



Registration of a Charge

Company name: **CAPITAL INDUSTRIAL 2 LIMITED**

Company number: **12898572**



X9L2EI6A

Received for Electronic Filing: **31/12/2020**

Details of Charge

Date of creation: **30/12/2020**

Charge code: **1289 8572 0002**

Persons entitled: **MOUNT STREET MORTGAGE SERVICING LIMITED AS SECURITY TRUSTEE FOR THE SECURED PARTIES**

Brief description: **NOT APPLICABLE**

Contains fixed charge(s).

Contains negative pledge.

Authentication of Form

This form was authorised by: **a person with an interest in the registration of the charge.**

Authentication of Instrument

Certification statement: **I CERTIFY THAT THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by: **SIMMONS & SIMMONS LLP**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 12898572

Charge code: 1289 8572 0002

The Registrar of Companies for England and Wales hereby certifies that a charge dated 30th December 2020 and created by CAPITAL INDUSTRIAL 2 LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 31st December 2020 .

Given at Companies House, Cardiff on 4th January 2021

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



Companies House



**THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES**

EXECUTION VERSION

Dated: 30 December 2020

L_LIVE_EMEA1:48453244v5

Subordination Deed

between

Capital Industrial 2 Limited

as Subordinated Creditor

Mount Street Mortgage Servicing Limited

as Security Agent

and

Capital Industrial 3 Limited

as Obligor

relating to

facilities made available to Capital Industrial 3 Limited

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THIS DEED is dated

30 December 2020

and made

BETWEEN:

- (1) **CAPITAL INDUSTRIAL 2 LIMITED**, a limited liability company incorporated under the laws of England and Wales, with registered number 12898572 and having its registered office at 17c Curzon Street, London, United Kingdom, W1J 5HU (the "**Subordinated Creditor**");
- (2) **MOUNT STREET MORTGAGE SERVICING LIMITED** registered in England and Wales (Company Number: 03411668) in its capacity as security trustee for the Secured Parties (the "**Security Agent**"); and
- (3) **CAPITAL INDUSTRIAL 3 LIMITED** a company registered in England and Wales with registered number 12898579 whose registered office is at 17c Curzon Street, London, United Kingdom, W1J 5HU (the "**Obligor**").

BACKGROUND:

- (A) The Original Lender and the Subordinated Creditor has made or is about to make loans, give credit or provide other financial facilities to the Obligor.
- (B) The Subordinated Creditor has agreed to subordinate those facilities and indebtedness as provided below.
- (C) As part of the Cross Border Merger the companies formerly known as Capital Industrial Three B.V. and Capital Industrial Two B.V. (the "**Transferors**") have merged with Capital Industrial 3 Limited and Capital Industrial 2 Limited (the "**Transferees**") respectively. In accordance with the provisions of The Companies (Cross-Border Mergers) Regulations 2007, the assets and liabilities of the Transferors have been transferred to the Transferees.

IT IS AGREED as follows:

1. **Definitions and Interpretation**

1.1 **Definitions**

Terms defined in the Facility Agreement have the same meaning when used in this Deed unless given a different meaning in this Deed, and in this Deed:

"**Assigned Assets**" means all the rights, interests, causes of action and remedies assigned pursuant to clause 4.1.

"**Collateral Instrument**" means notes, bills of exchange, certificates of deposit and other negotiable and non-negotiable instruments, guarantees, indemnities and other assurances against financial loss and any other documents or instruments which contain or evidence an obligation (with or without security) to pay, discharge or be responsible directly or indirectly for, any Liabilities of the Obligor or any other person liable.

"**Delegate**" means any delegate, agent, attorney or co-trustee appointed by the Security Agent.

"**Distribution**" means any payment by or distribution of assets of the Obligor, whether in

cash, property, securities or otherwise and whether on any account, including, without limitations, on account of principal, interest or damages.

"Enforcement Event" means an Event of Default in respect of which any notice has been served by the Security Agent in accordance with Clause 23.17 (Acceleration) of the Facility Agreement.

"Facility Agreement" means the facility agreement originally dated 11 March 2016 and as amended by an additional property agreement dated 23 June 2017 and as amended and restated on 27 November 2019 and as further amended and restated on or about the date of this Deed between (amongst others) the Obligor as borrower, AgFe UK Real Estate Senior Debt 1 S.à r.l as lender, the Security Agent and Mount Street Mortgage Servicing Limited as agent.

"Insolvency Event" the occurrence of any of the following in respect of any person:

- (A) that person's bankruptcy, dissolution, liquidation, winding up, administration or its entering into any voluntary arrangement or composition with creditors;
- (B) the appointment of a receiver or administrative receiver in respect of all or part of that person's assets; and
- (C) any event having a similar effect under the laws of any relevant jurisdiction.

"Liabilities" means any obligation for the payment or repayment of money.

"LPA" means the Law of Property Act 1925.

"Party" means a party to this Deed.

"Permitted Payment" means any payment to the Subordinated Creditor by the Obligor where:

- (A) no Default is outstanding or will result from the payment; and
- (B) the relevant payment is made from the General Account,

or in respect of which the Security Agent has provided its prior written consent.

"Receiver" means a receiver or receiver and manager or administrative receiver of the whole or any part of the Assigned Assets.

"Senior Agreement" means:

- (A) each Finance Document;
- (B) any other document designated in writing as such by the Security Agent, the Obligor and the Subordinated Creditor.

