



Homes  
England

Date: 12 November 2020

Our Ref: RFI3123

Tel: 0300 1234 500

Email: infogov@homesengland.gov.uk

Making homes happen

██████████  
By Email Only

Windsor House  
Homes England – 6<sup>th</sup> Floor  
50 Victoria Street  
London  
SW1H 0TL

Dear ██████████

**RE: Request for Information – RFI3123**

Thank you for your request for information which was processed in accordance the Freedom of Information Act 2000 (FOIA).

You requested the following information:

*I refer to a facility agreement in the sum of £27,680,000, made in 2017, from the Homes and Community Agency and Lambeth council to Muse (Brixton) Ltd. The facility agreement relates to the construction of homes at Hambrook and Ivor House. I attach a copy of the charge for reference.*

*Can you please provide me with the following information:*

- 1. How much of the £27,680,000 was provided by the Homes and Community Agency and how much was provided by Lambeth council?*
- 2. Was the loan purely a loan to the developer or was an element of it a grant in order to build affordable housing? If there was a grant element, can you please tell me how much of this was for shared ownership properties and how much was for social rent properties.*
- 3. Can you please provide me with a copy of the facility agreement between the Homes and Community Agency and Muse (Brixton) Ltd.*

**Response**

We can confirm that we do hold information which falls within the scope of your request. We will address each of your points below in turn.

- 1. How much of the £27,680,000 was provided by the Homes and Community Agency and how much was provided by Lambeth council?**

We can confirm that we do hold this information, we can confirm that the amount of £27,680,000 was as below;

- Homes and Communities Agency = £5,195,000
- London Borough of Lambeth = £22,485,000

This information is contained within Schedule 1 (The Original Lenders) of the Agreement.

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2. **Was the loan purely a loan to the developer or was an element of it a grant in order to build affordable housing? If there was a grant element, can you please tell me how much of this was for shared ownership properties and how much was for social rent properties.**

We can confirm that the matter was a loan investment, there was no grant element attached to it.

3. **Can you please provide me with a copy of the facility agreement between the Homes and Community Agency and Muse (Brixton) Ltd.**

Please find enclosed to this response and labelled Annex A a copy of the Single Current Term Facility Agreement (the Agreement) dated 22 February 2017 between;

- (1) MUSE (BRIXTON) LIMITED
- (2) HOMES AND COMMUNITIES AGENCY AND LONDON BOROUGH OF LAMBETH
- (3) THE FINANCIAL INSTITUTIONS listed herein
- (4) TMF GLOBAL SERVICES (UK) LIMITED
- (5) TMF TRUSTEE LIMITED

#### Section 43 - Commercial interests

Some of the information contained within the Agreement engages section 43(2) of the FOIA as it is commercial in nature and its release would be likely to prejudice the commercial interests of Homes England and other interested parties to the information.

Homes England is not obliged to disclose information that would, or would be likely to, prejudice the commercial interests of any party.

Section 43 is a qualified exemption. This means that once we have decided that the exemption is engaged, Homes England must carry out a public interest test to assess whether it is in the wider public interest for the information to be disclosed.

#### Arguments in favour of disclosure:

- Homes England acknowledges there is a general public interest in promoting accountability, transparency, public understanding and involvement in how Homes England undertakes its work and how it spends public money.

#### Arguments in favour of withholding:

- Releasing the information could reveal financial information of a third party which may in turn affect their commercial interests;
- Releasing information in relation to a third party in a competitive market would be likely to distort competition, making it a less competitive process, which would not be in the public interest;
- Disclosure would result in third parties being deterred from including commercially sensitive information in future applications. This will mean that Homes England must evaluate applications that are less



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comprehensive than would otherwise have been the case, meaning that Homes England's ability to undertake due diligence on the applications for funding will be impaired. This will result in decision makers not taking all relevant information into account, meaning the decisions will be less robust and less likely to deliver value for money; and

- Homes England has been unable to identify a wider public interest in disclosing the information requested.

Having considered the arguments for and against disclosure of the information, we have concluded that at this time, the balance of the public interest favours non-disclosure.

The full text of the legislation can be found on the following link;

<https://www.legislation.gov.uk/ukpga/2000/36/section/43>

#### Section 40 – Personal information

We have redacted and are withholding information on the grounds that it constitutes third party personal data and therefore engages section 40(2) of the FOIA.

To disclose personal data, such as names, job titles and contact information could lead to the identification of third parties and would breach one or more of the data protection principles.

Section 40 is an absolute exemption which means that we do not need to consider the public interest in disclosure. Once it is established that the information is personal data of a third party and release would breach one or more of the data protection principles, then the exemption is engaged.

The full text in the legislation can be found on the following link;

<https://www.legislation.gov.uk/ukpga/2000/36/section/40>

#### **Right to Appeal**

If you are not happy with the information that has been provided or the way in which your request has been handled you may request an internal review by writing to;

The Information Governance Team  
Homes England – 6<sup>th</sup> Floor  
Windsor House  
50 Victoria Street  
London  
SW1H 0TL

Or by email to [infogov@homesengland.gov.uk](mailto:infogov@homesengland.gov.uk)

You may also complain to the Information Commissioner however, the Information Commissioner does usually expect the internal review procedure to be exhausted in the first instance.



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Making homes happen

The Information Commissioner's details can be found via the following link;

<https://ico.org.uk/>

Please note that the contents of your request and this response are also subject to the Freedom of Information Act 2000. Homes England may be required to disclose your request and our response accordingly.

Yours sincerely,

**The Information Governance Team**

For Homes England

OFFICIAL

DATED 22 FEBRUARY 2017

(1) MUSE (BRIXTON) LIMITED

(2) HOMES AND COMMUNITIES AGENCY AND  
LONDON BOROUGH OF LAMBETH  
acting as Arrangers

(3) THE FINANCIAL INSTITUTIONS listed herein  
as Original Lenders

(4) TMF GLOBAL SERVICES (UK) LIMITED  
acting as Agent

(5) TMF TRUSTEE LIMITED  
acting as Security Agent

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£27,680,000 SINGLE CURRENCY TERM FACILITY  
AGREEMENT

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THIS AGREEMENT is made on

22 FEBRUARY

2017

**BETWEEN:-**

- (1) **MUSE (BRIXTON) LIMITED** registered in England (registered number 09507897) with registered office Kent House, 14-17 Market Place, London W1W 8AJ (the "**Borrower**");
- (2) **HOMES AND COMMUNITIES AGENCY** and **LONDON BOROUGH OF LAMBETH** as mandated lead arrangers (whether acting individually or together the "**Arranger**");
- (3) **THE FINANCIAL INSTITUTIONS** listed in Schedule 1 (*The Original Lenders*) as lenders (the "**Original Lenders**");
- (4) **TMF GLOBAL SERVICES (UK) LIMITED** (registered number 03561975) with registered office at 5th Floor 6 St. Andrew Street, London, EC4A 3AE as agent of the other Finance Parties (the "**Agent**"); and
- (5) **TMF TRUSTEE LIMITED** (registered number 03814168) with registered office at 5th Floor 6 St. Andrew Street, London, EC4A 3AE as security trustee for the Secured Parties (the "**Security Agent**").

IT IS AGREED as follows:-

**SECTION 1**

**INTERPRETATION**

1. **DEFINITIONS AND INTERPRETATION**

1.1 **Definitions**

In this Agreement:-

"Account"	means the General Account, the Deposit Account or the Rent Account
"Acoustic Consultant"	means Alan Saunders Associates Limited (trading as Clarke Saunders Associates) or any other acoustic consultants appointed by the Borrower or a Contractor in respect of the Development in accordance with this Agreement
"Affiliate"	means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company
"Affordable Agreements"	means the Notting Hill Development Agreement the Notting Hill Agreement for Lease and the Notting Hill Leases
"Affordable Proceeds"	means any monies received by the Borrower pursuant to the Affordable Agreements
"Affordable Units"	means the 14 intermediate residential units and 34 social rented units constructed on the Property
"Agreement for Lease"	means an agreement to grant an Occupational Lease for all or part of the Property



<b>"Architect"</b>	means Cartwright Pickard Architects Limited as novated architect or any other novated architect appointed by the Borrower or any other architect appointed by the Contractor in respect of the Development in accordance with this Agreement
<b>"Assignment Agreement"</b>	means an agreement substantially in the form set out in Schedule 5 ( <i>Form of Assignment Agreement</i> ) or any other form agreed between the relevant assignor and assignee
<b>"Authorisation"</b>	means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration
<b>"Availability Period"</b>	means the period from and including the date of this Agreement to and including the date falling 33 months after the first Utilisation Date
<b>"Available Commitment"</b>	means a Lender's Commitment minus:- <ul style="list-style-type: none"> <li>(a) the amount of its participation in any outstanding Loans; and</li> <li>(b) in relation to any proposed Utilisation, the amount of its participation in any Loans that are due to be made on or before the proposed Utilisation Date</li> </ul>
<b>"Available Facility"</b>	means the aggregate for the time being of each Lender's Available Commitment
<b>"Budgeted Costs"</b>	means the itemised budgeted costs and expenses relating to the refinancing and development of the Property, substantially in the form set out in Schedule 8 ( <i>Budgeted Costs</i> ) supplied to the Agent as a condition precedent under this Agreement on or before the first Utilisation Date
<b>"Building Contract"</b>	means the Hambrook House Building Contract and the Ivor House Building Contract
<b>"Business Day"</b>	means a day (other than a Saturday or Sunday) on which banks are open for general business in London
<b>"Code"</b>	means the US Internal Revenue Code of 1986
<b>"Collateral Warranty"</b>	means a collateral warranty given by a Contractor, a Sub-Contractor or a Consultant in favour of the Security Agent in relation to the Development
<b>"Commercial Units"</b>	means the ground floor commercial units to be constructed on the Property
<b>"Commitment"</b>	means:- <ul style="list-style-type: none"> <li>(a) in relation to an Original Lender, the amount set opposite its name under the heading "<b>Commitment</b>" in Schedule 1 (<i>The Original Lenders</i>) and the amount of any other Commitment transferred to it under this Agreement and</li> <li>(b) in relation to any other Lender, the amount of any Commitment transferred to it under this Agreement,</li> </ul>

to the extent not cancelled, reduced or transferred by it under this Agreement

**"Compensation Prepayment Proceeds"**

means the proceeds of all compensation and damages for the compulsory purchase of, or any blight or disturbance affecting, the Property but excluding any Excluded Compensation Proceeds

**"Completion Guarantee"**

means the performance guarantee entered into or to be entered into by the Guarantor in favour of the Security Agent and the Agent in agreed form

**"Compliance Certificate"**

means a certificate substantially in the form set out in Schedule 6 (*Form of Compliance Certificate*)

**"Confidential Information"**

means all information relating to any Obligor, the Group, the Finance Documents or the Facility of which a Finance Party becomes aware in its capacity as, or for the purpose of becoming, a Finance Party or which is received by a Finance Party in relation to, or for the purpose of becoming a Finance Party under, the Finance Documents or the Facility from either:-

- (a) any member of the Group or any of its advisers or
- (b) another Finance Party, if the information was obtained by that Finance Party directly or indirectly from any member of the Group or any of its advisers,

in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information but excludes:-

- (i) information that:-
  - (1) is or becomes public information other than as a direct or indirect result of any breach by that Finance Party of Clause 39.1 (*Confidentiality*) or
  - (2) is identified in writing at the time of delivery as non-confidential by any member of the Group or any of its advisers or
  - (3) is known by that Finance Party before the date the information is disclosed to it in accordance with paragraphs (a) or (b) above or is lawfully obtained by that Finance Party after that date, from a source which is, as far as that Finance Party is aware, unconnected with the Group and which, in either case, as far as that Finance Party is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality and

- (ii) any Funding Rate

<b>"Confidentiality Undertaking"</b>	means a confidentiality undertaking substantially in a recommended form of the LMA as set out in Schedule 7 ( <i>LMA Form of Confidentiality Undertaking</i> ) or in any other form agreed between the Borrower and the Agent
<b>"Considerate Constructors Scheme"</b>	means the Code of Considerate Practice promoted by the construction industry a copy of which is to be found on the Considerate Constructors Scheme website
<b>"Consultant"</b>	means:- <ul style="list-style-type: none"> <li>(a) the Architect</li> <li>(b) the Landscape Architect</li> <li>(c) the Mechanical and Electrical Consultant</li> <li>(d) the Quantity Surveyor</li> <li>(e) the Structural Engineer</li> <li>(f) the Contract Administrator</li> <li>(g) the Acoustic Consultant or</li> <li>(h) any other consultant with a material design responsibility in respect of the Development appointed by the Borrower or a Contractor in accordance with this Agreement</li> </ul>
<b>"Consultant Appointment"</b>	means an agreement for the appointment of a Consultant by the Borrower or a Contractor
<b>"Contingency"</b>	means the amount provided for Contingency in the Budgeted Costs to the extent not allocated to any item of costs and expenses in accordance with Clause 21.8 ( <i>Development costs</i> )
<b>"Contract Administrator"</b>	means Marick PS Limited or any other contract administrator appointed by the Borrower or the Contractor in respect of the Development in accordance with this Agreement
<b>"Contractor"</b>	means the Hambrook House Contractor and the Ivor House Contractor or any other building contractor appointed by the Borrower in respect of the Development in accordance with this Agreement
<b>"Control"</b>	means:- <ul style="list-style-type: none"> <li>(a) being the beneficial owner of more than 50% of the issued share capital of or of the voting rights in that company or</li> <li>(b) having the right to appoint or remove a majority of the directors or</li> <li>(c) otherwise controlling the votes at board meetings of that company by virtue of any powers conferred by:- <ul style="list-style-type: none"> <li>(i) the articles of association or rules (as applicable)</li> </ul> </li> </ul>

- (ii) any shareholders' agreement or
- (iii) any other document regulating the affairs of that company

<b>"Cost Overrun"</b>	means, at any time, the aggregate of the amount by which the aggregate costs and expenses (other than Contingency) comprised within the Projected Costs exceeds the Budgeted Costs
<b>"CTA"</b>	means the Corporation Tax Act 2009
<b>"Default"</b>	means an Event of Default or any event or circumstance specified in Clause 23 ( <i>Events of Default</i> ) which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Finance Documents or any combination of any of the foregoing) be an Event of Default
<b>"Delegate"</b>	means any delegate, agent, attorney or co-trustee appointed by the Security Agent
<b>"Deposit Account"</b>	means the account designated as such under Clause 16.1 ( <i>Designation of Accounts</i> ) and includes any replacement of that account
<b>"Developer"</b>	means Muse Developments Limited (company number 02717800) with registered office at Kent House, 14-17 Market Place, London, W1W 8AJ
<b>"Development"</b>	means the construction on the Properties of 120 residential units and 13,002 sq ft of retail/restaurant units, as described in the Specifications
<b>"Development Agreement"</b>	means the development agreement dated 11 April 2014 made between the Mayor and Burgesses of the London Borough of Lambeth (1) the Developer (2) and Morgan Sindall Group PLC (3) as varied by a deed of variation dated 8 September 2015 made between the Mayor and Burgesses of the London Borough of Lambeth (1) the Developer (2) and Morgan Sindall Group PLC (3) as amended and restated on 21 April 2016 and made between the Mayor and Burgesses of the London Borough of Lambeth (1) the Developer (2) and Morgan Sindall Group PLC (3)
<b>"Development Consent"</b>	means any Authorisation (including any planning permission, approval of all reserved matters and confirmation of satisfaction of all conditions precedent to the commencement of development) required under any law or regulation in connection with the Development
<b>"Development Document"</b>	means:- <ul style="list-style-type: none"> <li>(a) a Building Contract</li> <li>(b) the Development Management Agreement</li> <li>(c) each Post Novation Warranty</li> <li>(d) a Consultant Appointment</li> <li>(e) a Sub-Contract</li> </ul>

	(f)	a Collateral Warranty or
	(g)	any other document designated as such by the Agent and the Borrower
<b>"Development Management Agreement"</b>		means the development management agreement dated on or around the date of this agreement amongst the Security Agent, the Developer and the Borrower
<b>"Development Party"</b>		means:-
	(a)	a Contractor
	(b)	a Sub-Contractor
	(c)	a Consultant or
	(d)	any other person designated as such by the Agent and the Borrower
<b>"Disposal Document"</b>		means:-
	(a)	a Unit Disposal Document
	(b)	an Affordable Agreement or
	(c)	any other document designated as such by the Agent and the Borrower
<b>"Disposal Proceeds"</b>		means the net disposal proceeds derived from the disposal or proposed disposal of a Unit or a Commercial Unit in accordance with Clause 20.4 (but excluding any deposit received by the Borrower pursuant to a Unit Disposal Document which is held by the Borrower's solicitors as stakeholder)
<b>"Disruption Event"</b>		means either or both of:-
	(a)	a material disruption to those payment or communications systems or to those financial markets which are, in each case, required to operate in order for payments to be made in connection with the Facility (or otherwise in order for the transactions contemplated by the Finance Documents to be carried out) which disruption is not caused by, and is beyond the control of, any of the Parties or
	(b)	the occurrence of any other event which results in a disruption (of a technical or systems-related nature) to the treasury or payments operations of a Party preventing that, or any other Party:-
	(i)	from performing its payment obligations under the Finance Documents or
	(ii)	from communicating with other Parties in accordance with the terms of the Finance Documents,
		and which (in either such case) is not caused by, and is beyond

	the control of, the Party whose operations are disrupted
<b>"DMA Step-in Agreement"</b>	means the step-in agreement between the Borrower, the Developer and the Security Agent in respect of the Development Management Agreement
<b>"Duty of Care Agreement"</b>	means following the appointment of any managing agent a duty of care agreement entered into or to be entered into by a Managing Agent, the Borrower and the Security Agent in an agreed form
<b>"EC Base Rate"</b>	means either:- <ul style="list-style-type: none"> <li>(a) the EC Base Rate for the UK as published by the European Commission from time to time or</li> <li>(b) in the event of the EC Base Rate being no longer published by the European Commission for the UK, such other rate as Lender B may charge in accordance with its policies from time to time</li> </ul>
<b>"EIR"</b>	means the Environmental Information Regulations 2004, and any subordinate legislation made under the Environmental Information Regulations 2004 from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation
<b>"EIR Exception"</b>	means any applicable exemption to EIR
<b>"Environment"</b>	means humans, animals, plants and all other living organisms including the ecological systems of which they form part and the following media:- <ul style="list-style-type: none"> <li>(a) air (including, without limitation, air within natural or man-made structures, whether above or below ground)</li> <li>(b) water (including, without limitation, territorial, coastal and inland waters, water under or within land and water in drains and sewers) and</li> <li>(c) land (including, without limitation, land under water)</li> </ul>
<b>"Energy Supply Agreement"</b>	means each bulk energy supply agreement to be entered into between Lambeth Borough Council and a Manco
<b>"Environmental Claim"</b>	means any claim, proceeding, formal notice or investigation by any person in respect of any Environmental Law
<b>"Environmental Law"</b>	means any applicable law or regulation which relates to:- <ul style="list-style-type: none"> <li>(a) the pollution or protection of the Environment</li> <li>(b) the conditions of the workplace or</li> <li>(c) the generation, handling, storage, use, release or spillage of any substance which, alone or in combination with any other, is capable of causing harm to the Environment, including, without limitation, any waste</li> </ul>
<b>"Environmental Permits"</b>	means any permit and other Authorisation and the filing of any notification, report or assessment required under any

	Environmental Law for the operation of the business of the Borrower conducted on or from the properties owned or used by the Borrower
<b>"Event of Default"</b>	means any event or circumstance specified as such in Clause 23 ( <i>Events of Default</i> )
<b>"Excluded Compensation Proceeds"</b>	means any proceeds of compensation and/or any damages for the compulsory purchase of, or any blight or disturbance affecting, the Property which the Borrower notifies the Agent are, or are to be, applied in the replacement, reinstatement and/or repair of the Property, if those proceeds are so applied as soon as possible (but in any event within 180 days, or such longer period as the Lenders may agree) after receipt
<b>"Excluded Recovery Proceeds"</b>	means any proceeds of a Recovery Claim which the Borrower notifies the Agent are, or are to be, applied:- <ul style="list-style-type: none"> <li>(a) to satisfy (or reimburse an Obligor which has discharged) any liability, charge or claim upon an Obligor by a person which is not an Obligor or an Affiliate of an Obligor or</li> <li>(b) in the replacement, reinstatement and/or repair of assets of an Obligor which have been lost, destroyed or damaged,</li> </ul> <p>in each case as a result of the events or circumstances giving rise to that Recovery Claim, if those proceeds are so applied as soon as possible (but in any event within 90 days, or such longer period as the Lenders may agree) after receipt</p>
<b>"Exempted Information"</b>	means any Information that is designated as falling or potentially falling within the FOIA Exemptions or the EIR Exceptions
<b>"Facility"</b>	means the term loan facility made available under this Agreement as described in Clause 2 ( <i>The Facility</i> )
<b>"Facility Office"</b>	means the office or offices notified by a Lender to the Agent in writing on or before the date it becomes a Lender (or, following that date, by not less than five Business Days' written notice) as the office or offices through which it will perform its obligations under this Agreement
<b>"FATCA"</b>	means:- <ul style="list-style-type: none"> <li>(a) sections 1471 to 1474 of the Code or any associated regulations</li> <li>(b) any treaty, law or regulation of any other jurisdiction, or relating to an intergovernmental agreement between the US and any other jurisdiction, which (in either case) facilitates the implementation of any law or regulation referred to in paragraph (a) above or</li> <li>(c) any agreement pursuant to the implementation of any treaty, law or regulation referred to in paragraphs (a) or (b) above with the US Internal Revenue Service, the US government or any governmental or taxation authority in any other jurisdiction</li> </ul>

<b>"FATCA Application Date"</b>	<p>means:-</p> <ul style="list-style-type: none"> <li>(a) in relation to a "withholdable payment" described in section 1473(1)(A)(i) of the Code (which relates to payments of interest and certain other payments from sources within the US), 1 July 2014</li> <li>(b) in relation to a "withholdable payment" described in section 1473(1)(A)(ii) of the Code (which relates to "gross proceeds" from the disposition of property of a type that can produce interest from sources within the US), 1 January 2019 or</li> <li>(c) in relation to a "passthru payment" described in section 1471(d)(7) of the Code not falling within paragraphs (a) or (b) above, 1 January 2019,</li> </ul> <p>or, in each case, such other date from which such payment may become subject to a deduction or withholding required by FATCA as a result of any change in FATCA after the date of this Agreement</p>
<b>"FATCA Deduction"</b>	means a deduction or withholding from a payment under a Finance Document required by FATCA
<b>"FATCA Exempt Party"</b>	means a Party that is entitled to receive payments free from any FATCA Deduction
<b>"Fee Letter"</b>	means any letter or letters dated on or around about the date of this Agreement between any of the Arranger, the Agent or the Security Agent and the Borrower setting out any of the fees referred to in Clause 10 ( <i>Fees</i> )
<b>"Finance Document"</b>	means this Agreement, any Security Document, any Subordination Agreement, the Completion Guarantee, any Fee Letter, any Duty of Care Agreement or any other document designated as such by the Agent and the Borrower
<b>"Finance Party"</b>	means the Agent, the Security Agent, the Arranger or a Lender
<b>"Financial Indebtedness"</b>	<p>means any indebtedness for or in respect of:-</p> <ul style="list-style-type: none"> <li>(a) moneys borrowed</li> <li>(b) any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent</li> <li>(c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument</li> <li>(d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with GAAP, be treated as a balance sheet liability (other than any liability in respect of a lease or hire purchase contract which would, in accordance with GAAP in force prior to 1 January 2019, have been treated as an operating lease)</li> <li>(e) receivables sold or discounted (other than any</li> </ul>



	receivables to the extent they are sold on a non-recourse basis)
	(f) any amount raised under any other transaction (including any forward sale or purchase agreement) of a type not referred to in any other paragraph of this definition having the commercial effect of a borrowing
	(g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value (or, if any actual amount is due as a result of the termination or close-out of that derivative transaction, that amount) shall be taken into account)
	(h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution and
	(i) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (h) above
<b>"Fixed Rate"</b>	means 6.35 per cent per annum
<b>"FOIA"</b>	means the Freedom of Information Act 2000, and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation
<b>"FOIA Authority/Authorities"</b>	means a public authority as defined by FOIA and/or EIR
<b>"FOIA Exemption"</b>	means any applicable exemption to the FOIA
<b>"Funding Rate"</b>	means any individual rate notified by a Lender to the Agent pursuant to Clause 8.1.2 ( <i>Calculation of interest</i> )
<b>"GAAP"</b>	means generally accepted accounting principles in the United Kingdom including IFRS
<b>"General Account"</b>	means the account designated as such under Clause 16.1 ( <i>Designation of Accounts</i> ) and includes any replacement of that Account
<b>"Golden Brick Date"</b>	has the meaning given to it in the Notting Hill Agreement for Lease as at the date of that agreement and not varied by any variations to that agreement, unless agreed by the Agent
<b>"Gross Development Value"</b>	means the market value of the Development at Practical Completion calculated in accordance with the most recent Valuation and, for the avoidance of doubt, the market value will be the market value of the whole scheme and will not deduct any amounts in respect of Affordable Proceeds or deposits paid pursuant to a Unit Disposal Document which have been applied in and towards the costs of the Development

<b>"Group"</b>	means the Guarantor and each of its Subsidiaries
<b>"Guarantor"</b>	means Morgan Sindall Group PLC (company number 00521970) with registered office at Kent House, 14-17 Market Place, London W1W 8AJ
<b>"Hambrook House Building Contract"</b>	means the building contract dated on or about the date of this Agreement between the Borrower and the Hambrook House Contractor
<b>"Hambrook House Contractor"</b>	means Galliford Try Building Limited
<b>"Headlease"</b>	means each lease under which the Borrower holds title to any part of the Property
<b>"Holding Company"</b>	means, in relation to a person, any other person in respect of which it is a Subsidiary
<b>"HS Act"</b>	means the Health and Safety at Work etc. Act 1974
<b>"IFRS"</b>	means international accounting standards within the meaning of the IAS Regulation 1606/2002 to the extent applicable to the relevant financial statements
<b>"Information"</b>	means in relation to:- <ul style="list-style-type: none"> <li>(a) FOIA the meaning given under section 84 of the FOIA and which is held by Lender B at the time of receipt of an RFI and</li> <li>(b) EIR the meaning given under the definition of "environmental information" in section 2 of the EIR and which is held by Lender B at the time of receipt of an RFI</li> </ul>
<b>"Information Commissioner"</b>	has the meaning set out in section 6 of the Data Protection Act 1998
<b>"Initial Valuation"</b>	means the Valuation of the Property supplied to the Agent as a condition precedent under this Agreement on or before the first Utilisation Date
<b>"Insurance Prepayment Proceeds"</b>	means any proceeds of Insurances required to be paid into the Deposit Account in accordance with Clause 22.11.9(a)
<b>"Insurances"</b>	means any contract of insurance required under Clause 22.11 ( <i>Insurances</i> )
<b>"Interest Payment Date"</b>	means the last day of each Month and the Termination Date, with the first Interest Payment Date being the last day of the first full calendar month following the first Utilisation Date. If, however, any such day is not a Business Day, the Interest Payment Date will instead be the preceding Business Day
<b>"Interest Period"</b>	means, in relation to a Loan, each period determined in accordance with Clause 9 ( <i>Interest Periods</i> ) and, in relation to an Unpaid Sum, each period determined in accordance with Clause 8.4 ( <i>Default interest</i> )

<b>"ITA"</b>	means the Income Tax Act 2007
<b>"Ivor House Building Contract"</b>	means the building contract dated on or about the date of this Agreement between the Borrower and the Ivor House Contractor
<b>"Ivor House Contractor"</b>	means Morgan Sindall Construction and Infrastructure Limited
<b>"Landscape Architect"</b>	means Hyland Edgar Driver Limited or any other novated landscape architect appointed by the Borrower or any other landscape architect appointed by the Contractor in respect of the Development in accordance with this Agreement
<b>"Lease Document"</b>	<p>means:-</p> <ul style="list-style-type: none"> <li>(a) an Agreement for Lease</li> <li>(b) an Occupational Lease or</li> <li>(c) any other document designated as such by the Agent and the Borrower</li> </ul> <p>excluding for these purposes any Disposal Document</p>
<b>"Lease Prepayment Proceeds"</b>	means any premium or other amount paid to the Borrower in respect of any agreement to amend, supplement, extend, waive, surrender or release a Lease Document
<b>"Legal Reservations"</b>	<p>means:-</p> <ul style="list-style-type: none"> <li>(a) the principle that equitable remedies may be granted or refused at the discretion of a court and the limitation of enforcement by laws relating to insolvency, reorganisation and other laws generally affecting the rights of creditors</li> <li>(b) the time barring of claims under the Limitation Acts, the possibility that an undertaking to assume liability for or indemnify a person against non-payment of UK stamp duty may be void and defences of set-off or counterclaim</li> <li>(c) the limitation of the enforcement of the terms of leases of real property by laws of general application to those leases</li> <li>(d) similar principles, rights and remedies under the laws of any Relevant Jurisdiction and</li> <li>(e) any other matters which are set out as qualifications or reservations as to matters of law of general application in any legal opinions supplied to the Agent as a condition precedent under this Agreement on or before the first Utilisation Date</li> </ul>
<b>"Lender"</b>	<p>means:-</p> <ul style="list-style-type: none"> <li>(a) any Original Lender and</li> <li>(b) any other person which has become a Lender in accordance with Clause 24 (<i>Changes to the Lenders</i>),</li> </ul>

which in each case has not ceased to be a Party in accordance with the terms of this Agreement

"Lender A"	means London Borough of Lambeth and its permitted transferees and assignees
"Lender A Loan"	means the part of the Loan made by Lender A to the Borrower
"Lender B"	means Homes and Communities Agency of Arpley House, 110 Birchwood Boulevard, Birchwood, Warrington WA3 7QH
"Lender B Loan"	means the part of the Loan made by Lender B to the Borrower
"Limitation Acts"	means the Limitation Act 1980 and the Foreign Limitation Periods Act 1984
"LMA"	means the Loan Market Association
"Loan"	means a loan made or to be made under the Facility or the principal amount outstanding for the time being of that loan

"Loan to Cost"

S. 43

"Loan to Gross Development Value"

S. 43

"Managing Agent"

means any managing agent appointed by the Borrower in respect of the Property in accordance with Clause 22.10 (*Managing Agents*)

"Manco"

means Hambrook House (Brixton) Management Company Limited and Ivor House (Brixton) Management Company Limited

"Margin"

means S. 43

"Material Adverse Effect"

means in the reasonable opinion of the Agent a material adverse effect on:-

- (a) the business, operations, property, or financial condition or prospects of an Obligor or
- (b) the ability of an Obligor to perform its material obligations under the Finance Documents or
- (c) the validity or enforceability of, or the effectiveness or ranking of any Security granted or purported to be granted pursuant to any of, the Finance Documents or
- (d) the rights or remedies of any Finance Party under any of the Finance Documents

<b>"Mechanical and Electrical Consultant"</b>	means ChapmanBDSP Limited or any other mechanical and electrical consultant appointed by the Borrower or a Contractor in accordance with this Agreement
<b>"Milestone"</b>	means each milestone set out in Schedule 9 ( <i>Milestones</i> )
<b>"Month"</b>	means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, except that:- <ul style="list-style-type: none"> <li>(a) (subject to paragraph (c) below) if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day</li> <li>(b) if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month and</li> <li>(c) if an Interest Period begins on the last Business Day of a calendar month, that Interest Period shall end on the last Business Day in the calendar month in which that Interest Period is to end</li> </ul>
<b>"Net Rental Income"</b>	means Rental Income other than Tenant Contributions
<b>"New Lender"</b>	has the meaning given to that term in Clause 24 ( <i>Changes to the Lenders</i> )
<b>"Notting Hill"</b>	means Notting Hill Home Ownership Limited (company number IP23066R)
<b>"Notting Hill Agreement for Lease"</b>	means the agreement for lease dated on or about the date of this Agreement between the Borrower and Notting Hill pursuant to which the Borrower will grant to Notting Hill each Notting Hill Lease in respect of the Affordable Units
<b>"Notting Hill Development Agreement"</b>	means the agreement dated on or around the date of this Agreement between the Borrower and Notting Hill in respect of the construction of the Affordable Units (excluding the Golden Brick Works as that term is defined in the Notting Hill Development Agreement)
<b>"Notting Hill Lease"</b>	means each lease entered into pursuant to the Notting Hill Agreement for Lease
<b>"Notting Hill Step-in Agreement"</b>	means the step-in agreement between Notting Hill, the Borrower and the Security Agent in respect of the Notting Hill Development Agreement
<b>"Obligor"</b>	means the Borrower or the Guarantor
<b>"Occupational Lease"</b>	means any lease or licence or other right of occupation or right to receive rent to which the Property may at any time be subject and includes any guarantee of a tenant's obligations under the same

