in order to achieve the relevant perfection, protection or priority of any Security

##### **1.2 Compliance with laws**

The Borrower shall comply in all respects with all laws to which it may be subject, if failure so to comply would materially impair its ability to perform its obligations under the Finance Documents

##### **1.3 Taxes**

- (a) The Borrower shall pay all Tax required to be paid by it within the time period allowed for payment without incurring any penalties for non-payment
- (b) The Borrower shall not change its residence for Tax purposes

##### **1.4 VAT**

The Borrower shall.

- (a) not form or be a member of any VAT Group for the purposes of Section 43 of the VAT Act 1994,
- (b) comply with the Borrower's obligations under the VAT Act 1994 and regulations thereunder,
- (c) apply to make VAT returns to H M Revenue & Customs on a quarterly/monthly basis,
- (d) take all steps to ensure that H M Revenue & Customs make all repayments of VAT due to the Borrower as soon as practicable, and
- (e) in relation to the Property exercise and maintain any option, right to elect or discretion to waive exemption which may now or at any time be available to the Borrower to levy VAT on any supplies made by the Borrower (including without limitation to impose or charge VAT on the Rental Income).

## **1 5 Negative pledge**

The Borrower shall not create or permit to subsist any Security Interest over any of its assets other than Security Interests created in favour of the Lender or with the prior written approval of the Lender

## **1 6 Disposals**

- (a) The Borrower shall not enter into a single transaction or a series of transactions (whether related or not and whether voluntary or involuntary) to sell, lease, transfer or otherwise dispose of any asset other than
  - (i) of a Property on arm's-length terms if the Lender has consented to that sale, lease, transfer or other disposal, or
  - (ii) arising as a result of the grant of the Security
- (b) Before entering into any agreement to sell any dwelling on a Property the Borrower must have previously obtained the Lender's approval to the form of agreement it proposes to use and the form of any lease it intends to grant in relation to that dwelling
- (c) The Lender hereby consents to the Borrower entering into agreements in materially the form approved pursuant to paragraph 1 6(b) and completing the disposals to which those agreements relate provided
  - (i) no Obligor is in breach of any of its obligations under any Finance Document,
  - (ii) the purchaser under the agreement is a person who is not connected to an Obligor or any of the Borrower's directors or shareholders,
  - (iii) the agreement is entered into on arms length terms,
  - (iv) the price payable under the agreement net of the value of all discounts, rebates, allowances and other incentives is (in the Borrower's opinion) the open market price for the dwelling and (in any event) is not less than the amount agreed by the Lender pursuant to paragraph 5 2 (*Prior approvals*),
  - (v) the purchaser pays not less than a five percent (10%) deposit under the agreement,
  - (vi) any lease to be granted pursuant to the agreement has been approved pursuant to paragraph 1 6(b),
  - (vii) any deposit held by the Borrower's solicitors as agent for the Borrower is paid into the Exchanged Deposit Account, and
  - (viii) the Borrower's solicitors have provided an undertaking to pay the Net Proceeds of Sale, it being acknowledged that where a retention is made from the sale price in accordance with the agreement such undertaking shall only apply to the amount of the retention when it is released to the Borrower

## **1 7 Merger and change of business**

The Borrower shall not enter into any amalgamation, demerger, merger or corporate reconstruction nor shall any substantial change be made to the general nature of the business of the Obligors taken as a whole from that carried on at the date of this agreement



**1 8 Assets**

The Borrower shall maintain in good working order and condition (ordinary wear and tear excepted) all its assets necessary for the conduct of its business as conducted from time to time

**1 9 Arm's-length terms**

The Borrower shall not enter into any contract or arrangement with or for the benefit of any other person (including any disposal to that person) other than in the ordinary course of business, for full market value and on arm's-length terms

**1 10 Guarantees**

The Borrower shall not issue or allow to remain outstanding any guarantee in respect of any liability or obligation of any person save for any Finance Document (without the prior written consent of the lender, not to be unreasonably withheld or delayed)

**1 11 Restricted payments**

The Borrower shall not without the Lender's prior written consent

- (a) declare, pay or make any dividend or other payment or distribution of any kind in respect of any of its shares, or
- (b) reduce, return, purchase, repay, cancel or redeem any of its shares

**1 12 Notice of breaches**

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

- (a) any representation or warranty set out in Schedule 3 which is incorrect or misleading in any material respect when made or deemed to be repeated, and
- (b) any breach of any covenant set out in this Schedule 4

**1 13 Title documents**

The Borrower shall, on the execution of this agreement (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 agreement be entitled to hold

- (a) 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 obtain possession of all such deeds and documents of title),
- (b) all Insurance Policies (and any other insurance policies relating to any of the Charged Property which the Borrower is entitled to possess,
- (c) all deeds and documents of title (if any) relating to the Book Debts as the Lender may specify from time to time, and
- (d) copies of all the Assigned Agreements, certified to be true copies by either a director of the Borrower or by the Borrower's solicitors.

