

MR01

Particulars of a charge

233130/13



A fee is payable with this form
Please see 'How to pay' on the last page

You can use the WebFiling service to file this form online
Please go to www.companieshouse.gov.uk

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 there is no instrument Use form MR08

For further information, please refer to our guidance at www.companieshouse.gov.uk

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. It will be scanned and placed on the public record. **Do not send the original**

TUESDAY



A09 *A45RTSEB* #1
21/04/2015
COMPANIES HOUSE

1 Company details

Company number

0	0	2	2	9	6	0	6
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Company name in full BHS Limited

45 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

d	1	d	5	m	0	m	4	y	2	y	0	y	1	y	5
---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---

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 HSBC Bank plc

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

Brief description

Property known as 116 Silbury Arcade, Milton Keynes, MK9 3BE registered under title number BM176755 For more information please refer to the Third Party Legal Charge

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"

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 ¹

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

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

9

Signature

Please sign the form here

Signature

Signature

XHOGAN LOVELLS INTERNATIONAL LLP 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 F3A/SHAHKUNA - 4506998

Company name Hogan Lovells International LLP

Address Atlantic House

Holborn Viaduct

Post town London

County/Region

Postcode

E	C	1	A	2	F	G
---	---	---	---	---	---	---

Country United Kingdom

DX 57 London Chancery Lane

Telephone +44 (20) 7296 2000



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 or email 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

CHFP025

06/14 Version 2.0



FILE COPY

CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 229606

Charge code: 0022 9606 0045

The Registrar of Companies for England and Wales hereby certifies that a charge dated 15th April 2015 and created by BHS LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 21st April 2015

AX

Given at Companies House, Cardiff on 28th April 2015



Companies House



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

DATED 15 April

2015

(1) BHS LIMITED

- and -

(2) HSBC BANK PLC

**THIRD PARTY LEGAL
CHARGE**

Save for material redacted pursuant to s859G of the Companies Act 2008, I certify that this is a true and complete copy of the composite original seen by me

~~F. Prendergast~~
Name: Fiona Prendergast
Title: Solicitor

Date: 20 April 2015

Hogan Lovells International LLP (Ref _____)
Atlantic House, Holborn Viaduct, London EC1A 2FG

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Name: _____
Title: _____
Date: _____

Model: _____
Address: _____
City: _____
State: _____
Zip: _____

THIS THIRD PARTY LEGAL CHARGE is made on

15 April

2015

BETWEEN

- (1) **BHS LIMITED** a company incorporated in England and Wales with company number 00229606 whose registered address is at 129-137 Marylebone House, Marylebone Road, London, N1 5QD (the **Third Party Chargor**)
- (2) **HSBC BANK PLC** (the **Lender**)

BACKGROUND

- 1 The Lender has advanced the Loan to the Borrower pursuant to the terms of the Facility Agreement
- 2 Pursuant to clause 19.14 (*Third Party Legal Charge*) of the Facility Agreement and schedule 4 (*Conditions Subsequent*), paragraph 6(a)(iv) of the Facility Agreement, the Third Party Chargor has agreed (as security for its obligations under the Finance Documents and on substantially the terms as fixed real property is created by the Chargors under the Debenture) to charge its interest in the Property in favour of the Lender

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Third Party Legal Charge

Borrower means Carmen Properties Limited a company incorporated and registered under the laws of Jersey with registered number 81511 whose registered office is at Nautilus House La Cour des Casernes St Helier Jersey JE1 3NH

Chargor means each and all of the Borrower and the Chargors as listed in schedule 5 of the Facility Agreement,

Facility Agreement means the term loan facility agreement dated 13 March 2015 and made between, amongst others the Chargors and the Lender as the same may be amended, varied, supplemented or restated from time to time,

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

Material Agreements means each contract in respect of any disposal of any Security Asset, including any guarantees or sureties entered into in respect of them,

Property means the freehold property known as 116 Silbury Arcade, Milton Keynes, MK9 3BE registered under title number BM176755 subject to the Security Interests created by the Third Party Chargor in favour of the Lender forming part of the Security Assets,

Receiver means an administrative receiver, a receiver and/or manager of any or all of the Third Party Chargor's assets appointed by the Lender under the Security,

Secured Liabilities means all monies from time to time due or owing and all other actual or contingent liabilities from time to time incurred by the Chargors and the Guarantors to the Lender,

Security means the Security Interests created or intended to be created by or pursuant to this Third Party Legal Charge,

Security Assets means all of the Third Party Chargor's assets from time to time the subject of Security,