<b>"Original Financial Statements"</b>	<p>means:-</p> <p>(a) in relation to the Guarantor, its audited consolidated financial statements for the financial year ended 31 December 2015 and</p> <p>(b) in relation to the Borrower, its audited financial statements for its financial year ended 31 December 2015</p>
<b>"Original Jurisdiction"</b>	<p>means, in relation to the Borrower, the jurisdiction under whose laws the Borrower is incorporated as at the date of this Agreement</p>
<b>"Participating Member State"</b>	<p>means any member state of the European Union that has the euro as its lawful currency in accordance with legislation of the European Union relating to Economic and Monetary Union</p>
<b>"Party"</b>	<p>means a party to this Agreement</p>
<b>"Permitted Lease Arrangements"</b>	<p>means:</p> <p>(a) provided the Handover Date has occurred (as defined in the Affordable Agreements):</p> <p style="padding-left: 40px;">(i) the grant of a lease of that part of the Property known as Hambrook House for a term of at least 250 years to Hambrook House (Brixton) Management Company Limited;</p> <p style="padding-left: 40px;">(ii) the grant of a lease of that part of the Property known as Ivor House for a term of at least 250 years to Ivor House (Brixton) Management Company Limited;</p> <p>(b) the grant of leases of the Commercial Units for a term of at least 250 years to one or more subsidiaries of the Borrower, provided such subsidiary grants Security over its leasehold interest in favour of the Security Agent in form and substance satisfactory to the Agent; and</p> <p>(c) the surrender of the existing substation lease and the grant of a new lease of a new substation to be constructed within Hambrook House to London Power Networks plc (company number 03929195)</p>
<b>"Permitted Subsidiary"</b>	<p>means each Manco and any Subsidiary of the Borrower incorporated for the sole purpose of holding a leasehold interest of a Commercial Unit</p>
<b>"Post Novation Warranty"</b>	<p>means:</p> <p>(a) the collateral warranty from the Architect in favour of the Borrower;</p> <p>(b) the collateral warranty from the Landscape Architect in favour of the Borrower; and</p> <p>(c) the collateral warranty from the Structural Engineer in favour of the Borrower</p>

<b>"Practical Completion"</b>	means the date upon which the taking over certificate (as defined in the relevant Building Contract) has been issued in accordance with the relevant Building Contract and the Project Monitor has supplied the Agent with a certificate to that effect
<b>"Projected Costs"</b>	means, at any time, the latest estimate by the Project Monitor of each of the items of costs and expenses specified in the Budgeted Costs incurred and to be incurred
<b>"Project Monitor"</b>	means CBRE Ltd or any other chartered surveyor or project monitor appointed by the Agent in respect of the Development
<b>"Property"</b>	<p>means the property at:-</p> <ul style="list-style-type: none"> <li>(a) Hambrook House, 22 to 26 Porden Road (even numbers) London SW2 1EG and 10 Brixton Hill, London SW2 1RW as more particularly demised by and edged red on the plan annexed to a lease dated on or about the date of this Agreement and made between THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF LAMBETH of Lambeth Town Hall, Brixton Hill, London SW2 1RW (1) and Muse (Brixton) Limited (registered number 09507897) whose registered office is at Kent House, 14-17 Market Place, London W1W 8AJ (2); and</li> <li>(b) Ivor House, 1, 3 and 7 Acre Lane and Flats 1-26, 5 Acre Lane, LONDON SW2 5RS as more particularly demised by and edged red on the plan annexed to a lease dated on or about the date of this Agreement and made between THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF LAMBETH of Lambeth Town Hall, Brixton Hill, London SW2 1RW (1) and Muse (Brixton) Limited (registered number 09507897) whose registered office is at Kent House, 14-17 Market Place, London W1W 8AJ (2),</li> </ul> <p>as described in a Security Document and, where the context so requires, includes the buildings on the Property</p>
<b>"Property Protection Loan"</b>	<p>means a loan made by a Lender to the Borrower to finance:-</p> <ul style="list-style-type: none"> <li>(a) the payment of rent or any other amount, or any cost or expense, under or in connection with a Headlease</li> <li>(b) the payment of any premium for insurance, or any cost or expense required to keep any insurance in force, in accordance with this Agreement</li> <li>(c) the payment of any amount to fund the costs of carrying out the Development or</li> <li>(d) the payment of any amount which, in the opinion of the Lender concerned, is required to preserve or protect any Security Asset,</li> </ul> <p>in circumstances where the Borrower is obliged under a Finance Document but has failed to pay the relevant amount</p>

<b>"Property Report"</b>	means, in respect of the Property, any certificate of or report on title supplied to the Agent as a condition precedent under this Agreement on or before the first Utilisation Date
<b>"Qualifying Lender"</b>	has the meaning given to it in Clause 11 ( <i>Tax Gross Up and Indemnities</i> )
<b>"Quantity Surveyor"</b>	means Faithful+Gould Limited or any other quantity surveyor appointed by the Borrower or a Contractor in respect of the Development in accordance with this Agreement
<b>"Receiver"</b>	means a receiver or receiver and manager or administrative receiver of the whole or any part of the Security Assets
<b>"Recovery Prepayment Proceeds"</b>	<p>means the proceeds of a claim (a "<b>Recovery Claim</b>") against:-</p> <ul style="list-style-type: none"> <li>(a) the vendor of the Property or any of its Affiliates (or any employee, officer or adviser) or</li> <li>(b) the provider of the Property Report or the provider of any other due diligence report (in its capacity as provider of the same) in connection with the acquisition, development, financing or refinancing of the Property,</li> </ul> <p>except for Excluded Recovery Proceeds, and after deducting:-</p> <ul style="list-style-type: none"> <li>(i) any reasonable expenses incurred by an Obligor to a person who is not an Obligor or Affiliate of an Obligor</li> <li>(ii) any Tax incurred and required to be paid by an Obligor (as reasonably determined by that Obligor on the basis of existing rates and taking into account any available credit, deduction or allowance),</li> </ul> <p>in each case in relation to that Recovery Claim</p>
<b>"Relevant Jurisdiction"</b>	<p>means, in relation to the Borrower:-</p> <ul style="list-style-type: none"> <li>(a) its Original Jurisdiction</li> <li>(b) any jurisdiction where any asset subject to or intended to be subject to the Transaction Security to be created by it is situated and</li> <li>(c) any jurisdiction where it conducts its business</li> </ul>
<b>"Rent Account"</b>	means the account designated as such under Clause 16.1 ( <i>Designation of Accounts</i> ) and includes any replacement of that Account
<b>"Rental Income"</b>	<p>means the aggregate of all amounts paid or payable to or for the account of the Borrower in connection with the letting, licence or grant of other rights of use or occupation of any part of the Property, including each of the following amounts:-</p> <ul style="list-style-type: none"> <li>(a) rent, licence fees and equivalent amounts paid or</li> </ul>



payable

- (b) any sum received or receivable from any deposit held as security for performance of a tenant's obligations
- (c) a sum equal to any apportionment of rent allowed in favour of the Borrower
- (d) any other moneys paid or payable in respect of occupation and/or usage of the Property and any fixture and fitting on the Property including any fixture or fitting on the Property for display or advertisement, on licence or otherwise
- (e) any sum paid or payable under any policy of insurance in respect of loss of rent or interest on rent
- (f) any sum paid or payable, or the value of any consideration given, for the grant, surrender, amendment, supplement, waiver, extension or release of any Lease Document
- (g) any sum paid or payable in respect of a breach of covenant or dilapidations under any Lease Document
- (h) any sum paid or payable by or distribution received or receivable from any guarantor of any occupational tenant under any Lease Document
- (i) any Tenant Contributions and
- (j) any interest paid or payable on, and any damages, compensation or settlement paid or payable in respect of, any sum referred to above less any related fees and expenses incurred (which have not been reimbursed by another person) by the Borrower

<b>"Repeating Representations"</b>	means each of the representations set out in Clause 17.1 ( <i>Status</i> ) to Clause 17.6 ( <i>Governing law and enforcement</i> ) and Clause 17.9 ( <i>VAT</i> ) to Clause 17.21 ( <i>Ownership</i> )
<b>"Representative"</b>	means any delegate, agent, manager, administrator, nominee, attorney, trustee or custodian
<b>"Request for Information/RFI"</b>	shall have the meaning set out in the FOIA or any request for information under EIR which may relate to the Development, any Finance Document or any activities or business of Lender B
<b>"Required Completion Date"</b>	means the date following 33 Months from the date of first Utilisation
<b>"Required Milestone Date"</b>	means, with respect to a Milestone, the date set opposite that Milestone under the heading <b>"Required Milestone Date"</b> in Schedule 9 ( <i>Milestones</i> )
<b>"RIDDOR"</b>	means Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (as amended from time to time)

<b>"Secured Liabilities"</b>	means all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally or in any other capacity whatsoever) of each Transaction Obligor to any Secured Party under each Finance Document
<b>"Secured Party"</b>	means a Finance Party, a Receiver or any Delegate
<b>"Security"</b>	means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect
<b>"Security Agreement"</b>	means a Security over the assets of the Borrower entered into or to be entered into by the Borrower in favour of the Security Agent in an agreed form
<b>"Security Asset"</b>	means all of the assets of the Borrower which from time to time are, or are expressed to be, the subject of the Transaction Security
<b>"Security Document"</b>	means:- <ul style="list-style-type: none"> <li>(a) the Security Agreement</li> <li>(b) the Notting Hill Step-in Agreement</li> <li>(c) the DMA Step-in Agreement</li> <li>(d) any other document evidencing or creating Security over any asset to secure any obligation of any Obligor to a Secured Party under the Finance Documents or</li> <li>(e) any other document designated as such by the Security Agent and the Borrower</li> </ul>
<b>"Security Property"</b>	means:- <ul style="list-style-type: none"> <li>(a) the Transaction Security expressed to be granted in favour of the Security Agent as trustee for the Secured Parties and all proceeds of that Transaction Security</li> <li>(b) all obligations expressed to be undertaken by a Transaction Obligor to pay amounts in respect of the Secured Liabilities to the Security Agent as trustee for the Secured Parties and secured by the Transaction Security together with all representations and warranties expressed to be given by a Transaction Obligor or any other person in favour of the Security Agent as trustee for the Secured Parties and</li> <li>(c) any other amounts or property, whether rights, entitlements, choses in action or otherwise, actual or contingent, which the Security Agent is required by the terms of the Finance Documents to hold as trustee on trust for the Secured Parties</li> </ul>

<b>"Specifications"</b>	means the drawings, plans and specifications for the Development which have been supplied to, and approved by, the Agent and the Project Monitor as a condition precedent under this Agreement before the first Utilisation Date, as they may be amended in accordance with this Agreement or with the prior consent of the Agent (acting reasonably)
<b>"Structural Engineer"</b>	means Curtins Consulting Limited or any other novated structural engineer appointed by the Borrower or any other structural engineer appointed by a Contractor in accordance with this Agreement
<b>"Sub-Contract"</b>	means each contract entered into between a Contractor and a Sub-Contractor in relation to the Development including for the following design packages:- <ul style="list-style-type: none"> <li>(a) in respect of the Hambrook House Building Contract:- <ul style="list-style-type: none"> <li>(i) piling</li> <li>(ii) curtain walling</li> <li>(iii) external doors</li> <li>(iv) mechanical and electrical</li> <li>(v) lifts and</li> </ul> </li> <li>(b) in respect of the Ivor House Building Contract:- <ul style="list-style-type: none"> <li>(i) Main building entrance doors</li> <li>(ii) Structural steel frame (new steel to steel connections only)</li> <li>(iii) new shop front glazing</li> <li>(iv) new membrane roofing</li> <li>(v) mechanical services and electrical services and</li> <li>(vi) lifts</li> </ul> </li> </ul>
<b>"Sub-Contractor"</b>	means:- <ul style="list-style-type: none"> <li>(a) any sub-contractor which enters into a Sub-Contract and</li> <li>(b) any other sub-contractor with a material design responsibility in respect of the Development appointed by a Contractor in accordance with this Agreement</li> </ul>

<b>"Subordinated Creditor"</b>	<p>means:-</p> <ul style="list-style-type: none"> <li>(a) the Guarantor</li> <li>(b) the Developer or</li> <li>(c) any other person who becomes a Subordinated Creditor in accordance with this Agreement</li> </ul>
<b>"Subordinated Debt"</b>	<p>in relation to a Subordinated Creditor, has the meaning given to it in the Subordination Agreement entered into by that Subordinated Creditor</p>
<b>"Subordination Agreement"</b>	<p>means a subordination agreement entered into or to be entered into by a Subordinated Creditor, the Borrower and the Security Agent in an agreed form</p>
<b>"Subsidiary"</b>	<p>means a subsidiary undertaking within the meaning of section 1162 of the Companies Act 2006</p>
<b>"Tax"</b>	<p>means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same)</p>
<b>"Tenant Contributions"</b>	<p>means any amount paid or payable to the Borrower by any tenant under a Lease Document or any other occupier of the Property, by way of:-</p> <ul style="list-style-type: none"> <li>(a) contribution to:- <ul style="list-style-type: none"> <li>(i) ground rent</li> <li>(ii) insurance premia</li> <li>(iii) the cost of an insurance valuation</li> <li>(iv) a service or other charge in respect of the Borrower's costs in connection with any management, repair, maintenance or similar obligation or in providing services to a tenant of, or with respect to, the Property or</li> <li>(v) a reserve or sinking fund or</li> </ul> </li> <li>(b) VAT</li> </ul>
<b>"Termination Date"</b>	<p>means the earlier of:-</p> <ul style="list-style-type: none"> <li>(a) 20 Business Days from the date the last Unit is disposed of in accordance with Clause 20.4 (<i>Disposals</i>) sufficient to repay all Loans or</li> <li>(b) the date falling 34 Months from the date of first Utilisation</li> </ul>
<b>"Total Commitments"</b>	<p>means the aggregate of the Commitments being £27,680,000 at the date of this Agreement</p>

<b>"Transaction Document"</b>	means:- <ul style="list-style-type: none"> <li>(a) a Finance Document</li> <li>(b) a Development Document</li> <li>(c) a Lease Document</li> <li>(d) a Disposal Document</li> <li>(e) a Headlease</li> <li>(f) a document appointing a Managing Agent or</li> <li>(g) any other document designated as such by the Agent and the Borrower</li> </ul>
<b>"Transaction Obligor"</b>	means:- <ul style="list-style-type: none"> <li>(a) an Obligor or</li> <li>(b) a Subordinated Creditor</li> </ul>
<b>"Transaction Security"</b>	means the Security created or evidenced or expressed to be created or evidenced under the Security Documents
<b>"Transfer Certificate"</b>	means a certificate substantially in the form set out in Schedule 4 ( <i>Form of Transfer Certificate</i> ) or any other form agreed between the Agent and the Borrower
<b>"Transfer Date"</b>	means, in relation to an assignment or a transfer, the later of:- <ul style="list-style-type: none"> <li>(a) the proposed Transfer Date specified in the relevant Assignment Agreement or Transfer Certificate and</li> <li>(b) the date on which the Agent executes the relevant Assignment Agreement or Transfer Certificate</li> </ul>
<b>"Unit"</b>	means:- <ul style="list-style-type: none"> <li>(a) each individual residential unit constructed on the Property other than the Affordable Units and</li> <li>(b) each Commercial Unit</li> </ul>
<b>"Unit Disposal Document"</b>	means any agreement relating to the disposal of a Unit
<b>"Unpaid Sum"</b>	means any sum due and payable but unpaid by an Obligor under the Finance Documents
<b>"US"</b>	means the United States of America

"US Tax Obligor"	means:-  (a) a Borrower which is resident for tax purposes in the US or  (b) an Obligor some or all of whose payments under the Finance Documents are from sources within the US for US federal income tax purposes
"Utilisation"	means a utilisation of the Facility
"Utilisation Date"	means the date of a Utilisation, being the date on which the relevant Loan is to be made
"Utilisation Request"	means a notice substantially in the form set out in Schedule 3 ( <i>Utilisation Request</i> )
"Valuation"	means a valuation of the Borrower's interest in the Property by the Valuer, supplied at the request of the Agent, addressed to the Finance Parties and prepared on the basis of the market value as that term is defined in the then current Statements of Asset Valuation Practice and Guidance Notes issued by the Royal Institution of Chartered Surveyors
"Valuer"	means Lambert Smith Hampton or any other surveyor or valuer appointed by the Agent
"VAT"	means:-  (a) any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112) and  (b) any other tax of a similar nature, whether imposed in a member state of the European Union in substitution for, or levied in addition to, such tax referred to in paragraph (a) above, or imposed elsewhere

## 1.2 Construction

1.2.1 Unless a contrary indication appears, any reference in this Agreement to:-

- (a) the "**Agent**", the "**Arranger**", any "**Finance Party**", any "**Lender**", any "**Obligor**", any "**Party**", any "**Secured Party**", the "**Security Agent**", any "**Transaction Obligor**" or any other person shall 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 or Security Agents in accordance with the Finance Documents;
- (b) a document in "**agreed form**" is a document which is previously agreed in writing by or on behalf of the Borrower and the Agent;
- (c) "**assets**" includes present and future properties, revenues and rights of every description;
- (d) "**disposal**" includes a sale, transfer, assignment, grant, lease, licence, declaration of trust or other disposal, whether voluntary or involuntary, and "dispose" will be construed accordingly;

- (e) a "**Finance Document**" or "**Transaction Document**" or any other agreement or instrument is a reference to that Finance Document or Transaction Document or other agreement or instrument as amended, novated, supplemented, extended or restated;
- (f) "**guarantee**" means any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets of any person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness;
- (g) "**indebtedness**" includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (h) a "**person**" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership or other entity (whether or not having separate legal personality);
- (i) a "**regulation**" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
- (j) a provision of law is a reference to that provision as amended or re-enacted; and
- (k) a time of day is a reference to London time.

1.2.2 The determination of the extent to which a rate is "**for a period equal in length**" to an Interest Period shall disregard any inconsistency arising from the last day of that Interest Period being determined pursuant to the terms of this Agreement.

1.2.3 A Cost Overrun shall be regarded as "funded" to the extent an amount with respect to that Cost Overrun is deposited into the Deposit Account out of the proceeds of Subordinated Debt or such amount is funded by way of the Contingency in accordance with Clause 21.8 (*Development costs*).

1.2.4 Section, Clause and Schedule headings are for ease of reference only.

1.2.5 Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement.

1.2.6 A Default (other than an Event of Default) is "**continuing**" if it has not been remedied or waived and an Event of Default is "**continuing**" if it has not been waived.

### 1.3 **Currency symbols and definitions**

"£", "GBP" and "sterling" denote the lawful currency of the United Kingdom.

### 1.4 **Third party rights**

1.4.1 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 to enjoy the benefit of any term of this Agreement.

- 1.4.2 Subject to Clause 38.2 (*Exceptions*) but otherwise, 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 Agreement at any time.
- 1.4.3 Any Receiver, Delegate or any person described in Clause 26.11.2 (*Exclusion of liability*) may, subject to this Clause 1.4 and the Third Parties Act, rely on any Clause of this Agreement which expressly confers rights on it.



## SECTION 2

### THE FACILITY

#### 2. THE FACILITY

##### 2.1 The Facility

Subject to the terms of this Agreement, the Lenders make available to the Borrower a sterling term loan facility in an aggregate amount equal to the Total Commitments.

##### 2.2 Property Protection Loans

2.2.1 A Lender may, at its own discretion, make a Property Protection Loan whether requested by the Borrower or not.

2.2.2 Each Property Protection Loan shall:-

- (a) be repayable on demand made by the relevant Lender and in any event shall be repayable on the Termination Date; and
- (b) bear interest in accordance with Clause 8.4 (*Default interest*) as if it were an overdue amount.

##### 2.3 Finance Parties' rights and obligations

2.3.1 The obligations of each Finance Party under the Finance Documents are several. Failure by a Finance Party to perform its obligations under the Finance Documents does not affect the obligations of any other Party under the Finance Documents. No Finance Party is responsible for the obligations of any other Finance Party under the Finance Documents.

2.3.2 The rights of each Finance Party under or in connection with the Finance Documents are separate and independent rights and any debt arising under the Finance Documents to a Finance Party from an Obligor is a separate and independent debt in respect of which a Finance Party shall be entitled to enforce its rights in accordance with Clause 2.3.3 below. The rights of each Finance Party include any debt owing to that Finance Party under the Finance Documents and, for the avoidance of doubt, any part of a Loan or any other amount owed by an Obligor which relates to a Finance Party's participation in the Facility or its role under a Finance Document (including any such amount payable to the Agent on its behalf) is a debt owing to that Finance Party by that Obligor.

2.3.3 A Finance Party may, except as specifically provided in the Finance Documents, separately enforce its rights under or in connection with the Finance Documents.

#### 3. PURPOSE

##### 3.1 Purpose

The Borrower must apply all amounts borrowed by it under the Facility towards financing or refinancing the costs and expenses referred to in the Budgeted Costs which include the costs of carrying out the Development.

##### 3.2 Monitoring

No Finance Party is bound to monitor or verify the application of any amount borrowed pursuant to this Agreement.

#### 4. CONDITIONS OF UTILISATION

##### 4.1 Initial conditions precedent

- 4.1.1 The Lenders will only be obliged to comply with Clause 5.4 (*Lenders' participation*) in relation to any Utilisation if on or before the Utilisation Date for that Utilisation, the Agent has received (or waived the requirement to receive) all of the documents and other evidence listed in Schedule 2 (*Conditions Precedent*) in form and substance satisfactory to the Agent. The Agent shall notify the Borrower and the Lenders promptly upon being so satisfied.
- 4.1.2 Other than to the extent that the Lenders notify the Agent in writing to the contrary before the Agent gives the notification described in Clause 4.1.1 above, the Lenders authorise (but do not require) the Agent to give that notification. The Agent shall not be liable for any damages, costs or losses whatsoever as a result of giving any such notification.
- 4.1.3 The Agent may refuse to accept a Utilisation Request if the Agent believes that the notification described in Clause 4.1.1 above will not be capable of being given on or before the Utilisation Date.
- 4.1.4 If on the proposed Utilisation Date the Agent has not issued the notification described in Clause 4.1.1 above then:-
- (a) at the discretion of the Agent, the relevant Loans may still be made; and
  - (b) the proceeds of the relevant Loans will be paid into the client account of the solicitors to, or an account at, the Agent to be held to the order of the Agent until it gives the notification described in Clause 4.1.1 above.

##### 4.2 Further conditions precedent

The Lenders will only be obliged to comply with Clause 5.4 (*Lenders' participation*) if:-

- 4.2.1 on the date of the Utilisation Request and on the proposed Utilisation Date:-
- (a) no Default is continuing or would result from the proposed Loan;
  - (b) the Repeating Representations to be made by the Borrower are true in all material respects; and
  - (c) each Development Party to be paid with the proceeds of that Utilisation has entered into a Collateral Warranty in form and substance satisfactory to the Agent;
- 4.2.2 immediately following the making of the Loan:-
- (a) the Loan to Gross Development Value will not exceed 55 per cent; and
  - (b) prior to the Golden Brick Date, the Loan to Cost will not exceed 80 per cent; and
  - (c) on and following the Golden Brick Date, the Loan to Cost will not exceed 65 per cent; and
- 4.2.3 there are no outstanding Cost Overruns that have not been funded.

##### 4.3 Maximum number of Loans

A Borrower may not deliver a Utilisation Request if as a result of the proposed Utilisation four or more Lender A Loans or four or more Lender B Loans would be outstanding.

## SECTION 3

### UTILISATION

#### 5. UTILISATION

##### 5.1 Delivery of a Utilisation Request

The Borrower may utilise the Facility by delivery to the Agent of a duly completed Utilisation Request not later than 12 Business Days prior to the proposed Utilisation Date.

##### 5.2 Completion of a Utilisation Request

5.2.1 Each Utilisation Request is irrevocable and will not be regarded as having been duly completed unless:-

- (a) it specifies the purpose of the Loan;
- (b) the proposed Utilisation Date is a Business Day within the Availability Period;
- (c) the currency and amount of the Utilisation comply with Clause 5.3 (*Currency and amount*); and
- (d) except to the extent that any part of the Loan is to fund amounts payable to the Finance Parties under the Finance Documents, it is accompanied by evidence of the purpose of the Loan.

5.2.2 Evidence of the purpose of a Loan will comprise:-

- (a)
  - (i) an invoice (and evidence of payment if the Loan is to refinance the relevant amount) submitted by a Development Party under a Development Document; or
  - (ii) any other evidence of the cost or expense (and evidence of payment if the Loan is to refinance the relevant amount) where the Loan is to finance or refinance a cost or expense not incurred under a Development Document;
- (b) a certificate from the Contract Administrator, countersigned by the Project Monitor, confirming that the cost or expense to be financed or refinanced by the Loan:-
  - (i) is included in Budgeted Costs; and
  - (ii) has not been the subject of a previous certificate under this Clause 5.2; and
- (c) confirmation that 20% of the amount of the invoice or cost and expense referred to in Clause 5.2.2(a) above is being funded by Subordinated Debt,

each in form and substance satisfactory to the Agent.

5.2.3 Only one Loan may be requested in each Utilisation Request.

5.2.4 No more than one Loan may be requested in any calendar month.

### 5.3 **Currency and amount**

- 5.3.1 The currency specified in a Utilisation Request must be sterling.
- 5.3.2 The amount of the proposed Loan must be an amount which is not more than the Available Facility and which is a minimum of £100,000 or, if less, the Available Facility.
- 5.3.3 If a Loan is to finance a payment due to a Development Party under a Development Document, the Agent may (with the prior consent of the Borrower or without prior consent if a Default is continuing) advance that Loan directly to that Development Party.

### 5.4 **Lenders' participation**

- 5.4.1 If the conditions set out in this Agreement have been met, each Lender shall make its participation in each Loan available by the Utilisation Date through its Facility Office.
- 5.4.2 The amount of each Lender's participation in each Loan will be equal to the proportion borne by its Available Commitment to the Available Facility immediately prior to making the Loan.
- 5.4.3 The Agent shall notify each Lender of the amount of each Loan and the amount of its participation in that Loan promptly upon receipt of the Utilisation Request.

### 5.5 **Cancellation of Commitment**

The Commitments which, at that time, are unutilised shall be immediately cancelled at the end of the Availability Period.

## SECTION 4

### REPAYMENT, PREPAYMENT AND CANCELLATION

#### 6. REPAYMENT

##### 6.1 Repayment of Loans

The Borrower shall repay the Loans in full on the Termination Date.

##### 6.2 Reborrowing

The Borrower may not reborrow any part of the Facility which is repaid.

#### 7. PREPAYMENT AND CANCELLATION

##### 7.1 Illegality

If, in any applicable jurisdiction, it becomes unlawful for any Lender to perform any of its obligations as contemplated by this Agreement or to fund or maintain its participation in any Loan:-

7.1.1 that Lender shall promptly notify the Agent upon becoming aware of that event;

7.1.2 upon the Agent notifying the Borrower, the Available Commitment of that Lender will be immediately cancelled; and

7.1.3 the Borrower shall repay that Lender's participation in the Loans made to it on the last day of the Interest Period for each Loan occurring after the Agent has notified the Borrower or, if earlier, the date specified by the Lender in the notice delivered to the Agent (being no earlier than the last day of any applicable grace period permitted by law) and that Lender's corresponding Commitment shall be cancelled in the amount of the participation repaid.

##### 7.2 Change of control

7.2.1 If the Developer ceases to Control the Borrower or the Guarantor ceases to Control the Developer:-

(a) the Borrower shall promptly notify the Agent upon becoming aware of that event;

(b) a Lender shall not be obliged to fund a Utilisation; and

(c) if a Lender so requires and notifies the Agent within five Business Days of the Borrower notifying the Agent of the event the Agent shall, by not less than 20 Business Days' notice to the Borrower, cancel the Commitment of that Lender and declare the participation of that Lender in all outstanding Loans, together with accrued interest, and all other amounts accrued in respect of that Lender's participation in the Loans under the Finance Documents immediately due and payable, whereupon the Commitment of that Lender will be cancelled and all such outstanding Loans and amounts will become immediately due and payable.

##### 7.3 Mandatory prepayment

The Borrower must apply the following amounts in prepayment of the Loan, and payment of prepayment fees and other amounts referred to in Clause 7.9.2 at the time and in the order of application contemplated by Clause 7.4 (*Application of mandatory prepayments*):-

7.3.1 the amount of Net Rental Income;

- 7.3.2 the amount of Disposal Proceeds;
- 7.3.3 the amount of Lease Prepayment Proceeds;
- 7.3.4 the amount of Insurance Prepayment Proceeds;
- 7.3.5 the amount of Compensation Prepayment Proceeds; and
- 7.3.6 the amount of Recovery Prepayment Proceeds.

#### 7.4 Application of mandatory prepayments

7.4.1 An amount referred to in Clause 7.3 (*Mandatory prepayment*) shall be applied on the date provided for in accordance with Clause 16.3.6 and 16.4.4 in or towards:-

- (a) **first:-**
  - (i) prepayment of the Loans; and
  - (ii) payment of prepayment fees and any other amount that is or will become due and payable in accordance with Clause 7.9.2 as a result of those prepayments; and
- (b) **secondly**, in payment of any surplus to the General Account.

#### 7.5 Voluntary cancellation

The Borrower may, if it gives the Agent not less than 15 Business Days' (or such shorter period as the Lenders may agree) prior notice, cancel the whole or any part (being a minimum amount of £50,000 or if higher, a multiple of £10,000) of the Available Facility. Any cancellation under this Clause 7.5 shall reduce the Commitments of the Lenders rateably.

#### 7.6 Voluntary prepayment of Loans

7.6.1 The Borrower may, if it gives the Agent not less than 15 Business Days' (or such shorter period as the Lenders may agree) prior notice, prepay the whole or any part of any Loan (but, if in part, being an amount that reduces the amount of the Loan by a minimum amount of £50,000 or if higher, a multiple of £10,000).

7.6.2 A Loan may only be prepaid after the last day of the Availability Period (or, if earlier, the day on which the Available Facility is zero).

#### 7.7 Right of repayment and cancellation in relation to a single Lender

- 7.7.1 If:-
- (a) any sum payable to any Lender by an Obligor is required to be increased under Clause 11.2.3; or
  - (b) any Lender claims indemnification from the Borrower under Clause 11.3 (*Tax indemnity*) or Clause 12.1 (*Increased costs*),

the Borrower may, whilst the circumstance giving rise to the requirement for that increase or indemnification continues, give the Agent notice of cancellation of the Commitment of that Lender and its intention to procure the repayment of that Lender's participation in the Loans.

7.7.2 On receipt of a notice of cancellation referred to in Clause 7.7.1 above, the Commitment of that Lender shall immediately be reduced to zero.

7.7.3 On the last day of each Interest Period which ends after the Borrower has given notice of cancellation under Clause 7.7.1 above (or, if earlier, the date specified by the Borrower in that notice), the Borrower shall repay that Lender's participation in the Loan.

**7.8 Restrictions on right to prepay or cancel**

Notwithstanding any other term of this Clause 7, the Borrower may not exercise any right of prepayment or cancellation under Clause 7.5 (*Voluntary cancellation*), Clause 7.6 (*Voluntary prepayment of Loans*) or Clause 7.7 (*Right of repayment and cancellation in relation to a single Lender*) until it has received confirmation from the Agent that the Lenders are satisfied that, after prepayment or cancellation, the Borrower will have adequate funding to achieve Practical Completion.

**7.9 Restrictions**

7.9.1 Any notice of cancellation or prepayment given by any Party under this Clause 7 shall be irrevocable and, unless a contrary indication appears in this Agreement, shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of that cancellation or prepayment.

7.9.2 Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid without premium or penalty.

7.9.3 The Borrower may not reborrow any part of the Facility which is prepaid.

7.9.4 The Borrower shall not repay or prepay all or any part of the Loans or cancel all or any part of the Commitments except at the times and in the manner expressly provided for in this Agreement.

7.9.5 No amount of the Total Commitments cancelled under this Agreement may be subsequently reinstated.

7.9.6 If the Agent receives a notice under this Clause 7 it shall promptly forward a copy of that notice to either the Borrower or the affected Lenders as appropriate.

7.9.7 If all or part of any Lender's participation in a Loan is repaid or prepaid, an amount of that Lender's Commitment (equal to the amount of the participation which is repaid or prepaid) will be deemed to be cancelled on the date of repayment or prepayment.

7.9.8 Any prepayment of a Loan (other than a prepayment to a single Lender pursuant to Clause 7.1 (*Illegality*), Clause 7.2 (*Change of control*) or Clause 7.7 (*Right of repayment and cancellation in relation to a single Lender*)) shall be applied pro rata to each Lender's participation in that Loan.

## SECTION 5

### COSTS OF UTILISATION

#### 8. INTEREST

##### 8.1 Calculation of interest

8.1.1 The rate of interest on each Lender A Loan is the Fixed Rate. Interest will be charged daily on the outstanding Lender A Loan balance, net of any voluntary prepayments made pursuant to Clause 7.6 (*Voluntary prepayment of Loans*) which are credited by 5 pm on that day.

8.1.2 The rate of interest on each Lender B Loan for each Interest Period is the percentage rate per annum which is the aggregate of the applicable:-

- (a) Margin; and
- (b) EC Base Rate.

##### 8.2 Payment of interest

Except as provided in Clause 8.3 (*Capitalisation*), the Borrower shall pay accrued interest on each Loan on each Interest Payment Date.

##### 8.3 Capitalisation

8.3.1 Except as provided below, interest payable on each Interest Payment Date falling before the Termination Date will be capitalised on that Interest Payment Date and added to the principal amount of the Loan. References to the Loan will include the capitalised interest added to it.

8.3.2 Clause 8.3.1 above will not apply if:-

- (a) a Default is continuing and the Lenders so direct; or
- (b) as a result of the capitalisation of interest:-
  - (i) the aggregate amount of Loans would exceed the Total Commitments; or
  - (ii) the aggregate amount of interest and other finance costs capitalised or otherwise funded under this Agreement would exceed the amount provided for finance costs in the Budgeted Costs.

##### 8.4 Default interest

8.4.1 If the Borrower fails to pay any amount payable by it under a Finance Document in respect of a Lender A Loan on its due date, interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate which is two per cent per annum higher than the rate which would have been payable if the overdue amount had, during the period of non-payment, constituted a Lender A Loan in the currency of the overdue amount for successive Interest Periods, each of a duration selected by the Agent (acting reasonably).