**1.14 Notices to be given by the Borrower**

The Borrower shall immediately on the execution of this agreement

- (c) 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(c) and procure that each addressee of any such notice promptly provides an acknowledgement of the Lender's interest to the Lender,
- (d) give notice to each counterparty to an Assigned Agreement of the assignment under Clause 3 1(d) of the Borrower's rights and interest in and under that Assigned Agreement and procure that each addressee of any such notice will promptly provide an acknowledgement of the Lender's interest to the Lender, and
- (e) 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(b) of the Borrower's rights and interests under such accounts and 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 1 14

#### **1 15 Assigned Agreements**

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

- (a) waive any of its rights under any Assigned Agreement, or
- (b) supplement, amend, novate, terminate or permit termination of any Assigned Agreement

#### **1 16 Further assurance**

The Borrower shall, at its own cost

- (a) 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
- (b) 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

### **2 Information**

#### **2 1 Valuation**

- (a) The Borrower shall supply to the Lender a Valuation
  - (i) on the Lender's request if the Lender confirms it believes that the Borrower is in default of its obligations under the Finance Documents,
  - (ii) upon the Lender's request, if there is a disposal of an interest in all or part of a Property (or a disposal of all or part of the shares of the Borrower),
  - (iii) on each anniversary of the first drawdown under the Facility Letter (if so requested by the Lender).
- (b) If requested by the Lender, the Borrower shall supply to the Lender or provide all reasonable assistance to the Lender and the relevant Valuer in obtaining a Valuation at such other times as the Lender may reasonably request

- (c) The cost and expense of Valuations will be borne by the Borrower
- (d) The Borrower shall ensure that a copy of any other valuation obtained by any Obligor in respect of the Property not expressly referred to above is supplied to the Lender

## **2.2 Property**

The Borrower shall provide to the Lender on each Payment Date the following information (in form and substance satisfactory to the Lender) for the immediately preceding 3 month period

- (a) a schedule of the existing occupiers of the Property showing for each occupier the rent or other licence fee, service charge, VAT and any other payments payable (and, separately, paid) in that period,
- (b) copies of monthly management accounts and cashflows produced by or for any Obligor,
- (c) details of any arrears of rent licence fee or service charges under any Leases and the steps being taken to recover those which are more than 30 days in arrears, and
- (d) details of any rent reviews or tenancy renewals in progress or agreed

## **2.3 Development**

- (a) The Borrower shall provide to the Project Monitoring Surveyor, within 10 Business Days of the last day of each month, details of the progress of the Development including
  - (i) a report on progress of each item set out in the Development Budget;
  - (ii) a breakdown of the costs and expenses incurred by the Borrower in connection with the Development to date (including copies of any invoices relating to the Development in excess of £2,000),
  - (iii) a comparison of costs and expenses incurred in connection with each item set out in the Development Budget as against the anticipated cost or expense of that item as set out in the Development Budget (and any resulting Cost Overruns and cost savings),
  - (iv) a forecast of costs and expenses to be incurred with respect to each item set out in the Development Budget (and any anticipated Cost Overruns and cost savings),
  - (v) minutes of all project and site meetings held in connection with the Development and which relate to the progress of the Development together with copies of all material documents including test certificates, specialist reports and variations to the agreed contract programme and all management accounts and cashflows prepared by or for the Borrower and which relate to the Development for that meeting, and
- (b) The Borrower shall on request provide to the Lender such information regarding the Development and the progress of it as the Lender may request from time to time

## **3 Insurance undertakings**

### **3.1 Maintenance of insurance**

- (a) The Borrower must ensure that at all times it benefits from insurance against third party and public liability risks, that all the buildings constructed in course of

construction or standing on a Property are insured on terms equivalent to a "contractors all risks" policy and that the Property is insured against

- (i) loss or damage by fire, storm, tempest, flood, earthquake, lightning, explosion, impact, aircraft (other than hostile aircraft) and other aerial devices and articles dropped from them, riot, [terrorism] , civil commotion and malicious damage, bursting or overflowing of water tanks, apparatus or pipes, and subsidence, and
- (ii) (such other risks and contingencies as are insured against in accordance with sound commercial practice or which the Lender may direct from time to time,

to the full reinstatement value thereof with adequate provision also being made for

- (iii) the cost of clearing the site and architects', engineers', surveyors' and other professional fees incidental thereto (together with provision for future inflation), and
- (iv) (where relevant) the loss of rents or prospective rents for a period of not less than three years or such other period as the Lender may direct and having regard to any potential increases in rent as a result of reviews