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

12 Interpretation

- (a) Unless a contrary indication appears, any reference in this Third Party Legal Charge to
 - (i) **assets** includes present and future properties, revenues and rights of every description,
 - (ii) the **Lender** shall be construed to include its successors in title, permitted assigns and permitted transferees,
 - (iii) a **disposal** includes a lease, licence, transfer, sale or other disposal of any kind,
 - (iv) **includes** or **including** shall be read and construed as including the phrase **without limitation**,
 - (v) this **Third Party Legal Charge** or any other agreement or instrument is a reference to this Third Party Legal Charge, or other agreement or instrument as amended, supplemented, extended, restated, novated and/or replaced in any manner from time to time (however fundamentally and even if any of the same increases the Third Party Chargor's obligations or provides for further advances),
 - (vi) a provision of law is a reference to that provision as amended or re-enacted,
 - (vii) the singular includes the plural and vice versa, and
 - (viii) any real property includes
 - (A) all or any part of it,
 - (B) all buildings, fixtures (including trade fixtures), fittings and fixed plant or machinery at any time on that property,
 - (C) all easements, servitudes, rights and agreements in respect of that property,
 - (D) all rents from and proceeds of sale of that property, and
 - (E) the benefit of all covenants given in respect of that property
- (b) When any provision of this Third Party Legal Charge refers to an approval or consent by the Lender that provision shall be construed so as to require that consent or approval to be given in writing
- (c) References to clauses and paragraphs are to be construed, unless otherwise stated, as references to clauses and paragraphs of this Third Party Legal Charge
- (d) Clause headings are for ease of reference only and shall not affect the construction of this Third Party Legal Charge
- (e) If the Lender reasonably considers that an amount paid by the Third Party Chargor is capable of being avoided or otherwise set aside on the bankruptcy, liquidation or administration of the Third Party Chargor, then that amount shall not be considered to have been irrevocably paid for the purposes of this Third Party Legal Charge

- (f) Capitalised terms defined in the Facility Agreement have, unless expressly defined in this Deed, the same meaning in this Deed

1.3 Third party rights

Only a Receiver has any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Third Party Legal Charge

1.4 Law of Property (Miscellaneous Provisions) Act 1989

The terms of all other documents entered into between the Third Party Chargor and the Lender are incorporated in this Third Party Legal Charge to the extent required to ensure that any disposition of the Property contained in this Third Party Legal Charge is a valid disposition in accordance with section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989

1.5 Delivery

The parties intend this Third Party Legal Charge to be delivered on the first date specified on page 1 of this Third Party Legal Charge and that this Third Party Legal Charge shall take effect as a deed notwithstanding the fact that the Lender may only execute this Third Party Legal Charge under hand

2. LIMITED RECOURSE

Notwithstanding any other provision of the Finance Documents, it is expressly agreed and understood that

- (a) the sole recourse of the Lender to the Third Party Chargor under this deed is to the Third Party Chargor's interest in the Property, and
- (b) the liability of the Third Party Chargor to the Lender pursuant to or otherwise in connection with the Finance Documents shall be
 - (i) limited in aggregate to an amount equal to that recovered as a result of enforcement of this Third Party Legal Charge with respect to the Property, and
 - (ii) satisfied only from the proceeds of sale or other disposal or realisation of the Property pursuant to this Third Party Legal Charge

3 SECURITY

Nature of security

All Security and dispositions created or made by or pursuant to this Third Party Legal Charge are created or made in favour of the Lender with full title guarantee in accordance with the Law of Property (Miscellaneous Provisions) Act 1994 as security for the discharge of the Secured Liabilities

4 FIXED SECURITY

4.1 Fixed charges

The Third Party Chargor charges and agrees to charge all of its present and future right, title and interest in and to the following assets which are at any time owned by it, or in which it from time to time has an interest

- (a) by way of first legal mortgage, the Property,
- (b) by way of first fixed charge
 - (i) the proceeds of sale of the Property, and
 - (ii) the benefit of any rental deposit given or charged to the Third Party Chargor by any occupier of the Property,
- (c) by way of first fixed charge (insofar as not mortgaged by clause 4 1(a) or charged by clause 4 1(b)) all present and future rents and other sums due to the Third Party Chargor under any Lease,
- (d) by way of first fixed charge all plant and machinery relating to the Property (insofar as not mortgaged by clause 4 1(a) or charged by clause 4 1(b)) and the benefit of all contracts, licences and warranties relating to the same,
- (e) by way of first fixed charge (to the extent not otherwise charged or assigned in this Third Party Legal Charge), its interest in the Material Agreements, and
- (f) to the extent that any asset expressed to be assigned pursuant to clause 4 2 (Security assignments) is not effectively assigned under that clause, by way of first fixed charge, such asset