"Senior Debt" means all Liabilities owed or incurred by the Obligor to each Secured Party under any Senior Agreement or any other credit arrangements or Liabilities owed, however arising:

- (A) whether or not originally owed to a Secured Party;

- (B) whether owned as principal or as surety;
- (C) whether owed jointly or severally or in any other capacity;
- (D) whether present, future, actual or contingent; and
- (E) includes any Liabilities and any other sums arising under any hedging or foreign exchange arrangement,

on any account and in any manner, including anything which would be a Liability but for the fact that it is Unenforceable.

"Senior Discharge Date" means the date on which the Senior Debt has been repaid or discharged in full.

"Senior Security" means each Security Document and any other present or future Security, guarantee or other credit enhancement in favour of any Secured Party in respect of all or any of the Senior Debt, which is designated in writing as such by the Subordinated Creditor and the Security Agent.

"Subordinated Agreement" means any agreement made between the Subordinated Creditor and the Obligor giving rise to any Liabilities of the Obligor to the Subordinated Creditor from time to time.

"Subordinated Debt" means all Liabilities owed or incurred by the Obligor to the Subordinated Creditor under any Subordinated Agreement and also any other liabilities owed or incurred by the Obligor to the Subordinated Creditor, however arising:

- (A) whether or not originally owed to the Subordinated Creditor;
- (B) whether owed as principal or as surety;
- (C) whether owed jointly or severally or in any other capacity;
- (D) whether present, future, actual or contingent; and
- (E) includes any Liabilities and any other sums arising under any hedging or foreign exchange arrangement,

on any account and in any manner, including anything which would be a Liability but for the fact that it is Unenforceable.

"Unenforceable" means void, voidable, invalid, unenforceable or otherwise irrecoverable (whether or not known to the Security Agent or the Subordinated Creditor) and "Unenforceability" will be construed accordingly.

1.2 Interpretation

- (A) The provisions of clause 1.2 (*Construction*) of the Facility Agreement shall apply, with any necessary amendments, in this Deed as though they were set out in full in this Deed.
- (B) Any reference in this Deed to the "Subordinated Creditor", the "Security Agent", the "Obligor" or any other person will be construed so as to include its successors in

title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Finance Documents and, in the case of the Security Agent, any person for the time being appointed as Security Agent in accordance with the Facility Agreement.

1.3 Conflict

- (A) In the event of any conflict between the terms of this Deed and the terms of any Subordinated Agreement, the terms of this Deed shall prevail.
- (B) In the event of any inconsistency arising between any of the provisions of this Deed and the Facility Agreement, the provisions of the Facility Agreement shall prevail.

1.4 Third party rights

- (A) Unless expressly provided to the contrary in a Finance Document, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the "Third Parties Act") to enforce or enjoy the benefit of any term of this Deed.
- (B) Notwithstanding any term of any Finance Document, the consent of any person who is not a Party is not required to rescind or vary this Deed at any time.
- (C) Any Receiver, Delegate, Finance Party or any officer, employee or agent of such Receiver, Delegate or Finance Party may, subject to this sub-clause and the Third Parties Act, rely on any clause of this Deed which expressly confers rights on it.

1.5 Execution

It is intended that this document takes effect as a deed even though a Party may only execute it under hand.

1.6 Benefit

- (A) The provisions of this Deed are for the benefit of the Security Agent as security trustee for and on behalf of the Secured Parties.
- (B) The Obligor shall not have any rights under this Deed and none of the undertakings in this Deed by the Security Agent or the Subordinated Creditor are given (or be deemed to have been given) to, or for the benefit of, the Obligor.

2. Subordination

The Subordinated Debt is subordinated to the Senior Debt.

3. Undertakings

3.1 Subordinated Creditor undertakings

- (A) Until the Senior Discharge Date the Subordinated Creditor undertakes to the Security Agent that, notwithstanding any provision of any Subordinated Agreement, it will not without the prior written consent of the Security Agent directly or indirectly:

- (1) take, accept or receive any payment, prepayment or repayment, or accept any Distribution in respect of any Subordinated Debt in cash or in kind except, without prejudice to Clause 3.3, by virtue of a Permitted Payment;
 - (2) permit any person to purchase or acquire any Subordinated Debt;
 - (3) discharge, release or reduce any part of the Subordinated Debt in any manner, including, without limitation, by set-off or any right of contribution (other than any mandatory set-off arising under any law relating to insolvency) except, without prejudice to Clause 3.3, by virtue of a Permitted Payment;
 - (4) take, accept, receive or permit to exist any Security, guarantee and/or indemnity or negotiable instrument for, or in respect of, any Subordinated Agreement or Subordinated Debt other than the assignment of the same in accordance with this Deed;
 - (5) enter into any agreement to receive any credit from the Obligor or receive any credit from the Obligor;
 - (6) permit the Obligor to enter into or grant any guarantee or other Security in respect of the Subordinated Debt or any of its assets;
 - (7) take any action to enforce any Subordinated Agreement or commence any proceedings against the Obligor;
 - (8) take any action or step for or in respect of the recovery of any Subordinated Debt or any part thereof (including, without limitation, any action or step with a view to supporting the insolvency or re-organisation of the Obligor);
 - (9) take any enforcement action in relation to its rights in respect of the Subordinated Debt nor agree to any arrangement which the Obligor agrees not to take any enforcement action in respect of its rights under any Subordinated Agreement;
 - (10) amend, vary, waive or release any term of any Subordinated Agreement or any Subordinated Debt;
 - (11) assign, transfer or novate its rights or obligations in respect of any Subordinated Agreement or Subordinated Debt;
 - (12) subordinate any of the Subordinated Debt or any proceeds relating thereto to any sums owing by the Obligor to any person other than to the Security Agent in accordance with this Deed; or
 - (13) take or omit to take any action whereby this Deed might be terminated, impaired or adversely affected.
- (B) Until the Senior Discharge Date, the Subordinated Creditor undertakes to the Security Agent that, notwithstanding any provision of any Subordinated Agreement, it will:
- (1) take any action required by the Security Agent to facilitate the dispersal of assets the subject of the Senior Security. Such action will be taken at the cost of the Subordinated Creditor and regardless of whether or not there will

be any funds available to the Subordinated Creditor following the disposal;
and

- (2) immediately notify the Security Agent of any breach of any Subordinated Agreement.