(b) The Borrower shall ensure at all times that all insurance policies

- (i) contain a mortgagee clause whereby such insurance policy will not be vitiated or avoided as against a mortgagee or security holder in the event of or as a result of any misrepresentation, act or neglect or failure to make disclosure on the part of the insured party,
- (ii) note the interest of the Lender as a co-insured party and, in respect of any monies paid out in excess of ten thousand pounds (£10,000), as first loss payee,
- (iii) contain a "tenant's clause" in the following or similar terms

*"The insurance hereby effected shall not be prejudiced by any act or omission unknown to or beyond the control of the insured on the part of any tenant occupying or using the premises, provided that the insured immediately on becoming aware thereof shall give notice to the insurers and pay an additional premium if required",*

- (iv) contain terms providing that the policies will not be invalidated so far as the Lender is concerned for failure to pay any premium due without the insurer first giving to the Lender not less than 28 days' written notice,
- (v) are in an amount and form acceptable to the Lender, and
- (vi) are with an insurance company or underwriters acceptable to the Lender

(c) If the Lender requests, the Borrower shall promptly provide a copy of each insurance policy together with evidence of payment of the premiums and such other information in connection with the insurance policies as the Lender requests

(d) If the Lender considers that the amount insured, or the risks covered, by any insurance policy is/are inadequate, the Borrower shall increase the amount insured and/or require the category of risks covered to be amended to such extent and in such manner as the Lender considers appropriate

(e) The Borrower shall:

- (i) ensure that all things necessary to keep all the insurance policies in force are done promptly including the punctual payment of premiums, and
  - (ii) notify the Lender of premiums paid, renewals made, material variations and cancellations of insurance policies made or, to the knowledge of the insured, threatened or pending
- (f) The Borrower shall not allow anything to occur which may make any insurance policy void or voidable
- (g) If the Borrower does not comply, the Lender may (without any obligation to do so) effect or renew any such insurance policy either in its own name, or together with the Borrower in such sum and on such terms as the Lender may reasonably think expedient and all monies expended by the Lender will be deemed to be properly paid by the relevant person and shall be reimbursed by the Borrower on demand

### **3 2 Application of insurance monies**

The Borrower shall apply sums received under any insurance policy as follows

- (a) if it is required by a Lease to apply the sums in a particular way, then it must do so,
- (b) otherwise the Borrower must either
  - (i) apply the sums towards making good the loss or damage to which they relate, or
  - (ii) apply the sums towards prepayment of amounts advanced under the Facility Letter

## **4 Property undertakings**

### **4 1 Pay outgoings**

The Borrower shall ensure all rates, rents, outgoings and other sums payable out of or in respect of the Property are promptly paid

### **4 2 Title**

The Borrower shall ensure that all covenants, stipulations and obligations binding upon the Property are complied with and must ensure that all covenants, stipulations and obligations benefiting that Property are diligently enforced

### **4 3 Headlease**

- (a) The Borrower shall ensure that all covenants, stipulations and obligations binding on any Obligor as lessee under any Headlease are observed and performed and that all covenants, stipulations and obligations benefiting any Obligor as lessee under any Headlease are diligently enforced
- (b) The Borrower shall ensure that no Obligor waives, releases or varies any term of, or exercises any option or power to break, determine or extend (or agree to do any of the foregoing), any Headlease
- (c) The Borrower shall ensure that no Obligor does or permits to be done anything under a Headlease which may result in its forfeiture and must promptly notify the Lender of anything which may result in the forfeiture or determination of a Headlease
- (d) The Borrower shall ensure no Obligor agrees to any change in the rent payable under a Headlease without the prior written consent of the Lender

#### 4.4 Leases

In addition to the restriction in paragraph 1.6 (Disposals) (but subject always to paragraph 1.6(c) the Borrower shall not permit and shall not permit any Obligor to

- (a) grant any Lease,
- (b) terminate (whether by surrender, forfeiture or otherwise) any Lease,
- (c) vary any terms of or waive any rights it has under any Lease,
- (d) consent to any assignment or sub-letting of any lessee's interest under any Lease,

without the Lender's prior written consent and the Borrower shall not permit any Obligor to enter into any agreement to do so

#### 4.5 Property management

- (a) The Borrower shall diligently manage or procure the management of the Property in accordance with the principles of good estate management and promptly notify the Lender of any material default by any lessee or other occupier of the Property
- (b) If the Borrower, or the Lender considers that the Borrower has failed, at any time to comply with the obligations in paragraph 4.5(a) above, it shall be lawful for the Lender to carry out such works and take such steps as it may determine (acting reasonably) are necessary to remedy and rectify the failure, the fees, costs and expenses of such action to be reimbursed by the Borrower to the Lender upon demand
- (c) Nothing in this clause shall render the Lender liable to account as mortgagee in possession