4 2 Security assignments

- (a) The Third Party Chargor assigns and agrees to assign absolutely (subject to a proviso for reassignment on redemption) all of its present and future right, title and interest in and to
 - (i) (to the extent not mortgaged or charged by clause 4 1 (*Fixed charges*)) all present and future rents and other sums due to the Third Party Chargor under any Lease,
 - (ii) each Material Agreement together with all rights and remedies in connection with each Material Agreement and all proceeds and claims arising from them,
 - (iii) all insurance policies, claims under those insurance policies and all proceeds of those claims under the insurance policies relating to the Property,
 - (iv) the benefit of all rights, guarantees, Security Interests and remedies relating to any of the foregoing, and
 - (v) all proceeds of any of the foregoing not otherwise assigned under this clause 4 2
- (b) To the extent that any right referred to in clause 4 2(a) is not assignable, the assignment which that clause purports to effect shall operate as an assignment of all the Third Party Chargor's present and future rights and claims to any proceeds of such rights

4.3 Notice of Security

- (a) The Third Party Chargor must give notice of the grant of the Security
 - (i) within 1 month of the date of this Deed, to each tenant under a Lease (if any) in the form set out in schedule 1 (*Form of notice of assignment or charge of Contract*), and
 - (ii) promptly upon the date of this Deed, to each insurer under any insurance policy in which it has an interest in the form set out the schedule 2 (*Form of notice of assignment of Insurance*),

and it shall use its reasonable endeavours to procure that the recipient of each notice acknowledges it in writing

- (b) A notice pursuant to clause 4.3(a) must be given
 - (i) in the prescribed forms attached to this Third Party Legal Charge, and
 - (ii) promptly after the entry into a new Lease, or insurance policy after the date of this Third Party Legal Charge

4.4 Restriction

- (a) The Third Party Chargor authorises the Lender to make an application on Form RX1 (or such other form as may be prescribed from time to time) to enter the following restriction against the relevant registered estate

"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 [●]2015 in favour of HSBC Bank plc referred to in the Charges Register (or its conveyancer)"

- (b) The Third Party Chargor authorises the Lender to apply to the Land Registry to enter the obligation to make further advances on the charges register of the relevant registered estate

4.5 Preservation of assets

The Lender is not obliged to take any steps necessary to preserve any of the Third Party Chargor's assets, to enforce any term of any contract or to make any enquiries as to the nature or sufficiency of any payment received by it pursuant to this Third Party Legal Charge

5 NEGATIVE PLEDGE

- (a) The Third Party Chargor shall not create or permit to subsist any Security Interest over the Security Assets other than the Security without the consent of the Lender
- (b) Sub Paragraph 5(a) above shall not apply to
 - (i) any lien arising by operation of law and in the ordinary course of day to day business,
 - (ii) any Security or Quasi-Security arising under any retention of title, hire purchase or conditional sale arrangement or arrangements having similar effect in respect of goods supplied to an Obligor in the ordinary course of day to day business and on the supplier's standard or usual terms and not arising as a result of any default or omission by any Obligor,
 - (iii) any Security created over an escrow account set up for the purpose of a disposal of an asset, or
 - (iv) any floating charge security created by a member of the BHS Group in favour of the Corporate Guarantor

6. FURTHER ASSURANCE

The Third Party Chargor shall at its own expense ensure any documents are executed and any acts and things are done which the Lender may reasonably require from time to time for

- (a) giving effect to, perfecting or protecting the Security,
- (b) facilitating the realisation of any Security Asset,
- (c) facilitating the exercise of all powers, authorities and discretions vested in the Lender or in any Receiver, or
- (d) perfecting any Security over any assets acquired by the Third Party Chargor after the date of this Third Party Legal Charge

7. ENFORCEMENT

7.1 Remedying defaults

The Lender or a Receiver may (but is not obliged to) take any action to remedy a failure by the Third Party Chargor to observe and perform the provisions of this Third Party Legal Charge at the Third Party Chargor's cost

7.2 Timing of enforcement

- (a) The Secured Liabilities are deemed to have become due on the date of this Third Party Legal Charge
- (b) The Security shall become enforceable on the earlier of
 - (i) the date the Lender demands repayment of any of the Secured Liabilities, or
 - (ii) the Third Party Chargor's request
- (c) Neither section 93(1) nor section 103 of the Law of Property Act 1925 shall apply to this Third Party Legal Charge

