



Homes  
England

Date: 4 May 2021  
Our Ref: RFI3354  
Tel: 0300 1234 500  
Email: infogov@homesengland.gov.uk

Making homes happen

[REDACTED]  
By Email Only

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

Dear [REDACTED]

**RE: Request for Information – RFI3354**

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

You requested the following information:

*Please provide copies of the following loan agreements signed by Homes England:*

*1) The loan agreement between Homes England and QDD, a joint venture between Qatari Diar and DV4 Limited advised by Delancey, as described in this government publication:*

*<https://www.gov.uk/government/publications/build-to-rent-round-2-allocations/build-to-rent-round-2-signed-contracts>.*

*2) Any agreements made between Homes England and Delancey or Delancey-led consortiums made under the private rental sector (PRS) guarantee scheme, aka PRSGS.*

*3) The agreement was made between Homes England and the company overseeing the redevelopment of Earls Court (which had been acquired by Delancey in 2019) under the Home Building Fund.*

**Response**

We can confirm that we do hold some information that falls within the scope of your request.

Facility Agreement dated 27 March 2015 between Homes and Communities Agency and QDD EV N06 Limited and QDD EV N08 Limited

Please find enclosed within Annex A (which is attached to this response) a copy of the Facility Agreement dated 27 March 2015 between Homes and Communities Agency and QDD EV N06 Limited and QDD EV N08 Limited in respect of a term loan to finance the development of Plots N06 and N08 of the East Village, London E20.

Credit Agreement dated 24 March 2016 between Homes and Communities Agency and Earls Court Partnership Limited

OFFICIAL



Date: 4 May 2021

Our Ref: RFI3354

Tel: 0300 1234 500

Email: [infogov@homesengland.gov.uk](mailto:infogov@homesengland.gov.uk)

Please find enclosed within Annex B (which is attached to this response) a copy of the Credit Agreement dated 24 March 2016 between Homes and Communities Agency and Earls Court Partnership Limited relating to certain infrastructure works at Earls Court Village London.

You will note that redactions have been made to this disclosure, these redactions are supported by exemptions in accordance with the FOIA and are detailed below.

#### Section 43 - Commercial interests

We rely on section 43(2) of the FOIA as Homes England is not obliged to disclose information that would, or would be likely to, prejudice the commercial interests of any party.

Some of the information requested and contained within both annexes 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.

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 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:

- It would not be in the public interest to release information which would undermine Homes England's ability to achieve the best value for the public purse. We provide development finance to developers of all sizes, as well as investing in partnerships and joint ventures to increase the pace and scale of our partners' delivery and generate value for public money. To release this information would hinder our ability to negotiate the best possible deal for similar matters in the future as it would reveal our intentions and negotiating positions on commercial points and the value we place on these works. Agreements reached for this project are likely to serve as the basis for similar arrangements in the future. Therefore, disclosure of these matters would be prejudicial to Homes England;
- Disclosure would also undermine confidence in Homes England by the wider industry, which would deter businesses from approaching us with proposals if they felt their sensitive commercial information would be released. If revealed to a wider audience, it would affect future negotiations for the same or similar services. Homes England needs to attract the developers who will apply the funding we have provided to deliver the homes that the market needs. Developers would be deterred from working with us and accessing our funding if they thought that their sensitive commercial and financial information would be disclosed, including the most commercially sensitive terms of the agreements they have entered into with us. That would not be in the public interest.



Date: 4 May 2021

Our Ref: RFI3354

Tel: 0300 1234 500

Email: [infogov@homesengland.gov.uk](mailto:infogov@homesengland.gov.uk)

- The interests of the third parties involved would also be similarly affected by disclosure, as this would reveal financial strategies and analysis disclosed to Homes England that were not meant for release into the public domain. If released, their interests would be adversely affected as it could be used against them in negotiations for similar matters as other parties would have this prior knowledge of their business' operating models, forecasts and financial information. To release this information would undermine future bids for similar works as it would reveal what has been agreed in this instance which could be used as a basis for obtaining an unfair advantage by other third parties. This would put them at a commercial disadvantage which would not be in the public interest as it would hinder their ability to conduct business in a competitive market if their bidding and pricing strategies were revealed in this way; 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 section 43 in the legislation can be found here:

<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 and signatures 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 of section 40 in the legislation can be found here:

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

We can confirm that Homes England does not hold information as detailed in question 2 of your request. To conclude that the information is not held, we have searched with our Housing Guarantees Transactions team who would have the requested information if it were held.

The FOIA does not oblige a public authority to create information to answer a request if the requested information is not held. The duty under section 1(1) is only to provide the recorded information held.

The full text of section 1 in the legislation can be found here:

<https://www.legislation.gov.uk/ukpga/2000/36/section/1>



Homes  
England

Making homes happen

Date: 4 May 2021

Our Ref: RFI3354

Tel: 0300 1234 500

Email: [infogov@homesengland.gov.uk](mailto:infogov@homesengland.gov.uk)

### **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.

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 27 MARCH 2015

**HOMES AND COMMUNITIES AGENCY**  
as Original Lender

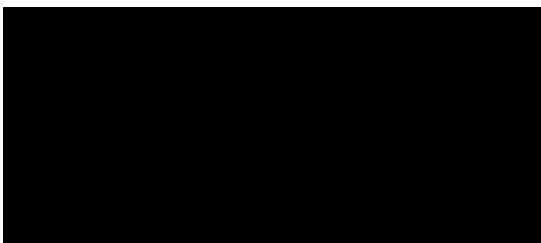
**HOMES AND COMMUNITIES AGENCY**  
as Facility Agent

and

**QDD EV N06 LIMITED**  
And  
**QDD EV N08 LIMITED**  
as Borrowers

**FACILITY AGREEMENT**

in respect of a term loan of up to  
[REDACTED] to finance the development of  
Plots N06 and N08 of the East Village, London E20



## Contents

<b>Clause</b>	<b>Name</b>	<b>Page</b>
1	Definitions and Interpretation .....	1
2	The Facilities.....	26
3	Purpose .....	27
4	Conditions of Utilisation .....	28
5	Utilisation .....	29
6	Repayment .....	31
7	Prepayment and Cancellation .....	31
8	Interest .....	33
9	Interest Periods .....	34
10	Indemnities .....	35
11	Mitigation .....	36
12	Costs and Expenses.....	36
13	Representations and Warranties.....	37
14	Information Undertakings .....	42
15	Financial Covenants.....	44
16	General Undertakings .....	45
17	Property Undertakings .....	48
18	Development Undertakings .....	58
19	Accounts .....	64
20	Guarantee .....	65
21	Events of Default and Acceleration .....	69
22	Changes to the Finance Parties .....	72
23	Changes to the Obligors .....	76
24	Role of the Facility Agent .....	77
25	Conduct of Business by the Finance Parties .....	83
26	Sharing among the Finance Parties .....	84
27	Payment Mechanics .....	85
28	Set-Off .....	87
29	Notices .....	87
30	Calculations and Certificates .....	89
31	Rights of Third Parties .....	90
32	Amendments and Decisions .....	90
33	Partial Invalidity .....	91
34	Remedies and Waivers .....	91
35	Counterparts.....	91
36	Confidential information.....	91
37	Law and Jurisdiction .....	94
<b>Schedule</b>	<b>Name</b>	<b>Page</b>
1	The Original Parties.....	95
1	Part 1 Original Lender .....	95
1	Part 2 Borrower details .....	95
2	Conditions Precedent.....	97
2	Part 1 Conditions precedent to signing of this Agreement .....	97
2	Part 2 Conditions precedent to first Utilisation .....	98
3	Utilisation Request .....	103
4	Utilisation Request Timeline .....	105

5	Form of Transfer Certificate .....	106
6	Property .....	109
7	Form of Compliance Certificate .....	110
8	Intermediate Lessee Accession Letter .....	111
9	Intermediate Lessees – Accession Conditions Precedent .....	112
10	HCA Standard Terms .....	114
11	New Lender Terms .....	119
12	Plan .....	128
	<b>Execution Page</b> .....	<b>129</b>

**DATED 27 MARCH 2015**

**PARTIES**

- (1) **HOMES AND COMMUNITIES AGENCY** of Arpley House, 110 Birchwood Boulevard, Birchwood, Warrington, WA3 7QH (the "**Original Lender**")
- (2) **HOMES AND COMMUNITIES AGENCY** of Arpley House, 110 Birchwood Boulevard, Birchwood, Warrington, WA3 7QH (the "**Facility Agent**")
- (3) **QDD EV N06 LIMITED** (company no. 09504858) whose registered office is at 6<sup>th</sup> Floor, Lansdowne House, Berkeley Square, London W1J 6ER (the "**N06 Borrower**") and
- (4) **QDD EV N08 LIMITED** (company no. 09504889) whose registered office is at 6<sup>th</sup> Floor, Lansdowne House, Berkeley Square, London W1J 6ER (the "**N08 Borrower**") and, together with the N06 Borrower, the "**Borrowers**")

**OPERATIVE PROVISIONS**

**1 DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Agreement:

"**125 Year Intermediate Lessee**" means an Intermediate Lessee to whom a 125 year lease is granted by an Intermediate Lessee to whom a 995 year lease is granted in connection with a Permitted Disposal.

"**Accession Letter**" means a document substantially in the form set out in Schedule 8 (*Intermediate Lessee Accession Letter*).

"**Account Bank**" means a Pre-approved Bank or such other bank with the Requisite Rating as is approved by the Facility Agent from time to time.

"**Accounts**" means each Disposal Proceeds Account, the Rectification Account, each Rent Account, each General Account, each Drawdown Account and any other bank account in the name of an Obligor which is designated by such Obligor and the Facility Agent as an "Account" for the purposes of this Agreement.

"**Act**" means the Law of Property Act 1925.

"**Advisers**" means the professional advisers appointed by the Facility Agent to advise any Finance Party under the Finance Documents.

"**Affiliate**" means, in relation to any person, a Subsidiary or a Holding Company of that person or any other Subsidiary of that Holding Company.

"**Affordable Housing Provider**" shall have the meaning ascribed to it in the Section 106 Agreement.

"**Agreed Form**" means, in relation to any deed or document, the form agreed between the Original Lender and the Borrowers prior to the date of this Agreement, subject to such changes as the Facility Agent and the Obligors' Representative, (each acting reasonably) may agree after the date hereof.

**"Approved Contractor"** means [REDACTED] or such other building contractor of similar standing approved by the Facility Agent, acting reasonably.

**"Approved Form"** means in relation to any Intermediate Lease:

- (a) it is on terms consistent with those described in the Initial Certificate or
- (b) it otherwise only contains such minor revisions as will not affect the overall value of the Charged Assets or the validity or effect of the security provided under this Agreement; or
- (c) its form and terms are otherwise in a form approved by the Facility Agent (acting reasonably); and
- (d) the demise details and plans to be inserted are within the boundaries of Property N06 and Property N08 as built.

**"Approved Managing Agent"** means each of:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED] and

- (g) any other such managing agent as may be approved by the Facility Agent, acting reasonably.

**"Architect"** means [REDACTED] or such other firm of architects appointed by [REDACTED] or, following the date of this Agreement, the relevant Borrower in connection with a Development and approved by the Facility Agent (acting reasonably) and the Obligors' Representative.

**"Assured Shorthold Tenancy"** means an assured shorthold tenancy of a Residential Unit granted by an Owner substantially in the form approved by the Facility Agent (acting reasonably).

**"Authorisation"** means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration.

**"Availability Period"** means the period from and including the date of this Agreement to and including 31 March 2018 as may be extended in accordance with Clause 5.5 (*Cancellation on expiry of Availability Period and further extension*).

**"Break Costs"** has the meaning given in Schedule 11 (*New Lender Terms*).

**"Budgeted Costs"** means, in relation to each Development, the itemised budgeted costs and expenses relating thereto, supplied to the Facility Agent as a condition precedent under this Agreement on or before the first Utilisation Date

and, up to and including Practical Completion of the relevant Development, updated no less than monthly.

**"Building Contract"** means each building contract to be entered into between a Borrower and the Approved Contractor for the construction of a Development.

**"Business Day"** means any day (other than a Saturday or Sunday) on which banks are generally open in London for the conduct of Sterling banking business.

**"Certificate of Title Specified Matters"** means all or any of the following to the extent that they are consistent with these arrangements as set out in the Initial Certificate:

- (a) the updating of the Initial Certificate so as to certify the title of the Borrowers to the Property;
- (b) the grant of the Headleases and (to the extent granted) each Intermediate Lease;
- (c) the entry into of any revised security pursuant to the [REDACTED] in accordance with the Intercreditor Deed;
- (d) updated search results (other than any matters of a material adverse nature that were not previously disclosed);
- (e) arrangements with [REDACTED] in relation to permanent transformers and relocation of the temporary common domain transformers and associated infrastructure;
- (f) approval from [REDACTED] to any variation to the boundaries of the Property;
- (g) matters referred to in Clause 17.9 (*Planning*); and
- (h) the matters referred to in paragraphs (b) (c) (e) and (f) of the definition of Permitted Disposal in accordance with any other relevant provisions of this Agreement.

**"Certificate of Title"** means the report on title prepared by [REDACTED] and addressed to (amongst others) the Finance Parties in relation to each Property and dated on or about the date of this Agreement, as the same is updated as a condition precedent to the first Utilisation of this Facility.

**"Charged Assets"** means each and all of the assets, property, undertaking and other interests from time to time in respect of which a Security Interest has been created or was intended to be created under a Finance Document and the subject matter of each of them.

**"Collateral Warranty"** means, in relation to a Development, an agreement to be entered into with the Security Agent by the Contractor, each Material Professional Consultant and each Material Sub-Contractor in the form prescribed under their respective contracts.

**"Commercial Unit"** means a unit at a Property primarily used and designated as commercial premises.

**"Commitment"** means:

- (a) in relation to the Original Lender, the amount set opposite its name under the heading "Commitment" in Schedule 1, Part 1 (*Original Lender*); and
- (b) in relation to any other Lender, the amount of any Commitment transferred to it under this Agreement,

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

**"Compliance Certificate"** means a certificate substantially in the form set out in Schedule 7 (*Form of Compliance Certificate*).

**"Confidential Information"** means all information relating to any Obligor, the [REDACTED], Subordinated Creditor, the Finance Documents or a 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 a Facility from either:

- (a) any Obligor, the [REDACTED], a Subordinated Creditor or any of their respective advisers; or
- (b) another Finance Party, if the information was obtained by that Finance Party directly or indirectly from any Obligor, the [REDACTED], a Subordinated Creditor or any of their 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:
  - (A) is or becomes public information other than as a direct or indirect result of any breach by that Finance Party of Clause 36 (*Confidential information*); or
  - (B) is identified in writing at the time of delivery as non-confidential by any Obligor, the [REDACTED], any Subordinated Creditor or any of their respective advisers; or
  - (C) 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 Obligors, the [REDACTED] [REDACTED] or the Subordinated Creditors 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.

**"Construction Excluded Matters"** means:

- (a) in connection with the Building Contract for Property N08:
  - (i) price
  - (ii) removal of lower basement

- (iii) reinstatement of cutback of building perimeter
  - (iv) change in shape, size and extent of canopies
  - (v) introduction of amenities area
  - (vi) possible reduction of two Residential Units
- (b) in connection with the Building Contract for Property N06:
- (i) price
  - (ii) set of drawings different from that used for Property N08
  - (iii) removal of lower basement
  - (iv) change in shape, size and extent of canopies
  - (v) introduction of amenities area
  - (vi) possible addition of [three] Residential Units.

**"Construction Report"** means the report prepared by [REDACTED] and addressed to (amongst others) the Finance Parties in relation to the Building Contracts and dated on or about the date of this Agreement, as the same is updated as a condition precedent to the first Utilisation of this Facility.

**"Contingency"** means, in relation to a Development, the amount provided for contingency in the Budgeted Costs for that Development to the extent not allocated to any item of costs and expenses in accordance with Clause 18.7 (*Cost Overruns and Use of Contingencies*).

**"Contractor"** means the contractor appointed by a Borrower in relation to a Development being the Approved Contractor, a Pre-approved Contractor or such other firm of contractors approved by the Facility Agent (acting reasonably) from time to time.

**"Cost Overrun"** means, in relation to a Development, at any time, the aggregate of the amount by which the costs and expenses certified by the Monitoring Surveyor (having consulted with and taken due regard to any representations made by the Obligors' Representative and having taken into account any amount of Contingency allocated to those costs and expenses in accordance with Clause 18.7.2 (*Cost Overruns and Use of Contingencies*)) as being the Projected Costs for that Development exceeds the most recently provided Budgeted Costs.

[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]

**"Cost Saving"** means, in relation to a Development, at any time, the amount by which the Monitoring Surveyor (acting reasonably) is satisfied that any item of



costs and expenses comprised within the Projected Costs for that Development is less than the relevant Budgeted Costs for that item at that time.

"**CTA**" means the Corporation Tax Act 2009.

[REDACTED]

"**Default**" means any Event of Default or event or circumstance specified in Clause 21 (*Events of Default and Acceleration*) 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.

"**Development**" means, in relation to each Property, the development of that Property, associated infrastructure, services and any other construction on that Property in accordance with the Development Details for that Property.

"**Development Details**" means, in relation to each Property, the following information provided by the relevant Borrower in relation to the Development of that Property as a condition precedent to the first Utilisation of the relevant Facility:

- (a) the Specifications; and
- (b) the Budgeted Costs,

each as varied from time to time in accordance with the terms of this Agreement.

"**Development Documents**" means each Building Contract, Professional Contract and Collateral Warranty.

"**Development Party**" means:

- (a) the Contractor;
- (b) a Material Professional Consultant; and
- (c) any other person agreed as such between the Facility Agent and the Obligors' Representative.

"**Disposal Proceeds**" means all capital monies or other sums or other consideration paid or payable in respect of the disposal of an Owner's interest in all or any part of a Property.

"**Disposal Proceeds Account**" means each account with the Account Bank designated as such by the Facility Agent and the Obligors' Representative under this Agreement.

"**Disruption Event**" 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.

**"Drawdown Account"** means each account with the Account Bank opened by a Borrower in the event that the Lenders do not agree to extend the Availability Period, as contemplated by Clause 5.5.4, and designated as the "Drawdown Account" by the Obligors' Representative and the Facility Agent.

[REDACTED]

[REDACTED]

[REDACTED]

**"EC Reference Rate"** means the most recent base rate for the UK published by the European Commission.

**"Employer's Agent"** means [REDACTED] or such other employer's agent appointed by [REDACTED] or, following the date of this Agreement, the relevant Borrower in connection with a Development and approved by the Facility Agent.

**"Environment"** means all or any part of land (including any building structure or receptacle in, over or on it), water (including surface, coastal and groundwaters), and air (including the atmosphere within any natural or man-made structure or receptacle above or below ground).

**"Environmental Claim"** means any claim, proceeding or investigation by any person in respect of any Environmental Law.

**"Environmental Law"** means any Laws relating to the protection or pollution of the Environment, or the prevention of harm to human health and/or the health of other living organisms.

**"Environmental Permit"** means any Authorisation required under any Environmental Law.

**"Event of Default"** means any event or circumstance specified in Clause 21 (*Events of Default and Acceleration*).

**"Facility"** means each of the:



calculating the value of any derivative transaction, only the marked to market value shall be taken into account);

- (i) 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
- (j) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraph (a) to paragraph (i).

**"GAAP"** means generally accepted accounting principles in the jurisdiction of incorporation of the relevant Obligor, including IFRS.

**"General Account"** means each account with the Account Bank designated as such by the Facility Agent and the Obligors' Representative under the terms of this Agreement.

██  
██  
██  
██

██  
██  
██  
██

██

**"HCA Standard Terms"** means the terms set out in Schedule 10 (*HCA Standard Terms*).

**"Headlease"** means each of the N06 Headlease and the N08 Headlease.

**"Holding Company"** means, in relation to a person, any other person in respect of which it is a Subsidiary.

**"IFRS"** means international accounting standards within the meaning of the IAS Regulation 1606/2002 to the extent applicable to the relevant financial statements.

**"Indebtedness"** means any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent, sole or joint.

**"Initial Certificate"** means the Certificate of Title delivered as a condition precedent to the signing of this Agreement.

**"Initial Valuation"** means the valuation prepared by Savills dated as at the date of this Agreement and showing:

- (a) a Gross Development Value of not less than ██████████ in respect of Property N08;
- (b) a Gross Development Value of not less than ██████████ in respect of Property N06;
- (c) the current Market Value of the Property (without the benefit of the relevant Development having been carried out and in its condition at the

time of the Valuation) of not less than [REDACTED] in respect of Property N06 and [REDACTED] in respect of Property N08; and

(d) the reinstatement value of each Property for insurance purposes.

**"Insurance Proceeds"** means the proceeds of any insurance claim received by any Obligor.

**"Intercreditor Deed"** means the intercreditor deed entered into on or around the date of the Mezzanine Facility Agreement in form and substance satisfactory to the Original Lender and made between, amongst others, the Mezzanine Lender, the Original Lender, the Security Agent and the Borrowers.

**"Interest Payment Date"** means, in the case of each Facility, the last day of each Interest Period or, on and following Practical Completion of the relevant Property, 31 March, 30 June, 30 September and 31 December in each year. If, however, any such date is not a Business Day, the Interest Payment Date will instead be the next Business Day.

**"Interest Payment Start Date"** means the date falling 18 months after Practical Completion.

**"Interest Period"** means, in relation to a Loan, each period detailed in accordance with Clause 9 (*Interest Periods*) and, in relation to an Unpaid Sum, each period determined in accordance with Clause 8.4 (*Default interest*).

[REDACTED]

[REDACTED]

[REDACTED]

**"Intermediate Lessee"** means each N06 Intermediate Lessee and each N08 Intermediate Lessee.

**"ITA"** means the Income Tax Act 2007.

**"Law"** means any European Community legislation (including any regulation or directive), the common law or United Kingdom legislation (including subordinate legislation and any order or regulations made under such legislation), by law or order of any court or administrative tribunal which is in force in the United Kingdom.

**"Lease Document"** means:

- (a) each N06 Intermediate Lease;
- (b) each N08 Intermediate Lease;
- (c) any Occupational Lease; or
- (d) any other document designated as such by the Facility Agent and the Obligors' Representative.



- (a) the ability of an Obligor, to perform its payment obligations under the Finance Documents or its obligations relating to the completion of the Development in accordance with the terms of the Finance Documents; or
- (b) Mezzanine Finance Documents; or
- (c) the legality or enforceability of any Finance Document or Mezzanine Finance Document (subject to the Reservations) which, if capable of remedy, is not remedied within 20 Business Days of the Obligors becoming aware of the same.

**"Material Professional Consultant"** means each of:

- (a) the Architect;
- (b) the Structural Engineer;
- (c) the ME&P Consultant;
- (d) the Employer's Agent;
- (e) the Planning Consultant; and
- (f) any professional consultant appointed after the date of this Agreement by the Borrowers in connection with the design and construction of the Development of a Property which in the opinion of the Monitoring Surveyor (having due regard to the representations of the Obligors' Representative) has a material design responsibility other than any such consultant disclosed to the Facility Agent prior to the date of this Agreement.

**"Material Sub-Contractor"** means:

- (a) any sub-contractor appointed by the Contractor in relation to piling/groundworks, frame, cladding, MEP, lifts, canopies and balconies at the Development; and
- (b) any other sub-contractor appointed by the Contractor which the Monitoring Surveyor and the Employer's Agent (acting reasonably) have determined to be a Material Sub-Contractor.

**"Material Sub-Contractor Appointments"** means the appointment documents in respect of each Material Sub-Contractor.

**"ME&P Consultant"** means [REDACTED] or such other mechanical, electrical and plumbing consultant appointed by [REDACTED] or, following the date of this Agreement, the relevant Borrower in connection with the relevant Development and approved by the Facility Agent.

**"Mezzanine Agent"** means the person identified as such in the Mezzanine Facility Agreement.

**"Mezzanine Borrower"** means the person identified in the Mezzanine Facility Agreement.

**"Mezzanine Facility Agreement"** means the mezzanine facility agreement dated on or about the date of this Agreement and entered into between, amongst others, the Mezzanine Borrower, the Mezzanine Agent and the Mezzanine Lender.

**"Mezzanine Finance Documents"** has the meaning given to "Finance Documents" in the Mezzanine Facility Agreement.

**"Mezzanine Lender"** has the meaning given to "Lender" in the Mezzanine Facility Agreement.

**"Monitoring Surveyor"** means such firm or firms acceptable to the Lender who are appointed from time to time by or on behalf of the Lender or the Security Agent (after consultation with the Obligors' Representative) from time to time to advise in relation to the Development of a Property, on such terms as are acceptable to the Lender, acting reasonably.

**"Month"** 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:

- (a) (subject to paragraph (c)) 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;
- (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
- (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.

The above rules will only apply to the last Month of any period.

**"Net Disposal Proceeds"** means, in relation to a Development or a Property, the Disposal Proceeds derived from the disposal of such Development or Property after deducting costs and expenses (including any VAT chargeable in respect of those costs and expenses) incurred as a result of the relevant disposal and approved in writing by the Facility Agent (such approval not to be unreasonably withheld or delayed).

**"Net Rental Income"** means Rental Income from a Residential Unit or Commercial Unit in respect of a Property other than (without double counting):

- (a) Tenant Contributions; and
- (b) any amount of fees falling due for payment to the Managing Agent pursuant to the Managing Agent's Appointment.

**"New Homes Warranty"** means the new homes warranty from the New Homes Warranty Provider.

**"New Homes Warranty Provider"** means [REDACTED] or such other provider which has been approved in writing by the Facility Agent (such approval not to be unreasonably withheld or delayed).

**"New Lender"** shall have the meaning ascribed to it by Clause 22 (*Changes to the Finance Parties*).

**"N06 Borrower"** means QDD EV N06 Limited.



“**N06 Facility**” means the term loan facility made available to the N06 Borrower in the amount of the N06 Facility Limit for the Development in respect of Property N06 as described in Clause 2 (*The Facilities*).

“**N06 Facility Limit**” means [REDACTED]

“**N06 Headlease**” has the meaning given in Schedule 6.

“**N06 Intermediate Lease**” means each lease of the N06 Property by an N06 Intermediate Lessee.

“**N06 Intermediate Lessee**” means each person to whom a 125 year or, as the case may be, a 995 year lease of the N06 Property has been granted, which has been approved in writing by the Facility Agent (acting reasonably) and who has acceded to the Agreement as an Owner and in respect of whom the documents listed in Schedule 9 (*Intermediate Lessees – Accession Conditions Precedent*) have been provided.

“**N08 Borrower**” means QDD EV N08 Limited.

“**N08 Facility**” means the term loan facility made available to the N08 Borrower and, in the circumstances described in Clause 3.2.2, the N06 Borrower in the amount of the N08 Facility Limit for the Development in respect of Property N08 as described in Clause 2 (*The Facilities*).

“**N08 Facility Limit**” means [REDACTED]

“**N08 Headlease**” has the meaning given in Schedule 6.

“**N08 Intermediate Lease**” means each lease of the N08 Property by an N08 Intermediate Lessee.

“**N08 Intermediate Lessee**” means each person to whom a 125 year or, as the case may be, a 995 year lease of the N08 Property has been granted, which has been approved in writing by the Facility Agent (acting reasonably) and who has acceded to the Agreement as an Owner and in respect of whom the documents listed in Schedule 9 (*Intermediate Lessees – Accession Conditions Precedent*) have been provided.

“**Obligor**” means each Borrower and, following accession as an Obligor in accordance with this Agreement, each Intermediate Lessee.

“**Obligors’ Representative**” means QDD EV N08 Limited or such other person as the Borrowers and the Facility Agent may agree .

“**Occupational Lease**” means any lease, agreement for lease, licence or other occupational interest subject to which an Owner’s interest in a Property is held now or in the future including any guarantee and rent deposit arrangements entered into under the terms of them.

“**Occupied**” shall have the meaning ascribed to it in the Section 106 Agreement.

“**Owner**” means:

- (a) in the case of Property N06, [REDACTED]  
[REDACTED]  
[REDACTED]
- (b) in the case of Property N08, [REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]

**"Party"** means a party to this Agreement.

**"Permitted Disposal"** means:

- (a) of cash by way of payment out of an Account in accordance with this Agreement;
- (b) grant of an Assured Shorthold Tenancy for any Residential Unit for market rent;
- (c) grant of a leasehold interest for a Commercial Unit on full repairing and insuring terms;
- (d) after Practical Completion, the grant by each Borrower of one 995 year lease and one or more 125 year leases, in each case, in favour of an Intermediate Lessee (provided that no Event of Default is continuing);
- (e) part(s) of the Property needed for "utility stations" or "utility services";
- (f) disposals pursuant to Planning and Highway Legislation;
- (g) any other disposal permitted under the Finance Documents; and
- (h) disposal of a Property in a single transaction, provided that:
  - (i) the Loan to Value will be no greater than [REDACTED] after the Disposal Proceeds have been applied in prepayment of the Loan; and
  - (ii) no Event of Default is continuing.

**"Permitted Indebtedness"** means Indebtedness:

- (a) under or permitted by the Finance Documents;
- (b) under or permitted by the Mezzanine Finance Documents; and
- (c) any Subordinated Debt.

**"Permitted Security Interest"** means:

- (a) a Security Interest created by, or arising out of, this Agreement, any of the Finance Documents, the Mezzanine Finance Documents, the Subordinated Creditors' Security Documents [REDACTED];
- (b) a Security Interest arising by operation of law in the ordinary course of the Borrowers' business;

- (c) arising out of retention of title provisions in suppliers standard conditions;  
or
- (d) any Security Interest created with the prior written consent of the Facility Agent.

“**Plan**” means the plan attached at Schedule 12.

“**Planning Acts**” means the “**consolidating Acts**” as defined in the Planning (Consequential Provisions) Act 1990, and any other legislation relating to town and country planning in force from time to time and all orders, regulations and instruments relating to the use and/or occupation of a Property made under such Acts.

“**Planning Consultant**” means [REDACTED] or such other firm of planning consultants appointed by [REDACTED] Limited or, following the date of this Agreement, the relevant Borrower in connection with the relevant Development.

“**Plot N05**” means the land shown edged red and marked N05 on the Plan.

“**Plot N05 Conditions**” means the Post Games Affordable Housing Units in Plot N05 are Substantially Complete and have been transferred to an Affordable Housing Provider.

“**Plot N16**” means the land shown edged red and marked N16 on the Plan.

“**Plot N18**” means the land shown edged red and marked N18 on the Plan.

“**Plot N19**” means the land shown edged red and marked N19 on the Plan.

“**Practical Completion**” means, in relation to each Property, the date upon which:

- (a) the criteria for the issue of the certificate of practical completion (as defined in the Building Contract applicable to that Property) have been met; and
- (b) that certificate of practical completion has been issued in accordance with the Building Contract.

“**Post Games Affordable Housing Units**” has the meaning given in the Section 106 Agreement.

“**Pre-approved Bank**” means [REDACTED]

“**Pre-approved Contractor**” means:

- (a) any of the following firms:
  - [REDACTED]
  - [REDACTED]
  - [REDACTED]
  - [REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]; or

- (b) any other firm or contractor agreed in writing by the Facility Agent (acting on the instructions of the Original Lender) which in the opinion of the Facility Agent is of comparable experience, reputation and financial strength as the firms listed in (a) above.

**“Private Rental”** means the letting of a Residential Unit on the open market for private residential purposes.

**“Professional Contracts”** means the appointments of the Material Professional Consultants.

**“Projected Costs”** means, in relation to each Development, at any time, the latest estimate by the Monitoring Surveyor (having regard to the representations of the Borrowers) of each of the items of costs and expenses specified in the Budgeted Costs incurred, and to be incurred, by the relevant Borrower in connection with that Development.

**“Property”** means each of Property N06 and Property N08.

**“Property N06”** means the property so described in Schedule 6 (*Property*).

**“Property N08”** means the property so described in Schedule 6 (*Property*).

**“Property Protection Loan”** means a loan made by a Lender to the Borrower to:

- (a) finance the Development materially in accordance with the Specifications (or as the Facility Agent may require to be updated where necessary to comply with any law or for health and safety reasons); or
- (b) otherwise protect or preserve any Security Interest, or assets the subject of any Security Interest, constituted by the Security Documents,

in circumstances where an Obligor is obliged under a Finance Document but has failed to pay the relevant amount except where such failure is as a result of the Lender’s failure to fund a Utilisation it is obliged under this Agreement to fund.

**“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.

**“Public Body”** means a public office or department of the Crown within the meaning of section 936(2)(c) of the ITA.

**“Qualifying Lender”** means:

- (a) a Lender which is beneficially entitled to interest payable to that Lender in respect of a Loan under this Agreement and is:
  - (i) a Lender:
    - (A) which is a bank (as defined for the purpose of section 879 of 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
    - (B) 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 ITA) at the time that that advance was made and within the charge to United Kingdom corporation tax as respects any payment of interest made in respect of that advance; or
  - (ii) a Lender which is:
    - (A) a company resident in the United Kingdom for United Kingdom tax purposes;
    - (B) a partnership each member of which is:
      - (1) a company so resident in the United Kingdom; or
      - (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
    - (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
    - (D) a Public Body; or
  - (iii) a Treaty Lender; or
- (b) a Lender which is a building society authorised under the Building Societies Act 1986 and which has the benefit of section 880 of ITA.

**"Receiver"** means any one or more receiver or receiver and manager or administrative receiver appointed by the Security Agent (whether sole, joint and/or several and including any substitute).

**"Rectification Account"** means the account with the Account Bank and any successor account opened and maintained by the Account Bank designated as such by the Facility Agent and the Obligors' Representative under the terms of this Agreement.

**"Rent Account"** means each account with the Account Bank designated as such by the Facility Agent and the Obligors' Representative under the terms of this Agreement.

**"Rental Income"** means the aggregate of all amounts paid or payable to or for the account of an Owner in connection with the letting of any part of the Property, including each of the following amounts:

- (a) rent, licence fees and equivalent amounts paid or payable;
- (b) any sum received or receivable from any deposit held as security for performance of a tenant's obligations (but not any Residential Unit Deposit);
- (c) a sum equal to any apportionment of rent allowed in favour of the Owner;
- (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 amendment, waiver, surrender or release of any lease;
- (g) any sum paid or payable by any guarantor of any occupational tenant under any lease;
- (h) any Tenant Contributions; and
- (i) 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 an Owner.

**"Repayment Date"** means [REDACTED]

**"Repeating Representations"** means each of the representations set out in Clause 13.1 (*Status*), Clause 13.2 (*Binding obligations*), Clause 13.3 (*Non-conflict with other obligations*), Clause 13.4 (*Power and authority*), Clause 13.5 (*Validity and admissibility in evidence*) Clause 13.9.1, (*No Default*) Clause 13.13 (*No proceedings pending or threatened*) and Clause 13.17.1 (*Legal and beneficial ownership of assets*).

**"Requisite Consents"** means those permissions (including planning permission and approval of reserved matters), consents, approvals, licences, certificates, registrations and authorisations which may be necessary to enable a Borrower to carry out, complete and use the relevant Development.

**"Requisite Rating"** means, with respect to any person:

- (a) a rating which meets the following requirements in relation to a bank at which an Account is held, its short term unsecured debt instruments in issue which are neither subordinated nor guaranteed with a rating of at least two of the following: F2 (or better) by Fitch, P2 (or better) by Moody's and A-2 (or better) by S&P; or
- (b) any bank in the United Kingdom at which an Account is held where that bank has the express support of the Bank of England.

**"Reservations"** means each and all of the following reservations that:

- (a) equitable remedies may be granted or refused at the discretion of the court;
- (b) there are limitations on enforcement by laws relating to insolvency generally and other laws generally affecting the rights of creditors;
- (c) there is time barring of claims under the Limitation Act 1980 or other applicable laws;
- (d) there is the possibility that an undertaking to assume liability for or to indemnify against non-payment of United Kingdom stamp duty land tax may be void;
- (e) there may be defences of set-off or counterclaim (provided that nothing in this definition purports to grant to the relevant person any such right and is without prejudice to any restriction contained in the Finance Documents) and similar principles, rights and defences under the laws of any foreign jurisdiction in which relevant obligations may have to be performed;
- (f) the limitation of the enforcement of the terms of leases of real property by laws of general application to those leases; and
- (g) 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 Facility Agent as a condition precedent on or before the first Utilisation Date.

**"Residential Unit"** means a unit at a Property primarily used and designated as residential premises.

**"Section 106 Agreement"** means the agreement made pursuant to Section 106 of the Town and Country Planning Act 1990 dated 30 March 2012 as varied by the deed of variation and supplemental agreement, both dated 25 March 2014.

**"Security Agent"** means the "Security Agent" under and as defined in the Intercreditor Deed.

**"Security Documents"** means each of:

- (a) the debentures (including a legal charge over the Properties), granted by the Owners in favour of the Security Agent; and
- (b) any other document entered into by any Obligor creating or expressed to create any Security Interest over all or any part of its assets in respect of the obligations of any Obligor under any of the Finance Documents.

**"Security Interest"** means any mortgage, pledge, lien, charge, security assignment, hypothecation, security trust, encumbrance or security interest and any other agreement or arrangement entered into to create or confer security over any asset.

**"Shareholder"** means [REDACTED]

**"Specifications"** means the detailed drawings, specifications, layout plans, landscaping layout and relevant Development constraints plans, highways drainage and other infrastructure works submitted by the Borrowers and approved by the Facility Agent and the Monitoring Surveyor as a condition precedent under this Agreement before the first Utilisation Date and as amended from time to time with the consent of the Facility Agent (such consent not to be unreasonably withheld or delayed).

**"Structural Engineer"** means [REDACTED] or such other structural engineer appointed by [REDACTED] or, following the date of this Agreement, the relevant Borrower in connection with the relevant Development and approved by the Facility Agent.

**"Subordination Accession Agreement"** has the meaning given to it in a Subordination Agreement.

**"Subordination Agreement"** means the subordination agreement in the Agreed Form and made between, amongst others, the Mezzanine Lender, the Original Lender, the Borrowers and the Shareholder.

**"Subordinated Creditor"** means:

- (a) an Obligor;
- (b) the [REDACTED]
- (c) the Shareholder; or
- (d) any other person who becomes a Subordinated Creditor in accordance with this Agreement or a Subordination Agreement.

**"Subordinated Creditors Security Documents"** means any agreement creating a Security Interest in favour of a Subordinated Creditor as security for any Subordinated Debt provided by that Subordinated Creditor.

**"Subordinated Debt"**, in relation to a Subordinated Creditor, has the meaning given to it in the Subordination Agreement entered into, or acceded to, by that Subordinated Creditor.

**"Subsidiary"** means either a subsidiary within the meaning of section 1159 of the Companies Act 2006 or a subsidiary undertaking within the meaning of section 1162 of the Companies Act 2006.

**"Substantially Complete"** shall have the meaning ascribed to it in the Section 106 Agreement.

**"Target Practical Completion Date"** means:

- (a) in the case of Property N08, [REDACTED]; and



(b) in the case of Property N06, [REDACTED]

or, in each case, the date falling six months thereafter if [REDACTED] is not appointed as the Contractor.

**"Target Start Date"** means:

(a) in the case of Property N08, [REDACTED]; and

(b) in the case of Property N06, [REDACTED]

or, in each case, the date falling six months thereafter if [REDACTED] is not appointed as the Contractor.

**"Tax"** 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).

**"Tax Confirmation"** means a confirmation by a Lender that the person beneficially entitled to interest payable to that Lender in respect of a Loan under a Finance Document falls under any of the categories as set out under paragraph (a)(ii)(A) to paragraph (a)(ii)(D) in the definition of Qualifying Lender and will continue to do so.

**"Tenant Contributions"** means any amount paid or payable to a Borrower by any tenant in respect of a Residential Unit or Commercial Unit on a Property under a lease or any other occupier in respect of a Property, by way of:

(a) contribution to:

(i) ground rent;

(ii) insurance premia;

(iii) the cost of an insurance valuation;

(iv) a service or other charge in respect of costs in connection with any management, repair, maintenance or similar obligation or in providing services to a tenant of, or with respect to, a Property or the common parts of the estate of which the Property forms part; or

(v) a reserve or sinking fund; or

(b) VAT.

**"Total Commitments"** means [REDACTED]  
[REDACTED]  
[REDACTED]

**"Transaction Documents"** means each and all of:

(a) the Finance Documents;

(b) the Development Documents;

(c) the Mezzanine Finance Documents;

- (d) contracts in connection with any disposal expressly permitted by the terms of this Agreement or made with the prior written consent of the Facility Agent pursuant to Clause 16.4.2 (*Disposals*); and
- (e) any other contracts so designated by the Obligors' Representative and the Facility Agent.

**"Transfer Certificate"** means a transfer certificate substantially in the form set out in Schedule 5 (*Form of Transfer Certificate*) or any other form agreed between the Facility Agent and the Borrowers.

**"Transfer Date"** means, in relation to a transfer, the later of:

- (a) the proposed Transfer Date specified in the relevant Transfer Certificate; and
- (b) the date on which the Facility Agent executes the relevant Transfer Certificate.

**"Treaty Lender"** means a Lender which:

- (a) is treated as a resident of a Treaty State for the purposes of the Treaty; and
- (b) does not carry on a business in the United Kingdom through a permanent establishment with which that Lender's participation in the Loans is effectively connected; and
- (c) meets all other conditions in the Treaty for full exemption from United Kingdom taxation on interest which relate to the Lender (including its tax or other status, the manner in which or the period for which it holds any rights under this Agreement, the reasons or purposes for its acquisition of such rights and the nature of any arrangements by which it disposes of or otherwise turns to account such rights).

**"Treaty State"** means a jurisdiction having a double taxation agreement (a **"Treaty"**) with the United Kingdom which makes provision for full exemption from tax imposed by the United Kingdom on interest.

**"UK Non-Bank Lender"** means, 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 Transfer Certificate which it executes on becoming a Party.

**"Unpaid Sum"** means any sum due and payable but unpaid by an Obligor under the Finance Documents.

**"Utilisation"** means a utilisation of a 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 (*Utilisation Request*) delivered in accordance with Schedule 4 (*Utilisation Request Timeline*).

**"Valuation"** means the Initial Valuation and each other valuation, in form and substance satisfactory to the Facility Agent, prepared by the Valuer and addressed

to the Finance Parties in respect of each Borrower's interest in the relevant Development on a Market Value basis.

"**Valuer**" means [REDACTED] or such other valuer or surveyor as may be appointed by the Facility Agent (in consultation with the Borrowers) for the purposes of carrying out a valuation of the Property pursuant to this Agreement.

"**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 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 Headings in this Agreement are for convenience only and do not affect its construction or interpretation.

1.2.2 Unless the contrary intention appears or where otherwise defined or interpreted, references in this Agreement to:

- (a) any party to any Finance Document shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
- (b) a document in "**agreed form**" is a document which is previously agreed in writing by or on behalf of the Borrowers and the Majority Lenders;
- (c) "**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.
- (d) 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.
- (e) "**including**" or "**in particular**" shall not limit words and expressions in connection with which they are used;
- (f) "**in connection with**", "**under**", "**pursuant to**", "**by virtue of**" or "**in relation to**" shall include each of the others;
- (g) a time of day is a reference to London time;
- (h) an obligation of any party to the Finance Documents (other than the Lenders) to do something shall include an obligation to procure that it is done and an obligation not to do something shall include an obligation not to permit, suffer or allow it;
- (i) "**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;

- (j) a Default which is "**continuing**" is continuing if it has not been waived in writing by the Facility Agent or remedied;
- (k) a "**person**" includes (where the context allows) any person, company, corporation, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality);
- (l) a "**regulatory requirement**" shall include any regulation, rule, official directive, request or guideline (whether or not having the force of law which, if not having the force of law, with which it is customary to comply) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
- (m) "**Sterling or £**" means pounds sterling; and
- (n) a provision of law is a reference to that provision as amended or re-enacted and includes subordinate legislation.

1.2.3 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.

1.2.4 This Agreement is subject to the Intercreditor Deed. In the event of inconsistency between this Agreement and the Intercreditor Deed, the Intercreditor Deed shall prevail.

1.2.5 The obligations of the Borrowers under each Finance Document are joint and several.

### 1.3 **Cost Overruns**

1.3.1 A Cost Overrun shall be regarded as **funded**:

- (a) to the extent an amount with respect to that Cost Overrun is deposited into the General Account out of the proceeds of Subordinated Debt or subscription by the Shareholder for ordinary shares in the share capital of the relevant Borrower [REDACTED]; or
- (b) to the extent there is a Cost Saving that is available to be offset against that Cost Overrun.

### 1.4 **Disposition of Property**

The terms of any other Finance Document and of any side letters between the parties to this Agreement are incorporated into each Finance Document to the extent required for the purported disposition of the Property contained in any Finance Document to be a valid disposition in accordance with section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989.

### 1.5 **HCA Standard Terms**

For so long as the Original Lender or any other Public Body is a Finance Party under this Agreement, the provisions of Schedule 10 (*HCA Standard Terms*) shall apply in addition, and without prejudice, to the remaining terms of this Agreement.

## 1.6 **New Lender Terms**

Following the transfer of the Facility by the Original Lender to a New Lender which is not a Public Body, the provisions of Schedule 11 (*New Lender Terms*) shall apply in addition, and without prejudice, to the remaining terms of this Agreement.

## 1.7 **Development Undertakings**

In respect of the undertakings given by each Obligor under Clause 18 (*Development Undertakings*), where consent is required from the Facility Agent to the terms of the Building Contracts for the Development:

- (a) in relation to the Building Contracts for both Property N06 and Property N08, it shall be deemed unreasonable for the Facility Agent to withhold or delay consent to any of the Construction Excluded Matters covered in them; and
- (b) it shall be deemed unreasonable for the Facility Agent to withhold or delay consent to terms of the appointment of the Building Contract for Property N06 if and to the extent that such terms are in substantially the same form as those for the Building Contract for Property N08 as set out in the Construction Report.

## 2 **THE FACILITIES**

### 2.1 **The Facilities**

Subject to the terms of this Agreement, the each Lender agrees to:

- (a) make available to the N06 Borrower the N06 Facility and, in the circumstances and to the extent contemplated in Clause 3.2.2, the unutilised amount of the N08 Facility; and
- (b) make available to the N08 Borrower the N08 Facility,

in an aggregate amount equal to the Total Commitments.

### 2.2 **Property Protection Loan**

2.2.1 Subject to Clause 2.2.3 below, a Lender may, with the consent of the Facility Agent, make a Property Protection Loan whether requested by a Borrower or not.

2.2.2 Each Property Protection Loan shall:

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

2.2.3 Unless an Event of Default has occurred and is continuing, a Lender shall give no less than ten Business Days' prior written notice to the relevant Borrower of its intention to make a Property Protection Loan and that Lender shall not make that Property Protection Loan if that Borrower pays the amount it is obliged under a Finance Document to pay before the expiry of those ten Business Days.

## 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 shall be a separate and independent debt.

2.3.3 A Finance Party may, except as otherwise stated in the Finance Documents, separately enforce its rights under the Finance Documents.

## 2.4 **Obligors' Representative**

Each Obligor irrevocably appoints the Obligors' Representative on its behalf to supply all information concerning itself contemplated by this Agreement to the Lenders, to give all notices and instructions (including Utilisation Requests), to make such agreements and to effect the relevant amendments, supplements and variations capable of being given, made or effected by any Obligor notwithstanding that they may affect an Obligor, without further reference to or the consent of that Obligor.

## 3 **PURPOSE**

### 3.1 **Purpose of the N06 Facility**

The N06 Borrower must apply all amounts borrowed by it under the N06 Facility towards financing the costs and expenses referred to in the Budgeted Costs for the Development of Property N06 as outlined in the Development Details and which include financing interest payable under this Agreement and costs and fees (including, without limitation, legal and valuation fees) incurred by the N06 Borrower relating to this financing.

### 3.2 **Purpose of the N08 Facility**

3.2.1 The N08 Borrower must apply all amounts borrowed by it under the N08 Facility towards financing the costs and expenses referred to in the Budgeted Costs for the Development of Property N08 as outlined in the Development Details and which include financing interest payable under this Agreement and costs and fees (including, without limitation, legal and valuation fees) incurred by the N08 Borrower relating to this financing.

3.2.2 The N06 Borrower must apply all amounts borrowed by it under the N08 Facility pursuant to a Utilisation Request referred to in 4.3.1(a)(iii) towards financing the costs and expenses referred to in the Budgeted Costs for the Development of Property N06 as outlined in the Development Details and which include financing interest payable under this Agreement and costs and fees (including, without limitation, legal and valuation fees) incurred by the N06 Borrower relating to this financing.

### 3.3 **No 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 **Conditions precedent to signing of this Agreement**

It shall be a condition precedent to the effectiveness of this Agreement that the Facility Agent has confirmed in writing to the Original Lender and the Borrowers that it has received the documents and other evidence listed in Schedule 2, Part 1 (*Conditions precedent to signing of this Agreement*) in form and substance satisfactory to it.

### 4.2 **Conditions precedent to first Utilisation**

A Borrower may not deliver a Utilisation Request in respect of the first Utilisation under this Agreement:

- (a) until the Facility Agent has received all of the documents and other evidence listed in Schedule 2, Part 2 (*Conditions precedent to first Utilisation*) in form and substance satisfactory to the Facility Agent and the Facility Agent has notified the Original Lender and the Borrowers in writing that this is the case; and
- (b) unless it has confirmed to the Facility Agent that:
  - (i) there is no outstanding breach of any term of any Development Document; and
  - (ii) no person has disputed, repudiated or disclaimed liability under any Development Document or evidenced an intention to do so,

where any such breach, dispute, repudiation or disclaimer would have a Material Adverse Effect.