8.4.2 If the Borrower fails to pay any amount payable by it under a Finance Document in respect of a Lender B Loan on its due date, interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate which is two per cent per annum higher than the rate which would have been payable if the overdue amount had, during the period of non-payment, constituted a



Lender B Loan in the currency of the overdue amount for successive Interest Periods, each of a duration selected by the Agent (acting reasonably).

8.4.3 Any interest accruing under this Clause 8.4 shall be immediately payable by the Borrower on demand by the Agent.

8.4.4 Default interest (if unpaid) arising on an overdue amount will be compounded monthly on each Interest Payment Date with the overdue amount but will remain immediately due and payable.

## 8.5 Notification of rates of interest

8.5.1 The Agent shall promptly notify the relevant Lenders and the Borrower of the determination of a rate of interest under this Agreement.

8.5.2 The Agent shall promptly notify the Borrower of each Funding Rate relating to a Lender B Loan.

## 9. INTEREST PERIODS

### 9.1 Length of Interest Periods

Each Interest Period for a Loan shall start on its Utilisation Date or (if already made) on the last day of its preceding Interest Period and (without double counting) end on the next Interest Payment Date.

### 9.2 Consolidation of Loans

9.2.1 If two or more Interest Periods in respect of the Lender A Loans end on the same date, those Lender A Loans will be consolidated into, and treated as, a single Lender A Loan on the last day of the Interest Period.

9.2.2 If two or more Interest Periods in respect of the Lender B Loans end on the same date, those Lender B Loans will be consolidated into, and treated as, a single Lender B Loan on the last day of the Interest Period.

## 10. FEES

### 10.1 Arrangement fee

The Borrower shall on or before the date of this Agreement pay to the Arrangers an arrangement fee in the following amounts:-

London Borough of Lambeth	£178,358
Homes and Communities Agency	£38,903

### 10.2 Agency fee

The Borrower shall pay to the Agent (for its own account) an agency fee in the amounts and at the times agreed in a Fee Letter.

### 10.3 Security Agent fee

The Borrower shall pay to the Security Agent (for its own account) a security agency fee in the amount and at the times agreed in a Fee Letter.

## SECTION 6

### ADDITIONAL PAYMENT OBLIGATIONS

#### 11. TAX GROSS UP AND INDEMNITIES

##### 11.1 Definitions

11.1.1 In this Agreement:-

**"Borrower DTTP Filing"**

means an HM Revenue & Customs Form DTTP2 duly completed and filed by the Borrower, which:-

- (a) where it relates to a Treaty Lender that is an Original Lender, contains the scheme reference number and jurisdiction of tax residence stated opposite that Lender's name in Schedule 1 (*The Original Lenders*), and is filed with HM Revenue & Customs within 30 days of the date of this Agreement or
- (b) where it relates to a Treaty Lender that is a New Lender, contains the scheme reference number and jurisdiction of tax residence stated in respect of that Lender in the relevant Transfer Certificate or Assignment Agreement, and is filed with HM Revenue & Customs within 30 days of that Transfer Date

**"Protected Party"**

means a Finance Party which is or will be subject to any liability, or required to make any payment, for or on account of Tax in relation to a sum received or receivable (or any sum deemed for the purposes of Tax to be received or receivable) under a Finance Document

**"Qualifying Lender"**

means:-

- (a) a Lender which is beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document and is:-
  - (i) a Lender:-
    - (1) which is a bank (as defined for the purpose of section 879 of the ITA) making an advance under a Finance Document and is within the charge to United Kingdom corporation tax as respects any payments of interest made in respect of that advance or would be within such charge as respects such payments apart from section 18A of the CTA or
    - (2) in respect of an advance made under a Finance Document by a person that was a bank (as defined for the purpose of section 879 of the ITA) at the time that that advance was made and

within the charge to United Kingdom corporation tax as respects any payments of interest made in respect of that advance or

(ii) a Lender which is:-

(1) a company resident in the United Kingdom for United Kingdom tax purposes

(2) a partnership each member of which is:-

(a) a company so resident in the United Kingdom or

(b) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of section 19 of the CTA) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of the CTA

(3) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (within the meaning of section 19 of the CTA) of that company or

(iii) a Treaty Lender or

(b) a Lender which is a building society (as defined for the purpose of section 880 of the ITA) making an advance under a Finance Document or

(c) a Lender which is a local authority (as defined for the purpose of section 999 of the ITA) making an advance under a Finance Document

<b>"Tax Confirmation"</b>	<p>means a confirmation by a Lender that the person beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document is either:-</p> <ul style="list-style-type: none"> <li>(a) a company resident in the United Kingdom for United Kingdom tax purposes</li> <li>(b) a partnership each member of which is:- <ul style="list-style-type: none"> <li>(i) a company so resident in the United Kingdom or</li> <li>(ii) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of section 19 of the CTA) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of the CTA</li> </ul> </li> <li>(c) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (within the meaning of section 19 of the CTA) of that company or</li> <li>(d) a local authority within the meaning of section 999 of the ITA and which is to be paid gross in accordance with section 936 of the ITA</li> </ul>
<b>"Tax Credit"</b>	means a credit against, relief or remission for, or repayment of any Tax
<b>"Tax Deduction"</b>	means a deduction or withholding for or on account of Tax from a payment under a Finance Document, other than a FATCA Deduction
<b>"Tax Payment"</b>	means either the increase in a payment made by an Obligor to a Finance Party under Clause 11.2 ( <i>Tax gross-up</i> ) or a payment under Clause 11.3 ( <i>Tax indemnity</i> )
<b>"Treaty Lender"</b>	<p>means a Lender which:-</p> <ul style="list-style-type: none"> <li>(a) is treated as a resident of a Treaty State for the purposes of the Treaty and</li> <li>(b) does not carry on a business in the United Kingdom through a permanent establishment with which that Lender's participation in the Loan is effectively connected</li> </ul>
<b>"Treaty State"</b>	means a jurisdiction having a double taxation agreement (a " <b>Treaty</b> ") with the United Kingdom which makes provision for full exemption from tax imposed by the United Kingdom on interest

"UK Non-Bank Lender" means:-

- (a) each Lender listed in Schedule 1 (*The Original Lenders*) and
- (b) where a Lender becomes a Party after the day on which this Agreement is entered into, a Lender which gives a Tax Confirmation in the Assignment Agreement or Transfer Certificate which it executes on becoming a Party

11.1.2 Unless a contrary indication appears, in this Clause 11 a reference to "determines" or "determined" means a determination made in the absolute discretion of the person making the determination.

## 11.2 Tax gross-up

11.2.1 Each Obligor shall make all payments to be made by it without any Tax Deduction, unless a Tax Deduction is required by law.

11.2.2 The Borrower shall promptly upon becoming aware that an Obligor must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Agent accordingly. Similarly, a Lender shall notify the Agent on becoming so aware in respect of a payment payable to that Lender. If the Agent receives such notification from a Lender it shall notify the Borrower and that Obligor.

11.2.3 If a Tax Deduction is required by law to be made by an Obligor, the amount of the payment due from that Obligor shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.

11.2.4 A payment shall not be increased under Clause 11.2.3 above by reason of a Tax Deduction on account of Tax imposed by the United Kingdom, if on the date on which the payment falls due:-

- (a) the payment could have been made to the relevant Lender without a Tax Deduction if the Lender had been a Qualifying Lender, but on that date that Lender is not or has ceased to be a Qualifying Lender other than as a result of any change after the date it became a Lender under this Agreement in (or in the interpretation, administration, or application of) any law or Treaty or any published practice or published concession of any relevant taxing authority; or
- (b) the relevant Lender is a Qualifying Lender solely by virtue of paragraph (a)(ii) of the definition of Qualifying Lender; and:-
  - (i) an officer of HM Revenue & Customs has given (and not revoked) a direction (a "**Direction**") under section 931 of the ITA which relates to the payment and that Lender has received from the Obligor making the payment or from the Borrower a certified copy of that Direction; and
  - (ii) the payment could have been made to the Lender without any Tax Deduction if that Direction had not been made; or
- (c) the relevant Lender is a Qualifying Lender solely by virtue of paragraph (a)(ii) of the definition of Qualifying Lender and:-
  - (i) the relevant Lender has not given a Tax Confirmation to the Borrower; and

- (ii) the payment could have been made to the Lender without any Tax Deduction if the Lender had given a Tax Confirmation to the Borrower, on the basis that the Tax Confirmation would have enabled the Borrower to have formed a reasonable belief that the payment was an "excepted payment" for the purpose of section 930 of the ITA; or
  - (d) the relevant Lender is a Treaty Lender and the Obligor making the payment is able to demonstrate that the payment could have been made to the Lender without the Tax Deduction had that Lender complied with its obligations under Clause 11.2.7 below.
- 11.2.5 If an Obligor is required to make a Tax Deduction, that Obligor shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.
- 11.2.6 Within 30 days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Obligor making that Tax Deduction shall deliver to the Agent for the Finance Party entitled to the payment a statement under section 975 of the ITA or other evidence reasonably satisfactory to that Finance Party that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.
- 11.2.7
- (a) Subject to Clause 11.2.7(b) below, a Treaty Lender and each Obligor which makes a payment to which that Treaty Lender is entitled shall co-operate in completing any procedural formalities necessary for that Obligor to obtain authorisation to make that payment without a Tax Deduction.
  - (b)
    - (i) A Treaty Lender which becomes a Party on the day on which this Agreement is entered into that holds a passport under the HMRC DT Treaty Passport scheme, and which wishes that scheme to apply to this Agreement, shall confirm its scheme reference number and its jurisdiction of tax residence opposite its name in Schedule 1 (*The Original Lenders*); and
    - (ii) a New Lender that is a Treaty Lender that holds a passport under the HMRC DT Treaty Passport scheme, and which wishes that scheme to apply to this Agreement, shall confirm its scheme reference number and its jurisdiction of tax residence in the Transfer Certificate or Assignment Agreement which it executes,

and, having done so, that Lender shall be under no obligation pursuant to Clause 11.2.7(a) above.
- 11.2.8 If a Lender has confirmed its scheme reference number and its jurisdiction of tax residence in accordance with Clause 11.2.7(b) above and:-
- (a) the Borrower has not made a Borrower DTTP Filing in respect of that Lender; or
  - (b) the Borrower has made a Borrower DTTP Filing in respect of that Lender but:-
    - (i) that Borrower DTTP Filing has been rejected by HM Revenue & Customs; or
    - (ii) HM Revenue & Customs has not given the Borrower authority to make payments to that Lender without a Tax Deduction within 60 days of the date of the Borrower DTTP Filing,

and, in each case, the Borrower has notified that Lender in writing, that Lender and the Borrower shall co-operate in completing any additional procedural formalities necessary for the Borrower to obtain authorisation to make that payment without a Tax Deduction.

- 11.2.9 If a Lender has not confirmed its scheme reference number and jurisdiction of tax residence in accordance with Clause 11.2.7(b) above, no Obligor shall make a Borrower DTTP Filing or file any other form relating to the HMRC DT Treaty Passport Scheme in respect of that Lender's Commitment or its participation in any Loan unless the Lender otherwise agrees.
- 11.2.10 The Borrower shall, promptly on making a Borrower DTTP Filing, deliver a copy of that Borrower DTTP Filing to the Agent for delivery to the relevant Lender.
- 11.2.11 A UK Non-Bank Lender which becomes a Party on the day on which this Agreement is entered into gives a Tax Confirmation to the Borrower by entering into this Agreement.
- 11.2.12 A UK Non-Bank Lender shall promptly notify the Borrower and the Agent if there is any change in the position from that set out in the Tax Confirmation.

### 11.3 Tax indemnity

- 11.3.1 The Borrower shall (within three Business Days of demand by the Agent) pay to a Protected Party an amount equal to the loss, liability or cost which that Protected Party determines will be or has been (directly or indirectly) suffered for or on account of Tax by that Protected Party in respect of a Finance Document.
- 11.3.2 Clause 11.3.1 above shall not apply:-
  - (a) with respect to any Tax assessed on a Finance Party:-
    - (i) under the law of the jurisdiction in which that Finance Party is incorporated or, if different, the jurisdiction (or jurisdictions) in which that Finance Party is treated as resident for tax purposes; or
    - (ii) under the law of the jurisdiction in which that Finance Party's Facility Office is located in respect of amounts received or receivable in that jurisdiction,  
  
if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by that Finance Party; or
  - (b) to the extent a loss, liability or cost:-
    - (i) is compensated for by an increased payment under Clause 11.2 (*Tax gross-up*);
    - (ii) would have been compensated for by an increased payment under Clause 11.2 (*Tax gross-up*) but was not so compensated solely because one of the exclusions in Clause 11.2.4 applied; or
    - (iii) relates to a FATCA Deduction required to be made by a Party
- 11.3.3 A Protected Party making, or intending to make, a claim under Clause 11.3.1 above shall promptly notify the Agent of the event which will give, or has given, rise to the claim, following which the Agent shall notify the Borrower.
- 11.3.4 A Protected Party shall, on receiving a payment from an Obligor under this Clause 11.3, notify the Agent.

#### 11.4 Tax Credit

If an Obligor makes a Tax Payment and the relevant Finance Party determines that:-

11.4.1 a Tax Credit is attributable to an increased payment of which that Tax Payment forms part, to that Tax Payment or to a Tax Deduction in consequence of which that Tax Payment was required; and

11.4.2 that Finance Party has obtained and utilised that Tax Credit,

the Finance Party shall pay an amount to the Obligor which that Finance Party determines will leave it (after that payment) in the same after-Tax position as it would have been in had the Tax Payment not been required to be made by the Obligor.

#### 11.5 Lender Status Confirmation

11.5.1 Each Lender which becomes a Party to this Agreement after the date of this Agreement shall indicate, in the Transfer Certificate or Assignment Agreement which it executes on becoming a Party, and for the benefit of the Agent and without liability to any Obligor, which of the following categories it falls in:-

- (a) not a Qualifying Lender;
- (b) a Qualifying Lender (other than a Treaty Lender); or
- (c) a Treaty Lender.

11.5.2 If a New Lender fails to indicate its status in accordance with this Clause 11.5 then such New Lender shall be treated for the purposes of this Agreement (including by each Obligor) as if it is not a Qualifying Lender until such time as it notifies the Agent which category applies (and the Agent, upon receipt of such notification, shall inform the Borrower). For the avoidance of doubt, a Transfer Certificate or Assignment Agreement shall not be invalidated by any failure of a Lender to comply with this Clause 11.5.

#### 11.6 Stamp taxes

The Borrower shall pay and, within three Business Days of demand, indemnify each Secured Party against any cost, loss or liability that Secured Party incurs in relation to all stamp duty registration and other similar Taxes payable in respect of any Finance Document.

#### 11.7 VAT

11.7.1 All amounts expressed to be payable under a Finance Document by any Party to a Finance Party which (in whole or in part) constitute the consideration for any supply for VAT purposes are deemed to be exclusive of any VAT which is chargeable on that supply, and accordingly, subject to Clause 11.7.2 below, if VAT is or becomes chargeable on any supply made by any Finance Party to any Party under a Finance Document and such Finance Party is required to account to the relevant tax authority for the VAT, that Party must pay to such Finance Party (in addition to and at the same time as paying any other consideration for such supply) an amount equal to the amount of that VAT (and such Finance Party must promptly provide an appropriate VAT invoice to that Party).



11.7.2 If VAT is or becomes chargeable on any supply made by any Finance Party (the "**Supplier**") to any other Finance Party (the "**Recipient**") under a Finance Document, and any Party other than the Recipient (the "**Relevant Party**") is required by the terms of any Finance Document to pay an amount equal to the consideration for that supply to the Supplier (rather than being required to reimburse or indemnify the Recipient in respect of that consideration):-

- (a) (where the Supplier is the person required to account to the relevant tax authority for the VAT) the Relevant Party must also pay to the Supplier (at the same time as paying that amount) an additional amount equal to the amount of the VAT. The Recipient must (where this Clause 11.7.2(a) applies) promptly pay to the Relevant Party an amount equal to any credit or repayment the Recipient receives from the relevant tax authority which the Recipient reasonably determines relates to the VAT payable on that supply; and
- (b) (where the Recipient is the person required to account to the relevant tax authority for the VAT) the Relevant Party must promptly, following demand from the Recipient, pay to the Recipient an amount equal to the VAT chargeable on that supply but only to the extent that the Recipient reasonably determines that it is not entitled to credit or repayment from the relevant tax authority in respect of that VAT.

11.7.3 Where a Finance Document requires any Party to reimburse or indemnify a Finance Party for any cost or expense, that Party shall reimburse or indemnify (as the case may be) such Finance Party for the full amount of such cost or expense, including such part thereof as represents VAT, save to the extent that such Finance Party reasonably determines that it is entitled to credit or repayment in respect of such VAT from the relevant tax authority.

11.7.4 Any reference in this Clause 11.7 to any Party shall, at any time when such Party is treated as a member of a group for VAT purposes, include (where appropriate and unless the context otherwise requires) a reference to the representative member of such group at such time (the term "**representative member**" to have the same meaning as in the Value Added Tax Act 1994).

11.7.5 In relation to any supply made by a Finance Party to any Party under a Finance Document, if reasonably requested by such Finance Party, that Party must promptly provide such Finance Party with details of that Party's VAT registration and such other information as is reasonably requested in connection with such Finance Party's VAT reporting requirements in relation to such supply.

## 11.8 **FATCA Information**

11.8.1 Subject to Clause 11.8.3 below, each Party shall, within 10 Business Days of a reasonable request by another Party:-

- (a) confirm to that other Party whether it is:-
  - (i) a FATCA Exempt Party; or
  - (ii) not a FATCA Exempt Party;
- (b) supply to that other Party such forms, documentation and other information relating to its status under FATCA as that other Party reasonably requests for the purposes of that other Party's compliance with FATCA; and
- (c) supply to that other Party such forms, documentation and other information relating to its status as that other Party reasonably requests for the purposes of that other Party's compliance with any other law, regulation, or exchange of information regime.

- 11.8.2 If a Party confirms to another Party pursuant to Clause 11.8.1(a) above that it is a FATCA Exempt Party and it subsequently becomes aware that it is not or has ceased to be a FATCA Exempt Party, that Party shall notify that other Party reasonably promptly.
- 11.8.3 Clause 11.8.1 above shall not oblige any Finance Party to do anything, and Clause 11.8.1(c) above shall not oblige any other Party to do anything, which would or might in its reasonable opinion constitute a breach of:-
- (a) any law or regulation;
  - (b) any fiduciary duty; or
  - (c) any duty of confidentiality.
- 11.8.4 If a Party fails to confirm whether or not it is a FATCA Exempt Party or to supply forms, documentation or other information requested in accordance with Clause 11.8.1(a) or 11.8.1(b) above (including, for the avoidance of doubt, where Clause 11.8.3 above applies), then such Party shall be treated for the purposes of the Finance Documents (and payments under them) as if it is not a FATCA Exempt Party until such time as the Party in question provides the requested confirmation, forms, documentation or other information.

## 11.9 FATCA Deduction

- 11.9.1 Each Party may make any FATCA Deduction it is required to make by FATCA, and any payment required in connection with that FATCA Deduction, and no Party shall be required to increase any payment in respect of which it makes such a FATCA Deduction or otherwise compensate the recipient of the payment for that FATCA Deduction.
- 11.9.2 Each Party shall promptly, upon becoming aware that it must make a FATCA Deduction (or that there is any change in the rate or the basis of such FATCA Deduction), notify the Party to whom it is making the payment and, in addition, shall notify the Borrower and the Agent and the Agent shall notify the other Finance Parties.

## 12. INCREASED COSTS

### 12.1 Increased costs

- 12.1.1 Subject to Clause 12.3 (*Exceptions*) the Borrower shall, within three Business Days of a demand by the Agent, pay for the account of a Finance Party the amount of any Increased Costs incurred by that Finance Party or any of its Affiliates as a result of:-
- (a) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation; or
  - (b) compliance with any law or regulation made after the date of this Agreement.
- 12.1.2 In this Agreement "**Increased Costs**" means:-
- (a) a reduction in the rate of return from the Facility or on a Finance Party's (or its Affiliate's) overall capital;
  - (b) an additional or increased cost; or
  - (c) a reduction of any amount due and payable under any Finance Document,

which is incurred or suffered by a Finance Party or any of its Affiliates to the extent that it is attributable to that Finance Party having entered into its Commitment or funding or performing its obligations under any Finance Document.

## 12.2 Increased cost claims

12.2.1 A Finance Party intending to make a claim pursuant to Clause 12.1 (*Increased costs*) shall notify the Agent of the event giving rise to the claim, following which the Agent shall promptly notify the Borrower.

12.2.2 Each Finance Party shall, as soon as practicable after a demand by the Agent, provide a certificate confirming the amount of its Increased Costs.

## 12.3 Exceptions

12.3.1 Clause 12.1 (*Increased costs*) does not apply to the extent any Increased Cost is:-

- (a) attributable to a Tax Deduction required by law to be made by an Obligor;
- (b) attributable to a FATCA Deduction required to be made by a Party;
- (c) compensated for by Clause 11.3 (*Tax indemnity*) (or would have been compensated for under Clause 11.3 (*Tax indemnity*) but was not so compensated solely because any of the exclusions in Clause 11.3.2 applied); or
- (d) attributable to the wilful breach by the relevant Finance Party or its Affiliates of any law or regulation.

12.3.2 In this Clause 12.3, a reference to a "**Tax Deduction**" has the same meaning given to the term in Clause 11.1 (*Definitions*).

## 13. OTHER INDEMNITIES

### 13.1 Currency indemnity

13.1.1 If any sum due from the Borrower under the Finance Documents (a "**Sum**"), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the "**First Currency**") in which that Sum is payable into another currency (the "**Second Currency**") for the purpose of:-

- (a) making or filing a claim or proof against the Borrower; or
- (b) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

the Borrower shall as an independent obligation, within three Business Days of demand, indemnify each Secured Party to whom that Sum is due against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.

13.1.2 the Borrower waives any right it may have in any jurisdiction to pay any amount under the Finance Documents in a currency or currency unit other than that in which it is expressed to be payable.

### 13.2 Other indemnities

The Borrower shall, within three Business Days of demand, indemnify each Secured Party against any cost, loss or liability incurred by that Secured Party as a result of:-

13.2.1 the occurrence of any Event of Default;

- 13.2.2 a failure by the Borrower to pay any amount due under a Finance Document on its due date, including without limitation, any cost, loss or liability arising as a result of Clause 29 (*Sharing Among the Finance Parties*);
- 13.2.3 funding, or making arrangements to fund, its participation in a Loan requested by the Borrower in a Utilisation Request but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by that Secured Party alone); or
- 13.2.4 a Loan (or part of a Loan) not being prepaid in accordance with a notice of prepayment given by the Borrower.

### 13.3 Indemnity to the Agent

The Borrower shall promptly indemnify the Agent against:-

- 13.3.1 any cost, loss or liability properly incurred by the Agent as a result of:-
  - (a) investigating any event which it reasonably believes is a Default; or
  - (b) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised; or
  - (c) instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under this Agreement; and
- 13.3.2 any cost, loss or liability (including, without limitation, for negligence or any other category of liability whatsoever) incurred by the Agent (otherwise than by reason of the Agent's gross negligence or wilful default) (or, in the case of any cost, loss or liability pursuant to Clause 30.10 (*Disruption to Payment Systems etc*) notwithstanding the Agent's negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent) in acting as Agent under the Finance Documents.

### 13.4 Indemnity to the Security Agent

- 13.4.1 The Borrower shall promptly indemnify the Security Agent and every Receiver and Delegate against any cost, loss or liability incurred by any of them as a result of:-
  - (a) any failure by the Borrower to comply with its obligations under Clause 15 (*Costs and Expenses*);
  - (b) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised;
  - (c) the taking, holding, protection or enforcement of the Transaction Security;
  - (d) the exercise of any of the rights, powers, discretions, authorities and remedies vested in the Security Agent and each Receiver and Delegate by the Finance Documents or by law;
  - (e) any default by any Transaction Obligor in the performance of any of the obligations expressed to be assumed by it in the Finance Documents;
  - (f) instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under this Agreement; or
  - (g) acting as Security Agent, Receiver or Delegate under the Finance Documents or which otherwise relates to any of the Security Property (otherwise, in each

case, than by reason of the relevant Security Agent's, Receiver's or Delegate's gross negligence or wilful default).

13.4.2 The Security Agent and every Receiver and Delegate may, in priority to any payment to the Secured Parties, indemnify itself out of the Security Assets in respect of, and pay and retain, all sums necessary to give effect to the indemnity in this Clause 13.4 and shall have a lien on the Transaction Security and the proceeds of the enforcement of the Transaction Security for all moneys payable to it.

#### **14. MITIGATION BY THE LENDERS**

##### **14.1 Mitigation**

14.1.1 Each Finance Party shall, in consultation with the Borrower, take all reasonable steps to mitigate any circumstances which arise and which would result in the Facility ceasing to be available or any amount becoming payable under or pursuant to, or cancelled pursuant to, any of Clause 7.1 (*Illegality*), Clause 11 (*Tax Gross Up and Indemnities*), Clause 12 (*Increased Costs*) including (but not limited to) transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.

14.1.2 Clause 14.1.1 above does not in any way limit the obligations of any Obligor under the Finance Documents.

##### **14.2 Limitation of liability**

14.2.1 The Borrower shall promptly indemnify each Finance Party for all costs and expenses properly incurred by that Finance Party as a result of steps taken by it under Clause 14.1 (*Mitigation*).

14.2.2 A Finance Party is not obliged to take any steps under Clause 14.1 (*Mitigation*) if, in the opinion of that Finance Party (acting reasonably), to do so might be prejudicial to it.

#### **15. COSTS AND EXPENSES**

##### **15.1 Transaction expenses**

The Borrower shall promptly on demand pay each of the Agent, the Arranger and the Security Agent the amount of all costs and expenses (excluding, in the case of the Arrangers, legal fees which are for their own account) properly incurred by any of them (and, in the case of the Security Agent, by any Receiver or Delegate up to any pre-agreed levels) in connection with the negotiation, preparation, printing, execution and perfection of:-

15.1.1 this Agreement and any other documents referred to in this Agreement or in a Security Document; and

15.1.2 any other Finance Documents executed after the date of this Agreement.

##### **15.2 Amendment costs**

If:-

15.2.1 an Obligor requests an amendment, waiver or consent; or

15.2.2 an amendment is required pursuant to Clause 30.9 (*Change of currency*),

the Borrower shall, within three Business Days of demand, reimburse each of the Agent and the Security Agent for the amount of all costs and expenses (including legal fees) properly incurred by the Agent or the Security Agent (and, in the case of the Security Agent, by any Receiver or Delegate up to any pre-agreed levels) in responding to, evaluating, negotiating or complying with that request or requirement.

### 15.3 **Valuations**

15.3.1 The Agent may request a Valuation at any time.

15.3.2 The Borrower shall promptly on demand pay to the Agent the costs of:-

- (a) the Initial Valuation;
- (b) a Valuation obtained by the Agent on or about the occurrence of Practical Completion;
- (c) a Valuation obtained by the Agent on an annual basis but no earlier than one year after any previous Valuation;
- (d) a Valuation obtained by the Agent in connection with the compulsory purchase of all or part of the Property; and
- (e) a Valuation obtained by the Agent at any time when a Default is continuing or is likely to occur as a result of obtaining that Valuation and that Valuation subsequently evidences a Default.

15.3.3 The Borrower must supply to the Agent a copy of any valuation of the Property an Obligor obtains, promptly upon obtaining it.

15.3.4 Any Valuation not referred to in Clause 15.3.2 above will be at the cost of the Lenders.

### 15.4 **Monitoring costs**

The Borrower must, within three Business Days of demand, reimburse the Agent the amount of all costs and expenses (including legal fees and the fees of the Project Monitor) up to pre-agreed levels (if any) reasonably incurred by the Agent in connection with the monitoring of the Development.

### 15.5 **Enforcement and preservation costs**

The Borrower shall, within three Business Days of demand, pay to each Secured Party the amount of all costs and expenses (including legal fees) incurred by that Secured Party in connection with the enforcement of, or the preservation of any rights under, any Finance Document or the Transaction Security and with any proceedings instituted by or against that Secured Party as a consequence of it entering into a Finance Document, taking or holding the Transaction Security, or enforcing those rights.

## SECTION 7

### BANK ACCOUNTS

#### 16. BANK ACCOUNTS

##### 16.1 Designation of Accounts

16.1.1 The Borrower must maintain the following bank accounts in the name of the Borrower:-

- (a) a deposit account designated the "**Deposit Account**"; and
- (b) a current account designated the "**General Account**".

16.1.2 If the Borrower or Agent becomes aware that Rental Income is or is to become payable it shall, as soon as reasonably practicable open and thereafter maintain a rent account designated the "**Rent Account**" in the name of the Borrower.

16.1.3 The Borrower may not, without the prior consent of the Agent, maintain any other bank account.

##### 16.2 Account bank

16.2.1 Subject to Clauses 16.2.2 and 16.2.3 below, each Account must be held at The Royal Bank of Scotland plc.

16.2.2 An Account must be replaced with a bank account at the same or another bank at any time if the Agent so requests.

16.2.3 The replacement of an Account only becomes effective when the relevant bank agrees with the Agent and the Borrower, in a manner satisfactory to the Agent, to fulfil the role of the bank holding that Account.

##### 16.3 Rent Account

16.3.1 The Security Agent shall have sole signing rights in relation to the Rent Account.

16.3.2

- (a) The Borrower must ensure that all Net Rental Income is paid into the Rent Account.
- (b) Clause 16.3.2(a) above shall not apply to Lease Prepayment Proceeds.

16.3.3 The Borrower may satisfy its obligations under Clause 16.3.2(a) above by ensuring that:-

- (a) a Managing Agent promptly collects all Rental Income and promptly pays all Net Rental Income received by it into the Rent Account; and
- (b) pending payment into the Rent Account, the Managing Agent holds that Net Rental Income in a trust account in the name of the Managing Agent, into which only amounts representing Rental Income are paid, with a bank approved by the Agent.

16.3.4 If any payment of any amount required to be paid into the Rent Account is paid into an Account other than the Rent Account, that payment must be paid immediately into the Rent Account by the Borrower.

- 16.3.5 If prior to the opening of the Rent Account pursuant to Clause 16.1.2 any Rental Income is received by the Borrower, the Rental Income shall instead be paid into the Deposit Account.
- 16.3.6 On any day on which an amount is due under a Headlease, the Security Agent may, and is irrevocably authorised by the Borrower to:-
- (a) withdraw from the Rent Account an amount instructed by the Borrower; and
  - (b) apply that amount in payment of that due amount on the date of such instruction from the Borrower.
- 16.3.7 Except as provided in Clause 30.5 (*Partial payments*) and Clause 16.3.8 below, on each Interest Payment Date, the Security Agent must withdraw from, and apply amounts standing to the credit of the Rent Account in such amounts as instructed by the Agent, in the following order:-
- (a) **first**, in or towards payment pro rata of any unpaid amounts owing to the Agent, the Arranger or the Security Agent under the Finance Documents;
  - (b) **secondly**, in or towards payment pro rata to the Agent for the relevant Lenders of any accrued interest on the Property Protection Loans due but unpaid under this Agreement;
  - (c) **thirdly**, in or towards payment pro rata to the Agent for the relevant Lenders of any principal of Property Protection Loans due but unpaid under this Agreement;
  - (d) **fourthly**, in or towards payment to the Agent for the Lenders of any accrued interest and fees due but unpaid under this Agreement;
  - (e) **fifthly**, in or towards payment to the Agent for the Lenders of any principal due but unpaid under this Agreement;
  - (f) **sixthly**, in or towards payment pro rata of any other sum due but unpaid to the Finance Parties under the Finance Documents;
  - (g) **seventhly**, payment of any surplus in accordance with Clause 7.3 (*Mandatory prepayment*); and
  - (h) **eighthly**, payment of any surplus into the General Account.
- 16.3.8 The Security Agent is obliged to make a withdrawal from the Rent Account in accordance with Clause 16.3.7 above only if:-
- (a) no Default is continuing; and
  - (b) the Repeating Representations are correct in all material respects and will be correct in all material respects immediately after the withdrawal.

#### 16.4 Deposit Account

16.4.1 The Security Agent has sole signing rights in relation to the Deposit Account.

16.4.2

- (a) The Borrower must ensure that all Disposal Proceeds are promptly upon receipt paid into the Deposit Account or, where such amounts are held by its solicitors as shareholder pursuant to a Unit Disposal Document, as soon as reasonably practicable once such amount is released to the Borrower.



- (b) The Borrower must ensure that all Lease Prepayment Proceeds are promptly upon receipt paid into the Deposit Account.
- (c) Subject to Clause 22.11.9, the Borrower must ensure that all Insurance Prepayment Proceeds are promptly upon receipt paid into the Deposit Account.
- (d) The Borrower must ensure that all Compensation Prepayment Proceeds are promptly upon receipt paid into the Deposit Account.
- (e) If required pursuant to Clause 16.3.5 the Borrower must ensure that all Net Rental Income is promptly upon receipt by it or the Managing Agent paid into the Deposit Account.
- (f) The Borrower must ensure that all Recovery Prepayment Proceeds are promptly upon receipt paid into the Deposit Account.
- (g) The Borrower must ensure that an amount equivalent to each Cost Overrun is (to the extent that it is not funded by way of the Contingency in accordance with Clause 21.8.3 (*Development costs*)) paid into the Deposit Account in accordance with Clause 21.8 (*Development costs*).
- (h) The Borrower must ensure that all Affordable Proceeds are promptly upon receipt paid into the Deposit Account.

16.4.3 Following receipt of any monies into the Deposit Account, the Borrower shall promptly (and in any event within two Business Days of the date of any request from the Security Agent) notify the Security Agent which limb of Clause 16.4.2(a) to 16.4.2(h) the payment relates.