7.3 Powers of the Lender

- (a) At any time after the Security becomes enforceable or if requested by the Third Party Chargor, the Lender may without further notice (unless required by law)
 - (i) appoint any person (or persons) to be a receiver, receiver and manager or administrative receiver of all or any part of the Security Assets and/or of the income of the Security Assets, and/or
 - (ii) exercise all or any of the powers conferred on mortgagees by the Law of Property Act 1925 (as amended or extended by this Third Party Legal Charge) and/or all or any of the powers which are conferred by this Third Party Legal Charge on a Receiver, in each case without first appointing a Receiver or notwithstanding the appointment of any Receiver
- (b) The Lender is not entitled to appoint a Receiver in respect of any Security Assets which are subject to Security which (as created) was a floating charge solely by reason of a moratorium being obtained under the Insolvency Act 2000 or anything done with a view to obtaining such a moratorium

7.4 No liability

Neither the Lender nor any Receiver shall be liable as a mortgagee in possession or otherwise to account in relation to the Security Assets for any loss on realisation or for any other default or omission. No exercise of the right in clause 7.1 (*Remedying defaults*) shall render the Lender or a Receiver a mortgagee in possession.

8 RECEIVER

8.1 Removal and replacement

The Lender may from time to time remove any Receiver appointed by it (subject, in the case of an administrative receivership, to section 45 of the Insolvency Act 1986) and, whenever it may deem appropriate, may appoint a new Receiver in the place of any Receiver whose appointment has terminated

8.2 Multiple Receivers

If at any time there is more than one Receiver of all or any part of the Security Assets and/or the income of the Security Assets, each Receiver shall have power to act individually (unless otherwise stated in the appointment document)

8.3 Remuneration

Any Receiver shall be entitled to remuneration for his services at a rate to be fixed by agreement between him and the Lender (or, failing such agreement, to be fixed by the Lender)

8.4 Payment by Receiver

Only monies actually paid by a Receiver to the Lender in relation to the Secured Liabilities shall be capable of being applied by the Lender in discharge of the Secured Liabilities

8.5 Third Party Chargor's agent

Any Receiver shall be the Third Party Chargor's agent and the Third Party Chargor shall (subject to the Companies Act 2006 and the Insolvency Act 1986) be solely responsible for his acts and defaults and for the payment of his remuneration. The Lender shall not incur any liability (either to the Third Party Chargor or to any other person) by reason of the appointment of a Receiver or for any other reason

9. POWERS OF RECEIVER

9.1 General powers

- (a) Any Receiver shall have
- (i) all the powers which are conferred by the Law of Property Act 1925 on mortgagees in possession and receivers appointed under that Act,
 - (ii) (whether or not he is an administrative receiver) all the powers which are listed in schedule 1 of the Insolvency Act 1986, and
 - (iii) all powers which are conferred by any other law conferring power on receivers

9.2 Additional powers

In addition to the powers referred to in clause 9.1 (*General powers*), a Receiver shall have the following powers

- (a) to take possession of, collect and get in all or any part of the Security Assets and/or income in respect of which he was appointed,
- (b) to manage the Security Assets and the Third Party Chargor's business as he thinks fit,

- (c) to redeem any Security Interest and to borrow or raise any money and secure the payment of any money in priority to the Secured Liabilities for the purpose of the exercise of his powers and/or defraying any costs or liabilities incurred by him in such exercise,
- (d) to sell or concur in selling, leasing or otherwise disposing of all or any part of the Security Assets in respect of which he was appointed without the need to observe the restrictions imposed by section 103 of the Law of Property Act 1925, and, without limitation
 - (i) fixtures may be severed and sold separately from the Property containing them, without the Third Party Chargor's consent,
 - (ii) the consideration for any such transaction may consist of cash, debentures or other obligations, shares, stock or other valuable consideration (and the amount of such consideration may be dependent upon profit or turnover or be determined by a third party), and
 - (iii) any such consideration may be payable in a lump sum or by instalments spread over such period as he thinks fit,
- (e) to alter, improve, develop, complete, construct, modify, refurbish or repair any building or land and to abandon, complete or undertake or concur in the completion or undertaking (with or without modification) of any project in which the Third Party Chargor was concerned or interested before his appointment (being a project for the alteration, improvement, development, completion, construction, modification, refurbishment or repair of any building or land),
- (f) to carry out any sale, lease or other disposal of all or any part of the Security Assets by conveying, transferring, assigning or leasing the same in the Third Party Chargor's name and, for that purpose, to enter into covenants and other contractual obligations in the Third Party Chargor's name and so as to bind the Third Party Chargor,
- (g) to take any such proceedings in the Third Party Chargor's name as he shall think fit in respect of the Security Assets and/or income in respect of which he was appointed (including proceedings for recovery of rent or other monies in arrears at the date of his appointment),
- (h) to enter into or make any such agreement, arrangement or compromise as he shall think fit,
- (i) to insure, and to renew any insurances in respect of, the Security Assets as he shall think fit (or as the Lender shall direct),
- (j) to appoint and employ such managers, officers and workmen and engage such professional advisers as he shall think fit (including, without prejudice to the generality of the foregoing power, to employ any firm, partner, company or other entity with which he is associated),
- (k) to form one or more subsidiaries of the Third Party Chargor and to transfer to any such subsidiary all or any part of the Security Assets,
- (l) to operate any rent review clause in respect of any Property in respect of which he was appointed and to apply for any new or extended lease, and
- (m) to
 - (i) give valid receipts for all monies and to do all such other things as may seem to him to be incidental or conducive to any other power vested in him or necessary or desirable for the realisation of any Security Asset,