3.2 Obligor undertakings

Until the Senior Discharge Date, the Obligor hereby undertakes with the Security Agent that, notwithstanding any provision of any Subordinated Agreement, it will not without the prior written consent of the Security Agent directly or indirectly:

- (A) pay, prepay or repay, or make any Distribution in respect of, or purchase or acquire, any Subordinated Debt in cash or in kind except, without prejudice to Clause 3.3, by virtue of a Permitted Payment;
- (B) permit any person to purchase or acquire any of the Subordinated Debt;
- (C) discharge, release or reduce any Subordinated Debt in any manner, including, without limitation, by set-off or any right of contribution (other than any mandatory set-off arising under any law relating to insolvency) except, without prejudice to Clause 3.3, by virtue of a Permitted Payment;
- (D) create or permit to exist any guarantee or Security over or otherwise charge or encumber its assets or any Subordinated Debt;
- (E) assign, transfer or novate its rights or obligations in respect of the Subordinated Debt;
- (F) enter into any agreement to provide credit to the Subordinated Creditor or provide credit to the Subordinated Creditor;
- (G) take any action to enforce any Subordinated Agreement or commence any proceedings against the Subordinated Creditor;
- (H) take any enforcement action in relation to its rights in respect of any Subordinated Agreement nor agree to any arrangement which the Subordinated Creditor agrees not to taken any enforcement action in respect of its rights under the Subordinated Debt;
- (I) amend, vary, waive or release any term of any Subordinated Agreement or any Subordinated Debt; or
- (J) take or omit to take any action whereby this Deed might be terminated, impaired or adversely affected.

3.3 Permitted Payments

So long as no Default has occurred and is continuing or would result from making a payment, each Obligor may make Permitted Payments.

4. Security

4.1 Assignment

The Subordinated Creditor assigns to the Security Agent by way of security for the payment and discharge of the Senior Debt:

- (A) its rights and interests (but not obligations) in respect of each Subordinated Agreement and the Subordinated Debt from time to time; and
- (B) all causes of action and other rights and remedies (but no obligations) relating to each Subordinated Agreement and the Subordinated Debt from time to time.

4.2 Enforcement

- (A) Clause 4.1 will become immediately enforceable if an Enforcement Event occurs.
- (B) Following an Enforcement Event, the Security Agent (acting on the instructions of the Majority Lenders) shall be entitled, without prior notice to the Subordinated Creditor or prior authorisation from any court, to sell or otherwise dispose of all or any part of the Assigned Assets (at the times, in the manner and on the terms it thinks fit).
- (C) The statutory powers of sale, of appointing a receiver and the other powers conferred on mortgagees by Section 101 of the LPA as varied and extended by this Deed shall arise on the date of this Deed.
- (D) Section 103 of the LPA (restricting the power of sale) shall not apply to this Deed.
- (E) Section 93 of the LPA (restricting the right of consolidation) shall not apply to this Deed.
- (F) Neither the Security Agent, a Receiver nor any Delegate is:
 - (1) liable to account as mortgagee in possession in respect of the Assigned Assets; nor
 - (2) liable for any loss upon realisation or exercise or non-exercise of any power, authority or right of the Security Agent, a Receiver and/or any Delegate arising under this Deed, nor for any act, default, neglect, or misconduct of any nature whatsoever nor for any failure to collect or preserve the Subordinated Debt.
- (G) The Security Agent, each Receiver and each Delegate is entitled to all the rights, powers and immunities conferred by the LPA on mortgagees and receivers duly appointed under the LPA.
- (H) No person dealing with the Security Agent, any Receiver or any Delegate shall be concerned to enquire:
 - (1) whether the rights conferred by or pursuant to any Finance Document are exercisable;
 - (2) whether any consents, regulations, restrictions or directions relating to such rights have been obtained or complied with;
 - (3) otherwise as to the propriety or regularity of acts purporting or intended to exercise any such rights; or

(4) as to the application of any money borrowed or raised.

- (l) All the protection to purchasers contained in Sections 104 (relating to a conveyance on sale) and 107 (relating to mortgagee's receipts, discharges etc.) of the LPA, Section 42(3) of the Insolvency Act 1986 or in any other applicable legislation shall apply to any person purchasing from or dealing with the Security Agent, any Receiver and/or any Delegate.

4.3 Security Agent's and Receiver's powers and rights

- (A) Following the occurrence of a Enforcement Event, whether or not the Security Agent has entered into or taken possession of the whole or any part of the Assigned Assets pursuant to this Deed and subject to any applicable insolvency law:
- (1) the Security Agent may, by writing under the hand of any authorised officer of the Security Agent, appoint a Receiver in relation to the Assigned Assets;
 - (2) subject to the Insolvency Act 1986 the Security Agent may, from time to time, in similar manner, remove a Receiver and appoint another in his place;
 - (3) the Security Agent may, either at the time of appointment or at any time thereafter, fix the remuneration of a Receiver; and
 - (4) the Security Agent and any agent or nominee wherever situated may, without further notice, exercise all powers conferred on mortgagees by the LPA as varied or extended by this Deed.