#### 4.6 Repair

Where development works are not being carried out the Borrower shall ensure all buildings and erections from time to time upon the Property and all fittings, plant and machinery on the Property are in good and substantial repair

#### 4.7 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 26 March 2015 in favour of Property Lending LLP referred to in the charges register or their conveyancer"*

#### 5 Development undertakings

##### 5.1 General

- (a) the Borrower shall promptly pay or procure the payment of all Cost Overruns as they occur
- (b) the Borrower shall not amend or vary the Development Planning Permission or apply for any such amendment or variation without the consent of the Lender
- (c) the Borrower shall not make any press or other media communication in relation to the funding of the Development without the prior approval of the Lender

- (d) the Borrower shall not incur any costs in relation to the Development save as set out in the Development Budget

## 5.2 Prior Approvals

Before commencing any development the Borrower shall

- (a) deliver to the Lender or its advisers evidence of the grant of all Authorisations required to permit the lawful commencement, execution, completion and ultimate use of the development,
- (b) obtain the approval of the Lender to the relevant development appraisal, such appraisal to be in such form as the Lender may from time to time require, and
- (c) agree with the Lender a schedule of the target sale prices to be achieved on each disposal of a dwelling

## 5.3 The Contractor

- (a) the Borrower shall appoint and employ the Building Contractor only after due enquiry as to its repute, competence and suitability with respect to the Development (however if the Borrower is acting in a developer capacity and the Lender consents in writing there shall be no requirement to appoint a separate Building Contractor)
- (b) the Borrower shall require as a condition of the employment of the Building Contractor that (or in circumstances where no Building Contractor is to be appointed the Borrower shall itself ensure that)
  - (i) at all times during the execution of the Development it will be registered for gross payment pursuant to section 63 of the Finance Act 2004,
  - (ii) it maintains professional indemnity cover of at least £5,000,000 (or if greater the Gross Development Value) with a reputable insurer in an amount approved by the Lender for each claim that may be made throughout the period that he retains liability under a Collateral Warranty or for breach of the terms of the Building Contract,
  - (iii) it agrees to issue a collateral warranty to any lessee under an Agreement for Lease where the terms of the Agreement for Lease require any Obligor to procure the grant of such a collateral warranty, and
  - (iv) it will procure the issue of the Performance Bond (if required by the Facility Letter or so requested in writing by the Lender)
- (c) the Borrower shall procure that any sub-contractor whose works or services the Lender considers are material to the Development or who has any responsibility for design will enter into a Collateral Warranty at the time of its appointment,
- (d) the Borrower shall
  - (i) diligently take all steps necessary or effectually to procure the due performance and observance of the obligations and duties of the Building Contractor,
  - (ii) not waive, release, vary nor estop itself from enforcing or seeking redress for any such obligation or duty without the consent of the Lender, and
  - (iii) not do nor omit to do any act or thing which would entitle the Building Contractor to treat the Building Contract as terminated by breach

#### **5 4 The Professional Team**

The Borrower shall or shall procure that the Building Contractor will

- (a) enter into Appointments with a Professional Team and such other advisers as the Lender may require in connection with the Development,
- (b) make any Appointment only after due enquiry has been made as to the repute, competence and suitability with respect to the Development of the prospective appointee,
- (c) not enter into any Appointment without the approval of the Lender (such approval not to be unreasonably withheld or delayed),
- (d) comply with the provisions of paragraphs 5 4(a) to 5 4(c) (inclusive) in relation to the Appointment of any replacement for a member of the Professional Team,
- (e) procure that each member of the Professional Team enters into a Collateral Warranty at the time of his appointment,
- (f) require as a condition of each Appointment that the appointee
  - (i) maintains professional indemnity cover of not less than £5,000,000 with a reputable insurer in an amount approved by the Lender for each claim that may be made throughout the period that he retains liability under a Collateral Warranty or for breach of the terms of the relevant Appointment, and
  - (ii) agrees to issue a collateral warranty to any lessee under an Agreement for Lease where the terms of the Agreement for Lease require any Obligor to procure the grant of such a collateral warranty,
- (g) diligently take all steps necessary effectually to procure the due performance and observe and performance of the duties of each member of the Professional Team,
- (h) not waive, release, vary nor estop itself from enforcing or seeking redress for any such obligation or duty without the consent of the Lender, and
- (i) not knowingly do nor knowingly omit to do any act or thing which (apart from the provisions of the relevant Collateral Warranty) would entitle a member of the Professional Team to treat his Appointment as terminated by breach