- (ii) exercise in relation to each Security Asset all such powers and rights as he would be capable of exercising if he were the absolute beneficial owner of the Security Assets, and
- (iii) use the Third Party Chargor's name for any of the above purposes

9.3 Limitation

- (a) The Lender may in the instrument by which a Receiver is appointed limit the powers of the Receiver
- (b) The Receiver shall be under no duty to the Third Party Chargor to exercise any power he may have and shall not incur any liability to the Third Party Chargor either by virtue of the exercise of such powers or by virtue of a failure to exercise such powers

10. APPROPRIATION OF RECEIPTS

10.1 Application

- (a) Subject to clause 10.2 (*Suspense account*), any monies received by the Lender in respect of the Security (subject to the payment of any claims having priority to the Security, but in substitution for section 109(8) of the Law of Property Act 1925) shall be applied in the following order of priority
 - (i) in discharging the remuneration of any Receiver and all costs, charges and expenses of and incidental to his or her appointment,
 - (ii) in or towards payment or discharge of the Secured Liabilities, and
 - (iii) in payment of the surplus (if any) to the Third Party Chargor or other person entitled to it
- (b) The Lender may apply sums received towards the payment or discharge of the Secured Liabilities in reduction of any part of the Secured Liabilities in any order or manner as it thinks fit. The Lender may override any appropriation made by the Third Party Chargor

10.2 Suspense account

Any monies received by the Lender or any Receiver may be placed in an interest bearing suspense or securities realised account and kept there for so long as the Lender considers prudent

11. CURRENCY CONVERSION

All monies received or held by the Lender or any Receiver under this Third Party Legal Charge may be converted from their existing currency into such other currency as the Lender or the Receiver considers necessary or desirable to cover the obligations and liabilities comprised in the Secured Liabilities in that other currency at the Lender's spot rate of exchange

12. NEW ACCOUNT

If the Lender receives or is deemed to be affected by notice (whether actual or constructive) of any subsequent Security Interest affecting some or all of the Security Assets or their proceeds of sale, then the Lender may open a new account for the Third Party Chargor. If it does not do so, it shall nevertheless be treated as if it had done so at the time when it received, or was deemed to have received, the notice. As from that time, any payment made to the Lender for the Third Party Chargor's account shall be credited (or be treated as having been credited) to the new account and shall not operate to reduce the amount for which the Security applies

13. DELEGATION AND APPOINTMENT OF ATTORNEYS

13.1 Delegation

- (a) The Lender may delegate to any person or persons all or any of the powers, authorities and discretions which are exercisable under this Third Party Legal Charge. A delegation may be made in any manner (including by power of attorney) in and on any terms (including power to sub-delegate) which the Lender thinks fit.
- (b) The Lender shall not be liable or responsible to the Third Party Chargor for any loss or damage arising from any act, default, omission or misconduct on the part of any of its delegates or sub-delegates.

13.2 Attorneys

- (a) By way of security, the Third Party Chargor irrevocably appoints the Lender, every Receiver and every delegate or sub-delegate appointed under clause 13.1 (*Delegation*) separately to be its attorney on its behalf, in its name
 - (i) to execute and do any documents, acts and things which it is required to execute and do under this Third Party Legal Charge or any other document relating to the Secured Liabilities, and
 - (ii) to execute and do any documents, acts and things which any attorney may deem proper in exercising any powers, authorities and discretions conferred by this Third Party Legal Charge any documents relating to the Secured Liabilities or by law on the Lender or any Receiver.
- (b) The Third Party Chargor ratifies and confirms anything which any of its attorneys does in the proper and lawful exercise or purported exercise of all or any of the powers, authorities and discretions referred to in this clause 13.2 (*Attorneys*).