16.4.4 Except as provided in Clause 30.5 (*Partial payments*) and Clause 16.4.5 below:-

- (a) on each Interest Payment Date, or earlier at the request of the Borrower if it gives the Security Agent not less than five Business Days' notice, the Security Agent must withdraw from, and apply amounts standing to the credit of, the Deposit Account in accordance with Clause 16.4.2(b) to 16.4.2(f) above in accordance with Clause 7.3 (*Mandatory prepayment*);
- (b) at the request of the Borrower, if it gives the Agent (with a copy to the Security Agent) not less than five Business Days' notice, the Security Agent must withdraw from, and apply amounts standing to the credit of, the Deposit Account in accordance with Clauses 16.4.2(a), 16.4.2(g) and 16.4.2(h) above in accordance with Clause 7.3 (*Mandatory prepayment*); and
- (c) at the request of the Borrower if:-
  - (i) it gives the Agent (with a copy to the Security Agent) not less than five Business Days' notice; and
  - (ii) (except to the extent that any part of the withdrawal is to fund amounts payable to the Finance Parties under the Finance Documents) that request is accompanied by the evidence referred to in Clause 5.2.2 and evidence that the withdrawal accords with the initial development appraisal,

the Security Agent must withdraw from, and apply amounts standing to the credit of, the Deposit Account in accordance with Clauses 16.4.2(a), 16.4.2(g) or 16.4.2(h) above either in payment to the Borrower for the payment of costs and expenses referred to in the Budgeted Costs or if there is a Default which is continuing or the Borrower has given their consent, in payment directly to the Development Party to whom those costs and expenses are due.

16.4.5 The Security Agent is obliged to make a withdrawal from the Deposit Account in accordance with Clause 16.4.4 above only if:-

- (a) no Default is continuing; and
- (b) the Repeating Representations are correct in all material respects and will be correct in all material respects immediately after the withdrawal.

## 16.5 General Account

16.5.1 Except as provided in Clause 16.5.4 below, the Borrower has signing rights in relation to the General Account.

16.5.2

- (a) The Borrower must ensure that, following Practical Completion and to the extent that any are received by it, all Tenant Contributions, unless held in a trust account in the name of the Managing Agent (if any), are paid into the General Account.
- (b) The Borrower must ensure that any other amount received or receivable by it, other than any amount specifically required under this Agreement to be paid into any other Account, is paid into the General Account.

16.5.3 Except as provided in Clause 16.5.4 below and subject to:-

- (a) any restriction in any Subordination Agreement; and
- (b) the requirement that amounts paid into the General Account for a particular purpose must be used for that purpose,

the Borrower may withdraw any amount from the General Account for any purpose.

16.5.4 At any time when a Default is continuing or the Repeating Representations are not correct in all material respects, the Security Agent may:-

- (a) operate the General Account;
- (b) notify the Borrower that its rights to operate the General Account are suspended, such notice to take effect in accordance with its terms; and
- (c) withdraw from, and apply amounts standing to the credit of, the General Account in or towards any purpose for which moneys in any Account may be applied.

## 16.6 Miscellaneous Accounts provisions

16.6.1 The Borrower must ensure that no Account goes into overdraft.

16.6.2 Any amount received or recovered by the Borrower otherwise than by credit to an Account must be held subject to the security created by the Finance Documents and immediately be paid to the relevant Account or to the Agent in the same funds as received or recovered.

16.6.3 If any payment is made into an Account in relation to which the Security Agent has sole signing rights which should have been paid into another Account, then, unless a Default is continuing, the Security Agent must, at the request of the Borrower and on receipt of evidence satisfactory to the Security Agent that the payment should have been made to that other Account, pay that amount to that other Account.

16.6.4 The moneys standing to the credit of an Account may be applied by the Security Agent in payment of any amount due but unpaid to a Finance Party under the Finance Documents.

16.6.5 No Finance Party is responsible or liable to the Borrower for:-

- (a) any non-payment of any liability of the Borrower which could be paid out of moneys standing to the credit of an Account; or
- (b) any withdrawal wrongly made, if made in good faith.

16.6.6 The Borrower must, within five Business Days of any request by the Agent, supply the Agent with the following information in relation to any payment received in an Account:-

- (a) the date of payment or receipt;
- (b) the payer; and
- (c) the purpose of the payment or receipt.

## SECTION 8

### REPRESENTATIONS, UNDERTAKINGS AND EVENTS OF DEFAULT

#### 17. REPRESENTATIONS

The Borrower makes the representations and warranties set out in this Clause 17 to each Finance Party on the date of this Agreement.

#### 17.1 Status

17.1.1 It is a limited liability corporation, duly incorporated and validly existing under the law of its Original Jurisdiction.

17.1.2 It has the power to own its assets and carry on its business as it is being conducted.

#### 17.2 Binding obligations

The obligations expressed to be assumed by it in each Transaction Document to which it is a party are, subject to the Legal Reservations, legal, valid, binding and enforceable obligations.

#### 17.3 Non-conflict with other obligations

The entry into and performance by it of, and the transactions contemplated by, the Transaction Documents and the granting of the Transaction Security do not and will not conflict with:-

17.3.1 (subject to the Legal Reservations) any law or regulation applicable to it;

17.3.2 its constitutional documents; or

17.3.3 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.

#### 17.4 Power and authority

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

17.4.2 No limit on its powers will be exceeded as a result of the borrowing, grant of security or giving of guarantees or indemnities contemplated by the Transaction Documents to which it is a party.

#### 17.5 Validity and admissibility in evidence

17.5.1 Subject to the Legal Reservations, all Authorisations required or desirable:-

(a) to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Transaction Documents to which it is a party; and

(b) to make the Transaction Documents to which it is a party admissible in evidence in its Relevant Jurisdictions,

have been obtained or effected and are in full force and effect except any Authorisation referred to in Clause 17.8.1, which Authorisations will be promptly obtained or effected after the date of this Agreement.

17.5.2 All Authorisations necessary for the conduct of the business, trade and ordinary activities of the Borrower have been obtained or effected and are in full force and effect.

## 17.6 Governing law and enforcement

17.6.1 Subject to the Legal Reservations, the choice of the governing law of the Finance Documents will be recognised and enforced in its Relevant Jurisdictions.

17.6.2 Subject to the Legal Reservations, any judgment obtained in relation to a Finance Document in the jurisdiction of the governing law of that Finance Document will be recognised and enforced in its Relevant Jurisdictions.

## 17.7 Deduction of Tax

17.7.1 It is not required to make any Tax Deduction (as defined in Clause 1.1 (*Definitions*)) from any payment it may make under any Finance Document to a Lender which is:-

- (a) a Qualifying Lender:-
  - (i) falling within paragraph (a)(i) of the definition of "Qualifying Lender"; or
  - (ii) except where a Direction has been given under section 931 of the ITA in relation to the payment concerned, falling within paragraph (a)(ii) of the definition of "Qualifying Lender"; or
  - (iii) falling within paragraph (b) of the definition of Qualifying Lender; or
  - (iv) falling within paragraph (c) of the definition of Qualifying Lender; or
- (b) a Treaty Lender and the payment is one specified in a direction given by the Commissioners of Revenue & Customs under Regulation 2 of the Double Taxation Relief (Taxes on Income) (General) Regulations 1970 (SI 1970/488).

17.7.2 No Rental Income payable to the Borrower is subject to a requirement to make a deduction or withholding for or on account of Tax from that Rental Income.

## 17.8 No filing or stamp taxes

17.8.1 Under the laws of its Relevant Jurisdiction it is not necessary that the Finance Documents be registered, filed, recorded, notarised or enrolled with any court or other authority in that jurisdiction or that any stamp, registration, notarial or similar Taxes or fees be paid on or in relation to the Finance Documents or the transactions contemplated by the Finance Documents except:-

- (a) registration of particulars of the Security Documents at Companies House under the Companies Act 2006 and payment of associated fees; and
- (b) registration of the Security Agreement at the Land Registry or Land Charges Registry in England and Wales and payment of associated fees,

which registrations, filings, taxes and fees will be made and paid promptly after the date of the relevant Security Document.

17.8.2 Any disclosure required to be made by it to any relevant taxing authority in relation to stamp duty land tax payable on any transactions contemplated by or being financed by the Transaction Documents has been made.

## 17.9 VAT

The Borrower is not a member of a value added tax group.

#### 17.10 **No default**

- 17.10.1 No Event of Default and, as at the date of this Agreement and each Utilisation Date, no Default is continuing or is reasonably likely to result from the making of any Utilisation or the entry into, or the performance of, or any transaction contemplated by, any Transaction Document.
- 17.10.2 As at the first Utilisation Date, there is no outstanding breach of any material term of any Development Document and no person has disputed, repudiated or disclaimed liability under any Development Document or evidenced in writing an intention to do so.
- 17.10.3 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 a termination event (however described) under any other agreement or instrument which is binding on it or to which any of its assets are subject which has or is reasonably likely to have a Material Adverse Effect.

#### 17.11 **Information**

- 17.11.1 All information supplied by it or on its behalf to any Finance Party in connection with the Transaction Documents and the Development was true and accurate as at the date it was provided or as at any date at which it was stated to be given.
- 17.11.2 Any financial projections contained in the information referred to in Clause 17.11.1 above have been prepared as at their date on the basis of recent historical information and on the basis of reasonable assumptions.
- 17.11.3 It has not omitted to supply any information which, if disclosed, would make the information referred to in Clause 17.11.1 above untrue or misleading in any material respect.
- 17.11.4 As at the first Utilisation Date, nothing has occurred since the date of the information referred to in Clause 17.11.1 above which, if disclosed, would make that information untrue or misleading in any material respect.

#### 17.12 **Financial statements**

- 17.12.1 Its Original Financial Statements were prepared in accordance with GAAP consistently applied.
- 17.12.2 Its Original Financial Statements give a true and fair view of its financial condition as at the end of the relevant financial year and results of operations during the relevant financial year.
- 17.12.3 Its most recent financial statements delivered pursuant to Clause 18.1 (*Financial statements*):-
  - (a) have been prepared in accordance with GAAP as applied to the Original Financial Statements; and
  - (b) give a true and fair view of (if audited) or fairly represent (if unaudited) its financial condition as at the end of the relevant financial year and operations during the relevant financial year (consolidated in the case of the Borrower).
- 17.12.4 Since the date of the most recent financial statements delivered pursuant to Clause 18.1 (*Financial statements*) there has been no material adverse change in its business, assets or financial condition.

**17.13 Pari passu ranking**

Its payment obligations under the Finance Documents rank at least pari passu with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.

**17.14 No proceedings pending or threatened**

No litigation, arbitration or administrative proceedings or investigations of, or before, any court, arbitral body or agency which are reasonably likely to be adversely determined against it and if so adversely determined are reasonably likely to have a Material Adverse Effect have (to the best of its knowledge and belief) been started or threatened in writing against it.

**17.15 Valuation**

17.15.1 All information supplied by it or on its behalf to the Valuer for the purposes of each Valuation was true and accurate as at its date or (if appropriate) as at the date (if any) at which it is stated to be given.

17.15.2 Any financial projections contained in the information referred to in Clause 17.15.1 above have been prepared as at their date, on the basis of recent historical information and on the basis of reasonable assumptions.

17.15.3 It has not omitted to supply any information to the Valuer which, if disclosed, would materially and adversely affect the Valuation.

17.15.4 As at the first Utilisation Date, nothing has occurred since the date the information referred to in Clause 17.15.1 above was supplied which, if it had occurred prior to the Initial Valuation, would have adversely affected the Initial Valuation.

**17.16 Title to Property**

17.16.1 The Borrower will, from the first Utilisation Date, save as disclosed in any Property Report:-

(a) be the legal and beneficial owner of the Property; and

(b) have good and marketable title to the Property,

in each case free from Security (other than those created by or pursuant to the Security Documents) and restrictions and onerous covenants (other than those set out in the Property Report).

17.16.2 From the first Utilisation Date except as disclosed in the Property Report:-

(a) no breach by it of any law, regulation or covenant is outstanding which adversely affects or might reasonably be expected to materially and adversely affect the value, saleability or use of the Property;

(b) there is no covenant, agreement, stipulation, reservation, condition, interest, right, easement or other matter whatsoever materially and adversely affecting the Property;

(c) nothing has arisen or has been created or is outstanding which would be an overriding interest, or an unregistered interest which overrides first registration or a registered disposition, over the Property;

(d) all facilities necessary for the enjoyment and use of the Property (including those necessary for the carrying on of its business at the Property) are enjoyed by the Property;

- (e) none of the facilities referred to in Clause 17.16.2(d) above are enjoyed on terms:-
  - (i) entitling any person to terminate or curtail its use of the Property; or
  - (ii) which conflict with or restrict its use of the Property;
- (f) the Borrower has not received any notice of any adverse claim by any person in respect of the ownership of the Property or any interest in it which might reasonably be expected to be determined in favour of that person, nor has any acknowledgement been given to any such person in respect of the Property; and
- (g) the Property is held by the Borrower free from any lease or licence (other than those entered into in accordance with this Agreement or required in order to carry out the Development).

17.16.3 All deeds and documents necessary to show good and marketable title to the Borrower's interests in the Property will from the first Utilisation Date be:-

- (a) in possession of the Security Agent;
- (b) held at the applicable Land Registry to the order of the Security Agent; or
- (c) held to the order of the Agent by a firm of solicitors approved by the Security Agent for that purpose.

#### 17.17 Information for Property Reports

- 17.17.1 The information supplied by it or on its behalf to the lawyers who prepared the Property Report for the purpose of the Property Report was true and accurate as at the date of the Property Report or (if appropriate) as at the date (if any) at which it is stated to be given.
- 17.17.2 The information referred to in Clause 17.17.1 above was at the date it was expressed to be given complete and did not omit any information which, if disclosed would make that information untrue or misleading in any material respect.
- 17.17.3 As at the first Utilisation Date, nothing has occurred since the date of any information referred to in Clause 17.17.1 above which, if disclosed, would make that information untrue or misleading in any material respect.

#### 17.18 No other business

- 17.18.1 The Borrower has not traded or carried on any business since the date of its incorporation except for the ownership, development and management of its interests in the Property.
- 17.18.2 As at the date of this Agreement, the Borrower is not party to any material agreement other than the Transaction Documents.
- 17.18.3 As at the date of this Agreement the Borrower does not have any Subsidiaries other than Permitted Subsidiaries.
- 17.18.4 The Borrower does not:-
  - (a) have, nor has it had, any employees; and
  - (b) have any obligation in respect of any retirement benefit or occupational pension scheme.



#### 17.19 **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 England and Wales and it has no "establishment" (as that term is used in Article 2(h) of the Regulations) in any other jurisdiction.

#### 17.20 **Ranking of Security**

Subject to the Legal Reservations, the security conferred by each Security Document constitutes a first priority security interest of the type described, over the assets referred to, in that Security Document and those assets are not subject to any prior or *pari passu* Security.

#### 17.21 **Ownership**

The Developer ceases to Control the Borrower or the Guarantor ceases to Control the Developer.

#### 17.22 **Repetition**

The Repeating Representations are deemed to be made by the Borrower by reference to the facts and circumstances then existing on the date of each Utilisation Request, on each Utilisation Date and the first day of each Interest Period (except that those contained in Clauses 17.12.1 and 17.12.2 will cease to be so made once subsequent financial statements have been delivered under this Agreement).

### 18. **INFORMATION UNDERTAKINGS**

The undertakings in this Clause 18 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

#### 18.1 **Financial statements**

The Borrower shall supply to the Agent in sufficient copies for all the Lenders as soon as they are available, but in any event within 180 days after the end of each of its financial years:-

18.1.1 its audited financial statements for that financial year; and

18.1.2 the audited financial statements of the Guarantor for that financial year; and

#### 18.2 **Compliance Certificate**

18.2.1 The Borrower shall supply to the Agent, with each quarterly report delivered pursuant to Clause 18.4.1(d), a Compliance Certificate setting out (in reasonable detail) computations as to compliance with Clause 19 (*Financial Covenants*) as at the Interest Payment Date falling immediately after the date of delivery of that report.

18.2.2 Each Compliance Certificate shall be signed by two directors of the Borrower.

#### 18.3 **Requirements as to financial statements**

18.3.1 Each set of financial statements delivered by the Borrower pursuant to Clause 18.1 (*Financial statements*) shall be certified by a director of the relevant company as giving a true and fair view (if audited) or fairly representing (if unaudited) its financial condition as at the date as at which those financial statements were drawn up.

18.3.2 The Borrower shall procure that each set of financial statements of an Obligor delivered pursuant to Clause 18.1 (*Financial statements*) is prepared using GAAP, accounting practices and financial reference periods consistent with those applied in the preparation of the Original Financial Statements for that Obligor unless, in relation to any set of financial statements, it notifies the Agent that there has been a change in GAAP, the

accounting practices or reference periods and its auditors (or, if appropriate, the auditors of the Obligor) deliver to the Agent:-

- (a) a description of any change necessary for those financial statements to reflect the GAAP, accounting practices and reference periods upon which that Obligor's Original Financial Statements were prepared; and
- (b) sufficient information, in form and substance as may be reasonably required by the Agent, to enable the Lenders to make an accurate comparison between the financial position indicated in those financial statements and that Obligor's Original Financial Statements.

18.3.3 Any reference in this Agreement to those financial statements shall be construed as a reference to those financial statements as adjusted to reflect the basis upon which the Original Financial Statements were prepared.

#### 18.4 Monitoring of Property

18.4.1 On or before the date five Business Days before each Interest Payment Date, the Borrower must supply to the Agent a report containing the following information, in form and substance satisfactory to the Agent, in respect of the quarterly period ending 10 Business Days before that Interest Payment Date:-

- (a) a schedule of the Units, showing for each Unit details of any Unit Disposal Document to which it is subject including details of the person to whom the Unit is to be disposed to, the deposit paid, the disposal price, the scheduled completion date and whether the disposal has completed and the disposal price has been paid;
- (b) details of amounts paid to the Deposit Account as a result of Unit disposals and amounts anticipated to be paid to the Deposit Account as a result of Unit disposals;
- (c) details of any breaches by any person of its obligation to pay any amount under its Disposal Document and any anticipated breaches of such obligations; and
- (d) copies of any management accounts and management cashflows produced by, or for, the Borrower.

18.4.2 On or before the date five Business Days before each Interest Payment Date falling after Practical Completion, to the extent that there are any Lease Documents in place in respect of the Property, the Borrower must supply to the Agent a report containing the following information, in form and substance satisfactory to the Agent, in respect of (except in the case of proposed or required capital expenditure or repairs under Clauses 18.4.2(g) and 18.4.2(h) below) the quarterly period ending 10 Business Days before that Interest Payment Date:-

- (a) a schedule of the existing occupational tenants of the Property, showing for each tenant the rent, service charge, value added tax and any other amounts payable in that period by that tenant;
- (b) details of:-
  - (i) any arrears of rents or service charges under any Lease Document; and
  - (ii) any other breaches of covenant under any Lease Document, and any step being taken to recover or remedy them;

- (c) details of any insolvency or similar proceedings affecting any occupational tenant of the Property or any guarantor of that occupational tenant;
- (d) details of any rent reviews with respect to any Lease Document in progress or agreed;
- (e) details of any Lease Document which has expired or been determined or surrendered and any new letting proposed;
- (f) copies of all material correspondence with insurance brokers handling the insurance of the Property;
- (g) details of any actual or proposed capital expenditure with respect to the Property;
- (h) details of any actual or required material repairs to the Property;
- (i) details of any notice it is entitled to serve on any former tenant of any Occupational Lease under section 17(2) of the Landlord and Tenant (Covenants) Act 1995 or on any guarantor of any such former tenant under section 17(3) of that Act; and
- (j) any other information in relation to the Property reasonably requested by the Agent.

18.4.3 The Borrower must notify the Agent of:-

- (a) any likely occupational tenant of any Commercial Unit;
- (b) any likely buyer of a Unit or any other part of the Property (including terms of reference); and
- (c) becoming aware that the Projected Costs are 5% or more higher than the Budgeted Costs.

## 18.5 Information: miscellaneous

The Borrower shall supply to the Agent (in sufficient copies for all the Lenders, if the Agent so requests):-

- 18.5.1 at the same time as they are dispatched, copies of all documents dispatched by the Borrower to its shareholders generally (or any class of them) or its creditors generally (or any class of them) at the same time as they are dispatched;
- 18.5.2 promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings or investigations which are current, threatened or pending against any Obligor, and which, if adversely determined against it, are reasonably likely to have a Material Adverse Effect; and
- 18.5.3 promptly, such further information regarding the financial condition, business and operations of any Obligor as any Finance Party (through the Agent) may reasonably request.

## 18.6 Notification of default

- 18.6.1 The Borrower shall notify the Agent of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence.
- 18.6.2 Promptly upon a request by the Agent, the Borrower shall supply to the Agent a certificate signed by two of its directors or senior officers on its behalf certifying that no Default is

continuing (or if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it).

## 18.7 "Know your customer" checks

18.7.1 If:-

- (a) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the date of this Agreement;
- (b) any change in the status of an Obligor, or the composition of the shareholders of the Borrower, after the date of this Agreement; or
- (c) a proposed assignment or transfer by a Lender of any of its rights and/or obligations under this Agreement to a party that is not a Lender prior to such assignment or transfer,

obliges the Agent or any Lender (or, in the case of Clause 18.7.1(c) above, any prospective new Lender) to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not already available to it, the Borrower shall promptly upon the request of the Agent or any Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself or on behalf of any Lender) or any Lender (for itself or, in the case of the event described in Clause 18.7.1(c) above, on behalf of any prospective new Lender) in order for the Agent, such Lender or, in the case of the event described in Clause 18.7.1(c) above, any prospective new Lender to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

18.7.2 Each Lender shall promptly upon the request of the Agent supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself) in order for the Agent to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

## 19. FINANCIAL COVENANTS

### 19.1 Loan to Gross Development Value

The Borrower must ensure that the Loan to Gross Development Value does not, at any time, exceed 55 per cent.

### 19.2 Loan to Cost

The Borrower must ensure that the Loan to Cost does not:-

19.2.1 at any time prior to the Golden Brick Date, exceed 80 per cent; and

19.2.2 at any time on or following the Golden Brick Date, exceed 65 per cent.

## 20. GENERAL UNDERTAKINGS

The undertakings in this Clause 20 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

## 20.1 Authorisations

The Borrower shall promptly:-

20.1.1 obtain, comply with and do all that is necessary to maintain in full force and effect; and

20.1.2 supply certified copies to the Agent of,

any Authorisation required under any law or regulation of a Relevant Jurisdiction to:-

- (a) enable it to perform its obligations under the Transaction Documents and to ensure the legality, validity, enforceability or admissibility in evidence of any Transaction Document; or
- (b) own its assets and carry on its business as it is being conducted.

## 20.2 Compliance with laws

20.2.1 The Borrower shall comply in all respects with all laws including but not limited to legislation relating to health and safety, welfare at work, equality and diversity, antibribery and modern slavery to which it may be subject, if failure so to comply has or is reasonably likely to have a Material Adverse Effect.

20.2.2 The Borrower confirms that it has, and is in full compliance with Lender B's ethical policies which are available as of the date hereof at the following website: <https://www.gov.uk/government/collections/ethical-policies>

## 20.3 Negative pledge

In this Clause 20.3, "**Quasi-Security**" means an arrangement or transaction described in Clause 20.3.2 below:-

20.3.1 the Borrower shall not create or permit to subsist any Security over any of its assets;

20.3.2 the Borrower shall not:-

- (a) sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by an Obligor;
- (b) sell, transfer or otherwise dispose of any of its receivables on recourse terms;
- (c) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or
- (d) enter into any other preferential arrangement having a similar effect,

in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset; and

20.3.3 Clauses 20.3.1 and 20.3.2 above do not apply to any Security or (as the case may be) Quasi-Security, listed below:-

- (a) the Transaction Security;
- (b) any lien arising by operation of law and in the ordinary course of trading;
- (c) any Security that is released prior to the first Utilisation; or

- (d) any Security entered into with the prior consent of the Agent.

## 20.4 Disposals

20.4.1 The Borrower shall not enter into a single transaction or a series of transactions (whether related or not and whether voluntary or involuntary) to dispose of all or any part of any asset.

20.4.2 Clause 20.4.1 above does not apply to any disposal:-

- (a) permitted under Clause 22.2 (*Occupational Leases*);
- (b) of a Unit in accordance with Clause 20.4.3 below;
- (c) of an Affordable Unit pursuant to an Affordable Agreement;
- (d) of cash by way of a payment out of an Account in accordance with this Agreement; or
- (e) made in the ordinary course of trading of any asset subject to the floating charge created under a Security Agreement.

20.4.3 The Borrower may dispose of a Unit if:-

- (a) no Default is continuing or would result from that disposal;
- (b) that disposal is:-
  - (i) on arm's length terms to an unrelated third party; and
  - (ii) substantially on the pro forma terms of the form of Unit Disposal Document agreed between the Borrower and the Agent (or any other form of Unit Disposal Document agreed between the Agent and the Borrower); and
- (c) the net disposal proceeds are not less than the aggregate of 95 per cent of the Market Value of that Unit (determined in accordance with the most recent Valuation of the Property at that time).

20.4.4 The Borrower must ensure that the Disposal Proceeds are immediately applied either:-

- (a) in accordance with Clause 7.3 (*Mandatory prepayment*); or
- (b) paid into the Deposit Account for application in accordance with Clause 16.4 (*Deposit Account*).

20.4.5 The Borrower shall supply to the Agent a copy of each Unit Disposal Document and each amendment, supplement, waiver or release of a Unit Disposal Document promptly upon entering the same.

20.4.6 The Borrower must:-

- (a) exercise its rights and comply with its obligations under each Unit Disposal Document; and
- (b) use its reasonable endeavours to ensure that each other party complies with its obligations under each Unit Disposal Document,

in a proper and timely manner.

20.4.7 For the purposes of this Clause 20, "**net disposal proceeds**" means the gross proceeds of any disposal permitted under Clause 20.4.3 above less an amount determined by the Agent as the reasonable costs and expenses associated with that disposal.

## 20.5 **Financial Indebtedness**

20.5.1 The Borrower may not incur or permit to be outstanding any Financial Indebtedness.

20.5.2 Clause 20.5.1 above does not apply to:-

- (a) any Financial Indebtedness incurred under the Finance Documents;
- (b) any Financial Indebtedness repaid prior to the first Utilisation; or
- (c) any Subordinated Debt.

## 20.6 **Lending and guarantees**

20.6.1 The Borrower may not be the creditor in respect of any loan or any form of credit to any person.

20.6.2 The Borrower may not give or allow to be outstanding any guarantee or indemnity to or for the benefit of any person in respect of any obligation of any other person or enter into any document under which the Borrower assumes any liability of any other person other than any guarantee or indemnity given under the Finance Documents.

## 20.7 **Merger**

20.7.1 The Borrower shall not enter into any amalgamation, demerger, merger or corporate reconstruction.

20.7.2 Clause 20.7.1 above does not apply to any disposal permitted pursuant to Clause 20.4 (*Disposals*).

## 20.8 **Change of business**

20.8.1 The Borrower may not carry on any business other than the ownership, development and management of its interests in the Property and the ownership a the Permitted Subsidiary.

20.8.2 The Borrower may not have any Subsidiary except a Permitted Subsidiary.

## 20.9 **Acquisitions**

The Borrower may not make any acquisition or investment other than:-

- 20.9.1 any acquisition made with the prior consent of the Agent; and
- 20.9.2 any other acquisition or investment as permitted under this Agreement.

## 20.10 **Other agreements**

The Borrower may not enter into any material agreement other than:-

- 20.10.1 the Transaction Documents; and
- 20.10.2 any other agreement expressly allowed under any other term of this Agreement.

## 20.11 Shares, dividends and share redemption

20.11.1 The Borrower may not issue any further shares or amend any rights attaching to its issued shares.

20.11.2 The Borrower shall not:-

- (a) declare, make or pay any dividend, charge, fee or other distribution (or interest on any unpaid dividend, charge, fee or other distribution) (whether in cash or in kind) on or in respect of its share capital (or any class of its share capital);
- (b) repay or distribute any dividend or share premium reserve;
- (c) pay any management, advisory or other fee to or to the order of any of its shareholder which for the avoidance of doubt shall exclude sums due to the Ivor House Contractor pursuant to the Ivor House Building Contract; or
- (d) redeem, repurchase, defease, retire or repay any of its share capital or resolve to do so.

## 20.12 VAT group

The Borrower may not be a member of a value added tax group.

## 20.13 Taxes

20.13.1 The Borrower must pay all Taxes due and payable by it prior to the accrual of any fine or penalty for late payment unless (and only to the extent that):-

- (a) payment of those Taxes is being contested in good faith;
- (b) adequate reserves are being maintained for those Taxes and the costs required to contest them; and
- (c) failure to pay those Taxes is not reasonably likely to have a Material Adverse Effect.

20.13.2 The Borrower must ensure that its residence for Tax purposes is in its Original Jurisdiction.

## 21. DEVELOPMENT UNDERTAKINGS

### 21.1 Completion

The Borrower must ensure that Practical Completion occurs by no later than the Required Completion Date unless otherwise agreed with the Agent.

### 21.2 Milestones

The Borrower must ensure that each Milestone is achieved by its Required Milestone Date unless otherwise agreed with the Agent.

### 21.3 Development

The Borrower must ensure that the Development is promptly commenced and is diligently carried out and is completed:-

21.3.1 in accordance with the Specifications and the Transaction Documents;



- 21.3.2 in a good and workmanlike manner, using materials of good quality which are fit for their respective purposes;
- 21.3.3 in compliance with the provisions of the Considerate Constructors Scheme save that where there shall be any conflict between the provisions of this Agreement and the provisions of the said scheme the provisions of this Agreement shall prevail;
- 21.3.4 in accordance with the Development Consents and applicable law; and
- 21.3.5 at least in accordance with the relevant Codes of Practice and British Standard Specifications.

#### 21.4 Authorisations

The Borrower must:-

- 21.4.1 use all reasonable endeavours to ensure that each Development Consent is maintained and remains effective without amendment for the benefit of the Development; and
- 21.4.2 obtain all necessary consents of adjoining owners or occupiers and all necessary grants, releases, waivers, modifications, covenants and other matters desirable to enable the Development to be completed.

#### 21.5 Development Documents and Disposal Documents

21.5.1 The Borrower must:-

- (a) exercise its rights and comply with its obligations under each Transaction Document (other than a Finance Document); and
- (b) ensure (so far as this is within its control) that others exercise their rights and comply with their obligations under each Transaction Document (other than a Finance Document),

in a manner consistent with the Borrower's obligations under the Finance Documents and in a proper and timely manner.

21.5.2 The Borrower must not:-

- (a) agree to any termination, amendment, supplement, waiver or release in respect of any Development Document, Disposal Documents, Specification; or
- (b) abandon any part of the Development.

21.5.3 The Borrower must promptly:-

- (a) notify the Agent and the Project Monitor of any proposed amendment, supplement, waiver or release in respect of any Development Document, Disposal Document or any Specification; and
- (b) supply to the Agent and the Project Monitor copies of any such amendment, supplement, waiver or release made or given.

21.5.4 The Borrower must ensure that each Development Document and Disposal Document provides, to the satisfaction of the Agent, that:-

- (a) the Borrower's rights under that Development Document or Disposal Document may be assigned to the Agent or its nominee; and

- (b) the Borrower's obligations under that Development Document or Disposal Document may be assumed by the Agent or its nominee,

without any requirement for consent from any other person.

## 21.6 Energy Supply Agreements

The Borrower must procure that each Manco:

- 21.6.1 does not agree to any termination, supplement, waiver or release in respect of any Energy Supply Agreement;
- 21.6.2 does not agree to any amendments where such amendments might reasonably be expected to prejudice the interest of the Finance Parties (in their capacity as Finance Parties only); and
- 21.6.3 exercises its rights and complies with its obligations under the relevant Energy Supply Agreement, in a manner consistent with the Borrower's obligations under the Finance Documents and in a proper and timely manner.

## 21.7 Step-in Agreements

The Borrower shall use all reasonable endeavours to procure that upon the request of the Agent, any party replacing a party (other than the Borrower) to an Affordable Agreement or the Development Management Agreement enters into a replacement step-in agreement with the Security Agent:-

- 21.7.1 in relation to each Transaction Document to which it is a party; and
- 21.7.2 which is in form and substance satisfactory to the Agent.

## 21.8 Development costs

- 21.8.1 The Borrower must not incur any cost or expense for goods or services in connection with the Development which is not anticipated in the Budgeted Costs unless it is funded by Contingency in accordance with Clause 21.8.3 or Subordinated Debt.
- 21.8.2 The Borrower must ensure funding of each Cost Overrun within 10 Business Days of the date on which it is determined. The Borrower may not use the proceeds of a Loan (directly or indirectly) for this purpose.
- 21.8.3 The Borrower may utilise up to £100,000 of the Contingency towards items of costs and expenses in the Budgeted Costs without the prior consent of the Lenders. If the Borrower wishes to utilise over £100,000 of Contingency in aggregate over the term of the Facility, the Borrower must request that the Lenders consent to all or part of the Contingency being allocated to an item of costs and expenses in the Budgeted Costs. Insofar as the Lenders do consent (such consent not to be unreasonably withheld), the relevant amount of Contingency shall be allocated and the Budgeted Costs shall be amended accordingly. The Borrower may not utilise the Contingency except in accordance with this Clause 21.8.3.