#### **5 5 The Agreed Plans**

- (a) The Borrower shall not make any variation to the Agreed Plans (that is to say, any alteration or addition to or omission of anything from the Agreed Plans nor the use of any materials in substitution for those specified in the Agreed Plans) without the consent of the Lender unless
  - (i) the variations are insubstantial or immaterial and of a routine nature,
  - (ii) in the case of such a variation involving substitution of materials the materials substituted are of equivalent or superior standard,
  - (iii) the variations do not involve the expenditure of a greater than £20,000, and
  - (iv) the Borrower notifies the Lender of the variations within 3 Business Days
- (b) the Borrower shall keep the Lender furnished with a complete set of the Agreed Plans as amended and revised from time to time, and will within a reasonable time after



Practical Completion deliver to the Lender two complete sets of the plans and specifications of the Development as finally built

- (c) Save in so far as effectually achieved pursuant to a Collateral Warranty, the Borrower shall promptly after Practical Completion either
  - (i) procure the assignment absolutely to the Lender of the full copyright of the Agreed Plans, or
  - (ii) take such other steps effectually to procure for the Lender the full right and entitlement to use the Agreed Plans on licence without further payment or liability for further payment,

and will execute all such deeds and documents as the Lender may reasonably require effectually to vest such rights in the Lender

## 5 6 Requisite Consents

- (a) In this clause "**Requisite Consents**" are those Authorisations that are necessary, lawfully, to commence, carry out, maintain and complete the Development and to beneficially use and enjoy the Development.
- (b) The Borrower shall promptly notify the Lender of the grant of all Requisite Consents and deliver copies of them to the Lender
- (c) The Borrower shall, if required, negotiate the terms of planning or other obligations with the local planning or other authority (under section 106 of the Town and Country Planning Act 1990, section 38 of the Highways Act 1980 or other statutory provisions requiring undertakings from the Borrower) but may not settle the terms of any such document without the approval of the Lender
- (d) If a Requisite Consent is refused, the Borrower shall appeal against the refusal or take such other appropriate action in order to proceed with the Development as the Lender may approve or require (in each case acting reasonably)
- (e) The Borrower shall negotiate the terms of agreements with the owners and occupiers of neighbouring property for the release of rights of way, light and air or otherwise and the extinguishment of interests in over or with respect to the Property to the extent that such rights and interests would be infringed by the Development or would prevent or impede the carrying out or progress of the Development or its use and enjoyment, but may not settle the terms without the approval of the Lender and where the release or modification of any restrictive covenant cannot be negotiated the Borrower will take such action for its discharge or modification as may be practicable under section 84 of the Law of Property Act 1925
- (f) The Borrower shall apply for and use all reasonable endeavours to obtain any necessary orders for the stopping up or diversion of highways or footpaths to the extent that they may be required to enable the Development to be carried out
- (g) Prior to implementing the Development Planning Permission the Borrower shall deliver to the Lender notice of approval of any reserved matters and notice of satisfaction of all pre-commencement conditions under the Development Planning Permission in a form acceptable to the Lender
- (h) The Borrower shall not issue a Drawdown Request unless the Lender is satisfied that the period for an application for Judicial Review of the grant of the Development Planning Permission has expired without an application for Judicial Review having been made.

## **5.7 The Development**

- (a) The Borrower shall undertake and complete the Development expeditiously and diligently in accordance with the Finance Documents and in any event so as to complete the Development by the Target Completion Date
- (b) The Borrower shall procure that the Development is carried out
  - (i) diligently, in a good and workmanlike manner and in accordance with good building practice,
  - (ii) in accordance with the Agreed Plans and the Requisite Consents, and
  - (iii) in accordance with the Development Planning Permission, the Development Budget and the Agreements for Lease
- (c) The Borrower shall procure there shall not be used on or in connection with the Development any materials or substances which at the time of specification are not approved or not recommended by the current British Standards and Codes of Practice (so far as they may be applicable to the Development) as being of deleterious, unsatisfactory or unsuitable quality
- (d) The Borrower shall procure that at Practical Completion the Property shall be left in full repair and in good and clean condition cleared of all unused building materials, plant and equipment used in the Development and temporary structures

## **5.8 Inspection of the Development by the Lender**

- (a) The Borrower shall afford the Lender and its advisers access to the Property in order to inspect and view the state and progress of the Development and the materials used at all reasonable times during the Security Period provided that
  - (i) while the Property is in the possession of the Building Contractor this access shall be by arrangement with the Building Contractor, and
  - (ii) the Lender and its advisers in doing so may not impede or obstruct the progress of the Development nor issue any instructions to the Building Contractor or any workmen employed in carrying out the Development or the Professional Team, but will address any requirement, comment or complaint only to the Borrower
- (b) The Borrower shall give to the Lender and the Project Monitoring Surveyor at least seven working days' prior notice of site and other formal meetings of the Professional Team and the Building Contractor or any of them in connection with the Development, and the Lender and its professional advisers are entitled to attend at and participate in such meetings
- (c) The Borrower shall pay due regard to requirements of the Lender or its professional advisers which are consistent with the terms of the Finance Documents