### 4.3 **Further conditions precedent**

4.3.1 Subject to Clause 4.1 and Clause 4.2, a Lender will only be obliged to comply with Clause 5.4 (*Lender's participation*) if:

- (a) on the date of that Utilisation Request and on the proposed Utilisation Date:
  - (i) no Default is continuing or would result from the proposed Loan; and
  - (ii) the relevant Borrower has certified to the Facility Agent that the Repeating Representations are true in all material respects and has provided such additional evidence in support thereof as the Facility Agent may reasonably require; and
  - (iii) in the case of a Utilisation Request from the N06 Borrower in respect of the N08 Facility, Practical Completion of Property N08 has occurred and the Monitoring Surveyor has confirmed that any

costs and expenses associated with the Development of Property N08 have been paid, or that funds are available to pay them;

- (b) immediately following the making of a Loan the relevant Loan (when aggregated with all other Loans under the Facility then outstanding or requested) would not exceed the Facility Limit for that Facility; and
- (c) details of the costs to be funded from the relevant Loan have been provided to and verified by the Monitoring Surveyor; and
- (d) the Loan to Cost will not exceed ■■■ per cent.; and
- (e) there are no outstanding Cost Overruns that have not been funded.

4.3.2 For the avoidance of doubt, the requirements of Clause 4.3.1(a) shall apply equally to any request made by the N06 Borrower to utilise any unused portion of the N08 Facility to finance the development of Property N06.

## 5 UTILISATION

### 5.1 Utilisation of a Facility

Each Borrower may utilise the relevant Facility by delivery to the Facility Agent of a duly completed Utilisation Request in accordance with Schedule 4 (*Utilisation Request Timeline*) not later than 10.00 am at least 10 days before the date on which a Loan is required.

### 5.2 Completion of a Utilisation Request

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

- (a) it specifies the purpose of the Loan; and
- (b) the proposed Utilisation Date is a Business Day within the Availability Period.

5.2.2 Evidence of the purpose of a Loan will comprise:

- (a)
  - (i) an invoice (receipted 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 (receipted 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; and
- (b) a certificate from the relevant Borrower, countersigned by the Monitoring Surveyor, 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 (*Completion of a Utilisation Request*),

each in form and substance satisfactory to the Facility Agent.

- 5.2.3 Only one Loan for each Borrower may be requested in each Utilisation Request.
- 5.2.4 No more than one Loan for each Borrower may be requested in any calendar month.
- 5.2.5 Each Borrower agrees to use reasonable endeavours to procure that all relevant information required by the Monitoring Surveyor to respond is provided in accordance with the timetable specified in Schedule 4 (*Utilisation Request Timeline*).
- 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 undrawn amount of a Facility.
- 5.4 **Lender's participation**
- 5.4.1 If the conditions set out in this Agreement are met:
- (a) each Lender shall make each Loan available by the relevant Utilisation Date through its Facility Office;
  - (b) the amount of each Lender's participation in each Loan will be equal to the proportion borne by its Commitments immediately prior to making that Loan;
  - (c) the Facility Agent shall notify each Lender of the details of each Loan and the amount of that Loan by 4.00 pm two clear Business Days before the date on which that Loan is required.
- 5.5 **Cancellation on expiry of Availability Period and further extension**
- 5.5.1 If first Utilisation under this Agreement has not occurred by 28 February 2017 the Facility Agent may (acting on the instructions of the Lenders) cancel the whole of the Facilities.
- 5.5.2 Any undrawn part of a Facility shall be automatically cancelled on the last day of the Availability Period.
- 5.5.3 Any cancellation under this Clause 5.5 (*Cancellation on expiry of Availability Period and further extension*) shall reduce the relevant Commitment of the Lenders under the Facilities.
- 5.5.4 Where the expiry of the Availability Period occurs prior to Practical Completion, the Lenders in their absolute discretion may consider an extension of the Availability Period but are in no way obligated to extend the Availability Period.
- 5.5.5 If the Lenders do not agree to extend the Availability Period, then, subject to the Loan to Cost (calculated by reference to the most recent Budgeted Costs) being 45 per cent. or less, each Borrower may draw the undrawn amount of the Facilities

and shall deposit the funds drawn into the relevant Drawdown Account. Funds in a Drawdown Account after the Availability Period will be released to fund Budgeted Costs on the same terms as Loans drawn (or to be drawn) for the same purpose under this Agreement.

5.6 **Cancellation: non-commencement of Development**

The Facility in respect of a Property will be cancelled if the relevant Borrower fails to commence works for the Development of that Property by the Target Start Date for that Property, unless otherwise agreed between the Facility Agent and the relevant Borrower.

6 **REPAYMENT**

6.1 **Repayment**

Subject to any provision of this Agreement requiring earlier payment, the Liabilities shall be paid and repaid in full on the Repayment Date.

6.2 **No reborrowing**

A Borrower may not reborrow any part of a Facility which is repaid.

7 **PREPAYMENT AND CANCELLATION**

7.1 **Mandatory prepayment: illegality**

If, in any applicable jurisdiction, it becomes unlawful or contrary to any request from, or any requirement of, any central bank or fiscal, monetary or other authority (whether or not having the force of law, but, where not having the force of law, being a request or requirement with which institutions such as a Lender would be accustomed to comply) for a Lender to perform any of its obligations as contemplated by this Agreement or to fund or maintain its participation in any Loan or it becomes unlawful for any Affiliate of a Lender for that Lender to do so:

- (a) that Lender shall promptly notify the Facility Agent upon becoming aware of that event;
- (b) upon the Facility Agent notifying the relevant Borrower, the Commitment of that Lender will be immediately cancelled; and
- (c) the relevant Borrower shall prepay that Lender's participation in the Loans:
  - (i) on the last day of the Interest Period occurring after the Facility Agent has notified the relevant Borrower; or
  - (ii) if earlier, the date specified by that Lender in the notice delivered to the Facility Agent (being no earlier than the last day of any applicable grace period permitted by law).

7.2 **Mandatory prepayment: change of control**

██  
██  
██

■ [REDACTED]  
[REDACTED]

■ [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**7.3 Voluntary prepayment**

Subject to Clause 7.5 (*General restrictions on cancellation and prepayment*) and Clause 10 (*Indemnities*), a Borrower may, if it gives the Facility Agent not less than 10 Business Days (or such shorter period as the Majority Lenders may agree) prior notice, prepay the whole or any part of any Loan (but, if in part, in a minimum amount of [REDACTED]).

**7.4 Voluntary cancellation**

Subject to Clause 7.5 (*General restrictions on cancellation and prepayment*) and Clause 10 (*Indemnities*), a Borrower may, if it gives to the Facility Agent:

- (a) not less than 5 Business Days (or such shorter period as the Majority Lenders may agree) prior notice; and
- (b) evidence in form and substance satisfactory to the Facility Agent (acting on the instructions of the Majority Lenders) that it has available to it (following such cancellation) sufficient funds to carry out and complete the relevant Development in accordance with the terms of this Agreement,

cancel the whole or any part (being a minimum amount of [REDACTED] or an integral multiple thereof, if more) of the relevant Facility. Any cancellation under this Clause 7.4 (*Voluntary cancellation*) shall reduce the Commitments under the relevant Facility.

**7.5 General restrictions on cancellation and prepayment**

- 7.5.1 Any notice of cancellation or prepayment given under this Clause 7 (*Prepayment and Cancellation*) 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.
- 7.5.2 Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid and Break Costs (if applicable) without premium, fee or penalty.
- 7.5.3 No repayment, prepayment or cancellation is allowed except at the times and in the manner expressly provided for in this Agreement.
- 7.5.4 No amount cancelled under this Agreement may be subsequently reinstated.
- 7.5.5 Upon receipt of a notice of prepayment or cancellation, the Facility Agent will notify a Lender concerned promptly of the terms of such notice.

7.5.6 If all or part of a Loan is repaid or prepaid and is not available for redrawing (other than by operation of Clause 4.3 (*Further conditions precedent*)), an amount of the Commitments (equal to the amount of the Loan which is repaid or prepaid) will be deemed to be cancelled on the date of repayment or prepayment. Any cancellation under this Clause 7.5.6 shall reduce the Commitments of the Lenders rateably.

8 **INTEREST**

8.1 **Calculation of interest**

The rate of interest on each Loan for each Interest Period is the percentage rate per annum which is the aggregate of the:

- (a) Margin; and
- (b) the applicable EC Reference Rate as at the start of the relevant Interest Period.

8.2 **Payment of interest**

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

8.3 **Capitalisation**

8.3.1 Subject to Clause 8.3.2, Interest payable on each Interest Payment Date falling before the Interest Payment Start Date will be automatically capitalised on that Interest Payment Date and added to the principal amount of the Loan. References to a Loan will include the capitalised interest added to it. From and including the Interest Payment Start Date, interest payable on each Interest Payment Date shall be payable by the Borrowers in cash or as otherwise agreed by the Lenders in their absolute discretion (acting reasonably).

8.3.2 Clause 8.3.1 will not apply if:

- (a) to the extent any of the relevant interest is funded out of moneys in the Rent Account in accordance with the terms of the Intercreditor Deed; or
- (b) an Event of Default is continuing.

8.3.3 The Borrowers will not be required to submit any Utilisation Request in respect of the capitalisation of interest under this Clause.

8.4 **Default interest**

8.4.1 [REDACTED]

8.4.2 If any Unpaid Sum consists of all or part of a Loan which became due on a day which was not the last day of an Interest Period:

(a) the first Interest Period for that Unpaid Sum shall have a duration equal to the unexpired portion of the current Interest Period; and

(b) [REDACTED]

8.4.3 Default interest (if unpaid) arising on the Unpaid Sum will be compounded with the Unpaid Sum at the end of each Interest Period applicable to that Unpaid Sum but will remain immediately payable.

8.5 **Notification of interest rate**

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

8.6 **Hedging**

8.6.1 Each Borrower has the right (but not the obligation) to enter into any master agreement, confirmation, schedule or other agreement for the purpose of hedging interest payable under this Agreement (each a "**Hedging Agreement**").

8.6.2 Each Hedging Agreement must be with a hedge counterparty acceptable to the Facility Agent (acting reasonably) and on such terms as are consistent with the terms of the Intercreditor Deed.

9 **INTEREST PERIODS**

9.1 **Interest Periods**

9.1.1 The period for which each Loan is outstanding will be divided into successive Interest Periods.

9.1.2 Prior to Practical Completion, 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. The first Interest Period for a Loan will end on the final day of the month in which its Utilisation Date falls, with successive Interest Periods being one month in length.

9.1.3 On and from Practical Completion, 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 shall end on the next Interest Payment Date or such other period agreed between the Borrower and the Facility Agent (acting on the instructions of the Majority Lenders).

9.2 **Non-Business Days**

If an Interest Period would otherwise end on a day which is not a Business Day, that Interest Period will instead end on the next Business Day in that calendar month (if there is one) or the preceding Business Day (if there is not).

9.3 **Consolidation of Loans**

The Facility Agent may adjust the Interest Period of any Loan so as to ensure that the Interest Period of all Loans then outstanding expires on the same date and are then consolidated into, and treated as, a single Loan.

#### 9.4 **Changes to Interest Periods**

The Facility Agent and the Borrower may enter into such other arrangements as they may agree for the determination and adjustment of Interest Periods.

### 10 **INDEMNITIES**

#### 10.1 **Currency indemnity**

10.1.1 If any sum due from an Obligor under the Finance Documents (a "**Sum**"), or if 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 that Obligor; or
- (b) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

that Obligor shall, as an independent obligation, within five Business Days of demand, indemnify each Finance 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:

- (i) the rate of exchange used to convert that Sum from the First Currency into the Second Currency; and
- (ii) the rate or rates of exchange available to that person at the time of its receipt of that Sum.

10.1.2 Each Obligor 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.

#### 10.2 **Other indemnities**

Each Obligor shall, within five Business Days of demand, indemnify each Finance Party against any cost, loss or liability incurred by that Finance Party as a result of:

- (a) the occurrence of any Event of Default;
- (b) the failure of an Obligor to pay any amount due under a Finance Document on its due date;
- (c) funding, or making arrangements to fund, its participation in a Loan requested in a Utilisation Request but not made by reason of the operation of any provision of this Agreement (other than by reason of default or negligence by that Finance Party alone); or
- (d) a Loan (or part of a Loan) not being prepaid in accordance with a notice of prepayment given by or on behalf of a Borrower.

#### 10.3 **Indemnity to the Facility Agent**

Each Obligor shall promptly indemnify the Facility Agent against any cost, loss or liability incurred by the Facility Agent (acting reasonably) as a result of investigating any event which it reasonably believes is a Default.

## 11 MITIGATION

### 11.1 Mitigation

Each Finance Party shall, in consultation with the Borrowers, take all reasonable steps to mitigate any circumstances which arise and which would result in the Facilities ceasing to be available or any amount becoming payable under or pursuant to, or cancelled pursuant to, Clause 7.1 (*Mandatory prepayment: illegality*) including (but not limited to) transferring its rights and obligations under the Finance Documents to an Affiliate or another Facility Office. This does not in any way limit the obligations of any Obligor under the Finance Documents.

### 11.2 Limitation of indemnity

11.2.1 The Borrowers shall within five Business Days of demand indemnify each Finance Party for all costs and expenses reasonably incurred by that Finance Party as a result of steps taken by it under Clause 11.1 (*Mitigation*).

11.2.2 A Finance Party is not obliged to take any steps under Clause 11.1 (*Mitigation*) if, in its opinion (acting reasonably), to do so might be prejudicial to it.

## 12 COSTS AND EXPENSES

### 12.1 Transaction expenses

The Borrowers shall promptly and in any event within five Business Days of demand pay to the Facility Agent the amount of all costs and expenses pre-agreed with the Obligors' Representative (including legal, valuation and other professional or other costs, fees and expenses) properly incurred by any of the Finance Parties in connection with the negotiation, preparation, printing, execution, syndication and perfection of:

- (a) this Agreement and any other documents referred to in this Agreement or in a Security Document; and
- (b) (without prejudice to Clause 12.2 (*Amendment costs*)) any other Finance Document executed after the date of this Agreement.

### 12.2 Amendment costs

If a party to any of the Finance Documents (other than a Finance Party) requests an amendment, waiver or consent or an amendment is required under this Agreement pursuant to a change of currency, the Borrowers shall, within five Business Days of demand, reimburse the Facility Agent for the amount of all costs and expenses pre-agreed with the Obligors' Representative (including legal fees) reasonably incurred by the Facility Agent in responding to, evaluating, negotiating or complying with that request or requirement.

### 12.3 Enforcement and preservation costs

The Borrowers shall, within five Business Days of demand, pay to each Finance Party the amount of all reasonable costs and expenses (including reasonable legal fees) incurred by that Finance Party in connection with the enforcement of, or the preservation of any rights under, any Finance Document or Security Interest constituted by the Finance Documents and with any proceedings instituted by or against that Finance Party as a consequence of it entering into a Finance

Document, taking or holding the Security Interests constituted by the Finance Documents or enforcing those rights.

### 13 **REPRESENTATIONS AND WARRANTIES**

Each Obligor makes the representations and warranties set out in this Clause 13 (*Representations and Warranties*) to each Finance Party and Security Agent on the date of this Agreement.

#### 13.1 **Status**

13.1.1 Each Obligor is a company, duly incorporated and validly existing under the law of its jurisdiction of incorporation.

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

#### 13.2 **Binding obligations**

The obligations expressed to be assumed by it in each Finance Document are, subject to the Reservations, legal, valid, binding and enforceable obligations.

#### 13.3 **Non-conflict with other obligations**

The entry into and performance by it of, and the transactions contemplated by, the Finance Documents do not and will not conflict with:

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

in each case, to an extent which would have a Material Adverse Effect.

#### 13.4 **Power and authority**

13.4.1 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 Finance Documents to which it is a party and the transactions contemplated by those Finance Documents.

13.4.2 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 Finance Documents to which it is a party.

#### 13.5 **Validity and admissibility in evidence**

13.5.1 Subject to the Reservations, all Authorisations required:

- (a) to enable it lawfully to enter into, exercise its rights and comply with its obligations under the Finance Documents to which it is a party; and
- (b) to make the Finance Documents to which it is a party admissible in evidence in its jurisdiction of incorporation and in England and Wales,



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

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

13.6 **Governing law and enforcement**

Subject to the Reservations:

- (a) where English law is the choice as the governing law of any Finance Document, such choice will be recognised and enforced in its jurisdiction of incorporation; and
- (b) any judgment obtained in England in relation to a Finance Document will be recognised and enforced in its jurisdiction of incorporation.

13.7 **No filings or stamp taxes**

- 13.7.1 It is not necessary that the Finance Documents be filed, recorded, notarised or enrolled with any court or other authority or that any stamp, stamp duty, land tax, registration, notarial or similar tax be paid on or in relation to those Finance Documents or the transactions contemplated by those Finance Documents except for any registration due under:

- (a) section 860 of the Companies Act 2006; and
- (b) the Land Registration Act 2002.

- 13.7.2 Any disclosure currently 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.

13.8 **VAT**

No Borrower is a member of a value added tax group.

13.9 **No Default**

- 13.9.1 No Event of Default is continuing or would reasonably be expected to result from the making of any Utilisation or the entry into, or the performance of, or any transaction contemplated by, any Finance Document.
- 13.9.2 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 its assets are subject which has or is reasonably likely to have a Material Adverse Effect.
- 13.9.3 As at the first Utilisation Date, there is no material outstanding breach of any term of any Development Document and no party to any such document has disputed, repudiated or disclaimed liability under any Development Document or threatened in writing an intention to do so.

**13.10 No misleading information**

- 13.10.1 All written information supplied by it or on its behalf to the Lenders in connection with the Finance Documents and the relevant Development was true and accurate as at the date it was provided or as at the date (if any) at which it is stated.
- 13.10.2 The financial projections included in any information provided in writing by it or on its behalf with respect to any Finance Document have been prepared on the basis of recent historical information and on the basis of reasonable assumptions.
- 13.10.3 Nothing has occurred since the information referred to above was provided and no information has been given or withheld that results in any such information being untrue or misleading in any material respect.

**13.11 Auditing basis and no material change**

- 13.11.1 All its accounts and other financial information (whether or not audited) delivered to any Finance Party:
- (a) have been prepared in accordance with GAAP consistently applied; and
  - (b) fairly represent its financial condition as at the date they were drawn up,
- unless, in either case, expressly disclosed in writing to the contrary to the Facility Agent along with the relevant statements.
- 13.11.2 There has been no material adverse change in its financial condition, business or assets since the date of its latest balance sheet and accounts.

**13.12 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.

**13.13 No proceedings pending or threatened**

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

**13.14 Valuation**

- 13.14.1 All written information supplied by it or on its behalf to the Valuer for the purposes of each Valuation was true and accurate in all material respects as at its date or (if appropriate) as at the date (if any) at which it is stated to be given.
- 13.14.2 Any financial projections contained in the information referred to in Clause 13.14.1 have been prepared as at their date, on the basis of recent historical information and on the basis of reasonable assumptions.
- 13.14.3 It has not omitted to supply any information to the Valuer which, if disclosed, would adversely affect the Valuation.

13.14.4 As at the first Utilisation Date, nothing has occurred since the date the information referred to in Clause 13.14.1 was supplied which, if it had occurred prior to the Initial Valuation, would have adversely affected the Initial Valuation in any material respect.

13.15 **Centre of main interests and establishments**

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

13.16 **Environmental**

Save as otherwise disclosed to the Facility Agent on or before the date of this Agreement:

- (a) it has all necessary Environmental Permits relating to the Development;
- (b) it is in compliance with all applicable Environmental Law and (in so far as necessary for the relevant stage of the relevant Development) all necessary Environmental Permits relating to the Development;
- (c) save as disclosed in a Certificate of Title, there is no Environmental Claim current or (to its knowledge and belief) pending or threatened (save where the same is immaterial) in relation to the Development.

13.17 **Legal and beneficial ownership of assets**

13.17.1 Save as disclosed in the Certificate of Title, each Obligor is (or will be from the Utilisation Date) the sole and absolute legal and beneficial owner of, and has good and valid title to, the Charged Assets charged (or intended to be charged) by such Obligor pursuant to the Security Documents, free from any Security Interest other than the Permitted Security Interests.

13.17.2 Except as disclosed in the Certificate of Title:

- (a) all material consents, licences and authorisations required by it in connection with its ownership of the Property have been obtained or effected (as appropriate) and are in full force and effect;
- (b) no breach of any law or regulation (including in respect of any Tax) is outstanding which has a material adverse effect or is reasonably likely to have a material adverse effect on the value of the Property;
- (c) there is no covenant, agreement, stipulation, reservation, condition, interest, right or other matter which materially adversely affects the Property;
- (d) nothing has arisen or has been created or is outstanding which would be an overriding interest or an unregistered interest which overrides the first registration of or registered dispositions over the Property;
- (e) all facilities necessary for the enjoyment and use of the Property (including those necessary for the carrying on of any business of an Obligor at the Property) are enjoyed by the Property;

- (f) no facility necessary for the enjoyment and use of the Property (including those necessary for the carrying on of any business of an Obligor at the Property) is enjoyed by the Property on terms entitling any person to terminate or curtail its use;
- (g) no Obligor has received any notice of any adverse claim by any person in respect of the ownership of the Property or any interest in it which would reasonably be expected to be determined in favour of that person, nor has any acknowledgement been given to any person in respect of the Property; and
- (h) the Property is held by the relevant Borrower free from any tenancy or licence other than those entered into in accordance with this Agreement.

**13.18 Security Interests**

13.18.1 Subject to the Reservations, each Security Document confers or, as the case may be, will confer, upon execution and delivery and, where applicable, registration, a first priority security interest of the type described.

13.18.2 Save for a Permitted Security Interest, no Security Interest exists over any of its assets.

**13.19 No other business**

The Borrowers have not carried on any business or investment activities, and have not incurred any liabilities or undertaken any obligations, since its incorporation other than acquiring, owning, managing the Property, carrying out and completing the relevant Development and any activity referred to in or permitted by the Development Details or pursuant to a Transaction Document.

**13.20 Ranking of Security**

The security conferred by each Finance Document will have the ranking ascribed to it in the Intercreditor Deed.

**13.21 Share capital and ownership**

(a) The entire issued share capital in each Borrower is legally and beneficially owned by the Shareholder.

(b) All of the shares in each Borrower are fully paid up.

**13.22 No employees**

It has not had, at any time, any employees or any obligation in respect of any retirement benefit or occupational pension scheme.

**13.23 Taxes paid**

It has duly and punctually paid all Taxes applicable to, or imposed on or in relation to it, its business, the Charged Assets or otherwise.

**13.24 Repetition of representations**

13.24.1 The representations set out in this Clause 13 (*Representations and Warranties*) are made by each Obligor on the date of this Agreement.

13.24.2 The Repeating Representations are deemed to be made by each Obligor by reference to the facts and circumstances then existing on:

- (a) the date of any Utilisation Request and the first day of each Interest Period; and
- (b) in relation to Clause 13.11 (*Auditing basis and no material change*), each date on which the relevant person delivers or is obliged to deliver the financial statements in accordance with Clause 14.1 (*Financial statements*).

## 14 **INFORMATION UNDERTAKINGS**

The undertakings in this Clause 14 (*Information Undertakings*) 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.

### 14.1 **Financial statements**

Each Obligor shall supply to the Facility Agent in sufficient copies for all the Lenders:

- (a) as soon as they become available, but in any event within 150 days after the end of each of its financial years, its audited financial statements for that financial year;
- (b) from the date of this Agreement, half-yearly profit and loss statements and balance sheets from each Borrower in respect of each Property prepared in accordance with GAAP and which give a true and fair reflection of each Borrower's financial condition for that financial half-year;
- (c) promptly upon receipt, information on acceptance of, provision of or an offer of any other public financial assistance or guarantees in respect of the Development of the Properties;

### 14.2 **Compliance certificate**

Each Borrower shall supply to the Facility Agent, by no later than five Business Days before each Interest Payment Date which falls on or after Practical Completion, a Compliance Certificate signed by one of its directors setting out (in reasonable detail) computations as to compliance with Clause 15 (*Financial Covenant*) in respect of the quarterly period ending on that Interest Payment Date.

### 14.3 **Requirements as to financial statements**

Each set of financial statements delivered pursuant to Clause 14.1 (*Financial statements*) shall be:

- (a) certified by a director of the relevant company to which they relate as being a true and fair view of its financial condition as at the date as at which those financial statements were drawn up and as fairly representing the results of its operations for the period then ending; and
- (b) prepared using GAAP and that any change in the accounting practice or financial reference period from those used in the statements previously supplied are notified to the Facility Agent with sufficient information for the

Facility Agent to make an accurate comparison with the previous statements.

#### 14.4 **Information: miscellaneous**

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

- (a) all documents required by law to be dispatched by (i) each Obligor to its shareholders or members (or any class of them) or (ii) each Obligor's creditors generally, in each case, at the same time as they are dispatched;
- (b) promptly upon becoming aware of them (to the extent they are able to lawfully disclose), 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, have a Material Adverse Effect;
- (c) notice of any court proceedings, arbitration or other legal proceedings (to the extent they are able to lawfully disclose) in respect of any claim relating to the Property [REDACTED] and such further information as the Facility Agent shall reasonably request in relation thereto;
- (d) promptly, such further information regarding its financial condition, business and operations as any Finance Party (through the Facility Agent) may reasonably request, provided that no Borrower shall be obliged to provide any information under this Clause 14.4(d) in relation to any investor in or shareholder of the Obligors or any Holding Company of the Obligors if that Borrower, acting reasonably deems such information to be of a highly sensitive or confidential nature.

#### 14.5 **Information: property reporting following Practical Completion**

By no later than ten Business Days after each Interest Payment Date which falls on or after Practical Completion, each Borrower shall supply to the Facility Agent reports in respect of the quarterly period ending on that Interest Payment Date, containing the following information:

- (a) the number of Residential Units which are subject to binding Occupational Leases on that Interest Payment Date expressed as a percentage of the total number of Residential Units;
- (b) the aggregate contracted Rental Income under all Occupational Leases of Residential Units which are binding on that Interest Payment Date;
- (c) any Tenant Contributions under all Occupational Leases of Residential Units which are binding on that Interest Payment Date;
- (d) the weighted average lease length of the Occupational Leases of all Residential Units which are binding on that Interest Payment Date;
- (e) a tenancy schedule for each Commercial Unit; and

- (f) details of any material capital expenditure which has been undertaken in the six month period prior to the relevant Interest Payment Date with respect to any Residential Unit or any Commercial Unit.

#### 14.6 **Notification of default**

- 14.6.1 Each Obligor shall notify the Facility Agent of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence.
- 14.6.2 Promptly upon a request by the Facility Agent, each Borrower shall supply to the Facility Agent a certificate (which shall contain relevant figures and calculations) signed by one 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).

#### 14.7 **"Know your customer" checks**

- 14.7.1 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 an Obligor, after the date of this Agreement; or
  - (c) a proposed transfer by a Lender of any of its rights and obligations under this Agreement to a party that is not a Lender prior to such transfer,

obliges the Facility Agent or any Lender (or, in the case of Clause 14.7.1(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, each Obligor shall promptly upon the request of the Facility Agent or any Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Facility Agent (for itself or on behalf of any Lender) or any Lender (for itself or in the case of the event described in Clause 14.7.1(b) above, on behalf of any prospective new Lender) in order for the Facility Agent, Lender or, in the case of the event described in Clause 14.7.1(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.

- 14.7.2 Each Lender shall promptly upon the request of the Facility Agent supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Facility Agent (for itself) in order for the Facility 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.

### 15 **FINANCIAL COVENANTS**

#### 15.1 **Loan to Value covenant**

Following Practical Completion of both Properties, the Loan to Value shall not at any time exceed [REDACTED]

## 15.2 **Rectification of breach of Loan to Value covenant**

15.2.1 No Default shall arise as a result of a breach, on any date, of 15.1 (*Loan to Value covenant*) provided that the Borrowers:

- (a) within five Business Days of the earlier of the Borrowers being aware of such breach or the Facility Agent notifying the Borrowers of such breach, notify the Facility Agent in writing that they will remedy such breach; and
- (b) within 15 Business Days of the earlier of the Borrowers being aware of such breach or the Facility Agent notifying the Borrowers of such breach, either:
  - (i) prepay the Loans in accordance with Clause 7.3 (*Voluntary prepayment*) (save that the 10 Business Days' notice of prepayment shall not apply) in an amount such that, immediately following such prepayment, Clause 15.1 (*Loan to Value covenant*) would be satisfied; and/or
  - (ii) subject to Clause 15.2.3, deposit into the Rectification Account an amount which if applied in immediate prepayment in accordance with Clause 7.3 (*Voluntary prepayment*), Clause 15.1 (*Loan to Value covenant*) would be satisfied.

15.2.2 In the event that a payment is made into the Rectification Account pursuant to Clause 15.2.1, such deposits will be released to the General Account specified by the Borrowers following two clear consecutive quarters of compliance with the Loan to Value covenant without consideration to any benefit to the Loan to Value covenant of any deposit in the Rectification Account.

15.2.3 In the event that the aggregate amount of payments made by the Borrowers pursuant to Clause 15.2.1(b) equates to at least █████ of the Total Commitments as at the date of this Agreement, a breach of the Loan to Value covenant will not constitute a Default under this Agreement. For the avoidance of doubt, any payments made pursuant to Clause 15.2.1(b)(ii) and subsequently released to a Borrower pursuant to Clause 15.2.2 shall not be included in any calculation pursuant to this Clause 15.2.3.

## 16 **GENERAL UNDERTAKINGS**

Each Obligor gives the undertakings in this Clause 16 (*General Undertakings*) which 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.

### 16.1 **Authorisation**

It shall promptly:

- (a) obtain, comply with and do all that is necessary to maintain in full force and effect; and
- (b) supply certified copies to the Facility Agent of,

any Authorisation required under any Law or regulatory requirement to enable it to perform its obligations under the Transaction Documents and to ensure the legality, validity, enforceability or admissibility in evidence in its jurisdiction of incorporation and in England and Wales of any Transaction Document.



## 16.2 **Compliance with Laws**

It shall comply in all material respects with all Laws and regulatory requirements to which it may be subject. In addition, if an Obligor becomes aware of any non-compliance with any applicable Law or regulation, or the Facility Agent notifies an Obligor of any non-compliance, the Facility Agent and that Obligor shall consult with each other for a reasonable period of time with a view to the Obligor complying with such applicable law or regulation or remedying the relevant breach as soon as reasonably possible after becoming aware of the same to the satisfaction of the Facility Agent (acting reasonably).

## 16.3 **Negative pledge**

16.3.1 It shall not create or permit to subsist any Security Interest over any of its assets.

16.3.2 Clause 16.3.1 does not apply to any Permitted Security Interest.

## 16.4 **Disposals**

16.4.1 It shall not sell, lease, transfer or otherwise dispose of any asset, or business, undertaking or any investment of any nature.

16.4.2 Clause 16.4.1 does not apply to any disposal made with the prior written consent of the Facility Agent or a Permitted Disposal.

## 16.5 **Merger**

It shall not take any steps with a view to entering into any amalgamation, demerger, merger or corporate reconstruction.

## 16.6 **Change of business**

Each Borrower shall:

- (a) only prior to Practical Completion, conduct the business of acquiring, owning, managing the Property, carrying out and completing the relevant Development and any related activities; and
- (b) only following Practical Completion, conduct the business of owning and managing the Property in each case including any activity referred to in the Development Details or pursuant to a Transaction Document;
- (c) not have any Subsidiary other than as agreed in writing by the Facility Agent; and
- (d) not enter into any joint venture or partnership.

## 16.7 **Financial Indebtedness**

It shall not incur any Indebtedness (including any Financial Indebtedness) other than Permitted Indebtedness.

## 16.8 **Lending and guarantees**

Save as specifically required or permitted by the Finance Documents, it shall not make:

- (a) any loans (other than any Subordinated Debt) or grant any other form of credit; or
- (b) give any guarantee or indemnity,

save as permitted by the Finance Documents or the Mezzanine Finance Documents.

#### 16.9 **Acquisitions**

It shall not (without the prior written consent of the Majority Lenders or as permitted under this Agreement) make any acquisition or investment.

#### 16.10 **Shares and dividends**

16.10.1 It shall not:

- (a) issue any further membership interests or shares (as appropriate) or alter any rights attaching to its membership interests of issued shares (as appropriate) as at the date of this Agreement unless such share capital is subject to Security Interests created under a Security Document;
- (b) pay, make or declare any dividend or other distribution or payment of a similar kind in respect of any of its membership interests or shares (as appropriate) or otherwise; or
- (c) redeem or purchase its own membership interests or shares (as appropriate) or provide financial assistance for any such redemption or purchase.

16.10.2 Clause 16.10.1 above shall not apply to any payment by a Borrower out of monies standing to the credit of the General Account in circumstances where there is no Event of Default continuing and no Event of Default would result from that payment.

#### 16.11 **Constitutional documents**

It shall not, without the prior written consent of the Majority Lenders, make any material change to any of its constitutional documents including its memorandum or articles of association if the same would have a Material Adverse Effect.

#### 16.12 **VAT status**

16.12.1 It shall not form or be a member of any VAT group for the purposes of section 43 of the Value Added Tax Act 1994 other than with another Obligor.

16.12.2 It shall not revoke, or allow to be revoked, any option to tax the Property exercised under part 1 of schedule 10 of the Value Added Tax Act 1994 by it or a relevant associate or a relevant group member (as those expressions are defined for the purposes of that part).

#### 16.13 **Other contracts**

16.13.1 It shall not enter into any contract other than:

- (a) the Transaction Documents;

- (b) contracts required for the day to day management and development of the Property;
- (c) contracts entered into in the ordinary course of business and in accordance with the principles of good estate management; and
- (d) contracts expressly permitted or required by the Finance Documents.

16.13.2 Save as otherwise expressly set out or permitted in this Agreement (or in the case of the Mezzanine Finance Documents as set out or permitted in the Intercreditor Deed (as applicable)) it shall:

- (a) take all steps reasonably available to it to procure the due and punctual performance by the other parties of their material obligations under it; and
- (b) not, except as permitted under the terms of this Agreement or without the prior written consent of the Facility Agent (such consent not to be unreasonably withheld or delayed) take any steps to, or agree to:
  - (i) amend, extend, terminate, cancel, modify, rescind, release, vary or waive any terms of any Transaction Document (save, in the case of an amendment, modification or variation, which is immaterial, corrects a manifest error or is administrative in nature);
  - (ii) surrender, assign or otherwise dispose of any Transaction Document; nor
  - (iii) agree to a change of party to any Transaction Document.

16.14 **Taxes**

It shall:

- (a) maintain its tax residence solely in its jurisdiction of incorporation;
- (b) ensure that all Taxes payable by, or assessed upon, it are paid when due and payable except to the extent that they are contested in good faith and an adequate reserve has been set aside with respect to the unpaid Tax and payment can lawfully be withheld; and
- (c) comply, within all applicable time limits, with all requirements to make, deliver or amend returns required to be made by it to any tax authority.

17 **PROPERTY UNDERTAKINGS**

Each Obligor gives the undertakings in this Clause 17 (*Property Undertakings*) which 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.

17.1 **Repair**

It shall from Practical Completion:

- (a) keep the Property (and any of the other Charged Assets which consist of buildings, structures or equipment) in good and substantial repair and condition in the same manner in which a prudent property owner in the same business as the Borrowers (taking into account wear and tear in the

ordinary course of using the Property or Charged Assets) would ensure and, when necessary, replace, rebuild and renew the same with items of similar quality and value; and

- (b) make good any want of repair in the Property and any fixture or fitting forming part of the Property, save to the extent that the obligation to repair is one to be undertaken by a tenant pursuant to an Occupational Lease unless it is unable to procure compliance by that tenant, having used all commercially reasonable endeavours to do so in which case the responsibility shall be that of the Borrower.

## 17.2 **Power to inspect and remedy**

17.2.1 Following Practical Completion, if it fails at any time to comply with the obligations of Clause 17.1 (*Repair*), it shall subject to the terms of any Occupational Lease be lawful for the Facility Agent (acting upon the instructions of the Lenders) to:

- (a) upon giving reasonable notice (save in the case of an emergency), enter the Property, with or without agents; and
- (b) carry out such works and take such steps as it may determine (acting reasonably) are necessary to remedy or rectify the failure.

17.2.2 The fees, costs and expenses of taking any such action referred to in Clause 17.2.1 will be reimbursed by the Borrower to the Facility Agent upon demand.

17.2.3 Nothing contained in this Clause 17 (*Property Undertakings*) shall render any Finance Party liable to account as mortgagee in possession.

## 17.3 **Alterations**

17.3.1 It shall not:

- (a) do in or on the Charged Assets any waste, spoil or destruction, nor undertake any development on or otherwise make any structural alteration or addition to the Charged Assets, without the prior written consent of the Facility Agent (such consent not to be unreasonably withheld) and, if the Facility Agent gives consent, shall commence, carry out and complete the relevant works without delay in accordance with any conditions of consent and to the satisfaction of the Facility Agent (acting reasonably); nor
- (b) sever, unfix or remove any of the fixtures belonging to it except for the purpose of replacing the same with new or improved models.

17.3.2 Clause 17.3.1 above shall not apply to:

- (a) the Development;
- (b) the maintenance of the buildings, plant, machinery, fixtures and fittings in accordance with the Transaction Documents or any Occupational Lease; or
- (c) the carrying out of non-structural improvements or alterations which affect only the interior of any building on the Property.

#### 17.4 **Granting of Intermediate Leases**

- 17.4.1 The Obligors shall procure the grant of the relevant Intermediate Leases within two months of Practical Completion of the relevant Property.
- 17.4.2 Concurrently with the granting of an N06 Intermediate Lease and/or an N08 Intermediate Lease, the:
- (a) N06 Borrower shall procure the accession of that N06 Intermediate Lessee to this Agreement as an Obligor and an Owner; and
  - (b) N08 Borrower shall procure the accession of that N08 Intermediate Lessee to this Agreement as an Obligor and an Owner; and
  - (c) the N06 Borrower and the N08 Borrower will procure that Manco enters into the relevant Intermediate Leases in the Approved Form and within one month thereafter the relevant Intermediate Lessee is admitted as a member of Manco.
- 17.4.3 Each Borrower acknowledges and agrees that it will not enter into any N06 Intermediate Lease or any N08 Intermediate Lease (as the case may be) without having complied with this Clause 17.4 (*Granting of Intermediate Leases*).
- 17.4.4 The accession of an N06 Intermediate Lessee and/or an N08 Intermediate Lessee pursuant to this Clause 17.4 (*Granting of Intermediate Leases*) shall be subject to the satisfaction of the Intermediate Lessee Conditions Precedent at Schedule 9 (*Intermediate Lessees – Accession Conditions Precedent*), each such condition precedent to be in form and substance acceptable to the Facility Agent (acting reasonably).
- 17.4.5 The Obligors shall procure that voting rights in relation to Manco are not exercised so as to have a material adverse effect upon the Charged Assets insofar as such rights are vested in a company within the same group of companies as [REDACTED] or as the Obligors.

#### 17.5 **Pay rates, charges and taxes**

It shall punctually pay and discharge all existing and future rates and Taxes payable, charged or assessed on or in respect of the Charged Assets and/or their owner or occupier howsoever arising, save to the extent that any tenant under an Occupational Lease is responsible for the payment of such sums.

#### 17.6 **Valuations**

The Facility Agent may, at any time following Practical Completion, require the Valuer to prepare a Valuation of the Property. The relevant Borrower shall be liable to bear the cost of that Valuation:

- (a) once in every 12 Month period from the date of Practical Completion;
- (b) or where a Default is continuing; or
- (c) where any Valuation evidences a breach of the Loan to Value Covenant; or
- (d) for the purposes of determining whether any disposal of a Property in a single transaction is a Permitted Disposal for the purposes of paragraph (h) of the definition thereof.

The cost of any other Valuation shall be for the account of the Lenders.

#### 17.7 **Environmental**

It shall:

- (a) comply, in all material respects, with all Environmental Law and maintain all Environmental Permits necessary for the relevant stage of the relevant Development;
- (b) inform the Facility Agent as soon as reasonably practicable upon becoming aware of the same of any:
  - (i) Environmental Claim which has been commenced;
  - (ii) any contamination to the Environment which might result in an Environmental Claim; and
  - (iii) any Environmental Claim which (to the best of its knowledge and belief) has been threatened against it,in each case, where the Environmental Claim would reasonably be expected, if adversely determined, to have a Material Adverse Effect; and
- (c) indemnify each Finance Party against any loss or liability which that Finance Party incurs as a result of any actual or alleged breach of any Environmental Law by any Obligor relating to the Charged Assets.

#### 17.8 **Compulsory acquisition**

17.8.1 It shall promptly notify the Facility Agent if any government agency or authority makes an order for the compulsory purchase of any part of the Property.

17.8.2 On receipt of a notice in accordance with Clause 17.8.1, the Facility Agent (acting reasonably) shall, if such compulsory purchase would reasonably be expected to materially adversely affect the value of the Property, be entitled to require a revised Valuation of the Property (at the cost of the relevant Borrower), which Valuation shall ignore any part of the Property the subject of that compulsory purchase.

#### 17.9 **Planning**

It shall:

- (a) comply with any conditions attached to any planning permission relating to the Property and comply with all agreements or undertakings under any Planning Acts relating to the Property; and
- (b) not make any application for any planning permission or for any amendments to any Planning Permissions relating to the Property or enter into any agreements or undertakings under any Planning Acts relating to the Property without the prior written consent of the Facility Agent (such consent not to be unreasonably withheld or delayed) provided that this Clause 17.9(b) shall not apply to applications for shopfronts or other minor divisional changes, street and open space furniture, advertisements or plant for air conditioning or ventilation or any of the Construction Excluded Matters.

## 17.10 Notices

It shall:

- (a) as soon as reasonably practicable upon becoming aware of the same notify the Facility Agent of any notice or order (or proposal for the same) in respect of the Charged Assets made by a competent authority;
- (b) produce them to the Facility Agent or the Advisers if requested by the Facility Agent; and
- (c) promptly and at its own cost, take all reasonable and necessary steps to comply with them to the extent required to do so by a competent authority, or (if required by the Facility Agent acting reasonably) make such representations or appeals and/or take such steps as the Facility Agent may reasonably require.

## 17.11 Managing Agents

### 17.11.1 No Obligor shall:

- (a) appoint any Managing Agent other than an Approved Managing Agent;
- (b) amend or waive the terms of any Managing Agent's Appointment; or
- (c) terminate the appointment of any Managing Agent unless an Approved Managing Agent will, no later than the date of such termination, be appointed as a replacement Managing Agent,

without the prior consent of, and on terms approved by, the Facility Agent (such approval not to be unreasonably withheld or delayed).

### 17.11.2 The Borrowers must use commercially reasonable endeavours to ensure that the Managing Agent complies with the terms of the Managing Agent's Appointment.

### 17.11.3 The Borrowers must ensure that each Managing Agent of the Properties:

- (a) enters into a duty of care agreement with the Facility Agent in form and substance satisfactory to the Facility Agent (acting reasonably);
- (b) acknowledges to the Facility Agent that it has notice of the Security Interests 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.

### 17.11.4 If any Managing Agent is in default of its material obligations under the Managing Agent's Appointment and, as a result:

- (a) an Event of Default occurs or is reasonably likely to occur; or
- (b) an Obligor is entitled to terminate the Managing Agent's Appointment,

then, if the Facility Agent (acting in a commercially reasonable manner) so requires, the relevant Obligor must promptly use its reasonable endeavours to:

- (i) terminate the Managing Agent's Appointment; and

- (ii) appoint a new Managing Agent in accordance with this Clause.

## 17.12 Insurance

17.12.1 At all times, from the first Utilisation Date and up to but excluding Practical Completion:

- (a) it shall effect and maintain (or procure the obtaining and maintenance of) insurance which:
  - (i) insure each Obligor in respect of its interests in the relevant Property and the plant and machinery on that 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 as recommended by as appropriate RICS-qualified professional) and to:
    - (A) provide cover against loss of damage by fire, storm, 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;
    - (B) provide cover for site clearance, shoring or propping up, professional fees and value added tax, where irrecoverable, together with adequate allowance for inflation;
    - (C) provide cover against acts of terrorism, including third party liability, up to the limit of indemnity within the third party liability policy, arising from such acts to the extent available in the relevant market; and
    - (D) provide cover for loss of anticipated rent/ revenue or delayed start up (DSU) cover (in respect of a period of not less than three years including provision for any increases in rent during the period of increases in rent during the period of insurance;
  - (ii) include public liability and third party liability insurance;
  - (iii) insure such other risks as prudent company in the same business as the relevant Borrower would insure; and
  - (iv) in each case are in an amount, and in form, and with an insurance company or underwriters, acceptable to the Facility Agent;
- (b) it shall procure that the Security Agent is named as co-insured under each of the insurances created under this Clause 17.12.1 (the "**Pre-Practical Completion Insurances**") (other than professional indemnity, public liability and third party liability insurances) and that the interests of the Security Agent are noted on each insurance policy but without liability on the party of the Security Agent or any other Finance Party for any premium in relation to those Pre-Practical Completion Insurances;



- (c) it shall procure that the Pre-Practical Completion Insurances comply with the following requirements:
  - (i) each of the Pre-Practical Completion Insurances must contain:
    - (A) a non-invalidation and non-vitiation clause under which the Pre-Practical Completion Insurances will not be vitiated or avoided as against an 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 insured party; and
    - (B) a waiver of the rights of subrogation of the insurer as against each Obligor and the Finance Parties;
  - (ii) the insurers must give at least 14 days' notice to the Security Agent if any insurer proposes to repudiate, rescind or cancel any Pre-Practical Completion Insurance, to treat it as avoided in whole or in part, to treat it as expired due to non-payment of premium or otherwise decline any valid claim under it by or on behalf of any insured party and must give the opportunity to rectify any such non-payment of premium within the notice period; and
  - (iii) it shall be free to assign all amounts payable to it under each of its Pre-Practical Completion Insurances and all its rights in connection with those amounts in favour of the Security Agent;
- (d) it shall use all reasonable endeavours to ensure that the Facility Agent receives copies of the Pre-Practical Completion Insurances, receipts for the payment of premiums for insurance and any information in connection with the insurances and claims under them which the Facility Agent may reasonably require;
- (e) it shall promptly notify the Facility Agent of:
  - (i) the proposed terms of any future renewal of any of the Pre-Practical Completion Insurances;
  - (ii) any material amendment, supplement, extension, termination, avoidance or cancellation of any of the Pre-Practical Completion Insurances made or, to its knowledge, threatened or pending;
  - (iii) any claim and any actual or threatened refusal of any claim, under any of the Pre-Practical Completion Insurances; and
  - (iv) any event or circumstance which has led or is reasonably likely to lead to a breach by any Obligor of any term of this Clause 17.12.1;
- (f) it shall:
  - (i) comply with the terms of the Pre-Practical Completion Insurances;
  - (ii) not do or permit anything to be done which may make void or voidable any of the Pre-Practical Completion Insurances; and

- (iii) comply with all reasonable risk improvement requirements of its insurers;
- (g) it shall ensure that:
  - (i) each premium for the Pre-Practical Completion Insurances is paid promptly and in any event within the agreed credit terms for which that premium is payable; and
  - (ii) all other things necessary are done so as to keep each of the Pre-Practical Completion Insurances in force;
- (h) if an Obligor fails to comply with any terms of this Clause 17.12.1, the Facility Agent may, at the expense of the Obligors effect any insurance and generally do such things and take such other action as the Facility Agent may reasonably consider necessary to prevent or remedy any breach of this Clause 17.12.1; and
  - (i) except as provided below, the proceeds of any Pre-Practical Completion Insurances must, if the Facility Agent so requires, be paid into the Disposal Proceeds Account;
  - (ii) to the extent required by the basis of settlement under any Pre-Practical Completion Insurances or under any Lease Document, each Obligor must apply moneys received under any Pre-Practical Completion Insurances in respect of the relevant Property towards replacing, restoring or reinstating that Property;
  - (iii) where Insurance Proceeds are with respect to loss of rent then such proceeds shall be payable to the relevant Obligor and shall be dealt with in the same manner as the insured rental sum, had it been received under the relevant Lease Document;
  - (iv) moneys received under liability policies held by an Obligor which are required by that Obligor to satisfy established liabilities of the Obligor to third parties must be used to satisfy these liabilities; and
  - (v) to the extent that the Insurance Proceeds of any claim in relation to any Pre-Practical Completion Insurance are not used in replacing, restoring or reinstating the relevant Property and do not in aggregate exceed ██████ in respect of any one claim, they shall not be required to be paid into the Disposal Proceeds Account unless an amount of proceeds from Pre-Practical Completion Insurances (to the extent not used in replacing, restoring or reinstating that Property) in excess of ██████ in aggregate has been received by the relevant Borrower in the preceding 12 months, in which case all such proceeds shall be paid into the Disposal Proceeds Account if required by the Facility Agent pursuant to Clause 17.12.1(h)(i) above.