## 21.9 Information on the Development

- 21.9.1 The Borrower must supply to the Agent, on the last day of each month, the first of which starts on the date of this Agreement, details of the costs and expenses incurred in connection with the Development and details of progress with respect to achieving the Milestones. These must include:-
- (a) a report on progress of each item set out in the Budgeted Costs;

- (b) a breakdown of the costs and expenses incurred by the Borrower in connection with the Development to date;
  - (c) a comparison of costs and expenses incurred in connection with each item set out in the Budgeted Costs as against the anticipated cost or expense of that item set out in the Budgeted Costs and any resulting Cost Overruns;
  - (d) a forecast of costs and expenses to be incurred with respect to each item set out in the Budgeted Costs during the next month and any Cost Overruns anticipated as a result; and
  - (e) a report on progress in achieving each Milestone including the expected date of achievement as against its Required Milestone Date.
- 21.9.2 The Borrower must supply to the Project Monitor, on request, sufficient information to enable the Project Monitor to supply monthly reports to the Agent on the progress of the Development.
- 21.9.3 The Borrower must promptly inform the Agent and the Project Monitor upon becoming aware of:-
- (a) any breach or alleged breach by any party under any Development Document;
  - (b) any claim or demand made against the Borrower by any person in connection with the Development;
  - (c) a fatal accident to any worker or a member of the public;
  - (d) any injury to a member of the public requiring reporting under RIDDOR;
  - (e) any dangerous occurrence, as defined by RIDDOR;
  - (f) the service of any improvement or prohibition notice under the HS Act;
  - (g) any incident having health & safety implications which attracts the attention of the police and/or the media; and
  - (h) the commencement of any criminal prosecution under the HS Act.
- 21.9.4 The Borrower must promptly supply to the Project Monitor minutes of all project and site meetings held in connection with the Development and which relate to the progress of the Development.
- 21.9.5 The Borrower must promptly supply to the Agent copies of all management accounts and cashflows in connection with the Development prepared by or for the Borrower.
- 21.9.6 The Borrower must promptly supply any other information in relation to:-
- (a) the costs of the Development;
  - (b) the progress of the Development; or
  - (c) any other matters relating to the Development,
- as the Agent or the Project Monitor may reasonably request.

## 21.10 Inspection/meetings

21.10.1 The Borrower must ensure each of the Agent, the Project Monitor and each Lender and any of its officers, employees and agents has access to the Property at all reasonable times.

21.10.2 The Borrower must:-

- (a) give reasonable prior notice to the Agent and the Project Monitor of, and allow a representative of each of the Agent and the Project Monitor to attend, all project and site meetings concerning the Property;
- (b) ensure that the Agent and the Project Monitor are given access to the records of the Development (including all drawings and specifications) during normal business hours;
- (c) organise formal review meetings concerning the Property, at which representatives of the Contractors, Sub-Contractors and Consultants will be present, no less often than monthly and, if the Agent or the Project Monitor reasonably requests, more frequently;
- (d) allow the Agent and the Project Monitor to attend the meetings referred to in Clause 21.10.2(c) above and make representations at or following those meetings; and
- (e) have due regard to any representations made by the Agent or the Project Monitor at any meeting referred to in Clause 21.10.2(c) above.

## 21.11 Development Parties

21.11.1 The Borrower must not:-

- (a) appoint a Development Party or any other person with a material design responsibility with respect to the Development; or
- (b) terminate the appointment of a Development Party or the Developer with respect to the Development, or change the terms of its appointment,

without the prior consent of, and on terms approved by, the Agent.

21.11.2 The Borrower must ensure that each Development Party:-

- (a) enters into a Collateral Warranty with the Security Agent within four Months of the date of appointment of the Development Party, in form and substance satisfactory to the Agent; and
- (b) is given notice of the Security created by the Security Documents.

21.11.3 The Borrower must ensure that the Developer complies with its obligations under each Development Document to which it is a party.

21.11.4 If a Development Party is in default of its obligations under the Development Document to which it is a party and the Borrower is entitled to terminate, or procure the termination of, that contract as a result, then, if the Agent so requires, the Borrower must promptly use all reasonable endeavours to:-

- (a) terminate or procure the termination of that contract; and
- (b) appoint or procure the appointment of a replacement Development Party in accordance with this Clause 21.11.

21.11.5 The Borrower must pass on to the appropriate Contractors, Sub-Contractors and Consultants, and ensure they have regard to, any recommendations of the Project Monitor as to the progress and implementation of the Development.

#### 21.12 **Effect of approvals and visits**

The Borrower acknowledges that:-

21.12.1 no approval of drawings or specifications or the passing of any work by the Agent or the Project Monitor; or

21.12.2 any visit to the Property or attendance at any meetings by the Agent or the Project Monitor or its respective officers, employees or agents,

will excuse an Obligor from the due performance of any of its obligations under the Finance Documents.

#### 21.13 **VAT**

21.13.1 The Borrower must promptly pay to HM Revenue & Customs all VAT and related interest and penalties payable by it in respect of the Property and the Development.

21.13.2 The Borrower must ensure that all recoveries of VAT referable to the Development are:-

(a) promptly applied in connection with the Development towards Budgeted Costs; or

(b) paid into the General Account and then applied towards the Budgeted Costs.

21.13.3 The Borrower must, on the last day of each month, the first of which starts on the date of this Agreement, supply to the Agent:-

(a) details of the amount of VAT paid by the Borrower in that month; and

(b) details of the amount of VAT reclaimed and received by the Borrower in that month and, where applicable, details of the application of amounts received when applied towards the Budgeted Costs.

#### 21.14 **Procedure for Completion**

21.14.1 In anticipation of the issue of the taking over certificate (as defined in the relevant Building Contract) for the Development, the Borrower must ensure that the Contract Administrator supplies the Agent and the Project Monitor with at least five Business Days' prior notice of the date the Contract Administrator intends to carry out each inspection of the Development.

21.14.2 The Borrower must allow a representative of the Agent and the Project Monitor to accompany the Contract Administrator on each inspection referred to in Clause 21.14.1 above and to make representations in writing to the Contract Administrator before the issue of the relevant certificate. No representation made will bind or estop the Agent.

21.14.3 The Borrower must ensure that a copy of that taking over certificate is promptly supplied to the Agent and the Project Monitor.

## 21.15 Public procurement

21.15.1 All procurement of works, equipment, goods and services by the Borrower relating to the Development shall be based on value for money and in complying with this Clause 21.15.1 the Borrower shall:-

- (a) (other than in respect of Ivor House) use all reasonable endeavours to obtain not less than three tenders from potential contractors;
- (b) select a contractor from potential contractors on the basis of overall value for money and suitable skill and experience;
- (c) use a fair and documented decision-making process in selecting contractors and take account of the need for public sector accountability and probity; and
- (d) not appoint a contractor connected with the Borrower other than the Ivor House Contractor in respect of the Ivor House Building Contract.

## 22. PROPERTY UNDERTAKINGS

### 22.1 Title

22.1.1 The Borrower must exercise its rights and comply in all respects with any covenant, stipulation or obligation (restrictive or otherwise) at any time affecting the Property.

22.1.2 The Borrower may not without the prior consent of the Agent agree to any amendment, supplement, waiver, surrender or release of any covenant, stipulation or obligation (restrictive or otherwise) at any time affecting the Property.

22.1.3 The Borrower must promptly take all such steps as may be necessary or desirable to enable the Security created by the Security Documents to be registered, where appropriate, at the applicable Land Registry.

### 22.2 Occupational Leases

This Clause 22.2 shall not apply to any Disposal Document entered into in accordance with this Agreement.

22.2.1 The Borrower may not without the consent of the Agent:-

- (a) enter into any Agreement for Lease;
- (b) other than under an Agreement for Lease, grant or agree to grant any new Occupational Lease;
- (c) agree to any amendment, supplement, extension, waiver, surrender or release in respect of any Lease Document;
- (d) exercise any right to break, determine or extend any Lease Document;
- (e) commence any forfeiture or irritancy proceedings in respect of any Lease Document;
- (f) grant any licence or right to use or occupy any part of the Property;
- (g) consent to any sublease or assignment of any tenant's interest under any Lease Document;

- (h) agree to any change of use under, or (except where required to do so under the terms of the relevant Lease Document) rent review in respect of, any Lease Document; or
- (i) serve any notice on any former tenant under any Lease Document (or on any guarantor of that former tenant) which would entitle it to a new lease or tenancy.

22.2.2 The Borrower must:-

- (a) diligently collect or procure to be collected all Rental Income;
- (b) exercise its rights and comply with its obligations under each Lease Document; and
- (c) use its reasonable endeavours to ensure that each tenant complies with its obligations under each Lease Document,

in a proper and timely manner.

22.2.3 Notwithstanding the terms of this Clause 22.2 (*Occupational Leases*) the Agent shall not unreasonably withhold or delay its consent to the entry into the Permitted Lease Arrangements by the Borrower.

22.2.4 Any Lease Prepayment Proceeds must be paid into the Deposit Account for application in accordance with Clause 16.4 (*Deposit Account*).

22.2.5 The Borrower must supply to the Agent a copy of each Lease Document, a copy of each amendment, supplement or extension to a Lease Document and a copy of each document recording any rent review in respect of a Lease Document promptly upon entering into the same.

22.2.6 The Borrower must use its reasonable endeavours to find tenants for the Commercial Units with a view to granting a Lease Document with respect to that space.

22.2.7 The Borrower may not grant or agree to grant any Lease Document of a Commercial Unit without including in the alienation covenant a provision for the proposed assignor on any assignment to guarantee the obligations of the proposed assignee until that assignee is released as tenant under the terms of the Landlord and Tenant (Covenants) Act 1995.

### 22.3 **Headlease**

22.3.1 The Borrower must:-

- (a) exercise its rights and comply with its obligations under the Headlease;
- (b) use its reasonable endeavours to ensure that each landlord complies with its obligations under the Headlease; and
- (c) if so required by the Security Agent, apply for relief against forfeiture of the Headlease,

in a proper and timely manner.

22.3.2 The Borrower may not:-

- (a) agree to any amendment, supplement, waiver, surrender or release of the Headlease;
- (b) exercise any right to break, determine or extend the Headlease;

- (c) agree to any upward rent review in respect of the Headlease; or
- (d) do or allow to be done any act as a result of which the Headlease may become liable to forfeiture or otherwise be terminated.

## 22.4 Affordable Agreements

22.4.1 The Borrower may not without the consent of the Agent:-

- (a) agree to any amendment, supplement, extension, waiver, surrender or release in respect of any Affordable Agreement;
- (b) exercise any right to break, determine or extend any Affordable Agreement;
- (c) commence any forfeiture or irritancy proceedings in respect of any Affordable Agreement;
- (d) consent to any sublease or assignment of any tenant's interest under any Affordable Agreement.

22.4.2 The Borrower must:-

- (a) exercise its rights and comply with its obligations under each Affordable Agreement; and
- (b) use its reasonable endeavours to ensure that each tenant complies with its obligations under each Affordable Agreement,

in a proper and timely manner.

22.4.3 The Borrower must supply to the Agent a copy of each Affordable Agreement, a copy of each amendment, supplement or extension to an Affordable Agreement and a copy of each document recording any rent review in respect of an Affordable Agreement promptly upon entering into the same.

## 22.5 Maintenance

Following Practical Completion, the Borrower must ensure that all buildings, plant, machinery, fixtures and fittings on the Property are in, and maintained in:-

22.5.1 good and substantial repair and condition and, as appropriate, in good working order; and

22.5.2 in respect of the Commercial Space or any part of the Property which is to be let (and not subject to Disposal Documents), such repair, condition and order as to enable them to be let in accordance with all applicable laws and regulations; for this purpose, a law or regulation will be regarded as applicable if it is either:-

- (a) in force; or
- (b) it is expected to come into force and a prudent property owner in the same business as the Borrower would ensure that its buildings, plant, machinery, fixtures and fittings were in such condition, repair and order in anticipation of that law or regulation coming into force.



## 22.6 Development

22.6.1 The Borrower must not without the prior consent of the Agent:-

- (a) make or allow to be made any application for planning permission in respect of any part of the Property; or
- (b) carry out, or allow to be carried out, any demolition, construction, structural alterations or additions, development or other similar operations in respect of any part of the Property.

22.6.2 Clause 22.6.1 above shall not apply to:-

- (a) the carrying out of the Development in accordance with the terms of this Agreement;
- (b) any amendments (which would not have an adverse impact on the market value of the Property) to be made to the planning permission in respect of the Development;
- (c) the maintenance of the buildings, plant, machinery, fixtures and fittings in accordance with the Transaction Documents; or
- (d) the carrying out of non-structural improvements or alterations which affect only the interior of any building on the Property.

22.6.3 The Borrower must comply in all respects with all planning laws, permissions, agreements and conditions to which the Property may be subject.

## 22.7 Notices

The Borrower must, within 14 days after the receipt by the Borrower of any application, requirement, order or notice served or given by any public or local or any other authority or any landlord with respect to the Property (or any part of it):-

22.7.1 deliver a copy to the Security Agent; and

22.7.2 inform the Security Agent of the steps taken or proposed to be taken to comply with the relevant requirement, order or notice.

## 22.8 Investigation of title

The Borrower must grant the Security Agent or its lawyers on request all facilities within the power of the Borrower to enable the Security Agent or its lawyers to:-

22.8.1 carry out investigations of title to the Property; and

22.8.2 make such enquiries in relation to any part of the Property as a prudent mortgagee might carry out.

## 22.9 Power to remedy

22.9.1 If the Borrower fails to perform any obligations under the Finance Documents affecting the Property, the Borrower must allow the Security Agent or its agents and contractors:-

- (a) to enter any part of the Property;
- (b) to comply with or object to any notice served on the Borrower in respect of the Property; and

- (c) to take any action that the Security Agent may reasonably consider necessary or desirable to prevent or remedy any breach of any such term or to comply with or object to any such notice.

22.9.2 The Borrower must immediately on request by the Security Agent pay the costs and expenses of the Security Agent or its agents and contractors incurred in connection with any action taken by it under this Clause 22.9.

22.9.3 No Finance Party shall be obliged to account as mortgagee in possession as a result of any action taken under this Clause 22.9.

## 22.10 **Managing Agents**

22.10.1 The Borrower may not:-

- (a) appoint any Managing Agent;
- (b) amend, supplement, extend or waive the terms of appointment of any Managing Agent; or
- (c) terminate the appointment of any Managing Agent,

without the prior consent of, and on terms approved by, the Agent.

22.10.2 The Borrower must ensure that each Managing Agent of the Property:-

- (a) enters into a Duty of Care Agreement with the Security Agent in form and substance satisfactory to the Agent;
- (b) acknowledges to the Security Agent that it has notice of the Security created by the Finance Documents; and
- (c) agrees to pay all Net Rental Income received by it into the Rent Account without any withholding, set-off or counterclaim.

22.10.3 If a Managing Agent is in default of its obligations under its management agreement and, as a result, the Borrower is entitled to terminate that management agreement, then, if the Agent so requires, the Borrower must promptly use all reasonable endeavours to:-

- (a) terminate the management agreement; and
- (b) appoint a new Managing Agent in accordance with this Clause 22.10.

## 22.11 **Insurances**

22.11.1 The Borrower must ensure that at all times from the first Utilisation Date Insurances are maintained in full force and effect, which:-

- (a) insure the Borrower in respect of its interests in the Property and the plant and machinery on the Property (including fixtures and improvements) for their full replacement value (being the total cost of entirely rebuilding, reinstating or replacing the relevant asset if it is completely destroyed, together with all related fees and demolition costs);
- (b) provide cover against loss or damage by fire, storm, tempest, flood, earthquake, lightning, explosion, impact, aircraft and other aerial devices and articles dropped from them, riot, civil commotion and malicious damage, bursting or overflowing of water tanks, apparatus or pipes and all other normally insurable risks of loss or damage for a property of the type of the Property;

- (c) provide cover for site clearance, shoring or propping up, professional fees and value added tax together with adequate allowance for inflation;
- (d) provide for contractor's all risks insurance covering contractors and sub-contractors;
- (e) provide for professional indemnity insurance or public and product liability covering contractors, sub-contractors and consultants with a material design responsibility;
- (f) provide cover against acts of terrorism, including any third party liability arising from such acts;
- (g) include public liability and third party liability insurance;
- (h) insure such other risks as a prudent company or other person in the same business as the Borrower would insure; and
- (i) in each case are in an amount, and in form, and with an insurance company or underwriters, acceptable at all times to the Agent.

22.11.2 The Borrower must procure that the Security Agent (as security trustee for the Secured Parties) is named as composite insured in respect of its own separate insurable interest under each of the Insurances (other than public liability, professional indemnity insurance and third party liability insurances) but without any liability on the part of the Security Agent, any other Finance Party or any Delegate for any premium in relation to those Insurances (unless the Security Agent has expressly and specifically requested to be made liable in respect of any increase in premium or unpaid premium in respect of any of those Insurances).

22.11.3 The Borrower must procure that the Insurances comply with the following requirements:-

- (a) each of the Insurances (other than public liability, third party liability and professional indemnity insurance) must contain:-
  - (i) a non-invalidation and non-vitiation clause under which the Insurances will not be avoided or vitiated as against any insured party as a result of any circumstances beyond the control of that insured party or any misrepresentation, non-disclosure, or breach of any policy term or condition, on the part of any other insured party or any agent of any other insured party;
  - (ii) a waiver of the rights of subrogation of the insurer as against the Borrower, each Secured Party and the tenants of the Property other than any such rights arising in connection with any fraud or criminal offence committed by any of those persons in respect of the Property or any Insurance; and
  - (iii) a loss payee clause under which the Security Agent is named as first loss payee (in respect of amounts in excess of £250,000);
- (b) each insurer must give at least 14 days' notice to the Security Agent if it proposes to:-
  - (i) repudiate, rescind or cancel any Insurance;
  - (ii) treat any Insurance as avoided in whole or in part;
  - (iii) treat any Insurance as expired due to non-payment of premium; or

- (iv) otherwise decline any claim under any Insurance by or on behalf of any insured party,

and, in respect Clause 22.11.3(b)(iii) above, must in the notice give the Security Agent the opportunity to rectify any such non-payment of premium within the notice period; and

- (c) the Borrower must be free to assign or otherwise grant Security over all amounts payable to it under each of its Insurances and all its rights in connection with those amounts in favour of the Security Agent.

22.11.4 The Borrower must use all reasonable endeavours to ensure that the Agent receives copies of the Insurances, receipts for the payment of premiums for insurance and any information in connection with the Insurances and claims under them which the Agent may reasonably require.

22.11.5 The Borrower must promptly notify the Agent of:-

- (a) the proposed terms of any future renewal of any of the Insurances;
- (b) any amendment, supplement, extension, termination, avoidance or cancellation of any of the Insurances made or, to its knowledge, threatened or pending;
- (c) any claim, and any actual or threatened refusal of any claim, under any of the Insurances; and
- (d) any event or circumstance which has led or may lead to a breach by the Borrower of any term of this Clause 22.11.

22.11.6 The Borrower must:-

- (a) comply with the terms of the Insurances;
- (b) not do or permit anything to be done which may make void or voidable any of the Insurances; and
- (c) comply with all reasonable risk improvement requirements of its insurers.

22.11.7 The Borrower must ensure that:-

- (a) each premium for the Insurances is paid promptly and in any event prior to the commencement of the period of insurance for which that premium is payable; and
- (b) all other things necessary are done so as to keep each of the Insurances in force.

22.11.8 If the Borrower fails to comply with any term of this Clause 22.11, the Agent may, at the expense of the Borrower, effect any insurance and generally do such things and take such other action as the Agent may reasonably consider necessary or desirable to prevent or remedy any breach of this Clause 22.11.

22.11.9

- (a) Except as provided below, the proceeds of any Insurances in excess of £250,000 must, if the Agent so requires, be paid into the Deposit Account for application in accordance with Clause 16.4 (*Deposit Account*).
- (b) To the extent required by the basis of settlement under any Insurances or under any Lease Document, the Borrower must apply moneys received under any

Insurances in respect of the Property towards replacing, restoring or reinstating the Property.

- (c) Moneys received under liability policies held by the Borrower which are required to satisfy established liabilities of the Borrower to third parties must be used to satisfy these liabilities.

## 22.12 Environmental matters

22.12.1 The Borrower must:-

- (a) comply and ensure that any relevant third party complies with all Environmental Law;
- (b) obtain, maintain and ensure compliance with all requisite Environmental Permits applicable to it or to the Property; and
- (c) implement procedures to monitor compliance with and to prevent liability under any Environmental Law applicable to it or the Property,

where failure to do so has or is reasonably likely to have a Material Adverse Effect or result in any liability for a Finance Party.

22.12.2 The Borrower must, promptly upon becoming aware, notify the Agent of:-

- (a) any Environmental Claim started, or to its knowledge, threatened;
- (b) any circumstances reasonably likely to result in an Environmental Claim; or
- (c) any suspension, revocation or notification of any Environmental Permit.

22.12.3 The Borrower must indemnify each Finance Party against any loss or liability which:-

- (a) that Finance Party incurs as a result of any actual or alleged breach of any Environmental Law by any person; and
- (b) would not have arisen if a Finance Document had not been entered into, unless it is caused by that Finance Party's gross negligence or wilful misconduct.

## 23. EVENTS OF DEFAULT

### 23.1 Events of Default

23.1.1 Each of the events or circumstances set out in this Clause 23 is an Event of Default (save for Clause 23.20 (*Acceleration*)).

23.1.2 In this Clause 23 "**Material Company**" means the Borrower, the Guarantor, the Developer or the Contractors.

### 23.2 Non-payment

The Borrower does not pay on the due date any amount payable pursuant to a Finance Document at the place and in the currency in which it is expressed to be payable unless:-

23.2.1 its failure to pay is caused by:-

- (a) administrative or technical error; or

(b) a Disruption Event; and

23.2.2 payment is made within three Business Days of its due date.

### 23.3 Financial covenants

Any requirement of Clause 19 (*Financial Covenants*) is not satisfied.

### 23.4 Other obligations

23.4.1 The Borrower does not comply with any term of:-

- (a) Clause 18.6 (*Notification of default*);
- (b) Clauses 20.1 (*Authorisations*) to 20.9 (*Acquisitions*) or 20.11 (*Shares, dividends and share redemption*);
- (c) Clause 21.1 (*Completion*) or Clause 21.2 (*Milestones*); or
- (d) Clause 22.2 (*Occupational Leases*), Clause 22.3 (*Headlease*) or Clause 22.11 (*Insurances*).

23.4.2 A Transaction Obligor does not comply with any provision of the Finance Documents (other than those referred to in Clause 23.2 (*Non-payment*), Clause 23.3 (*Financial covenants*) and Clause 23.4.1 above).

23.4.3 No Event of Default under Clause 23.4.2 above will occur if the failure to comply is capable of remedy and is remedied within 10 Business Days of the earlier of (i) the Agent giving notice to the Borrower and (ii) any Transaction Obligor becoming aware of the failure to comply.

### 23.5 Misrepresentation

Any representation or statement made or deemed to be made by a Transaction Obligor in the Finance Documents or any other document delivered by or on behalf of any Transaction Obligor under or in connection with any Finance Document is or proves to have been incorrect or misleading in any material respect when made or deemed to be made.

### 23.6 Cross default

23.6.1 Any Financial Indebtedness of the Borrower is not paid when due nor within any originally applicable grace period.

23.6.2 Any Financial Indebtedness of the Borrower is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described).

23.6.3 Any commitment for any Financial Indebtedness of the Borrower is cancelled or suspended by a creditor of the Borrower as a result of an event of default (however described).

23.6.4 Any creditor of the Borrower becomes entitled to declare any Financial Indebtedness of the Borrower due and payable prior to its specified maturity as a result of an event of default (however described).

## 23.7 **Insolvency**

### 23.7.1 A Material Company:-

- (a) is unable or admits inability to pay its debts as they fall due;
- (b) is deemed to, or is declared to, be unable to pay its debts under applicable law;
- (c) suspends or threatens to suspend making payments on any of its debts; or
- (d) by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors (excluding any Finance Party in its capacity as such) with a view to rescheduling any of its indebtedness.

23.7.2 The value of the assets of any Material Company is less than its liabilities (taking into account contingent and prospective liabilities).

23.7.3 A moratorium is declared in respect of any indebtedness of any Material Company. If a moratorium occurs, the ending of the moratorium will not remedy any Event of Default caused by that moratorium.

## 23.8 **Insolvency proceedings**

### 23.8.1 Any corporate action, legal proceedings or other procedure or step is taken in relation to:-

- (a) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of any Material Company;
- (b) a composition, compromise, assignment or arrangement with any creditor of any Material Company;
- (c) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of any Material Company or any of its assets; or
- (d) enforcement of any Security over any assets of any Material Company,

or any analogous procedure or step is taken in any jurisdiction.

23.8.2 This Clause 23.8 shall not apply to any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within 10 Business Days of commencement.

## 23.9 **Creditors' process**

Any expropriation, attachment, sequestration, distress or execution or any analogous process in any jurisdiction affects any asset or assets of a Material Company and is not discharged within 10 Business Days.

## 23.10 **Cessation of business**

An Obligor suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a material part of its business except as a result of any disposal allowed under this Agreement or with the prior consent of the Agent.

## 23.11 **Unlawfulness and invalidity**

23.11.1 It is or becomes unlawful for a Transaction Obligor to perform any of its obligations under the Finance Documents or any Transaction Security created or expressed to be created

or evidenced by the Security Documents ceases to be effective or any subordination created under a Subordination Agreement is or becomes unlawful.

23.11.2 Any obligation or obligations of any Transaction Obligor under any Finance Documents are not (subject to the Legal Reservations) or cease to be legal, valid, binding or enforceable and the cessation individually or cumulatively materially and adversely affects the interests of the Finance Parties under the Finance Documents.

23.11.3 Any Finance Document ceases to be in full force and effect or any Transaction Security or any subordination created under a Subordination Agreement ceases to be legal, valid, binding, enforceable or effective or is alleged by a party to it (other than a Finance Party) to be ineffective.

#### **23.12 Repudiation and rescission of agreements**

A Transaction Obligor (or any other relevant party) rescinds or purports to rescind or repudiates or purports to repudiate a Finance Document or any of the Transaction Security or evidences an intention to rescind or repudiate a Finance Document or any Transaction Security.

#### **23.13 Abandonment**

The Borrower abandons all or a significant part of the Development for a continuous period of 28 days or more.

#### **23.14 Compulsory purchase**

23.14.1 Any part of the Property is compulsorily purchased or the applicable local authority makes an order for the compulsory purchase of all or any part of the Property; and

23.14.2 in the opinion of the Lenders, taking into account the amount and timing of any compensation payable, the compulsory purchase has or will have a Material Adverse Effect.

#### **23.15 Completion**

23.15.1 Practical Completion does not occur on or before the Required Completion Date.

23.15.2 In the opinion of the Project Monitor (having regard to any representations made by the Borrower and/or its representatives), Practical Completion will not occur on or before the Required Completion Date.

#### **23.16 Major damage**

23.16.1 Any part of the Property is destroyed or damaged; and

23.16.2 in the opinion of the Lenders, taking into account the amount and timing of receipt of the proceeds of insurance effected in accordance with the terms of this Agreement, the destruction or damage has or will have a Material Adverse Effect.

#### **23.17 Headlease**

Forfeiture proceedings with respect to the Headlease are commenced or the Headlease is forfeited and no reliefs are available.

#### **23.18 Ownership**

The Borrower is not or ceases to be Controlled by the Guarantor.



23.19 **Material adverse change**

Any event or circumstance occurs which, in the opinion of the Lenders, has or is reasonably likely to have a Material Adverse Effect.

23.20 **Acceleration**

On and at any time after the occurrence of an Event of Default which is continuing the Agent may, and shall if so directed by the Lenders, by notice to the Borrower:-

23.20.1 cancel the Total Commitments whereupon they shall immediately be cancelled;

23.20.2 declare that all or part of the Loans, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, whereupon they shall become immediately due and payable;

23.20.3 declare that all or part of the Loans be payable on demand, whereupon they shall immediately become payable on demand by the Agent on the instructions of the Lenders; and/or

23.20.4 exercise or direct the Security Agent to exercise any or all of its rights, remedies, powers or discretions under the Finance Documents.

23.21 **Replacement of Contractor**

No Event of Default shall occur under Clause 23.7 (*Insolvency*) or Clause 23.8 (*Insolvency proceedings*) in respect of a Contractor ("**Contractor Default**") if:-

23.21.1 the Borrower appoints a replacement Contractor acceptable to the Agent and on terms acceptable to the Agent as soon as reasonably practicable but in any event no later than 45 Business Days after the date of the Contractor Default or puts in place such alternative arrangements as are acceptable to the Lenders;

23.21.2 any Security required in respect of such arrangements is provided in form and substance satisfactory to the Lenders; and

23.21.3 any Cost Overrun resulting from the Contractor Default and arrangements put in place by the Borrower in accordance with Clause 23.21.1 is funded by the Borrower within 20 Business Days of the date of notification to the Borrower in accordance with the terms of this Agreement.

## SECTION 9

### CHANGES TO PARTIES

#### 24. CHANGES TO THE LENDERS

##### 24.1 Assignments and transfers by the Lenders

24.1.1 Subject to this Clause 24, a Lender (the "**Existing Lender**") may:-

- (a) assign any of its rights; or
- (b) transfer by novation any of its rights and obligations,  
to any other person other than an individual (the "**New Lender**").

24.1.2 The Existing Lender may:-

- (a) assign any of its rights; or
- (b) transfer by novation any of its rights and obligations to any other party pursuant to a statutory transfer and the requirement of this Clause 24 shall not apply.

##### 24.2 Conditions of assignment or transfer

24.2.1 An assignment will only be effective on:-

- (a) receipt by the Agent (whether in the Assignment Agreement or otherwise) of written confirmation from the New Lender (in form and substance satisfactory to the Agent) that the New Lender will assume the same obligations to the other Finance Parties as it would have been under if it was an Original Lender; and
- (b) performance by the Agent of all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to such assignment to a New Lender, the completion of which the Agent shall promptly notify to the Existing Lender and the New Lender.

24.2.2 A transfer will only be effective if the procedure set out in Clause 24.5 (*Procedure for transfer*) is complied with.

24.2.3 If:-

- (a) a Lender assigns or transfers any of its rights or obligations under the Finance Documents or changes its Facility Office; and
- (b) as a result of circumstances existing at the date the assignment, transfer or change occurs, an Obligor would be obliged to make a payment to the New Lender or Lender acting through its new Facility Office under Clause 11 (*Tax Gross Up and Indemnities*) or Clause 12 (*Increased Costs*),

then the New Lender or Lender acting through its new Facility Office is only entitled to receive payment under those Clauses to the same extent as the Existing Lender or Lender acting through its previous Facility Office would have been if the assignment, transfer or change had not occurred. This Clause 24.2.3 shall not apply in relation to Clause 11.2 (*Tax gross-up*), to a Treaty Lender that has included a confirmation of its scheme reference number and its jurisdiction of tax residence in accordance with Clause 11.2.7(b)(ii) if the Obligor making the payment has not made a Borrower DTTP Filing in respect of that Treaty Lender.

24.2.4 Each New Lender, by executing the relevant Transfer Certificate or Assignment Agreement, confirms, for the avoidance of doubt, that the Agent has authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of the requisite Lender or Lenders in accordance with this Agreement on or prior to the date on which the transfer or assignment becomes effective in accordance with this Agreement and that it is bound by that decision to the same extent as the Existing Lender would have been had it remained a Lender.

#### 24.3 Assignment or transfer fee

The New Lender shall, on the date upon which an assignment or transfer takes effect, pay to the Agent (for its own account) a fee of £2000.

#### 24.4 Limitation of responsibility of Existing Lenders

24.4.1 Unless expressly agreed to the contrary, an Existing Lender makes no representation or warranty and assumes no responsibility to a New Lender for:-

- (a) the legality, validity, effectiveness, adequacy or enforceability of the Finance Documents or any other documents;
- (b) the financial condition of any Obligor;
- (c) the performance and observance by any Obligor of its obligations under the Finance Documents or any other documents; or
- (d) the accuracy of any statements (whether written or oral) made in or in connection with any Finance Document or any other document,

and any representations or warranties implied by law are excluded.

24.4.2 Each New Lender confirms to the Existing Lender and the other Finance Parties that it:-

- (a) has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of each Obligor and its related entities in connection with its participation in this Agreement and has not relied exclusively on any information provided to it by the Existing Lender in connection with any Finance Document; and
- (b) will continue to make its own independent appraisal of the creditworthiness of each Obligor and its related entities whilst any amount is or may be outstanding under the Finance Documents or any Commitment is in force.

24.4.3 Nothing in any Finance Document obliges an Existing Lender to:-

- (a) accept a re-transfer or re-assignment from a New Lender of any of the rights and obligations assigned or transferred under this Clause 24; or
- (b) support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by any Obligor of its obligations under the Finance Documents or otherwise.

#### 24.5 Procedure for transfer

24.5.1 Subject to the conditions set out in Clause 24.2 (*Conditions of assignment or transfer*) a transfer is effected in accordance with Clause 24.5.3 below when the Agent executes an otherwise duly completed Transfer Certificate delivered to it by the Existing Lender and the New Lender. The Agent shall, subject to Clause 24.5.2 below, as soon as reasonably practicable after receipt by it of a duly completed Transfer Certificate appearing on its

face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Transfer Certificate.

24.5.2 The Agent shall only be obliged to execute a Transfer Certificate delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to the transfer to such New Lender.

24.5.3 Subject to Clause 24.9 (*Pro rata interest settlement*), on the Transfer Date:-

- (a) to the extent that in the Transfer Certificate the Existing Lender seeks to transfer by novation its rights and obligations under the Finance Documents each of the Obligors and the Existing Lender shall be released from further obligations towards one another under the Finance Documents and their respective rights against one another under the Finance Documents shall be cancelled (being the "**Discharged Rights and Obligations**");
- (b) each of the Obligors and the New Lender shall assume obligations towards one another and/or acquire rights against one another which differ from the Discharged Rights and Obligations only insofar as that Obligor and the New Lender have assumed and/or acquired the same in place of that Obligor and the Existing Lender;
- (c) the Agent, the Arranger, the New Lender and other Lenders shall acquire the same rights and assume the same obligations between themselves as they would have acquired and assumed had the New Lender been an Original Lender with the rights and/or obligations acquired or assumed by it as a result of the transfer and to that extent the Agent, the Arranger and the Existing Lender shall each be released from further obligations to each other under the Finance Documents; and
- (d) the New Lender shall become a Party as a "Lender".