## **5.9 Practical Completion**

The following provisions shall apply to practical completion pursuant to the Building Contract

- (a) the Borrower shall give notice (and use its reasonable endeavours to give at least 21 days' notice) to the Lender of the pending issue of the certificate of practical completion in order to allow the Lender and the Project Monitoring Surveyor the opportunity to inspect the Development and consider whether the Development has been completed in accordance with the Borrower's obligations under the Finance Documents,

- (b) the person or firm (the "Employers Agent") having the responsibility of issuing the certificate of practical completion under the Building Contract shall not be fettered from issuing any such certificate at such time as in his opinion he thinks fit,
- (c) the Lender may make representations to the Employers Agent as to whether such certificate of practical completion should be issued at a particular time or what qualifications should be made to such certificate of practical completion upon its issue,
- (d) if the Lender is of the opinion that such certificate of practical completion should not have been issued or that the certificate as issued has not been properly qualified, the Lender may notify the Borrower within a reasonable time giving details of the Lender's objections and the Borrower and the Lender will endeavour to resolve what, if any, action should be taken but if they cannot or do not do so objections not so resolved are to be determined as the Lender requires,
- (e) the Borrower shall take whatever action may be required in consequence of the resolution of the objections of the Lender, and
- (f) the issue of a certificate of practical completion under the Building Contract shall in no way fetter the discretion of the Project Monitoring Surveyor in deciding when or whether to issue any certificate of Practical Completion

#### **5 10 Defects Liability**

- (a) The Borrower shall enforce the defects liability provisions in the Building Contract
- (b) The Borrower shall inspect or procure the inspection of the Development and prepare a schedule of defects itemising defects, shrinkages and other faults due to materials or workmanship not in accordance with the Building Contract before practical completion and will
  - (i) deliver a copy to the Lender in time for the Lender to consider it and notify additions to the Borrower, and
  - (ii) then deliver the schedule (with any additions notified to the Borrower by the Lender) to the Building Contractor within the appropriate time limits for doing so under the Building Contract
- (c) The Borrower must include in any schedule of defects, any defects notified to it by the Lender or the Project Monitoring Surveyor within the appropriate time limits under the Building Contract without obliging the Lender or Project Monitoring Surveyor to prepare any such schedule of defects

#### **5 11 Actions Claims and Proceedings**

- (a) The Borrower shall diligently prosecute claims and seek redress (so far as may be practicable and prudent) for the consequences of failure on the part of the Professional Team or the Building Contractor to observe and perform their respective obligations in relation to the Development
- (b) The Borrower shall pay due regard to the requirements of the Lender both in relation to the prosecution of claims and the conduct of proceedings, but the prosecution of claims is to be carried out at the Borrower's expense

#### **5 12 Repairs**

From the date practical completion is certified pursuant to the Building Contract the Borrower shall keep or cause to be kept all buildings and erections from time to time upon the Property in good and substantial repair and will ensure that representatives of the Lender (with or

without surveyors workmen and others) are able at all reasonable times to view the state of repair of the Property

## **6 Book Debts**

### **6 1 Preservation of Book Debts**

The Borrower shall not (except as provided by paragraph 6 2 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

### **6 2 Realising Book Debts**

The Borrower shall

- (a) 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,
- (b) not, without the prior written consent of the Lender, withdraw any amounts standing to the credit of any Designated Account, and
- (c) 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

## **7 Investments Covenants**

### **7 1 Deposit of title documents**

- (a) The Borrower shall
  - (i) on the execution of this agreement, deposit with the Lender, or as the Lender may direct, all stock or share certificates and other documents of title or evidence of ownership relating to any Investments owned by the Borrower at that time, and
  - (ii) on the purchase or acquisition by it of Investments after the date of this agreement, deposit with the Lender, or as the Lender may direct, all stock or share certificates and other documents of title or evidence of ownership relating to those Investments
- (b) At the same time as depositing documents with the Lender, or as the Lender may direct, in accordance with clause 7 1 (a) (i) or clause 7 1 (a) (ii) the Borrower shall also deposit with the Lender, or as the Lender may direct
  - (i) all stock transfer forms relating to the relevant Investments duly completed and executed by or on behalf of the Borrower, but with the name of the transferee, the consideration and the date left blank, and
  - (ii) any other documents (in each case duly completed and executed by or on behalf of the Borrower) that the Lender may request to enable it or any of its nominees, or any purchaser or transferee, to be registered as the owner of, or otherwise obtain a legal title to, or to perfect its security interest in any of the relevant Investments,

so that the Lender may, at any time and without notice to the Borrower, complete and present those stock transfer forms and other documents to the issuer of the Investments for registration