None of the restrictions imposed by the LPA in relation to the appointment of receivers, the giving of notice or otherwise shall apply.

- (B) A Receiver may from time to time delegate, by power of attorney or otherwise, to any person any of his powers and discretions, whether arising by statute, the provisions of this Deed or otherwise, upon such terms and for such periods of time as he may in his discretion think fit and may from time to time terminate any such delegation. The Security Agent shall not be liable for any loss or damage arising from any such delegate's act, default, neglect or misconduct of any nature whatsoever.
- (C) The Security Agent (without becoming a mortgagee in possession) and/or any Receiver (without personal liability) shall have the powers to do or abstain from doing anything which the Subordinated Creditor could do or abstain from doing including, without limitation, the powers conferred by Section 109 of the LPA and, in the case of a Receiver who is an administrative receiver the powers conferred by Section 29 of the Insolvency Act 1986 and by Schedule 1 to the Insolvency Act 1986 whether or not the Senior Creditor and/or any Receiver is an administrative receiver. Such powers and rights may be exercised in the name of the Subordinated Creditor and in such manner and on such terms as the person exercising them shall in its sole absolute discretion consider appropriate.

4.4 Receiver as agent

A Receiver is for all purposes the agent of the Subordinated Creditor. Subject to the provisions of the Insolvency Act, the Subordinated Creditor is solely responsible for all of a Receiver's acts, defaults, neglect and misconduct of any nature whatsoever and for his

remuneration and costs, to the exclusion of liability on the part of the Security Agent.

4.5 **No obligation**

No Receiver is obliged to exercise any of the powers set out in this clause.

4.6 **Several power**

Where more than one Receiver is appointed, each Receiver has the power to act severally unless the Security Agent specifies otherwise in the appointment of such Receiver.

4.7 **Powers exercisable by the Security Agent**

- (A) The Security Agent may exercise all powers granted to a Receiver by this Deed, whether as attorney of the Subordinated Creditor or otherwise.
- (B) The powers of a Receiver set out above are in addition to, and without prejudice to, all statutory and other powers of the Security Agent and so that, without limitation, such powers are and remain exercisable by the Security Agent in respect of that part of the Assigned Assets in respect of which no appointment of a Receiver by the Security Agent is from time to time subsisting.

5. **Subordination on insolvency**

5.1 **Subordinated Creditor actions**

Until the Senior Discharge Date, upon an Insolvency Event occurring in respect of the Obligor:

- (A) the claims of the Subordinated Creditor in respect of the Subordinated Debt shall be postponed in all respects to the Senior Debt;
- (B) the Subordinated Creditor shall not, unless directed by the Security Agent (acting on the instructions of the Majority Lenders), claim, prove, rank or vote as a creditor of the Obligor;
- (C) if the Subordinated Creditor is so directed by the Security Agent (acting on the instructions of the Majority Lenders), it agrees to act in accordance with such directions and shall procure that any resultant Distributions be made to the Security Agent to the extent necessary to repay all the Senior Debt in full; and
- (D) the Subordinated Creditor irrevocably authorises and directs the Security Agent to submit any proof and/or to instruct the relevant liquidator or other person distributing the assets of the Obligor or their proceeds to pay Distributions directly to the Security Agent.

5.2 **Actions of the Security Agent**

Until the Senior Discharge Date, the Security Agent may, and is irrevocably authorised by and on behalf of the Subordinated Creditor to:

- (A) claim, enforce or prove for any Subordinated Debt;
- (B) file claims and proofs, give receipts, take all such proceedings and do all such

actions as the Security Agent (acting on the instructions of the Majority Lenders) sees fit to recover the Subordinated Debt; and

- (C) receive Distributions from such actions for application towards the Senior Debt.

5.3 Treatment of non-cash distributions

Save for any Permitted Payment, if the Security Agent receives any distribution otherwise than in cash in respect of the Subordinated Liabilities:

- (A) the Security Agent (acting on the instructions of the Majority Lenders) may realise that distribution as it sees fit;
- (B) the Senior Debt will not be deemed reduced by that distribution until and except to the extent that the proceeds of such realisation are applied towards the Senior Debt; and
- (C) on realisation, the Security Agent will apply the realisation proceeds towards the Senior Debt.

5.4 Payments to Security Agent directly

The Subordinated Creditor:

- (A) directs the trustee in bankruptcy, liquidator, assignee or other person distributing the assets of an Obligor or their proceeds to pay Distributions in respect of the Subordinated Debt direct to the Security Agent until the Senior Discharge Date;
- (B) will give all such notices and do all such things as the Security Agent may request to give effect to paragraph 5.4(A) above.

5.5 Transfer of Distributions

Until the Senior Discharge Date the Subordinated Creditor will at its own expense do all such things as the Security Agent may require to transfer to the Security Agent all Distributions which must be turned over to or held in trust for the Security Agent (including endorsements and execution of formal transfers).

5.6 Subordinated Creditor action

The Subordinated Creditor shall, at its own cost, promptly do all such things and take all such actions as directed by the Security Agent (acting on the instructions of the Majority Lenders) to give effect to this clause, including, without limitation, taking action which the Security Agent is not able to take under this clause.