## 24.6 Procedure for assignment

24.6.1 Subject to the conditions set out in Clause 24.2 (*Conditions of assignment or transfer*) an assignment may be effected in accordance with Clause 24.6.3 below when the Agent executes an otherwise duly completed Assignment Agreement delivered to it by the Existing Lender and the New Lender. The Agent shall, subject to Clause 24.6.2 below, as soon as reasonably practicable after receipt by it of a duly completed Assignment Agreement appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Assignment Agreement.

24.6.2 The Agent shall only be obliged to execute an Assignment Agreement delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to the assignment to such New Lender.

24.6.3 Subject to Clause 24.9 (*Pro rata interest settlement*), on the Transfer Date:-

- (a) the Existing Lender will assign absolutely to the New Lender the rights under the Finance Documents expressed to be the subject of the assignment in the Assignment Agreement;
- (b) the Existing Lender will be released by each Obligor and the other Finance Parties from the obligations owed by it (the "**Relevant Obligations**") and expressed to be the subject of the release in the Assignment Agreement; and

- (c) the New Lender shall become a Party as a "Lender" and will be bound by obligations equivalent to the Relevant Obligations.

24.6.4 Lenders may utilise procedures other than those set out in this Clause 24.6 to assign their rights under the Finance Documents (but not without the consent of the relevant Obligor or unless in accordance with Clause 24.5 (*Procedure for transfer*), to obtain a release by that Obligor from the obligations owed to that Obligor by the Lenders nor the assumption of equivalent obligations by a New Lender) provided that they comply with the conditions set out in Clause 24.2 (*Conditions of assignment or transfer*).

#### 24.7 **Copy of Transfer Certificate or Assignment Agreement to Borrower**

The Agent shall, as soon as reasonably practicable after it has executed a Transfer Certificate or an Assignment Agreement, send to the Borrower a copy of that Transfer Certificate or Assignment Agreement.

#### 24.8 **Security over Lenders' rights**

In addition to the other rights provided to Lenders under this Clause 24, each Lender may without consulting with or obtaining consent from any Obligor, at any time charge, assign or otherwise create Security in or over (whether by way of collateral or otherwise) all or any of its rights under any Finance Document to secure obligations of that Lender including, without limitation:-

24.8.1 any charge, assignment or other Security to secure obligations to a federal reserve or central bank; and

24.8.2 in the case of any Lender which is a fund, any charge, assignment or other Security granted to any holders (or trustee or representatives of holders) of obligations owed, or securities issued, by that Lender as security for those obligations or securities,

except that no such charge, assignment or Security shall:-

- (a) release a Lender from any of its obligations under the Finance Documents or substitute the beneficiary of the relevant charge, assignment or Security for the Lender as a party to any of the Finance Documents; or
- (b) require any payments to be made by an Obligor other than or in excess of, or grant to any person any more extensive rights than, those required to be made or granted to the relevant Lender under the Finance Documents.

#### 24.9 **Pro rata interest settlement**

24.9.1 If the Agent has notified the Lenders that it is able to distribute interest payments on a "pro rata basis" to Existing Lenders and New Lenders then (in respect of any transfer pursuant to Clause 24.5 (*Procedure for transfer*) or any assignment pursuant to Clause 24.6 (*Procedure for assignment*) the Transfer Date of which, in each case, is after the date of such notification and is not on the last day of an Interest Period):-

- (a) any interest or fees in respect of the relevant participation which are expressed to accrue by reference to the lapse of time shall continue to accrue in favour of the Existing Lender up to but excluding the Transfer Date ("**Accrued Amounts**") and shall become due and payable to the Existing Lender (without further interest accruing on them) on the last day of the current Interest Period (or, if the Interest Period is longer than six Months, on the next of the dates which falls at six Monthly intervals after the first day of that Interest Period); and

- (b) the rights assigned or transferred by the Existing Lender will not include the right to the Accrued Amounts, so that, for the avoidance of doubt:-
  - (i) when the Accrued Amounts become payable, those Accrued Amounts will be payable to the Existing Lender; and
  - (ii) the amount payable to the New Lender on that date will be the amount which would, but for the application of this Clause 24.9, have been payable to it on that date, but after deduction of the Accrued Amounts.

24.9.2 In this Clause 24 references to "Interest Period" shall be construed to include a reference to any other period for accrual of fees.

## 25. CHANGES TO THE TRANSACTION OBLIGORS

### 25.1 Assignments and transfer by Obligors

No Obligor may assign any of its rights or transfer any of its rights or obligations under the Finance Documents.

### 25.2 Release of security

25.2.1 If a disposal of any asset subject to security created by a Security Document is made in the following circumstances:-

- (a) the disposal is permitted by the terms of this Agreement;
- (b) all the Lenders agree to the disposal;
- (c) the disposal is being made at the request of the Security Agent in circumstances where any security created by the Security Documents has become enforceable; or
- (d) the disposal is being effected by enforcement of a Security Document,

the Security Agent may release the asset(s) being disposed of from any security over those assets created by a Security Document. However, the proceeds of any disposal (or an amount corresponding to them) must be applied in accordance with the requirements of the Finance Documents (if any).

25.2.2 If the Security Agent is satisfied that a release is allowed under this Clause 25.2, (at the request and expense of the Borrower) each Finance Party must enter into any document and do all such other things which are reasonably required to achieve that release. Each other Finance Party irrevocably authorises the Security Agent to enter into any such document. Any release will not affect the obligations of any other Obligor under the Finance Documents.

### 25.3 Additional Subordinated Creditors

25.3.1 The Borrower may request that any person becomes a Subordinated Creditor, with the prior approval of the Agent, by delivering to the Agent:-

- (a) a duly executed Subordination Agreement; and
- (b) such constitutional documents, corporate authorisations and other documents and matters as the Agent may reasonably require, in form and substance satisfactory to the Agent, to verify that the person's obligations are legally binding, valid and enforceable and to satisfy any applicable legal and regulatory requirements.

25.3.2 A person referred to in Clause 25.3.1 above will become a Subordinated Creditor on the date the Agent enters into the Subordination Agreement delivered under Clause 25.3.1 above.

## SECTION 10

### THE FINANCE PARTIES

#### 26. ROLE OF THE AGENT, THE SECURITY AGENT AND THE ARRANGER

##### 26.1 The Agent and the Security Agent

26.1.1 Each of the Arranger and the Lenders appoints the Agent to act as its agent under and in connection with the Finance Documents.

26.1.2 The Security Agent is appointed by the Secured Parties and it has agreed that it holds the Security Property on trust for the Secured Parties on the terms contained in this Agreement.

26.1.3 Each of the Finance Parties authorises the Agent and the Security Agent to perform the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions specifically given to the Agent and the Security Agent (as applicable) under or in connection with the Finance Documents together with any other incidental rights, powers, authorities and discretions.

##### 26.2 Enforcement through Security Agent only

The Secured Parties shall not have any independent power to enforce, or have recourse to, any of the Transaction Security or to exercise any right, power, authority or discretion arising under the Security Documents except through the Security Agent.

##### 26.3 Instructions

26.3.1 Each of the Agent and the Security Agent shall:-

(a) unless a contrary indication appears in a Finance Document, exercise or refrain from exercising any right, power, authority or discretion vested in it as Agent or Security Agent (as applicable) in accordance with any instructions given to it by all Lenders; and

(b) not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with Clause 26.3.1(a) above (or, if this Agreement stipulates the matter is a decision for any other Finance Party or group of Finance Parties, from that Finance Party or group of Finance Parties).

26.3.2 Each of the Agent and the Security Agent shall be entitled to request instructions, or clarification of any instruction, from the Lenders (or, if the relevant Finance Document stipulates the matter is a decision for any other Finance Party or group of Finance Parties, from that Finance Party or group of Finance Parties) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion and the Agent or Security Agent (as applicable) may refrain from acting unless and until it receives any such instructions or clarification that it has requested.

26.3.3 Save in the case of decisions stipulated to be a matter for any other Finance Party or group of Finance Parties under the relevant Finance Document and unless a contrary indication appears in a Finance Document, any instructions given to the Agent or Security Agent (as applicable) by the Lenders shall override any conflicting instructions given by any other Parties and will be binding on all Finance Parties.

26.3.4 Clause 26.3.1 above shall not apply:-

(a) where a contrary indication appears in a Finance Document;



- (b) where a Finance Document requires the Agent or the Security Agent to act in a specified manner or to take a specified action;
  - (c) in respect of any provision which protects the Agent's or Security Agent's own position in its personal capacity as opposed to its role of Agent or Security Agent for the relevant Finance Parties or Secured Parties (as applicable) including, without limitation, Clause 26.6 (*No fiduciary duties*) to Clause 26.11 (*Exclusion of liability*), Clause 26.14 (*Confidentiality*) to Clause 26.22 (*Custodians and nominees*) and Clause 26.25 (*Acceptance of title*) to Clause 26.28 (*Disapplication of Trustee Acts*);
  - (d) in respect of the exercise of the Security Agent's discretion to exercise a right, power or authority under any of:-
    - (i) Clause 27.1 (*Order of application*);
    - (ii) Clause 27.2 (*Prospective liabilities*); and
    - (iii) Clause 27.5 (*Permitted Deductions*).
- 26.3.5 If giving effect to instructions given by the Lenders would (in the Agent's or (as applicable) the Security Agent's opinion) have an effect equivalent to an amendment or waiver referred to in Clause 38 (*Amendments and Waivers*), the Agent or (as applicable) Security Agent shall not act in accordance with those instructions unless consent to it so acting is obtained from each Party (other than the Agent or Security Agent) whose consent would have been required in respect of that amendment or waiver.
- 26.3.6 In exercising any discretion to exercise a right, power or authority under the Finance Documents where either:-
- (a) it has not received any instructions as to the exercise of that discretion; or
  - (b) the exercise of that discretion is subject to Clause 26.3.4(d) above,
- the Agent or Security Agent shall do so having regard to the interests of (in the case of the Agent) all the Finance Parties and (in the case of the Security Agent) all the Secured Parties.
- 26.3.7 The Agent or the Security Agent (as applicable) may refrain from acting in accordance with any instructions of any Finance Party or group of Finance Parties until it has received any prefunding indemnification and/or security that it may in its discretion require (which may be greater in extent than that contained in the Finance Documents and which may include payment in advance) for any cost, loss or liability (together with any applicable VAT) which it may incur in complying with those instructions.
- 26.3.8 Without prejudice to the remainder of this Clause 26.3, in the absence of instructions, each of the Agent and the Security Agent may act (or refrain from acting) as it considers to be in the best interest of (in the case of the Agent) the Finance Parties and (in the case of the Security Agent) the Secured Parties.
- 26.3.9 Neither the Agent nor the Security Agent is authorised to act on behalf of a Finance Party (without first obtaining that Finance Party's consent) in any legal or arbitration proceedings relating to any Finance Document. This Clause 26.3.9 shall not apply to any legal or arbitration proceeding relating to the perfection, preservation or protection of rights under the Security Documents or enforcement of the Transaction Security or Security Documents.

## 26.4 Duties of the Agent and Security Agent

- 26.4.1 The duties of the Agent and the Security Agent under the Finance Documents are solely mechanical and administrative in nature.
- 26.4.2 Subject to Clause 26.4.3 below, each of the Agent and the Security Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Agent or Security Agent (as applicable) for that Party by any other Party.
- 26.4.3 Without prejudice to Clause 24.7 (*Copy of Transfer Certificate or Assignment Agreement to Borrower*), Clause 26.4.2 above shall not apply to any Transfer Certificate or any Assignment Agreement.
- 26.4.4 Except where a Finance Document specifically provides otherwise, neither the Agent nor the Security Agent is obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- 26.4.5 If the Agent or the Security Agent receives notice from a Party referring to any Finance Document, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the other Finance Parties.
- 26.4.6 If the Agent is aware of the non-payment of any principal, interest, commitment fee or other fee payable to a Finance Party (other than the Agent, the Arranger or the Security Agent) under this Agreement, it shall promptly notify the other Finance Parties.
- 26.4.7 The Agent shall provide to the Borrower within 20 Business Days of a request by the Borrower (but no more frequently than once per calendar month), a list (which may be in electronic form) setting out the names of the Lenders as at the date of that request, their respective Commitments, the address and fax number (and the department or officer, if any, for whose attention any communication is to be made) of each Lender for any communication to be made or document to be delivered under or in connection with the Finance Documents, the electronic mail address and/or any other information required to enable the sending and receipt of information by electronic mail or other electronic means to and by each Lender to whom any communication under or in connection with the Finance Documents may be made by that means and the account details of each Lender for any payment to be distributed by the Agent to that Lender under the Finance Documents.
- 26.4.8 Each of the Agent and the Security Agent shall have only those duties, obligations and responsibilities expressly specified in the Finance Documents to which it is expressed to be a party (and no others shall be implied).

## 26.5 Role of the Arranger

Except as specifically provided in the Finance Documents, the Arranger has no obligations of any kind to any other Party under or in connection with any Finance Document.

## 26.6 No fiduciary duties

- 26.6.1 Nothing in any Finance Document constitutes:-
- (a) the Agent or the Arranger as a trustee or fiduciary of any other person; or
  - (b) the Security Agent as an agent, trustee or fiduciary of any Transaction Obligor.
- 26.6.2 None of the Agent, the Security Agent or the Arranger shall be bound to account to any other Finance Party or (in the case of the Security Agent) any Secured Party for any sum or the profit element of any sum received by it for its own account.

## 26.7 Business with the Group

The Agent, the Security Agent and the Arranger may accept deposits from, lend money to and generally engage in any kind of banking or other business with any Transaction Obligor or Affiliate of a Transaction Obligor.

## 26.8 Rights and discretions

26.8.1 Each of the Agent and the Security Agent may:-

- (a) rely on any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised;
- (b) assume that:-
  - (i) any instructions received by it from the Lenders, any Finance Parties or any group of Finance Parties are duly given in accordance with the terms of the Finance Documents; and
  - (ii) unless it has received notice of revocation, that those instructions have not been revoked; and
- (c) rely on a certificate from any person:-
  - (i) as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or
  - (ii) to the effect that such person approves of any particular dealing, transaction, step, action or thing,

as sufficient evidence that that is the case and, in the case of Clause 26.8.1(c)(i) above, may assume the truth and accuracy of that certificate.

26.8.2 Each of the Agent and the Security Agent may assume (unless it has received notice to the contrary in its capacity as agent or security trustee for the Finance Parties or Secured Parties) that:-

- (a) no Default has occurred (unless, in the case of the Agent, it has actual knowledge of a Default arising under Clause 23.2 (*Non-payment*));
- (b) any right, power, authority or discretion vested in any Party or any group of Finance Parties has not been exercised; and
- (c) any notice or request made by the Borrower (other than a Utilisation Request) is made on behalf of and with the consent and knowledge of all the Transaction Obligors.

26.8.3 Each of the Agent and the Security Agent may engage (at the cost to the Borrower) the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts.

26.8.4 Without prejudice to the generality of Clause 26.8.3 above or Clause 26.8.5 below, each of the Agent and the Security Agent may at any time engage (at the cost to the Borrower) the services of any lawyers to act as independent counsel to the Agent or Security Agent (as applicable), (and so separate from any lawyers instructed by the Lenders) if the Agent or Security Agent (as applicable), in its reasonable opinion deems this to be desirable.

26.8.5 Each of the Agent and the Security Agent may rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts

(whether obtained by the Agent or by the Security Agent or by any other Party) and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.

26.8.6 Each of the Agent and the Security Agent may act in relation to the Finance Documents and the Security Property through its officers, employees and agents and shall not:-

- (a) be liable for any error of judgment made by any such person; or
- (b) be bound to supervise, or be in any way responsible for any loss incurred by reason of misconduct, omission or default on the part, of any such person,

unless such error or such loss was directly caused by the Agent's or the Security Agent's (as applicable) gross negligence or wilful misconduct.

26.8.7 Unless a Finance Document expressly provides otherwise each of the Agent and the Security Agent may disclose to any other Party any information it reasonably believes it has received as agent or security trustee under the Finance Documents.

26.8.8 Notwithstanding any other provision of any Finance Document to the contrary, none of the Agent, the Security Agent or the Arranger is obliged to do or omit to do anything if it would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.

26.8.9 Notwithstanding any provision of any Finance Document to the contrary, neither the Agent nor the Security Agent is obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.

## 26.9 Responsibility for documentation

None of the Agent, the Security Agent or the Arranger, is responsible or liable for:-

26.9.1 the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Agent, the Security Agent, the Arranger, a Transaction Obligor or any other person in or in connection with any Finance Document or the Property Reports or the transactions contemplated in the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; or

26.9.2 the legality, validity, effectiveness, adequacy or enforceability of any Finance Document or the Security Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Security Property; or

26.9.3 any determination as to whether any information provided or to be provided to any Finance Party or Secured Party is non-public information the use of which may be regulated or prohibited by applicable law or regulation relating to insider dealing or otherwise.

## 26.10 No duty to monitor

Neither the Agent nor the Security Agent shall be bound to enquire:-

26.10.1 whether or not any Default has occurred;

26.10.2 as to the performance, default or any breach by any Party of its obligations under any Finance Document; or

26.10.3 whether any other event specified in any Finance Document has occurred.

**26.11 Exclusion of liability**

26.11.1 Without limiting Clause 26.11.2 below (and without prejudice to any other provision of any Finance Document excluding or limiting the liability of the Agent, the Security Agent or any Receiver or Delegate), none of the Agent, the Security Agent nor any Receiver or Delegate will be liable (including, without limitation, for negligence or any other category of liability whatsoever) for:-

- (a) any damages, costs or losses to any person, any diminution in value, or any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Finance Document or the Security Property, unless directly caused by its gross negligence or wilful misconduct;
- (b) exercising, or not exercising, any right, power, authority or discretion given to it by, or in connection with, any Finance Document, the Security Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Finance Document or the Security Property;
- (c) any shortfall which arises on the enforcement or realisation of the Security Property; or
- (d) without prejudice to the generality of Clauses 26.11.1(a) to 26.11.1(c) above, any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of:-
  - (i) any act, event or circumstance not reasonably within its control; or
  - (ii) the general risks of investment in, or the holding of assets in, any jurisdiction,

including (in each case and without limitation) such damages, costs, losses, diminution in value or liability arising as a result of: nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets (including any Disruption Event); breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action.

26.11.2 No Party (other than the Agent, the Security Agent, that Receiver or that Delegate (as applicable)) may take any proceedings against any officer, employee or agent of the Agent, the Security Agent, a Receiver or a Delegate, in respect of any claim it might have against the Agent, the Security Agent, a Receiver or a Delegate or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document or any Security Property and any officer, employee or agent of the Agent, the Security Agent, a Receiver or a Delegate may rely on this Clause 26.11 subject to Clause 1.4 (*Third party rights*) and the provisions of the Third Parties Act.

26.11.3 Neither the Agent nor the Security Agent will be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents to be paid by the Agent or the Security Agent (as applicable) if the Agent or Security Agent (as applicable) has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by the Agent or the Security Agent (as applicable) for that purpose.

26.11.4 Nothing in this Agreement shall oblige the Agent, the Security Agent or the Arranger to carry out:-

- (a) any "know your customer" or other checks in relation to any person; or
- (b) any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any Finance Party,

on behalf of any Finance Party and each Finance Party confirms to the Agent, the Security Agent and the Arranger that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Agent, the Security Agent or the Arranger.

26.11.5 Without prejudice to any provision of any Finance Document excluding or limiting the liability of the Agent, the Security Agent, any Receiver or Delegate, any liability of the Agent, the Security Agent, any Receiver or Delegate arising under or in connection with any Finance Document or the Security Property shall be limited to the amount of actual loss which has been finally judicially determined to have been suffered (as determined by reference to the date of default of the Agent, the Security Agent, Receiver or Delegate or, if later, the date on which the loss arises as a result of such default) but without reference to any special conditions or circumstances known to the Agent, the Security Agent, any Receiver or Delegate at any time which increase the amount of that loss. In no event shall the Agent, the Security Agent, any Receiver or Delegate be liable for any loss of profits, goodwill, reputation, business opportunity or anticipated saving, or for special, punitive, indirect or consequential damages, whether or not the Agent, the Security Agent, the Receiver or Delegate has been advised of the possibility of such loss or damages.

#### 26.12 **Lenders' indemnity to the Agent and Security Agent**

26.12.1 Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify the Agent, the Security Agent and every Receiver and every Delegate, within three Business Days of demand, against any cost, loss or liability (including, without limitation, for negligence or any other category of liability whatsoever) incurred by any of them (otherwise than by reason of the Agent's, Security Agent's Receiver's or Delegate's gross negligence or wilful default) (or, in the case of any cost, loss or liability pursuant to Clause 30.10 (*Disruption to Payment Systems etc*), notwithstanding the Agent's negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent) in acting as Agent, Security Agent, Receiver or Delegate under the Finance Documents (unless the relevant Agent, Security Agent, Receiver or Delegate has been reimbursed by an Obligor pursuant to a Finance Document).

26.12.2 Subject to Clause 26.12.3 below, the Borrower shall immediately on demand reimburse any Lender for any payment that Lender makes to the Agent or the Security Agent pursuant to Clause 26.12.1 above.

26.12.3 Clause 26.12.2 above shall not apply to the extent that the indemnity payment in respect of which the Lender claims reimbursement relates to a liability of the Agent or the Security Agent to an Obligor.

#### 26.13 **Resignation of the Agent and the Security Agent**

26.13.1 Each of the Agent and the Security Agent may resign and appoint one of its Affiliates acting through an office in the United Kingdom as successor by giving notice to the other Finance Parties and the Borrower.

26.13.2 Alternatively the Agent or the Security Agent may resign by giving 30 days' notice to the other Finance Parties and the Borrower, in which case the Lenders (after consultation

with the other Finance Parties and the Borrower) may appoint a successor Agent or Security Agent (as applicable).

- 26.13.3 If the Lenders have not appointed a successor Agent or Security Agent in accordance with Clause 26.13.2 above within 20 days after notice of resignation was given, the retiring Agent or Security Agent (as applicable) (after consultation with the other Finance Parties and Borrower) may appoint a successor Agent or Security Agent (as applicable) (acting through an office in the United Kingdom).
- 26.13.4 If the Agent wishes to resign because (acting reasonably) it has concluded that it is no longer appropriate for it to remain as agent and the Agent is entitled to appoint a successor Agent under Clause 26.13.3 above, the Agent may (if it concludes (acting reasonably) that it is necessary to do so in order to persuade the proposed successor Agent to become a party to this Agreement as Agent) agree with the proposed successor Agent amendments to this Clause 26 and any other term of this Agreement dealing with the rights or obligations of the Agent consistent with then current market practice for the appointment and protection of corporate trustees together with any reasonable amendments to the agency fee payable under this Agreement which are consistent with the successor Agent's normal fee rates and those amendments will bind the Parties.
- 26.13.5 The retiring Agent or Security Agent (as applicable) shall, make available to the successor Agent or Security Agent (as applicable) such documents and records and provide such assistance as the successor Agent or Security Agent may reasonably request for the purposes of performing its functions as Agent or Security Agent (as applicable) under the Finance Documents. The Borrower shall, within three Business Days of demand, reimburse the retiring Agent or Security Agent (as applicable) for the amount of all costs and expenses (including legal fees) properly incurred by it in making available such documents and records and providing such assistance.
- 26.13.6 The resignation notice of the Agent or Security Agent (as applicable) shall only take effect upon:-
- (a) the appointment of a successor; and
  - (b) (in the case of the Security Agent) the transfer of the Security Property to that successor.
- 26.13.7 Upon the appointment of a successor, the retiring Agent or Security Agent (as applicable) shall be discharged from any further obligation in respect of the Finance Documents (other than its obligations under Clause 26.26.2 and 26.13.5 above) but shall remain entitled to the benefit of Clause 13.3 (*Indemnity to the Agent*), Clause 13.4 (*Indemnity to the Security Agent*) and this Clause 26 (and any fees for the account of the retiring Agent or Security Agent (as applicable) shall cease to accrue from (and shall be payable on) that date). Any successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.
- 26.13.8 After consultation with the Borrower, the Lenders may, by giving 30 days' notice to the Agent or Security Agent (as applicable), require it to resign in accordance with Clause 26.13.2 above. In this event, the Agent or Security Agent (as applicable) shall resign in accordance with Clause 26.13.2 above but the cost referred to in Clause 26.13.5 above shall be for the account of the Borrower.

26.13.9 The Agent shall resign in accordance with Clause 26.13.2 above (and, to the extent applicable, shall use reasonable endeavours to appoint a successor Agent pursuant to Clause 26.13.3 above) if on or after the date which is three months before the earliest FATCA Application Date relating to any payment to the Agent under the Finance Documents, either:-

- (a) the Agent fails to respond to a request under Clause 11.8 (*FATCA Information*) and the Borrower or a Lender reasonably believes that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;
- (b) the information supplied by the Agent pursuant to Clause 11.8 (*FATCA Information*) indicates that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date; or
- (c) the Agent notifies the Borrower and the Lenders that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;

and (in each case) the Borrower or a Lender reasonably believes that a Party will be required to make a FATCA Deduction that would not be required if the Agent were a FATCA Exempt Party, and the Borrower or that Lender, by notice to the Agent, requires it to resign.

#### 26.14 Confidentiality

26.14.1 In acting as agent or trustee for the Finance Parties, the Agent or Security Agent (as applicable) shall be regarded as acting through its agency division which shall be treated as a separate entity from any other of its divisions or departments.

26.14.2 If information is received by another division or department of the Agent or Security Agent, it may be treated as confidential to that division or department and the Agent or Security Agent (as applicable) shall not be deemed to have notice of it.

#### 26.15 Relationship with the other Finance Parties

26.15.1 Subject to Clause 24.9 (*Pro rata interest settlement*), the Agent may treat the person shown in its records as Lender at the opening of business (in the place of the Agent's principal office as notified to the Finance Parties from time to time) as the Lender acting through its Facility Office:-

- (a) entitled to or liable for any payment due under any Finance Document on that day; and
- (b) entitled to receive and act upon any notice, request, document or communication or make any decision or determination under any Finance Document made or delivered on that day,

unless it has received not less than five Business Days' prior notice from that Lender to the contrary in accordance with the terms of this Agreement.

26.15.2 Any Lender may by notice to the Agent appoint a person to receive on its behalf all notices, communications, information and documents to be made or despatched to that Lender under the Finance Documents. Such notice shall contain the address, fax number and (where communication by electronic mail or other electronic means is permitted under Clause 33.5 (*Electronic communication*)) electronic mail address and/or any other information required to enable the transmission of information by that means (and, in each case, the department or officer, if any, for whose attention communication is to be made) and be treated as a notification of a substitute address, fax number, electronic mail address (or such other information), department and officer by that Lender



for the purposes of Clause 33.2 (*Addresses*) and Clause 33.5.1(b) and the Agent shall be entitled to treat such person as the person entitled to receive all such notices, communications, information and documents as though that person were that Lender.

26.15.3 Each Finance Party shall supply the Security Agent with any information that the Security Agent may reasonably specify as being necessary or desirable to enable the Security Agent to perform its functions as Security Agent.

#### 26.16 **Credit appraisal by the Lenders**

Without affecting the responsibility of any Obligor for information supplied by it or on its behalf in connection with any Finance Document, each Lender confirms to the Agent, the Security Agent and the Arranger that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with any Finance Document including but not limited to:-

26.16.1 the financial condition, status and nature of each member of the Group;

26.16.2 the legality, validity, effectiveness, adequacy or enforceability of any Finance Document, the Security Property and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Security Property;

26.16.3 whether that Finance Party has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Finance Document, the Security Property, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Security Property;

26.16.4 the adequacy, accuracy or completeness of the Property Reports and any other information provided by the Agent, the Security Agent, any Party or by any other person under or in connection with any Finance Document, the transactions contemplated by any Finance Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; and

26.16.5 the right or title of any person in or to, or the value or sufficiency of any part of, the Security Assets, the priority of any of the Transaction Security or the existence of any Security affecting the Security Assets.

#### 26.17 **Agent's and Security Agent's management time**

26.17.1 Any amount payable to the Agent or Security Agent under Clause 13.3 (*Indemnity to the Agent*), Clause 13.4 (*Indemnity to the Security Agent*), Clause 15 (*Costs and Expenses*) and Clause 26.12 (*Lenders' indemnity to the Agent and Security Agent*) shall include the cost of utilising the management time or other resources of the Agent or Security Agent (as applicable) and will be calculated on the basis of such reasonable daily or hourly rates as the Agent or Security Agent may notify to the Borrower and the other Finance Parties, and is in addition to any fee paid or payable to the Agent or Security Agent under Clause 10 (*Fees*).

26.17.2 Without prejudice to Clause 26.17.1 above, in the event of:-

(a) a Default;

(b) the Security Agent being requested by a Transaction Obligor or the Lenders to undertake duties which the Security Agent and the Borrower agree to be of an exceptional nature or outside the scope of the normal duties of the Security Agent under the Finance Documents; or

- (c) the Security Agent and the Borrower agreeing that it is otherwise appropriate in the circumstances,

the Borrower shall pay to the Security Agent any additional remuneration that may be agreed between them or determined pursuant to Clause 26.17.3 below.

- 26.17.3 If the Security Agent and the Borrower fail to agree upon the nature of the duties, or upon the additional remuneration referred to in Clause 26.17.2 above or whether additional remuneration is appropriate in the circumstances, any dispute shall be determined by an investment bank (acting as an expert and not as an arbitrator) selected by the Security Agent and approved by the Borrower or, failing approval, nominated (on the application of the Security Agent) by the President for the time being of the Law Society of England and Wales (the costs of the nomination and of the investment bank being payable by the Borrower) and the determination of any investment bank shall be final and binding upon the Parties.

**26.18 Deduction from amounts payable by the Agent**

If any Party owes an amount to the Agent under the Finance Documents the Agent may, after giving notice to that Party, deduct an amount not exceeding that amount from any payment to that Party which the Agent would otherwise be obliged to make under the Finance Documents and apply the amount deducted in or towards satisfaction of the amount owed. For the purposes of the Finance Documents that Party shall be regarded as having received any amount so deducted.

**26.19 Reliance and engagement letters**

Each Finance Party and Secured Party confirms that each of the Arranger, the Agent and the Security Agent has authority to accept on its behalf (and ratifies the acceptance on its behalf of any letters or reports already accepted by the Arranger, the Agent or the Security Agent) the terms of any reliance letter or engagement letters relating to the Property Reports or any reports or letters provided by accountants, auditors or providers of due diligence reports in connection with the Finance Documents or the transactions contemplated in the Finance Documents and to bind it in respect of those Property Reports, reports or letters and to sign such letters on its behalf and further confirms that it accepts the terms and qualifications set out in such letters.

**26.20 No responsibility to perfect Transaction Security**

The Security Agent shall not be liable for any failure to:-

- 26.20.1 require the deposit with it of any deed or document certifying, representing or constituting the title of any Transaction Obligor to any of the Security Assets;
- 26.20.2 obtain any licence, consent or other authority for the execution, delivery, legality, validity, enforceability or admissibility in evidence of any Finance Document or the Transaction Security;
- 26.20.3 register, file or record or otherwise protect any of the Transaction Security (or the priority of any of the Transaction Security) under any law or regulation or to give notice to any person of the execution of any Finance Document or of the Transaction Security;
- 26.20.4 take, or to require any Transaction Obligor to take, any step to perfect its title to any of the Security Assets or to render the Transaction Security effective or to secure the creation of any ancillary Security under any law or regulation; or
- 26.20.5 require any further assurance in relation to any Security Document.

## 26.21 Insurance by Security Agent

26.21.1 The Security Agent shall not be obliged:-

- (a) to insure any of the Security Assets;
- (b) to require any other person to maintain any insurance; or
- (c) to verify any obligation to arrange or maintain insurance contained in any Finance Document,

and the Security Agent shall not be liable for any damages, costs or losses to any person as a result of the lack of, or inadequacy of, any such insurance.

26.21.2 Where the Security Agent is named on any insurance policy as an insured party, it shall not be liable for any damages, costs or losses to any person as a result of its failure to notify the insurers of any material fact relating to the risk assumed by such insurers or any other information of any kind, unless the Lenders request it to do so in writing and the Security Agent fails to do so within 14 days after receipt of that request.

## 26.22 Custodians and nominees

The Security Agent may appoint and pay any person to act as a custodian or nominee on any terms in relation to any asset of the trust as the Security Agent may determine, including for the purpose of depositing with a custodian this Agreement or any document relating to the trust created under this Agreement and the Security Agent shall not be responsible for any loss, liability, expense, demand, cost, claim or proceedings incurred by reason of the misconduct, omission or default on the part of any person appointed by it under this Agreement or be bound to supervise the proceedings or acts of any person.

## 26.23 Delegation by the Security Agent

26.23.1 Each of the Security Agent, any Receiver and any Delegate may, at any time, delegate by power of attorney or otherwise to any person for any period, all or any right, power, authority or discretion vested in it in its capacity as such.

26.23.2 That delegation may be made upon any terms and conditions (including the power to sub-delegate) and subject to any restrictions that the Security Agent, that Receiver or that Delegate (as the case may be) may, in its discretion, think fit in the interests of the Secured Parties.

26.23.3 No Security Agent, Receiver or Delegate shall be bound to supervise, or be in any way responsible for any damages, costs or losses incurred by reason of any misconduct, omission or default on the part of, any such delegate or sub-delegate.