17.12.2 At all times from and including Practical Completion:

- (a) it shall effect and maintain (or procure the obtaining and maintenance of) insurance which:
  - (i) accords with the terms of any Headlease granted over the relevant Property and which will accord with any Intermediate Lease; and

- (ii) provide cover for loss of rent (in respect of a period of not less than three years including provision for any increases in rent during the period of insurance (the "**Loss of Rent Insurances**");
- (b) it shall procure that the insurable interests of the Security Agent are noted under the Loss of Rent Insurances but without liability on the part of the Security Agent or any other Finance Party for any premium in relation to the Loss of Rent Insurances;
- (c) it shall procure that the Loss of Rent Insurances comply with the following requirements:
  - (i) the Loss of Rent Insurances must contain:
    - (A) a non-invalidation and non-vitiation clause under which the Loss of Rent Insurance will not be vitiated or avoided as against an insured party as a result of any circumstances beyond the control of the 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 insured party; and
    - (B) a waiver of the rights of subrogation of the insurer as against each Obligor, the Finance Parties and the tenants of each Commercial Unit and each Residential Unit;
  - (ii) the insurers must give at least 14 days' notice to the Security Agent if any insurer proposes to repudiate, rescind, cancel any Loss of Rent Insurance, to treat it as avoided in whole or in part, to treat it as expired due to non-payment of premium or otherwise decline any valid claim under it by or on behalf of any insured party and must give the opportunity to rectify any such non-payment of premium within the notice period; and
  - (iii) the relevant Obligor must be free to assign all amounts payable to it under the Loss of Rent Insurances and all its rights in connection with those amounts in favour of the Security Agent;
- (d) it shall promptly notify the Facility Agent of:
  - (i) the proposed terms of any future renewal of any of the Loss of Rent Insurances;
  - (ii) any material amendment, supplement, extension, termination, avoidance or cancellation of any of the Loss of Rent Insurances made or, to its knowledge, threatened or pending; and
  - (iii) any claim, and any actual or threatened refusal of any claim, under any of the Loss of Rent Insurances in excess of [REDACTED]

and shall, to the extent notice thereof is received by it, notify the Facility Agent of the same in relation any insurances of whatever nature maintained by Manco pursuant to any Headlease or any Intermediate Lease;
- (e) it shall comply with the terms of any insurance created under this Clause 17.12.2 ("**Post-Practical Completion Insurance**") and not do or

knowingly permit anything to be done which may make void or voidable any of such insurance;

- (f) it shall ensure that each premium for the Loss of Rent Insurances is paid promptly;
- (g) if an Obligor fails to comply with any term of this Clause 17.12.2, the Facility Agent may, at the expense of the Obligors, effect any insurance and generally do such things and take such other action as the Facility Agent may reasonably consider necessary to prevent or remedy any breach of this Clause 17.12.2; and
  - (i) any Insurance Proceeds (other than Insurance Proceeds which represent proceeds in respect of any Loss of Rent Insurances or liability policies) shall, to the extent required by the basis of settlement under any Post-Completion Insurance or under any Lease Document, be applied towards replacing, restoring or reinstating the relevant Commercial Units, Residential Units or otherwise in amelioration of the loss in respect of which the applicable claim was made;
  - (ii) except as provided in Clause 17.12.1(g)(i) above, if an Event of Default is continuing any proceeds of any Insurance Proceeds (other than Insurance Proceeds which represent proceeds in respect of any Loss of Rent Insurances or liability policies) must, if the Facility Agent so requires, be paid into the Disposal Proceeds Account for the application in accordance with the requirements of the Intercreditor Deed;
  - (iii) insurance Proceeds in respect of any Loss of Rent Insurances will be treated as Rental Income and applied to have effect as if it were rental Income received over the period of the loss of rent; and
  - (iv) moneys received under liability policies held by an Obligor which are required by that Obligor to satisfy established liabilities of the Obligor to third parties must be used to satisfy those liabilities.

#### 17.13 **Failure to comply with insurance obligations**

If there is a failure to comply with any provision of this Agreement in relation to insurance, the Facility Agent and/or its nominees may (without reference to the Lenders and without any obligation to do so, but acting reasonably) immediately effect the insurance concerned at the expense of the Borrowers.

#### 17.14 **Use**

17.14.1 The Property shall only be used for the purposes of carrying out and completing the relevant Development and thereafter for such uses contemplated by the Development Details.

17.14.2 Without the prior written consent of the Facility Agent (such consent not to be unreasonably withheld), there shall be no application for any material change of use.

17.14.3 From and including Practical Completion of the Residential Units the Borrowers may not use or permit the use of any Residential Unit other than for Private Rental purposes.

17.15 **Title**

It shall:

- (a) exercise its rights and comply in all respects with any covenant, stipulation or obligation (restrictive or otherwise) at any time affecting a Property; and
- (b) not agree to any amendment, supplement, waiver, surrender or release of any covenant, stipulation or obligation (restrictive or otherwise) at any time affecting the Property without the prior written consent of the Facility Agent.

17.16 **Title deeds**

It shall deposit with the Security Agent the deeds and documents of title relating to the Property or an undertaking for them to be held to order.

17.17 **Records**

Each Borrower is to maintain and keep up to date a property information file in respect of the Property containing:

- (a) A register containing a summary of each of the Tenancy Agreements;
- (b) copies of all the Tenancy Agreements and any licences, rent review memoranda and other deeds or documents that are supplemental or ancillary to or that vary the Tenancy Agreements;
- (c) details of all rent and service charge payable;
- (d) copies of all insurance contracts and schedules for the Property and for any plant, machinery and equipment forming part of the Property; and
- (e) copies of all inspection certificates that are required to be kept in relation to any plant, machinery and equipment forming part of the Property.

17.17.2 The Borrowers are to provide on request (and where lawful to do so) all copy documents and records in respect of the Property as may reasonably be required by the Facility Agent, any auditor of the Parties or any legal or other professional advisor or any regulatory or governmental body.

17.17.3 The Borrowers will also retain (in a secure manner reasonably satisfactory to the Facility Agent) all original documentation relating to the Property including any relating to the New Homes Warranty together with copies of all relevant title information.

18 **DEVELOPMENT UNDERTAKINGS**

Each Obligor gives the undertakings in this Clause 18 (*Development Undertakings*) which 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 Requisite consents**

It shall:

- (a) as and when each are required for the purposes of the relevant Development, use reasonable endeavours to obtain all Requisite Consents where failure to do so would have a Material Adverse Effect;
- (b) observe and perform the terms of the Requisite Consents; and
- (c) do anything reasonably necessary to preserve and maintain in full force and effect and (where necessary) renew the Requisite Consents.

**18.2 The Development**

- (a) It shall commence the design and demolition works in connection with the relevant Development (and the Monitoring Surveyor shall confirm the same to the Facility Agent) by the Target Start Date for that Property and carry out and complete that Development:
  - (i) in accordance with the Development Details;
  - (ii) in a good, proper and workmanlike manner and in accordance with general building practice and in any event to comply with the Construction (Design and Management) Regulations 2007;
  - (iii) with all materials to be of the kinds and standards specified under the Building Contract; and
  - (iv) without infringement of any rights, reservations, covenants, restrictions, stipulations or other encumbrances binding on it.

**18.3 Practical Completion**

Notwithstanding any other provision of this Agreement it shall achieve Practical Completion by the Target Practical Completion Date save for any reasonable extension of time approved by the Facility Agent (acting reasonably) permitted for force majeure events under the Building Contract.

**18.4 New Homes Warranty**

It shall procure that a cover note from the New Homes Warranty Provider is issued upon Practical Completion confirming the Residential Units have (in accordance with the New Homes Warranty) received a satisfactory final inspection.

**18.5 Professional indemnity**

It shall use commercially reasonable endeavours to procure that the Contractor, each Material Sub-Contractor and each Material Professional Consultant maintains professional indemnity insurance with a limit of not less than [REDACTED] in respect of each claim or such other amount as approved by the Facility Agent (acting on the instructions of the Lender).

**18.6 Alterations to Development**

It shall:

- (a) not make any amendment, waiver or release of any Development Document; and
- (b) only be entitled to proceed with the relevant Development in accordance with the Development Details;

save where prior notice has been given to the Facility Agent and the relevant variation:

- (i) is required by any Law for health and safety reasons;
- (ii) does not increase or decrease the size of each of Property N06 and Property N08 by more than five units provided that for both together the number shall not be greater than five;
- (iii) does not have a material and adverse effect on the size, specification or lay-out of that Development; or
- (iv) shall not delay Practical Completion or occupation or use of that Development beyond the Target Practical Completion Date,

or otherwise with the consent (such consent not to be unreasonably withheld or delayed) in writing of the Facility Agent (acting reasonably).

## 18.7 **Cost Overruns and Use of Contingencies**

18.7.1 It shall not, without the consent of the Facility Agent, incur any cost or expense for goods or services in connection with the relevant Development which is not anticipated in the Budgeted Costs unless it is funded by way of Subordinated Debt, the subscription by the Shareholder for further shares in the relevant Borrower, a Cost Saving [REDACTED]  
[REDACTED]

18.7.2 Part or parts of the Contingency may be allocated to an item of costs and expenses in the Budgeted Costs provided that the Monitoring Surveyor confirms to the Facility Agent that the remaining unallocated Contingency shown in the Budgeted Costs, when aggregated with the remaining available Facility, the remaining available facility under the Mezzanine Facility Agreement and any amounts available to the relevant Borrower out of the proceeds of Subordinated Debt or subscription by the Shareholder for ordinary shares in the share capital of the relevant Borrower, will be sufficient to carry out and complete the Development as required by this Agreement. The relevant amount of Contingency shall be allocated and the Budgeted Costs shall be amended accordingly. A Borrower may not utilise the Contingency except in accordance with this Clause 18.7 (*Cost Overruns and Use of Contingencies*).

## 18.8 **Provision of information relating to the Development and Plot N05**

18.8.1 Each Borrower must supply to the Facility Agent and the Monitoring Surveyor, 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. 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 (together with any associated VAT) incurred by the Borrowers in connection with the Development to date;
- (c) a reconciliation of recoverable and irrecoverable VAT as against the most recent Budgeted Costs;
- (d) 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 the resulting Cost Overruns and Cost Savings (if any);
- (e) 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 the Cost Overruns and Cost Savings (if any) anticipated as a result;
- (f) details of the amount of VAT:
  - (i) paid by each Borrower in that month; or
  - (ii) reclaimed and received by each Borrower in that month and, where applicable, details of the application of amounts received when applied to the Budgeted Costs; and
- (g) if sums have been deposited into any Drawdown Account pursuant to Clause 5.5.5 (*Cancellation on expiry of Availability Period and further extension*), a monthly statement showing credits and debits into and out of each Drawdown Account.

18.8.2 Upon request, each Borrower must provide to the Facility Agent and the Monitoring Surveyor such information relating to Plot N05 as they may reasonably require in relation to the progress of the development thereof and of the satisfaction of the Plot N05 Conditions.

18.8.3 Upon not less than five Business Days' notice from the Facility Agent, it shall give the Facility Agent and the Advisers (and in particular the Monitoring Surveyor) reasonable access to the Property subject to compliance with all reasonable health and safety rules and procedures (provided that the Borrowers shall not be obliged to provide any such access more than once in a calendar month unless the Facility Agent has reasonable grounds for believing that a Default has occurred and is continuing) and the information and assistance they require from time to time to enable them to monitor and evaluate the Development on behalf of the Facility Agent and in particular (but without limitation):

- (a) the progress of the Development;
- (b) the quality of the Development and materials; and
- (c) the costs being incurred.

18.8.4 It shall:

- (a) hold project meetings on a regular basis at least once a month, giving to the Facility Agent and the Monitoring Surveyor at least five Business Days' prior written notice of each meeting, together with copies of the agenda and papers to be considered at the relevant meeting, allow them to be present and participate at the discussions at meetings and give them



copies of the minutes of all meetings, including any which they do not attend; and

- (b) allow the Facility Agent to call a meeting with the Borrowers no more than once per financial quarter (or more frequently if the reasonable opinion of the Facility Agent an Event of Default has occurred and is continuing) on reasonable prior written notice being not less than five Business Days and ensure the Borrowers shall ensure that a representative with the necessary authority and knowledge of the relevant Development attend the meeting.

18.8.5 Upon becoming aware of the same, it shall notify the Monitoring Surveyor of the appointment of any sub-contractor which has a material [design] responsibility or a significant value, whereupon the Monitoring Surveyor (having regard to representations of the Obligors' Representative) will determine (acting reasonably) whether or not that sub-contractor is a Material Sub-Contractor.

## 18.9 **Inspection of Development and Practical Completion**

It shall:

- (a) allow the Advisers to inspect the Development at any time upon not less than five Business Days' notice prior to the date on which the Employer's Agent intends to carry out an inspection of the Development in connection with the issue of a statement of Practical Completion and, if the Advisers make observations about the Development, particularly about items which they consider necessary to be done before the statement of Practical Completion is issued, give due regard to those observations (but without limiting the rights and obligations of the Employer's Agent in relation to the issue of the statement of Practical Completion);
- (b) procure that a copy of the statement of Practical Completion is delivered to the Facility Agent and its Monitoring Surveyor as soon as reasonably practicable upon receipt; and
- (c) take all practicable steps to procure the making good of all items reasonably specified in any snagging or defects list issued pursuant to the terms of the Building Contract on or following Practical Completion and the making good of all such defects within the rectification period specified in the Building Contract.

## 18.10 **Appointment of Contractor and the Material Professional Consultants**

18.10.1 Other than in respect of the appointment of:

- (a) any of the Material Professional Consultants appointed on or before the date of this Agreement;
- (b) an Approved Contractor under a Building Contract; or
- (c) a Material Sub-Contractor under a Material Sub-Contractor Appointment,

it shall obtain the prior written consent of the Facility Agent (acting on the instructions of the Majority Lenders) to the appointment (and to the terms of appointment and (save for variations made in accordance with Clause 18.6 (*Alterations to Development*)) any variation or termination of them) of any:

- (i) Contractor; or
- (ii) Material Professional Consultant in relation to the Development,

such consent not to be unreasonably withheld or delayed.

18.10.2 It shall as soon as reasonably practicable procure a Collateral Warranty in favour of the Security Agent from any Contractor, Material Sub-Contractor and Material Professional Consultant.

#### 18.11 **Termination of Contractor and/or Material Professional Consultant**

18.11.1 If a Borrower becomes entitled to terminate the employment of the Contractor or any Material Professional Consultant under a Development Document, that Borrower shall on request by the Facility Agent (acting reasonably):

- (a) terminate such employment;
- (b) replace the relevant party with a new party approved by the Facility Agent under a new contract on terms approved by the Facility Agent (such approval not to be unreasonably withheld or delayed); and
- (c) simultaneously with any appointment, use commercially reasonable endeavours to obtain a Collateral Warranty from that new party (such approval not to be unreasonably withheld or delayed), provided that the Facility Agent will not require termination of the employment of the relevant person unless:
  - (i) it considers that a failure to replace that person may have a material and adverse effect on the timing, cost, size, specification, value or quality of the relevant Development or adversely affect saleability of a Unit and/or that Development; and
  - (ii) the relevant Borrower has failed to rectify the breach within 90 days (or such other period agreed between that Borrower and the Lenders) of it becoming aware that such breach has occurred.

18.11.2 In the event that the responsibility of the Contractor for ground conditions agreed under the Building Contract for Property N08 and/or the Building Contract for Property N06 is less than the full responsibility for ground conditions imposed by clause 2.41 currently prescribed for the Building Contract for Property N08 as set out in the Construction Report, the Borrower shall procure a collateral warranty from [REDACTED] in respect of their ground investigation report dated 10 September 2014 in relation to Property N08 and/or a collateral warranty in respect of their ground investigation report dated 11 February 2015 in relation to Property N06.

#### 18.12 **Costs of Development**

It shall make provision in a manner satisfactory to the Lenders for the payment and discharge (to the extent not funded out of the Facilities) of all the costs, expenses and other sums required to carry out and complete the relevant Development.

#### 18.13 **Monitoring Surveyor costs**

It shall, within five Business Days of demand, pay to the Lenders, the reasonable costs, fees and expenses properly incurred by it in relation to the employment of

the Monitoring Surveyor in relation to the Finance Documents to the extent that such amounts have, prior to an Event of Default, been pre-agreed by the Borrower, acting reasonably.

18.14 **VAT recovery**

It shall promptly and efficiently seek recovery, in the name of the relevant Obligor, of all VAT refunds to which that Obligor is entitled.

18.15 **Compliance with Development Documents**

It shall use reasonable endeavours to see that the parties to the Development Documents comply in all material respects with their obligations under the Development Documents and to enforce the terms of the Development Documents to the extent that it is commercially feasible to do so.

18.16 **Compliance with the Headlease**

The Obligors shall comply with their respective obligations under each of the Headleases (as tenant) and each Intermediate Lease (as both landlord and tenant) following their grant and shall procure compliance by Manco with its obligations under any such Intermediate Lease.

18.17 **Compliance with the CDM Regulations**

It shall provide or procure the provision to the Health and Safety Executive the particulars specified in schedule 1 of the Construction (Design and Management) Regulations 2007 in respect of the relevant Development.

19 **ACCOUNTS**

The undertakings in this Clause 19 (*Accounts*) 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.

19.1 **Establishment and maintenance of accounts**

19.1.1 Each Borrower shall, on or prior to the first Utilisation Date, open and maintain such Accounts in its name with the designated branch of the Account Bank as agreed with the Facility Agent and as contemplated by the Intercreditor Agreement.

19.1.2 Each Account shall be denominated in Sterling.

19.1.3 Each Borrower may pay to the Account Bank such reasonable transaction charges in accordance with the Account Bank's usual practices for similar accounts as that Borrower may from time to time agree with the Account Bank. No other fee or charges shall be paid to the Account Bank in respect of the Accounts.

19.2 **General provisions relating to the Account Bank**

19.2.1 The Account Bank shall initially operate out of its designated branch in the United Kingdom.

19.2.2 If a Borrower so requests (and the Facility Agent consents (such consent not to be unreasonably withheld or delayed)), the Account Bank shall be changed to a Pre-approved Bank or such other financial institution with the Requisite Rating which

agrees to that appointment and which has its designated branch in London and that Borrower shall do all such things as the Facility Agent reasonably requests to facilitate that change of Account Bank.

### 19.3 **General provisions relating to the Accounts**

19.3.1 Each Account shall:

- (a) bear interest at the rate agreed between the Account Bank and the Borrowers from time to time, such interest to be credited to that Account; and
- (b) save for each General Account and each Drawdown Account prior to the occurrence of an Event of Default which is continuing, name the Facility Agent (or officers of it) as sole authorised signatory.

19.3.2 Each Borrower acknowledges that:

- (a) each Account Bank may maintain the Accounts in accordance with its usual practices and may from time to time sub-divide the Accounts or set up linked Accounts;
- (b) no Obligor (other than any 125 Year Intermediate Lessee) may open or maintain any other account other than the Accounts without the prior written consent of the Facility Agent;
- (c) a 125 Year Intermediate Lessee may open any accounts with the Account Bank that are subject to such security as the Facility Agent may require, acting reasonably;
- (d) despite any other provisions to the contrary, no amount may be released or transferred from any Account if that Account is, or would as a result of such release or transfer become, overdrawn or if an Event of Default (which is continuing) has occurred except, in each case, with the prior written consent of the Facility Agent or to pay the Liabilities in accordance with this Agreement;
- (e) on the Repayment Date or on any part of the Loans becoming immediately due and payable, the Facility Agent may apply the balance standing to the credit of each Account in or towards payment of the Liabilities;
- (f) this Clause 19 (*Accounts*) does not limit or affect its obligations to pay the Liabilities in accordance with the Finance Documents; and
- (g) the Finance Parties shall not be responsible to any Borrower for any non-payment of any of the Liabilities which could be paid out of monies standing to the credit of any Account nor shall the Finance Parties be liable for any withdrawal from an Account wrongly made (except for fraud, gross negligence or wilful misconduct by the Facility Agent).

## 20 **GUARANTEE**

### 20.1 **Financial guarantee**

20.1.1 Subject to Clause 20.1.1(b) below, each Obligor (a "**Guarantor Obligor**") irrevocably and unconditionally, jointly and severally:

- (a) as principal obligor guarantees to the Lender prompt performance of each other Obligor's obligations under the Finance Documents;
- (b) undertakes with the Lender that whenever an Obligor (the "**Defaulting Obligor**") does not pay any amount when due under the Finance Documents, the Guarantor Obligor will forthwith upon demand pay that amount as if the Guarantor Obligor instead of the Defaulting Obligor concerned were expressed to be the principal obligor; and
- (c) indemnifies the Lender on demand against any loss or liability suffered by it if any obligation guaranteed by the Guarantor Obligor under Clause 20.1.1(a) above, or undertaken by the Guarantor Obligor under Clause 20.1.1(b) above, is or becomes unenforceable, invalid or illegal. The amount payable by each Guarantor Obligor under this indemnity shall not exceed the amount it would have to pay under this Clause 20.1 (*Financial guarantee*) if the amount claimed had been recoverable on the basis of a guarantee.

20.1.2 Clause 20.1.1 above shall only apply on or after the occurrence of an Event of Default for so long as it is outstanding.

## 20.2 **Continuing guarantee**

The guarantee in this Clause 20 (*Guarantee*) is a continuing guarantee and will extend to the ultimate balance of all sums payable by the Obligors, regardless of any intermediate payment or discharge in whole or in part.

## 20.3 **Reinstatement**

20.3.1 Where any discharge (whether in respect of the obligations of an Obligor or any security for those obligations or otherwise) is made in whole or in part or any arrangement is made on the faith of any payment, security or other disposition which is avoided or must be restored on insolvency, liquidation, administration or otherwise without limitation, the liability of each Guarantor Obligor under this Clause 20 (*Guarantee*) shall continue or be reinstated as if the discharge or arrangement had not occurred.

20.3.2 The Lender may concede or compromise any claim that any payment, security or other disposition is liable to avoidance or restoration.

## 20.4 **Waiver of defences**

The obligations of each Guarantor Obligor under this Clause 20 (*Guarantee*) will not be affected by an act, omission, matter or thing which, but for this provision, would reduce, release or prejudice any of its obligations under this Clause 20 (*Guarantee*) or prejudice or diminish those obligations in whole or in part, including (whether or not known to it or the Lender):

- (a) any time or waiver granted to, or composition with, an Obligor or other person;
- (b) any failure on the part of any person to satisfy its obligations under the Finance Documents;
- (c) the release of any other person under the terms of any composition or arrangement with any creditor of any member of the Group;

- (d) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, an Obligor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- (e) any incapacity or lack of powers, authority or legal personality of or dissolution or change in the members or status of an Obligor or any other person;
- (f) any amendment (however fundamental) or replacement of a Finance Document or any other document or security so that references to that Finance Document or other document or security in this Clause 20 (*Guarantee*) shall include each amendment or replacement;
- (g) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security, to the intent that the obligations of each Guarantor Obligor under this Clause 20 (*Guarantee*) shall remain in full force and its guarantee be construed accordingly, as if there were no unenforceability, illegality or invalidity;
- (h) any postponement, discharge, reduction, non-provability or other similar circumstance affecting any obligation of an Obligor or any other person under a Finance Document resulting from any insolvency, liquidation or dissolution proceedings or from any law, regulation or order so that each such obligation shall for the purposes of the obligations of each Guarantor Obligor under this Clause 20 (*Guarantee*) be construed as if there were no such circumstance; or
- (i) any natural disaster (including fire, lightning, explosion, storm, earthquake or flooding), war, riot, civil commotion, political or labour unrest or any other event either beyond the control of the person concerned or not foreseen prior to entering into any document, however fundamental, however, for the avoidance of doubt, insofar as the relevant obligation of the Guarantor Obligor is to use reasonable endeavours, nothing in this paragraph will change the nature of that obligation.

## 20.5 **Guarantor intent**

Without prejudice to the generality of Clause 20.4 (*Waiver of defences*), each Guarantor Obligor expressly confirms that it intends that its obligations under this Clause 20.5 (*Guarantor intent*) shall extend from time to time to any (however fundamental) increase or addition of or to any of the Finance Documents and/or any facility or amount made available under any of the Finance Documents for the purposes of or in connection with any of the following: development financing business acquisitions of any nature; increasing working capital; enabling investor distributions to be made; carrying out restructurings; refinancing existing facilities; refinancing any other indebtedness; making facilities available to new borrowers; any other variation or extension of the purposes for which any such facility or amount might be made available from time to time; and any fees, costs and/or expenses associated with any of the foregoing.

## 20.6 **Immediate recourse**

Each Guarantor Obligor waives any right it may have of first requiring the Lender (or any trustee or agent on its behalf) to proceed against or enforce any other

rights or security or claim payment from any person before claiming from the Guarantor Obligor under this Clause 20 (*Guarantee*).

## 20.7 **Appropriations**

Until all amounts which may be or become payable by the Obligors under or in connection with the Finance Documents have been irrevocably paid in full, the Lender (or any trustee or agent on its behalf) may:

- (a) refrain from applying or enforcing any other moneys, security or rights held or received by the Lender (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit and no Guarantor Obligor shall be entitled to the benefit of the same; and
- (b) hold in a suspense account any moneys received from a Guarantor Obligor or on account of the liability of a Guarantor Obligor under this Clause 20 (*Guarantee*).

## 20.8 **Non-competition**

20.8.1 Until all amounts which may be or become payable by the Obligors under or in connection with the Finance Documents have been irrevocably paid in full, no Guarantor Obligor shall, after a claim has been made or by virtue of any payment or performance by it under this Clause 20 (*Guarantee*):

- (a) be subrogated to any rights, security or moneys held, received or receivable by the Lender (or any trustee or agent on its behalf) or be entitled to any right of contribution or indemnity in respect of any payment made or moneys received on account of a Guarantor Obligor's liability under this Clause 20 (*Guarantee*);
- (b) (unless so directed by the Facility Agent, in which case it shall) claim, rank, prove or vote as a creditor of an Obligor or its estate in competition with the Lender (or any trustee or agent on its behalf); or
- (c) (unless so directed by the Facility Agent, in which case it shall) receive, claim or have the benefit of any payment, distribution or security from or on account of an Obligor or exercise any right of set-off as against an Obligor.

20.8.2 Each Guarantor Obligor shall hold in trust (which trust is not intended to create a Security Interest) for and forthwith pay or transfer to the Lender any payment or distribution or benefit of security received by it contrary to this Clause 20.8 (*Non-competition*) or as a result of a direction by the Lender under Clause 20.8.1(b) or Clause 20.8.1(c) above.

## 20.9 **Additional security**

This guarantee is in addition to and is not in any way prejudiced by any other security now or subsequently held by the Lender.

## 21 EVENTS OF DEFAULT AND ACCELERATION

### 21.1 Non-payment

A Obligor 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:

- (a) its failure to pay is caused by:
  - (i) administrative or technical error; or
  - (ii) a Disruption Event; and
- (b) payment is made within five Business Days' of its due date.

### 21.2 Financial covenants

An Obligor does not comply with Clause 15 (*Financial Covenant*) (subject to any cure rights and remedies set out therein).

### 21.3 Other obligations

21.3.1 An Obligor does not comply with any provision of the Finance Documents (to which it is a party) (other than those referred to in Clause 21.1 (*Non-payment*)).

21.3.2 No Event of Default under Clause 21.3.1 shall occur if the failure to comply is capable of remedy and is remedied within five Business Days of the Facility Agent giving notice to the relevant Obligor or, if earlier, that Obligor becoming aware of the failure to comply.

### 21.4 Misrepresentation

Any representation or statement made or deemed to be made by an Obligor in the Finance Documents or any other document delivered by or on behalf of that Obligor under or in connection with any Finance Document (to which it is a party) is, in the opinion of the Facility Agent, or proves to have been, incorrect or misleading in any material respect when made or deemed to be made, unless the circumstances giving rise to the misrepresentation are:

- (a) in the opinion of the Facility Agent capable of remedy; and
- (b) remedied within five Business Days of the Facility Agent giving notice to the relevant Obligor or, if earlier, the Obligor becoming aware of the misrepresentation.

### 21.5 Cross Default

Any:

- (a) Financial Indebtedness of an Obligor is not paid when due nor within any originally applicable grace period;
- (b) Financial Indebtedness of an Obligor is declared to be or otherwise becomes payable before its specified maturity as a result of an event of default (however described);



- (c) commitment for any Financial Indebtedness of an Obligor is cancelled or suspended by a creditor of an Obligor as a result of an event of default (however described); or
- (d) creditor of an Obligor becomes entitled to declare any Financial Indebtedness of an Obligor payable before its specified maturity as a result of an event of default (however described)

and provided that this Clause shall not apply to any Financial Indebtedness incurred under the Mezzanine Facility Agreement or to any Subordinated Debt.

## 21.6 **Insolvency**

21.6.1 An Obligor is unable or admits its inability to pay its debts as they fall due, suspends making payments on any of its debts or, is deemed to, or is declared to, be unable to pay its debts under applicable law by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness.

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

## 21.7 **Insolvency proceedings**

21.7.1 Any corporate action, legal proceedings or other procedure or step is taken, or notice given, 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 an Obligor;
- (b) a composition, assignment, adjustment, compromise, scheme or arrangement with any creditor of an Obligor;
- (c) the appointment of a provisional liquidator, a liquidator, receiver, administrator, administrative receiver, compulsory manager or other similar officer in respect of an Obligor or any of its assets;
- (d) the enforcement of any Security Interest over the assets of an Obligor; or
- (e) any analogous procedure or step is taken in any jurisdiction.

21.7.2 Clause 21.7.1 does not apply to any:

- (a) reconstruction or amalgamation whilst solvent on terms previously approved in writing by the Facility Agent; and/or
- (b) a petition instituted against an Obligor (but not by them) for the winding-up of that party which is frivolous or vexatious and is being diligently contested by the relevant party in good faith and is discharged within ten Business Days of the petition being made.

## 21.8 **Creditors' process**

Any expropriation, attachment, sequestration, distress or execution affects any asset or assets of an Obligor and is not discharged within 30 days.

**21.9 Cessation of Business**

An Obligor suspends or ceases to carry on, (or threatens to suspend or cease to carry on), a substantial part of its business.

**21.10 Headlease**

Forfeiture proceedings with respect to a Headlease are commenced (unless such proceedings have been commenced frivolously or vexatiously or are being contested in good faith by the relevant Borrower) or a Headlease is forfeited.

**21.11 Major Damage**

Other than in respect of any works required in order to carry out and complete the relevant Development in accordance with the terms of this Agreement, any part of the Property is damaged or destroyed and, taking into account the amount, timing and application of the proceeds of any insurance and any other amounts made available to the relevant Borrower by way of Subordinated Debt or the proceeds of subscription by the Shareholder for ordinary shares in the capital of the relevant Borrower, the destruction will have a Material Adverse Effect.

**21.12 Compulsory purchase**

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 which has or is reasonably likely to have a Material Adverse Effect.

**21.13 Unlawfulness**

It is or becomes unlawful for an Obligor to perform any of its obligations under the Transaction Documents to which it is a party.

**21.14 Ranking of Security**

Any Security Interest created by a Finance Document proves to have been or becomes invalid or unenforceable or proves to have ranked after, or loses its priority to, any other Security Interest save as contemplated by the Finance Documents.

**21.15 Transaction Documents**

Any Transaction Document is not, or is alleged by an Obligor not to be binding on or enforceable against such party or effective to create any Security Interest intended or purported to be created by it.

**21.16 Repudiation**

An Obligor repudiates a Transaction Document or evidences an intention to repudiate such a Transaction Document to which it is a party.

**21.17 The Development**

21.17.1 There is an abandonment, suspension or interruption of all or a significant part of the relevant Development for a period exceeding 60 days unless:

- (a) an alternative contractor is selected from the list of Pre-approved Contractors or an alternative contractor is agreed between the Borrowers

and the Facility Agent (taking instructions from the Lenders) within 30 days of the occurrence of such an event; or

- (b) within 90 days of such identification, that alternative contractor is appointed.

21.17.2 Any of the events referred to in Clause 21.6 (*Insolvency*) to Clause 21.8 (*Creditors' process*) occurs in respect of the Contractor and has or is reasonably likely to have a Material Adverse Effect provided that there shall be no Event of Default under this Clause 21.17.2 if:

- (a) within 20 Business Days of any of the relevant events occurring, the identity of an alternative Contractor is agreed between the Borrowers and the Lenders; and
- (b) within 90 days of such agreement, the identified alternative Contractor is appointed on then prevailing market terms;
- (c) the Borrower provides to the Lender a report which highlights the material differences contained in the new Contractor contract when compared with that of the outgoing Contractor; and
- (d) a Collateral Warranty has been provided to the Security Agent by the new Contractor.

## 21.18 **Material Adverse Change**

Any event, or series of events, occurs which has or is reasonably likely to have a Material Adverse Effect.

## 21.19 **Acceleration**

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

- (a) cancel the Facilities, upon which it shall immediately be cancelled;
- (b) 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 payable, upon which they shall become immediately payable;
- (c) declare that all or part of the Loans be payable on demand, whereupon it shall immediately become payable on demand by the Facility Agent acting on the instructions of the Lenders;
- (d) take (or direct the Security Agent to take) any step to enforce any Security Interest or exercise any rights of the Finance Parties under any Finance Document.

## 22 **CHANGES TO THE FINANCE PARTIES**

### 22.1 **Transfers by the Lenders**

Subject to this Clause 22 (*Changes to the Finance Parties*), a Lender (an "**Existing Lender**") may transfer by novation, or otherwise dispose of, any of its rights and obligations under any Finance Document to another bank or financial institution

which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets in the United Kingdom (the "**New Lender**").

## 22.2 **Conditions of transfer**

22.2.1 A Lender may at any time transfer all (or part) of its rights, benefits or obligations under this Agreement, to:

- (a) a bank or a building society licensed to accept deposits by the Bank of England or an insurance provider or a pension fund (after consulting with the Obligors' Agent for a period of not less than 90 days); or
- (b) a Public Body.

22.2.2 A Lender may not transfer all (or part) of its rights, benefits or obligations under this Agreement to a real estate fund, a real estate company, a non-financial investor, a sovereign wealth fund or investor, a private equity fund, a hedge fund, a fund of funds, a debt fund or a lender or investor which is not subject to any regulatory requirements without the prior written consent of the relevant Borrower.

22.2.3 Notwithstanding the provisions of Clause 22.2.1 or 22.2.2 a Lender may at any time while an Event of Default is continuing, transfer all (or part) of its rights, benefits or obligations under this Agreement to a bank or other regulated financial institution without the prior written consent of any Obligor.

22.2.4 A transfer will only be effective if the procedures set out in Clause 22.5 (*Procedure for transfer*) are complied with.

22.2.5 If:

- (a) a Lender transfers or otherwise disposes of 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 transfer, disposal or change occurs, an Obligor would be obliged to make a payment to the New Lender or a Lender acting through its new Facility Office under paragraph 3 (*Increased Costs*) of Schedule 11 (*New Lender Terms*),

then the New Lender or a 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 that Lender acting through its previous Facility Office would have been if the transfer, disposal or change had not occurred.

22.2.6 This Clause 22.2.6 shall not apply in respect of a transfer made in the ordinary course of the primary syndication of the Facility.

22.2.7 Each New Lender, by executing the relevant Transfer Certificate, confirms, for the avoidance of doubt, that the Facility 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 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.

22.2.8 Any transfer by an Existing Lender to a New Lender shall only be effective if it transfers the Existing Lender's share of the Facility pro rata against the Existing Lender's participation in any:

- (a) undrawn Commitment; and
- (b) Loans which remain outstanding,

in each case, as at the date of the relevant transfer.

### 22.3 **Lender Status Confirmation**

22.3.1 Each Lender which becomes a Party to this Agreement after the date of this Agreement shall indicate, in the Transfer Certificate which it executes on becoming a Party, and for the benefit of the Facility 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.

22.3.2 If a New Lender fails to indicate its status in accordance with this Clause 22.3 (*Lender Status Confirmation*) 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 Facility Agent which category applies (and the Facility Agent, upon receipt of such notification, shall inform the Borrower). For the avoidance of doubt, a Transfer Certificate shall not be invalidated by any failure of a Lender to comply with this Clause 22.3 (*Lender Status Confirmation*).

22.3.3 A Lender shall promptly notify the Obligor if there is any change in its Qualifying Lender status from the position set out in the Transfer Certificate or Tax Confirmation (as relevant).

### 22.4 **Limitation of responsibility of Existing Lenders**

22.4.1 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 the Borrowers;
- (c) the performance and observance by each 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.

22.4.2 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 any 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 any Obligor and its related entities whilst any amount is or may be outstanding under the Finance Documents or any Commitment is in force.

22.4.3 Nothing in any Finance Document obliges an Existing Lender to:

- (a) accept a re-transfer from a New Lender of any of the rights and obligations, transferred or disposed of to it under this Clause 22 (*Changes to the Finance Parties*); or
- (b) support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by a Obligor of its obligations under the Finance Documents or otherwise.

## 22.5 Procedure for transfer

22.5.1 Subject to the above, a transfer is effected in accordance with Clause 22.5.2, when the Facility Agent executes an otherwise duly completed Transfer Certificate delivered to it by the Existing Lender and the New Lender. The Facility Agent shall, as soon as reasonably practicable after receipt by it of a duly completed Transfer Certificate appearing on its face to comply with this Agreement and delivered in accordance with this Agreement, execute that Transfer Certificate.

22.5.2 The Facility 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.

22.5.3 Subject to Clause 22.7 (*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 Obligor 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 Obligor 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 each Obligor and the New Lender have assumed and/or acquired the same in place of each Obligor and the Existing Lender;
- (c) the Facility Agent, the Security Agent, the New Lender and other Lenders shall acquire the same rights and assume the same obligations among themselves as they would have acquired and assumed had the New Lender been a Lender signatory to this Agreement with the rights and/or obligations acquired or assumed by it as a result of the transfer and to that extent the Facility Agent 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.

## 22.6 **Copy of Transfer Certificate to Borrowers**

The Facility Agent shall, as soon as reasonably practicable after it has executed a Transfer Certificate, send to the relevant Borrower a copy of that Transfer Certificate.

## 22.7 **Pro-rata interest settlement**

If the Facility 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 22.5 (*Procedure for transfer*) 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 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 22.7 (*Pro-rata interest settlement*) have been payable to it on that date, but after deduction of the Accrued Amounts.

## 22.8 **Participations**

Nothing in this Agreement restricts the ability of any Lender to participate or sub-participate the Facility which it may do without the consent of any other party.

## 23 **CHANGES TO THE OBLIGORS**

### 23.1 **Assignment and transfers by Obligor**

No Obligor may assign any of its rights or transfer any of its rights or obligations under the Finance Documents without the prior written consent of the Lenders.

### 23.2 **New Obligor**

23.2.1 The Facility Agent shall execute an Accession Letter if:

- (a) at the same time or prior to the Accession Letter being delivered to the Facility Agent, the relevant Intermediate Lessee delivers to the Lender such items listed in Schedule 9 (*Intermediate Lessees – Accession Conditions Precedent*) as the Lender determines are required in relation to

that Intermediate Lessee, in each case (other than the updated Certificate of Title), in form and substance satisfactory to the Facility Agent;

- (b) no Default is continuing or would result as a result of the accession of that Intermediate Lessee as a Party; and
- (c) each Party (other than the relevant Intermediate Lessee) irrevocably authorises the Lender to execute any duly completed Accession Letter on its behalf.

23.2.2 The Accession Letter shall take effect on the date of execution of that Accession Letter by the Facility Agent or, if later, the date specified in that Accession Letter.

23.2.3 On delivery of an Accession Letter, the relevant Intermediate Lessee confirms that the representations set out in Clause 13 (*Representations and Warranties*) are true and correct in relation to it as at the date of delivery made by reference to the facts and circumstances then existing.

### 23.3 **Additional Subordinated Creditors**

23.3.1 A Borrower may request that any person becomes a Subordinated Creditor, with the prior approval of the Facility Agent (acting reasonably), by delivering to the Facility Agent:

- (a) a duly executed Subordination Agreement or a Subordination Accession Agreement duly executed by the Borrowers and the new Subordinated Creditor;
- (b) a duly executed Subordinated Creditor's Security Agreement duly executed by the new Subordinated Creditor; and
- (c) such other documents and matters as are specified in the Subordination Agreement as conditions precedent to the Subordination Accession Agreement.

23.3.2 A person referred to in Clause 23.3.1 above will become a Subordinated Creditor on the date the Facility Agent enters into the Subordination Agreement or Subordination Accession Agreement and the Subordinated Creditor's Security Agreement delivered under Clause 23.3.1 above.

23.3.3 If the accession of a Subordinated Creditor requires any Finance Party to carry out all necessary "know your customer" checks or other similar checks under any applicable law or regulation in circumstances where the necessary information is not already available to it, the relevant Borrower must, on request by any Finance Party, supply promptly to that Finance Party any documentation or other evidence which is reasonably requested by that Finance Party (whether for itself, on behalf of any Finance Party or any prospective new Lender) to enable a Finance Party or prospective new Lender to carry out and be satisfied with the results of all applicable "know your customer" checks or other similar checks.

## 24 **ROLE OF THE FACILITY AGENT**

### 24.1 **Appointment of the Facility Agent**

24.1.1 Each other Finance Party appoints the Facility Agent to act as its agent under and in connection with the Finance Documents and, where expressly stated in any



Finance Document, to act as its trustee under and in connection with the Finance Documents.

- 24.1.2 Each other Finance Party authorises the Facility Agent to exercise the rights, powers, authorities and discretions specifically given to them under or in connection with the Finance Documents together with any other incidental rights, powers, authorities and discretions.

## 24.2 **Duties of the Facility Agent**

- 24.2.1 Subject to Clause 22.6 (*Copy of Transfer Certificate to Borrowers*), the Facility Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Facility Agent for that Party by any other Party.

- 24.2.2 Except where a Finance Document specifically provides otherwise, the Facility Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.

- 24.2.3 If the Facility Agent receives notice from a Party referring to this Agreement, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the other Finance Parties.

- 24.2.4 If the Facility Agent is aware of the non-payment of any principal, interest, commitment fee or other fee payable to a Finance Party or Security Agent (other than the Facility Agent) under this Agreement it shall promptly notify the other Finance Parties.

- 24.2.5 The Facility Agent's duties under the Finance Documents are solely mechanical and administrative in nature.

## 24.3 **Limitation on duties of the Facility Agent and exclusion of fiduciary duties**

- 24.3.1 The Facility Agent shall not have any duties or obligations to any person under this Agreement or the other Finance Documents except to the extent that they are expressly set out in this Agreement or the other Finance Documents.

- 24.3.2 Save as otherwise specifically provided in this Agreement, nothing in this Agreement constitutes the Facility Agent as a trustee or fiduciary of any other person.

- 24.3.3 The Facility Agent shall not be bound to account to any Lender for any sum or the profit element of any sum received by it for its own account.

## 24.4 **Business with the Borrowers**

The Facility Agent may accept deposits from, lend money to, and generally engage in any kind of banking or other business with, any of the Borrowers.

## 24.5 **Rights and discretions of the Facility Agent**

- 24.5.1 The Facility Agent may rely on:

- (a) any representation, notice or document believed by it to be genuine, correct and appropriately authorised; and

- (b) any statement made by a director, authorised signatory or employee of any person regarding any matters which may reasonably be assumed to be within his knowledge or within his power to verify.
- 24.5.2 The Facility Agent may assume (unless it has received notice to the contrary in its capacity as agent for the Lenders) that:
  - (a) no Default has occurred (unless it has actual knowledge of a Default arising) under Clause 21 (*Events of Default and Acceleration*);
  - (b) any right, power, authority or discretion vested in any party to the Finance Documents or the Lenders has not been exercised; and
  - (c) any notice or request made by the Borrowers (other than a Utilisation Request) is made on behalf of and with the consent and knowledge of all the Obligors.
- 24.5.3 The Facility Agent may engage, pay for and rely on the advice or services of any lawyers, accountants, surveyors or other experts.
- 24.5.4 The Facility Agent may act in relation to the Finance Documents through its personnel and agents.
- 24.5.5 The Facility Agent may on any terms it chooses (including the power to sub-delegate) delegate all of its rights, powers authorities and discretions under the Finance Documents and shall not be bound to supervise, or be in any way responsible for any loss so incurred, including by their misconduct or default save where the Facility Agent has been negligent in making any such delegation.
- 24.5.6 The Facility Agent may disclose to any other party to any of the Finance Documents any information it reasonably believes it has received as agent under this Agreement or any other Finance Document.
- 24.5.7 Notwithstanding any other provision of any Finance Document to the contrary, the Facility Agent shall not be 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.
- 24.5.8 The Facility Agent may place any of the Finance Documents (and any other instruments, documents or deeds delivered under them) in any safe deposit, safe or receptacle selected by it or any bank, company (whose business includes the safe custody of documents) or any firm of lawyers and shall not be responsible for any loss so incurred save by reason of its own gross negligence or wilful misconduct.
- 24.5.9 The Facility Agent shall not:
  - (a) be bound to enquire the ownership, right, title, value or sufficiency of the Charged Assets or their priority or any Security Interest attaching to them;
  - (b) be under any liability whatsoever to any of the other parties under any of the Finance Documents for any failure or delay in performance, or breach of the obligations of any of the other parties under the Finance Documents;
  - (c) be under any obligations other than those for which express provision is made under this Agreement;

- (d) be under any liability to insure (or to procure the insurance of) the Charged Assets or to enquire as to the adequacy or sufficiency of any insurance; or
- (e) be under any liability for any failure to require the deposit of any document or to obtain or register any licence, consent or other authority relating to the Finance Documents or to effect any registration in respect of the Finance Documents or to take any step to ensure the effectiveness of the security contemplated by the Security Documents save in the case of gross negligence or wilful misconduct.

## 24.6 **Lenders' instructions**

24.6.1 Unless a contrary indication appears in a Finance Document, the Facility Agent shall:

- (a) exercise any right, power, authority or discretion vested in it as agent in accordance with any instructions given to it by the Majority Lenders (or, if so instructed by the Majority Lenders, refrain from exercising any right, power, authority or discretion vested in it as agent); and
- (b) not be liable for any act (or omission) if it acts (or refrains from taking any action) in accordance with an instruction of the Majority Lenders.

24.6.2 Unless a contrary indication appears in a Finance Document, any instructions given by the Majority Lender will be binding on all the Finance Parties.

24.6.3 The Facility Agent may refrain from acting in accordance with the instructions of the Majority Lenders until it has received such security as it may require for any cost, loss or liability (together with any associated VAT) which it may incur in complying with the instructions.

24.6.4 In the absence of instructions from the Majority Lenders, the Facility Agent may act (or refrain from taking action) as it considers to be in the best interest of the Lenders.

24.6.5 No Facility Agent is authorised to act on behalf of the Lenders (without first obtaining the Lenders' consent) in any legal or arbitration proceedings relating to any Finance Document.

## 24.7 **Responsibility for documentation**

The Facility Agent is not:

- (a) responsible for the adequacy, accuracy and/or completeness of any information (whether oral or written) supplied by the Facility Agent or any Obligor or any other person given under or in connection with any Finance Document; or
- (b) responsible for the legality, validity, effectiveness, adequacy or enforceability of any Transaction Document or any other agreement, arrangement or document entered into, made or executed in anticipation of or in connection with any Transaction Document; or
- (c) responsible for any determination as to whether any information provided or to be provided to any Lender is non-public information the use of which

may be regulated or prohibited by applicable law or regulation relating to insider dealing or otherwise.

#### 24.8 **Exclusion of liability**

- 24.8.1 Without limiting Clause 24.8.2, the Facility Agent will not be liable for any action taken by it under or in connection with any Finance Document, unless directly caused by its gross negligence or wilful misconduct.
- 24.8.2 No party (other than the Facility Agent) may take any proceedings against any officer, employee or agent of the Facility Agent in respect of any claim it might have against the Facility Agent or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document and any officer, employee or agent of the Facility Agent may rely on this Clause 24.8 (*Exclusion of liability*) subject to Clause 31 (*Rights of Third Parties*) and the provisions of the Contracts (Rights of Third Parties) Act 1999.
- 24.8.3 The Facility Agent will not 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 it if it 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 it for that purpose.
- 24.8.4 Nothing in this Agreement shall oblige the Facility Agent to carry out any “know your customer” or other checks in relation to any person on behalf of the Lenders and each Lender confirms to the Facility Agent 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 Facility Agent.

#### 24.9 **Lender’s indemnity to the Facility Agent**

- 24.9.1 Each Lender shall indemnify the Facility Agent, within three Business Days of demand, against any cost, loss or liability incurred by the Facility Agent (otherwise than by reason of gross negligence or wilful misconduct of the Facility Agent) in acting in its capacity as Facility Agent under the Finance Documents (unless the relevant Facility Agent has been reimbursed by the Borrowers pursuant to a Finance Document).
- 24.9.2 The Borrowers shall within five Business Days of demand. reimburse on demand each Lender for any payment made by it under Clause 24.9.1.

#### 24.10 **Resignation of the Facility Agent**

- 24.10.1 The Facility 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 Borrowers. If the Original Lender is the Facility Agent, it may resign with immediate effect by giving notice to the other Finance Parties and the Borrowers.
- 24.10.2 Alternatively, the Facility Agent may resign by giving 30 days’ notice to the Lender and the Borrowers, in which case the Majority Lenders (after consultation with the Borrowers) may appoint a successor Facility Agent.
- 24.10.3 If the Majority Lenders have not appointed a successor Facility Agent in accordance with Clause 24.10.2 within 30 days after notice of resignation was given, the retiring Facility Agent (after consultation with the Borrowers) may appoint a successor Facility Agent (acting through an office in the United Kingdom).

- 24.10.4 The retiring Facility Agent shall, at its own cost, make available to the successor Facility Agent such documents and records and provide such assistance as the successor Facility Agent may reasonably request for the purposes of performing its functions as Facility Agent under the Finance Documents.
- 24.10.5 The Facility Agent's resignation notice shall only take effect upon the appointment of a successor.
- 24.10.6 Upon the appointment of a successor, the retiring Facility Agent shall be discharged from any further obligation in respect of the Finance Documents but shall remain entitled to the benefit of Clause 24 (*Role of the Facility Agent*). 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.
- 24.10.7 After consultation with the Borrowers, the Majority Lenders may, by notice to the Facility Agent, require it to resign in accordance with the preceding provisions. In this event, the Facility Agent shall resign in accordance with those provisions (with any associated costs be at the expense of the Lenders).