14. REDEMPTION OF PRIOR SECURITY INTERESTS

14.1 Redemption

The Lender may at any time redeem, or procure the transfer to it of, any prior Security Interest over any Security Assets at the Third Party Chargor's cost.

14.2 Costs of redemption

All principal monies, interest, costs, charges and expenses incurred in and incidental to any redemption or transfer under clause 14.1 (*Redemption*) shall be paid by the Third Party Chargor within 3 Business Days of demand, in each case together with interest calculated and in the manner referred to in clause 18 (*Indemnities*).

15. RELEASES

15.1 Discharge

If the Lender is satisfied that the Secured Liabilities have been unconditionally and irrevocably paid, repaid and discharged in full, the Lender will, at the request and cost of the Third Party Chargor, discharge this Deed.

15.2 Releases conditional

- (a) Any release, settlement, discharge, re-assignment or arrangement in respect of the Security (in this clause 15 (*Releases*), a release) made by the Lender on the faith of any assurance, security

or payment shall be conditional on that assurance, security or payment not being avoided, reduced, clawed back or ordered to be repaid under any law relating to liquidation, bankruptcy or insolvency

- (b) If any avoidance, reduction, or clawback occurs or any order is made as referred to in clause 15.1 (*Releases conditional*), then the release shall have no effect and shall not prejudice the Lender's right to enforce the Security in respect of the Secured Liabilities. As between the Third Party Chargor and the Lender, the Security shall (notwithstanding the release) be deemed to have remained at all times in effect and held by the Lender as Security for the Secured Liabilities.

15.3 Retention

- (a) If and for so long as any assurance, security or payment as is mentioned in clause 15.1 (*Releases conditional*) remains in the reasonable opinion of the Lender susceptible of being avoided, reduced, clawed back or ordered to be repaid under any law relating to liquidation, bankruptcy or insolvency, the Lender may in its absolute discretion retain all or part of the Security and other rights under this Third Party Legal Charge as Security for the Secured Liabilities after they have been paid and discharged in full.
- (b) If, at any time while all or part of the Lender's rights under this Third Party Legal Charge are so retained
 - (i) an application is made to a competent court for a winding-up order to be made in respect of the Third Party Chargor,
 - (ii) steps are taken to wind the Third Party Chargor up,
 - (iii) an application is made to a competent court for an administration order to be made in respect of the Third Party Chargor,
 - (iv) a notice of intention to appoint an administrator to the Third Party Chargor is filed at court, or
 - (v) the appointment of an administrator to the Third Party Chargor takes effect,

then the Lender may continue to retain all or part of its rights under this Third Party Legal Charge for any further period as the Lender may determine in its absolute discretion.

16 CONTINUING SECURITY

16.1 Continuing security

The Security is continuing security and shall secure the ultimate balance of the Secured Liabilities, notwithstanding

- (a) intermediate payment or discharge of the whole or part of the Secured Liabilities,
- (b) the Third Party Chargor's liquidation or other incapacity or any change in its constitution, name or style,
- (c) any change in the Lender's constitution, name or style, its absorption in or amalgamation with any other person or the acquisition of all or part of its undertaking by any other person, or
- (d) any other event, matter or thing

16.2 Additional to other rights

The Security is in addition to (and shall not merge with, otherwise prejudice or affect or be prejudiced or affected by) any other remedy, guarantee, indemnity, Security Interest or other right which may be or have been created (by the Third Party Chargor or otherwise) in favour of the Lender. Accordingly, the Third Party Chargor's liability under this Third Party Legal Charge shall not be prejudiced or affected by, and this Third Party Legal Charge may be enforced notwithstanding

- (a) the existence or invalidity of all or any of those rights, or
- (b) at any time, the Lender exchanging, releasing, varying, abstaining from perfecting or enforcing or otherwise dealing or omitting to deal with all or any of those rights

17. THIRD PARTY PROTECTION

No purchaser, mortgagee or other person dealing with the Lender or a Receiver shall be concerned

- (a) to enquire whether any of the Secured Liabilities have become due or payable or remain unpaid or undischarged,
- (b) whether the power which the Lender or Receiver is purporting to exercise has become exercisable, or
- (c) to see to the application of any money paid to the Lender or to a Receiver

18. INDEMNITIES

The Third Party Chargor agrees to fully indemnify the Lender and any Receiver (and in the case of legal costs and expenses on a solicitor and own client basis) within 3 Business Days of demand against all liabilities, losses, claims, actions, damages, costs and expenses incurred by, made or brought against the Lender or Receiver (or any manager or agent appointed by the Lender or Receiver)