6. Representations

The Subordinated Creditor makes the representations and warranties set out in this clause 6 on the date of this Deed:

6.1 Status

- (A) It is a private company with limited liability, duly incorporated and validly existing under the law of its jurisdiction of incorporation.

- (B) It has the power to own its assets and carry on its business as it is being conducted.

6.2 Binding obligations

The obligations expressed to be assumed by it in this Deed are subject to the Legal Reservations, legal, valid, binding and enforceable obligations.

6.3 Non-conflict with other obligations

The entry into and performance by it of, and the transactions contemplated by, this Deed does not and will not conflict with:

- (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.

6.4 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, this Deed and the transactions contemplated by this Deed.

6.5 Validity and admissibility in evidence

- (A) All Authorisations required or desirable:
 - (1) to enable it lawfully to enter into, exercise its rights and comply with its obligations in this Deed; and
 - (2) to make this Deed admissible in evidence in its Relevant Jurisdictions,have been obtained or effected and are in full force and effect.
- (B) All Authorisations necessary for the conduct of its business, trade and ordinary activities have been obtained or effected and are in full force and effect where failure to obtain or effect those Authorisations has or is reasonably likely to have a Material Adverse Effect.

6.6 Registration requirements

Under the law of its jurisdiction of incorporation, it is not necessary to file, register or record this Deed in any public place or elsewhere or that any stamp, registration or similar tax be paid on or in relation to this Deed or the transactions contemplated by this Deed except registration of particulars of this Deed at Companies Houses.

6.7 Information

- (A) All information supplied by it to any Finance Party in connection with this Deed or the Facility Agreement was true and accurate as at the date it was provided or as

at the date at which it was stated to be given.

- (B) It has not omitted to supply any information which, if disclosed, would make the information referred to in paragraph (A) untrue or misleading in any respect.
- (C) Nothing has occurred since the date of the information referred to in paragraph (A) which, if disclosed, would make that information untrue or misleading in any respect.

6.8 No proceedings pending or threatened

No litigation, arbitration or administrative proceedings or investigations of, or before, any court, arbitral body or agency which, if adversely determined, might reasonably be expected to have a Material Adverse Effect have (to the best of its knowledge and belief (having made due and careful enquiry)) been started or threatened against it.

6.9 Ownership

- (A) It is and will remain the legally and beneficially entitled, free of any Security, option, subordination or other right in favour of any person to the Subordinated Liabilities.
- (B) The Subordinated Liabilities are not subject to any set-off, counterclaim or other defence.

6.10 Insolvency

At the date hereof:

- (A) it has not been (i) declared bankrupt, (ii) granted a suspension of payment, or (iii) dissolved; and
- (B) no applications for its bankruptcy, suspension of payment or dissolution have been filed with the courts to the best of its knowledge.

6.11 Immunity

- (A) The entry into by it of this Deed constitutes private and commercial acts performed for private and commercial purposes.
- (B) It will not be entitled to claim immunity from suit, execution, attachment or other legal process in any proceedings taken in its jurisdiction of incorporation in relation to this Deed.

6.12 Jurisdiction/governing law

- (A) The choice of the governing law of this Deed will be recognised and enforced in the Subordinated Creditor's jurisdiction of incorporation.
- (B) Any judgment obtained in England in relation to this Deed will be recognised and enforced in the Subordinated Creditor's jurisdiction of incorporation.

6.13 Deduction of Tax

It is not required to make any deduction for or on account of Tax from any payment it may

make under this Deed.

6.14 No default

No other event or circumstance is outstanding which constitutes (or with the expiry of a grace period, the giving of notice, the making of any determination or any combination of any of the foregoing, would constitute) a default or termination event (however described) under any other agreement or instrument which is binding on it or to which its assets are subject.

6.15 Pari passu ranking

Its payment obligations under this Deed 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.

6.16 Centre of main interests and establishments

For the purposes of The Council of the European Union Regulation No. 1346/2000 on Insolvency Proceedings (the "**Regulation**"), its centre of main interest (as that term is used in Article 3(1) of the Regulation) is situated in its jurisdiction of incorporation and it has no "establishment" (as that term is used in Article 2(h) of the Regulations) in any other jurisdiction.

6.17 Taxation

- (A) It is not materially overdue in the filing of any Tax returns and it is not overdue in the payment of any amount in respect of Tax of £50,000 (or its equivalent in any other currency) or more.
- (B) No claims or investigations are being, or are reasonably likely to be, made or conducted against it with respect to Taxes such that a liability of, or claim against, it of £50,000 (or its equivalent in any other currency) or more is reasonably likely to arise.
- (C) It is resident for Tax purposes only in the jurisdiction of its incorporation.

6.18 Repetition

Save for Clauses 6.6 (*Registration Requirements*), 6.13 (*Deduction of Tax*) and 6.17 (*Taxation*), each of the representations made in this clause are deemed to be made daily by the Subordinated Creditor, by reference to the facts and circumstances then existing.

7. Voting

Until the Senior Discharge Date, the Subordinated Creditor:

- (A) irrevocably authorises the Security Agent to exercise all powers of convening meetings, voting and representation in respect of the Subordinated Debt (provided that this will not entitle the Security Agent to vary the terms of any Subordinated Agreement);
- (B) will provide all forms of proxy and of representation necessary for such exercise; and

(C) if and to the extent that the Security Agent is not entitled to exercise a power conferred by the above:

- (1) will exercise that power acting in accordance with the instructions of the Security Agent (acting on the instructions of the Majority Lenders); and
- (2) will not exercise them so as to impair the subordination provided for in this Deed.