#### 24.11 **Confidentiality**

- 24.11.1 In acting as agent or trustee for a Lender, the Facility Agent 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.
- 24.11.2 If information is received by a division or department of the Facility Agent other than that division or department responsible for complying with the obligations assumed by the Facility Agent under the Finance Documents, that information may be treated as confidential to that division or department and the Facility Agent shall not be deemed to have notice of it nor shall it be obliged to disclose such information to any party.

#### 24.12 **Relationship with the Lenders**

- 24.12.1 The Facility Agent may treat each Lender as entitled to or liable for any payments under any Finance Document in accordance with this Agreement.
- 24.12.2 Each Lender may by notice to the Facility Agent appoint a person to receive on its behalf all notices, communications, information and documents to be made or despatched to the Lenders 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 29.5 (*Electronic Communication*) electronic mail address and/or any other information required to enable the sending and receipt 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, department and officer by the Lender for the purposes of Clause 29.2 (*Addresses*) and Clause 29.5(a)(i) and the Facility 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.

#### 24.13 **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 Facility Agent 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:

- (a) the financial condition, status and nature of any Obligor;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;
- (c) whether a Lender has recourse, and the nature and extent of that recourse, against any party to any of the Finance Documents or any of its assets under or in connection with any Finance Document, 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;
- (d) the adequacy, accuracy and/or completeness of any information provided by the Facility Agent, any party to any of the Finance Documents or by any other person under or in connection with any Finance Document, 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; and
- (e) the right or title of any person in or to, or the value or sufficiency of any part of the Charged Assets, the priority of the Security Interests created by the Security Documents or the existence of any Security Interests affecting the Charged Assets.

#### 24.14 **Deduction from amounts payable by the Facility Agent**

If any party to any of the Finance Documents owes an amount to the Facility Agent under the Finance Documents the Facility Agent may, after giving notice to that party, deduct an amount not exceeding that amount from any payment to that party which the Facility 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.

#### 25 **CONDUCT OF BUSINESS BY THE FINANCE PARTIES**

No provision of this Agreement will:

- (a) interfere with the right of any Finance Party to arrange its affairs (tax or otherwise) in whatever manner it thinks fit;
- (b) 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
- (c) oblige any Finance Party to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of Tax.

## 26 SHARING AMONG THE FINANCE PARTIES

### 26.1 Payments to Finance Parties

If a Lender (a "**Recovering Lender**") receives or recovers any amount from a Obligor other than in accordance with Clause 27 (*Payment Mechanics*) (a "**Recovered Amount**") and applies that amount to a payment due under the Finance Documents then:

- (a) the Recovering Lender shall, within three Business Days, notify details of the receipt or recovery, to the Facility Agent;
- (b) the Facility Agent shall determine whether the receipt or recovery is in excess of the amount the Recovering Lender would have been paid had the receipt or recovery been received or made by the Facility Agent and distributed in accordance with Clause 27 (*Payment Mechanics*), without taking account of any Tax which would be imposed on the Facility Agent in relation to the receipt, recovery or distribution; and
- (c) the Recovering Lender shall, within three Business Days of demand by the Facility Agent, pay to the Facility Agent an amount (the "**Sharing Payment**") equal to such receipt or recovery, less any amount which the Facility Agent determines may be retained by the Recovering Finance Party as its share of any payment to be made, in accordance with Clause 26 (*Sharing among the Finance Parties*).

### 26.2 Redistribution of payments

The Facility Agent shall treat the Sharing Payment as if it had been paid by the relevant Obligor and shall distribute it among the Finance Parties (other than the Recovering Finance Party) (the "**Sharing Finance Parties**") in accordance with Clause 27.7 (*Application of receipts*) towards the obligations of that Obligor to the Sharing Finance Parties.

### 26.3 Recovering Lender's rights

On a distribution by the Facility Agent under Clause 26.2 (*Redistribution of payments*), of a payment received by a Recovering Finance Party from a Obligor and the Recovering Lender, an amount of the Recovered amount equal to the Sharing Payment will be treated as not having been paid by that Obligor.

### 26.4 Reversal of redistribution

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

- (a) each Sharing Finance Party shall, upon request of the Facility Agent, pay to the Facility Agent for the account of that Recovering Lender 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 Lender for its proportion of any interest on the Sharing Payment which that Recovering Lender is required to pay) (the "**Redistributed Amount**"); and
- (b) 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.

## 26.5 **Exceptions**

- 26.5.1 Clause 26 (*Sharing among the Finance Parties*) shall not apply to the extent that the Recovering Lender would not, after making any payment pursuant to this Clause 26 (*Sharing among the Finance Parties*), have a valid and enforceable claim against the relevant Obligor.
- 26.5.2 A Recovering Lender is not obliged to share with any other Finance Party any amount which the Recovering Lender 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.

## 27 **PAYMENT MECHANICS**

### 27.1 **Payments to the Facility Agent**

- 27.1.1 On each date on which a Obligor or a Lender is required to make a Sterling payment under a Finance Document, that Obligor or that Lender shall make the same available to the Facility 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 Facility Agent as being customary at the time for settlement of transactions in Sterling in the place of payment.
- 27.1.2 Unless a Finance Document specifies otherwise, all payments under the Finance Documents must be made to the Facility Agent at such bank and account as specified under its name in the execution pages of this Agreement or as the Facility Agent may otherwise specify.

### 27.2 **Distributions by the Facility Agent**

Each payment received by the Facility Agent under the Finance Documents for another Party shall, subject as provided below, be made available by the Facility Agent as soon as practicable after receipt to the party entitled to receive payment in accordance with this Agreement (in the case of each Lender, for the account of its Facility Office (if any such Facility Office has been notified to the Facility Agent), to such account as that party may notify to the Facility Agent by not less than five Business Days' notice with a bank in London or, in the case of a Loan, to such account of such person as may be specified in the relevant Utilisation Request.

### 27.3 **Distributions to an Obligor**

The Facility Agent may (with the consent of the relevant Obligor or in accordance with this Agreement) 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 any party under the Finance Documents.

### 27.4 **Clawback**

- 27.4.1 Where a sum is to be paid to the Facility Agent under the Finance Documents for another Party, the Facility 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. However, it may do so if it wishes.

27.4.2 If the Facility Agent pays an amount to another Party and it proves to be the case that the Facility Agent had not actually received that amount, then the Party who should have made that amount (or the proceeds of any related exchange contract) available to the Facility Agent or, if that Party fails to do so, the Party to whom that amount (or the proceeds of any related exchange contract) has been made available by the Facility Agent, shall on demand, pay such amount to the Facility Agent together with interest on that amount from the date of payment to the date of receipt by the Facility Agent, calculated by the Facility Agent to reflect its cost of funds.

27.5 **No set-off by the Obligor**

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

27.6 **Business Day**

Any payment under any Finance Document 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).

27.7 **Application of receipts**

27.7.1 If the Facility Agent receives a payment that is insufficient to discharge all the amounts then due and payable by an Obligor under the Finance Documents (or the provisions of this Clause 27.7 (*Application of receipts*) are otherwise expressed to apply), the Facility 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 of any unpaid fees, costs and expenses and any other liability of the Facility Agent (including any agent, delegate or appointee of any Facility Agent) under the Finance Documents;
- (b) **secondly**, in or towards payment of any accrued interest, costs, fees or commission payable (other than in respect of principal) but unpaid under the Finance Documents;
- (c) **thirdly**, in or towards payment of any principal payable but unpaid under the Finance Documents;
- (d) **fourthly**, in or towards payment of any other sum payable but unpaid under the Finance Documents; and
- (e) **finally**, any surplus will be applied in accordance with the terms of the Intercreditor Deed.

27.7.2 The Facility Agent shall, if so directed by the Majority Lenders, vary the order set out above.

27.7.3 Any application in accordance with this Clause 27.7 (*Application of receipts*) will override any appropriation made by any Obligor.

## 27.8 **Change of currency**

27.8.1 Unless otherwise prohibited by law, if more than one currency or currency unit is 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 Facility Agent (after consultation with the Borrowers); 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 Facility Agent (acting reasonably).

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

## 27.9 **Right of refusal**

Each Obligor acknowledges that the Facility Agent is to be satisfied that any funds used or to be used (directly or indirectly) to achieve any payment under the Finance Documents originates from a source which complies with all money laundering and "**know your customer**" rules and regulations. The Facility Agent shall be entitled to refuse any such payment, prepayment or cancellation if not so satisfied but shall inform the Borrowers as soon as practically possible.

## 28 **SET-OFF**

A Finance Party may set off any matured obligations due from an Obligor under any Finance Document (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.

## 29 **NOTICES**

### 29.1 **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.

### 29.2 **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:

- (a) in the case of a person which is a Party on the date of this Agreement, that identified with its name below;
- (b) in the case where a person becomes a Party after the date of this Agreement, that notified in writing to the Facility Agent on or prior to the date on which that person becomes a Party,

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

### 29.3 **Delivery**

29.3.1 Any communication or document made or delivered by one person to another person 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 two 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 29.2 (*Addresses*), if addressed to that department or officer.

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

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

29.3.4 Any communication or document made or delivered to the Borrowers in accordance with this Clause 29 (*Notices*) shall be deemed to have been made or delivered to each of the Obligors.

29.3.5 Any communication or document which becomes effective, in accordance with Clause 29.3.1 to Clause 29.3.2, after 5.00 pm in the place of receipt shall be deemed only to become effective on the following day.

### 29.4 **Notification of address and fax number**

Promptly upon receipt of notification of an address or fax number or change of address or fax number in accordance with this Agreement, the Facility Agent shall notify the other Parties.

### 29.5 **Electronic Communication**

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 to:

- (a) the extent that those two Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication and if those two Parties;

- (i) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
  - (ii) 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.
- (b) Any electronic communication made between those two Parties will be effective only when actually received in readable form and in the case of any electronic communication made by a Party to the Facility Agent only if it is addressed in such a manner as the Facility Agent shall specify for this purpose.
- (c) Any electronic communication which becomes effective, in accordance with Clause 29.5(b), after 5.00 pm in the place of receipt shall be deemed only to become effective on the following day.

## 29.6 **English language**

- 29.6.1 Any notice given under or in connection with any Finance Document must be in English.
- 29.6.2 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 Facility 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.

## 30 **CALCULATIONS AND CERTIFICATES**

### 30.1 **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.

### 30.2 **Certificates and determinations**

Any certificate 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.

### 30.3 **Day count convention**

Any interest, commission or fee accruing under a Finance Document will accrue from day to day and will be calculated on the basis of the actual number of days elapsed and a year of 365 days or, in any case where the London interbank market differs, in accordance with that market practice.

## 31 **RIGHTS OF THIRD PARTIES**

31.1.1 Unless the right of enforcement is expressly granted, it is not intended that a third party should have the right to enforce a provision of this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.

31.1.2 The parties may (if they agree) rescind or vary this Agreement without the consent of a third party to whom an express right to enforce any of its terms has been provided.

## 32 **AMENDMENTS AND DECISIONS**

### 32.1 **Required consent**

Except as provided in this Clause 32 (*Amendments and Decisions*) and subject to the terms of the Intercreditor Deed, any term of the Finance Documents may be amended, supplemented, modified or waived by the Obligors only with the consent of the Majority Lenders. The Facility Agent may effect, on behalf of any Finance Party, any amendment or waiver permitted by this Clause 32 (*Amendments and Decisions*).

### 32.2 **Exceptions**

An amendment or waiver which has the effect of changing or which relates to:

- (a) an extension of the date for payment of any amount due under the Finance Documents;
- (b) a reduction in the Margin or a reduction in the amount of any payment of principal, interest, fees or commission payable;
- (c) an increase in, or an extension of, any Commitment or any requirement that a cancellation of Commitments reduces the Commitments of the Lenders rateably under the relevant Facility;
- (d) a change to an Obligor other than in accordance with the terms of the Finance Documents;
- (e) a release of any Security Document other than in accordance with the terms of the Finance Documents;
- (f) any provision which expressly requires the consent of all the Lenders;
- (g) Clause 22 (*Changes to the Finance Parties*) or this Clause 32 (*Amendments and Decisions*); and
- (h) the nature or scope of the [REDACTED],

may only be made with the consent of all Lenders.

### 32.3 **No amendment or waiver**

No amendment or waiver relating to the rights or obligations of any Facility Agent may be effected without the consent of that Facility Agent.

**33 PARTIAL INVALIDITY**

If, at any time, any provision of the Finance Documents 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.

**34 REMEDIES AND WAIVERS**

No failure to exercise, nor any delay in exercising, on the part of any Finance Party, any right or remedy under the Finance Documents 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 of the Finance Documents on the part of the 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 this Agreement are cumulative and not exclusive of any right or remedies provided by law.

**35 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.

**36 CONFIDENTIAL INFORMATION****36.1 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 36.2 (*Disclosure of Confidential Information*) 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.

**36.2 Disclosure of Confidential Information**

Any Finance Party may disclose:

- (a) to any of its Affiliates and any of its or their officers, directors, employees, professional advisers, auditors, partners and 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 36.2(a) 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;
- (b) to any person:
  - (i) 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 a Finance Party and, in each case, and to any of that person's Affiliates and professional advisers;

- (ii) 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 and professional advisers;
- (iii) appointed by any Finance Party or by a person to whom Clause 36.2(b)(i) or Clause 36.2(b)(ii) 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 24.12.2;
- (iv) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in Clause 36.2(b)(i) or Clause 36.2(b)(ii);
- (v) 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;
- (vi) 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;
- (vii) who is a Party, a member of the Group or any related entity of an Obligor; or
- (viii) with the consent of the Borrower;

in each case, such Confidential Information as that Finance Party shall consider appropriate if:

- (A) in relation to Clause 36.2(b)(i), Clause 36.2(b)(ii) and Clause 36.2(b)(iii), 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;
- (B) in relation to Clause 36.2(b)(iv), 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;
- (C) in relation to Clause 36.2(b)(v), Clause 36.2(b)(vi) and Clause 36.2(b)(vii), 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

- (c) to any person appointed by that Finance Party or by a person to whom Clause 36.2(b)(i) or Clause 36.2(b)(ii) 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 36.2(c) 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
- (d) 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.

### 36.3 **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.

### 36.4 **Notification of disclosure**

Each of the Finance Parties agrees (to the extent permitted by law and regulation) to inform the Borrower:

- (a) of the circumstances of any disclosure of Confidential Information made pursuant to Clause 36.2(b)(v) 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 Confidential Information has been disclosed in breach of this Clause 36 (*Confidential information*).

### 36.5 **Continuing obligations**

The obligations in this Clause 36 (*Confidential information*) are continuing and, in particular, shall survive and remain binding on each Finance Party for a period of 12 months from the earlier of:



- (a) 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
- (b) the date on which such Finance Party otherwise ceases to be a Finance Party.

37 **LAW AND JURISDICTION**

37.1.1 This Agreement and any non-contractual obligations arising out of or in relation to this Agreement shall be governed by English law.

37.1.2 The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with the Finance Documents (including a dispute relating to the existence, validity or termination of any Finance Document or any non-contractual obligation arising out of or in connection with any Finance Document) (a "**Dispute**").

37.1.3 The Parties agreed that the English courts are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.

**This Agreement has been entered into on the date stated at the beginning of this Agreement.**

**Schedule 1  
The Original Parties**

**Part 1  
Original Lender**

<b>Name</b>		<b>Commitment</b>
-------------	--	-------------------

Homes and Communities Agency	Fax: [REDACTED]	[REDACTED]
------------------------------	-----------------	------------

**Contact details**

Address: Arpley House  
110 Birchwood Boulevard  
Birchwood  
Warrington  
WA3 7QZ

Attention: Head of Portfolio Management

**Jurisdiction (and tax residence if applicable)**

**Part 2  
Borrower details**

<b>Name</b>	<b>Contact details</b>	<b>Jurisdiction</b>
-------------	------------------------	---------------------

QDD EV N06 Limited	Fax: [REDACTED]	[REDACTED]
--------------------	-----------------	------------

Address: [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Attention: s. 40(2) [REDACTED]  
[REDACTED]

QDD EV N08 Limited	Fax: [REDACTED]	[REDACTED]
--------------------	-----------------	------------

Address: [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Attention:

█  
s. 40(2) █  
█

**Schedule 2  
Conditions Precedent**

**Part 1**

**Conditions precedent to signing of this Agreement**

**1 Corporate**

(a) Authorisations

- (i) A copy of the constitutional documents of each Borrower.
- (ii) A copy of the resolution of the board of directors of each Borrower:
  - (A) approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party and resolving that it execute the Finance Documents to which it is a party;
  - (B) authorising a specified person or persons to execute the Finance Documents to which it is a party on its behalf; and
  - (C) 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.

(b) Certificates and specimen signatures

- (i) In respect of each Borrower a certificate given by a director of that Borrower containing:
  - (A) a specimen of the signature of each person authorised by the resolution referred to paragraph 1(a)(ii);
  - (B) certification that the borrowing, or guaranteeing, of the Facility in full would not cause any borrowing, or guaranteeing, limit binding on it to be exceeded; and
  - (C) certification that each copy document relating to it specified in this Schedule 2, Part 1 (*Conditions precedent to signing of this Agreement*) is correct, complete and in full force and effect as at a date no earlier than the date of this Agreement.

(c) Structure

A group structure chart in respect of the Borrowers and each Subordinated Creditor.

**2 Information**

(a) Financial information

■ [REDACTED]

■ [REDACTED]

## (b) Money laundering

Evidence required by any Finance Party for the purpose of any "know your customer" regulations or similar identification procedures.

3 **Property**

## (a) A copy of the Initial Valuation.

## (b) A copy of the Certificate of Title.

## (c) A copy of the Construction Report.

## (d) A copy of the initial report from the Monitoring Surveyor.

## (e) A report on Manco from [REDACTED] with accompanying reliance letter in favour of the Original Lender.

## (f) Confirmation from the Borrowers' solicitors that the Initial Certificate may (for the avoidance of doubt) be read as confirming that the covenants given by Manco in the Intermediate Lease are given in favour of the relevant Borrower as well as the tenants under those leases.

4 **Legal Opinions**

A legal opinion of [REDACTED], English legal advisers to the Finance Parties.

5 **Other documents and evidence**

Evidence that the fees, costs and expenses then due from the Borrower pursuant to Clause 12 (*Costs and Expenses*) and agreed by the Borrower and the Lender prior to the date of this Agreement have been or will be paid by the date falling no more than 20 Business Days after the date of this Agreement.

## Part 2 Conditions precedent to first Utilisation

1 **Corporate**

## (a) Authorisations

(i) A copy of the constitutional documents of the [REDACTED]

(ii) A copy of the resolution of the board of directors of the [REDACTED]:

(A) approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party and resolving that it execute the Finance Documents to which it is a party;

(B) authorising a specified person or persons to execute the Finance Documents to which it is a party on its behalf; and

(C) 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.

- (b) Certificates and specimen signatures
- (i) A certificate given by a director of the [REDACTED] containing:
- (A) a specimen of the signature of each person authorised by the resolution referred to paragraph 1(a)(ii);
- (B) certification that the borrowing, or guaranteeing, of the Facility in full would not cause any borrowing, or guaranteeing, limit binding on it to be exceeded; and
- (C) certification that each copy document relating to it specified in Schedule 2, Part 1 is correct, complete and in full force and effect as at a date no earlier than the date of the guarantees to be provided pursuant to paragraph 6(a).

## 2 Information

- (a) Financial information
- (i) Evidence of the financial standing of the [REDACTED].
- (ii) A pro forma balance sheet for each Borrower.
- (iii) Confirmation from a director or, if appropriate, the directors of each Borrower that the Borrowers are solvent.
- (b) Evidence that there is outstanding Subordinated Debt or ordinary shares in the share capital of each Borrower in an amount as set out in the initial Budgeted Costs.
- (c) Accounts
- (i) Evidence of the establishment and maintenance of the Accounts.
- (ii) Duly completed account mandates and/or any other account opening forms and relevant specimen signature forms for each Account.
- (d) Insurance
- Evidence by way of a letter from the Borrowers' insurance brokers addressed to the Finance Parties of compliance with the insurance requirements set out in Clause 17.12 (*Insurance*) of the Agreement.

## 3 Tax

A tax paper prepared by [REDACTED] [REDACTED] that the opinions set out in the tax paper prepared by [REDACTED] and delivered as a condition precedent to the signing of this Agreement remain valid.

## 4 Property

- (a) An updated Certificate of Title which shall, inter alia:

- (i) include updated searches;
- (ii) confirm that the Headleases have been completed and an application form has been submitted to the Land Registry within the appropriate priority period of the Land Registry Search referred to in paragraph 4(d) below;
- (iii) confirm the approval (if required) from [REDACTED] under a Deed of Restrictive Covenant dated 19 June 2009 between [REDACTED] for the siting of the canopies and balconies which form part of the Development on title EGL559879,

and which is otherwise substantially in the form of the Initial Certificate with such additional disclosures or information as the Facility Agent may agree or require (acting reasonably having regard only to the effect on value of any proposed changes to the Charged Assets or the validity or priority of the security granted in respect of the Charged Assets or the need to complete information which was referred to but not available at the time of the Initial Certificate) and Provided That any changes to the Certificate of Title which are comprised in the Certificate of Title Specified Matters shall be treated as having been agreed by the Facility Agent..

- (b) A certified copy of each Headlease and (to the extent granted) each Intermediate Lease.
- (c) A certified copy of a notice to, and acknowledgement from, [REDACTED] of the charging of the Headleases.
- (d) The results of Land Registry searches in favour of the Facility Agent on the appropriate forms against all of the registered titles comprising each Borrower's interest in the Property, and:
  - (i) giving no less than 20 Business Days priority beyond the date of the relevant Security Document; and
  - (ii) showing no adverse entries.
- (e) An undertaking from [REDACTED] as legal counsel to the Borrowers in connection with registration of the Security Document at the Land Registry within the required priority period.
- (f) Consent to the charging of the Headleases (if required).
- (g) Such Land Registry compliant certificates (if any) as are required to enable the Facility Agent to be registered as the proprietor of the Security Document at the Land Registry notwithstanding any restriction on the proprietorship register of the titles out of which the Headleases will be granted.
- (h) An updated Construction Report, which shall be substantially in the form of the Construction Report delivered as a condition precedent to the signing of this Agreement (but provided that any changes to the Construction Report which arise as a result of the Construction Excluded Matters shall not be "substantial" for these purposes).
- (i) [REDACTED]

(i) [Redacted]

(ii) [Redacted]

(iii) [Redacted]

(1) [Redacted]

(2) [Redacted]

[Redacted]

5 **Development Documents**

(a) Documents

- (i) The initial Development Details and an updated report from the Monitoring Surveyor on the Development Details;
- (ii) Copies of the Development Documents;
- (iii) Evidence of the extent and level of the professional indemnity insurance of:
  - (A) the Contractor; and
  - (B) each Material Professional Consultant; and
  - (C) each Material Sub-Contractor.



- (iv) A Collateral Warranty from the Contractor and each Material Professional Consultant.
- (v) A collateral warranty from [REDACTED] in respect of the ground investigation report it has provided, if required under Clause 18.11.2.

(b) Approvals and consents

A report from the Monitoring Surveyor addressed to the Finance Parties confirming, amongst other things, that:

- (i) Subject to paragraph 5(b)(ii), all Requisite Consents and Authorisations required in order to commence the Development have been obtained and any applicable judicial review period has expired; or
- (ii) to the extent not already obtained pursuant to paragraph 5(b)(i), there are no obstacles which will materially delay the issue of the Requisite Consents and Authorisations or the progress of the Development.

**6 Security Documents and other Finance Documents**

- (a) A copy of each [REDACTED] duly executed by each Obligor and each other party to them, each in the Agreed Form.
- (b) A copy of each Security Document and the Intercreditor Deed duly executed by each Obligor and each other party to them.

**7 Legal Opinions**

- (a) A legal opinion of [REDACTED], English legal advisers to the Finance Parties.
- (b) A legal opinion of [REDACTED], legal advisers to the [REDACTED] addressed to the Finance Parties in respect of the [REDACTED] and confirming, among other things, that the [REDACTED] has the capacity to enter into and be bound by each Guarantee and the enforceability of them.

**8 Other documents and evidence**

- (a) Evidence that the [REDACTED] has appointed an agent for service of process in England and Wales and that such agent has accepted its appointment.
- (b) Evidence that the fees, costs and expenses then due from the Borrower pursuant to Clause 12 (*Costs and Expenses*) have been or will be paid by the first Utilisation Date.

**Schedule 3  
Utilisation Request**

[On Letterhead of relevant Borrower]

To: **HOMES AND COMMUNITIES AGENCY ("Facility Agent")**

From: [•]<sup>1</sup>

Date: [•]

Dear Sirs

**The development of Property N06 and Property N08 at East Village, London, E20 - [REDACTED] Development Facility Agreement between us dated [•] 2015 (the "Agreement")**

We refer to the Agreement. This is a Utilisation Request. Terms defined in the Agreement shall bear the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request.

- (a) We wish to borrow a Loan on the following terms:
- (i) Proposed Utilisation Date: [•]
  - (ii) Facility: N06 Facility/ N08 Facility
  - (iii) Amount: £[•]
  - (iv) Payment instructions: [Details of account for payment]
  - (v) [Interest Period: [•]]; and
- (b) We authorise and request you to deduct from the Utilisation:
- (i) all fees costs and expenses due to or incurred by any Finance Party under the Agreement, being the sum of £[•];
  - (ii) the Facility Agent's lawyers' fees and expenses, being the sum of £[•];
  - (iii) the Valuer's fees, being the sum of £[•];
  - (iv) Land Registry fees, being the sum of £[•]; and
  - (v) relevant Companies Registry fees, being the sum of £[•].
- (c) [We confirm that each condition precedent delivered in accordance with Schedule 2 (*Conditions Precedent*) of the Agreement is satisfied on the date of this Utilisation Request or will be satisfied on the proposed Utilisation Date.]<sup>2</sup>
- (d) We confirm that:

---

<sup>1</sup> Borrower details to be inserted once confirmed

<sup>2</sup> Applicable to first Utilisation only.

- (i) there is no outstanding breach of any term of any Development Document;  
and
- (ii) no person has disputed, repudiated or disclaimed liability under any Development Document or evidenced an intention to do so,

where any such breach, dispute, repudiation or disclaimer would have a Material Adverse Effect.

(e) We further confirm that:

- (i) on the date of that Utilisation Request and on the proposed Utilisation Date:
  - (A) no Default is continuing or would result from the proposed Loan;  
and
  - (B) Repeating Representations are true in all material respects; and
- (ii) immediately following the making of a Loan the relevant Loan (when aggregated with all other Loans under the Facility then outstanding or requested) would not exceed the Facility Limit for the Facility in respect of which this request is submitted.

(f) This Utilisation Request is irrevocable.

Yours faithfully

Authorised signatory for  
[•]

**Schedule 4**  
**Utilisation Request Timeline**

Day/ date in each Month	Action
A	Development Party's application date for payment under a Development Document.
A + 2-5 days	Verification of the costs and expenses requested to be funded using the proceeds of a Loan to be agreed between the Employer's Agent and the Monitoring Surveyor.
No later than A + 5 days	Employer's Agent issues its certificate confirming that the cost or expense to be financed or refinanced by the Loan is included in the Budgeted Costs and has not been the subject of any certificate issued by the Employer's Agent in respect of a previous Utilisation Request.
A + 7 days	Utilisation Request to be submitted by the relevant Borrower in respect of costs and expenses which are approved by the Monitoring Surveyor and in respect of which the Monitoring Surveyor has countersigned the certificate referred to in paragraph (b) of Clause 5.2.2 (Completion of a Utilisation Request).
No later than 19th	Loan proceeds to be received by the relevant Borrower from the Facility Agent into that Borrower's General Account.
No later than 20th	Relevant Borrower to make the necessary payments using funds standing to the credit of the General Account

"A" means the date falling 28 days before the 20th day of each Month.

**Schedule 5  
Form of Transfer Certificate**

To: **HOMES AND COMMUNITIES AGENCY** as Facility Agent

From: [*The Existing Lender*] (the "**Existing Lender**") and [*The New Lender*] (the "**New Lender**")

Date: [●]

**The development of Property N06 and Property N08 at East Village, London, E20 -  
[REDACTED] Development Facility Agreement dated [●] 2015 (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 22.5 (*Procedure for transfer*) of the Agreement.
- 3 The Existing Lender and the New Lender agree to the Existing Lender transferring to the New Lender by novation and in accordance with Clause 22.5 (*Procedure for transfer*) of the Agreement, 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(s) and participation in Loans under the Agreement as specified in the Schedule.
- 4 The proposed Transfer Date is [●].
- 5 The facility office and address, fax number, email address and attention details for notices of the New Lender for the purposes of Clause 29.2 (*Addresses*) of the Agreement are set out in the Schedule.
- 6 The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in Clause 22.4.3 of the Agreement.
- 7 The New Lender confirms, for the benefit of the Facility Agent and each Obligor, that it is:
  - (a) [a Qualifying Lender (other than a Treaty Lender);]
  - (b) [a Treaty Lender;]
  - (c) [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:
  - (a) a company resident in the United Kingdom for United Kingdom tax purposes; or
  - (b) a partnership each member of which is:
    - (i) a company so resident in the United Kingdom; or
    - (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; or

- (iii) 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.]

- 9 [The New Lender confirms that it holds a passport under the HMRC Treaty Passport scheme (reference number [●]), and is tax resident in [●]<sup>3</sup>, so that interest payable to it by the Borrowers is generally subject to full exemption from UK withholding tax and that it wishes that scheme to apply to the Agreement.]<sup>4</sup>
- 10 In consideration of the New Lender being accepted as a Lender, the New Lender confirms that, as from the Transfer Date, it intends to be party to the Intercreditor Deed as a Senior Lender, and undertakes to perform all the obligations expressed in the Intercreditor Deed to be assumed by a Senior Lender and agrees that it shall be bound by all the provisions of the Intercreditor Deed, as if it had been an original party to the Intercreditor Deed.
- 11 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.
- 12 This Transfer Certificate [and any non-contractual obligations arising out of or in connection with it][is/are] governed by English law.
- 13 This Transfer Certificate has been entered into on the date stated at the beginning of this Transfer Certificate.

---

<sup>3</sup> Insert jurisdiction of tax residence.

<sup>4</sup> Include if New Lender holds a passport under HMRC DT Treaty scheme and wishes that scheme to apply to the Agreement.

THE SCHEDULE

Commitment/Rights and obligations to be transferred

[Insert relevant details including relevant Facility]

[Facility office address, fax number, email address and attention details for notices and account details for payments]

[Existing Lender] [New Lender]

Branch: [●] Branch: [●]

Branch MEI: [●] Branch MEI: [●]

By: By:

This Transfer Certificate is accepted by the Facility Agent and the Transfer Date is confirmed as [●].

[●] [Facility Agent]

Facility Agent MEI: [●]

By:

**Schedule 6  
Property**

**Property N06** being the property to be comprised in the lease (the "**N06 Headlease**") to be entered into between [REDACTED] and defined as the "Property" in the Initial Certificate for Plot N06, and shown for identification purposes on the Plan.

**Property N08** being the property to be comprised in the lease (the "**N08 Headlease**") to be entered into between [REDACTED] and defined as the "Property" in the Initial Certificate for Plot N08 and shown for identification purposes on the Plan.



**Schedule 7  
Form of Compliance Certificate**

To: **HOMES AND COMMUNITIES AGENCY** as Facility Agent

Dated: [●]

Dear Sirs

**The development of Property N06 and Property N08 at East Village, London, E20 -  
[REDACTED] Development Facility Agreement dated [●] (the "Agreement")**

- 1 We refer to the Agreement. This is a Compliance Certificate. Terms defined in the Agreement have the same meaning when used in this Compliance Certificate unless given a different meaning in this Compliance Certificate.
- 2 We confirm that the Loan to Value is [●] per cent.
- 3 We confirm that we are not aware of any matter that may have a Material Adverse Effect.
- 4 We confirm that no Default is continuing.<sup>5</sup>

Signed:

Director of

[●]<sup>6</sup>

---

<sup>5</sup> If this statement cannot be made, the certificate should identify any Default that is continuing and the steps, if any, being taken to remedy it.

<sup>6</sup> Name of Borrower

**Schedule 8**  
**Intermediate Lessee Accession Letter**

To: **THE HOMES AND COMMUNITIES AGENCY** as Lender

From: [Intermediate Lessee] and [Borrowers]

Dated: [●]

Dear Sirs

**[Borrowers] – [REDACTED] Facility Agreement dated [●] 2015 (the "Agreement")**

We refer to the Agreement. This is an Accession Letter. Terms defined in the Agreement have the same meaning in this Accession Letter unless given a different meaning in this Accession Letter.

[Intermediate Lessee] (registered in England and Wales number [●]) agrees to become an Obligor and to be bound by the terms of the Agreement as an Obligor in accordance with Clause 23.2 (*New Obligors*) of the Agreement.

[Intermediate Lessee]'s administrative details are as follows:

Address: [●]

Fax No: [●]

Attention: [●]

This Accession Letter is governed by English law.

Yours faithfully

authorised signatory for  
**QDD EV N06 LIMITED**  
as Borrower

By:

authorised signatory for  
[*New Obligor*]  
as Obligor

By:

authorised signatory for  
**QDD EV N08 LIMITED**  
as Borrower

By:

authorised signatory for  
**THE HOMES AND COMMUNITIES AGENCY**  
as Lender

By:

**Schedule 9**  
**Intermediate Lessees – Accession Conditions Precedent**

**1 Corporate**

(a) Authorisations

- (i) A copy of the constitutional documents of each Intermediate Lessee
- (ii) A copy of the resolution of the board of directors of each Intermediate Lessee:
  - (A) approving the terms of, and the transactions contemplated by, the Accession Letter and the Finance Documents to which it is a party and resolving that it execute the Accession Letter and any other Finance Documents to which it is a party;
  - (B) authorising a specified person or persons to execute the Accession Letter and other Finance Documents to which it is a party on its behalf; and
  - (C) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party.

(b) Certificates and specimen signatures

- (i) A certificate given by a director of that Intermediate Lessee containing:
  - (A) a specimen of the signature of each person authorised by the resolution referred to paragraph 1(a)(ii);
  - (B) certification that the accession to the Facility would not cause any borrowing, or guaranteeing, limit binding on it to be exceeded; and
  - (C) certification that each copy document relating to it specified in this Schedule 9 (*Intermediate Lessees – Accession Conditions Precedent*) is correct, complete and in full force and effect as at a date no earlier than the date of the Accession Letter.

(c) Structure

A group structure chart in respect of the Intermediate Lessee.

**2 Information**

Money laundering

Evidence required by any Finance Party for the purpose of any “know your customer” regulations or similar identification procedures.

**3 Finance Documents**

- (a) A duly executed Subordination Agreement or Subordination Accession Agreement.

- (b) A debenture (including a legal charge over the Intermediate Lease) is granted by the relevant Intermediate Lessee in favour of the Security Agent over the Intermediate Lease.

#### 4 **Property**

- (a) Prior written notice of the Permitted Disposal is given to the Facility Agent at least ten Business Days prior to completion of the relevant Permitted Disposal.
- (b) Confirmation is given by the Borrower's Solicitors that the Intermediate Leases are in the Approved Form.
- (c) Suitable undertakings are provided by the Borrower's solicitors to deal with any Stamp Duty Land Tax returns and all Land Registry requirements and (without limitation) to submit the Debenture (including a Legal Charge over the Intermediate Lease) for registration at HM Land Registry within the priority period of a clear Land Registry search in favour of the Original Lender or Facility Agent.
- (d) Consent to the charging of the relevant Intermediate Lease (if required).

## Schedule 10 HCA Standard Terms

### 1 DEFINITIONS

In this Schedule:

“**DPA**” means the Data Protection Act 1998 as amended or updated from time to time.

“**EIR**” means the Environmental Information Regulations 2004, 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.

“**EIR Exceptions**” means any applicable exemption to EIR.

“**Exempted Information**” means any Information that is designated as falling or potentially falling within the FOIA Exemptions or the EIR Exceptions.

“**FOIA**” 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.

“**FOIA Authority**” means a public authority as defined by FOIA and/or EIR.

“**FOIA Exemptions**” means any applicable exemption to the FOIA.

“**Information**” means:

- (a) in relation to the FOIA has the meaning given under section 84 of the FOIA and which is held by each Original Finance Party at the time of receipt of a Request For Information; and
- (b) in relation to the EIR has the meaning given under the definition of “environmental information” in section 2 of the EIR and which is held by each Original Finance Party at the time of receipt of a Request For Information.

“**Information Commissioner**” has the meaning set out in section 6 of the DPA.

“**Original Finance Party**” means the Original Lender and the Homes and Communities Agency in its capacity as Facility Agent.

“**Personal Data**” has the meaning ascribed to it in the DPA.

“**Request for Information**” 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 an Original Finance Party.

#### 1.1 Freedom of information

- 1.1.1 Each Obligor acknowledges that each Original Finance Party is, and any successor Finance Party which is a Public Body may be, subject to legal duties which may require the release of information under the FOIA and/or the EIR and that each Original Finance Party or any successor Lender which is a Public Body may be

under an obligation to provide Information, which may include Confidential Information, subject to a Request for Information.

1.1.2 Each Original Finance Party 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 Obligors respond directly to a Request for Information to which an Original Finance Party is required to respond to, except to confirm receipt of the Request for Information and that the Request for Information has been passed to that Original Finance Party unless otherwise expressly authorised to do so by that Original Finance Party.

1.1.3 Subject to paragraph 1.1.4 below, each Obligor acknowledges that each Original Finance Party may be obliged under the FOIA or the EIR to disclose Information:

- (a) without consulting the Obligors; or
- (b) following consultation with the Obligors and having taken (or not taken, as the case may be) its views into account.

1.1.4 Without in any way limiting paragraph 1.1.2 and paragraph 1.1.3, in the event that an Original Finance Party receives a Request for Information, that Original Finance Party will, where appropriate, as soon as reasonably practicable notify the Obligors.

1.1.5 Each Obligor will assist and co-operate with each Original Finance Party as reasonably requested by each Original Finance Party to enable such Original Finance Party 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 the cost of the relevant Original Finance Party:

- (a) transfer any Request for Information received by the Obligors to the relevant Original Finance Party 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 each Original Finance Party and supply such data or information as may be requested by each Original Finance Party;
- (c) provide each Original Finance Party with any data or information in its possession or power in the form the relevant Original Finance Party requires within five Business Days (or such other period as the relevant Original Finance Party may specify) of the relevant Original Finance Party requesting that Information; and
- (d) permit each Original Finance Party to inspect any records as requested from time to time.

1.1.6 Nothing in this Agreement will prevent an Original Finance Party 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.

- 1.1.7 To the extent that an Obligor becomes an FOIA Authority subject to the FOIA and the EIR during the course of this Agreement this paragraph will apply mutatis mutandis to both parties.

The obligations in this paragraph 1.1 (*Freedom of information*) 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.

- 1.1.8 The Obligors and each Original Finance Party will cooperate with one another in order to enable each such party to fulfil its statutory obligations under the DPA.

## 1.2 **Publication of information before Parliament**

Each Obligor acknowledges that the National Audit Office has the right to publish details of the Finance Documents in its relevant reports to Parliament.

## 2 **PUBLIC RELATIONS AND PUBLICITY**

- 2.1 Save as specified in the Original Lender's marketing requirements or otherwise set out in this paragraph 2 (*Public relations and publicity*), no Obligor shall and shall use reasonable endeavours to procure that no Contractor, officer, employee or agent shall communicate with any representative of any press, television, radio or other communications media on any matter concerning the financing contemplated under this Agreement without the Original Lender's prior written consent (not to be unreasonably delayed).

- 2.2 Each Obligor shall:

- (a) notify the Original Lender in advance of any publicity plan, event or communication which it proposes to implement, hold or issue in respect of the financing contemplated under this Agreement;
- (b) ensure that pro-active positive press releases issued in respect of the financing contemplated under this Agreement acknowledge in the body of their text the fact and amount of the Original Lender's contribution to the Development;
- (c) ensure that the following wording (or such other wording as the Original Lender may require from time to time) is included within all press releases in respect of the financing contemplated under this Agreement in the section entitled "Notes to Editors":
  - (i) **"The Homes and Communities (HCA)** is the single, national housing and regeneration delivery agency for England, and the Regulator of Social Housing Providers. The HCA's vision is to:
  - (ii) create opportunity for people to live in homes they can afford in places they want to live, by enabling local authorities and communities to deliver the ambition they have for their own areas; and

- (iii) focus on governance, financial viability and value for money as the basis for robust economic regulation that maintains lender confidence and protects the taxpayer.”
  - (d) not produce any publication touching or concerning the financing contemplated under this Agreement, this Agreement (or the performance of it by either the Obligors or the Original Lender) without the prior written approval of the Original Lender save where such publication is in the overwhelming public interest (and in any event without first consulting the Original Lender and allowing the Original Lender to make representations on such proposed disclosure);
  - (e) comply with such requirements as to Property signage as the Original Lender (acting reasonably) may notify to it from time to time; and
  - (f) ensure that any publicity material prepared in relation to the financing contemplated under this Agreement includes the logo of the Original Lender.
- 2.3 Each Obligor grants to the Original Lender a non-exclusive, royalty-free licence to use any photographs, records, images, articles or illustrations relating to the Development undertaken by or for the Obligors for use in any publicity or advertising, whether published alone or in conjunction with any other person, except that the Original Lender shall consult with the Obligors prior to using the names or logos of any Obligor, [REDACTED] in any publicity or advertising.
- 2.4 During the term of this Agreement, the Original Lender grants the Obligors a non-exclusive licence to use the Original Lender’s logo only for the purposes of the Development and in accordance with the Marketing Guide. No Obligor may grant sub-licences of this licence or any part of it or use such logo for any other purposes save where approved in advance by the Original Lender.
- 2.5 Each Obligor acknowledges that the Original Lender’s logo is owned by and will remain the property of the Original Lender.
- 3 REPUTATION OF THE PARTIES**
- 3.1 Neither the Obligors nor any Original Finance Party will publish any statement, orally or in writing, relating to the Obligors or any Original Finance Party (as the case may be) which might damage that other such party’s reputation or that of any of its officers or employees except for any statements made during the course of any legal proceedings involving the Obligors and the Original Lender or any other government agency.
- 3.2 No Obligor is, or has at any time, engaged in any activity, practice or conduct that would constitute an offence under the Bribery Act 2010.
- 3.3 No Obligor is or has been the subject of any investigation, enquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence under the Bribery Act 2010, and no such investigation, enquiry or proceedings are pending or to the best of the Obligors’ knowledge and belief having made all due enquiry have been threatened which, if adversely determined, would be expected to have a Material Adverse Effect and there are no circumstances likely to give rise to any such investigation, enquiry or proceedings.



- 3.4 The Obligors will not and will procure that each Obligor will not engage (directly or indirectly) in any activity, practice or conduct that would constitute an offence under the Bribery Act 2010.
- 3.5 The Obligors shall supply to each Original Finance Party, promptly on becoming aware of them and to the extent they are lawfully able to do so, details of any investigation, enquiry or enforcement proceedings by any governmental, administrative or regulatory body relating to any offence or alleged offence under the Bribery Act 2010 against it or any Obligor.

**Schedule 11**  
**New Lender Terms**

**1 BREAK COSTS**

**1.1 Break Costs**

1.1.1 For the purpose of this paragraph 1.1 (*Break Costs*), "**Break Costs**" means, the amount (if any) by which:

- (a) the interest (excluding Margin) which a Lender should have received for the period from the date of receipt of all or any part of its participation in a Loan or an Un-paid Sum to the last day of the current Interest Period in respect of that Loan or that Unpaid Sum, had that Loan or Unpaid Sum received been paid on the last day of that Interest Period;

exceeds:

- (b) the amount which that Lender would be able to obtain by placing an amount equal to that Loan or Unpaid Sum received by it on deposit with a leading bank in the London interbank market for a period starting on the Business Day following receipt or recovery and ending on the last day of the current Interest Period.

1.1.2 The Borrowers shall, within five Business Days of demand by a Lender, pay to that Lender its Break Costs attributable to all or any part of a Loan or Unpaid Sum being paid by the Borrower on a day other than the last day of an Interest Period for that Loan or Unpaid Sum.

1.1.3 The Lender shall, as soon as reasonably practicable, after a demand by the Facility Agent, provide a certificate confirming the amount of its Break Costs for any Interest Period in which they accrue.

**2 FEES**

**2.1 Facility Agent**

The Borrowers will pay to the Facility Agent (for its own account) the fees in the amount and at the times agreed in the Fees Letters.

**3 INCREASED COSTS**

**3.1 Increased costs**

3.1.1 Subject to paragraph 3.3 (*Exceptions*), the Borrower shall, within three Business Days of demand by the Facility 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 regulatory requirement; r
- (b) compliance with any law or regulatory requirement made after the date of this Agreement; or

- (c) the implementation or application of or compliance with Basel III or CRD IV (whether such implementation, application or compliance is by a government, regulator, Finance Party or any of its Affiliates).

3.1.2 For the purposes of this paragraph 3 (*Increased Costs*):

- (a) "Increased Costs" means:
  - (i) a reduction in the rate of return from the Facility or on a Finance Party's (or its Affiliate's) overall capital;
  - (ii) an additional or increased cost; or
  - (iii) a reduction of any amount 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 Documents;

- (b) "**Basel III**" means:
  - (i) the agreements on capital requirements, a leverage ratio and liquidity standards contained in "Basel III: A global regulatory framework for more resilient banks and banking systems", "Basel III: International framework for liquidity risk measurement, standards and monitoring" and "Guidance for national authorities operating the countercyclical capital buffer" published by the Basel Committee on Banking Supervision in December 2010, each as amended, supplemented or restated; or
  - (ii) the rules for global systemically important banks contained in "Global systemically important banks: assessment methodology and the additional loss absorbency requirement – Rules text" published by the Basel Committee on Banking Supervision in November 2011, as amended, supplemented or restated; and
  - (iii) any further guidance or standards published by the Basel Committee on Banking Supervision relating to "Basel III"; and

- (c) "**CRD IV**" means:
  - (i) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms; and
  - (ii) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms.

## 3.2 **Increased costs claim**

3.2.1 A Lender intending to make a claim pursuant to this paragraph 3 (*Increased Costs*) shall notify the Facility Agent of the event giving rise to the claim, following which the Facility Agent shall promptly notify the Borrower.

- 3.2.2 Each Lender shall, as soon as practicable, after a demand by the Facility Agent, provide to the Facility Agent a certificate confirming the amount (together with supporting calculations) of its Increased Costs.

### 3.3 **Exceptions**

The liability of the Borrower to pay any increased amount under this paragraph 3 (*Increased Costs*) shall not apply to the extent of any Increased Cost is:

- (a) attributable to a Tax Deduction required by law to be made by an Obligor;
- (b) attributable to the wilful breach by the relevant Finance Party or its Affiliate of any law or regulatory requirement;
- (c) attributable to the implementation or application of or compliance with the "International Convergence of Capital Measurement and Capital Standards, a Revised Framework" published by the Basel Committee on Banking Supervision in June 2004 in the form existing on the date of this Agreement (but excluding any amendment arising out of or incorporating any measure from Basel III and/or CRD IV) ("Basel II") or any other law or regulation which implements Basel II (whether such implementation, application or compliance is by a government, regulator, Finance Party or any of its Affiliates); or
- (d) attributable to the implementation or application of or compliance with the bank levy imposed by the United Kingdom and governed by the Finance Act 2011, in the form existing on the date of this Agreement or any other law or regulation which implements such bank levy.

## 4 **SECURITISATION**

- 4.1 The Borrower shall procure that each Obligor shall cooperate with the Finance Parties to facilitate the rating of any Lender's interest in any Finance Document by internationally recognised ratings agencies nominated by the Finance Party concerned and provide such information as any Finance Party may reasonably require in connection with any assignment, transfer or other disposal of any Lender's interest in any Finance Document in relation to any securitisation of this Facility, whether alone or in conjunction with any other loan or loans, including any information which needs disclosing in any offering circular or otherwise to the ratings agencies.

- 4.2 The Borrower shall be reimbursed by the relevant Finance Party for any cost, expenses, registration or other similar tax (including legal costs) incurred by it as a direct result of any such securitisation or proposed securitisation.

## 5 **SECURITY OVER LENDERS' RIGHTS**

In addition to the other rights provided to the Lender under this Agreement, each Lender may without consulting with or obtaining consent from any Obligor, at any time change, assign or otherwise create Security Interests in or over (whether by way of collateral or otherwise) all or any of its rights under any Finance Document to secure obligations of the Lender including without limitation any charge, assignment or other Security Interest to secure obligations to a federal reserve or central bank except that no such charge, assignment or Security Interest shall:

- (a) release the Lender from any of its obligations under the Finance Documents or substitute the beneficiary of the relevant charge, assignment or Security Interest 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.