## **7.2 Nominations**

- (a) The Borrower shall terminate with immediate effect all nominations it may have made (including, without limitation, any nomination made under section 145 or section 146 of the Companies Act 2006) in respect of any Investments and, pending that termination, procure that any person so nominated
  - (i) does not exercise any rights in respect of any Investments without the prior written approval of the Lender, and
  - (ii) immediately on receipt by it, forward to the Lender all communications or other information received by it in respect of any Investments for which it has been so nominated
- (b) The Borrower shall not, during the Security Period, exercise any rights (including, without limitation, any rights under sections 145 and 146 of the Companies Act 2006) to nominate any person in respect of any of the Investments

## **7.3 Additional registration obligations**

- (a) The Borrower shall
  - (i) obtain all consents, waivers, approvals and permissions that are necessary, under the articles of association (or otherwise) of an issuer, for the transfer of the Investments to the Lender or its nominee, or to a purchaser on enforcement of the security constituted by this agreement, and
  - (ii) procure the amendment of the share transfer provisions (including, but not limited to, deletion of any pre-emption provisions) under the articles of association, other constitutional document or otherwise of each issuer in any manner that the Lender may require in order to permit the transfer of the Investments to the Lender or its nominee, or to a purchaser on enforcement of the security constituted by this agreement

## **7.4 Dividends and voting rights before enforcement**

- (a) Before the security constituted by this agreement becomes enforceable, the Borrower may retain and apply for its own use all dividends, interest and other monies paid or payable in respect of the Investments and, if any are paid or payable to the Lender or any of its nominees, the Lender will hold all those dividends, interest and other monies received by it for the Borrower and will pay them to the Borrower promptly on request
- (b) Before the security constituted by this agreement becomes enforceable, the Borrower may exercise all voting and other rights and powers in respect of the Investments or, if any of the same are exercisable by the Lender or any of its nominees, to direct in writing the exercise of those voting and other rights and powers provided that
- (c) it shall not do so in any way that would breach any provision of the Facility Letter or this deed or for any purpose inconsistent with the Facility Letter or this agreement, and
- (d) the exercise of, or the failure to exercise, those voting rights or other rights and powers would not, in the Lender's opinion, have an adverse effect on the value of the Investments or otherwise prejudice the Lender's security under this agreement

**7.5** The Borrower shall indemnify the Lender against any loss or liability incurred by the Lender (or its nominee) as a consequence of the Lender (or its nominee) acting in respect of the Investments at the direction of the Borrower.

**7.6** The Lender shall not, by exercising or not exercising any voting rights or otherwise, be construed as permitting or agreeing to any variation or other change in the rights attaching to

or conferred by any of the Investments that the Lender considers prejudicial to, or impairing the value of, the security created by this agreement

**7 7 Dividends and voting rights after enforcement**

After the security constituted by this agreement has become enforceable

- (a) 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
- (b) 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

**7 8 Calls on Investments**

The Borrower shall promptly pay all calls, instalments and other payments that may be or become due and payable in respect of all or any of the Investments. The Borrower acknowledges that the Lender shall not be under any liability in respect of any such calls, instalments or other payments

**7 9 No alteration of constitutional documents or rights attaching to Investments**

The Borrower shall not, without the prior written consent of the Lender, amend, or agree to the amendment of

- (a) the memorandum or articles of association, or any other constitutional documents, of any issuer that is not a public company, or
- (b) the rights or liabilities attaching to any of the Investments

**7 10 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

- (a) consolidate or subdivide any of its Investments, or reduce or re-organise its share capital in any way,
- (b) issue any new shares or stock, or
- (c) 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 deed

**7 11 Investments information**

The Borrower shall, promptly following receipt, send to the Lender copies of any notice, circular, report, accounts and any other document received by it that relates to the Investments

**8 Intellectual Property**

**8 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

**8.2 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

**8.3 Maintenance of Intellectual Property**

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

## **Schedule 5**

### **(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 agreement, 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 5 are without prejudice to any other rights of the Lender under this agreement. 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 agreement has become enforceable, the Lender or any Receiver may, as agent for the Borrower, dispose of any chattels or produce 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 5, the Borrower shall indemnify the Lender and any Receiver against any liability arising from such disposal

#### **4 Prior Security Interests**

4 1 At any time after the security constituted by this agreement has become enforceable, or after any powers conferred by any Security Interest having priority to this agreement shall have become exercisable, the Lender may

(a) redeem such or any other prior Security Interest, or procure its transfer to itself, and

(b) settle any account of the holder of any prior Security Interest

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 a Security Interest 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 of interest specified in the Facility Letter] 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 agreement (including the proceeds of any previous conversion under this Paragraph 5) from their existing currencies into such other currencies as the Lender may think fit

5 2 Any such conversion shall be effected at [the Lender's] then prevailing spot selling rate of exchange for such other currency against the existing currency

5 3 Each reference in this Paragraph 5 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 Security Interest, 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 5, 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
- (a) the security constituted by this agreement has become enforceable, or
  - (b) the Lender has received notice of any subsequent Security Interest 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 agreement (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 agreement or to the liability of the Borrower for the Secured Liabilities.