8. **Turnover**

8.1 **Turnover trust**

Save for any Permitted Payment, if at any time before the Senior Discharge Date the Subordinated Creditor receives:

- (A) any Distribution in respect of, or on account of, the Subordinated Debt;
- (B) any Distribution in respect of the purchase or other acquisition of the Subordinated Debt;
- (C) the proceeds of enforcement of any Security or guarantee in relation to the Subordinated Debt; or
- (D) any of the Subordinated Debt are discharged in any manner,

the Subordinated Creditor will hold any such payment or Distribution or an amount equal to the amount discharged on trust for the Security Agent and pay and distribute it as soon as possible to the Security Agent for application in or towards payment and/or discharge of the Senior Debt.

8.2 **Failure of trust**

If the trust referred to in this clause fails or cannot be given effect to, the Subordinated Creditor will pay to the Security Agent an amount equal to the relevant amount and the Security Agent shall apply such receipts in or towards payment and/or discharge of the Senior Debt.

8.3 **Failure to act**

If the Subordinated Creditor fails to perform its obligations under this clause, the Security Agent is irrevocably authorised to effect the same on behalf of the Subordinated Creditor.

8.4 **Additional Subordinated Debt**

Any Distribution made by the Subordinated Creditor to the Security Agent under this clause shall be added to the Subordinated Debt (to the extent permitted by law).

9. **Application of receipts**

- (A) Any amount received by the Security Agent under this Deed shall be applied by it in accordance with the Facility Agreement.
- (B) Until the Senior Discharge Date:

- (1) the Security Agent (acting on the instructions of the Majority Lenders) may refrain from applying or enforcing any Senior Security, monies or rights held or received by the Security Agent or apply and enforce the same in such manner and order as the Security Agent sees fit (whether against the Senior Debt or otherwise); and
 - (2) the Subordinated Creditor will not be entitled to the benefit of such Senior Security.
- (C) The Subordinated Creditor will not be entitled to direct the application by the Security Agent of any sums received by the Security Agent from the Subordinated Creditor in connection with this Deed.

10. **Continuing obligations**

10.1 **Reinstatement**

If any discharge, release or arrangement (whether in respect of the obligations of the Obligor or any security for those obligations or otherwise) is made by a Secured Party in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then the Senior Debt will continue or be reinstated as if the discharge, release or arrangement had not occurred.

10.2 **Waiver of defences**

- (A) The terms of this deed shall not be affected by any act, omission, matter or thing which, but for this clause, would reduce, release or prejudice any Parties rights and/or obligations under this Deed (and whether or not known to any Secured Party) including, without limitation:
- (1) any time, waiver or consent granted to, or composition with, the Obligor or other person;
 - (2) the release of the Obligor or any other person under the terms of any composition or arrangement with any creditor of any other person;
 - (3) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of the Obligor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
 - (4) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Obligor or any other person;
 - (5) any amendment, novation, supplement, extension (whether of maturity or otherwise) or restatement (in each case, however fundamental, whether or not more onerous or of whatever nature) or replacement of a Finance Document or any other document or security, including, without limitation, any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under any Finance Document, Subordinated Document or other document or security;
 - (6) any unenforceability, illegality or invalidity of any obligation of any person

under any Finance Document or any other document or security; or

(7) any insolvency or similar proceedings.

(B) The Secured Creditor acknowledges that:

(1) the Security Agent is under no obligation to give it notice of the occurrence of any event in paragraph 10.2(A)(1) above;

(2) it has no right of consent in relation to any event in paragraph 10.2(A)(1) above; and

(3) no lack of consent shall impair the provisions of this Deed.

10.3 Continuing obligations

The obligations of the Obligor and the Subordinated Creditor under this Deed are continuing obligations and shall be and remain fully effective until the Senior Discharge Date, notwithstanding:

(A) that the Obligor may have no liability to the Security Agent at the time of execution of this Deed;

(B) any intermediate payment, reduction or discharge of the Senior Debt or any part of it; and

(C) any increase in or variation of the Senior Debt or Subordinated Debt or any variation, extension or supplement to any Senior Agreement or Subordinated Agreement.

10.4 Additional security

This Deed is in addition to, and is not in any way prejudiced by, any Security or other right now or subsequently held by any Finance Party.

10.5 No impairment to existing obligations

(A) Nothing in this Deed is intended to or shall impair the obligations of:

(1) the Obligor to any Secured Party under any Senior Agreement; or

(2) the Obligor to the Subordinated Creditor under any Subordinated Agreement.

(B) No payment made to the Security Agent in relation to the Senior Debt pursuant to this Deed shall be deemed to extinguish the obligations of the Obligor to the Subordinated Creditor pursuant to any Subordinated Agreement.

(C) No failure by the Security Agent to give any notice which it is required to give in respect of the Obligor shall affect or impair the liability of the Obligor to any Secured Party under this Deed.

(D) Nothing contained in this Deed in any manner affects the rights or remedies of any Secured Party under the Senior Agreements.

10.6 No Recourse to other rights

The Security Agent will not be obliged, before making demand or taking any other steps to enforce its rights under this Deed:

- (A) to make any demand for repayment, or take any action to recover any Senior Debt;
- (B) to take any proceedings or exhaust any claim, right or remedy against the Obligor or any other person; or
- (C) to take any action under or enforce any Security held by it.