## 6 TAX DEDUCTIONS AND INDEMNITIES

- 6.1 Each Obligor shall make all payments to be made by it without any Tax Deduction, unless a Tax Deduction is required by law.
- 6.2 Each Obligor shall promptly upon becoming aware that it must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Facility Agent accordingly. Similarly, the Lender shall promptly notify the Facility Agent on becoming so aware in respect of a payment payable to the Lender. If the Facility Agent receives such notification from the Lender it shall promptly notify the relevant Obligor.
- 6.3 If an Obligor is required by law to make a Tax Deduction, 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.
- 6.4 An Obligor is not required to make an increased payment to the Lender under paragraph 6.3 for a Tax Deduction in respect of tax imposed by the United Kingdom from a payment of interest on a Loan if, on the date on which the payment falls due:
  - (a) the payment could have been made to the Lender without a Tax Deduction if it was a Qualifying Lender, but on that date the Lender is not or has ceased to be a Qualifying Lender 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 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 the Lender has received from the Obligor making the payment 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 Lender is a Qualifying Lender solely by virtue of paragraph (a)(ii) of the definition of Qualifying Lender and:
    - (i) the Lender has not given a Tax Confirmation to the relevant Obligor; 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 relevant Obligor, on the basis that the Tax Confirmation would

have enabled the relevant Obligor 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 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 the Lender complied with its obligations to co-operate under paragraph 6.7 or paragraph 6.8 of this Schedule (as applicable).
- 6.5 If an Obligor is required to make a Tax Deduction, it 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.
- 6.6 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 Facility 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.
- 6.7 Subject to paragraph 6.4(a), a Treaty Lender and each Obligor which makes a payment to which that Treaty Lender is entitled shall co-operate in completing as soon as reasonably practicable any procedural formalities necessary for that Obligor to obtain authorisation to make that payment without a Tax Deduction;
- (a)
    - (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, Part 1 (*Original Lender*); and
    - (ii) A New Lender 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 which it executes,
- and, having done so, that Lender shall be under no obligation pursuant to paragraph 6.7(a).
- 6.8 If the Lender has confirmed its scheme reference number and its jurisdiction of tax residence in accordance with paragraph 6.7(a) and:
- (a) the Borrower making payment to the Lender has not made a Borrower DTTP Filing in respect of that Lender; or
  - (b) the Borrower making a payment to the Lender 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 the Lender without a Tax Deduction within 60 days of the date of the Borrower DTTP Filing,

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

For the purposes of this Agreement, a "**Borrower DTTP Filing**" means an HM Revenue & Customs' Form DTTP2 duly completed and filed by a Borrower in relation to any New Lender that is a Treaty Lender, which contains the scheme reference number and jurisdiction of tax residence stated in respect of that Lender in the relevant Transfer Certificate, and is filed with HM Revenue & Customs.

- 6.9 If the Lender has not confirmed its scheme reference number and jurisdiction of tax residence in accordance with paragraph 6.7(a), no Obligor shall make a Borrower DTTP Filing or file any other form relating to the HMRC DT Treaty Passport scheme in respect of the Lender's Commitment(s) or its provision of any Loan unless the Lender otherwise agrees.
- 6.10 The Borrower shall, promptly on making a Borrower DTTP Filing, deliver a copy of that Borrower DTTP Filing to the Facility Agent for delivery to the Lender.
- 6.11 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.
- 6.12 A UK Non-Bank Lender shall promptly notify the Borrower and the Facility Agent if there is any change in the position from that set out in the Tax Confirmation.
- 6.13 The Original Lender confirms to the Borrower that it is a Qualifying Lender but not a Treaty Lender.

6.14 **Deduction of Tax**

In this Schedule:

"**Tax Credit**" means a credit against, relief or remission for, or repayment of any Tax.

"**Tax Deduction**" means a deduction or withholding for or on account of Tax from a payment under a Finance Document.

"**Tax Payment**" means either the increase in a payment made by an Obligor to a Finance Party under paragraph 6.3 of this Schedule or a payment under paragraph 6.15.1 of this Schedule.

The Borrower represents and warrants on each Interest Payment Date that it is not required to make any deduction or withholding for or on account of Tax from any payment it may make under any Finance Document to the 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
- (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).

## 6.15 Tax indemnity

6.15.1 Each Obligor shall, within five Business Days of demand by the Facility Agent, pay to a Protected Party an amount equal to the loss, liability or cost which suffered for or on account of Tax by that Protected Party in respect of a Finance Document, provided this shall not apply with respect to any Tax assessed on a Finance Party:

- (a) 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, or as having a permanent establishment, for tax purposes; or
- (b) 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.

6.15.2 A Protected Party making, or intending to make, a claim under paragraph 6.15 shall promptly notify the Facility Agent of the event which will give, or has given, rise to the claim, following which the Facility Agent shall notify the Borrower.

6.15.3 A Protected Party shall, on receiving a payment from an Obligor under paragraph 6.15.1, notify the Facility Agent.

## 6.16 Tax credit

6.16.1 If any Obligor makes a Tax Payment and the relevant Finance Party determines that:

- (a) a Tax Credit is attributable to that Tax Payment or to a Tax Deduction in consequence of which that Tax Payment was required; and
- (b) that Finance Party has obtained and utilised that Tax Credit,

the relevant Finance Party shall pay to that Obligor an amount which 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 that Obligor.

6.16.2 If a Tax Deduction is required by law to be made from a payment made by an Obligor to a Treaty Lender but the Treaty Lender is entitled to a repayment or rebate of the relevant Tax (a "**Treaty Rebate**") by virtue of a relevant Treaty, the Treaty Lender shall promptly following the written request to do so from the



Obligor claim that Treaty Rebate and shall within seven days of receiving any such Treaty Rebate pay to the Obligor a sum equal to the amount of the same.

#### 6.17 **Determinations**

Unless a contrary indication appears, in this Schedule 11 (*New Lender Terms*) a reference to "**determines**" or "**determined**" means a determination made in the absolute discretion of the person making the determination.

#### 6.18 **Stamp taxes**

The Borrower will pay and, within five Business Days of demand, indemnify each Finance Party against any cost, loss or liability each Finance Party incurs in relation to any stamp duty land tax, stamp duty, registration or other similar Taxes payable in respect of, or in order to register or enforce, any Finance Document except those payable on or by reference to or in consequence of the transfer of the whole or any part of the rights of a Finance Party under a Finance Document.

#### 6.19 **VAT**

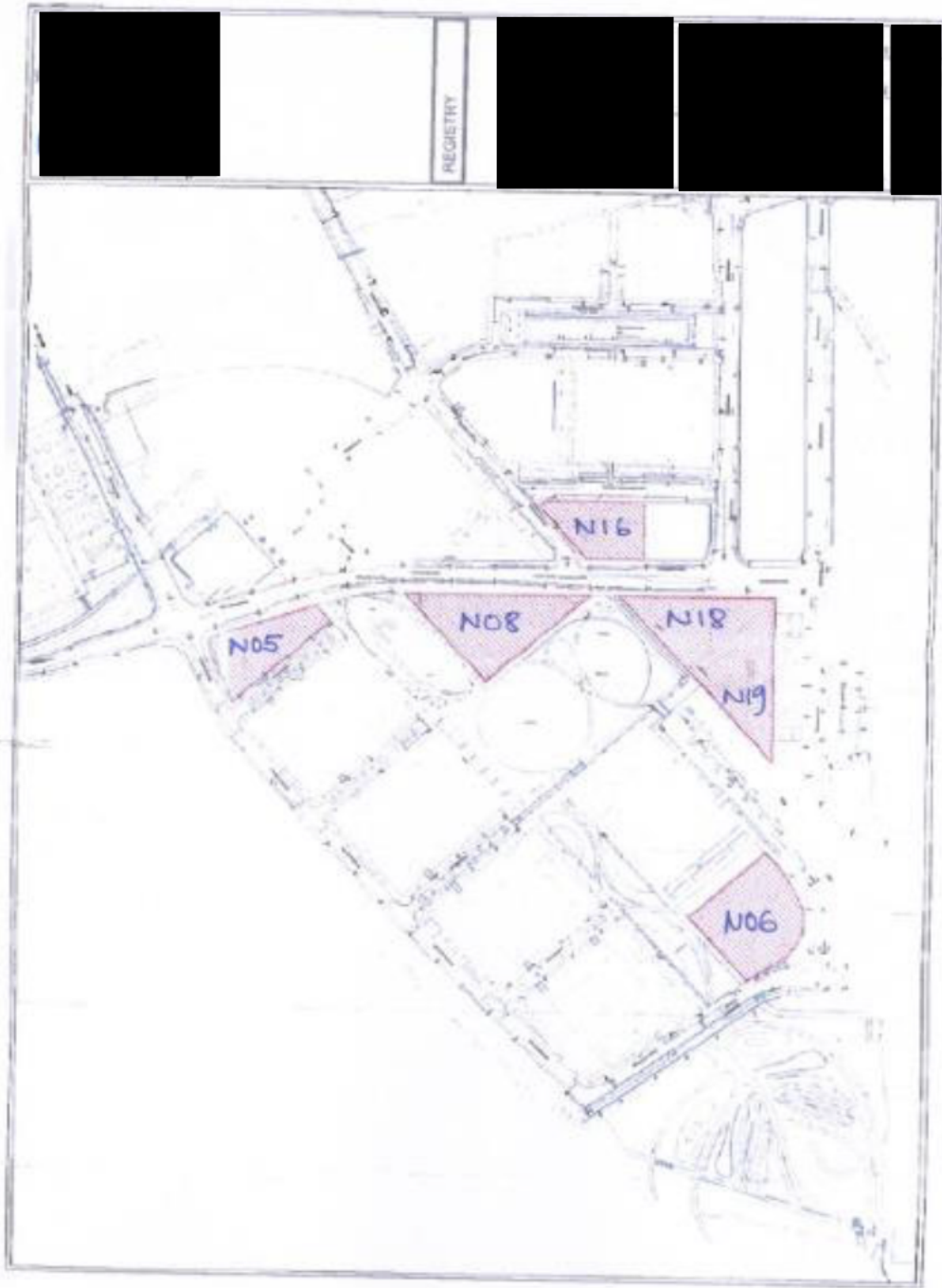
6.19.1 All amounts expressed to be payable under a Finance Document by any Party to a Finance Party which (in whole or in part) constitute the consideration for any supply for VAT purposes are deemed to be exclusive of any VAT which is chargeable on that supply, and accordingly, subject to paragraph 6.19.2, 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).

6.19.2 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 Supplier will issue a valid VAT invoice to the Recipient and the Recipient will use all reasonable endeavours to obtain credit or repayment from the relevant tax authority. The Recipient must (where this paragraph 6.19.2(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 chargeable 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.

- 6.19.3 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 is entitled to credit or repayment in respect of such VAT from the relevant tax authority.
- 6.19.4 Any reference in this paragraph 6.19 (*VAT*) 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).
- 6.19.5 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 the Lender 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.

### Schedule 12 Plan



**Execution Page**

**Facility Agent**

Signed for and on behalf of **HOMES AND COMMUNITIES AGENCY** by: )

**S. 40(2)**

**Original Lender**

Signed for and on behalf of **HOMES AND COMMUNITIES AGENCY** by: )

**S. 40(2)**

**N06 Borrower**

QDD EV N06 LIMITED

By:

**N08 Borrower**

QDD EV N08 LIMITED

By:

**Execution Page**

**Facility Agent**

Signed for and on behalf of **HOMES AND COMMUNITIES AGENCY** by: )  
)  
)

Duly authorised signatory

**Original Lender**

Signed for and on behalf of **HOMES AND COMMUNITIES AGENCY** by: )  
)  
)

Duly authorised signatory

**N06 Borrower**

QDD EV N06 LIMITED

By: **S. 40(2)**

**S. 40(2)**

**N08 Borrower**

QDD EV N08 LIMITED

By: **S. 40(2)**

**S. 40(2)**

DATED 24 March 2016

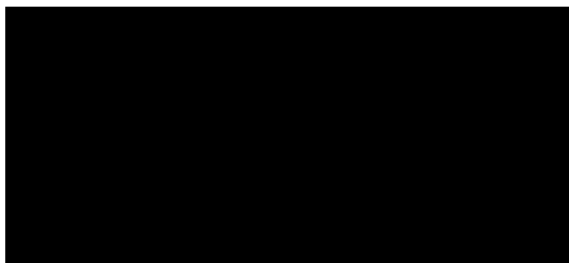
**EARLS COURT PARTNERSHIP LIMITED**  
as Original Borrower

**HOMES AND COMMUNITIES AGENCY**  
as Lender

**HOMES AND COMMUNITIES AGENCY**  
as Security Agent

**CREDIT AGREEMENT**

relating to certain Infrastructure Works at Earls Court Village, London



## Contents

Clause	Name	Page
1	Definitions and interpretations .....	1
2	The Facility.....	30
3	Purpose .....	31
4	Conditions precedent.....	31
5	Drawdown.....	33
6	Repayment.....	34
7	Prepayment and cancellation .....	34
8	Interest periods .....	36
9	Interest.....	36
10	Payments.....	37
11	Bank accounts .....	39
12	Taxes .....	40
13	Mitigation.....	48
14	Guarantee.....	48
15	Representations and warranties.....	51
16	Corporate undertakings .....	57
17	Development and property undertakings.....	62
18	Financial covenant .....	70
19	Default .....	71
20	Security Trust and Intercreditor Arrangements .....	74
21	HCA Deed of Covenant .....	76
22	Expenses .....	77
23	Indemnities .....	78
24	Evidence and calculations.....	79
25	Amendments and waivers .....	80
26	Changes to the parties.....	80
27	Confidentiality.....	85
28	Homes and Communities Agency .....	90
29	Set-off .....	90
30	Severability .....	90
31	Counterparts .....	90
32	Notices .....	91
33	Governing law .....	93
34	Enforcement.....	93
Schedule	Name	Page
1	Conditions Precedent to First Utilisation .....	94
2	.....	98
2	Part 1 Conditions Precedent to Accession Deed .....	98
2	Part 2 Conditions precedent to Borrower Novation Deed.....	100
3	Form of Request .....	102
4	List of Major Trade Contractors and Major Professionals .....	103
5	LMA Form of Confidentiality Undertaking .....	106
6	The Original Site .....	111
7	The Masterplan Site.....	113

8 Intercreditor Principles..... 114

9 Excluded Properties..... 117

10 Form of Accession Deed..... 118

11 Form of Borrower Novation Deed..... 120

12 Form of Resignation Letter..... 122

13 Form of Permitted Part Confirmation ..... 123

14 [REDACTED] [REDACTED]..... 125

15 Lillie Bridge Depot..... 126

16 Form of Overriding Purpose Certificate ..... 127

17 Freehold Properties ..... 128

**Execution Page..... 129**



DATED 24 March 2016

**PARTIES**

- (1) **EARLS COURT PARTNERSHIP LIMITED** (company no 08872070) whose registered office is at 15 Grosvenor Street, London W1K 4QZ (the "**Original Borrower**")
- (2) **HOMES AND COMMUNITIES AGENCY** as Lender (the "**Original Lender**")
- (3) **HOMES AND COMMUNITIES AGENCY** as the security trustee (the "**Security Agent**")

**OPERATIVE PROVISIONS**

**1 DEFINITIONS AND INTERPRETATIONS**

1.1 In this Agreement:

"**Acceding Obligor**" means any member of the Group (other than the Borrower) which is a party to an Accession Deed.

"**Accession Deed**" means a document substantially in the form set out in Schedule 10 (*Form of Accession Deed*) or in such other form as the Borrower and the Lender may agree.

"**Account**" means a bank account established in accordance with Clause 11.1 (*Designation of Accounts*).

"**Additional Property**" means



[REDACTED]

**"Affiliate"** means a Subsidiary or a Holding Company of a person and any other Subsidiary of that Holding Company.

**"Agreed Form"** means:

- (a) in relation to the Business Plan, the format of the business plan signed by the Lender and the Borrower for identification on or before the date of this Agreement or such other format as the Lender may approve (acting reasonably);
- (b) in relation to the Overriding Purpose Certificate, the form attached as Schedule 16 (*Form of Overriding Purpose Certificate*) to this Agreement or such other form as the Lender may approve (acting reasonably);
- (c) in relation to a Permitted Part Confirmation, the form set forth in Schedule 13 (*Form of Permitted Part Confirmation*) or such other form as the Lender may approve (acting reasonably);
- (d) in relation to the Project Monitor Drawdown Report, the form agreed by the Lender, the Borrower and the Project Monitor; and
- (e) in relation to any other document, the form agreed by the Lender and the Borrower from time to time.

**"Agreed Package"** means:

- (a) in connection with any Major Professional, the form of Professional Appointment containing Third Party Rights or, to the extent that the form does not contain Third Party Rights, the related Collateral Warranty; and
- (b) in connection with any Major Trade Contractor, the form of Trade Contract containing Third Party Rights or, to the extent that the form does not contain Third Party Rights, the related Collateral Warranty,

in the form delivered pursuant to paragraph 11 of Schedule 1 (*Conditions Precedent to First Utilisation*) or such other form as the Lender may approve (such approval not to be unreasonably withheld or delayed).

[REDACTED]

**"Architect"** means such firm or company of architects appointed by an Obligor in relation to the Infrastructure Works or any part thereof from time to time, as notified by the Borrower to the Lender in writing.

**"Asset Protection Agreement"** means:

- (a) the asset protection agreement in relation to a development at Earl's Court London SW5 between [REDACTED] [REDACTED] dated 23 November 2015; and

- (b) any other asset protection agreement entered into by the Borrower pursuant to the Framework Agreement.

**"Availability Period"** means the period from and including the date of this Agreement to and including 31 March 2020.

**"Bank Levy"** means given to that term in Clause 12.1 (*General*).

**"Borrower"** means:

- (a) prior to the Borrower Novation Deed being accepted in accordance with Clause 26.1.2 (*Transfers by Obligors*), the Original Borrower; or
- (b) from the date the Borrower Novation Deed is accepted in accordance with Clause 26.1.2 (*Transfers by Obligors*), the New Borrower.

**"Borrower Novation Deed"** means a document substantially in the form set out in Schedule 11 (*Form of Borrower Novation Deed*) delivered in accordance with Clause 26.1.2 (*Transfers by Obligors*).

**"Building Services Engineer"** means such firm or company of building services engineers as may be appointed by an Obligor in connection with the Infrastructure Works or any part thereof from time to time, as notified by the Borrower to the Lender in writing.

**"Business Day"** means a day (other than a Saturday or a Sunday) on which banks are open for business in London.

**"Business Plan"** means:

- (a) initially, the business plan signed by the Lender and the Borrower on the date of this Agreement for the purposes of identification; and
  - (b) subsequently, the most recent business plan delivered by the Borrower to the Lender on or prior to 28 February in each year in accordance with Clause 17.3.5,
- and, in each case, any updates or revisions thereto provided in accordance with Clause 17.3.7.

**"Capco Group"** means:

- (a) Capital & Counties Properties plc and its Affiliates; or
- (b) any successor entity which acquires, directly or indirectly, all of the interests of Capital & Counties Properties plc and its Affiliates' interests in the Site and/or the Borrower as a result of a Permitted Capco Transaction, provided that such successor entity is a public limited company registered in England and Wales or another entity approved in writing by the Lender.

**"Centre of Main Interests"** means the "centre of main interests" of an Obligor for the purposes of Council Regulation (EC) No 1346/2000 of 29th May, 2000.

**"Certificate of Title"** means a certificate of title delivered to the Lender (on a reliance basis) as a condition precedent in accordance with Schedule 1 (*Conditions Precedent to First Utilisation*) paragraph 9(c) and any other certificate of title

provided in accordance with paragraph (d) of the definition of "**Additional Property**".

"**Certifying Agent**" means such third party firm or company appointed by an Obligor to issue any certificate of Practical Completion in relation to any Major Trade Contract from time to time, as notified by the Borrower to the Lender in writing.



"**Code**" means the US Internal Revenue Code of 1986.

"**Collateral Warranty**" means to the extent that the Trade Contract or Professional Appointment entered into by a Major Trade Contractor or a Major Professional does not contain Third Party Rights, each collateral warranty granted or to be granted by a Major Trade Contractor or a Major Professional, in favour of the Security Agent in the form set out in the Agreed Package or such other form as the Lender may approve (such approval not to be unreasonably withheld or delayed).

"**Commitment**" means in relation to the Lender, [REDACTED] and in relation to any other Lender, the amount of any Commitment transferred to it under this Agreement, to the extent not cancelled, reduced or transferred by it under this Agreement.

"**Confidential Information**" means Obligor Confidential Information and Lender Confidential Information.

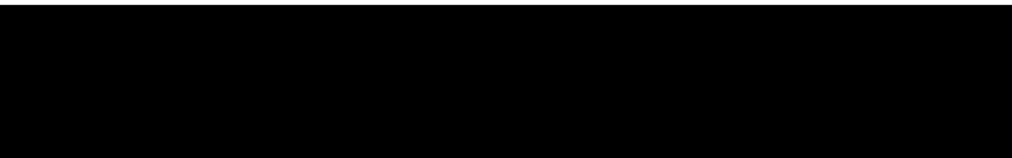
"**Confidentiality Undertaking**" means a confidentiality undertaking substantially in a recommended form of the LMA as set out in Schedule 5 (*LMA Form of Confidentiality Undertaking*) or in any other form agreed between the Borrower and the Lender.

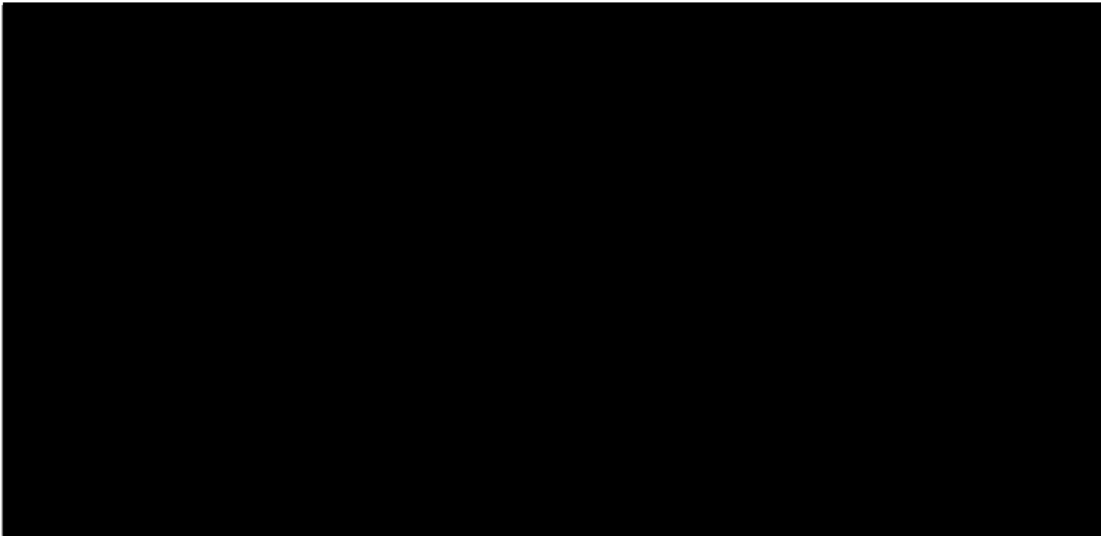
"**Construction Report**" means the report on the forms of the Major Trade Contracts and Major Professional Appointments prepared by Herbert Smith Freehills LLP addressed to, or otherwise capable of being relied on by, the Security Agent and delivered to the Lender in accordance with Schedule 1 (*Conditions Precedent to First Utilisation*) paragraph 9(d).

"**Cost Overrun**" means, at any time, any cost of or relating to the Infrastructure Works not included in, or in excess of an amount included in, the then current version of the Infrastructure Budgeted Costs.

"**Cost Saving**" means, in relation to the Infrastructure Works at any time, the amount by which the Project Monitor determines the actual costs of or relating to the Infrastructure Works to be less than the costs included in the then current version of the Infrastructure Budgeted Costs.

"**Deed of Covenant**" has the meaning given to it in Clause 21.1 (*HCA Deed of Covenant*).





**"Default"** means an Event of Default or an event or circumstance specified in Clause 19 (*Default*) which would (with the expiry of a grace period, the giving of notice or the making of any determination under any Finance Document or any combination of them) be an Event of Default.

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

**"Designated Interest Period"** has the meaning given to it in Clause 9.4 (*Default interest*).

**"Disruption Event"** means:

- (a) a material disruption to the payment or communications systems or to the financial markets which are, in each case, required to operate in order for payments to be made (or other transactions to be carried out) in connection with the transactions contemplated by the Finance Documents, which 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 it, or any other Party from:
  - (i) performing its payment obligations under the Finance Documents; or
  - (ii) communicating with other Parties in accordance with the terms of the Finance Documents,

and which in either case is not caused by, and is beyond the control of, the Party whose operations are disrupted.

**"DPA"** means the Data Protection Act 1998 as amended or updated from time to time.

**"Drawdown Date"** means the date of borrowing a Loan.

**"EC1 Headlease"** means a lease dated 2 April 2015 of property known as Site EC1 of Earls Court Village, London made between (1) London Underground Ltd and (2) Earls Court Partnership Ltd.

"**EC2 Headlease**" means a lease dated 2 April 2015 of property known as Site EC2 of Earls Court Village, London made between (1) London Underground Ltd and (2) Earls Court Partnership Ltd.

"**EC Reference Rate**" means the most recent base rate for the United Kingdom published by the European Commission.

"**EIR**" means the Environmental Information Regulations 2004, and any subordinate legislation made thereunder from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation.

"**EIR Exceptions**" means any applicable exemption to EIR.

[REDACTED]

"**Equity Funded Cost Overrun**" means any amount of a Cost Overrun that has been funded by way of equity injection into the Borrower or Subordinated Debt which is subject to the Subordination Agreement.

"**Establishment**" means any place of operations where an Obligor carries on non-transitory economic activity with human means and goods.

"**Event of Default**" means an event or circumstance specified as such in Clause 19 (*Default*).

"**Excluded Properties**" means any property owned by an Obligor which is not included in the Site being, at the date of this Agreement, the properties, details of which are set forth in Schedule 9 (*Excluded Properties*).

"**Exempted Information**" means any Information that is designated as falling or potentially falling within the FOIA Exemptions or the EIR Exceptions.

"**Facility**" means the credit facility made available under this Agreement described in Clause 2 (*The Facility*).

"**Facility Office**" means the office(s) notified by the Lender to the Borrower before the date of this Agreement as the office through which it will perform all or any of its obligations under this Agreement.

"**FATCA**" means:

- (a) sections 1471 to 1474 of the Code or any associated regulations;
- (b) any treaty, law or regulation enacted in any other jurisdiction, or relating to an intergovernmental agreement between the US and any other jurisdiction, which (in either case) facilitates the implementation of paragraph (a) above; or
- (c) any agreement pursuant to the implementation of any treaty, law or regulation referred to in paragraph (a) or paragraph (b) above with the US Internal Revenue Service, the US government or any governmental or taxation authority in any other jurisdiction.

"**FATCA Deduction**" means a deduction or withholding from a payment under a Finance Document required by FATCA.

**"FATCA Exempt Party"** means a Party that is entitled to receive payments free from any FATCA Deduction.

**"Finance Document"** means:

- (a) this Agreement;
- (b) a Security Document;
- (c) any Intercreditor Agreement;
- (d) any Subordination Agreement;
- (e) a Borrower Novation Deed;
- (f) an Accession Deed; or
- (g) any other document designated as such by the Lender and the Borrower.

**"Finance Party"** means the Lender and the Security Agent.

**"Financial Indebtedness"** means any indebtedness for or in respect of:

- (a) moneys borrowed;
- (b) amounts raised pursuant to any acceptance credit (including any dematerialised equivalent);
- (c) amounts raised pursuant to any bond, note, debenture, loan stock or other similar instrument;
- (d) any redeemable preference share;
- (e) amounts raised pursuant to any agreement treated as a finance or capital lease in accordance with GAAP;
- (f) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (g) any amount raised under any other transaction (including any forward sale or purchase agreement) having the commercial effect of a borrowing;
- (h) any derivative transaction protecting against or benefiting from fluctuations in any rate or price (and, except for non-payment of an amount, the then mark-to-market value of the derivative transaction will be used to calculate its amount);
- (i) any counter-indemnity obligation in respect of any guarantee, indemnity, bond, letter of credit or any other instrument issued by a bank or financial institution; or
- (j) the amount of any liability in respect of any guarantee, indemnity or similar assurance against financial loss of any person in respect of any item referred to in the above paragraphs.

**"First Utilisation Date"** means the first date on which a Loan is drawn down under the Facility and First Utilisation shall be construed accordingly.

"**Fitch**" means Fitch Ratings Limited or any successor to its rating business.

"**FOIA**" means the Freedom of Information Act 2000, and any subordinate legislation made under it from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation.

"**FOIA Authority**" means a public authority as defined by FOIA and/or EIR.

"**FOIA Exemptions**" means any applicable exemption to the FOIA.

"**Framework Agreement**" means [REDACTED]

"**Freehold Properties**" means the freehold properties, details of which are set forth in Schedule 17 (*Freehold Properties*).

"**GAAP**" means generally accepted accounting principles in the jurisdiction of incorporation of the Obligors including IFRS where applicable.

"**Group**" means the Borrower and each of its Affiliates from time to time.

"**Guarantor**" means any Acceding Obligor unless that Acceding Obligor has been released from its guarantee obligations pursuant to Clause 26.9 (*Resignation and release*).

"**Headleases**" means:

- (a) the EC1 Headlease;
- (b) the EC2 Headlease;
- (c) the NAR Headlease;
- (d) the Network Rail Lease; and
- (e) any other leasehold interest obtained or to be obtained by an Obligor in respect of the Site pursuant to the Framework Agreement or otherwise.

"**Holding Company**" means in relation to a company or a corporation, any other company or corporation in respect of which it is a Subsidiary.

"**IFRS**" means international accounting standards within the meaning of the IAS Regulation 1606/2002 to the extent applicable to the relevant financial statements.

"**Information**" means:

- (a) in relation to the FOIA, has the meaning given under section 84 of the FOIA and which is held by the Lender at the time of receipt of a Request For Information; and
- (b) in relation to the EIR, has the meaning given under the definition of "environmental information" in section 2 of the EIR and which is held by the Original Lender at the time of receipt of a Request For Information.



**"Information Commissioner"** means set out in section 6 of the DPA.

**"Infrastructure Budgeted Costs"** means the itemised budgeted costs and expenses prepared by the Borrower in connection with carrying out the Infrastructure Works as set out in the Business Plan.

**"Infrastructure Contingency"** means in relation to the Infrastructure Works, the amount specified as such in the Infrastructure Budgeted Costs or the remaining undrawn or unallocated amount of that infrastructure contingency.

**"Infrastructure Debenture"** means the debenture entered into and granted by the Borrower in favour of the Security Agent for the benefit of the Secured Parties granting, among other things, a fixed security over certain of the Borrower's assets including all its interests in the Site, the Infrastructure Works, certain Infrastructure Documents, the LRP Agreement and the Landowners Agreement and a qualifying floating charge over the whole of the Borrower's assets.

**"Infrastructure Document"** means each Trade Contract, each Professional Appointment, any Asset Protection Agreement and any other document relating to the Infrastructure Works designated by the Borrower and the Lender as an **"Infrastructure Document"**.

**"Infrastructure Works"** means:

- (a) any works and services carried out to prepare or enable all or any part of the Site for follow-on commercial or residential development which the Borrower has, acting in a manner consistent with the Overriding Purpose, designated as Infrastructure Works for the purpose of this Agreement, including works and services in relation to:
  - (i) demolition;
  - (ii) remediation;
  - (iii) portal beam removal;
  - (iv) apron strengthening;
  - (v) decking;
  - (vi) transfer structures;
  - (vii) external utility connections (including electricity, gas, water, telecommunications and drainage) and diversion of existing utility infrastructure;
  - (viii) roads;
  - (ix) mainline, underground or suburban railway infrastructure or systems;
  - (x) public realm; and
- (b) any materials supplied in connection with such works and services, provided that:

- (a) for the purposes of this definition, references to "the Site" shall not include any Additional Properties which are not included in the Masterplan Site;
- (b) unless otherwise agreed between the Borrower and the Lender, there shall be excluded any works and services in relation to above grade works and the follow-on building within any commercial or residential development (including internal utility connections and any works and services in any basement areas which are to be let or sold following such commercial or residential development); and
- (c) the Borrower may withdraw its designation of any package of works previously designated as Infrastructure Works at any time prior to the first Request in respect of those Infrastructure Works.

**"Infrastructure Works Account"** means an account of the Borrower as referred to in Clause 11.1.1.

**"Initial Valuation"** means the Valuation of the Site prepared by [REDACTED] as at 31 December 2015 delivered pursuant to Schedule 1 (*Conditions Precedent to First Utilisation*), paragraph 6, together with any supplement thereto.

**"Intercreditor Agreement"** means any intercreditor agreement entered into between, among others, the Lender, the Security Agent and a Third Party Lender pursuant to Clause 20 (*Security Trust and Intercreditor Arrangements*).

**"Intercreditor Principles"** means the intercreditor principles as set out in Schedule 8 (*Intercreditor Principles*).

**"Interest Payment Date"** means the last day of March, June, September and December in each calendar year. If any such day is not a Business Day, the Interest Payment Date shall instead be the preceding Business Day.

**"Interest Period"** means the relevant period ascertained in accordance with Clause 8 (*Interest periods*).

**"Landowners Agreement"** [REDACTED]

**"LBD Rights Agreement"** [REDACTED]

**"Lease Document"** means:

- (a) each Headlease;
- (b) any lease document entered into by an Obligor in connection with a Permitted Disposal; and
- (c) any other document designated as such by the Lender and the Borrower.

**"Lender Confidential Information"** means all information relating to the Lender, the Finance Documents or the Facility of which an Obligor becomes aware in its capacity as, or for the purpose of becoming, an Obligor or which is received

by that Obligor in relation to, or for the purpose of becoming an Obligor under, the Finance Documents or the Facility from the Lender or 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 information that:

- (a) is or becomes public information other than as a direct or indirect result of any breach by the Obligor of Clause 27 (*Confidentiality*);
- (b) is identified in writing at the time of delivery as non-confidential by the Lender or any of its advisers; or
- (c) is known by the Obligor or one of its Affiliates before the date the information is disclosed to it or is lawfully obtained by the Obligor or one of its Affiliates after that date, from a source which is, as far as the Obligor is aware, unconnected with the Lender and which, as far as the Obligor is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality.

"**LIBOR**" means in relation to any Loan the applicable Screen Rate as of the Specified Time for sterling and for a 12 month period and if that rate is less than zero, LIBOR shall be deemed to be zero.

"**Lillie Bridge Depot**" means the part of the Site more particularly described in Schedule 15 (*Lillie Bridge Depot*).

"**Lillie Road Retail Units**" means the retail units located on Lillie Road.

"**Lillie Square LP**" means Lillie Square LP, a limited partnership with registration number LP014696 whose registered office is at 15 Grosvenor Street, London W1K 4QZ.

"**Limitation Acts**" means the Limitation Act 1980 and the Foreign Limitation Periods Act 1984.

"**Loan**" means the principal amount of each borrowing (including capitalised interest added to that amount under Clause 9.3 (*Capitalisation and payment of interest*)) by the Borrower under the Facility or the principal amount outstanding of that borrowing.

"**Loan to Value**" means the aggregate of all outstanding Loans under the Facility as a percentage of the market value of the Site. For the purposes of determining Loan to Value, market value shall be determined in accordance with the most recent Valuation at that time.

"**LRP Agreement**" means the agreement relating to Lost River Park Earls Court London dated 2 April 2015 made between (1) EC Properties GP Limited and EC Properties Nominee Limited and (2) Earls Court Partnership Limited.

"**LTV Rectification Account**" means an account of the Borrower as referred to in Clause 11.1.1(b).

"**LUL Void Lease**" means a lease to be granted pursuant to a development agreement for lease dated 2 April 2015 made between (1) Earls Court Partnership Limited and (2) London Underground Limited relating to a void to be fitted out as a train stabling.

**"Major Professional"** means:

- (a) a Professional in respect of one of the Infrastructure Works packages as set out in Schedule 4 (*List of Major Trade Contractors and Major Professionals*);
- (b) a Professional appointed to replace any Professional referred to in paragraph (a) above;
- (c) in respect of any package of Infrastructure Works being funded under this Agreement, a Professional which has a material design responsibility in connection with that package of Infrastructure Works where the amount payable or expected to be payable to that Professional in relation to that package of Infrastructure Works is more than [REDACTED] in aggregate; and
- (d) any Certifying Agent.

**"Major Trade Contractor"** means:

- (a) a Trade Contractor in respect of one of the Infrastructure Works packages as set out in Schedule 4 (*List of Major Trade Contractors and Major Professionals*);
- (b) a Trade Contractor appointed to replace any Trade Contractor referred to in paragraph (a) above; and
- (c) in respect of any package of Infrastructure Works being funded under this Agreement, a Trade Contractor which manufactures or supplies equipment which is material to the functioning of that package of Infrastructure Works or which has a material design, construction or installation responsibility in connection with that package of Infrastructure Works where the amount payable or expected to be payable to that trade contractor in relation to that package of Infrastructure Works is more than [REDACTED] in aggregate.

**"Margin"** means:

- (a) on any day on which the Loan to Value is [REDACTED] or [REDACTED]; or
- (b) on any day on which the Loan to Value is [REDACTED] or [REDACTED]; or
- (c) on any day on which Loan to Value is [REDACTED] or [REDACTED]; or
- (d) on any day on which the Loan to Value is [REDACTED].

**"Masterplan Site"** means the area of which the Site forms part, as more particularly described in Schedule 7 (*The Masterplan Site*).

**"Material Adverse Effect"** means a material adverse effect on:

- (a) the ability of any Obligor to perform its payment obligations under the Finance Documents, its obligations under Clause 17.2(a) or (d) (*Completion of Infrastructure Works*), its obligations to provide a Business Plan and/or an Overriding Purpose Certificate under Clause 17.3.5

or 17.3.7 (*Business Plan*) or its obligations under Clause 18 (*Financial covenant*);

- (b) 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
- (c) the rights or remedies of the Lender or the Security Agent under any of the Finance Documents.

**"Material Event of Default"** means any of the following Events of Default:

- (a) an Event of Default under Clause 19.2 (*Non-payment*);
- (b) after the date on which the Lender is obliged to advance any further sums under this Agreement, an Event of Default under Clause 18.1 (*Loan to Value*) which is not remedied pursuant to Clause 18.2 (*Rectification of Loan to Value*);
- (c) a material event of default (howsoever described) in relation to a facility with a Third Party Lender with whom the Lender has entered into an Intercreditor Agreement, or such Third Party Lender accelerating or taking enforcement action prior to the Practical Completion of the Infrastructure Works;
- (d) a failure to comply with the requirements of Clause 17.3 (*Business Plan*) in relation to the delivery of a Business Plan and/or an Overriding Purpose Certificate;
- (e) an Event of Default under Clause 19.3 (*Breach of other obligations*) but only if it arises as a result of a breach by an Obligor of its obligations under Clause 16.10 (*Negative pledge*), Clause 16.11 (*Transactions similar to security*), Clause 16.12 (*Disposals*) or Clause 16.15 (*Shares and Dividends*);
- (f) an Event of Default under Clause 19.6 (*Insolvency*);
- (g) an Event of Default under Clause 19.7.2, Clause 19.7.3 or Clause 19.7.4 (*Insolvency proceedings*);
- (h) an Event of Default under Clause 19.8 (*Appointment of receivers and managers*); or
- (i) the EC1 Headlease, the EC2 Headlease or the NAR Headlease is forfeited.

**"Mechanical and Electrical Engineer"** means such firm or company of mechanical and electrical engineers appointed by an Obligor in relation to the Infrastructure Works or any part thereof from time to time, as notified by the Borrower to the Lender in writing.

**"Moody's"** means Moody's Investors Services Limited or any successor to its rating business.

**"Necessary Consents"** means all planning permissions required for the Infrastructure Works (if any) and all other permissions, authorisations, permits, licences and approvals under the Planning Acts and under any other statute, bye-law or regulation of any competent authority and any consents from any landlord,

adjoining landowner, occupier or any other person which are necessary to enable the Infrastructure Works to be commenced, carried out and completed and specifically, the Section 106 Agreement and the Planning Permissions.

**"NAR Lease"** means the headlease dated 2 April 2015 between (1) EC Properties GP Ltd as General Partner of EC Properties LP and EC Properties Nominee Ltd and (2) the Borrower regarding the northern access road site within the Site.

**"Network Rail Lease"** means the headlease dated 28 March 2013 between (1) Network Rail Infrastructure Limited (2) EC Properties GP Limited (as general partner of EC Properties LP) and EC Properties Nominee Limited and (3) Capital & Counties Limited regarding the raft, airspace, columns and land owned by Network Rail within the Site.

**"New Borrower"** means any member of the Group (other than the Original Borrower) which is party to a Borrower Novation Deed.

**"New Shareholder Injection"** means the aggregate amount subscribed for by any person for ordinary shares in the Borrower or the issue by the Borrower of loan notes or other debt instruments in the Borrower, as the case may be, provided that such loan notes or other debt instruments constitute Subordinated Debt.

**"Obligor"** means the Borrower and each Guarantor.

**"Obligor Confidential Information"** means all information relating to an Obligor, the Group, the Finance Documents or the Facility, the Site or the Infrastructure Works 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 an Obligor or 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 information that:

- (a) is or becomes public information other than as a direct or indirect result of any breach by the Lender of Clause 27 (*Confidentiality*); or
- (b) is identified in writing at the time of delivery as non-confidential by an Obligor or any of its advisers; or
- (c) is known by a Finance Party before the date the information is disclosed to it or is lawfully obtained by a Finance Party after that date, from a source which is, as far as that Finance Party is aware, unconnected with the Borrower and which, as far as the Finance Party is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality.

**"Original Site"** means the Site as described in Schedule 6 (*The Original Site*) which excludes (for the avoidance of doubt) the Excluded Properties.

**"Original Lender"** means the Homes and Communities Agency.

**"Overriding Purpose"** means

[REDACTED]

Agreement, number

**"Overriding Purpose Certificate"** means a certificate signed by two directors of the Borrower (without personal liability) confirming that the implementation of that Business Plan is consistent with achieving the Overriding Purpose and otherwise in the Agreed Form.

**"Party"** means a party to this Agreement.

**"Permitted Capco Transaction"** means:

- (a) an intra-group reorganisation of any member of the Capco Group on a solvent basis; or
- (b) a demerger or other transaction where the ultimate shareholders in Capital & Counties Properties plc acquire, or are offered the right to acquire shares in that successor entity on terms proportionate to their shareholdings in Capital & Counties plc.

**"Permitted Disposal"** means:

- (a) a disposal of an Obligor's interest in any part of the Site which is not inconsistent with the Business Plan (including by way of the grant of any security in respect of the Site, the sale or lease of any part of the Site or the sale of the shares in any Affiliate to whom a sale, transfer, lease or other disposal referred to in paragraph (h) of this definition has been made) and is made:
  - (i) at a time when no Event of Default is outstanding; and
  - (ii) in circumstances where the Loan to Value will, following such disposal, be [REDACTED] as determined by reference to a Valuation undertaken pursuant to Clause 22.2.4;
- (b) the grant of any lease:
  - (i) of a commercial unit on arm's length terms for a rack rent:
    - (A) with a term of no more than 3 years; or
    - (B) where the commercial unit in question is a Lillie Road Retail Unit, with a term of any length;
  - (ii) of the Qatar Airways building on the Cluny Mews Property;
  - (iii) of a residential unit for a term of no more than 3 years; or

- (iv) for a term of not more than 3 years whether at a market rent or not which excludes the security of tenure provisions contained in the Landlord and Tenant Act 1954 including but not limited to leases of car parking, meanwhile and community use;
- (c) [REDACTED];
- (d) the grant of any hoarding licences;
- (e) the grant of any leases and wayleaves in respect of any part of the Site to any entity whether statutory or otherwise providing utilities or services, including any Undertaker Disposal;
- (f) any disposals of parts of the Site (other than parts which the Business Plan envisages being used for residential units) entered into for no financial consideration (other than nominal financial consideration) to comply with or discharge a planning obligation or pursuant to any Necessary Consents, including any Undertaker Disposal and the relocation of the bus layover provided for in clause 17 of the agreement referred to in paragraph (a) of the definition of "Section 106 Agreement", where this is consistent with the Overriding Purpose;
- (g) any disposals (including by way of security) in order to give effect to an Intercreditor Agreement pursuant to Clause 20 (*Security Trust and Intercreditor Arrangements*);
- (h) the grant of an underlease, the transfer of part of a Headlease or any other sale, transfer, lease or other disposal of all or any part of the Site, in each case to an Affiliate of an Obligor provided that on the date of such disposal:
  - (i) no Event of Default is outstanding;
  - (ii) the relevant Affiliate has entered into a Supplemental Security Agreement and an Accession Deed; and
  - (iii) the Lender has notified the Borrower that it has received or waived (in each case, in form and substance satisfactory to it, acting reasonably) all of the documents and other matters set out in Schedule 2, Part 1 (*Conditions Precedent to Accession Deed*) to this Agreement;
- (i) disposals of cash in compliance with its obligations under the Relevant Documents;
- (j) disposals of Excluded Properties;
- (k) disposals of any individual residential unit on the Site where the disposal takes place following practical completion or is conditional upon practical completion of such unit, subject to a maximum of 100 residential units in any six month period commencing on the date of the then most recent Valuation; and
- (l) any other Disposal which the Lender designates as a Permitted Disposal,

and provided that, if a disposal referred to in paragraph (a) to (l) above (other than an Undertaker Disposal) is of any part (rather than the whole) of the Site, a



Permitted Part Confirmation, signed by the Borrower and by the solicitors acting for the Borrower in relation to the disposal of the relevant part, has been provided to the Lender.

**"Permitted Part Confirmation"** means a letter of confirmation signed by a director of the Borrower and by the solicitors acting for the Borrower and any relevant Obligor in relation to any disposal referred to in paragraph (a) to (e) of the definition of "Permitted Disposal", in (or substantially in) the form set forth in Schedule 13 (*Form of Permitted Part Confirmation*).

**"Permitted Property Transaction"** means:

[REDACTED]

- (e) extinguishing easements, rights of way or wayleaves which burden the Site;
- (f) varying easements, rights of way or wayleaves which burden the Site where the varied easement, right of way or wayleave is no more onerous than the existing easement, right of way or wayleave and maintains, enhances or does not adversely affect the value of the Site;

- (g) the making of any *ad medium filum* or adverse possession claims in respect of part or parts of the Site;
- (h) the release by any Obligor of any rights of light benefiting the Site:
  - (i) to the extent necessary to comply with the requirements of the Landowners Agreement; or
  - (ii) with Lillie Square LP;
- (i) any merging of an Obligor's freehold and/or leasehold interests in the Site provided that a Security Interest in favour of the Lender or for its benefit is granted by the Obligors in relation to the merged title on terms acceptable to the Lender, acting reasonably, immediately following the issuance of the merged title; and
- (j) any other transactions (not being disposals for financial consideration, other than nominal financial consideration) which will not:
  - (i) affect the Borrower's ability to make the payments required under this Agreement;
  - (ii) have any adverse effect on the value of the Site; or
  - (iii) adversely affect the Borrower's ability to achieve the Overriding Purpose,

and provided that, if any such transaction would also constitute a Permitted Disposal, the requirements of this Agreement relating to Permitted Disposals are complied with.

**"Permitted Subsidiary"** means:

- (a) Empress Place, Apartments Management Company Limited (company number 04801890) and Marview Limited (company number 02652131);
- (b) any Subsidiary of an Obligor referred to in paragraph (h) of the definition of Permitted Disposal; and
- (c) any other Subsidiary of an Obligor provided that its principal purpose and operations relate to the Site or activities related to the Original Site, any Additional Property and/or any Excluded Property.

**"Planning Acts"** means the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990, the Planning (Hazardous Substances) Act 1990, the Planning (Consequential Provisions) Act 1990, the Planning and Compensation Act 1991, the Local Government Planning and Land Act 1980, the Planning and Compulsory Purchase Act 2004, the Building and Fire Regulations and any re-enactment, variation or modification of any or all of them and any subordinate legislation made (before or after this Deed) under any such enactments together with all other statutes governing or controlling the use or development of land and property.

**"Planning Agreement"** has the meaning given to it in Clause 21.1 (*HCA Deed of Covenant*).

**"Planning Permission"** means:

- (a) the outline planning permission dated 14 November 2013 allocated local planning authority reference 2011/02001/OUT, as amended from time to time (the "**LBHF Permission**"); and
- (b) the outline planning permission dated 14 November 2013 allocated local planning authority reference PP/11/01937, as amended from time to time (the "**RBKC Permission**");
- (c) the full planning permission for demolition and alteration of existing buildings and structures and redevelopment of the site for the erection of buildings comprising single storey basement, and part three, part four storey buildings for 638 sqm of retail space (A1), 16 residential units (C3) and related ancillary uses, together with the provision of new open space, provision of vehicular and pedestrian accesses and routes from Old Brompton Road, including all associated highway works, structures for decking over existing rail lines and tunnels, and other ancillary and incidental works to the development. (West Brompton Square Permission granted on 1 April 2015 under reference PP 15/00369);
- (d) the full planning permission for the construction of a basement for ancillary uses (including parking, plant and servicing) in association with the RBKC Permission. (Basement Permission granted on 15 August 2014 under reference PP/13/07063); and
- (e) the full planning permission for works to lower an existing basement ramp at 100A West Cromwell Road and part of the land to the south to increase the headroom for vehicles (Ramp Permission granted on 13 September 2013 under reference PP/13/02805).

"**Planning Report**" means the report on planning in respect of the Original Site prepared by Pinsent Masons LLP addressed to the Security Agent delivered to the Lender (on a reliance basis) in accordance with paragraph 9(c) of Schedule 1 (*Conditions Precedent to First Utilisation*).

"**Practical Completion**" means, in relation to each package of Infrastructure Works being funded under this Agreement, the day named in the relevant certificate issued by an Obligor or its appointed Certifying Agent confirming that practical completion (or any equivalent concept) of such Infrastructure Works has taken place in accordance with the relevant Trade Contract, or the Trade Contract last in time to achieve practical completion (or any equivalent concept), for that package of Infrastructure Works.