- (a) as a result of the Third Party Chargor's failure to perform any of its obligations under this Third Party Legal Charge,
- (b) in the exercise of any of the powers or other rights conferred by this Third Party Legal Charge,
- (c) in respect of any costs, charges or expenses incurred in connection with clause 11 (*Currency conversion*),
- (d) in respect of the redemption of any prior Security Interest over any Security Asset under clause 14 (*Redemption of prior Security Interests*),
- (e) as a result of the Third Party Chargor's breach of any current or other obligation or matter relating to the Property, or
- (f) in respect of any other matter or thing done or omitted relating to the Security Assets

19. CALCULATIONS AND CERTIFICATES

Any certificate of or determination by the Lender specifying the amount of the Secured Liabilities is, in the absence of manifest error, conclusive evidence against the Third Party Chargor of the matters to which it relates

20. PARTIAL INVALIDITY

All the provisions of this Third Party Legal Charge are severable and distinct from one another and if at any time any provision is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of any of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired

21 REMEDIES AND WAIVERS

No failure to exercise nor any delay in exercising any right or remedy under this Third Party Legal Charge against the Third Party Chargor 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. The rights and remedies provided are cumulative and not exclusive of any rights or remedies provided by law

22 AMENDMENTS AND WAIVERS

Any provision of this Third Party Legal Charge may be amended only if the Third Party Chargor and the Lender agree in writing and any breach of this Third Party Legal Charge may be waived before or after it occurs only if the Lender so agrees in writing. A waiver given or consent granted by the Lender under this Third Party Legal Charge will be effective only if given in writing and then only in the instance and for the purpose for which it is given

23. TRANSFER

- (a) The Lender may assign and/or transfer its rights and obligations under this Third Party Legal Charge
- (b) The Third Party Chargor shall not assign any of its rights or transfer any of its obligations under this Third Party Legal Charge

24 MANAGEMENT TIME

The Lender reserves the right to charge for its management time or other resources (which will be calculated on the basis of such reasonable daily or hourly rates as the Lender may notify to the Third Party Chargor from time to time)

25. COUNTERPARTS

This Third Party Legal Charge may be executed in any number of counterparts, all of which, taken together, shall constitute one and the same instrument and any party may enter into this Third Party Legal Charge by executing a counterpart

26 NOTICES

26.1 Communications in writing

Any communication to be made under or in connection with this Third Party Legal Charge shall be made in writing in the English language and, unless otherwise stated, must be made by letter

26.2 Addresses

The Lender may deliver any communication, document or notice to the Third Party Chargor relating to this Third Party Legal Charge to its registered office, to any address to which a notice under any facility relating to the Secured Liabilities might be sent or any additional address the Third Party Chargor may notify to the Lender by not less than five business days' notice

26.3 Delivery

- (a) Save as set out in (b) below, any communication or document made or delivered by one person to another under or in connection with this Third Party Legal Charge will only be effective when it has been left at the relevant address or five business days after being deposited in the post, postage prepaid, in an envelope addressed to it at that address
- (b) Any communication or document to be made or delivered to the Lender will be effective only when actually received by the Lender and then only if it is expressly marked for the attention of the department or officer identified with Lender's signature below (or any substitute department or officer as the Lender shall specify for this purpose)

27. GOVERNING LAW

This Third Party Legal Charge and any non-contractual obligations arising out of or in connection with it are governed by English law

28. ENFORCEMENT

28.1 Jurisdiction

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Third Party Legal Charge (including disputes regarding the existence, validity or termination of this Third Party Legal Charge, the Security Interests intended to be created by it or any non-contractual obligations arising out of or in connection with it) (a Dispute)
- (b) The Third Party Chargor agrees that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly it will not argue to the contrary
- (c) This clause 28.1 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

IN WITNESS WHEREOF THE THIRD PARTY CHARGOR HAS EXECUTED THIS THIRD PARTY LEGAL CHARGE AS A DEED the year and date appearing on the first page of it

SCHEDULE 1

FORM OF NOTICE OF ASSIGNMENT OR CHARGE OF CONTRACT

From BHS Limited (Third Party Chargor)

To [Details of Party to Contract]

Date [] 20[]

Dear Sirs

[Description of Lease] (Contract)

We refer to

- 1 the Contract, and
- 2 [third party legal charge] (**Third Party Legal Charge**) dated [] 20[] made between HSBC Bank plc (**Lender**) (1) and the Third Party Chargor (2)