## 26.24 Additional Security Agents

26.24.1 The Security Agent may at any time appoint (and subsequently remove) any person to act as a separate trustee or as a co-trustee jointly with it:-

- (a) if it considers that appointment to be in the interests of the Secured Parties;
- (b) for the purposes of conforming to any legal requirement, restriction or condition which the Security Agent deems to be relevant; or
- (c) for obtaining or enforcing any judgment in any jurisdiction,

and the Security Agent shall give prior notice to the Borrower and the Finance Parties of that appointment.

26.24.2 Any person so appointed shall have the rights, powers, authorities and discretions (not exceeding those given to the Security Agent under or in connection with the Finance Documents) and the duties, obligations and responsibilities that are given or imposed by the instrument of appointment.

26.24.3 The remuneration that the Security Agent may pay to that person, and any costs and expenses (together with any applicable VAT) incurred by that person in performing its functions pursuant to that appointment shall, for the purposes of this Agreement, be treated as costs and expenses incurred by the Security Agent.

#### 26.25 **Acceptance of title**

The Security Agent shall be entitled to accept without enquiry, and shall not be obliged to investigate, any right and title that any Transaction Obligor may have to any of the Security Assets and shall not be liable for, or bound to require any Transaction Obligor to remedy, any defect in its right or title.

#### 26.26 **Winding up of trust**

If the Security Agent, with the approval of the Agent, determines that:-

26.26.1 all of the Secured Liabilities and all other obligations secured by the Security Documents have been fully and finally discharged; and

26.26.2 no Secured Party is under any commitment, obligation or liability (actual or contingent) to make advances or provide other financial accommodation to any Obligor pursuant to the Finance Documents,

then:-

(a) the trusts set out in this Agreement shall be wound up and the Security Agent shall release, without recourse or warranty, all of the Transaction Security and the rights of the Security Agent under each of the Security Documents; and

(b) any Security Agent which has resigned pursuant to Clause 26.13 (*Resignation of the Agent and the Security Agent*) shall release, without recourse or warranty, all of its rights under each Security Document.

#### 26.27 **Powers supplemental to Trustee Acts**

The rights, powers, authorities and discretions given to the Security Agent under or in connection with the Finance Documents shall be supplemental to the Trustee Act 1925 and the Trustee Act 2000 and in addition to any which may be vested in the Security Agent by law or regulation or otherwise.

#### 26.28 **Disapplication of Trustee Acts**

Section 1 of the Trustee Act 2000 shall not apply to the duties of the Security Agent in relation to the trusts constituted by this Agreement. Where there are any inconsistencies between the Trustee Act 1925 or the Trustee Act 2000 and the provisions of this Agreement, the provisions of this Agreement shall, to the extent permitted by law and regulation, prevail and, in the case of any inconsistency with the Trustee Act 2000, the provisions of this Agreement shall constitute a restriction or exclusion for the purposes of that Act.

### 27. **APPLICATION OF PROCEEDS**

#### 27.1 **Order of application**

Subject to Clause 27.2 (*Prospective liabilities*), all amounts from time to time received or recovered by the Security Agent pursuant to the terms of any Finance Document or in connection with the

realisation or enforcement of all or any part of the Transaction Security (for the purposes of this Clause 27, the "**Recoveries**") shall be held by the Security Agent on trust to apply them at any time as the Security Agent (in its discretion) sees fit, to the extent permitted by applicable law (and subject to the provisions of this Clause 27), in the following order:-

- 27.1.1 in discharging any sums owing to the Security Agent, any Receiver or any Delegate;
- 27.1.2 in payment of all costs and expenses incurred by the Agent or any Secured Party in connection with any realisation or enforcement of the Transaction Security taken in accordance with the terms of this Agreement; and
- 27.1.3 in payment to the Agent for application in accordance with Clause 30.5 (*Partial payments*).

## 27.2 **Prospective liabilities**

Following acceleration the Security Agent may, in its discretion, hold any amount of the Recoveries in an interest bearing suspense or impersonal account(s) in the name of the Security Agent with such financial institution (including itself) and for so long as the Security Agent shall think fit (the interest being credited to the relevant account) for later application under Clause 27.1 (*Order of application*) in respect of:-

- 27.2.1 any sum to the Security Agent, any Receiver or any Delegate; and
- 27.2.2 any part of the Secured Liabilities,

that the Security Agent reasonably considers, in each case, might become due or owing at any time in the future.

## 27.3 **Investment of proceeds**

Prior to the application of the proceeds of the Recoveries in accordance with Clause 27.1 (*Order of application*) the Security Agent may, in its discretion, hold all or part of those proceeds in an interest bearing suspense or impersonal account(s) in the name of the Security Agent with such financial institution (including itself) and for so long as the Security Agent shall think fit (the interest being credited to the relevant account) pending the application from time to time of those moneys in the Security Agent's discretion in accordance with the provisions of this Clause 27.3.

## 27.4 **Currency Conversion**

- 27.4.1 For the purpose of, or pending the discharge of, any of the Secured Liabilities the Security Agent may convert any moneys received or recovered by the Security Agent from one currency to another, at a market rate of exchange.
- 27.4.2 The obligations of any Transaction Obligor to pay in the due currency shall only be satisfied to the extent of the amount of the due currency purchased after deducting the costs of conversion.

## 27.5 **Permitted Deductions**

The Security Agent shall be entitled, in its discretion:-

- 27.5.1 to set aside by way of reserve amounts required to meet, and to make and pay, any deductions and withholdings (on account of taxes or otherwise) which it is or may be required by any applicable law to make from any distribution or payment made by it under this Agreement; and
- 27.5.2 to pay all Taxes which may be assessed against it in respect of any of the Security Assets, or as a consequence of performing its duties, or by virtue of its capacity as

Security Agent under any of the Finance Documents or otherwise (other than in connection with its remuneration for performing its duties under this Agreement).

## 27.6 Good Discharge

27.6.1 Any payment to be made in respect of the Secured Liabilities by the Security Agent may be made to the Agent on behalf of the Finance Parties and any payment made in that way shall be a good discharge, to the extent of that payment, by the Security Agent.

27.6.2 The Security Agent is under no obligation to make the payments to the Agent under Clause 27.6.1 above in the same currency as that in which the obligations and liabilities owing to the relevant Finance Party are denominated.

## 28. CONDUCT OF BUSINESS BY THE FINANCE PARTIES

No provision of this Agreement will:-

28.1 interfere with the right of any Finance Party to arrange its affairs (tax or otherwise) in whatever manner it thinks fit;

28.2 oblige any Finance Party to investigate or claim any credit, relief, remission or repayment available to it or the extent, order and manner of any claim; or

28.3 oblige any Finance Party to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of Tax.

## 29. SHARING AMONG THE FINANCE PARTIES

### 29.1 Payments to Finance Parties

If a Finance Party (a "**Recovering Finance Party**") receives or recovers any amount from an Obligor other than in accordance with Clause 30 (*Payment Mechanics*) (a "**Recovered Amount**") and applies that amount to a payment due under the Finance Documents then:-

29.1.1 the Recovering Finance Party shall, within three Business Days, notify details of the receipt or recovery to the Agent;

29.1.2 the Agent shall determine whether the receipt or recovery is in excess of the amount the Recovering Finance Party would have been paid had the receipt or recovery been received or made by the Agent and distributed in accordance with Clause 30 (*Payment Mechanics*), without taking account of any Tax which would be imposed on the Agent in relation to the receipt, recovery or distribution; and

29.1.3 the Recovering Finance Party shall, within three Business Days of demand by the Agent, pay to the Agent an amount (the "**Sharing Payment**") equal to such receipt or recovery less any amount which the Agent determines may be retained by the Recovering Finance Party as its share of any payment to be made, in accordance with Clause 30.5 (*Partial payments*).

### 29.2 Redistribution of payments

The Agent shall treat the Sharing Payment as if it had been paid by the relevant Obligor and distribute it between the Finance Parties (other than the Recovering Finance Party) (the "**Sharing Finance Parties**") in accordance with Clause 30.5 (*Partial payments*) towards the obligations of that Obligor to the Sharing Finance Parties.

### 29.3 Recovering Finance Party's rights

On a distribution by the Agent under Clause 29.2 (*Redistribution of payments*) of a payment received by a Recovering Finance Party from an Obligor, as between the relevant Obligor and the

Recovering Finance Party, an amount of the Recovered Amount equal to the Sharing Payment will be treated as not having been paid by that Obligor.

#### 29.4 **Reversal of redistribution**

If any part of the Sharing Payment received or recovered by a Recovering Finance Party becomes repayable and is repaid by that Recovering Finance Party, then:-

29.4.1 each Sharing Finance Party shall, upon request of the Agent, pay to the Agent for the account of that Recovering Finance Party an amount equal to the appropriate part of its share of the Sharing Payment (together with an amount as is necessary to reimburse that Recovering Finance Party for its proportion of any interest on the Sharing Payment which that Recovering Finance Party is required to pay) (the "**Redistributed Amount**"); and

29.4.2 as between the relevant Obligor and each relevant Sharing Finance Party, an amount equal to the relevant Redistributed Amount will be treated as not having been paid by that Obligor.

#### 29.5 **Exceptions**

29.5.1 This Clause 29 shall not apply to the extent that the Recovering Finance Party would not, after making any payment pursuant to this Clause, have a valid and enforceable claim against the relevant Obligor.

29.5.2 A Recovering Finance Party is not obliged to share with any other Finance Party any amount which the Recovering Finance Party has received or recovered as a result of taking legal or arbitration proceedings, if:-

- (a) it notified that other Finance Party of the legal or arbitration proceedings; and
- (b) that other Finance Party had an opportunity to participate in those legal or arbitration proceedings but did not do so as soon as reasonably practicable having received notice and did not take separate legal or arbitration proceedings.

## SECTION 11

### ADMINISTRATION

#### 30. PAYMENT MECHANICS

##### 30.1 Payments to the Agent

30.1.1 On each date on which an Obligor or a Lender is required to make a payment under a Finance Document, that Obligor or Lender shall make the same available to the Agent (unless a contrary indication appears in a Finance Document) for value on the due date at the time and in such funds specified by the Agent as being customary at the time for settlement of transactions in the relevant currency in the place of payment.

30.1.2 Payment shall be made to such account in the principal financial centre of the country of that currency (or, in relation to euro, in a principal financial centre in such Participating Member State or London, as specified by the Agent) and with such bank as the Agent, in each case, specifies.

##### 30.2 Distributions by the Agent

Each payment received by the Agent under the Finance Documents for another Party shall, subject to Clause 30.3 (*Distributions to an Obligor*) and Clause 30.4 (*Clawback and pre-funding*) be made available by the Agent as soon as practicable after receipt to the Party entitled to receive payment in accordance with this Agreement (in the case of a Lender, for the account of its Facility Office), to such account as that Party may notify to the Agent by not less than five Business Days' notice with a bank specified by that Party in the principal financial centre of the country of that currency (or, in relation to euro, in the principal financial centre of a Participating Member State or London, as specified by that Party).

##### 30.3 Distributions to an Obligor

The Agent may (with the consent of the Obligor or in accordance with Clause 31 (*Set-Off*)) apply any amount received by it for that Obligor in or towards payment (on the date and in the currency and funds of receipt) of any amount due from that Obligor under the Finance Documents or in or towards purchase of any amount of any currency to be so applied.

##### 30.4 Clawback and pre-funding

30.4.1 Where a sum is to be paid to the Agent under the Finance Documents for another Party, the Agent is not obliged to pay that sum to that other Party (or to enter into or perform any related exchange contract) until it has been able to establish to its satisfaction that it has actually received that sum.

30.4.2 Unless Clause 30.4.3 below applies, if the Agent pays an amount to another Party and it proves to be the case that the Agent had not actually received that amount, then the Party to whom that amount (or the proceeds of any related exchange contract) was paid by the Agent shall on demand refund the same to the Agent together with interest on that amount from the date of payment to the date of receipt by the Agent, calculated by the Agent to reflect its cost of funds.

30.4.3 If the Agent has notified the Lenders that it is willing to make available amounts for the account of the Borrower before receiving funds from the Lenders then if and to the extent that the Agent does so but it proves to be the case that it does not then receive funds from a Lender in respect of a sum which it paid to the Borrower:-

- (a) the Agent shall notify the Borrower of that Lender's identity and the Borrower shall on demand refund it to the Agent; and



- (b) the Lender by whom those funds should have been made available or, if that Lender fails to do so, the Borrower, shall on demand pay to the Agent the amount (as certified by the Agent) which will indemnify the Agent against any funding cost incurred by it as a result of paying out that sum before receiving those funds from that Lender.

### 30.5 Partial payments

30.5.1 If the Agent receives a payment that is insufficient to discharge all the amounts then due and payable by an Obligor under the Finance Documents, the Agent shall apply that payment towards the obligations of that Obligor under the Finance Documents in the following order:-

- (a) **first**, in or towards payment pro rata of any unpaid amount owing to the Agent, the Security Agent, any Receiver or any Delegate under the Finance Documents;
- (b) **secondly**, in or towards payment pro rata of any accrued interest on the Property Protection Loans due but unpaid under this Agreement;
- (c) **thirdly**, in or towards payment pro rata of any principal on the Property Protection Loans due but unpaid under this Agreement;
- (d) **fourthly**, in or towards payment of any accrued interest and fees due but unpaid under this Agreement;
- (e) **fifthly**, in or towards payment of any accrued interest not yet capitalised;
- (f) **sixthly**, in or towards payment of any principal due but unpaid under this Agreement; and
- (g) **seventhly**, in or towards payment pro rata of any other sum due but unpaid under the Finance Documents.

30.5.2 The Agent shall, if so directed by all the Lenders, vary the order set out in Clauses 30.5.1(b) to 30.5.1(g) above. Any such variation may include the re-ordering of obligations set out in any such Clause.

30.5.3 Clauses 30.5.1 and 30.5.2 above will override any appropriation made by an Obligor.

### 30.6 No set-off by Obligors

All payments to be made by an Obligor under the Finance Documents shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

### 30.7 Business Days

30.7.1 Any payment under the Finance Documents 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).

30.7.2 During any extension of the due date for payment of any principal or Unpaid Sum under this Agreement interest is payable on the principal or Unpaid Sum at the rate payable on the original due date.

### 30.8 Currency of account

30.8.1 Subject to Clauses 30.8.2 and 30.8.3 below, Sterling is the currency of account and payment for any sum due from an Obligor under any Finance Document.

30.8.2 Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.

30.8.3 Any amount expressed to be payable in a currency other than sterling shall be paid in that other currency.

### 30.9 Change of currency

30.9.1 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:-

(a) any reference in the Finance Documents to, and any obligations arising under the Finance Documents in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the Agent (after consultation with the Borrower); and

(b) 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 Agent (acting reasonably).

30.9.2 If a change in any currency of a country occurs, this Agreement will, to the extent the Agent (acting reasonably and after consultation with the Borrower) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the Relevant Market and otherwise to reflect the change in currency.

### 30.10 Disruption to Payment Systems etc

If either the Agent determines (in its discretion) that a Disruption Event has occurred or the Agent is notified by the Borrower that a Disruption Event has occurred:-

30.10.1 the Agent may, and shall if requested to do so by the Borrower, consult with the Borrower with a view to agreeing with the Borrower such changes to the operation or administration of the Facility as the Agent may deem necessary in the circumstances;

30.10.2 the Agent shall not be obliged to consult with the Borrower in relation to any changes mentioned in Clause 30.10.1 above if, in its opinion, it is not practicable to do so in the circumstances and, in any event, shall have no obligation to agree to such changes;

30.10.3 the Agent may consult with the Finance Parties in relation to any changes mentioned in Clause 30.10.1 above but shall not be obliged to do so if, in its opinion, it is not practicable to do so in the circumstances;

30.10.4 any such changes agreed upon by the Agent and the Borrower shall (whether or not it is finally determined that a Disruption Event has occurred) be binding upon the Parties as an amendment to (or, as the case may be, waiver of) the terms of the Finance Documents notwithstanding the provisions of Clause 38 (*Amendments and Waivers*);

30.10.5 the Agent shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever (including, without limitation, for negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent) arising as a result of its taking, or failing to take, any actions pursuant to or in connection with this Clause 30.10; and

30.10.6 the Agent shall notify the Finance Parties of all changes agreed pursuant to Clause 30.10.4 above.

**31. SET-OFF**

A Finance Party may set off any matured obligation due from an Obligor under the Finance Documents (to the extent beneficially owned by that Finance Party) against any matured obligation owed by that Finance Party to that Obligor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Finance Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

**32. CO-OPERATION**

32.1 Each Party undertakes to co-operate in good faith with the other Parties to facilitate the proper performance of this Agreement and the other Finance Documents and the delivery of the Development and in particular will (subject to Clause 32.2):-

32.1.1 use all reasonable endeavours to avoid unnecessary disputes and claims against any other Party; and

32.1.2 not interfere with the rights of any other Party (not its employees, agents, representatives, contractors or subcontractors) in performing its obligations under this Agreement nor in any other way hinder or prevent any other Party (not its employees, agents, representatives, contractors or subcontractors) from performing those obligations provided that this provision shall not prevent any party from exercising its express rights under this Agreement.

32.2 Nothing in Clause 32.1 shall:-

32.2.1 interfere with the right of the Parties to arrange their affairs in whatever manner they consider fit in order to perform its obligations under this Agreement and in connection with the Development in the manner in which it considers to be the most effective and efficient; or

32.2.2 relieve a party from any obligation contained in this Agreement.

**33. NOTICES**

**33.1 Communications in writing**

Any communication to be made under or in connection with the Finance Documents shall be made in writing and, unless otherwise stated, may be made by fax or letter.

**33.2 Addresses**

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with the Finance Documents is:-

33.2.1 in the case of the Borrower, that identified with its name below;

33.2.2 in the case of each Lender or any other Obligor, that notified in writing to the Agent on or prior to the date on which it becomes a Party; and

33.2.3 in the case of the Agent and the Security Agent, that identified with its name below,

or any substitute address or fax number or department or officer as the Party may notify to the Agent (or the Agent may notify to the other Parties, if a change is made by the Agent) by not less than five Business Days' notice.

### 33.3 Delivery

33.3.1 Any communication or document made or delivered by one person to another under or in connection with the Finance Documents will only be effective:-

- (a) if by way of fax, when received in legible form; or
- (b) if by way of letter, 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;

and, if a particular department or officer is specified as part of its address details provided under Clause 33.2 (*Addresses*), if addressed to that department or officer.

33.3.2 Any communication or document to be made or delivered to the Agent or the Security Agent will be effective only when actually received by the Agent or the Security Agent and then only if it is expressly marked for the attention of the department or officer identified with the Agent's or the Security Agent's signature below (or any substitute department or officer as the Agent or Security Agent shall specify for this purpose).

33.3.3 All notices from or to an Obligor shall be sent through the Agent.

33.3.4 Any communication or document made or delivered to the Borrower in accordance with this Clause will be deemed to have been made or delivered to each of the Obligors.

33.3.5 Any communication or document which becomes effective, in accordance with Clauses 33.3.1 to 33.3.4 above, after 5.00 pm in the place of receipt shall be deemed only to become effective on the following day.

### 33.4 Notification of address and fax number

Promptly upon changing its address or fax number, the Agent shall notify the other Parties.

### 33.5 Electronic communication

33.5.1 Any communication to be made between any two Parties under or in connection with the Finance Documents may be made by electronic mail or other electronic means (including, without limitation, by way of posting to a secure website) if those two Parties:-

- (a) notify each other in writing of their electronic mail address and/or any other information required to enable the transmission of information by that means; and
- (b) notify each other of any change to their address or any other such information supplied by them by not less than five Business Days' notice.

33.5.2 Any such electronic communication as specified in Clause 33.5.1 above to be made between an Obligor and a Finance Party may only be made in that way to the extent that those two Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication.

33.5.3 Any such electronic communication as specified in Clause 33.5.1 above made between any two Parties will be effective only when actually received (or made available) in readable form and in the case of any electronic communication made by a Party to the Agent or the Security Agent only if it is addressed in such a manner as the Agent or the Security Agent shall specify for this purpose.

33.5.4 Any electronic communication which becomes effective, in accordance with Clause 33.5.3 above, after 5.00 pm in the place in which the Party to whom the relevant

communication is sent or made available has its address for the purpose of this Agreement shall be deemed only to become effective on the following day.

33.5.5 Any reference in a Finance Document to a communication being sent or received shall be construed to include that communication being made available in accordance with this Clause 33.5.

### 33.6 English language

33.6.1 Any notice given under or in connection with any Finance Document must be in English.

33.6.2 All other documents provided under or in connection with any Finance Document must be:-

(a) in English; or

(b) if not in English, and if so required by the Agent, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

## 34. NO AGENCY, PARTNERSHIP OR EMPLOYMENT

34.1 The Borrower shall at all times be independent of the Finance Parties and nothing in this Agreement shall:-

34.1.1 establish any partnership, joint venture or other association between any of the parties; or

34.1.2 create the relationship of employer and employee between the Finance Parties and the Borrower or otherwise permit the Borrower hold itself out to be an employee of the Finance Parties; or

34.1.3 (save as expressly provided) create the relationship of principal and agent between the parties; or

34.1.4 authorise the Borrower to make or enter into any commitments for or on behalf of any other party.

## 35. CALCULATIONS AND CERTIFICATES

### 35.1 Accounts

In any litigation or arbitration proceedings arising out of or in connection with a Finance Document, the entries made in the accounts maintained by a Finance Party are *prima facie* evidence of the matters to which they relate.

### 35.2 Certificates and Determinations

Any certification or determination by a Finance Party of a rate or amount under any Finance Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

### 35.3 Day count convention

Any interest, commission or fee accruing under a Finance Document 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 Market differs, in accordance with that market practice.

36. **PARTIAL INVALIDITY**

If, at any time, any provision of a Finance Document 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 such provision under the law of any other jurisdiction will in any way be affected or impaired.

37. **REMEDIES AND WAIVERS**

No failure to exercise, nor any delay in exercising, on the part of any Finance Party, any right or remedy under a Finance Document shall operate as a waiver of any such right or remedy or constitute an election to affirm any of the Finance Documents. No election to affirm any Finance Document on the part of any Finance Party shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in each Finance Document are cumulative and not exclusive of any rights or remedies provided by law.

38. **AMENDMENTS AND WAIVERS**

38.1 **Required consents**

38.1.1 Subject to Clause 38.2 (*Exceptions*), any term of the Finance Documents may be amended or waived only with the consent of all of the Lenders and the Borrower and any such amendment or waiver will be binding on all Parties.

38.1.2 The Agent may effect, on behalf of any Finance Party, any amendment or waiver permitted by this Clause 38.

38.1.3 Without prejudice to the generality of Clauses 26.8.3, 26.8.4 and 26.8.5, the Agent may engage, pay for and rely on the services of lawyers in determining the consent level required for and effecting any amendment, waiver or consent under this Agreement.

38.2 **Exceptions**

An amendment or waiver which relates to the rights or obligations of the Agent, the Security Agent, or the Arranger (each in their capacity as such) may not be effected without the consent of the Agent, the Security Agent, or the Arranger, as the case may be.

38.3 **Lender Disputes**

38.3.1 If Lender A and Lender B fail (within 20 Business Days (or such longer period as Lender A and Lender B may agree in writing)) to agree:-

- (a) any consent, waiver or amendment contemplated by the Agreement; or
- (b) any other matter or course of action relating to the Agreement,

then the matter shall be determined in accordance with the following steps:-

- (i) firstly, Lender A and Lender B shall hold a meeting within 10 Business Days of the expiry of the period referred to in Clause 38.3.1 above to agree a resolution on the matter; failing which
- (ii) secondly, the Agent shall within 10 Business Days of the expiry of the period referred to in paragraph (i) above seek independent advice from an appropriate expert (the identity and terms of reference of such expert to be agreed by the Lenders acting reasonably), and provided the advice is given within 20 Business Days of being instructed, the expert's determination shall be final and the Lenders agree to be bound by any such determination; failing which, and only in

circumstances where the relevant expert has not made a determination,

- (iii) lastly, the matter shall be determined by Lender A acting in its absolute discretion, whose determination shall be final and Lender B hereby agrees to be bound by any such determination.

38.3.2 Lender A agrees to provide written confirmation of any such determination referred to in Clause 38.3.1(b)(iii) above to Lender B as soon as reasonably practicable.

38.3.3 Lender A and Lender B shall pay their own costs and expenses incurred in connection with this Clause.

38.3.4 Each of Lender A and Lender B confirm that, during any period in which a dispute is continuing, each Lender will continue to make the amount of its participation in the Loan available to the Borrower in accordance with this Agreement.

## 39. CONFIDENTIAL INFORMATION

### 39.1 Confidentiality

Each Finance Party agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by Clause 39.2 (*Disclosure of Confidential Information*) and Clause 39.5 (*Disclosure to numbering service providers*), and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information.

### 39.2 Disclosure of Confidential Information

Any Finance Party may disclose:-

39.2.1 to any of its Affiliates and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives such Confidential Information as that Finance Party shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this Clause 39.2.1 is informed in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;

39.2.2 to any person:-

- (a) to (or through) whom it assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations under one or more Finance Documents or which succeeds (or which may potentially succeed) it as Agent or Security Agent and, in each case, and to any of that person's Affiliates, Representatives and professional advisers;
- (b) with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to, one or more Finance Documents and/or one or more Obligors and to any of that person's Affiliates, Representatives and professional advisers;
- (c) appointed by any Finance Party or by a person to whom Clauses 39.2.2(a) or 39.2.2(b) above applies to receive communications, notices, information or documents delivered pursuant to the Finance Documents on its behalf (including, without limitation, any person appointed under Clause 26.15.2);

- (d) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in Clauses 39.2.2(a) or 39.2.2(b) above;
- (e) to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation;
- (f) to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes;
- (g) to whom information is required to be disclosed in connection with any Insurance;
- (h) to whom or for whose benefit that Finance Party charges, assigns or otherwise creates Security (or may do so) pursuant to Clause 24.8 (*Security over Lenders' rights*);
- (i) who is a Party, a member of the Group or any related entity of an Obligor; or
- (j) with the consent of the Borrower;

in each case, such Confidential Information as that Finance Party shall consider appropriate if:-

- (i) in relation to Clauses 39.2.2(a), 39.2.2(b) and 39.2.2(c) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking except that there shall be no requirement for a Confidentiality Undertaking if the recipient is a professional adviser and is subject to professional obligations to maintain the confidentiality of the Confidential Information;
- (ii) in relation to Clause 39.2.2(d) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking or is otherwise bound by requirements of confidentiality in relation to the Confidential Information they receive and is informed that some or all of such Confidential Information may be price-sensitive information;
- (iii) in relation to Clauses 39.2.2(e) to 39.2.2(h) above, the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of that Finance Party, it is not practicable so to do in the circumstances; and

39.2.3 to any person appointed by that Finance Party or by a person to whom Clause 39.2.2(a) or 39.2.2(b) above applies to provide administration or settlement services in respect of one or more of the Finance Documents including without limitation, in relation to the trading of participations in respect of the Finance Documents, such Confidential Information as may be required to be disclosed to enable such service provider to provide any of the services referred to in this Clause 39.2.3 if the service provider to whom the Confidential Information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Borrower and the relevant Finance Party; and



39.2.4 to any rating agency (including its professional advisers) such Confidential Information as may be required to be disclosed to enable such rating agency to carry out its normal rating activities in relation to the Finance Documents and/or the Obligors if the rating agency to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information.

### 39.3 Freedom of Information

39.3.1 The Borrower acknowledges that Lender B is subject to legal duties which may require the release of information under the FOIA and/or the EIR and that Lender B may be under an obligation to provide Information subject to a Request for Information.

39.3.2 Lender B shall be responsible for determining in its absolute discretion whether:-

(a) any Information is Exempted Information or remains Exempted Information; or

(b) any Information is to be disclosed in response to a Request for Information,

and in no event shall the Borrower respond directly to a Request for Information to which Lender B is required to respond to, except to confirm receipt of the Request for Information and that the Request for Information has been passed to Lender B unless otherwise expressly authorised to do so by Lender B.

39.3.3 Subject to Clause 39.3.4 below, the Borrower acknowledges that Lender B may be obliged under the FOIA or the EIR to disclose Information:-

(a) without consulting the Borrower ; or

(b) following consultation with the Borrower and having taken (or not taken, as the case may be) its views into account.

39.3.4 Without in any way limiting Clauses 39.3.2 and 39.3.3, in the event that Lender B receives a Request for Information, Lender B will, where appropriate, as soon as reasonably practicable notify the Borrower.

39.3.5 The Borrower will assist and co-operate with Lender B as requested by Lender B to enable Lender B to comply with its disclosure obligations under the FOIA and the EIR within the prescribed periods for compliance and in particular without limitation will (and shall procure that its agents, Contractors and Sub-Contractors will), at their own cost:-

(a) transfer any Request for Information received by the Borrower to Lender B as soon as practicable after receipt and in any event within two Business Days of receiving a request for information;

(b) provide all such assistance as may be required from time to time by Lender B and supply such data or information as may be requested by Lender B; and

(c) provide Lender B with any Information already in its possession or power in such form that Lender B requires within five Business Days (or such other period as Lender B may specify) of Lender B requesting that Information.

39.3.6 Nothing in this Agreement will prevent Lender B from complying with any valid order, decision, enforcement or practice recommendation notice issued to it by the Information Commissioner under the FOIA and / or the EIR in relation to any Exempted Information.

39.3.7 To the extent that the Borrower becomes a FOIA Authority subject to the FOIA and the EIR during the course of this Agreement this Clause will apply mutatis mutandis to both parties.

39.3.8 The obligations in this Clause 39.3 will survive the expiry or termination of the Finance Documents for a period of two years or, in respect of any particular item of Confidential Information, until such earlier time as that item of Confidential Information reaches the public domain otherwise than by reason of a breach of a Finance Document or of any other duty of confidentiality relating to that information.

#### 39.4 **Publication of information before Parliament**

The Borrower acknowledges that the National Audit Office has the right to publish details of the Finance Documents in its relevant reports to Parliament.

#### 39.5 **Disclosure to numbering service providers**

39.5.1 Any Finance Party may disclose to any national or international numbering service provider appointed by that Finance Party to provide identification numbering services in respect of this Agreement, the Facility and/or one or more Obligors the following information:-

- (a) names of Obligors;
- (b) country of domicile of Obligors;
- (c) place of incorporation of Obligors;
- (d) date of this Agreement;
- (e) Clause 42 (*Governing Law*);
- (f) the names of the Agent and the Arranger;
- (g) date of each amendment of this Agreement;
- (h) amount of Total Commitments;
- (i) currency of the Facility;
- (j) type of Facility;
- (k) ranking of Facility;
- (l) Termination Date for Facility;
- (m) changes to any of the information previously supplied pursuant to Clauses 39.5.1(a) to 39.5.1(l) above; and
- (n) such other information agreed between such Finance Party and the Borrower,

to enable such numbering service provider to provide its usual syndicated loan numbering identification services.

39.5.2 The Parties acknowledge and agree that each identification number assigned to this Agreement, the Facility and/or one or more Obligors by a numbering service provider and the information associated with each such number may be disclosed to users of its services in accordance with the standard terms and conditions of that numbering service provider.

39.5.3 Each Obligor represents that none of the information set out in Clauses 39.5.1(a) to 39.5.1(n) above is, nor will at any time be, unpublished price-sensitive information.

- 39.5.4 The Agent shall notify the Borrower and the other Finance Parties of:-
- (a) the name of any numbering service provider appointed by the Agent in respect of this Agreement, the Facility and/or one or more Obligors; and
  - (b) the number or, as the case may be, numbers assigned to this Agreement, the Facility and/or one or more Obligors by such numbering service provider.

**39.6 Entire agreement**

This Clause 39 constitutes the entire agreement between the Parties in relation to the obligations of the Finance Parties under the Finance Documents regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.

**39.7 Inside information**

Each of the Finance Parties acknowledges that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and each of the Finance Parties undertakes not to use any Confidential Information for any unlawful purpose.

**39.8 Notification of disclosure**

Each of the Finance Parties agrees (to the extent permitted by law and regulation) to inform the Borrower:-

- 39.8.1 of the circumstances of any disclosure of Confidential Information made pursuant to Clause 39.2.2(e) except where such disclosure is made to any of the persons referred to in that Clause during the ordinary course of its supervisory or regulatory function; and
- 39.8.2 upon becoming aware that Confidential Information has been disclosed in breach of this Clause 39.

**39.9 Continuing obligations**

The obligations in this Clause 39 are continuing and, in particular, shall survive and remain binding on each Finance Party for a period of 12 months from the earlier of:-

- 39.9.1 the date on which all amounts payable by the Obligors under or in connection with the Finance Documents have been paid in full and all Commitments have been cancelled or otherwise cease to be available; and
- 39.9.2 the date on which such Finance Party otherwise ceases to be a Finance Party.

**40. CONFIDENTIALITY OF FUNDING RATES**

**40.1 Confidentiality and disclosure**

40.1.1 The Agent and the Borrower agree to keep each Funding Rate confidential and not to disclose it to anyone, save to the extent permitted by Clauses 40.1.2 and 40.1.3 below.

40.1.2 The Agent may disclose:-

- (a) any Funding Rate to the Borrower pursuant to Clause 8.5 (*Notification of rates of interest*); and
- (b) any Funding Rate to any person appointed by it to provide administration services in respect of one or more of the Finance Documents to the extent

necessary to enable such service provider to provide those services if the service provider to whom that information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Agent and the relevant Lender.