11. Subrogation of Subordinated Creditor

If the Senior Debt is discharged in full from any proceeds of the Subordinated Debt, then with effect from the Senior Discharge Date, the Subordinated Creditor will be:

- (A) subrogated to the Senior Debt; and
- (B) entitled to an assignment of the Senior Debt without any recourse to the Security Agent.

12. Power of attorney

12.1 Appointment

The Subordinated Creditor by way of security irrevocably appoints the Security Agent, any Receiver and any Delegate severally as its attorney (with full power of substitution) on its behalf and in its name or otherwise as such time and in such manner as the attorney may think fit:

- (A) to do anything which the Subordinated Creditor is obliged to do under this Deed, but has failed to do so on the date it was obliged so to do; and
- (B) to exercise any of the rights conferred on the Security Agent, any Receiver or any Delegate in relation to the Assigned Assets or under any Finance Document, the LPA or the Insolvency Act 1986.

12.2 Ratification

The Subordinated Creditor ratifies and confirms and agrees to ratify and confirm whatever any such attorney does or purports to do under its appointment under this clause

13. Information

- (A) The Subordinated Creditor agrees to notify the Security Agent (following a reasonable request) of the amounts from time to time of the Subordinated Debt.
- (B) The Obligor and the Subordinated Creditor agree to provide the Security Agent with any document or other information relating to the Subordinated Debt as it may request.
- (C) The Obligor acknowledges and agrees that the Subordinated Creditor and the Security Agent may give the other information about the Obligor, whether financial

or otherwise.

- (D) The Security Agent will notify the Subordinated Creditor as soon as reasonably practicable on the occurrence of the full and final discharge of the Senior Debt.

14. **Discharge**

14.1 **Release**

Following the Senior Discharge Date, the Security Agent shall, at the written request and cost of the Subordinated Creditor, as soon as reasonably practicable take all action reasonably necessary to discharge this Deed and execute and deliver such deeds and documents as the Subordinated Creditor may reasonably require to give effect to this clause.

14.2 **Retention**

If the Security Agent considers that any amount paid or credited to it under this Deed is capable of being avoided or otherwise set aside, that amount shall not be considered to have been paid for the purposes of determining whether all the Senior Debt has been irrevocably paid.

15. **Partial invalidity**

If at any time any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of the remaining provisions under the law of any other jurisdiction will in any way be affected or impaired.

16. **Remedies and waivers**

- (A) No failure to exercise, nor any delay in exercising, on the part of the Security Agent, any right or remedy under this Deed shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy.
- (B) The rights and remedies provided in this Deed are cumulative and are not exclusive of any right or remedies provided by law.

17. **Other Collateral Instruments**

The Subordinated Creditor and the Obligor agree to be bound by this Deed notwithstanding that any other person intended to execute or to be bound by any Collateral Instrument under or pursuant to any Senior Agreement may not do so or may not be effectually bound and notwithstanding that such other Collateral Instrument may be determined or be or become invalid or unenforceable against any other person, whether or not the deficiency is known to the Security Agent.

18. **Changes to the Parties**

18.1 **Assignment and transfer by the Subordinated Creditor or the Obligor**

Neither the Subordinated Creditor nor the Obligor may assign any of its rights or transfer (whether by novation or otherwise) any of its respective rights or obligations under this

Deed.

18.2 Assignment and transfer by the Security Agent

The Security Agent may assign any of its rights or transfer any of its rights or obligations under this Deed to any person to whom it is permitted to assign its rights or transfer any of its rights or obligations to under the terms of the Facility Agreement.

- 18.3 The Security Agent may disclose to any prospective transferee or to any other person who may propose entering into contractual relations with the Security Agent, such information about the Obligor and/or the Subordinated Creditor as the Security Agent may consider appropriate.

19. Acknowledgement of assignment

Each Obligor acknowledges that this Deed constitutes notice to it of the assignment of and security granted over the Subordinated Debt, each Subordinated Agreement and other items pursuant to the Subordinated Creditor's Security Agreement dated on or about the date of this Deed between the Security Agent and the Subordinated Creditor.

20. Costs and expenses

20.1 Enforcement expenses

The Subordinated Creditor shall, within three Business Days of written demand, indemnify the Security Agent against the amount of all costs, losses, liabilities and/or expenses (including legal fees and other professional fees, VAT and disbursements) incurred by the Security Agent, any Finance Party, any Receiver or any Delegate in connection with the release, enforcement of or the preservation of any right under this Deed and any proceedings instituted by or against the Security Agent as a consequence of enforcing those rights including any present or future stamp or other Tax or duties and any related penalties or interest which may be imposed by any competent jurisdiction in connection with the enforcement of this Deed or in consequence of any payment being made under this Deed being impeached or declared void for any reason.

20.2 Amendment costs

If the Subordinated Creditor requests an amendment, waiver or consent, the Subordinated Creditor shall, within three Business Days of demand, reimburse the Security Agent for the amount of all costs and expenses (including legal fees and other professional fees, VAT and disbursements) reasonably incurred by the Security Agent in responding to, evaluating, negotiating or complying with that request or requirement.