"**Professional**" means, in relation to the Infrastructure Works, each Architect, Building Services Engineer, Certifying Agent, Mechanical and Electrical Engineer or Structural Engineer or any other consultant with material design responsibility in respect of the Infrastructure Works appointed by the relevant Obligor or whose appointment has been novated to the Borrower (or in respect of whom the Borrower is obliged to accept a novation), or any other consultant with like responsibilities in respect of the Infrastructure Works as may be appointed by the relevant Obligor.

"**Professional Appointment**" means an agreement for the appointment by an Obligor of a Professional or an agreement for the appointment of a Professional which has been novated to an Obligor.

"**Project**" means the project consisting of the Infrastructure Works.

**"Project Monitor"** means Arcadis or any replacement appointed pursuant to Clause 17.6.6.

**"Project Monitor Drawdown Report"** means a report delivered in the Agreed Form by the Project Monitor in connection with a proposed Drawdown pursuant to Clause 4.2(c) addressed to, or otherwise capable of being relied on by, the Security Agent on behalf of the Finance Parties.

**"Project Monitor Initial Report"** means a report on the Infrastructure Works and the Infrastructure Documents (to the extent that the same are in existence as at the date of this Agreement) prepared by the Project Monitor.

**"Project Monitor Quarterly Report"** means a report on, *inter alia*, the progress of the Infrastructure Works and compliance by the Borrower with the requirements of Clause 17.2 (*Completion of Infrastructure Works*) in the form agreed between the Project Monitor, the Lender and the Borrower from time to time delivered by the Project Monitor and addressed to, or otherwise capable of being relied on by, the Security Agent on behalf of the Finance Parties.

**"Project Monitor Report"** means each Project Monitor Drawdown Report, each Project Monitor Initial Report and each Project Monitor Quarterly Report. **"Property Protection Loan"** means a loan under the Facility made by the Lender to the Borrower to finance:

- (a) the payment of any premium of insurance, or any cost or expense required to keep any insurance in force, in accordance with the requirements of this Agreement;
- (b) the payment of any rent or any other amount, cost or expense, due under or in connection with a Headlease; or
- (c) while an Event of Default is outstanding, the payment of any other amount which is required to preserve or protect any Security Asset,

in each case in circumstances where an Obligor is obliged under a Finance Document but has failed to pay the relevant amount.

**"Public Body"** means a public office or department of the Crown within the meaning of section 936(2)(c) of the ITA and not mentioned in section 978(2) of the ITA.

**"Public Sector Subsidy"** means any non-repayable grant received or receivable by an Obligor from public sector bodies including for this purpose funding from the European Commission, government bodies (whether national or local) or bodies in receipt of lottery funds from the National Lottery Distribution Fund pursuant to the National Lotteries Acts 1993 and 1998.

**"Quotation Day"** means, in relation to any period for which an interest rate is to be determined, two Business Days before the first day of that period unless market practice differs in the Relevant Market in which case the Quotation Day will be determined by the Lender in accordance with market practice in the Relevant Market (and if quotations would normally be given on more than one day, the Quotation Day will be the last of those days).

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

**"Related Fund"** in relation to a fund (the first fund), means a fund which is managed or advised by the same investment manager or investment adviser as the first fund or, if it is managed by a different investment manager or investment adviser, a fund whose investment manager or investment adviser is an Affiliate of the investment manager or investment adviser of the first fund.

**"Relevant Document"** means a Finance Document, an Infrastructure Document, each Headlease, the LRP Agreement, the Landowners Agreement, the Framework Agreement, any Intercreditor Agreement and any other document designated as a Relevant Document by the Lender and the Borrower.

**"Relevant Jurisdiction"** means, in relation to an Obligor:

- (a) its jurisdiction of incorporation or formation;
- (b) any jurisdiction where any asset subject to or intended to be subject to a Security Interest is situated;
- (c) any jurisdiction where it conducts its business; and
- (d) the jurisdiction whose laws govern the perfection of any of the Security Documents entered into by it.

**"Relevant Market"** means the London interbank market.

**"Reliance Letter"** means a letter from a person (other than an Obligor) addressed to the Lender providing a report or other information to a Valuer in connection with a Valuation of the Site or any part thereof including any certificate of title or other report prepared by solicitors, any rights of light summary and planning conditions report, where such information was relied on by the Valuer for the purposes of undertaking the Valuation in question which, in the case of any reports provided by solicitors, shall contain a Solicitor's Confirmation.

**"Repayment Date"** means [REDACTED].

**"Repeating Representations"** means the representations set out in Clause 15.1 (*Representations and warranties*) other than those set in Clause 15.8 (*Registration Requirements*), Clause 15.10 (*Litigation*), Clause 15.18 (*Taxes on Payments*), Clause 15.19.2 (*Tax*), Clause 15.20 (*VAT*) and Clause 15.21.2(c) (*Sanctions Compliance*).

**"Reports"** means each:

- (a) Certificate of Title;
- (b) Construction Report;
- (c) Planning Report;
- (d) Project Monitor Report;
- (e) any report or certificate referred to in paragraph (d) of the definition of "Additional Property";
- (f) any other report prepared after the date of this Agreement by a professional adviser on behalf of an Obligor, the information in which is

relied upon by a Valuer for the purposes of undertaking a Valuation of the Site; and

- (g) each addendum or update to any of the reports listed in paragraphs (a) to (f) above.

**"Representative"** means any delegate, agent, manager, administrator, nominee, attorney, trustee or custodian.

**"Request"** means a request made by the Borrower for a Loan substantially in the form set out in the form of Schedule 3 (*Form of Request*).

**"Request for Information"** 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 the Lender.

**"Requisite Rating"** means in relation to any insurer a rating for its long term unsecured and non-credit enhanced obligations of at least two of BBB+ or higher by Fitch or S&P or Baal or higher by Moody's or a comparable rating from an internationally recognised credit rating agency.

**"Reservations"** means:

- (a) the principle that equitable remedies and awards of enforcement costs are remedies which may be granted or refused at the discretion of the court;
- (b) the limitation or enforcement as a result of laws relating to bankruptcy, insolvency, liquidation, reorganisation, court schemes, moratoria, administration and other laws generally affecting the rights of creditors;
- (c) the principle that certain types of security expressed to take effect as fixed security may, as a result of the ability of an Obligor to deal with the assets subject to that security on terms permitted under the Finance Documents, take effect as floating security;
- (d) the requirement that an assignment must be notified to the relevant company if it is to take effect as a legal assignment;
- (e) the principle that, if security is purported to be created (or an assignment or assignation is purported to be made) by an Obligor in breach of any prohibition imposed on that Obligor creating security over (or assigning) that asset, this may affect the validity of the security purported to be created;
- (f) the time barring of claims under the Limitation Acts;
- (g) rules against perpetuities and similar principles;
- (h) similar principles, rights and defences under the laws of any Relevant Jurisdiction; and
- (i) any other matters which are set out as qualifications or reservations to matters of law of general application in any legal opinions supplied to any Finance Party as a condition precedent or otherwise under this Agreement.

**"Resignation Letter"** means a letter substantially in the form set out at Schedule 12 (*Form of Resignation Letter*).

**"Restricted Person"** means any person that is:

- (a) listed on, or owned or controlled by a person listed on, a Sanctions List;
- (b) the government of a Sanctioned Country;
- (c) located in or incorporated under the laws of any Sanctioned Country; or
- (d) to the best of the knowledge of any Obligor (acting with due care and enquiry), otherwise a target of Sanctions.

**"Screen Rate"** means the London interbank offered rate administered by ICE Benchmark Administration Limited (or any other person which takes over the administration of that rate) for sterling for the relevant period, displayed on page LIBOR01 of the Thomson Reuters screen (or any replacement Thomson Reuters page which displays that rate) or on the appropriate page of such other information service which publishes that rate from time to time in place of Thomson Reuters. If such page or service ceases to be available, the Lender may specify another page or service displaying the relevant rate after consultation with the Borrower.

**"S&P"** means Standard & Poor's Rating Services, a division of the McGraw-Hill Companies, Inc. or any successor to its rating business.

**"Sanctioned Country"** means a country or territory which is subject to:

- (a) general trade, economic or financial sanctions or trade embargoes imposed, administered or enforced by:
  - (i) the US government and administered by OFAC;
  - (ii) The United Nations Security Council;
  - (iii) the European Union; or
  - (iv) Her Majesty's Treasury of the United Kingdom; and
- (b) general trade, economic or financial sanctions or trade embargoes imposed, administered or enforced by the US State Department, the US Department of Commerce or the US Department of the Treasury.

**"Sanctions"** means:

- (a) economic or financial sanction regulation, restrictive measure or trade embargoes imposed, administered or enforced from time to time by:
  - (i) The United Nations Security Council;
  - (ii) the European Union; or
  - (iii) Her Majesty's Treasury of the United Kingdom,each as amended, supplemented or substituted from time to time; and
- (b) economic or financial sanction, regulation, restrictive measure or trade embargo imposed, administered or enforced from time to time by the US State Department, the US Department of Commerce or the US Department

of the Treasury, each as amended, supplemented or substituted from time to time.

- (c) Sanctions List means any of the lists of specifically designated nationals or designated persons or entities (or equivalent) held by:
- (i) the US government and administered by OFAC, the US State Department, the US Department of Commerce or the US Department of the Treasury;
  - (ii) The United Nations Security Council;
  - (iii) the European Union; or
  - (iv) Her Majesty's Treasury of the United Kingdom,

each as amended, supplemented or substituted from time to time.

**"Section 106 Agreement"** means each of:

- (a) the section 106 agreement dated 14 November 2013 entered into between EC Properties GP Limited, EC Properties Nominee Limited, London Borough of Hammersmith and Fulham, Royal Borough of Kensington and Chelsea, London Underground Limited and Transport for London (as amended pursuant to a variation agreement dated 7 November 2014);
- (b) the section 106 agreement dated 31 March 2015 entered into between EC Properties GP Limited, EC Properties Nominee Limited, Royal Borough of Kensington and Chelsea and London Underground Limited relating to land at 348-350 Old Brompton Road and other land,

and any updates or amendments thereto entered into in accordance with this Agreement.

**"Secured Party"** means the Security Agent, the Lender and any other person designated as a Secured Party pursuant to an Intercreditor Agreement.

**"Security Assets"** means:

- (a) any security interest and any other agreement or arrangement entered into to create or confer security over any asset in favour of the Lender or the Security Agent as trustee for any Secured Party pursuant to any Security Document and all proceeds thereof;
- (b) all obligations of a Debtor to pay amounts in respect of the Liabilities to the Security Agent as trustee for the Secured Parties with all representations and warranties expressed to be given by a Debtor in favour of the Security Agent as trustee for the Secured Parties;
- (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,

other than those assets which are subject only to a floating charge.

**"Security Document"** means:



- (a) the Infrastructure Debenture;
- (b) each Supplemental Security Agreement; and
- (c) any other document designated as such by the Security Agent and the Borrower.

**"Security Interest"** means any mortgage, pledge, lien, charge, assignment by way of security, hypothecation or security interest or any other agreement or arrangement having a similar effect.

**"Site"** means the Original Site, excluding any part of the Original Site disposed of by way of a Permitted Disposal and including any Additional Property.

**"Solicitor's Confirmation"** means confirmation from a solicitor as to that solicitor's duty of care to the Lender, substantially in the form set out in Schedule 13 (*Form of Permitted Part Confirmation*) with such modifications as are reasonably necessary to take account of the nature of the transaction in relation to which the confirmation is being provided.

**"Specified Time"** means Quotation Day 11:00 am.

**"Sterling"** or **"£"** means the lawful currency for the time being in the United Kingdom.

**"Structural Engineer"** means in respect of the Infrastructure Works or any part thereof, such firm or company of structural engineers appointed by an Obligor from time to time.

**"Subordinated Creditor"** means:

[REDACTED]

**"Subordinated Debt"**, in relation to a Subordinated Creditor, has the meaning given to it in the Subordination Agreement.

**"Subordination Agreement"** means a subordination agreement in the form delivered as a condition precedent under this Agreement or such other form as is acceptable to the Lender, acting reasonably, entered into or to be entered into by a Subordinated Creditor and the Security Agent.

**"Subsidiary"** means an entity of which a person has direct or indirect control or owns directly or indirectly more than 50 per cent of the voting capital or similar right of ownership and **"control"** for this purpose means the power to direct the management and the policies of the entity whether through ownership of voting capital, by contract or otherwise and for the purpose of making any determination as to whether an entity is a subsidiary within this definition, the existence of any Security over any shares in an entity which would otherwise be a Subsidiary shall be ignored.

**"Substitution Date"** has the meaning given to that term in the Borrower Novation Deed.

**"Supplemental Security Agreement"** means a security document entered into by an Acceding Obligor in favour of the Security Agent which shall be substantially in the form of the Infrastructure Debenture, subject to such amendments as the Borrower and the Lender, each acting reasonably, may agree to take account of the security being granted by the relevant Acceding Obligor.

**"Tax"** means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest) and taxation shall be construed accordingly.

**"Tax Deduction"** means a deduction or withholding, other than a FATCA Deduction, for or on account of Tax from a payment under a Finance Document.

**"Tax Payment"** means a payment made by an Obligor to the Lender in any way relating to a Tax Deduction or under any indemnity given by an Obligor in respect of Tax under any Finance Document.

**"TfL"** means Transport for London.

**"TfL Threshold Breach"** means [REDACTED]

**"Third Party Lender Event of Default"** means any default (howsoever described) in relation to any Financial Indebtedness to a Third Party Lender.

**"Third Party Lender"** means:

- (a) any person providing finance to an Obligor for the purposes of financing or refinancing any construction works (other than the Infrastructure Works) on any part of the Site; and
- (b) any person financing any particular building or buildings constructed from time to time on any part of the Site.

**"Third Party Rights"** mean the rights afforded to the Lender or the Security Agent on its behalf:

- (a) under a Trade Contract entered into by a Major Trade Contractor; or
- (b) under a Professional Appointment entered into by a Major Professional,

by virtue of the Contracts (Rights of Third Parties) Act 1999 in form and substance as set out in the Agreed Package or permitted in accordance with the terms of the Finance Documents or such other form as the Lender may approve (such approval not to be unreasonably withheld or delayed).

[REDACTED]

**"Trade Contract"** means any trade contract in respect of the Infrastructure Works entered into or to be entered into between an Obligor and a Trade Contractor or whose Trade Contract has been novated to an Obligor.

**"Trade Contractor"** means a firm or company of trade contractors or suppliers of equipment which is material to the functioning of the Infrastructure Works appointed by an Obligor or a Trade Contractor whose contract relating to the Infrastructure Works has been novated to an Obligor (or in respect of which an Obligor is obliged to accept a novation).

**"UK"** means the United Kingdom of Great Britain and Northern Ireland.

**"Undertaker Disposal"** means the grant of easements or rights, transfer, lease or dedication of any part of the Site to:

- (a) a local or other public authority pursuant to a requirement in an agreement or unilateral undertaking under section 106 of the Town and Country Planning Act 1990;
- (b) a highways authority to comply with highways requirements or in connection with the adoption or dedication of public highway; or
- (c) a utilities company for an electricity substation, gas governor, sewage or water pumping station, drainage balancing device or other similar matters for the provision of relevant services,

provided that in each case it will be of benefit to the retained parts of the Site.

**"Valuation"** means a valuation of the Site undertaken by the Valuer on the basis of the market value as defined in the current issue of 'Valuation Professional Standards' issued by the Royal Institute of Chartered Surveyors in its actual state and condition at the date of the relevant valuation which:

- (a) shall specify the extent to which the Valuer has relied on any reports or other information provided by third parties to the Valuer in connection with such valuation;
- (b) shall provide as a component part of the budget for abnormal expenditure such current budget for the settlement of rights of light compensation as is recommended for the current development proposals by a reputable rights of light surveyor or shall make such other provision in relation to costs arising from, or other implications of, potential rights that the Valuer deems appropriate;
- (c) in respect of any Valuation for the purposes of Clause 22.2.4 (*Valuations*):
  - (i) shall include an assumption that there has been no change in market conditions since the preceding Valuation unless the Lender (acting reasonably and taking into account any adverse changes in market conditions affecting the Site which have developed since the preceding Valuation) has notified the Borrower it requires no such assumption to be included;
  - (ii) shall include an assumption that there has been no change in costs or income projections since the preceding Valuation (unless such costs or income projections have been revised in an updated Business Plan provided since the preceding Valuation); and
  - (iii) shall confirm that the Valuer has received such legal reporting (in the form of a certificate of title or other summary containing a Solicitor's Confirmation) as to the terms of the disposal of part of

the Site and its consequent effect on the retained part of the Site being valued as the Valuer thinks appropriate given the nature of the valuation being undertaken; and

- (d) shall not, without the Lender's prior approval (such approval not to be unreasonably withheld or delayed), include the making of any special assumptions other than:
  - (i) any special assumptions made in the Initial Valuation; and
  - (ii) any other special assumptions which the Valuer has confirmed as being prudent and reasonable in the context of valuing the Site and which are not made as a result of any omission from, or deficiency in, the reports or information set out in paragraph (a) above.
- (e) "**Valuer**" means Jones Lang LaSalle or such other surveyor or valuer as may be appointed by the Borrower in consultation (for a period of no more than ten Business Days) with the Lender, provided that the terms of appointment, reliance and the agreed assumptions are substantially the same as they were with Jones Lang LaSalle in relation to the Initial Valuation.

"**VAT**" means value added tax as provided for in the VATA and legislation and regulations supplemental thereto or any other tax of a similar nature whether of the UK or elsewhere.

"**VAT Group**" means a group for the purposes of the VAT Grouping Legislation.

"**VAT Grouping Legislation**" means, in the UK:

- (a) section 43 to 43D (inclusive) of VATA; and
  - (b) the Value Added Tax (Groups: eligibility) Order 2004 (SI 2004/1931),
- or any equivalent legislation in any other jurisdiction.

"**VATA**" means the Value Added Tax Act 1994.

## 1.2 **Construction**

1.2.1 In this Agreement, unless the contrary intention appears, a reference to:

- (a) an "**amendment**" includes a supplement, novation, extension (whether of maturity or otherwise), restatement, re-enactment or replacement (however fundamental and whether or not more onerous) and amended will be construed accordingly;
- (b) "**assets**" include present and future properties, revenues and rights of every description;
- (c) an "**authorisation**" includes an authorisation, consent, approval, resolution, permit, licence, exemption, filing, registration or notarisation;
- (d) "**disposal**" means a sale, transfer, assignment, grant, lease, licence, declaration of trust or other disposal, whether voluntary or involuntary, and "dispose" will be construed accordingly;

- (e) "**indebtedness**" includes any obligation (whether incurred as principal or as surety and whether present or future, actual or contingent) for the payment or repayment of money;
- (f) "**know your customer requirements**" are the identification checks that the Lender requests or requires in order to meet its obligations under any applicable law or regulation to identify a person who is (or is to become) its customer;
- (g) a "**person**" includes any individual, company, corporation, unincorporated association or body (including a partnership, trust, fund, joint venture or consortium), government, state, agency, organisation or other entity whether or not having separate legal personality;
- (h) a "**regulation**" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law but, if not having the force of law, being of a type with which any person to which it applies is accustomed to comply) of any governmental inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
- (i) "**writing**" includes letter, fax and email;
- (j) a "**currency**" is a reference to the lawful currency for the time being of the relevant country;
- (k) a Default (other than an Event of Default) being "**outstanding**" means that it has not been remedied or waived and an Event of Default being "**outstanding**" means that it has not been waived or, before a notice is served under Clause 19.19.1(b) or Clause 19.19.1(c) remedied;
- (l) a provision of law is a reference to that provision as amended, extended, applied or re-enacted and includes any subordinate legislation;
- (m) a "Clause" or a "Schedule" is a reference to a Clause or a Schedule to this Agreement;
- (n) a Party or any other person includes its successors in title, permitted assigns and permitted transferees;
- (o) a Finance Document or other document or security includes (without prejudice to any prohibition on amendments) any amendment to that Finance Document or other document or security, including any change in the purpose of, any extension of or any increase in the amount of a facility or any additional facility;
- (p) a time of day is a reference to London time; and
- (q) the word "**including**" is without limitation.

1.2.2 Unless the contrary intention appears, a reference to a "**month**" or "**months**" is a reference to a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month or the calendar month in which it is to end, except that:

- (a) if the numerically corresponding day is not a Business Day, the period will end on the next Business Day in that month (if there is one) or the preceding Business Day (if there is not);
  - (b) if there is no numerically corresponding day in that month, that period will end on the last Business Day in that month; and
  - (c) notwithstanding Clause 1.2.2(a), a period which commences on the last Business Day of a month will end on the last Business Day in the next month or the calendar month in which it is to end, as appropriate.
- 1.2.3 The index to and the headings in this Agreement are for convenience only and are to be ignored in construing this Agreement.
- 1.2.4 Unless expressly provided to the contrary in a Finance Document, a person who is not a party to a Finance Document may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.
- 1.2.5 Notwithstanding any term of any Finance Document, no consent of any third party is required for any amendment (including any release or compromise of any liability) or termination of that Finance Document.
- 1.2.6 In circumstances where the consent of a Party is requested in accordance with any relevant provision of a Finance Document but that Party does not respond (whether in the negative or the affirmative) to that request within 15 Business Days the consent of that Party shall be deemed to be given.
- 1.2.7 Unless the contrary intention appears:
- (a) a reference to a Party will not include that Party if it has ceased to be a Party under this Agreement;
  - (b) a word or expression used in any other Finance Document or in any notice given in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement; and
  - (c) any obligation of an Obligor under the Finance Documents which is not a payment obligation remains in force for so long as any payment obligation of an Obligor may be or is capable of becoming outstanding under the Finance Documents.
- 1.2.8 Each Finance Party agrees that no personal liability shall attach in any way to any director, officer, employee or other individual signing a certificate or other document on behalf of any Obligor.

## 2 THE FACILITY

### 2.1 The Facility

Subject to the terms of this Agreement, the Lender agrees to grant to the Borrower an infrastructure facility of an amount up to the Total Commitments under which the Borrower may request Loans during the Availability Period.

## 2.2 **Property Protection Loans**

- 2.2.1 The Lender may make Property Protection Loans, whether requested by the Borrower or not, and shall provide the Borrower with not less than two Business Days' notice of its intention to do so.
- 2.2.2 The Borrower must repay each Property Protection Loan made to it on demand by the Lender and, in any event, on the Repayment Date.
- 2.2.3 The Borrower must pay interest on each Property Protection Loan made to it in accordance with Clause 9.4 (*Default interest*) as if it was an overdue amount.

## 3 **PURPOSE**

### 3.1 **Purpose of Facility**

- 3.1.1 The proceeds of each Loan shall be applied in or towards:
- (a) financing or refinancing the fees, costs and expenses (including professional and consultant fees) of the Infrastructure Works and any fees, costs and expenses incurred or to be incurred in connection with the Infrastructure Works, including any applicable VAT but excluding any affordable housing commuted sum payments;
  - (b) refinancing any Equity Funded Cost Overrun; and
  - (c) financing the payment of interest in accordance with Clause 9.3 (*Capitalisation and payment of interest*).

### 3.2 **General**

Without affecting the obligations of the Obligors in any way, the Lender is not bound to monitor or verify the application of any Loan.

## 4 **CONDITIONS PRECEDENT**

### 4.1 **Documentary conditions precedent**

- 4.1.1 The Lender's obligation to fund under Clause 5.3 (*Application of Loan proceeds*) on the first Drawdown Date is subject to the Lender having received prior to the proposed Drawdown Date (in each case in form and substance satisfactory to it, except for the Agreed Package and the documents referred to in paragraph 11 of Schedule 1 (*Conditions Precedent to First Utilisation*)), all of the documents and other matters set out in Schedule 1 (*Conditions Precedent to First Utilisation*) or, to the extent it has not received the same, it has waived receipt of the same. The Lender shall promptly issue that notification when it has so received or waived the relevant requirement. Without prejudice to the foregoing, the Lender's obligation to fund under Clause 5.3 (*Application of Loan proceeds*) on the second Drawdown Date is subject to the Lender having received, in form and substance satisfactory to it:
- (a) a final version of the Project Monitor Initial Report;
  - (b) a duly completed (but undated) bank mandate authorising the Security Agent to operate the Infrastructure Works Account in the circumstances described in Clause 11.2.4; and

- (c) a copy of the notice to the bank operating the Infrastructure Works Account of the charging of the interests of the Borrower in the Infrastructure Works Account.

4.1.2 The Lender may refuse to accept a Request if it reasonably believes that the notification referred to in Clause 4.1.1 will not be given on or before the proposed Drawdown Date.

4.1.3 If on a proposed Drawdown Date the Lender has not issued the notification referred to in Clause 4.1.1 then:

- (a) at its own discretion, the Loan may still be made; and
- (b) if the Lender exercises such discretion to make the Loan, the proceeds of the Loan will be paid into the client account of the solicitors to the Lender to be held to the order of the Lender until it gives the notification referred to in Clause 4.1.1.

#### 4.2 Further conditions precedent

The obligation of the Lender to fund a Loan under Clause 5.4 (*Loans*) is subject to the further conditions precedent that:

- (a) both on the date of the Request and on the proposed Drawdown Date:
  - (i) the Repeating Representations are correct and will be correct immediately after the Loan is made; and
  - (ii) no Default is outstanding or will result from the making of that Loan;
- (b) the making of that Loan would not cause:
  - (i) the Loan to Value to [REDACTED] or
  - (ii) [REDACTED]
- (c) in the case of the first Utilisation of the Loan, it is accompanied by such information as the Lender may notify the Borrower prior to the date of this Agreement as being required for this purpose and, in the case of each subsequent Utilisation, the Lender has received a Project Monitor Drawdown Report in respect of that Utilisation.

#### 4.3 Project Monitor

The Lender shall:

- (a) appoint Arcadis as Project Monitor on or prior to the First Utilisation Date and ensure that such appointment expressly requires Arcadis to provide the Project Monitor Initial Report and the Project Monitor Drawdown Reports; and
- (b) use reasonable endeavours to ensure that the Project Monitor discharges its duties relating to the issuance of the Project Monitor Initial Report and



the Project Monitor Drawdown Reports in accordance with the requirements of the Project Monitor's appointment.

## 5 **DRAWDOWN**

### 5.1 **Drawdown**

5.1.1 The Borrower may borrow a Loan if the Lender receives a Request not later than ten Business Days before the proposed Drawdown Date or such shorter period as the Lender may, in its absolute discretion, agree.

5.1.2 Only one Loan may be requested in each Request.

5.1.3 The Drawdown Date for the first Loan under the Facility must occur on or before 31 March 2016.

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

### 5.2 **Completion of Requests**

A Request will not be regarded as having been duly completed unless:

- (a) it specifies one Loan only for an amount not less than £100,000 unless otherwise agreed in writing between the Lender and the Borrower;
- (b) the proposed Drawdown Date is a Business Day during the Availability Period applicable to the Facility; and
- (c) where all or any part of that Loan is to refinance an Equity Funded Cost Overrun, it is accompanied by either:
  - (i) a confirmation from the Project Monitor which is satisfactory to the Lender as to the existence of the Cost Saving attributed to the Infrastructure Budgeted Costs to which the Equity Funded Cost Overrun related; or
  - (ii) a confirmation from the Borrower as to the actual costs of or relating to the Infrastructure Works being less than those anticipated to be incurred by the Borrower during a period which falls after the expiry of the period to which the then current Business Plan relates,

and which is in each case sufficient to offset the amount of the Equity Funded Cost Overrun to be refinanced in accordance with Clause 17.3.8.

### 5.3 **Application of Loan proceeds**

The proceeds of each Loan shall be paid to the Infrastructure Works Account provided that, if the Lender has not received the documents referred to in Clause 4.1.1(b) and Clause 4.1.1(c) prior to the First Utilisation, in the case of the First Utilisation such proceeds shall be paid to the client account of Berwin Leighton Paisner LLP or, at the Lender's sole discretion, to the client account of Herbert Smith Freehills LLP. All proceeds so paid by the Lender shall be applied in accordance with Clause 11:2 (*Infrastructure Works Account*) or, in the case of the First Utilisation if the same have been paid into a solicitor's account, in accordance with the undertaking delivered to the Lender as a condition precedent under paragraph 14(b) of Schedule 1 (*Conditions Precedent to First Utilisation*).

5.4 **Loans**

If the conditions satisfied in this Agreement have been met, the Lender shall make each Loan available on the Drawdown Date specified in the relevant Request.

6 **REPAYMENT**

The Borrower shall repay each Loan together with all other amounts outstanding under the Finance Documents on the Repayment Date.

7 **PREPAYMENT AND CANCELLATION**

7.1 **Mandatory prepayment – illegality**

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

- (a) the Lender shall promptly notify the Borrower upon becoming aware of that event;
- (b) upon receipt of the notice referred to in Clause 7.1(a) the undrawn Commitment of the Lender will be immediately cancelled; and
- (c) the Borrower shall repay the Loans on the last day of the Interest Period for each Loan occurring after that notification or, if earlier, the date specified by the Lender in the notice referred to in Clause 7.1(a) (being no earlier than the last day of any applicable grace period permitted by law).

7.2 **Mandatory prepayment - change of control**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

7.2.2 Any request by the Borrower to the Lender for consent to a person becoming an Approved Shareholder shall be accompanied by written details reasonably necessary for the Lender to assess whether the requirements set out in the definition of "Approved Shareholder" have been met.

7.2.3 If a change of control or a Tfl Threshold Breach occurs:

- (a) the Borrower shall promptly notify the Lender upon becoming aware of that event;
- (b) the Lender shall not be obliged to fund a Loan; and
- (c) the Lender may, by not less than 60 Business Days' notice to the Borrower, cancel the Commitments and declare the Loans, together with accrued interest, and all other amounts accrued under the Finance Documents, immediately due and payable, whereupon the Commitments will be cancelled and all such outstanding amounts will become immediately due and payable.

**7.3 Voluntary prepayment and cancellation**

7.3.1 Without prejudice to Clause 18.2 (*Rectification of Loan to Value*), the Borrower may, by giving not less than 15 Business Days' prior notice to the Lender (or such shorter period as is agreed to by the Lender in writing), prepay any Loan in whole or in part (but, if in part, in a minimum amount of £500,000 and integral multiples of £100,000).

7.3.2 Subject to Clause 7.3.3, the Borrower may, by giving not less than 15 Business Days' prior notice to the Lender (or such shorter period as is agreed to by the Lender in writing), cancel the undrawn portion of the Total Commitments in whole or in part (but, if in part in a minimum amount of £500,000 and integral multiples of £100,000).

7.3.3 Except in the case of the cancellation of the entire amount of the Total Commitments where no amount of the Facility has been drawn down and provided no Event of Default is outstanding, the Borrower may only cancel any part of the undrawn portion of the Total Commitments if it provides evidence satisfactory to the Lender (acting reasonably) that, taking into account the undrawn amount of

the Total Commitments remaining after the cancellation and the need for the Infrastructure Contingency, there are sufficient funds to complete the Infrastructure Works in accordance with the Business Plan.

**7.4 Miscellaneous provisions**

- 7.4.1 Any notice of prepayment and/or cancellation under this Agreement is irrevocable.
- 7.4.2 All prepayments under this Agreement shall be made together with accrued interest on the amount prepaid. No premium or penalty is payable in respect of any prepayment or cancellation under this Agreement.
- 7.4.3 No prepayment or cancellation is permitted except in accordance with the express terms of this Agreement.
- 7.4.4 No amount prepaid or repaid under this Agreement may be reborrowed.

**8 INTEREST PERIODS**

**8.1 Interest Periods**

- 8.1.1 Each Loan has successive Interest Periods.
- 8.1.2 Each Interest Period shall start on an Interest Payment Date and end on the next Interest Payment Date (except that the first Interest Period for each Loan shall start on its Drawdown Date and end on the next Interest Payment Date) unless otherwise agreed in writing between the Borrower and the Lender.

**8.2 Non-Business Days**

If an Interest Period would otherwise end on a day which is not a Business Day, that Interest Period shall instead end on the next Business Day in that calendar month (if there is one) or the preceding Business Day (if there is not).

**8.3 Consolidation**

A Loan made to the Borrower shall be consolidated with all other Loans made to the Borrower on each Interest Payment Date.

**9 INTEREST**

**9.1 Interest rate**

The rate of interest on each Loan for each of its Interest Periods is, subject to Clause 9.1(b), the rate per annum determined by the Lender to be the aggregate of the applicable:

- (a) Margin; and
- (b) the EC Reference Rate or, if the EC Reference Rate is unavailable, 12 month LIBOR, in each case as at the first day of the relevant Interest Period.

9.2 **Due dates**

Subject to Clause 9.3 (*Capitalisation and payment of interest*), accrued interest on each Loan is payable by the Borrower on each Interest Payment Date for that Loan.

9.3 **Capitalisation and payment of interest**

9.3.1 Any unpaid amount of interest that is payable on a Loan on any Interest Payment Date shall, unless paid by the Borrower on or prior to that Interest Payment Date, be capitalised on that Interest Payment Date and be added to the principal amount of the Loan in respect of which it accrued and such capitalised amounts shall bear interest in accordance with this Clause 9 (*Interest*) and shall be repayable in accordance with the repayment and prepayment provisions of this Agreement.

9.3.2 For the avoidance of doubt, the Borrower is under no obligation to pay interest on the Loan other than by way of capitalisation pursuant to this Clause 9.3 and any amount of interest which is capitalised in accordance with this Clause 9.3 (*Capitalisation and payment of interest*) shall no longer be due and payable and no Default shall occur as a result of such capitalisation.

9.4 **Default interest**

9.4.1 If the Borrower fails to pay any amount due and payable by it under the Finance Documents, it shall forthwith on demand by the Lender pay interest on the overdue amount from the due date up to the date of actual payment, after as well as before judgment, at a rate (the default rate) determined by the Lender to be 2% per annum above the higher of:

- (a) if the overdue amount is principal (including a Property Protection Loan), the aggregate rate determined in accordance with Clause 9.1 (*Interest rate*); and/or
- (b) in any other case, the EC Reference Rate plus the applicable Margin for each successive interest period of such duration as the Lender may, acting reasonably, determine (each a "**Designated Interest Period**").

9.4.2 If the applicable default rate is to be calculated in accordance with Clause 9.4.1(b), default interest will be compounded at the end of each Designated Interest Period, otherwise default interest will be compounded at the end of each successive period of such duration as the Lender may reasonably determine and, in each case, for the avoidance of doubt, will remain immediately due and payable.

9.5 **Notification**

The Lender shall promptly notify the Borrower of the determination of a rate of interest in connection with the Facility under this Agreement no later than the first day of each Interest Period.

10 **PAYMENTS**

10.1 **Place**

All payments by the Borrower under this Agreement shall be made to the Lender at:

Bank : ██

Sort Code: [REDACTED]  
Account number: [REDACTED]

or to its account at such other office or bank in the United Kingdom as it may notify to the Borrower for this purpose.

**10.2 Funds and currency**

Payments by the Borrower under this Agreement to the Lender shall be made in Sterling for value on the due date.

**10.3 Set-off and counterclaim**

All payments made by an Obligor under the Finance Documents shall be made without set-off or counterclaim.

**10.4 Non-Business Days**

10.4.1 If a payment under the Finance Documents is due on a day which is not a Business Day, the due date for that payment shall instead be the preceding Business Day.

10.4.2 During any extension of the due date for payment of any principal under Clause 10.4.1 interest is payable on that principal at the rate payable on the original due date.

**10.5 Partial payments**

10.5.1 Subject to Clause 10.5.2, if the Lender receives a payment insufficient to discharge all the amounts then due and payable by the Borrower under the Finance Documents, the Lender shall apply that payment towards the obligations of the Borrower under the Finance Documents in the following order:

- (a) first, in or towards payment pro rata of any unpaid fees, costs and expenses of the Finance Parties under the Finance Documents;
- (b) secondly, in or towards payment to the Lender of any accrued interest and fees due but unpaid under the Finance Documents in relation to the Property Protection Loans;
- (c) thirdly, in or towards payment to the Lender of any principal and other amounts due but unpaid under the Finance Documents in relation to the Property Protection Loans;
- (d) fourthly, in or towards payment pro rata to the Lender of all accrued interest and fees due but unpaid under the Finance Documents (other than in respect of Property Protection Loans);
- (e) fifthly, in or towards payment pro rata to the Lender of any principal due but unpaid under this Agreement (other than in respect of Property Protection Loans); and
- (f) sixthly, in or towards payment pro rata of any other sums due but unpaid under the Finance Documents.

10.5.2 Clause 10.5.1 shall override any appropriation made by the Borrower.

10.5.3 The Lender may vary the order set out in Clause 10.5.1.

## 10.6 Disruption to payment systems

- 10.6.1 If the Lender determines that a Disruption Event has occurred or the Borrower notifies the Lender that a Disruption Event has occurred, the Lender:
- (a) may, and must if requested by the Borrower, enter into discussions with the Borrower for a period of not more than five days with a view to agreeing any changes to the operation or administration of the Facility ("**changes**") as the Lender may decide is necessary; and
  - (b) is not obliged to enter into discussions with the Borrower in relation to any changes if, in its opinion, it is not practicable so to do and has no obligation to agree to any changes.
- 10.6.2 Any agreement between the Lender and the Borrower will be (whether or not it is finally determined that a Disruption Event has occurred), binding on the Parties notwithstanding the provisions of Clause 25 (*Amendments and waivers*).
- 10.6.3 The Lender accepts the discretions given to it by this Clause only on the basis that it will not be liable (either in contract or tort) for any damages, costs or losses of any kind which any Party may incur or sustain as a result of the Lender taking or not taking any action under this Clause.

## 11 BANK ACCOUNTS

### 11.1 Designation of Accounts

- 11.1.1 The Borrower shall open and maintain at The Royal Bank of Scotland plc or other bank acceptable to the Lender (acting reasonably):
- (a) a bank account in its name, designated an "**Infrastructure Works Account**" (such account to be opened on or before the second Drawdown Date); and
  - (b) prior to the date on which any amount is required to be paid into such account, a bank account in its name, designated a "**LTV Rectification Account**".

### 11.2 Infrastructure Works Account

- 11.2.1 The Borrower shall, subject to Clause 11.2.4 and Clause 11.4 (*Accounts Generally*), have sole signing rights on the Infrastructure Works Account.
- 11.2.2 Amounts will be paid into the Borrower's Infrastructure Works Account in accordance with Clause 5.3 (*Application of Loan proceeds*).
- 11.2.3 Unless an Event of Default is outstanding, the Borrower may make withdrawals from the Infrastructure Works Account to:
- (a) pay any costs and expenses (including amounts in respect of or representing VAT) incurred in accordance with the Infrastructure Documents, the goods and services referred to in the Infrastructure Budgeted Costs or otherwise applied in or towards a purpose consistent with the Finance Documents; and

- (b) in the case of any payment to the Infrastructure Works Account from the LTV Rectification Account, in payment of any liabilities of the Borrower or in making payments to its shareholders or the Subordinated Creditors.

11.2.4 If an Event of Default is outstanding, the Security Agent may notify the Borrower that its rights to make withdrawals from the Infrastructure Works Account are suspended and the Security Agent shall, from the date of such notice until the date on which it serves any notice to the contrary, have sole signing rights on the Infrastructure Works Account.

### 11.3 **LTV Rectification Account**

11.3.1 The Security Agent has sole signing rights in relation to the LTV Rectification Account.

11.3.2 The Borrower shall pay any amount referred to in Clause 18.2.1(b) into the LTV Rectification Account.

11.3.3 The Borrower shall pay amounts into the LTV Rectification Account in accordance with Clause 18.2.1(b).

11.3.4 Following six months of compliance with the Loan to Value covenant (without regard to the sums standing to the credit of the LTV Rectification Account), the Security Agent shall withdraw the Rectification Amount from the LTV Rectification Account and shall pay such amount to the Infrastructure Works Account.

### 11.4 **Accounts Generally**

11.4.1 Each relevant Obligor shall ensure that, save with the prior written consent of the Lender or where the Security Agent is operating the relevant Account under this Clause 11 (*Bank accounts*), none of the Accounts are overdrawn at any time.

11.4.2 The Borrower shall procure that copies of all bank statements in connection with each Account are promptly furnished to the Lender and the Security Agent and the Borrower shall provide Lender and the Security Agent within 15 Business Days of any request, the following information in relation to any transaction with respect to an Account:

- (a) date of payment/receipt;
- (b) payer; and
- (c) purpose of/for payment/receipt.

11.4.3 The Security Agent may, if it has appointed an administrative receiver, receiver or manager in accordance with the terms of a Security Document, delegate its powers of withdrawal under this Clause 11 (*Bank accounts*) to any administrative receiver, receiver and/or manager.

## 12 **TAXES**

The terms of this Clause 12 (*Taxes*) (other than Clauses 12.1 (*General*), Clause 12.2.1 (*Deduction required by law*), Clause 12.7 (*VAT*), Clause 12.8 (*FATCA Deduction*) and Clause 12.9 (*FATCA Information*)) shall not apply for so long as the Homes and Communities Agency or any Public Body is the Lender.



The Home and Communities Agency confirms that it is a body corporate pursuant to section 1 of the Housing and Regeneration Act 2008 and thus a UK resident company for the purposes of section 933 of the ITA and is beneficially entitled to interest payable to it in respect of an advance made under this Agreement and undertakes to notify the Borrower promptly of any change in that position.

12.1 **General**

12.1.1 In this Clause 12 (*Taxes*) and for the purposes of Clause 26 (*Changes to the parties*):

"**Bank Levy**" means the UK bank levy as set out in the Finance Act 2011 (UK), the French tax bancaire de risque systémique as set out under article 235 ter ZE of the French code général des impôts (France), the German bank levy as set out in the German Restructuring Fund Act 2010 (Restrukturierungsfondsgesetz), or any bank levy of a similar nature in force as at the date of this Agreement which is charged wholly or mainly by reference to the balance sheet (including any consolidated balance sheet of any group of which the Lender forms part) of the Lender.

"**CTA 2009**" means the Corporation Tax Act 2009.

"**ITA 2007**" means the Income Tax Act 2007.

The Lender is a "**Qualifying Lender**" at any time at which it is:

- (a) a UK Lender;
- (b) a Treaty Lender; or
- (c) a building society (as defined for the purpose of section 880 of the ITA 2007) making an advance under this Agreement.

"**Tax Confirmation**" means a confirmation by the Lender that the person beneficially entitled to interest payable to it under this Agreement is either:

- (a) a company resident in the UK for UK tax purposes;
- (b) a partnership each member of which is:
  - (i) a company resident in the UK for UK tax purposes; or
  - (ii) a company not resident in the UK for UK tax purposes but which carries on a trade in the UK through a permanent establishment and is required to bring into account in computing its chargeable profits (for the purposes of section 19 of the CTA 2009) the whole of any share of interest payable to it under this Agreement which is attributable to it by reason of Part 17 of the CTA 2009; or
- (c) a company not resident in the UK for UK tax purposes which carries on a trade in the UK through a permanent establishment and is required to bring into account interest payable to it under this Agreement in computing its chargeable profits (for the purposes of section 19 of the CTA 2009).

"**Tax Credit**" means a credit against any Tax or any relief or remission for Tax (or its repayment).

The Lender is a "**Treaty Lender**" at any time at which it is beneficially entitled (for the purposes of the relevant Treaty) to interest payable to the Lender in respect of an advance under a Finance Document and:

- (a) is treated as resident of a Treaty State for the purposes of the Treaty;
- (b) does not carry on a business in the UK through a permanent establishment with which the Loan is effectively connected; and
- (c) is able to fulfil any other conditions which must be fulfilled under the Treaty by residents of that Treaty State for such residents to obtain full exemption from UK taxation on interest except that for this purpose it shall be assumed that any necessary procedural formalities are satisfied.

"**Treaty State**" means a jurisdiction having a double taxation agreement (a Treaty) with the UK which makes provision for full exemption from Tax imposed by the UK on interest.

The Lender will be a "**UK Lender**" if it is:

- (a) beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document and:
  - (i) is a bank (as defined for the purpose of section 879 of the ITA 2007) making an advance under a Finance Document and is within the charge to UK 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 2009; or
  - (ii) 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 UK corporation tax as respects any payments of interest made in respect of that advance; or
- (b) a UK Non-Bank Lender.

"**UK Non-Bank Lender**" means:

- (a) a company resident in the UK for UK tax purposes;
- (b) a partnership, each member of which is:
  - (i) a company resident in the UK for UK tax purposes; or
  - (ii) a company not resident in the UK for UK tax purposes but which carries on a trade in the UK through a permanent establishment and is required to bring into account in computing its chargeable profits (for the purpose of section 19 of the CTA 2009) the whole of any share of interest payable to it under this Agreement which is attributable to it by reason of Part 17 of the CTA 2009; or
- (c) a company not resident in the UK for UK tax purposes which carries on a trade in the UK through a permanent establishment and is required to bring into account interest payable to it under this Agreement in computing its chargeable profits for the purpose of section 19 of the CTA 2009,

which, in each case, is beneficially entitled to interest payable to it in respect of an advance under this Agreement.

**12.2 Tax gross-up**

12.2.1 Each Obligor must make all payments to be made by it under the Finance Documents without any Tax Deduction, unless a Tax Deduction is required by law.

12.2.2 Each Obligor shall promptly upon becoming aware that it must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Lender accordingly. Similarly, the Lender will notify the Borrower promptly on becoming so aware in respect of a payment to it.

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

12.2.4 A payment shall not be increased under Clause 12.2.3 by reason of a Tax Deduction in respect of tax imposed by the UK if on the date the payment falls due:

(a) the payment could have been made to the Lender without a Tax Deduction if it was, or had been, a Qualifying Lender, but on that date the Lender is not, or has ceased to be, a Qualifying Lender provided that this Clause 12.2.4(a) shall not apply in the case of a Qualifying Lender (which is not a Treaty Lender) if such Tax Deduction arises as a result of any change after the date it became the 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 Lender is a Qualifying Lender solely because it is a UK Non-Bank Lender and:

(i) an officer of HM Revenue & Customs has given (and not revoked) a direction under section 931 of the ITA 2007 (as that provision has effect on the date on which the relevant Lender became a party to this Agreement) which relates to the relevant payment;

(ii) the Lender has received from the Borrower a certified copy of that direction; and

(iii) the payment could have been made to the Lender without any Tax Deduction in the absence of that direction; or

(c) the Lender is a Qualifying Lender solely because it is a UK Non-Bank Lender and:

(i) the Lender has not given a Tax Confirmation to the Borrower or has given a Tax Confirmation and has subsequently retracted it; 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 that Borrower to have formed a reasonable belief that a

payment was an "**excepted payment**" for the purpose of section 930 of the ITA 2007; or

- (d) if the Lender is a Treaty Lender unless the Lender is able to demonstrate that the Tax Deduction would not have been required if that Obligor had complied with its obligations under Clause 12.2.7.

12.2.5 If an Obligor is required to make a Tax Deduction, that Obligor must make the minimum Tax Deduction allowed by law and must make any payment required in connection with that Tax Deduction within the time allowed by law.

12.2.6 Within 30 days of making either a Tax Deduction or a payment required in connection with a Tax Deduction, the Obligor making that Tax Deduction or payment must deliver to the Lender evidence satisfactory to it (acting reasonably) that the Tax Deduction has been made or (as applicable) the appropriate payment has been paid to the relevant taxing authority.

12.2.7 A Treaty Lender and each Obligor must co-operate in completing any procedural formalities (including, where necessary, the relevant Obligor confirming to HM Revenue & Customs that the relevant payment is UK source) necessary for that Obligor to obtain authorisation to make that payment without a Tax Deduction including making and filing an appropriate application for relief under the relevant Treaty and the Treaty Lender shall ensure that the relevant form is filed promptly with the relevant tax authority.

12.2.8 If the Lender is expressed to be a UK Non-Bank Lender, it provides a Tax Confirmation to the Borrower by entering into this Agreement.

### 12.3 **Tax indemnity**

12.3.1 Except as provided below, the Borrower must (within three Business Days of demand by the Lender) pay to the Lender an amount equal to any loss or liability or cost which the Lender reasonably determines has been suffered (directly or indirectly) by it for or on account of Tax in relation to a payment received or receivable (or any payment deemed to be received or receivable) under a Finance Document.

12.3.2 Clause 12.3.1 does not apply with respect to any Tax assessed on the Lender under the laws of the jurisdiction in which:

- (a) the Lender is incorporated or, if different, the jurisdiction (or jurisdictions) in which the Lender is treated as resident for tax purposes; or
- (b) the Lender'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 by the Lender. However, any payment deemed to be received or receivable, including any amount treated as income but not actually received by the Lender, such as a Tax Deduction, will not be treated as net income received or receivable for this purpose.

12.3.3 Clause 12.3.1 does not apply to the extent a loss, liability or cost:

- (a) is compensated for by an increased payment under Clause 12.2 (*Tax gross-up*); or

(b) would have been compensated for by an increased payment under Clause 12.2 (*Tax gross-up*) but was not compensated solely because one of the exclusions in Clause 12.2.4 of that Clause applied; or

(c) is in respect of a Bank Levy.

12.3.4 Clause 12.3.1 does not apply to the extent a loss, liability or cost relates to a FATCA Deduction required to be made by a Party.

12.3.5 If the Lender makes, or intends to make, a claim under Clause 12.3.1 above it must promptly notify the Borrower of the event which will give, or has given, rise to the claim.