We give you notice that pursuant to the Third Party Legal Charge, we have assigned/charged all of our present and future right, title, interest and benefit in, under and to the Contract (including all [rent] payable to us under the Contract) to the Lender

We irrevocably and unconditionally instruct and authorise you

- 1 to make all payments in connection with the Contract as the Lender may direct. Until you are notified otherwise by the Lender, the Lender directs such sums to be paid to [*insert Third Party Chargor bank details*],
- 2 that all our rights in connection with the Contract are exercisable by (or with the consent of) the Lender. Until you are notified otherwise by the Lender, the Lender directs that all such rights powers, discretions and remedies shall continue to be exercisable by us, and
- 3 to disclose any information relating to the Contract which the Lender may from time to time request

No amendment, waiver or release of any right or obligation in connection with the Contract and no termination or rescission of the Contract by us shall be effective without the prior written consent of the Lender and in any event no such termination or rescission shall be effective unless you have given notice to the Lender

Notwithstanding anything in this notice or otherwise we (and not the Lender nor its appointees) shall be liable under the Contract to perform all the obligations assumed by us under it

The instructions and authorisations contained in this letter shall remain in full force and effect until we and the Lender together give you notice in writing revoking them

This letter shall be governed by and construed in accordance with the laws of England

Please acknowledge receipt of this notice by signing the acknowledgement on the enclosed copy letter and returning the same to the Lender

Form of Acknowledgement

ACKNOWLEDGEMENT

To HSBC Bank plc
[insert address]

FAO [insert details of the Relationship Manager]

We, [Details of Party to the Contract] hereby acknowledge receipt of a Notice of Assignment/Charge of Contracts from BHS Limited (**Third Party Chargor**) of which the attached is a copy (**Notice**)

We confirm that

- (a) we have not received notice of any other assignment of the interests described in the Notice,
- (b) we will not, without the prior written consent of the Lender, vary, rescind or otherwise alter or terminate the Contract or in any way prejudice the rights of the Lender and the beneficiaries under the Contract , and
- (c) we confirm that we will act in accordance with the instructions given by the Third Party Chargor in the Notice

For and on behalf of

[Details of Party to the Contract]

Dated []

SCHEDULE 2

FORM OF NOTICE OF ASSIGNMENT OF INSURANCE

To [Insurer]

Date [] 20[]

Dear Sirs,

We give you notice that we have assigned and charged to HSBC Bank plc in its capacity as (Lender) pursuant to a third party legal charge entered into by us in favour of the Lender dated [] 20[] all our right, title and interest in and to the proceeds of [*insert details of relevant insurance policy*] (the Policy of Insurance)

With effect from your receipt of this notice we instruct you to

- (1) following receipt of the Lender's written notification, make all payments and claims under or arising from the Policy of Insurance to the Lender [*insert an account number if required*] or to its order as it may specify in writing from time to time, and
- (2) disclose to the Lender, without further approval from us, such information regarding the Policy of Insurance as the Lender may from time to time request and to send it copies of all notices issued by you under the Policy of Insurance

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

Please acknowledge receipt of this notice (substantially in the form of the attached) by signing the acknowledgement on the enclosed copy letter and returning it to the Lender at HSBC Bank plc, [*insert address*] marked for the attention of [*insert details of the Relationship Manager*]

Yours faithfully,

for and on behalf of

[INSERT THIRD PARTY CHARGOR'S DETAILS]

[On copy only]

To HSBC Bank plc
[insert address]

FAO [insert details of the Relationship Manager]

We acknowledge receipt of a notice in the terms set out above and confirm that we have not received notice of any previous assignments or charges of or over any of the rights, title and interests and benefits referred to in such notice and that we will comply with the terms of that notice

We further confirm that no amendment or termination of the Policy of Insurance shall be effective unless we have given the Lender thirty days written notice of it or, if it is not possible to comply with such notification to the Lender in accordance with the provisions of the relevant Policy of Insurance, the notice will be provided to the Lender in relation to such termination as soon as possible

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

For and on behalf of [Insurer]

By []

Dated []

EXECUTION PAGE

THE LENDER

SIGNED for and on behalf of)

HSBC BANK plc)

A large, dense black scribble redacting the signature of the lender.

Executed and Delivered as a deed by
BHS LIMITED acting by

Director

in the presence of

Signature of witness

Name of witness

Address of witness

EXECUTION PAGE

THE LENDER

SIGNED for and on behalf of)


HSBC BANK plc)

Executed and Delivered as a deed by
BHS LIMITED acting by

Director 

DOMINIC CHAPPELL

in the presence of

Signature of witness 

Name of witness
ELEANOR GARRATT

Address of witness 