21. Payments

21.1 Set-off

- (A) The Security Agent may set off any matured obligation due from the Subordinated Creditor under this Deed (to the extent beneficially owned by the Security Agent) against any matured obligation owed by the Security Agent to the Subordinated Creditor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Security Agent may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

- (B) All payments to be made by the Subordinated Creditor under this Deed shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

21.2 Taxes

The Subordinated Creditor shall pay Tax and VAT in respect of any amount payable by it to the Security Agent, any Receiver, Delegate and/or Finance Party under this Deed in accordance with the Facility Agreement. The Security Agent, any Receiver, Delegate and/or Finance Party shall provide the Subordinated Creditor with an appropriate VAT invoice in respect of any fees, costs or expenses payable by the Subordinated Creditor to the Security Agent, such Receiver, Delegate and/or Finance Party pursuant to this Deed in accordance with applicable legislation (to the extent applicable to the Security Agent, such Receiver, Delegate or Finance Party) and the Subordinated Creditor will provide its valid VAT registration number (if any) to the Security Agent, any Receiver, Delegate and/or Finance Party upon request by the Security Agent, any Receiver, Delegate and/or Finance Party.

21.3 Default interest

Any amount due but unpaid by the Subordinated Creditor under this Deed shall incur interest in accordance with default interest provisions of the Facility Agreement.

21.4 Application of payments to the Security Agent

The Security Agent shall apply all amounts received or recovered under this Deed in satisfaction of, whether in whole or in part, the Senior Debt in accordance with the Facility Agreement.

21.5 Business Days

- (A) Any payment which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).
- (B) During any extension of the due date for payment of any amount under this Deed, interest is payable on the principal or the then due but unpaid amount at the rate payable on the original due date.

21.6 Currency of account

- (A) Subject to paragraphs (B) and (C) below, sterling is the currency of account and payment for any sum due from the Subordinated Creditor.
- (B) All payments by the Subordinated Creditor under this Deed (including damages for its breach) shall be made in the currency in which the relevant amount is denominated, or if different, is payable and to such account, with such person and such other manner as the Security Agent (acting on the instructions of the Majority Lenders) may direct.
- (C) Any amount expressed to be payable in a currency other than sterling shall be paid in that other currency.

21.7 Change of currency

- (A) Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:
 - (1) any reference in this Deed to, and any obligations arising under this Deed in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the Security Agent (after consultation with the Subordinated Creditor); and
 - (2) any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the Security Agent (acting reasonably).
- (B) If a change in any currency of a country occurs, this Deed shall, to the extent the Security Agent (acting reasonably and after consultation with the Subordinated Creditor) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the Relevant Interbank Market and otherwise to reflect the change in currency.

21.8 Day count convention

Any interest, commission or fee accruing under this Deed will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 365 days or, in any case where the practice in the Relevant Interbank Market differs, in accordance with that market practice.

22. Certificates and determinations

Any certification or determination by the Security Agent of a rate or amount under this Deed is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

23. Notices

- (A) Subject to paragraph (B) every notice, request, demand or other communication under this Deed shall be made and delivered in accordance with the Facility Agreement.
- (B) Notices, demands or other communications to be made or sent to the Subordinated Creditor shall be made and sent to the address identified by its name below.

24. The Finance Documents

The Subordinated Creditor acknowledges the terms of the Finance Documents, including, without limitation, clause 8.4 (*Default interest*), clause 26 (*Role of the Agent and the Security Agent*) and clause 27 (*Application of Proceeds*) of the Facility Agreement.

25. Counterparts

This Deed may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of the Deed.

26. Governing Law

This Deed and any non-contractual obligations arising out of or in connection with it are governed by English law.

27. **Enforcement**

27.1 **Jurisdiction**

- (A) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute relating to the existence, validity or termination of this Deed or any non-contractual obligation arising out of or in connection with this Deed) (a "Dispute").
- (B) Each Party agrees that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (C) This clause is for the benefit of the Security Agent only. As a result, the Security Agent shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Security Agent may take concurrent proceedings in any number of jurisdictions.


This Deed has been entered into as a deed and delivered on the date stated at the beginning of this Deed.

EXECUTION PAGE

Obligor

EXECUTED as a DEED by
CAPITAL INDUSTRIAL 3 LIMITED
acting by Jeff Schwartz

and H McCarney

DocuSigned by:

86E982110EA94DD.....
Director

DocuSigned by:
H McCarney
B704BB749FB340D.....
Director

Security Agent

EXECUTED as a DEED by
**MOUNT STREET MORTGAGE
SERVICING LIMITED**
acting by an authorised signatory

.....
Authorised signatory
.....
Print Name

in the presence of:

Witness:
Name:
Address:
.....
Occupation:

EXECUTION PAGE

Obligor

EXECUTED as a DEED by
CAPITAL INDUSTRIAL 3 LIMITED
acting by

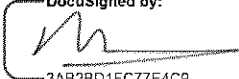
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Director

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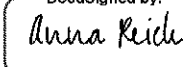
.....
Director

Security Agent

EXECUTED as a DEED by
**MOUNT STREET MORTGAGE
SERVICING LIMITED**
acting by an authorised signatory

DocuSigned by:

3AB2BD1FC77E4C9...
.....
Authorised signatory
Matthew Murray
.....
Print Name

in the presence of:

DocuSigned by:

0199C0D3A14A4FF...

Witness:

Name: Anna Reich
.....


Address: 90 Cathedral Road, Cardiff, CF11 9LN
.....


Occupation: Fitness and Wellbeing Instructor
.....

Subordinated Creditor

EXECUTED as a DEED by
CAPITAL INDUSTRIAL 2 LIMITED
acting by Jeff Schwartz

and H McCarney

DocuSigned by:

.....86E862110EA94DD.....
Director

DocuSigned by:

.....B704BB749FB340D.....
Director