## **Schedule 6**

### **(Enforcement)**

#### **1 Enforcement events**

##### **1 1 This agreement shall be enforceable if**

- (a) 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),
- (b) the Borrower is in breach of any of its obligations under this agreement 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,
- (c) the Borrower
  - (i) 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),
  - (ii) commences negotiations with any one or more of its creditors with a view to the general readjustment or rescheduling of its indebtedness, or
  - (iii) makes a general assignment for the benefit of, or a composition with, its creditors,
- (d) 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, trustee or similar officer of it or of any or all of its revenues or assets,
- (e) 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,
- (f) any event occurs in relation to the Borrower that is analogous to those set out in Paragraph 1 1(c), Paragraph 1 1(d) or Paragraph 1 1(e) of this Schedule 6, or
- (g) any representation, warranty or statement made, or deemed to be made, by the Borrower under this agreement 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 6 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 agreement 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 agreement, but the Lender shall not exercise such power of sale until the security constituted by this agreement has become enforceable under Paragraph 1 of this Schedule 6

**3 Extension of statutory powers**

**3 1** 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 agreement has become enforceable, whether in its own name or in that of the Borrower, to

- (a) grant any lease or agreement for lease,
- (b) accept surrenders of leases, or
- (c) 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**

**4 1** No purchaser, mortgagee or other person dealing with the Lender or any Receiver shall be concerned to enquire

- (a) whether any of the Secured Liabilities have become due or payable, or remain unpaid or undischarged,
- (b) whether any power the Lender or a Receiver is purporting to exercise has become exercisable, or
- (c) 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 agreement has become enforceable, or at the request of the Borrower, the Lender may, without further notice

- (a) 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
- (b) (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 agreement 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 agreement 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 agreement 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 agreement 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**

9 1 Any Receiver appointed by the Lender under this agreement shall, in addition to the powers conferred on him by the Law of Property Act 1925 and the Insolvency Act 1986, have,

(a) 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

(b) the powers set out in Schedule 7

**10 Order of application of proceeds**

10 1 All monies received by the Lender or a Receiver in the exercise of any enforcement powers conferred by this agreement shall be applied

(a) 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),

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

(c) third, in or towards discharge of the Secured Liabilities in such order and manner as the Lender determines, and

(d) 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 agreement 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
- (a) the Borrower is required to execute and do under this agreement, including execute any document required by the Lender under Paragraph 1 14 of Schedule 4, and
  - (b) any attorney may deem proper or desirable in exercising any of the powers, authorities and discretions conferred by this agreement 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 of this Schedule 6
- 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 agreement becomes enforceable
- 15 2 Any appointment under this Paragraph 15 shall
- (a) be in writing signed by a duly authorised signatory of the Lender, and
  - (b) 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 15 and appoint a replacement for any Administrator whose appointment ends for any reason under that paragraph

## **Schedule 7**

(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**

**9 1** 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 7 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 9, 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 agreement

**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 7, 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 agreement)

**18 Power to redeem prior Security Interests**

A Receiver may redeem any prior Security Interest and settle and pass the accounts to which the Security Interest 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**

**19.1 A Receiver may do all such other acts and things**

- (a) as he may consider desirable or necessary for realising any of the Charged Property,
- (b) 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
- (c) which he lawfully may or can do as agent for the Borrower.

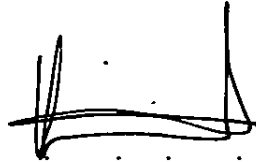
**20      Scope of powers**

Any exercise of any of the powers given by this Schedule 7 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 7) or himself

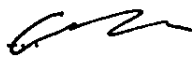


**SIGNATURE PAGE TO SECURITY AGREEMENT**

**Executed as a deed** )  
by )  
**LONDON AND FULHAM LIMITED** )  
acting by Joel Fried a director )  
in the presence of )



Director

Signature of witness   
Name **CHARLES MAXWELL**  
Address **22 WOODLANDS**  
**LONDON NW11 9QL**  
Occupation **SOLICITOR**

**Executed as a deed** )  
by )  
**PROPERTY LENDING LLP** )  
acting by \_\_\_\_\_ )  
in the presence of )

Title

Signature of witness

Name

Address

Occupation