40.1.3 The Agent may disclose any Funding Rate, and the Borrower may disclose any Funding Rate, to:-

- (a) any of its Affiliates and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives if any person to whom that Funding Rate is to be given pursuant to this Clause 40.1.3(a) is informed in writing of its confidential nature and that it may be price sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of that Funding Rate or is otherwise bound by requirements of confidentiality in relation to it;
- (b) any person to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation if the person to whom that Funding Rate is to be given is informed in writing of its confidential nature and that it may be price sensitive information except that there shall be no requirement to so inform if, in the opinion of the Agent or the Borrower, as the case may be, it is not practicable to do so in the circumstances;
- (c) any person to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes if the person to whom that Funding Rate is to be given is informed in writing of its confidential nature and that it may be price sensitive information except that there shall be no requirement to so inform if, in the opinion of the Agent or the Borrower, as the case may be, it is not practicable to do so in the circumstances; and
- (d) any person with the consent of the relevant Lender.

#### 40.2 Related obligations

40.2.1 The Agent and the Borrower acknowledge that each Funding Rate is or may be price sensitive information and that its use may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and the Agent and the Borrower undertake not to use any Funding Rate for any unlawful purpose.

40.2.2 The Agent and the Borrower agree (to the extent permitted by law and regulation) to inform the relevant Lender:-

- (a) of the circumstances of any disclosure made pursuant to Clause 40.1.3(b) except where such disclosure is made to any of the persons referred to in that Clause during the ordinary course of its supervisory or regulatory function; and
- (b) upon becoming aware that any information has been disclosed in breach of this Clause 40.

#### 40.3 No Event of Default

No Event of Default will occur under Clause 23.4 (*Other obligations*) by reason only of the Borrower's failure to comply with this Clause 40.

41. **COUNTERPARTS**

Each Finance Document 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 Finance Document.

## SECTION 12

### GOVERNING LAW AND ENFORCEMENT

#### 42. GOVERNING LAW

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

#### 43. ENFORCEMENT

##### 43.1 Jurisdiction

43.1.1 The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement) (a "**Dispute**").

43.1.2 The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.

43.1.3 This Clause 43.1 is for the benefit of the Finance Parties only. As a result, no Finance Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Finance Parties may take concurrent proceedings in any number of jurisdictions.

**THIS AGREEMENT** has been entered into on the date stated at the beginning of this Agreement.

**SCHEDULE 1**

**THE ORIGINAL LENDERS**

<b>Name of Original Lender</b>	<b>Commitment</b>	<b>Treaty Passport Scheme reference number and jurisdiction of tax residence (if applicable)</b>
Homes and Communities Agency	£5,195,000	
London Borough of Lambeth	£22,485,000	

## SCHEDULE 2

### CONDITIONS PRECEDENT

#### 1. TRANSACTION OBLIGORS

- 1.1 A copy of the constitutional documents of each Transaction Obligor.
- 1.2 A copy of a resolution of the board of directors of each Transaction Obligor:-
  - 1.2.1 approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party and resolving that it execute, deliver and perform the Finance Documents to which it is a party;
  - 1.2.2 authorising a specified person or persons to execute the Finance Documents to which it is a party on its behalf; and
  - 1.2.3 authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices (including, if relevant, any Utilisation Request) to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party.
- 1.3 A specimen of the signature of each person authorised by the resolution referred to in paragraph 1.2 above.
- 1.4 A certificate of each Obligor (signed by a director) confirming that borrowing or guaranteeing or securing, as appropriate, the Total Commitments would not cause any borrowing, guarantee, security or similar limit binding on it to be exceeded.
- 1.5 A certificate of an authorised signatory of the relevant Transaction Obligor certifying that each copy document relating to it specified in this Schedule 2 is correct, complete and in full force and effect as at a date no earlier than the date of this Agreement.
- 1.6 A structure chart setting out the ownership of the Borrower, each Subordinated Creditor (other than the Guarantor) and the Property.
- 1.7 Evidence required by each Lender and the Agent for the purpose of any 'know your customer' or similar identification procedures.

#### 2. FINANCIAL INFORMATION

- 2.1 A pro forma balance sheet of the Borrower as at the first Utilisation Date.
- 2.2 A copy of the Guarantor's 2016 half year results presentation.
- 2.3 The Original Financial Statements.
- 2.4 Copies of the bank mandates for the Deposit Account.

#### 3. VALUATION AND SURVEY

- 3.1 A copy of the Initial Valuation.
- 3.2 Confirmation that the Agent's internal valuer has carried out a satisfactory inspection of the Property.
- 3.3 An archaeological report/environmental report/ground condition report/ measurement survey/structural survey/rights of light report on the Property addressed to the Finance Parties.



#### 4. **INSURANCE**

- 4.1 Evidence, by way of a letter from the Borrower's insurance brokers addressed to the Finance Parties, that the insurance cover in force in respect of the Property complies with the terms of this Agreement and the necessary premia have been paid.
- 4.2 Evidence of the extent and level of the professional indemnity insurance or public and product liability insurance of:-
- 4.2.1 the Contractors;
  - 4.2.2 each Consultant; and
  - 4.2.3 any Sub-Contractor who is providing a Collateral Warranty
- in each case, to the extent that such parties have been appointed prior to the first Utilisation Date.

#### 5. **PROPERTY**

In this section an "**acceptable undertaking**" means a solicitor's undertaking from a firm of solicitors regulated by the Law Society of England and Wales and approved for this purpose by the Agent and in form and substance satisfactory to the Agent.

- 5.1 All title documents relating to the Borrower's interest in the Property or an acceptable undertaking to hold the same to the order of the Security Agent.
- 5.2 Copies of all Lease Documents in electronic format.
- 5.3 The results of Land Registry searches in favour of the Security Agent on the appropriate forms against all of the registered titles comprising the Borrower's interest in the Property and:-
- 5.3.1 giving not less than 20 Business Days' priority beyond the date of the relevant Security Agreement; and
  - 5.3.2 showing no adverse entries.
- 5.4 A certificate of title to the Property incorporating a report on the Lease Documents prepared by the Borrower's solicitors and addressed to the Finance Parties.
- 5.5 An overview report prepared by the Security Agent's solicitors on each certificate of title addressed to the Finance Parties.
- 5.6 Evidence that all Security (other than under a Security Document) affecting the Borrower's interest in the Property has been, or will be, discharged by the first Utilisation Date.
- 5.7 All necessary Land Registry application forms in relation to the charging of the Property in favour of the Security Agent (including a form to note the obligation to make further advances, a form to register the restriction contained in the Security Agreement and a form for disclosable overriding interests), duly completed, accompanied by payment of the applicable Land Registry fees or an acceptable undertaking in relation to the same.
- 5.8 Copies of all Authorisations required in connection with the charging of the Property in favour of the Security Agent.
- 5.9 A copy of a notice to the reversioner of the Headlease in connection with the charging of the Headlease to the Security Agent, accompanied by payment of the appropriate registration fees or an acceptable undertaking to serve the same.
- 5.10 A copy of the relevant rent demand for the latest instalment of rent under the Headlease.

- 5.11 A copy of the pro forma form of Unit Disposal Document.
- 5.12 A copy of the signed and dated Notting Hill Agreement for Lease.
- 5.13 A copy of the signed and dated Notting Hill Development Agreement.
- 5.14 Evidence that the "Overarching Conditions" and the "Phase 1B Conditions" (as are each defined in the Development Agreement) have been satisfied.
- 5.15 Evidence that the Headleases in respect of Hambrook House and Ivor House have been granted.
- 5.16 Undertaking from Addleshaw Goddard LLP addressed to the Lenders and Pinsent Masons LLP in a form approved by the Agent to (a) make the necessary SDLT returns (and pay the required SDLT) in respect of the Headleases and (b) register the Headleases and Security Agreement at the Land Registry (together with approved Land Registry forms for all registrations, copies of which are to be attached to the undertaking).
- 5.17 Copy of a waiver letter from London Borough of Lambeth (as landowner) in favour of the Agent in relation to termination of the Development Agreement.

## 6. **DEVELOPMENT DOCUMENTS**

- 6.1 The Budgeted Costs.
- 6.2 A copy of the initial development appraisal.
- 6.3 A copy of each Building Contract and the Specifications.
- 6.4 A copy of the Development Agreement.
- 6.5 A copy of the Development Management Agreement.
- 6.6 A copy of each Consultant Appointment.
- 6.7 A copy of the Energy Supply Agreement.
- 6.8 A copy of each Post Novation Warranty.
- 6.9 To the extent that such parties have been appointed prior to the first Utilisation Date, a Collateral Warranty from each Contractor, Sub-Contractor and each Consultant.
- 6.10 Copies of the Development Consents.
- 6.11 A report on the Development, the Development Documents entered into prior to the first Utilisation Date and ancillary documents (including the Development Parties, all plans, the Specifications, the Budgeted Costs and the development programme) prepared by the Project Monitor and addressed to the Agent. This report must include confirmation that all Development Consents have been obtained and any applicable judicial review period has passed.
- 6.12 A report on the Development Documents entered into prior to the first Utilisation Date prepared by Pinsent Masons LLP and addressed to the Agent with an overview report prepared by the Security Agent's solicitors.

## 7. **SECURITY AND OTHER FINANCE DOCUMENTS**

- 7.1 A Security Agreement executed by the Borrower and the Security Agent.
- 7.2 A Subordination Agreement executed by each Subordinated Creditor, the Borrower and the Security Agent.

7.3 A Completion Guarantee executed by the Guarantor, the Agent and the Security Agent.

7.4 Each Fee Letter executed by all parties thereto.

7.5 The Notting Hill Step-in Agreement executed by all parties thereto.

7.6 The DMA Step-In Agreement executed by all parties thereto.

7.7

7.7.1 A notice to each bank operating an Account, counterparty to each Headlease or Relevant Contract (as defined in the Security Agreement) in place on or prior to the date of this Agreement and each insurer), substantially in the relevant form set out in the Security Agreement; and

7.7.2 confirmation from each bank operating an Account that it will acknowledge the notice to be sent to it, substantially in the relevant form set out in the Security Agreement.

## 8. TAX

8.1 A copy of the VAT registration certificate for the Borrower.

8.2 Evidence that the Borrower has duly elected to waive exemption in relation to the Property and that HM Revenue & Customs has received that election.

## 9. LEGAL OPINIONS

A legal opinion of Pinsent Masons LLP, legal advisers to the Arranger and the Agent in England, substantially in the form distributed to the Original Lenders prior to signing this Agreement.

## 10. OTHER DOCUMENTS AND EVIDENCE

10.1 Evidence of the payment of all outstanding arrangement fees and outstanding fees of the Project Monitor and the Valuer.

10.2 Evidence that any other fees, and the costs and expenses then due from the Borrower pursuant to Clause 10 (*Fees*) and Clause 15 (*Costs and Expenses*) have been paid or will be paid by the first Utilisation Date.

10.3 A copy of any other Authorisation or other document, opinion or assurance which the Agent considers to be necessary or desirable (if it has notified the Borrower accordingly) in connection with the entry into and performance of the transactions contemplated by any Finance Document or for the validity and enforceability of any Finance Document.

**SCHEDULE 3**  
**UTILISATION REQUEST**

From: Muse (Brixton) Limited  
To: TMF GLOBAL SERVICES (UK) LIMITED as Agent  
Dated: [            ]

Dear Sirs

**Muse (Brixton) Limited – £27,680,000 Facility Agreement**  
**dated [            ] (the "Agreement")**

1. We refer to the Agreement. This is a Utilisation Request. Terms defined in the Agreement have the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request.
2. We wish to borrow a Loan on the following terms:-  
Proposed Utilisation Date: [            ] (or, if that is not a Business Day, the next Business Day)  
Amount: [            ] or, if less, the Available Facility
3. We confirm that each condition specified in Clause 4.2 (*Further conditions precedent*) is satisfied on the date of this Utilisation Request.
4. The proceeds of this Loan should be credited to [account].
5. The purpose of the Loan is [            ].
6. We enclose with this Utilisation Request:-
  - 6.1 [            ]; and
  - 6.2 a certificate from the Contract Administrator, countersigned by the Project Monitor, as required under the terms of the Agreement.
7. [We confirm that you may [disburse the Loan through [lawyers] and] deduct from the Loan (although the amount of the Loan will remain the amount requested above):-
  - 7.1 the outstanding balance of the arrangement fee being £[            ];
  - 7.2 any commitment fee due and payable at the Utilisation Date;
  - 7.3 [            ] fees;
  - 7.4 the fees of the Valuer and [            ]; and
  - 7.5 Land Registry fees.

8. This Utilisation Request is irrevocable.

Yours faithfully

.....  
authorised signatory for  
Muse (Brixton) Limited

## SCHEDULE 4

### FORM OF TRANSFER CERTIFICATE

To: TMF GLOBAL SERVICES (UK) LIMITED as Agent

From: [*The Existing Lender*] (the "Existing Lender") and [*The New Lender*] (the "New Lender")

Dated: [            ]

#### Muse (Brixton) Limited – £27,680,000 Facility Agreement

dated [            ] (the "Agreement")

1. We refer to the Agreement. This is a Transfer Certificate. Terms defined in the Agreement have the same meaning in this Transfer Certificate unless given a different meaning in this Transfer Certificate.
2. We refer to Clause 24.5 (*Procedure for transfer*):-
  - 2.1 the Existing Lender and the New Lender agree to the Existing Lender transferring to the New Lender by novation and in accordance with Clause 24.5 (*Procedure for transfer*) all of the Existing Lender's rights and obligations under the Agreement and the other Finance Documents which relate to that portion of the Existing Lender's Commitment and participation in Loans under the Agreement as specified in the Schedule;
  - 2.2 the proposed Transfer Date is [            ];and
  - 2.3 the Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of Clause 33.2 (*Addresses*) are set out in the Schedule.
3. The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in Clause 24.4.3.
4. The New Lender confirms, for the benefit of the Agent and without liability to any Obligor, that it is:-
  - 4.1 [a Qualifying Lender (other than a Treaty Lender);]
  - 4.2 [a Treaty Lender;]
  - 4.3 [not a Qualifying Lender].
5. [The New Lender confirms that the person beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document is either:-
  - 5.1 a company resident in the United Kingdom for United Kingdom tax purposes;
  - 5.2 a partnership each member of which is:-
    - 5.2.1 a company so resident in the United Kingdom; or
    - 5.2.2 a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of section 19 of the CTA) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of the CTA; or

- 5.3 a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (within the meaning of section 19 of the CTA) of that company.]
6. [The New Lender confirms that it holds a passport under the HMRC DT Treaty Passport scheme (reference number [ ]) and is tax resident in [ ], so that interest payable to it by borrowers is generally subject to full exemption from UK withholding tax, and requests that the Borrower notify the Borrower that it wishes that scheme to apply to this Agreement.]
- [6/7]. This Transfer Certificate 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 this Transfer Certificate.
- [7/8]. This Transfer Certificate [and any non-contractual obligations arising out of or in connection with it] [is/are] governed by English law.
- [8/9]. This Transfer Certificate has been entered into on the date stated at the beginning of this Transfer Certificate.

**Note: The execution of this Transfer Certificate may not transfer a proportionate share of the Existing Lender's interest in the Transaction Security in all jurisdictions. It is the responsibility of the New Lender to ascertain whether any other documents or other formalities are required to perfect a transfer of such a share in the Existing Lender's Transaction Security in any jurisdiction and, if so, to arrange for execution of those documents and completion of those formalities.**

**THE SCHEDULE**

**COMMITMENT/RIGHTS AND OBLIGATIONS TO BE TRANSFERRED**

*[insert relevant details]*

*[Facility Office address, fax number and attention details for notices and account details for payments]*

[Existing Lender]

[New Lender]

By:

By:

This Transfer Certificate is accepted by the Agent and the Transfer Date is confirmed as [            ].

[Agent]

By:



## SCHEDULE 5

### FORM OF ASSIGNMENT AGREEMENT

To: TMF GLOBAL SERVICES (UK) LIMITED as Agent and Muse (Brixton) Limited as Borrower

From: [the *Existing Lender*] (the "**Existing Lender**") and [the *New Lender*] (the "**New Lender**")

Dated: [            ]

#### Muse (Brixton) Limited - £27,680,000 Facility Agreement

dated [            ] (the "**Agreement**")

1. We refer to the Agreement. This is an Assignment Agreement. Terms defined in the Agreement have the same meaning in this Assignment Agreement unless given a different meaning in this Assignment Agreement.
2. We refer to Clause 24.6 (*Procedure for assignment*):-
  - 2.1 the Existing Lender assigns absolutely to the New Lender all the rights of the Existing Lender under the Agreement and the other Finance Documents which relate to that portion of the Existing Lender's Commitment and participations in Loans under the Agreement as specified in the Schedule;
  - 2.2 the Existing Lender is released from all the obligations of the Existing Lender which correspond to that portion of the Existing Lender's Commitment and participations in Loans under the Agreement specified in the Schedule; and
  - 2.3 the New Lender becomes a Party as a Lender and is bound by obligations equivalent to those from which the Existing Lender is released under paragraph 2.2 above.
3. The proposed Transfer Date is [            ].
4. On the Transfer Date the New Lender becomes Party to the Finance Documents as a Lender.
5. The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of Clause 33.2 (*Addresses*) are set out in the Schedule.
6. The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in Clause 24.4.3.
7. The New Lender confirms, for the benefit of the Agent and without liability to any Obligor, that it is:-
  - 7.1 [a Qualifying Lender falling (other than a Treaty Lender);]
  - 7.2 [a Treaty Lender;]
  - 7.3 [not a Qualifying Lender].
8. [The New Lender confirms that the person beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document is either:-
  - 8.1 a company resident in the United Kingdom for United Kingdom tax purposes;

- 8.2 a partnership each member of which is:-
- 8.2.1 a company so resident in the United Kingdom; or
- 8.2.2 a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of section 19 of the CTA) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of the CTA; or
- 8.3 a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (within the meaning of section 19 of the CTA) of that company.]

[8/9]. [The New Lender confirms that it holds a passport under the HMRC DT Treaty Passport scheme (reference number [ ]) and is tax resident in [ ], so that interest payable to it by borrowers is generally subject to full exemption from UK withholding tax, and requests that the Borrower notify the Borrower that it wishes that scheme to apply to this Agreement.]

[9/10]. This Assignment Agreement acts as notice to the Agent (on behalf of each Finance Party) and, upon delivery in accordance with Clause 24.7 (*Copy of Transfer Certificate or Assignment Agreement to Borrower*), to the Borrower of the assignment referred to in this Assignment Agreement.

[10/11]. This Assignment Agreement 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 this Assignment Agreement.

[11/12]. This Assignment Agreement [and any non-contractual obligations arising out of or in connection with it] [is/are] governed by English law.

[12/13]. This Assignment Agreement has been entered into on the date stated at the beginning of this Assignment Agreement.

**THE SCHEDULE**

**RIGHTS TO BE ASSIGNED AND OBLIGATIONS TO BE RELEASED AND UNDERTAKEN**

*[insert relevant details]*

*[Facility office address, fax number and attention details for notices and account details for payments]*

[Existing Lender]

[New Lender]

By:

By:

This Assignment Agreement is accepted by the Agent and the Transfer Date is confirmed as [                      ].

Signature of this Assignment Agreement by the Agent constitutes confirmation by the Agent of receipt of notice of the assignment referred to herein, which notice the Agent receives on behalf of each Finance Party.

[Agent]

By:

**Note: The execution of this Assignment Agreement may not transfer a proportionate share of the Existing Lender's interest in the Security in all jurisdictions. It is the responsibility of the New Lender to ascertain whether any other documents or other formalities are required to perfect a transfer of such a share in the Existing Lender's Security in any jurisdiction and, if so, to arrange for execution of those documents and completion of those formalities.**



## SCHEDULE 7

### LMA FORM OF CONFIDENTIALITY UNDERTAKING

#### [LETTERHEAD OF POTENTIAL PURCHASER]

Date: [            ]

To: [insert name of Seller]

#### The Agreement

Company: (the "Company")

Date: [            ]

Amount: [            ]

Agent: [            ]

Dear Sirs

We are considering acquiring an interest in the Agreement which, subject to the Agreement, may be by way of novation, assignment, the entering into, whether directly or indirectly, of a sub-participation or any other transaction under which payments are to be made or may be made by reference to one or more Finance Documents and/or one or more Obligors or by way of investing in or otherwise financing, directly or indirectly, any such novation, assignment, sub-participation or other transaction (the "**Acquisition**"). In consideration of you agreeing to make available to us certain information, by our signature of this letter we agree as follows (acknowledged and agreed by you by your signature of a copy of this letter):

#### 1. CONFIDENTIALITY UNDERTAKING

We undertake:-

- 1.1 to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by paragraph 2 below and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to our own confidential information; and
- 1.2 until the Acquisition is completed to use the Confidential Information only for the Permitted Purpose.

#### 2. PERMITTED DISCLOSURE

You agree that we may disclose:-

- 2.1 to any of our Affiliates and any of our or their officers, directors, employees, professional advisers and auditors such Confidential Information as we shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this paragraph 2.1 is informed in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information, except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;
- 2.2 subject to the requirements of the Agreement, to any person:-
  - 2.2.1 to (or through) whom we assign or transfer (or may potentially assign or transfer) all or any of our rights and/or obligations which we may acquire under the Agreement such

Confidential Information as we shall consider appropriate if the person to whom the Confidential Information is to be given pursuant to this paragraph 2.2.1 has delivered a letter to us in equivalent form to this letter;

2.2.2 with (or through) whom we enter into (or may potentially enter into) any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to the Agreement or any Obligor such Confidential Information as we shall consider appropriate if the person to whom the Confidential Information is to be given pursuant to this paragraph 2.2.2 has delivered a letter to us in equivalent form to this letter; and

2.2.3 to whom information is required or requested to be disclosed by any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation such Confidential Information as we shall consider appropriate; and

2.3 notwithstanding paragraphs 2.1 and 2.2 above, Confidential Information to such persons to whom, and on the same terms as, a Finance Party is permitted to disclose Confidential Information under the Agreement, as if such permissions were set out in full in this letter and as if references in those permissions to Finance Party were references to us.

### **3. NOTIFICATION OF DISCLOSURE**

We agree (to the extent permitted by law and regulation) to inform you:-

3.1 of the circumstances of any disclosure of Confidential Information made pursuant to paragraph 2.2.3 above except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and

3.2 upon becoming aware that Confidential Information has been disclosed in breach of this letter.

### **4. RETURN OF COPIES**

If we do not enter into the Acquisition and you so request in writing, we shall return or destroy all Confidential Information supplied by you to us and destroy or permanently erase (to the extent technically practicable) all copies of Confidential Information made by us and use our reasonable endeavours to ensure that anyone to whom we have supplied any Confidential Information destroys or permanently erases (to the extent technically practicable) such Confidential Information and any copies made by them, in each case save to the extent that we or the recipients are required to retain any such Confidential Information by any applicable law, rule or regulation or by any competent judicial, governmental, supervisory or regulatory body or in accordance with internal policy, or where the Confidential Information has been disclosed under paragraph 2.2.3 above.

### **5. CONTINUING OBLIGATIONS**

The obligations in this letter are continuing and, in particular, shall survive and remain binding on us until:-

5.1 if we become a party to the Agreement as a lender of record, the date on which we become such a party to the Agreement;

5.2 if we enter into the Acquisition but it does not result in us becoming a party to the Agreement as a lender of record, the date falling 12 months after the date on which all of our rights and obligations contained in the documentation entered into to implement the Acquisition have terminated; or

5.3 in any other case the date falling 12 months after the date of our final receipt (in whatever manner) of any Confidential Information.

## 6. **NO REPRESENTATION; CONSEQUENCES OF BREACH, ETC**

We acknowledge and agree that:-

- 6.1 neither you, nor any member of the Group nor any of your or their respective officers, employees or advisers (each a "**Relevant Person**"):-
  - 6.1.1 make any representation or warranty, express or implied, as to, or assume any responsibility for, the accuracy, reliability or completeness of any of the Confidential Information or any other information supplied by you or the assumptions on which it is based; or
  - 6.1.2 shall be under any obligation to update or correct any inaccuracy in the Confidential Information or any other information supplied by you or be otherwise liable to us or any other person in respect of the Confidential Information or any such information; and
- 6.2 you or members of the Group may be irreparably harmed by the breach of the terms of this letter and damages may not be an adequate remedy; each Relevant Person may be granted an injunction or specific performance for any threatened or actual breach of the provisions of this letter by us.

## 7. **ENTIRE AGREEMENT: NO WAIVER; AMENDMENTS, ETC**

- 7.1 This letter constitutes the entire agreement between us in relation to our obligations regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.
- 7.2 No failure to exercise, nor any delay in exercising, any right or remedy under this letter will operate as a waiver of any such right or remedy or constitute an election to affirm this letter. No election to affirm this letter will be effective unless it is in writing. No single or partial exercise of any right or remedy will prevent any further or other exercise or the exercise of any other right or remedy under this letter.
- 7.3 The terms of this letter and our obligations under this letter may only be amended or modified by written agreement between us.

## 8. **INSIDE INFORMATION**

We acknowledge that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and we undertake not to use any Confidential Information for any unlawful purpose.

## 9. **NATURE OF UNDERTAKINGS**

The undertakings given by us under this letter are given to you and are also given for the benefit of the Company and each other member of the Group.

## 10. **THIRD PARTY RIGHTS**

- 10.1 Subject to this paragraph 10 and to paragraphs 6 and 9, a person who is not a party to this letter has no right under the Contracts (Rights of Third Parties) Act 1999 (the "**Third Parties Act**") to enforce or to enjoy the benefit of any term of this letter.
- 10.2 The Relevant Persons may enjoy the benefit of the terms of paragraphs 6 and 9 subject to and in accordance with this paragraph 10 and the provisions of the Third Parties Act.
- 10.3 Notwithstanding any provisions of this letter, the parties to this letter do not require the consent of any Relevant Person to rescind or vary this letter at any time.

11. **GOVERNING LAW AND JURISDICTION**

11.1 This letter (including the agreement constituted by your acknowledgement of its terms) (the "Letter") and any non-contractual obligations arising out of or in connection with it (including any non-contractual obligations arising out of the negotiation of the transaction contemplated by this Letter) are governed by English law.

11.2 The courts of England have non-exclusive jurisdiction to settle any dispute arising out of or in connection with this Letter (including a dispute relating to any non-contractual obligation arising out of or in connection with either this Letter or the negotiation of the transaction contemplated by this Letter).

12. **DEFINITIONS**

In this letter (including the acknowledgement set out below) terms defined in the Agreement shall, unless the context otherwise requires, have the same meaning and:-

**"Confidential Information"** means all information relating to the Company, any Obligor, the Group, the Finance Documents, [the/a] Facility and/or the Acquisition which is provided to us in relation to the Finance Documents or [the/a] Facility by you or any of your affiliates or advisers, in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information but excludes information that:-

- (a) is or becomes public information other than as a direct or indirect result of any breach by us of this letter or
- (b) is identified in writing at the time of delivery as non-confidential by you or your advisers or
- (c) is known by us before the date the information is disclosed to us by you or any of your affiliates or advisers or is lawfully obtained by us after that date, from a source which is, as far as we are aware, unconnected with the Group and which, in either case, as far as we are aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality

**"Group"** means the Company and its subsidiaries for the time being (as such term is defined in the Companies Act 2006)

**"Permitted Purpose"** means considering and evaluating whether to enter into the Acquisition

Please acknowledge your agreement to the above by signing and returning the enclosed copy.

Yours faithfully

.....  
For and on behalf of  
[Potential Purchaser]



To: [Potential Purchaser]

We acknowledge and agree to the above:

.....  
For and on behalf of  
[Seller]

**SCHEDULE 8**  
**BUDGETED COSTS**

Summary Appraisal for Phase 1b - Ivor House & Hambrook House

REVENUE

Sales Valuation                      Units                      ft<sup>2</sup>                      Rate ft<sup>2</sup>                      Unit Price                      Gross Sales

S. 43

Rental Area Summary

Units                      ft<sup>2</sup>                      Rate ft<sup>2</sup>                      Initial MRV/Unit                      Net Rent at Sale                      Initial MRV

S. 43

Investment Valuation

S. 43

S. 43

GROSS DEVELOPMENT VALUE

S. 43

S. 43

NET DEVELOPMENT VALUE

S. 43

NET REALISATION

OUTLAY

ACQUISITION COSTS

S. 43

Other Acquisition

S. 43

S. 43

**CONSTRUCTION COSTS**

Construction                      Units                      Unit Amount                      Cost

S. 43

**Other Construction**

S. 43

**PROFESSIONAL FEES**

S. 43

**MARKETING & LETTING**

S. 43

**DISPOSAL FEES**

S. 43

**Additional Costs**

S. 43

**RENT FREE COSTS**

S. 43

**Interest and Fees**

S. 43

**S. 43**

**TOTAL COSTS**

**s. 43**

**PROFIT**

**s. 43**

**Performance Measures**

**s. 43**

s. 43

s. 43

S. 43



# s. 43

**SCHEDULE 9**

**MILESTONES**

<b>Details of Milestone</b>	<b>Required Milestone Date</b>
Start on Site	21 April 2017
Required Completion Date	The date following 33 Months from the date of first Utilisation

SIGNATURES

THE BORROWER

MUSE (BRIXTON) LIMITED

By:

**s. 40(2)**

Director

**s. 40(2)**

~~\*Director/Secretary~~

Address: Muse (Brixton) Limited, Kent House, 14-17 Market Place, London W1W 8AJ

Fax: N/A

Attention: **s. 40(2)**

THE ARRANGERS

The common seal of

**HOMES AND COMMUNITIES AGENCY**

is hereunto affixed in the presence of:

Name:

Authorised Signatory

Address: Homes and Communities Agency – Investments, St. George's House, Kingsway,  
Team Valley, Gateshead NE11 0NA

Fax: N/A

Attention: **s. 40(2)**

**SIGNATURES**

**THE BORROWER**

**MUSE (BRIXTON) LIMITED**

By:

.....  
Director

.....  
\*Director/Secretary

Address: Muse (Brixton) Limited, Kent House, 14-17 Market Place, London W1W 8AJ

Fax: N/A

Attention: **s. 40(2)**

**THE ARRANGERS**

The common seal of

**HOMES AND COMMUNITIES AGENCY**

is hereunto affixed in the presence of:

Name:

Authorised Signatory

**s. 40(2)**

Team Leader  
Provider Management

Address: Homes and Communities Agency – Investments, St. George's House, Kingsway,  
Team Valley, Gateshead NE11 0NA

Fax: N/A

Attention: **s. 40(2)**



**s. 40(2)**

The common seal of  
**LONDON BOROUGH OF LAMBETH**  
is hereunto affixed in the presence of:

Name:

**Authorised Officer**

Authorised Signatory

Address: London Borough of Lambeth, 7<sup>th</sup> Floor Phoenix House, 10 Wandsworth Road,  
London SW8 2LL

Fax:

**s. 40(2)**

Attention:

**s. 40(2)**

Corporate Resources

**THE AGENT**

**TMF GLOBAL SERVICES (UK) LIMITED**

By:

.....  
Director

Address: 5th Floor, 6 St Andrew Street, London, EC4A 3AE, United Kingdom

Fax: +44 (0) 207 832 4901

Attention: Loan Services

**THE SECURITY AGENT**

**TMF TRUSTEE LIMITED**

By:

.....  
Director

Address: 5th Floor, 6 St Andrew Street, London, EC4A 3AE, United Kingdom

Fax: +44 (0) 207 832 4901

Attention: Corporate Trust

The common seal of

**LONDON BOROUGH OF LAMBETH**

is hereunto affixed in the presence of:

Name:

Authorised Signatory

Address: London Borough of Lambeth, 7<sup>th</sup> Floor Phoenix House, 10 Wandsworth Road,  
London SW8 2LL

Fax: s. 40(2)

Attention: s. 40(2) Corporate Resources

**THE AGENT**

**TMF GLOBAL SERVICES (UK) LIMITED**

By: s. 40(2)

.....  
Director

Address: 5th Floor, 6 St Andrew Street, London, EC4A 3AE, United Kingdom

Fax: +44 (0) 207 832 4901

Attention: Loan Services

**THE SECURITY AGENT**

**TMF TRUSTEE LIMITED**

By: s. 40(2)

.....  
Director

Address: 5th Floor, 6 St Andrew Street, London, EC4A 3AE, United Kingdom

Fax: s. 40(2)

Attention: Corporate Trust

**THE ORIGINAL LENDERS**

The common seal of

**HOMES AND COMMUNITIES AGENCY**

is hereunto affixed in the presence of:

Name:

Authorised Signatory

**s. 40(2)**



Address:

Homes and Communities Agency – Investments, St. George's House, Kingsway,  
Team Valley, Gateshead NE11 0NA

Fax:

N/A

Attention:

**s. 40(2)**

The common seal of

**LONDON BOROUGH OF LAMBETH**

is hereunto affixed in the presence of:

Name:

Authorised Signatory

Address:

London Borough of Lambeth, 7<sup>th</sup> Floor Phoenix House, 10 Wandsworth Road,  
London SW8 2LL

Fax:

**s. 40(2)**

Attention:

**s. 40(2)**

Corporate Resources

**THE ORIGINAL LENDERS**

The common seal of

**HOMES AND COMMUNITIES AGENCY**

is hereunto affixed in the presence of:

Name:

Authorised Signatory

Address: Homes and Communities Agency – Investments, St. George's House, Kingsway,  
Team Valley, Gateshead NE11 0NA

Fax: N/A

Attention: **s. 40(2)**

The common seal of

**LONDON BOROUGH OF LAMBETH**

is hereunto affixed in the presence of:

Name:

Authorised Signatory

**s. 40(2)**

Authorised Officer

**s. 40(2)**

Address: London Borough of Lambeth, 7<sup>th</sup> Floor Phoenix House, 10 Wandsworth Road,  
London SW8 2LL

Fax: **s. 40(2)**

Attention: **s. 40(2)** Corporate Resources