#### 12.4 **Tax Credit**

12.4.1 If an Obligor makes a Tax Payment and the Lender determines that:

(a) a Tax Credit is attributable either 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

(b) it has obtained and used that Tax Credit,

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

12.4.2 If an Obligor makes a Tax Deduction in respect of tax imposed by the UK on interest from a payment of interest to a Treaty Lender, that Obligor shall as soon as reasonably practicable provide the Treaty Lender with an executed original certificate, in the form required by HM Revenue & Customs, evidencing the Tax Deduction. Where Clause 12.2 (*Tax gross-up*) applies to increase the amount of such payment due to that Treaty Lender, the Treaty Lender shall as soon as reasonably practicable following receipt of such certificate apply to HM Revenue & Customs for a refund of the amount of the Tax Deduction and, upon receipt by the Treaty Lender of such amount from HM Revenue & Customs, that refund (after deducting any applicable tax and the reasonable costs and expenses incurred in connection with obtaining such refund) shall (for the avoidance of doubt) be considered a Tax Credit and Clause 12.4.1 shall apply in relation thereto to the extent that that refund is attributable to the increase in the amount paid by an Obligor pursuant to Clause 12.2 (*Tax gross-up*).

#### 12.5 **Lender Status Confirmation**

Any Lender which becomes a Party to this Agreement after the date of this Agreement shall indicate for the benefit of the Lender and without any 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.

If a New Lender fails to indicate its status in accordance with this Clause 12.5 (*Lender Status Confirmation*) 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 Borrower which category applies.

**12.6 Stamp taxes**

The Borrower must pay and indemnify the Lender against any cost, loss or liability that the Lender incurs in relation to all stamp duty, stamp duty land tax, registration or other similar Tax payable in connection with the entry into, performance or enforcement of any Finance Document, except for any such Tax payable in connection with the entry into a transfer by the Lender in accordance with Clause 26.3 (*Assignments and transfers by the Lender*).

**12.7 VAT**

12.7.1 All amounts set out, or expressed to be payable under a Finance Document by any Party to the Lender 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 or becomes chargeable on that supply, and accordingly, subject to Clause 12.7.2, if VAT is chargeable on any supply made by the Lender to any Party under a Finance Document and the Lender is required to account for the VAT to the relevant tax authority, that Party must pay to the Lender (in addition to and at the same time as paying any other consideration for such supply) an amount equal to the amount of the VAT (and the Lender must promptly provide an appropriate VAT invoice to that Party).

12.7.2 Where a Finance Document requires any Party to reimburse or indemnify the Lender for any costs or expenses, that Party must also at the same time reimburse or indemnify (as the case may be) the Lender against all VAT incurred by the Lender in respect of the costs or expenses but only to the extent that the Lender reasonably determines that neither it nor any other member of any group of which it is a member for VAT purposes is entitled to credit or repayment from the relevant tax authority in respect of such VAT.

12.7.3 If VAT is chargeable on any supply made by the Lender to any Party under a Finance Document and if reasonably requested by the Lender, that Party shall promptly provide the Lender with details of its VAT registration number and any other information as is reasonably requested in connection with the Lender's VAT reporting requirements in relation to such supply.

12.7.4 Any reference in this Clause 12.7 (*VAT*) 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 person who is treated as making the supply or (as appropriate) receiving the supply under the grouping rules (as provided for in Article 11 of Council Directive 2006/112/EC (or as implemented by a Member State)).

**12.8 FATCA Deduction**

12.8.1 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.

12.8.2 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 Lender.

**12.9 FATCA Information**

12.9.1 Subject to Clause 12.9.3, each Party shall, within ten 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; and
- (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 or information regime.

12.9.2 If a Party confirms to another Party pursuant to Clause 12.9.1(a) 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.

12.9.3 Clause 12.9.1 shall not oblige the Lender or 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.

12.9.4 If a Party fails to confirm its status or to supply forms, documentation or other information requested in accordance with Clause 12.9.1 (including, for the avoidance of doubt, where Clause 12.9.3 applies), then:

- (a) if that Party failed to confirm whether it is (and/or remains) a FATCA Exempt Party then such Party shall be treated for the purposes of the Finance Documents as if it is not a FATCA Exempt Party; and
- (b) if that Party failed to confirm its applicable "passthru payment percentage" then such Party shall be treated for the purposes of the Finance Documents (and payments made thereunder) as if its applicable "passthru payment percentage" is 100%,

until (in each case) such time as the Party in question provides the requested confirmation, forms, documentation or other information.

## 13 MITIGATION

### 13.1 Mitigation

13.1.1 The Lender must, in consultation with the Borrower, take all reasonable steps to mitigate any circumstances which arise and which result or would result in:

- (a) any Tax Payment; or
- (b) the Lender being able to exercise any right of prepayment and/or cancellation under this Agreement by reason of any illegality,

including transferring its rights and obligations under the Finance Documents to an Affiliate or changing its Facility Office.

13.1.2 Clause 13.1.1 does not in any way limit the obligations of the Borrower under the Finance Documents.

### 13.2 Limitation of liability

13.2.1 The Borrower must indemnify the Lender for all costs and expenses reasonably incurred by the Lender as a result of steps taken by it under Clause 13.1 (*Mitigation*) save in relation to any costs and expenses incurred by a Lender which is a Treaty Lender in relation to obtaining the relevant authority or clearance to obtain full exemption from taxation on interest imposed by the UK

13.2.2 The Lender is not obliged to take any steps under Clause 13.1 (*Mitigation*) if, in the opinion of the Lender (acting reasonably), to do so might be prejudicial to it.

### 13.3 Conduct of business by the Lender

No term of this Agreement will save to the extent expressly provided otherwise in Clause 12 (*Taxes*):

- (a) interfere with the right of the Lender to arrange its affairs (tax or otherwise) in whatever manner it thinks fit;
- (b) oblige the Lender to investigate or claim any credit, relief, remission or repayment available to it in respect of Tax or the extent, order and manner of any claim; or
- (c) oblige the Lender to disclose any confidential information relating to its affairs (tax or otherwise) or any computation in respect of tax.

## 14 GUARANTEE

### 14.1 Financial guarantee

14.1.1 Each Guarantor irrevocably and unconditionally, jointly and severally:

- (a) as principal obligor guarantees to the Lender prompt performance of each Obligor's obligations under the Finance Documents;
- (b) undertakes with the Lender that whenever an Obligor does not pay any amount when due under the Finance Documents, the Guarantor will forthwith upon demand pay that amount as if the Guarantor instead of the Obligor concerned were expressed to be the principal obligor; and



- (c) indemnifies the Lender on demand against any loss or liability suffered by it if any obligation guaranteed by the Guarantor under Clause 14.1.1(a), or undertaken by the Guarantor under Clause 14.1.1(b), is or becomes unenforceable, invalid or illegal. The amount payable by each Guarantor under this indemnity shall not exceed the amount it would have to pay under this Clause 14.1 (*Financial guarantee*) if the amount claimed had been recoverable on the basis of a guarantee.

#### 14.2 **Continuing guarantee**

The guarantee in this Clause 14 (*Guarantee*) is a continuing guarantee and will extend to the ultimate balance of all sums payable by the Obligor, regardless of any intermediate payment or discharge in whole or in part.

#### 14.3 **Reinstatement**

- 14.3.1 Where any discharge (whether in respect of the obligations of an Obligor or any security for those obligations or otherwise) is made in whole or in part or any arrangement is made on the faith of any payment, security or other disposition which is avoided or must be restored on insolvency, liquidation, administration or otherwise without limitation, the liability of each Guarantor under this Clause 14 (*Guarantee*) shall continue or be reinstated as if the discharge or arrangement had not occurred.

- 14.3.2 The Lender may concede or compromise any claim that any payment, security or other disposition is liable to avoidance or restoration.

#### 14.4 **Waiver of defences**

The obligations of each Guarantor under this Clause 14 (*Guarantee*) will not be affected by an act, omission, matter or thing which, but for this provision, would reduce, release or prejudice any of its obligations under this Clause 14 (*Guarantee*) or prejudice or diminish those obligations in whole or in part, including (whether or not known to it or the Lender):

- (a) any time or waiver granted to, or composition with, an Obligor or other person;
- (b) any failure on the part of any person to satisfy its obligations under the Finance Documents;
- (c) the release of any other person under the terms of any composition or arrangement with any creditor of any member of the Group;
- (d) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, an Obligor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- (e) any incapacity or lack of powers, authority or legal personality of or dissolution or change in the members or status of an Obligor or any other person;
- (f) any amendment (however fundamental) or replacement of a Finance Document or any other document or security so that references to that

Finance Document or other document or security in this Clause 14 (*Guarantee*) shall include each amendment or replacement;

- (g) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security, to the intent that the obligations of each Guarantor under this Clause 14 (*Guarantee*) shall remain in full force and its guarantee be construed accordingly, as if there were no unenforceability, illegality or invalidity;
- (h) any postponement, discharge, reduction, non-provability or other similar circumstance affecting any obligation of an Obligor or any other person under a Finance Document resulting from any insolvency, liquidation or dissolution proceedings or from any law, regulation or order so that each such obligation shall for the purposes of the obligations of each Guarantor under this Clause 14 (*Guarantee*) be construed as if there were no such circumstance; or
- (i) any natural disaster (including fire, lightning, explosion, storm, earthquake or flooding), war, riot, civil commotion, political or labour unrest or any other event either beyond the control of the person concerned or not foreseen prior to entering into any document, however fundamental, however, for the avoidance of doubt, insofar as the relevant obligation of the Guarantor is to use reasonable endeavours, nothing in this Clause 14.4 (*Waiver of defences*) will change the nature of that obligation.

#### 14.5 **Guarantor intent**

Without prejudice to the generality of Clause 14.4 (*Waiver of defences*), each Guarantor expressly confirms that it intends that its obligations under this Clause 14 (*Guarantee*) shall extend from time to time to any (however fundamental) increase or addition of or to any of the Finance Documents and/or any facility or amount made available under any of the Finance Documents for the purposes of or in connection with any of the following: development financing business acquisitions of any nature; increasing working capital; enabling investor distributions to be made; carrying out restructurings; refinancing existing facilities; refinancing any other indebtedness; making facilities available to new borrowers; any other variation or extension of the purposes for which any such facility or amount might be made available from time to time; and any fees, costs and/or expenses associated with any of the foregoing.

#### 14.6 **Immediate recourse**

Each Guarantor waives any right it may have of first requiring the Lender (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from the Guarantor under this Clause 14 (*Guarantee*).

#### 14.7 **Appropriations**

Until all amounts which may be or become payable by the Obligors under or in connection with the Finance Documents have been irrevocably paid in full, the Lender (or any trustee or agent on its behalf) may:

- (a) refrain from applying or enforcing any other moneys, security or rights held or received by the Lender (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner

and order as it sees fit and no Guarantor shall be entitled to the benefit of the same; and

- (b) hold in a suspense account any moneys received from a Guarantor or on account of the liability of a Guarantor under this Clause 14 (*Guarantee*).

#### 14.8 **Non-competition**

Until all amounts which may be or become payable by the Obligors under or in connection with the Finance Documents have been irrevocably paid in full, no Guarantor shall, after a claim has been made or by virtue of any payment or performance by it under this Clause 14 (*Guarantee*):

- (a) be subrogated to any rights, security or moneys held, received or receivable by the Lender (or any trustee or agent on its behalf) or be entitled to any right of contribution or indemnity in respect of any payment made or moneys received on account of a Guarantor's liability under this Clause 14 (*Guarantee*);
- (b) (unless so directed by the Lender, in which case it shall) claim, rank, prove or vote as a creditor of an Obligor or its estate in competition with the Lender (or any trustee or agent on its behalf); or
- (c) (unless so directed by the Lender, in which case it shall) receive, claim or have the benefit of any payment, distribution or security from or on account of a Transaction Obligor or exercise any right of set-off as against a Transaction Obligor.

Each Guarantor shall hold in trust (which trust is not intended to create a Security Interest) for and forthwith pay or transfer to the Lender any payment or distribution or benefit of security received by it contrary to this Clause 14.8 (*Non-competition*) or as a result of a direction by the Lender under Clause 14.8(b) or Clause 14.8(c).

#### 14.9 **Additional security**

This guarantee is in addition to and is not in any way prejudiced by any other security now or subsequently held by the Lender.

### 15 **REPRESENTATIONS AND WARRANTIES**

#### 15.1 **Representations and warranties**

15.1.1 Each Obligor makes the representations and warranties set out in this Clause 15 (*Representations and warranties*) to each Finance Party.

15.1.2 Each representation and warranty made by or relating to a Guarantor is made by, or relates to, the assets, the arrangements and the obligations of that Guarantor and each Guarantor makes the representations and warranties set out in Clause 15 (*Representations and warranties*) regarding its assets, its activities, its arrangements and its obligations and not to the assets, arrangements or obligations regarding a different Guarantor.

#### 15.2 **Status**

15.2.1 It:

- (a) is a limited liability corporation, duly incorporated and validly existing under the law of England and Wales;
- (b) has its principal place of business in England; and
- (c) has the power to own its assets and carry on its business, as it is being conducted.

**15.3 Powers and authority**

- 15.3.1 It has the power to enter into and perform, and has taken all necessary action to authorise the entry into and performance of, the Relevant Documents to which it is or will be a party and the transactions contemplated by those documents where failure to do so (other than in respect of the Finance Documents) has or is reasonably likely to have a Material Adverse Effect.
- 15.3.2 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 Finance Documents to which it is a party.

**15.4 Legal validity**

The obligations expressed to be assumed by it in each Relevant Document to which it is a party are, subject to the Reservations, legal, valid, binding and enforceable obligations in accordance with their terms in all material respects (in the case of the Relevant Documents other than the Finance Documents and Asset Protection Agreements) or in all respects (in the case of the Finance Documents and Asset Protection Agreements).

**15.5 Non-conflict**

The entry into and performance by it of, and the transactions contemplated by, the Finance Documents to which it is a party do not and will not conflict with:

- (a) any law or regulation or judicial or official order applicable to it;
- (b) its constitutional documents; or
- (c) any document which is binding upon it or any of its assets in any material respect, unless the relevant conflict has been previously consented to or waived by the appropriate person.

**15.6 No default**

- 15.6.1 No Event of Default is outstanding or would reasonably be expected to result from the making of a Loan to the Borrower or the entry into, performance of, or any transaction contemplated by, any Relevant Document.
- 15.6.2 There is no outstanding breach of any term of any Relevant Document to which it is a party which has or is reasonably likely to have a Material Adverse Effect.
- 15.6.3 No person has disputed, repudiated or disclaimed any material liability under any Infrastructure Document or any Headlease, or indicated that it does not consider itself bound by or does not intend to comply with any material provision of the same in circumstances other than:

- (a) where the Obligor is contesting (in good faith) such dispute, repudiation, or disclaimer of liability; or
- (b) a dispute, repudiation or disclaimer under a Trade Contract or Professional Appointment which will not have a Material Adverse Effect.

15.6.4 No other event or circumstance is outstanding which constitutes a default or a termination event (howsoever described) under any document which is binding on it or any of its assets to an extent or in a manner which has or is reasonably likely to have a Material Adverse Effect.

#### 15.7 **Authorisations**

Except for registration in accordance with Clause 15.8 (*Registration Requirements*), all authorisations required by it in connection with the entry into, performance, validity and enforceability of, and the transactions contemplated by, the Finance Documents to which it is a party have been obtained or effected (as appropriate) and are in full force and effect.

#### 15.8 **Registration Requirements**

15.8.1 Subject to the Reservations, except for due registration of the Security Documents that create a Security Interest under the Companies Act 2006 and the Infrastructure Debenture or any Supplemental Security Document creating a Security Interest in the Site at the Land Registry under the Land Registration Acts 2002, it is not necessary to file, register or record any Finance Document entered into by it in any public place or elsewhere.

15.8.2 As at the date of this Agreement, except for registration fees payable at Companies House and, where appropriate, the Land Registry no stamp duty, registration taxes or similar Tax or charge is payable in respect of any Finance Document.

#### 15.9 **Ranking of security**

Subject to the Reservations (other than paragraph (e) of the definition of that term), and due registration of each Security Document that creates a Security Interest under the Land Registration Act 2002 and the terms of any Intercreditor Agreement, the security conferred by each Security Document entered into by it 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 Interest.

#### 15.10 **Litigation**

As at the date of this Agreement no litigation, arbitration or administrative proceedings which would reasonably be expected to be adversely determined and, if adversely determined, would be reasonably likely to have a Material Adverse Effect are current or, to its knowledge, pending or threatened. This Clause 15.10 (*Litigation*) shall not apply to any litigation, arbitration or administrative proceedings which are frivolous or vexatious and which are discharged within 21 days of commencement.

#### 15.11 **Information**

15.11.1 All written factual information supplied by it to the Finance Parties in connection with the Relevant Documents including information contained in any Business Plan,

is true, complete and accurate in all material respects as at the date (if any) at which it is given.

- 15.11.2 The information referred to in Clause 15.11.1 did not omit as at the date it was expressed to be given any information which, if disclosed, would make the information referred to in Clause 15.11.1 above untrue or misleading in any material respect.

**15.12 Financial Statements**

Its financial statements most recently delivered to the Lender:

- (a) have been prepared in accordance with GAAP, consistently applied; and
- (b) fairly represent its financial condition (consolidated if applicable) as at the date to which they were drawn up,

except, in each case, as disclosed to the contrary in those financial statements, and as at the First Utilisation Date for the Facility there has been no material adverse change in its financial condition since the date to which those financial statements were drawn up.

**15.13 Title to the Site**

- 15.13.1 Except as disclosed in any Certificate of Title, the Construction Report or Planning Report:

- (a) the Borrower is (or, in the case of any leasehold interest referred to in paragraph (d) of the definition of "Headleases" and with effect from the date such leasehold interest is obtained, will be) the legal and beneficial owner of the Headleases and the Freehold Properties;
- (b) the Borrower has good and marketable title to the Site free from:
  - (i) Security Interests (other than those set out in the Security Documents; and
  - (ii) restrictions and onerous covenants.

- 15.13.2 All deeds and documents necessary to show good and legally marketable title to those interests in the Site will from the First Utilisation Date of the Facility be held to the order of the Security Agent (save to the extent that they are held at the Land Registry) until the Borrower represents it is released from the charges under the relevant Security Documents.

- 15.13.3 As at the date of this Agreement the market value (as defined in the current RICS Appraisal and valuation manual) of the Excluded Properties does not exceed [REDACTED]

- 15.13.4 No event or circumstance is outstanding which affects the Excluded Properties in a manner which has or is reasonably likely to have a Material Adverse Effect.

- 15.13.5 No Excluded Property is necessary for the purposes of carrying out the development of the Site in accordance with the Planning Permissions or to enable the Overriding Purpose to be achieved.

**15.14 Information for Reports**

- 15.14.1 The information supplied by it or on its behalf to the persons who prepared any Report for the purpose of that Report was true and accurate in all material respects as at its date or (if appropriate) as at the date (if any) at which it is stated to be given.
- 15.14.2 The information referred to in Clause 15.14.1 was at the date it was expressed to be given complete and did not knowingly omit any information which would make that information misleading in any material respect.
- 15.14.3 As at the First Utilisation Date and except as disclosed in any addendum or update to any Report delivered on or before the First Utilisation Date, nothing has occurred since the date of any information referred to in Clause 15.14.1 which, if disclosed, would make that information untrue or misleading in any material respect.

**15.15 Valuation**

- 15.15.1 All written factual information provided by it or on its behalf to the Valuer for the purposes of each Valuation of the Site was true and accurate in all material respects and no information was knowingly omitted which would make that information misleading in any material respect.
- 15.15.2 As at the First Utilisation Date for the Facility, there has been no change to the information provided pursuant to Clause 15.15.1 above between the date such information was provided and the Drawdown Date of the first Loan which would materially affect the Initial Valuation.

**15.16 No other business**

- 15.16.1 The Borrower has no Subsidiaries, other than Permitted Subsidiaries.
- 15.16.2 No Obligor:
- (a) has or has ever had any employees other than employees where the total annual salary of such employees does not exceed £1,000,000 in any of the Borrower's financial years; or
  - (b) has any obligation in respect of any retirement benefit or occupational pension scheme.

**15.17 Centre of Main Interests**

Its Centre of Main Interests is situated in its jurisdiction of incorporation and it has no Establishment in any other jurisdiction.

**15.18 Taxes on Payments**

As at the date of this Agreement, it is not required to make any Tax Deduction from any payment it may make under any Finance Document to the Finance Parties provided that, in the case of the Lender, it is:

- (a) a Qualifying Lender:
  - (i) falling within paragraph (i) of the definition of UK Lender; or

- (ii) except where a "**Direction**" has been given under section 931 of the ITA 2007 in relation to the payment concerned, falling within paragraph (ii) of the definition of UK Lender; or
  - (iii) falling within paragraph (iii) 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).

#### 15.19 **Tax**

15.19.1 The Borrower has paid and discharged all Taxes (including, for the avoidance of doubt, stamp duty land tax) in excess of £250,000 imposed on it or its assets within the time period allowed without incurring interest or penalties save to the extent that:

- (a) payment is being contested in good faith;
- (b) it has maintained adequate reserves for the payment of such Taxes; and
- (c) payment can be lawfully withheld.

15.19.2 There are no claims which are current or, to the best of its knowledge, pending against the Borrower with respect to Taxes which if adversely determined would have a Material Adverse Effect.

15.19.3 The Borrower is not materially overdue in the filing of any Tax returns.

15.19.4 Any disclosure required to be made by it to any relevant taxing authority in relation to stamp duty land tax payable by the transactions contemplated by the Relevant Documents has been made.

15.19.5 The Borrower is and has at all times been solely resident for Tax purposes in the jurisdiction of its incorporation or formation and it has not and has never had, a permanent establishment for tax purposes in any jurisdiction other than the UK.

#### 15.20 **VAT**

15.20.1 The Borrower is or has applied to HM Revenue & Customs to be registered for UK VAT.

15.20.2 The Borrower is not and has never been, treated as a member of a VAT Group other than a group made up solely of Obligors.

#### 15.21 **Sanctions compliance**

15.21.1 The Borrower has conducted its businesses in all material respects in compliance with applicable anti-corruption laws and has instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

15.21.2 The Borrower:

- (a) is not a Restricted Person;



- (b) has not, in so far as it is aware, been engaged in any transaction, activity or conduct that could reasonably be expected to result in it being designated as a Restricted Person; and/or
- (c) has not received notice of, or is otherwise aware of, any claim, action, suit, proceedings or investigation involving it with respect to Sanctions or with regard to any offence or alleged offence committed by an Obligor under the Bribery Act 2010 and, as far as the Borrower is aware, there are no circumstances likely to give rise to any such investigation, enquiry or proceedings.

#### 15.22 **Governing law and enforcement**

Subject to the Reservations:

- (a) the choice of governing law of the Finance Documents will be recognised and enforced in its Relevant Jurisdiction; and
- (b) 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 Jurisdiction.

#### 15.23 **Times for making representations and warranties**

The representations and warranties set out in this Clause 15 (*Representations and warranties*):

- (a) are made on the date of this Agreement; and
- (b) in the case of the Repeating Representations, are deemed to be repeated by the Borrower on the date of each Request, on each Drawdown Date and on each Interest Payment Date,

in each case, with reference to the facts and circumstances then existing except that, where a representation and warranty is expressed to be made on a specific date, it shall only be made on such date.

### 16 **CORPORATE UNDERTAKINGS**

#### 16.1 **Duration**

The undertakings in this Clause 16 (*Corporate undertakings*) remain in force from the date of this Agreement to the date on which all amounts outstanding under this Agreement have been irrevocably paid in full or all outstanding Commitments have been cancelled.

#### 16.2 **Financial Information**

- 16.2.1 The Borrower shall supply to the Lender its audited accounts for each of its financial years if it is legally obliged to produce audited accounts.
- 16.2.2 All accounts must be supplied as soon as they are available and, in the case of the Borrower's audited accounts, within 180 days of the end of the relevant financial period.

**16.3 Form of Accounts**

The Borrower shall procure that the financial statements delivered under Clause 16.2.1 are prepared in accordance with accounting principles and practices generally accepted in the UK consistently applied.

**16.4 Information - Miscellaneous**

16.4.1 The Borrower shall supply to the Lender:

- (a) all material documents despatched by it to any Third Party Lender or to its creditors generally (in their capacity as creditors) at the same time as they are despatched;
- (b) promptly upon becoming aware of them, details of:
  - (i) any litigation, arbitration or administrative proceedings with an economic value (when aggregated with any other litigation, arbitration or administrative proceedings current, pending or threatened) which are reasonably expected to be adversely determined and, if adversely determined, are likely to have a Material Adverse Effect; and
  - (ii) any investigation, enquiry or proceedings by any government administrative or regulatory body relating to any offence or alleged offence by the Borrower under the Bribery Act;
- (c) if a Default is outstanding, promptly, such further information in its possession or control regarding its financial condition and operations as the Lender may reasonably request, and any information in its possession or control which the Lender reasonably requires from the Borrower; and
- (d) promptly upon receipt, details of any Public Sector Subsidy received in relation to the Infrastructure Works.

**16.5 Notification**

16.5.1 The Borrower shall promptly notify the Lender of any Default in connection with which the Borrower has obligations (actual or contingent) under the Finance Documents (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence.

16.5.2 The Borrower shall promptly notify the Lender of any Third Party Lender Event of Default.

16.5.3 If an Obligor becomes aware of any non-compliance with Clause 15.19.1 as a result of being notified of a non-payment of any Tax by H.M. Revenue & Customs, it shall within 10 Business Days notify the Lender of such non-compliance and of the reasons therefor, and:

- (a) within 30 Business Days of such notification to the Lender, remedy such non-compliance; or
- (b) consult with the Lender with a view to remedying such non-compliance in a manner that is acceptable to the Lender, acting reasonably.

16.6 **"Know your customer" checks**

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 after the date of this Agreement;
- (c) a proposed assignment or transfer by the Lender of any of its rights and obligations under this Agreement to any person prior to such assignment or transfer;
- (d) a change of control (as defined in Clause 7.2 (*Mandatory prepayment - change of control*)) or a change in the composition of the direct or indirect ownership interests in the Borrower; or
- (e) the substitution of the Original Borrower with the New Borrower in accordance with Clause 26.1 (*Transfers by the Obligors*),

obliges a Finance Party (or, in the case of Clause 16.6(c), 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 Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Lender (for itself or, in the case of the event described in Clause 16.6(c), on behalf of any prospective new Lender) in order for the relevant Finance Party or, in the case of the event described in Clause 16.6(c), 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.

16.7 **Authorisations**

The Borrower shall promptly:

- (a) obtain, maintain and comply with the terms of; and
- (b) on request by the Lender, supply certified copies to the Lender of,
- (c) any authorisation required under any law or regulation to enable it to perform its obligations under, or, subject to the Reservations, for the validity or enforceability of, any Relevant Document to which it is a party.

16.8 **Compliance with laws**

16.8.1 The Borrower shall comply in all respects with all laws to which it is subject where failure to do so has or is reasonably likely to have a Material Adverse Effect.

16.8.2 If an Obligor becomes aware of non-compliance with any applicable law or regulation as the result of having received a formal written notice thereof from any governmental or regulatory authority then, unless such notice is being contested in good faith by the Obligor or it is lawful for the Obligor not to take any action to remedy or comply with such applicable law or regulation, such Obligor shall within 60 days or such longer period as the relevant Obligor may reasonably consider

appropriate, taking into account the materiality of the issue in question, remedy or comply with such applicable law or regulation.

**16.9 Pari passu ranking**

The Borrower shall, save as otherwise provided under any Intercreditor Agreement, procure that its obligations under the Finance Documents do and will rank at least *pari passu* with all its present and future unsecured obligations, except for those which are mandatorily preferred by law applying to companies generally.

**16.10 Negative pledge**

16.10.1 The Borrower will not create or permit to subsist any Security Interest over or in respect of its Security Assets.

16.10.2 Clause 16.10.1 does not apply to:

- (a) any Security Interest in favour of any Finance Party pursuant to the Security Documents;
- (b) any lien arising by operation of law and in the ordinary course of business and securing amounts not more than 60 days overdue;
- (c) the creation of any Security Interest which constitutes a Permitted Disposal; and
- (d) any Security Interest approved by the Lender.

**16.11 Transactions similar to security**

The Borrower will not without the consent of the Lender:

- (a) except as permitted by the Finance Documents, sell, transfer or otherwise dispose of any of its Security Assets on terms whereby it is or may be leased to or re-acquired or acquired by the Borrower; or
- (b) sell, transfer or otherwise dispose of any of its receivables comprised within the definition of Security Assets on recourse terms, except for the discounting of bills or notes in the ordinary course of trading,

in circumstances where the transaction is entered into primarily as a method of raising finance or of financing the acquisition of an asset.

**16.12 Disposals**

16.12.1 Subject to Clause 17.5 (*Lease Documents*), the Borrower will not without the prior written consent of the Lender (acting reasonably), either in a single transaction or in a series of transactions, whether related or not and whether voluntarily or involuntarily, sell, transfer, lease or otherwise dispose of all or any part of the Site, the Accounts or an Infrastructure Document.

16.12.2 Clause 16.12.1 shall not apply to Permitted Disposals, Permitted Property Transactions or any lien or Security Interest permitted pursuant to Clause 16.10.2.

16.12.3 The Lender will, within a reasonable period after written request by the Borrower, issue such letters as the Borrower may reasonably request confirming that a

Permitted Disposal is a disposal permitted under this Agreement and any relevant Security Document.

**16.13 Mergers**

No Obligor will enter into any amalgamation, demerger, merger or reconstruction other than a solvent reorganisation where either:

- (a) no assets or liabilities of the relevant Obligor are transferred; or
- (b) if any assets referred to in Clause 16.13(a) are transferred and constitute the whole or any part of the Site or any rights under an Infrastructure Document, that part of the Site or such rights are transferred to one or more Obligors.

**16.14 Financial indebtedness**

No Obligor shall, except with the prior written consent of the Lender, incur any Financial Indebtedness other than:

- (a) under the Finance Documents;
- (b) Subordinated Debt;
- (c) Financial Indebtedness permitted in accordance with the terms of any Intercreditor Agreement;
- (d) Financial Indebtedness otherwise permitted by the Finance Documents; and
- (e) trade credit incurred in the ordinary course of trade.

**16.15 Shares and Dividends**

16.15.1 No Obligor shall, except with the prior written consent of the Lender:

- (a) declare or pay any dividend or make any other distribution in respect of any of its share capital; or
- (b) repay or redeem any of its shares,

at any time when the Loan to Value is [REDACTED].

**16.16 Pari passu ranking**

Subject to the terms of any Intercreditor Agreement and any security referred to in paragraph (g) of the definition of "Permitted Disposal", each Obligor shall ensure that at all times any unsecured and unsubordinated claims of the Lender against it under the Finance Documents rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors except those creditors whose claims are mandatorily preferred by laws of general application to companies.

**16.17 Sanctions**

Each Obligor shall ensure that the proceeds of any Loan will not directly be lent, contributed or otherwise made available to any person or entity (whether or not

related to the relevant Obligor) for the purpose of financing the activities of any person or for the benefit of any country currently subject to any Sanctions.

17 **DEVELOPMENT AND PROPERTY UNDERTAKINGS**

17.1 **Duration**

The undertakings in this Clause 17 (*Development and property undertakings*) remain in force from the date of this Agreement to the date on which the Loans advanced to (and Commitments available to) the Borrower (have been irrevocably repaid in full or cancelled (as applicable)).

17.2 **Completion of Infrastructure Works**

Each Obligor will, following the commencement of a package of Infrastructure Works being funded under this Agreement:

[REDACTED]

(b) diligently procure the carrying out and completion of those Infrastructure Works in all material respects in accordance with any relevant building regulation requirements;

[REDACTED]

[REDACTED]

(e) procure that all necessary consents of adjoining owners or occupiers and all necessary grants, releases, waivers, modifications, covenants and other matters to enable the relevant Infrastructure Works to be completed are obtained when required;

(f) not make any material amendment to any Infrastructure Document that would have a Material Adverse Effect;

[REDACTED]

[REDACTED]

- (h) until the expiry of the relevant defects liability period and subject to Clause 17.4 (*Trade Contractors and Professionals*), not, without the prior consent of the Lender (not to be unreasonably withheld or delayed), amend or vary the terms of any Infrastructure Document where to do so would materially and adversely affect the rights of any Obligor under any defects warranty given thereunder by a Major Professional or Major Trade Contractor provided that upon being given written notice of the issue of the certificate of making good defects under the relevant Infrastructure Document, the Security Agent shall promptly release (upon the request and at the reasonable cost of the Borrower) all Security Interests over that Infrastructure Document and provided further that this Clause 17.2(h) shall not prevent the replacement of a Major Professional or a Major Contractor; and
- (i) comply with the provisions of the Headleases so far as they are binding upon the Borrower and relate to the carrying out of the Infrastructure Works in all material respects.

**17.3 Business Plan**

[REDACTED]

[REDACTED] Lender [REDACTED]

[REDACTED] Based [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] from [REDACTED]



[REDACTED]

**17.4 Trade Contractors and Professionals**

No Obligor will, in respect of the Infrastructure Works being funded under this Agreement, appoint a Major Trade Contractor or a Major Professional unless:

- (a) the relevant Major Professional or Major Trade Contractor enters into a Collateral Warranty in favour of the Security Agent (or affords to the Security Agent Third Party Rights); and
- (b) promptly following its execution the Borrower delivers to the Lenders a certified copy (or, to the extent that the relevant Professional Appointment or Trade Contract contains commercially sensitive information, a redacted copy) of the relevant Professional Appointment or Trade Contract.

**17.5 Lease Documents**

[REDACTED]

17.5.2 Where an Obligor has entered into a Permitted Property Transaction referred to in paragraph (i) of the definition thereof, the Security Agent shall, at the cost and request of the relevant Obligor, release any Security Interest held by the Security Agent in respect of the leasehold interest which has been merged into a superior title pursuant to such Permitted Property Transaction, provided that the Security Agent has been granted a Security Interest in respect of such superior title in form and substance satisfactory to it, acting reasonably.

**17.6 Monitoring of Property and Infrastructure Works**

17.6.1 The Borrower shall provide to the Project Monitor such information as the Project Monitor may reasonably request from time to time (where it has such information in its possession or control) for the purposes of preparing any Project Monitor Drawdown Report or any Project Monitor Quarterly Report. In addition, the Borrower shall afford (or procure that there be afforded) to the Project Monitor and any officers, employees and agents of the Project Monitor access to the Site at reasonable times for the purposes of preparing any Project Monitor Report or as

may otherwise be required for the purposes of discharging the Project Monitor's duties under the terms of its appointment, provided that the Lender shall procure that the Project Monitor and such officers, employees and agents shall:

- (a) give the Borrower reasonable prior notice of any such access requirements;
- (b) comply with the relevant health and safety and reasonable security requirements and any relevant contractor's site regulations in respect of the Site;
- (c) not delay or disrupt the regular progress of the Infrastructure Works, or any part thereof, or give direct instructions to any Professional or Trade Contractor.

17.6.2 At the request of the Lender or the Project Monitor, the Borrower shall hold formal review meetings concerning the Infrastructure Works at which representatives of the Lender, the Project Monitor and any Certifying Agent will be present, which shall be requested to be held no more often than quarterly unless the Lender reasonably considers that an Event of Default has arisen in which case such meetings shall be held at more recent intervals as reasonably requested by the Lender.

17.6.3 Save to the extent that such information has already been provided to the Lender in writing pursuant to Clause 17.6.1 or Clause 17.6.2, the Borrower shall supply to the Lender a quarterly report, the content of which shall have been approved in writing by the Project Monitor, acting reasonably and expeditiously, in respect of the Infrastructure Works containing the following information:

- (a) details of any event which may have a material and adverse effect on the timing for delivery of the Infrastructure Works;
- (b) details of any anticipated material change to the Infrastructure Budgeted Costs;
- (c) details of any Permitted Disposals, any material Permitted Property Transactions, any amendment, waiver or surrender of any Headlease; and
- (d) a copy of each certificate of Practical Completion.

17.6.4 Nothing in this Clause shall render the Lender or the Security Agent liable to account as mortgagee in possession.

17.6.5 No approval of drawings or specifications or the passing of any work by the Project Monitor or the fact of any visit to the Site or attendance at any meetings by the Lender or the Project Monitor or its respective officers, employees or agents shall excuse an Obligor from the due performance of its obligations under the Finance Documents.

17.6.6 Provided that no Event of Default is outstanding, the Borrower may require that the Project Monitor is replaced with a project monitor appointed by any lender under a Construction Finance Document on terms satisfactory to the Lender, acting reasonably.

17.7 **Insurances**

17.7.1 Subject to Clause 17.7.2, at all times from the First Utilisation Date each relevant Obligor shall effect or procure to be effected (to the extent the same are insurable in the European insurance market):

- (a)
  - (i) prior to Practical Completion of the Infrastructure Works, construction all risks insurance including all risks of loss or damage to the construction works (including subsidence), whether permanent or temporary, including materials or other goods incorporated or for incorporation or used or intended to be used in connection with the Site and the construction works all being the property of the insured or for which the insured is responsible (but excluding contractors' equipment) on a full reinstatement basis, including site clearance, professional fees and value added tax where applicable; and
  - (ii) on and after Practical Completion of the Infrastructure Works insurance of the Site, the building and the plant and machinery on the Site including fixtures and improvements on a full reinstatement basis, including site clearance, professional fees, value added tax where applicable and subsidence, (to the extent the same are insurable anywhere in the global market);
- (b) third party liability insurances;
- (c) all insurances required to be procured by any Obligor under the Infrastructure Documents;
- (d) insurance against acts of terrorism to the extent that such cover is maintained with Pool Re or is otherwise generally available in the market; and
- (e) such insurances as a prudent company in the same business as the relevant Obligor would effect.

17.7.2 All insurances required under this Clause 17.7 (*Insurances*) must be with an insurance company or underwriter that has a Requisite Rating.

17.7.3 Each Obligor will procure that the Security Agent is named as a co-insured (on a composite insured basis) and loss payee (other than in respect of public liability and third party liability insurances), in respect of individual claims of £500,000 or more and on an aggregate basis in respect of claims of £2,500,000 or more, on all insurance policies required under Clause 17.7.1(a) and Clause 17.7.1(d). Every such policy shall contain:

- (a) a Clause whereby such insurance shall not be vitiated or avoided as against the Lender in the event or as a result of any misrepresentation, act or neglect or failure to make disclosure on the part of the insured party (other than the Lender);
- (b) terms providing that it shall not be invalidated so far as the Lender is concerned for failure to pay any premium due without the insurer first giving to the Security Agent not less than 14 days' written notice;

- (c) a Clause noting that the Lender will have no liability for the payment of outstanding premiums under the policy;
- (d) a Clause noting that the Lender will have no duty of disclosure to the insurer of the policy; and
- (e) a waiver of their rights of subrogation of the insurer as against the Security Agent and the Lender other than where arising out of any deliberate act of fraud committed by such persons.

17.7.4 Each Obligor must be free to assign all amounts payable to it under each of its insurances and all its rights in connection with this amount in favour of the Security Agent.

17.7.5 Each Obligor will use its reasonable endeavours to procure that there be given to the Lender such information in connection with the insurances and copies of the policies as the Lender may reasonably require and will promptly notify the Lender of renewals made and material variations or cancellations of policies made or, to the knowledge of an Obligor, threatened or pending.

17.7.6 No Obligor shall do or knowingly permit anything to be done which makes void or voidable any insurance policy taken out by or on behalf of any Obligor in respect of any part of the Site.

17.7.7 Each Obligor must ensure that:

- (a) each premium (or, where relevant, premium instalment) for insurance is paid promptly; and
- (b) a copy of each premium receipt evidencing payment for the renewal of the insurance policy together with the latest cover note or other evidence of insurance cover being in force is supplied to the Lender.

17.7.8 If an Obligor fails to comply with any of the provisions of this Clause 17.7 (*Insurances*), the Security Agent shall immediately be entitled to effect the insurances concerned at the reasonable cost and expense of the relevant Obligor and the relevant Obligor shall, within three Business Days of demand, reimburse the Security Agent for such cost and expense.

17.7.9 Provided that no notice has been served by the Lender after the occurrence of an Event of Default which is outstanding, directing that such monies are to be paid to a specified account, the relevant Obligor may apply all monies received or receivable under all insurance policies under Clause 17.7.1(a) and Clause 17.7.1(d) for any purpose consistent with achieving the Overriding Purpose. If an Event of Default is outstanding, the Lender may, by notice to the relevant Obligor, require such monies to be paid to an account specified by the Lender.

## 17.8 **VAT**

Each Obligor undertakes to pay promptly to H.M. Revenue & Customs all amounts of VAT (if any) and related interest and penalties (if any) properly payable by it in connection with the Infrastructure Works.

## 17.9 **Excluded Properties and Additional Headleases**

17.9.1 If:

- (a) an Excluded Property is or becomes necessary for the purposes of carrying out the development of the Site in accordance with the Planning Permissions or to achieve Practical Completion of the Infrastructure Works;
- (b) a Headlease referred to in paragraph (e) of the definition thereof is granted to an Obligor,

the Borrower shall procure that the relevant Excluded Property or, as the case may be, Headlease is designated as an Additional Property and that the requirements of this Agreement relating to Additional Properties are adhered to.

- 17.9.2 If the Borrower otherwise considers it necessary or desirable to do so, the Borrower may procure that an Excluded Property is designated as an Additional Property and that the requirements of this Agreement relating to Additional Properties are adhered to.

#### 17.10 Environmental matters

- 17.10.1 In this Clause 17.10 (*Environmental matters*):

**"Environmental Approval"** means any authorisation required under any Environmental Law for the operation of the business of the Obligors conducted on or from properties owned or used by the Obligors;

**"Environmental Claim"** means any claim, proceeding, formal notice or investigation by any person in respect of any Environmental Law; and

**"Environmental Law"** means any applicable law or regulation which relates to:

- (a) the pollution or protection of the environment;
- (b) the harm to or the protection of human health;
- (c) the conditions of the workplace; or
- (d) any emission or substance capable of causing harm to any living organism or the environment.

- 17.10.2 The Obligors must:

- (a) comply with all Environmental Law;
- (b) obtain, maintain and use reasonable endeavours to ensure compliance with all requisite Environmental Approvals applicable to it, the Infrastructure Works or to the Site; and
- (c) implement procedures to monitor compliance with and to prevent liability under any Environmental Law applicable to it, the Infrastructure Works or the Site,

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

- 17.10.3 The relevant Obligors must, promptly upon becoming aware, notify the Lender of:

- (a) any Environmental Claim started, or to its knowledge, threatened in respect of the Infrastructure Works relating to its Site or Development;

- (b) any circumstances reasonably likely to result in an Environmental Claim in respect of the Infrastructure Works or the Site; or
- (c) any suspension, revocation or notification of any Environmental Approval in respect of the Infrastructure Works or the Site,

which has or, if substantiated, is reasonably likely to either have a Material Adverse Effect or result in any liability for the Lender.

17.10.4 The relevant Obligors must indemnify the Lender against any loss or liability which:

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

18 **FINANCIAL COVENANT**

18.1 **Loan to Value**

The Borrower shall ensure that the Loan to Value does not, at any time, [REDACTED]

18.2 **Rectification of Loan to Value**

18.2.1 If, at any time, the Loan to Value would [REDACTED] the Borrower shall be entitled to:

- (a) prepay part of the Loans in each case in an amount necessary to ensure that the Loan to Value does not [REDACTED] or
- (b) deposit into the LTV Rectification Account an amount which, if applied in immediate prepayment of the Loans pursuant to Clause 18.2.1(a), would result in the Loan to Value not [REDACTED].

18.2.2 If the Borrower complies with Clause 18.2.1, the Borrower will be regarded as having satisfied the condition precedent referred to at Clause 4.2(b)(i) for the purpose of the Lender's obligation to fund a Loan and as having satisfied the terms of Clause 18.1 (*Loan to Value*).

[REDACTED]

18.3 **Restrictions**

The Borrower may exercise its rights pursuant to Clause 18.2.1(b) up to [REDACTED] prior to the Repayment Date. The Borrower may not exercise its rights pursuant to Clause 18.2.1(b) in [REDACTED] For the avoidance of doubt, there shall be no restrictions on the exercise of the Borrower's rights pursuant to Clause 18.2.1(b).

AM 31

19 **DEFAULT**

19.1 **Events of Default**

Each of the events set out in Clause 19.2 (*Non-payment*) to Clause 19.18 (*Material adverse change*) (inclusive) is an Event of Default.

19.2 **Non-payment**

An Obligor does not pay on the due date any amount payable by it under the Finance Documents in the currency in which, and the account into which, it is expressed to be payable unless the failure to pay:

- (a) is caused by a technical or administrative error only and that failure is remedied within three Business Days of the due date; or
- (b) is caused by a Disruption Event and is remedied within three Business Days of the due date.

19.3 **Breach of other obligations**

19.3.1 An Obligor does not comply with its obligations under Clause 18.1 (*Loan to Value*) and such non-compliance is not remedied in accordance with Clause 18.2 (*Rectification of Loan to Value*).

19.3.2 An Obligor does not comply with any of its obligations under the Finance Documents (other than those referred to in Clause 16.8.2, Clause 19.2 (*Non-payment*), and Clause 19.3.1) unless such non-compliance:

- (a) is capable of remedy; and
- (b) is remedied within 20 Business Days of the earlier of the Lender giving written notice of such non-compliance and that Obligor becoming aware of such non-compliance.

19.4 **Misrepresentation**

A representation or warranty or statement made or deemed to be repeated by an Obligor in any Finance Document or in any document delivered by or on behalf of an Obligor under any Finance Document is incorrect or misleading in any material respect when made or deemed to be repeated, unless the circumstances giving rise to the misrepresentation or breach of warranty:

- (a) are capable of remedy; and
- (b) are remedied within 20 Business Days of the earlier of the Lender giving notice of the misrepresentation or breach of warranty and any Obligor becoming aware of the misrepresentation or breach of warranty.

19.5 **Cross-default**

19.5.1 Subject to Clause 19.5.2:

- (a) any Financial Indebtedness of an Obligor is not paid when due; or

- (b) an event of default howsoever described occurs under any document relating to Financial Indebtedness of an Obligor and is not remedied within any originally applicable grace period; or
- (c) any Financial Indebtedness of an Obligor becomes prematurely due and payable or is placed on demand as a result of an event of default (howsoever described) under the agreement relating to that Financial Indebtedness; or
- (d) any Security Interest securing Financial Indebtedness over any asset of an Obligor becomes enforceable.

19.5.2 Clause 19.5.1 shall not apply to Financial Indebtedness under any Finance Document or the Subordinated Debt.

## 19.6 **Insolvency**

19.6.1 An Obligor is, or is deemed for the purposes of Section 123(1)(e) or (2) of the Insolvency Act 1986 (or any other applicable law) to be unable to pay its debts as they fall due or to be insolvent, or admits inability to pay its debts as they fall due, provided that for the purposes of the test under section 123(2) of the Insolvency Act 1986 the Subordinated Debt shall be ignored.

19.6.2 An Obligor suspends making payments on all or any class of its debts or announces an intention to do so, or a moratorium is declared in respect of any of its indebtedness.

19.6.3 An Obligor, by reason of general financial difficulties, begins negotiations with one or more of its creditors (other than the Finance Parties) with a view to the readjustment or rescheduling of any of its indebtedness.

## 19.7 **Insolvency proceedings**

19.7.1 Any petition is presented or any proposal or convening of a meeting is made with a view to a composition, assignment or arrangement with any creditors of an Obligor.

19.7.2 A meeting of an Obligor's shareholders, directors or other officers is convened for the purpose of considering any resolution for (or to petition for or to file documents with a court or any registrar for) the winding-up or for the administration of an Obligor (except that such an event shall cease to be an Event of Default if that resolution is put to the meeting but not passed) or any such resolution is passed.

19.7.3 Any person presents a petition or files documents with a court or any registrar for the administration of an Obligor or any person presents a petition for the winding-up of an Obligor (other than a petition for winding up where the Lender is satisfied (acting reasonably) that it is vexatious or frivolous or which is being contested in good faith and with due diligence and, in each case, which is discharged within 21 days).

19.7.4 An order for the winding-up or administration or dissolution of an Obligor is made.

## 19.8 **Appointment of receivers and managers**

19.8.1 Any liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or the like is appointed in respect of any part of the Borrower's assets, the Security Assets of any other Obligor or any material part of any other Obligor's other assets, provided that this Clause 19.8.1



shall not apply to any solvent winding-up of a Permitted Subsidiary which is not an Obligor.

19.8.2 The directors of an Obligor request the appointment of a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or the like to that Obligor.

19.8.3 Any other steps are taken to enforce any Security Interest over any part the Borrower's assets, the Security Assets of any other Obligor or any material part of any other Obligor's other assets.

#### 19.9 **Creditors' process**

Any attachment, sequestration, distress or execution affects any Security Asset of an Obligor and is not discharged within 21 days.

#### 19.10 **Analogous proceedings**

There occurs, in relation to an Obligor, any event anywhere which, in the reasonable opinion of the Lender, appears to correspond with any of those mentioned in Clause 19.6 (*Insolvency*) to Clause 19.9 (*Creditors' process*) (inclusive).

#### 19.11 **Cessation of business**

Subject to compliance with Clause 16.13 (*Mergers*), an Obligor ceases, or threatens to cease, to carry on all or a substantial part of its business other than as a result of a Permitted Disposal.

#### 19.12 **Unlawfulness**

19.12.1 It is or becomes unlawful for an Obligor or any other person (other than the Lender) to perform in any material respect any of its obligations under the Finance Documents to which it is a party.

19.12.2 It is or becomes unlawful for an Obligor or any other person to perform any of its obligations under the Relevant Documents (other than the Finance Documents) where such inability to perform has or is reasonably likely to have a Material Adverse Effect.

19.12.3 Any obligation of an Obligor under the Finance Documents is not (subject to the Reservations) or ceases to be legal, valid, binding or enforceable and the cessation individually or cumulatively materially and adversely affects the interests of the Lender under the Finance Documents.

#### 19.13 **Finance Documents**

Subject to the Reservations, a Finance Document is not, or is alleged by the Borrower not to be, binding on or enforceable against the Borrower or, in the case of the Security Documents, effective to create the security intended to be created by it.

#### 19.14 **Major damage**

Once the Infrastructure Works have commenced, all or substantially all of the building works on the Original Site taken as a whole are damaged or destroyed to an extent which has, or is reasonably likely to have, (taking into account the

availability of any insurance proceeds and the obligations of other parties under any Development Documents) a Material Adverse Effect.

**19.15 Compulsory purchase**

Any part of the Site is compulsorily purchased or the applicable local authority makes an order for the compulsory purchase of all or any part of a Development or a Site and taking into account the amount and timing of any compensation payable, the relevant compulsory purchase will cause the Loan to Value to [REDACTED].

**19.17 Abandonment**

Once the Infrastructure Works have commenced, an Obligor abandons all or substantially all of the building works on the Original Site taken as a whole for a period of more than six months unless:

- (a) such abandonment is contemplated by the Business Plan; or
- (b) the Lender, acting reasonably, determines that the Overriding Purpose will be achieved notwithstanding such abandonment.

**19.18 Material adverse change**

Any event or series of events occurs which has a Material Adverse Effect.

**19.19 Acceleration**

19.19.1 On or at any time after the occurrence of an Event of Default, if that Event of Default is outstanding, the Lender may, by notice to the Borrower:

- (a) cancel the Total Commitments; and/or
- (b) demand that all the Loans, together with accrued interest and all other amounts payable under the Finance Documents be immediately due and payable, whereupon they shall become immediately due and payable; and/or
- (c) demand that all or part of the Loans be payable on demand, whereupon they shall become immediately due and payable on demand.

**20 SECURITY TRUST AND INTERCREDITOR ARRANGEMENTS**

20.1 If the Borrower notifies the Lender that any existing or proposed Third Party Lender requires to share, directly or indirectly, in any of the Security Assets and/or to become a Secured Party or otherwise to enter into an intercreditor arrangement with the Lender:

- (a) the Lender (acting reasonably and in good faith) will consider any proposal made by the Borrower in relation thereto;

- (b) the Borrower or the relevant Third Party Lender will provide to the Lender for its consideration (acting reasonably and in good faith) a draft Intercreditor Agreement which shall:
  - (i) be consistent with the Intercreditor Principles (unless the Lender and the Borrower otherwise agree, each acting reasonably and in good faith according to the nature of the transaction proposed with the Third Party Lender, that alternative principles are more suitable); and
  - (ii) if the proposal involves the Third Party Lender acquiring an interest in the Security Assets, set forth in detail the terms on which the Third Party Lender is to share in the Security Assets and/or on which the Security Agent is to hold the Security Assets on trust for the for the Third Party Lender or its agents as an additional Secured Party which terms shall include such protections, indemnifications, rights and powers as the Security Agent may reasonably require, taking into account the protections and indemnifications that are customary and usual for a Security Agent undertaking the duties similar to those required of it under the Intercreditor Agreement and in relation to the Security Assets generally;
- (c) upon agreeing the terms of the draft intercreditor agreement provided by the Borrower pursuant to Clause 20.1(b) above, the Lender, the Borrower, the Security Agent, the Third Party Lender and any other relevant Party shall use all reasonable endeavours to enter into the same, together with any ancillary documents and amendments to the Finance Documents that may be required to take account of the provisions of the proposed intercreditor agreement, within such time as may reasonably be required in order to facilitate the financing or refinancing being provided by the Third Party Lender.

20.2 If, pursuant to an Intercreditor Agreement, the interests of the Lender in relation to any part of the Site are subordinated to the interests of the Third Party Lender or any person on that Third Party Lender's behalf, the part of the Site in relation to which the interests of the Lender are subordinated will be disregarded for the purposes of calculating the Loan to Value of the Site.

20.3 The Security Agent declares that it holds the Security Assets on trust for the Secured Parties on the terms contained in this Agreement and the Relevant Documents (as the same may be amended from time to time pursuant to an Intercreditor Agreement or otherwise).

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

20.5 The Security Agent may resign by giving 30 days' notice to the Lender and the Borrower, in which case the Lender (after consultation with the Borrower) may appoint a successor Security Agent.

20.6 The resignation notice of the Security Agent shall only take effect upon:

- (a) the appointment of a successor; and

(b) the transfer of the Security Assets to that successor.

20.7 Each Secured Party confirms that 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 Security Agent) the terms of any reliance letter or engagement letters or any reports or letters provided by accountants, auditors or providers of due diligence reports in connection with the Finance Documents, each Valuation and the transactions contemplated in the Finance Documents and to bind it in respect of those 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.

## 21 HCA DEED OF COVENANT

21.1 In this Clause 21 (*HCA Deed of Covenant*):

**"Planning Agreement"** means any agreement (including a unilateral agreement) or any deed of variation of an existing agreement in each case under section 106 of the Town and Country Planning Act 1990 or section 111 of the Local Government Act 1972 or any agreement or variation of an agreement under any other enactment having the same or similar effect including highways agreements pursuant to sections 38 or 278 of the Highways Act 1980 and sewers agreements pursuant to section 104 of the Water Industry Act 1991.

**"Deed of Covenant"** means the deed of covenant made or to be made between the Security Agent and London & Continental Railways Limited relating to land at the rear of Philbeach Gardens, London SW5.

21.2 The Security Agent will, if requested by an Obligor and to the extent such Planning Agreement is required to be entered into by that Obligor's mortgagee or chargee, enter into any Planning Agreement which that Obligor is required to enter into pursuant to any planning permission granted under any Planning Act provided that:

- (a) the Security Agent shall enter into such Planning Agreement solely to consent to the Site or any part thereof being bound by the obligations in such Planning Agreement and to confirm that the security created pursuant to the Security Documents shall take effect subject to the Planning Agreement;
- (b) the Security Agent shall otherwise have no liability under any such Planning Agreement unless and until it takes possession of the Site or any part thereof as a mortgagee in possession;
- (c) the Security Agent shall not be liable for any breach of the terms of any such Planning Agreement arising prior to the Security Agent becoming a mortgagee in possession of the Site or part thereof to which such obligation(s) relates;
- (d) on any disposal of the relevant Obligor's interest in the Site or any part thereof (or upon such disposal by the Security Agent as mortgagee in possession) then that Obligor's or the Security Agent's interest in the Site or any part thereof as are disposed of (as the case may be) shall be released from the restrictions and obligations contained in such Planning Agreement.

21.3 The Obligors shall indemnify the Security Agent against any loss or liability it incurs as a consequence of entering in a Planning Agreement in accordance with this Clause 21 (*HCA Deed of Covenant*) unless caused by the Security Agent's gross

negligence or wilful default and shall pay the Security Agent's professional fees reasonably incurred in connection with reviewing, reporting on and negotiating such Planning Agreement.

- 21.4 The Security Agent shall, by no later than the date of the Infrastructure Debenture, enter into the Deed of Covenant and provide a certified copy of the executed Deed of Covenant to the Borrower.

## 22 EXPENSES

### 22.1 Initial and special costs

The Borrower shall within 20 Business Days of demand pay to the Lender or as the Lender may direct the amount of all costs and expenses (including legal fees) reasonably incurred by it in connection with:

- (a) the negotiation, preparation, printing and execution of:
  - (i) this Agreement and any other documents referred to in this Agreement; and
  - (ii) any other Finance Document executed after the date of this Agreement (including, in the case of any Finance Documents entered into or proposed to be entered into in connection with any Permitted Disposal, the inclusion of any Additional Property in the Site and/or the transfer of any of the Borrower's obligations to a New Borrower, regardless of whether the relevant Finance Documents are finalised or executed in relation thereto);
  - (iii) the costs of considering and/or implementing any intercreditor arrangements proposed by the Borrower pursuant to Clause 20 (*Security Trust and Intercreditor Arrangements*), and regardless of whether an Intercreditor Agreement is finalised or executed in relation thereto;
- (b) any amendment, waiver, consent or suspension of rights (or any proposal for any of the foregoing) requested by or on behalf of an Obligor or, in the case of Clause 25.2 (*Change of currency*), the Lender, and relating to a Finance Document or a document referred to in any Finance Document; and
- (c) the fees of the Project Monitor,

provided that such costs and expenses have been pre-approved by the Borrower if they are incurred prior to an Event of Default.

### 22.2 Valuations

- 22.2.1 After the first anniversary of the date of this Agreement, the Borrower shall deliver to the Lender a copy of each semi-annual Valuation of the whole of the Site commissioned by the Borrower in accordance with the requirements of its shareholders which is addressed to or otherwise capable of being relied upon by the Security Agent.
- 22.2.2 The Lender may, at its own cost (but without prejudice to Clause 22.2.3) request a Valuation at any time.

22.2.3 The Borrower must on demand by the Lender pay the costs of any Valuation requested by the Lender:

- (a) at any time when an Event of Default is outstanding or where the Lender reasonably believes a Default may occur as a result of the Valuation being delivered (except that if no such Default does result then that Valuation shall be at the cost of the Lender);
- (b) in connection with the compulsory purchase of all or any part of a Site; or
- (c) in connection with any Permitted Disposal,

which costs shall, in the case of paragraphs (b) and (c) above, be pre-approved by the Borrower.

22.2.4 If the Borrower wishes to undertake any disposal referred to in paragraph (a) or (g) of the definition of Permitted Disposal, it shall instruct the Valuer (on terms satisfactory to the Lender, acting reasonably) to undertake a Valuation of the Site prior to such Permitted Disposal, on the assumption that the part of the Site that is the subject of the relevant disposal is no longer included in the Site.

22.2.5 If in the Valuation referred to in Clause 22.2.4 the Valuer states that it has relied upon any Report or information provided by a third party for the purposes of determining the value of the Site, then (unless such person is an Obligor) the Borrower shall procure that the person who provided such Report or information enters into a Reliance Letter in relation thereto in favour of the Security Agent, in form and substance satisfactory to the Lender.

### 22.3 **Enforcement costs**

Each Obligor must on demand pay to the Lender the amount of all costs and expenses (including legal fees) incurred by the Lender in connection with:

- (a) the enforcement of, or the preservation of any rights under, any Relevant Document;
- (b) in investigating any possible Default, if such investigations reveal that Default is outstanding; or
- (c) any proceedings instituted against the Lender as a consequence of it entering into a Relevant Document (other than any proceedings relating to a breach by the Lender of any obligation under or relating to any Relevant Document).

## 23 **INDEMNITIES**

### 23.1 **Currency indemnity**

23.1.1 Each Obligor must, as an independent obligation, indemnify the Lender against any loss or liability which the Lender incurs as a consequence of:

- (a) the Lender receiving an amount in respect of an Obligor's liability under the Finance Documents; or
- (b) that liability being converted into a claim, proof, judgment or order,

in each case, in a currency other than the currency in which the amount is expressed to be payable under the relevant Finance Document.

23.1.2 Unless otherwise required by law, each Obligor waives any right it may have in any jurisdiction to pay any amount under the Finance Documents in a currency other than that in which it is expressed to be payable.

23.2 **Other indemnities**

23.2.1 The Borrower must indemnify the Lender against any loss or liability which it incurs as a consequence of:

- (a) the occurrence of any Event of Default;
- (b) any failure by an Obligor to pay any amount due under a Finance Document on its due date;
- (c) (other than by reason of negligence or default by the Lender) the Loan not being made after a Request has been delivered for that Loan; or
- (d) the Loan (or part of the Loan) not being prepaid in accordance with this Agreement.

Each Obligor's liability in each case includes any loss or expense on account of funds borrowed, contracted for or utilised to fund any amount payable under any Finance Document or any Loan (or part thereof).

23.2.2 Each Obligor must indemnify the Lender against any loss or liability incurred by the Lender as a result of:

- (a) investigating any event which the Lender reasonably believes to be a Default; or
- (b) acting or relying on any notice which the Lender reasonably believes to be genuine, correct and appropriately authorised.

24 **EVIDENCE AND CALCULATIONS**

24.1 **Accounts**

Accounts maintained by the Lender in connection with this Agreement are prima facie evidence of the matters to which they relate.

24.2 **Certificates and determinations**

Any certification or determination by the Lender of a rate or amount under this Agreement is prima facie evidence of the matters to which it relates.

24.3 **Calculations**

Interest accrues from day to day and are calculated on the basis of the actual number of days elapsed and a year of 365 days.

25 **AMENDMENTS AND WAIVERS**

25.1 **Procedure**

Any term of the Finance Documents may be amended or waived with the agreement of the Borrower and the Lender.

25.2 **Change of currency**

If a change in any currency of a country occurs (including where there is more than one currency or currency unit recognised at the same time as the lawful currency of a country), the Finance Documents will be amended to the extent the Lender (acting reasonably and in consultation with the Borrower) determines is necessary to reflect the change.

25.3 **Waivers and remedies cumulative**

The rights of the Lender under the Finance Documents:

- (a) may be exercised as often as necessary;
- (b) are cumulative and not exclusive of its rights under the general law; and
- (c) may be waived only in writing and specifically.

Delay in exercising or non-exercise of any right is not a waiver of that right.

26 **CHANGES TO THE PARTIES**

26.1 **Transfers by the Obligors**

26.1.1 Subject to Clause 26.1.2, no Obligor may assign, transfer, novate or dispose of any of, or any interest in, its rights and obligations under the Finance Documents without the prior consent of the Lender.

26.1.2 Subject to compliance with the requirements of Clause 26.1.3, the Original Borrower may request that it is released from its obligations under this Agreement as a Borrower and the New Borrower assumes all of the rights and obligations of the Original Borrower under this Agreement.

26.1.3 The New Borrower shall become the Borrower on the Substitution Date, if:

- (a) the Original Borrower has delivered to the Lender:
  - (i) a duly completed Borrower Novation Deed executed by the Original Borrower and the New Borrower; and
  - (ii) all of the documents and other evidence listed in Part 2 of Schedule 2 (*Conditions precedent to be delivered by the New Borrower*);
- (b) notice of the proposed novation has been given to the Lender not less than 15 Business Days prior to the proposed Substitution Date and has delivered to the Lender all information the Lender may require for the purposes of confirming compliance with Clause 16.6 (*"Know your customer" checks*);



- (c) no Default is continuing at the date of the notice of the Substitution Date or would result from the proposed novation;
- (d) the New Borrower is (or will be on the proposed Substitution Date be), directly or indirectly, a wholly owned Subsidiary of the Original Borrower; and
- (e) the Guarantors are (or will be on the proposed Substitution Date be) each, directly or indirectly, wholly owned Subsidiaries of the New Borrower.

26.1.4 The Lender shall accept a Borrower Novation Deed delivered in accordance with Clause 26.1.3 and the novation contemplated by that Borrower Novation Deed shall take effect on the Substitution Date.

26.1.5 Delivery of the Borrower Novation Deed in accordance with Clause 26.1.3 constitutes confirmation by each of the New Borrower and the Original Borrower that the Repeating Representations are true and correct in relation to it in all material respects as at the date of delivery as if made by reference to the facts and circumstances then existing.

26.1.6 The Lender shall notify the Original Borrower promptly on receipt of a duly completed Borrower Novation Deed and the documents and other evidence listed in Clause 26.1.3.

## 26.2 **Additional Subordinated Creditors**

26.2.1 Subject to obtaining the prior approval of the Lender (which will not be required in the case of a person who is a Permitted Subsidiary, an Affiliate of a Subordinated Creditor at the date of this Agreement, a person who acquires, directly or indirectly, any interest in the Borrower in accordance with this Agreement or any Affiliate of such a person), the Borrower may request that any person becomes a Subordinated Creditor by delivering to the Lender:

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

26.2.2 If the accession of a Subordinated Creditor requires the Lender to carry out all necessary "know your customer" checks or other similar checks under any applicable law or regulation in circumstances where the necessary information is not already available to it, the Borrower must, on request by the Lender, supply promptly to the Lender any documentation or other evidence which is reasonably requested by the Lender (whether for itself, on behalf of the Lender or any prospective new Lender) to enable the Lender or prospective new Lender to carry out and be satisfied with the results of all applicable "know your customer" checks or other similar checks.

## 26.3 **Assignments and transfers by the Lender**

26.3.1 The Original Lender may not assign or transfer all or any of its rights and/or obligations under this Agreement prior to the date on which the Original Lender ceases to be obliged to make any further Loans to the Borrower without the

Borrower's prior consent. For the purposes of this Clause 26.3 (*Assignments and transfers by the Lender*), references to an assignment or transfer by a Lender shall include any sub-participation or other form of transaction where the economic and/or voting rights of the Lender are transferred by contract to a third party which is not an Affiliate of the Lender.

26.3.2 Subject to Clause 26.3.3 and Clause 26.3.5, after the date on which the Lender ceases to be obliged to make any further Loans available to the Borrower but prior to a Material Event of Default, the Lender (the "**Existing Lender**") may assign or transfer all or any part of its rights and/or obligations under this Agreement to:

(a) a person which:

- (i) is regularly engaged in making, purchasing or investing in real estate loans and experienced in development financings; and
- (ii) is a Qualifying Lender (other than a Treaty Lender) or is a Treaty Lender which holds a passport under the HMRC DT Treaty Passport scheme and has complied with all requirements of such scheme,

and provided that the Lender has given no less than 90 days' notice to the Borrower;

or

(b) a person which is at the relevant time a lender to the Borrower and provided that the Lender has given no less than 30 days' notice to the Borrower,

(a "**New Lender**").

26.3.3 The Lender may, at any time without the consent of the Borrower, assign or transfer all or any part of its rights and/or obligations under this Agreement to a person which is a Public Body of equivalent covenant strength to the Original Lender or to any person to whom the Lender is required by statute to assign or transfer its rights and/or obligations pursuant to Clause 26.3.3.

26.3.4 If Material Event of Default is outstanding the restrictions to Clause 26.3.1 to Clause 26.3.3 do not apply.

26.3.5 If the Borrower does not approve of the person to whom the Lender is to transfer all or part of its rights and/or obligations under Clause 26.3.1 (each a "**Non-Approved Lender**"), other banks and financial institutions selected by them may replace the Non-Approved Lender by requiring the Existing Lender to (and the Existing Lender shall) transfer pursuant to this Clause 26.3 (*Assignments and transfers by the Lender*) all of its rights and obligations under the Finance Documents to one or more other banks or financial institutions which confirms its or their willingness to assume, and does assume, all the obligations of the Existing Lender for a purchase price in cash payable at the time of the transfer equal to the outstanding principal amount of the Existing Lender's participation in the outstanding Loans and all accrued interest.

26.3.6 The consent of the Borrower is required for any transfer, assignment or sub-participation by the Lender of part of the Loans where the rights of the transferee, assignee or sub-participant in respect of the Loans do not rank *pari passu* with the retained rights of the Lender under the Finance Documents.

26.3.7 Any reference in this Agreement to the Lender includes a New Lender.

**26.4 Conditions to assignment or transfer of rights**

An assignment or transfer of rights will only be effective on receipt by the Existing Lender of written confirmation from the New Lender (in form and substance satisfactory to the Existing Lender) that the New Lender will, in relation to the assigned rights, assume obligations equivalent to those it would have been under if it had been the Existing Lender.

**26.5 Limitation of responsibility of Existing Lender**

26.5.1 Unless expressly agreed to the contrary, the Existing Lender makes no representation or warranty and assumes no responsibility to the New Lender for the legality, validity, adequacy, accuracy, completeness or performance of:

- (a) the financial condition of any Obligor; or
- (b) the legality, validity, effectiveness, enforceability, adequacy, accuracy, completeness or performance of:
  - (i) any Finance Document or any other document;
  - (ii) any statement or information (whether written or oral) made in or supplied in connection with any Finance Document; or
  - (iii) any observance by any Obligor of its obligations under any Finance Document or any other document,

and any representations or warranties implied by law are excluded.

26.5.2 The New Lender confirms to the Existing Lender that it:

- (a) has made, and will continue to make, its own independent appraisal of all risks arising under or in connection with the Finance Documents (including the financial condition and affairs of any Obligor and its related entities and the nature and extent of any recourse against any Party or its assets) in connection with its participation in this Agreement; and
- (b) has not relied exclusively on any information supplied to it by the Existing Lender in connection with any Finance Document.

26.5.3 Nothing in any Finance Document requires the Existing Lender to:

- (a) accept a re-transfer from a New Lender of any of the rights and obligations assigned or transferred under this Clause 26.5 (*Limitation of responsibility of Existing Lender*); or
- (b) support any losses incurred by the New Lender by reason of the non-performance by any Obligor of its obligations under any Finance Document or otherwise.

**26.6 Costs resulting from change of Lender or Facility Office**

26.6.1 If:

- (a) the Lender assigns or transfers any of its rights and 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, the Borrower would be obliged to pay a Tax Payment or an Increased Cost,

then unless that Tax Payment or Increased Cost is as a result of either:

- (i) a transfer made of the request of an Obligor under Clause 13 (*Mitigation*); or
- (ii) the Borrower failing to comply in a timely manner with its obligations to deliver any procedural formalities on its part necessary to obtain authorisation to make that payment without a Tax Deduction (including making and filing an appropriate application for relief under the relevant Treaty),

then the Borrower need only pay that Tax Payment or Increased Cost to the same extent that it would have been obliged to if no assignment, transfer or change had occurred.

26.6.2 For the avoidance of doubt (but without limitation), no Obligor shall have any obligation to make a payment with respect to an Increased Cost or a Tax Payment following any such assignment, transfer or novation or change of Facility Office if:

- (a) the relevant New Lender or Lender which has changed its Facility Office is or becomes a Treaty Lender; and
- (b) that Tax Payment or Increased Cost has arisen other than as a result of the Borrower's failure to comply in a timely manner with any of the Borrower's obligations to deliver any procedural formalities on its part necessary to obtain authorisation to make that payment without a Tax Deduction (including any requirement on the Borrower to make and file an appropriate application for relief under the relevant Treaty).

## 26.7 **Representatives**

The Lender may act in relation to the Finance Documents through its personnel and agents.

## 26.8 **Security over Lender's rights**

In addition to the other rights provided to the Lender under this Clause 26 (*Changes to the parties*), the Lender may without consulting with or obtaining consent from any Obligor, at any time charge, assign or otherwise create a Security Interest in or over (whether by way of collateral or otherwise) all or any of its rights under any Finance Document to secure its obligations including:

- (a) any charge, assignment or other Security Interest to secure obligations to a federal reserve, central bank, Her Majesty's Treasury, any other UK government body or any equivalent body in another jurisdiction; and
- (b) where the Lender is a fund, any charge, assignment or other Security Interest granted to any holders (or trustee or representatives of holders) of obligations owed, or securities issued, by it as security for those obligations or securities,

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

- (i) release the Lender from any of its obligations under the Finance Documents or substitute the beneficiary of the relevant charge, assignment or Security Interest for the Lender as a party to any of the Finance Documents; or
- (ii) 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 Lender under the Finance Documents.

## 26.9 Resignation and release

26.9.1 Where an Obligor has created Security Interests over any of its assets or business in favour of the Security Agent the Security Agent shall, at the cost and request of the relevant Obligor, release those assets, business or shares (or equivalent) and issue certificates of non-crystallisation if such release is necessary in order to implement a Permitted Disposal or such assets, businesses or shares have been transferred by way of Permitted Disposal.

26.9.2 The Borrower may request that a Guarantor is released from its obligations under Clause 14 (*Guarantee*) by delivering to the Lender a Resignation Letter and the Lender shall accept a Resignation Letter and notify the Borrower of its acceptance if:

- (a) the Borrower has confirmed that no Default is continuing or would result from the acceptance of the Resignation Letter;
- (b) no payment is due from the Guarantor under Clause 14 (*Guarantee*);
- (c) where the Guarantor is also a Borrower, it is under no actual or contingent obligations as a Borrower;
- (d) the Guarantor does not own any part of the Site; and
- (e) the Guarantor does not have any rights or obligations in respect of any Infrastructure Development Document.

## 27 CONFIDENTIALITY

### 27.1 Obligor Confidential Information

The Lender agrees to keep all Obligor Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by Clause 27.2 (*Disclosure of Obligor Confidential Information*), and to ensure that all Obligor Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information.

### 27.2 Disclosure of Obligor Confidential Information

Subject to Clause 27.3 (*Freedom of information*) below, the Lender may disclose:

- (a) to any of its Affiliates and, in the case of any Lender other than the Original Lender, its Related Funds and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives such Obligor Confidential Information as the Lender shall consider

appropriate if any person to whom the Obligor Confidential Information is to be given pursuant to this Clause 27.2(a) is informed in writing of its confidential nature and that some or all of such Obligor 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 Obligor Confidential Information;

- (b) to any person:
- (i) 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 and to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
  - (ii) 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, Related Funds, Representatives and professional advisers;
  - (iii) appointed by the Lender or by a person to whom Clause 27.2(b)(i) or Clause 27.2(b)(ii) applies to receive communications, notices, information or documents delivered pursuant to the Finance Documents on its behalf;
  - (iv) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in Clause 27.2(b)(i) or Clause 27.2(b)(ii);
  - (v) 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 (including any requirement for disclosure under the FOIA or the EIR);
  - (vi) 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;
  - (vii) to whom or for whose benefit the Lender charges, assigns or otherwise creates a Security Interest (or may do so) pursuant to Clause 26.8 (*Security over Lender's rights*);
  - (viii) who is a Party; or
  - (ix) with the consent of the Borrower,
- such Obligor Confidential Information as the Lender shall consider appropriate if:

- (A) in relation to Clause 27.2(b)(i) or Clause 27.2(b)(ii) and Clause 27.2(b)(iii), the person to whom the Obligor 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 Obligor Confidential Information;
  - (B) in relation to Clause 27.2(b)(iv), the person to whom the Obligor Confidential Information is to be given has entered into a Confidentiality Undertaking or is otherwise bound by requirements of confidentiality in relation to the Obligor Confidential Information they receive and is informed that some or all of such Obligor Confidential Information may be price-sensitive information;
  - (C) in relation to Clause 27.2(b)(iv), Clause 27.2(b)(v) and Clause 27.2(b)(vi), the person to whom the Obligor Confidential Information is to be given is informed of its confidential nature and that some or all of such Obligor Confidential Information may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of the Lender, it is not practicable so to do in the circumstances;
- (c) to any person appointed by the Lender or by a person to whom Clause 27.2(b)(i) or Clause 27.2(b)(ii) applies to provide administration or settlement services in respect of one or more of the Finance Documents including in relation to the trading of participations in respect of the Finance Documents, such Obligor 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 27.2(c) if the service provider to whom the Obligor 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 Lender.

**27.3 Freedom of information**

- 27.3.1 Each Obligor acknowledges that the Original Lender and that any other Lender which is a Public Body may be subject to legal duties which may require the release of information under the FOIA and/or the EIR and that the Lender may be under an obligation to provide Information subject to a Request for Information.
- 27.3.2 The Lender shall be responsible for determining in its absolute discretion (acting reasonably) 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.
- 27.3.3 Without in any way limiting Clause 27.3.2, if the Lender receives a Request for Information, the Lender will:

- (a) notify the Obligors as soon as reasonably practicable after the receipt of such Request for Information; and
- (b) consult with the Obligors and take the Obligors' views into account before complying with any obligation under the FOIA or the EIR to disclose Information.

27.3.4 Nothing in this Clause 27.3 (*Freedom of information*) will prevent the Lender 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.

27.3.5 To the extent that any Obligor becomes an FOIA Authority subject to the FOIA and the EIR during the course of this Agreement this Clause 27.3 (*Freedom of information*) will apply *mutatis mutandis* to both parties.

27.3.6 The obligations in this Clause 27.3 (*Freedom of information*) 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.

#### 27.4 **Publication of information before Parliament**

Each Obligor acknowledges that the National Audit Office has the right to publish details of the Finance Documents in its relevant reports to Parliament.

#### 27.5 **Lender Confidential Information**

Each Obligor agrees to keep all Lender Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by Clause 27.6 (*Disclosure of Lender Confidential Information*) and to ensure that all Lender Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information.

#### 27.6 **Disclosure of Lender Confidential Information**

The Borrower may disclose:

- (a) to any of its Affiliates and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives such Lender Confidential Information as the Obligor shall consider appropriate if any person to whom the Lender Confidential Information is to be given pursuant to this Clause 27.6(a) is informed in writing of its confidential nature 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 Lender Confidential Information;
- (b) to any person:
  - (i) 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;



- (ii) 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;
- (iii) who is a Party; or
- (iv) with the consent of the Lender, such Lender Confidential Information as the Obligor shall consider appropriate if the person to whom the Lender Confidential Information is to be given has provided a confidentiality undertaking in a form agreed between the Obligor and the Lender, 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 Lender Confidential Information.

**27.7 Entire agreement**

This Clause 27 (*Confidentiality*) constitutes the entire agreement between the Parties in relation to their obligations regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.

**27.8 Inside information**

The Lender acknowledges that some or all of the Obligor 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 the Lender undertakes not to use any Obligor Confidential Information for any unlawful purpose.

**27.9 Notification of disclosure**

Each of the Lender and the Borrower agrees (to the extent permitted by law and regulation) to inform the other:

- (a) of the circumstances of any disclosure of Confidential Information made pursuant to Clause 27.2(b)(iv) or Clause 27.6(b)(i) as the case may be, except where such disclosure is made to any of the persons referred to in that Clause 27.2 (*Disclosure of Obligor Confidential Information*) during the ordinary course of its supervisory or regulatory function; and
- (b) upon becoming aware that Confidential Information has been disclosed in breach of this Clause 27 (*Confidentiality*).

**27.10 Continuing obligations**

The obligations in this Clause 27 (*Confidentiality*) are continuing and, in particular, shall survive and remain binding for a period of 12 months from the earlier of:

- (a) the date on which all amounts payable by the Obligors under or in connection with this Agreement have been paid in full and all Commitments have been cancelled or otherwise cease to be available; and
- (b) the date on which the Lender otherwise ceases to be a Party.

**28 HOMES AND COMMUNITIES AGENCY**

- 28.1 Nothing contained in or carried out pursuant to any Finance Document and no consents given by the Lender will unlawfully prejudice the Lender's rights, powers or duties and/or obligations in the exercise of its functions or under any statutes, bylaws, instruments, orders or regulations.
- 28.2 Nothing contained in or carried out pursuant to any Finance Document and no consents given by the Lender or an Obligor will unlawfully prejudice the Lender's or that Obligor's (as appropriate) rights, powers or duties and/or obligations in the exercise of its functions or under any statutes, bylaws, instruments, orders or regulations.
- 28.3 No provision of any Finance Document will interfere with the Lender's right to arrange its affairs as it may decide (or oblige it to disclose any information relating to its affairs) except as expressly stated otherwise.
- 28.4 Prior to First Utilisation of the Facility, the Borrower and the Lender (each acting reasonably and in good faith) may seek to agree a press release relating to the Lender's financing of the Infrastructure Works and such other marketing and publicity materials relating thereto as either party may reasonably request. Save as set out in this Clause 28 (*Homes and Communities Agency*) the Borrower shall not communicate with any representative of any press, television, radio or other communications media on any matter concerning this Agreement without the Lender's prior written consent (not to be unreasonably delayed) save where necessary to comply with any applicable laws and regulations or the requirements of any stock exchange.

**29 SET-OFF**

If an Event of Default is outstanding, the Lender may set off any matured obligation owed by an Obligor under the Finance Documents against any matured obligation owed by the Lender to that Obligor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Lender may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

**30 SEVERABILITY**

If a provision of any Finance Document is or becomes illegal, invalid or unenforceable in any jurisdiction, that shall not affect:

- (a) the validity or enforceability in that jurisdiction of any other provision of the Finance Documents; or
- (b) the validity or enforceability in other jurisdictions of that or any other provision of the Finance Documents.

**31 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 that Finance Document.

32 **NOTICES**

32.1 **Giving of notices**

All notices or other communications under or in connection with each Finance Document shall be given in writing. Any such notice will be deemed to be given when delivered.

However, a notice given in accordance with the above but received on a day which is not a Business Day or after business hours in the place of receipt will only be deemed to be given on the next working day in that place.

32.2 **Addresses for notices**

32.2.1 The Obligors' address for notices as at the date of this Agreement is:

15 Grosvenor Street  
London  
W14 4QZ

For the attention of: Company Secretary

or such other as an Obligor may notify to the Lender by not less than five Business Days' notice.

32.2.2 The Lender's and Security Agent's address for notices as at the date of this Agreement is:

Arpley House  
110 Birchwood Boulevard  
Birchwood  
Warrington  
WA3 7QH

For the attention of: Head of Portfolio Management

Ref: Earls Court Village

or such other as the Lender may notify to the Obligors by not less than five Business Days' notice.

32.3 **Obligors**

32.3.1 All communications under the Finance Documents from an Obligor must be sent to the Lender.

32.3.2 All communications under the Finance Documents to an Obligor (other than the Borrower) must be sent to the Borrower.

32.3.3 Any communication given to the Borrower in connection with a Finance Document will be deemed to have been given also to the other Obligors.

32.3.4 Each Lender may assume that any communication made by the Borrower is a made with the consent of each other Obligor.

32.3.5 Each Obligor by its execution of this Agreement irrevocably appoints the Borrower (acting through one or more authorised signatories) to act on its behalf as its agent in relation to the Finance Documents and irrevocably authorises:

- (a) on its behalf to supply all information concerning itself contemplated by this Agreement to the Lender and to give all notices and instructions (including, in the case of the Borrower, Requests), to make such agreements and to effect the relevant amendments, supplements and variations capable of being given, made or effected by any Obligor notwithstanding that they may affect the Obligor, without further reference to or the consent of that Obligor; and
- (b) the Lender to give any notice, demand or other communication to that Obligor pursuant to the Finance Documents to the Borrower,

and in each case the Obligor shall be bound as though the Obligor itself had given the notices and instructions (including any Requests) or executed or made the agreements or effected the amendments, supplements or variations, or received the relevant notice, demand or other communication.

32.3.6 Every act, omission, agreement, undertaking, settlement, waiver, amendment, supplement, variation, notice or other communication given or made by the Borrower or given to the Borrower under any Finance Document on behalf of another Obligor or in connection with any Finance Document (whether or not known to any other Obligor and whether occurring before or after such other Obligor became an Obligor under any Finance Document) shall be binding for all purposes on that Obligor as if that Obligor had expressly made, given or concurred with it. In the event of any conflict between any notices or other communications of the Borrower and any other Obligor, those of the Borrower shall prevail.

#### 32.4 Use of websites

32.4.1 Except as provided below, each Obligor may deliver any information under this Agreement to the Lender by posting it on to an electronic website if:

- (a) the Lender agrees;
- (b) the Obligor and the Lender designate an electronic website for this purpose;
- (c) the Obligor notifies the Lender of the address of and password for the website; and
- (d) the information posted is in a format agreed between the Obligor and the Lender.

32.4.2 Notwithstanding the above, each Obligor must supply to the Lender in paper form a copy of any information posted on the website.

32.4.3 Each Obligor must promptly upon becoming aware of its occurrence, notify the Lender if:

- (a) the website cannot be accessed;
- (b) the website or any information on the website is infected by any electronic virus or similar software;

- (c) the password for the website is changed; or
- (d) any information to be supplied under this Agreement is posted on the website or amended after being posted.

If the circumstances in Clause 32.4.3(a) or Clause 32.4.3(b) occur, the relevant Obligor must supply any information required under this Agreement in paper form until the Lender is satisfied that the circumstances giving rise to the notification are no longer continuing.

### 33 GOVERNING LAW

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

### 34 ENFORCEMENT

34.1.1 The English courts have exclusive jurisdiction to settle any dispute including a dispute relating to any non-contractual obligation arising out of or in connection with any Finance Document.

34.1.2 The English courts are the most appropriate and convenient courts to settle any such dispute in connection with any Finance Document. Each Obligor agrees not to argue to the contrary and waives objection to those courts on the grounds of inconvenient forum or otherwise in relation to proceedings in connection with any Finance Document.

34.1.3 This Clause 34 (*Enforcement*) is for the benefit of the Lender only. To the extent allowed by law, the Lender may take:

- (a) proceedings in any other court; and
- (b) concurrent proceedings in any number of jurisdictions.

34.1.4 References in this Clause 34 (*Enforcement*) to a dispute in connection with a Finance Document includes any dispute as to the existence, validity or termination of that Finance Document.

**This Agreement has been entered into on the date stated at the beginning of this Agreement.**

**Schedule 1**  
**Conditions Precedent to First Utilisation**

**1 Authorisations**

- (a) A copy of the memorandum and articles of association, certificate of incorporation and certificate of incorporation on change of name (if any) of each Obligor and each Subordinated Creditor.
- (b) A copy of a resolution of the board of directors of each Obligor which is party to this Agreement and each Subordinated Creditor:
  - (i) approving the terms of, and the transactions contemplated by the Finance Documents to which it is a party and resolving that it execute those Finance Documents;
  - (ii) authorising a specified person or persons to execute the Finance Documents to which it is a party; and
  - (iii) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices (including, if relevant, any Requests) to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party.
- (c) A copy of a resolution signed by all the holders of the issued or allotted shares in the Borrower.
- (d) A certificate of a director of the Borrower, including a specimen signature list:
  - (i) certifying that the borrowing of the Total Commitments in full would not cause any borrowing limit binding on it to be exceeded; and
  - (ii) certifying that each document delivered under this Schedule 1 (*Conditions Precedent to First Utilisation*) is correct, complete and in full force and effect as at a date no later than the date of this Agreement.

**2 Finance Documents**

- (a) This Agreement executed by the Parties to it.
- (b) The Infrastructure Debenture.
- (c) The Subordination Agreement.

**3 Legal Opinions**

- (a) A legal opinion of Berwin Leighton Paisner LLP, English legal advisors to the Lender, addressed to the Lender.
- (b) A legal opinion of Ogier, Jersey legal advisors to the Lender, addressed to the Lender.

**4 Development**

The Project Monitor Initial Report.

**5 Financial Information**

A copy of the latest available audited financial statements of the Borrower.

**6 Valuation**

(a) The Initial Valuation.

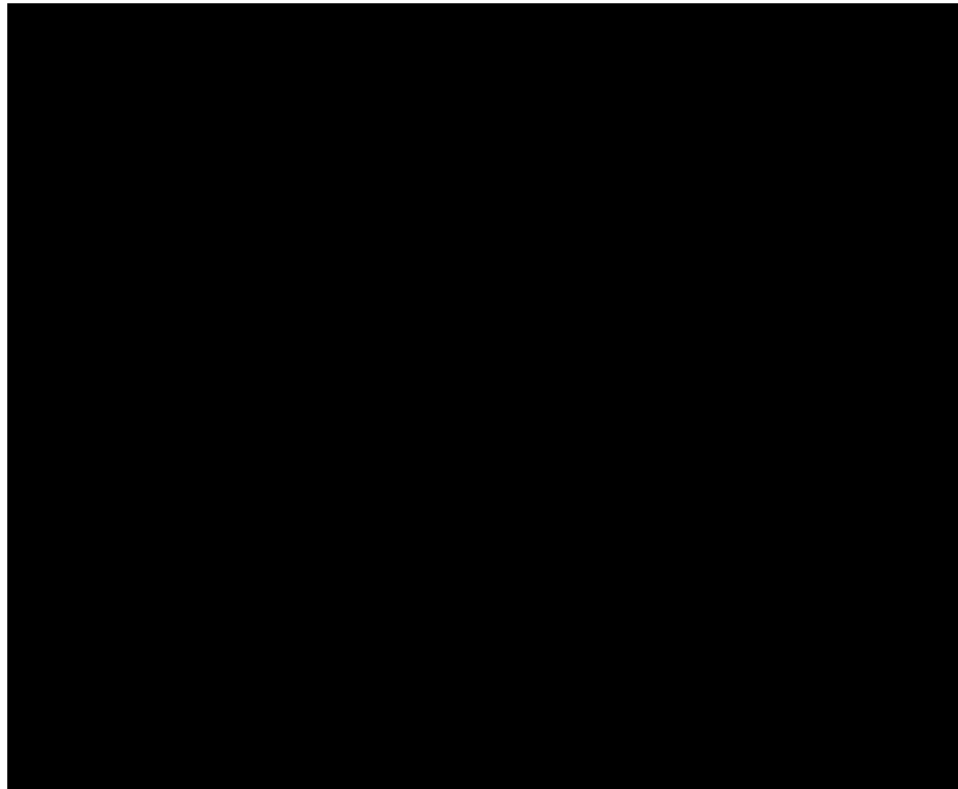
(b) 

**7 Miscellaneous**

- (a) The initial Business Plan and its accompanying Overriding Purpose Certificate.
- (b) Evidence required by the Lender for the purpose of "know your customer" requirements.
- (c) A copy of the ownership structure of the Borrower.

**8 Security notices**

- (a) Notices to the parties to each Headlease, the LRP Agreement and the Landowners Agreement of the charging or assignment of the Borrower's interests thereunder.
- (b) Notices to the insurer under each insurance policy to be put in place in accordance with this Agreement of the charging or assignment of the Borrower's interest thereunder.
- (c) Notices to counterparties to each of:



9 **Property**

- (a) Undertakings from the solicitors of the Borrower confirming that:
- (i) all title documents relating to the Borrower's interests in the Site are held to the order of the Security Agent; and
  - (ii) Land Registry applications in relation to the charging of the Headleases and the Freehold Titles in favour of the Security Agent will be made within the priority period confirmed by the Land Registry and that all appropriate land registry fees will be paid.
- (b) The results of the Land Registry searches in favour of the Security Agent on the appropriate forms against all of the registered titles comprising the interests of the Borrower in relation to the Site with a priority period to end no earlier than 25 April 2016 and showing no adverse entries other than registrations of title documents anticipated or outlined in the Certificate of Title referred to in paragraph (c) below.
- (c) The Certificate of Title and the Planning Report and an overview of the Certificate of Title and Construction Report prepared by Berwin Leighton Paisner LLP, in each case, each addressed to the Lender.
- (d) The Construction Report.
- (e) A copy of the Section 106 Agreements.
- (f) A copy of each Headlease.
- (g) The Deed of Covenant.

10 **Details of the Development**

The Agreed Package.

11 **Infrastructure Documents**

A copy of trade contracts or appointments entered into between the Borrower and the Major Trade Contractors and Major Professionals where appointed, in each case, containing Third Party Rights or catering for the provisions of Collateral Warranties in favour of the Security Agent, as set out in Schedule 4 (*List of Major Trade Contractors and Major Professionals*).

12 **Tax**

- (a) A copy of the VAT registration certificate for the Borrower.
- (b) Evidence that the Borrower has duly exercised an option to tax in relation to the Site and that HM Revenue & Customs has been notified of such option to tax.

13 **Insurance**

Confirmation in the agreed form from an independent insurance broker appointed by the Lender that the insurance cover in force complies with the terms of this Agreement and the necessary premiums have been paid.



14 **Miscellaneous**

- (a) Payment of all outstanding fees (as agreed between and the Lender and the Borrower), together with evidence of arrangements satisfactory to the Lender to meet the fees of the Project Monitor.
- (b) If the proceeds of the First Utilisation are to be paid into the client account of [REDACTED], an undertaking from [REDACTED] (or, if the proceeds of the First Utilisation are to be paid into the client account of [REDACTED], an undertaking from [REDACTED] in relation to the application of such proceeds.
- (c) A copy of any other authorisation or other document, opinion or assurance which the Lender, acting in good faith, reasonably considers to be necessary in connection with the entry into and performance of, and the transactions contemplated by, any Relevant Document or for the validity and enforceability of any Relevant Document, provided that the Lender gives the Borrower reasonable notice of any requirement under this paragraph 14(b) and gives the Borrower notice of that requirement prior to the date of this Agreement.

## Schedule 2

### Part 1 Conditions Precedent to Accession Deed

#### 1 Authorisations

- (a) A copy of the memorandum and articles of association, certificate of incorporation and certificate of incorporation on change of name (if any) of the Acceding Obligor and, in respect of any Acceding Obligor incorporated in a jurisdiction other than England and Wales, copies of any applicable consents or authorisations required by that Acceding Obligor to enter into the Finance Documents to which it is party.
- (b) A copy of a resolution of the board of directors of the Acceding Obligor:
- (i) approving the terms of, and the transactions contemplated by the Finance Documents to which it is party and resolving that it execute those Finance Documents;
  - (ii) authorising a specified person or persons to execute the Finance Documents to which it is party; and
  - (iii) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices to be signed and/or despatched by it under or in connection with the Finance Documents to which it is party.
- (c) A copy of a resolution signed by all the holders of the issued or allotted shares in the Acceding Obligor approving the terms of, and the transactions contemplated by the Finance Documents to which it is party.
- (d) A certificate of a director of the Acceding Obligor, including a specimen signature list:
- (i) certifying that the guarantee provided by it under the Finance Documents to which it is party would not cause any guaranteeing limit binding on it to be exceeded; and
  - (ii) certifying that each document delivered under this Schedule 2 (*Part 1: Conditions Precedent to Accession Deed*) is correct, complete and in full force and effect as at a date no later than the date of the Accession Deed to which it is party.

#### 2 Finance Documents

- (a) An Accession Deed.
- (b) A Supplemental Security Agreement.
- (c) If applicable, a deed of accession to any Intercreditor Agreement entered into on or prior to the date of the Accession Deed to which it is party.

#### 3 Security notices

Notices to parties to each insurance policy to be put in place in accordance with this Agreement (if any) of the charging or assignment of the relevant Acceding Obligor's interest thereunder.

**4 Property**

Where the Acceding Obligor is acquiring title to any part of the Site:

- (a) undertakings from the solicitors of the Acceding Obligor confirming that:
- (i) all title documents relating to the Acceding Obligor's interests in the relevant part of the Site are held to the order of the Security Agent;
  - (ii) Land Registry applications in relation to the transfer or creation of title to the Acceding Obligor's interests in the relevant part of the Site and the registration of the charging of such interests in favour of the Security Agent will be made within the priority period confirmed by the Land Registry and that all appropriate land registry fees will be paid; and
  - (iii) duly completed Land Transaction Returns in relation to the Acceding Obligor's interests in the relevant part of the Site will be submitted accompanied by payments of stamp duty land tax;
- (b) the results of the Land Registry searches in favour of the Security Agent on the appropriate forms against all of the registered titles comprising the interests of the Acceding Obligor in relation to the relevant Site giving not less than 25 Business Days' priority beyond the date of the relevant Supplemental Security Agreement and showing no adverse entries;
- (c) if the relevant Permitted Disposal is by way of the grant of a leasehold interest in the Site to the Acceding Obligor, a copy of the relevant Lease and all documents ancillary thereto; and
- (d) if the relevant Permitted Disposal is by way of a transfer of part of any Headlease to in the Site to the Acceding Obligor, a copy of the relevant transfer and all documents ancillary thereto.

**5 Tax**

- (a) A copy of any VAT registration certificate for the Acceding Obligor.

**6 Legal Opinions**

- (a) A legal opinion of [REDACTED] English legal advisors to the Lender, addressed to the Lender.
- (b) If the Acceding Obligor is incorporated in a jurisdiction other than England and Wales, a legal opinion of the legal advisers to the Lender in the relevant jurisdiction.

**Part 2**  
**Conditions precedent to Borrower Novation Deed**

**1 Authorisations**

- (a) A copy of the memorandum and articles of association, certificate of incorporation and certificate of incorporation on change of name (if any) of the New Borrower and, in respect of any New Borrower incorporated in a jurisdiction other than England and Wales, copies of any applicable consents or authorisations required by that New Borrower to enter into the Finance Documents to which it is party.
- (b) A copy of a resolution of the board of directors of the New Borrower:
  - (i) approving the terms of, and the transactions contemplated by the Finance Documents to which it is party and resolving that it execute those Finance Documents;
  - (ii) authorising a specified person or persons to execute the Finance Documents to which it is party; and
  - (iii) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices to be signed and/or despatched by it under or in connection with the Finance Documents to which it is party.
- (c) A copy of a resolution signed by all the holders of the issued or allotted shares in the New Borrower approving the terms of, and the transactions contemplated by the Finance Documents to which it is party.
- (d) A certificate of a director of the New Borrower, including a specimen signature list:
  - (i) certifying that the guarantee provided by it under the Finance Documents to which it is party would not cause any guaranteeing limit binding on it to be exceeded; and
  - (ii) certifying that each document delivered under this Part 2 of Schedule 2 (*Conditions Precedent to Borrower Novation Deed*) is correct, complete and in full force and effect as at a date no later than the date of the Borrower Novation Deed.

**2 Finance Documents**

- (a) The Borrower Novation Deed.
- (b) A Supplemental Security Agreement.
- (c) If applicable, a deed of accession to any Intercreditor Agreement entered into on or prior to the date of the Borrower Novation Deed.

**3 Legal Opinions**

- (a) A legal opinion of Berwin Leighton Paisner LLP, English legal advisors to the Lender, addressed to the Lender.
- (b) If the New Borrower is incorporated in a jurisdiction other than England and Wales, a legal opinion of the legal advisors to the Lender in the relevant jurisdiction.

4 **Financial Information**

- (a) A copy of the latest available financial statements (audited, if available) of the New Borrower.

5 **Know your customer**

- (a) Evidence required by the Lender for the purposes of "know your customer" requirements.

6 **Tax**

- (a) A copy of the VAT registration certificate for the New Borrower.

**Schedule 3  
Form of Request**

To: Homes and Communities Agency

From: Earls Court Partnership Limited

Date: [●]

**Earls Court Partnership Limited - Credit Agreement dated [●] 2016**

This is a Request.

We wish to borrow a Loan in the amount of £[●] for the purpose set out in Clause 3.1 (*Purpose of Facility*) as follows:

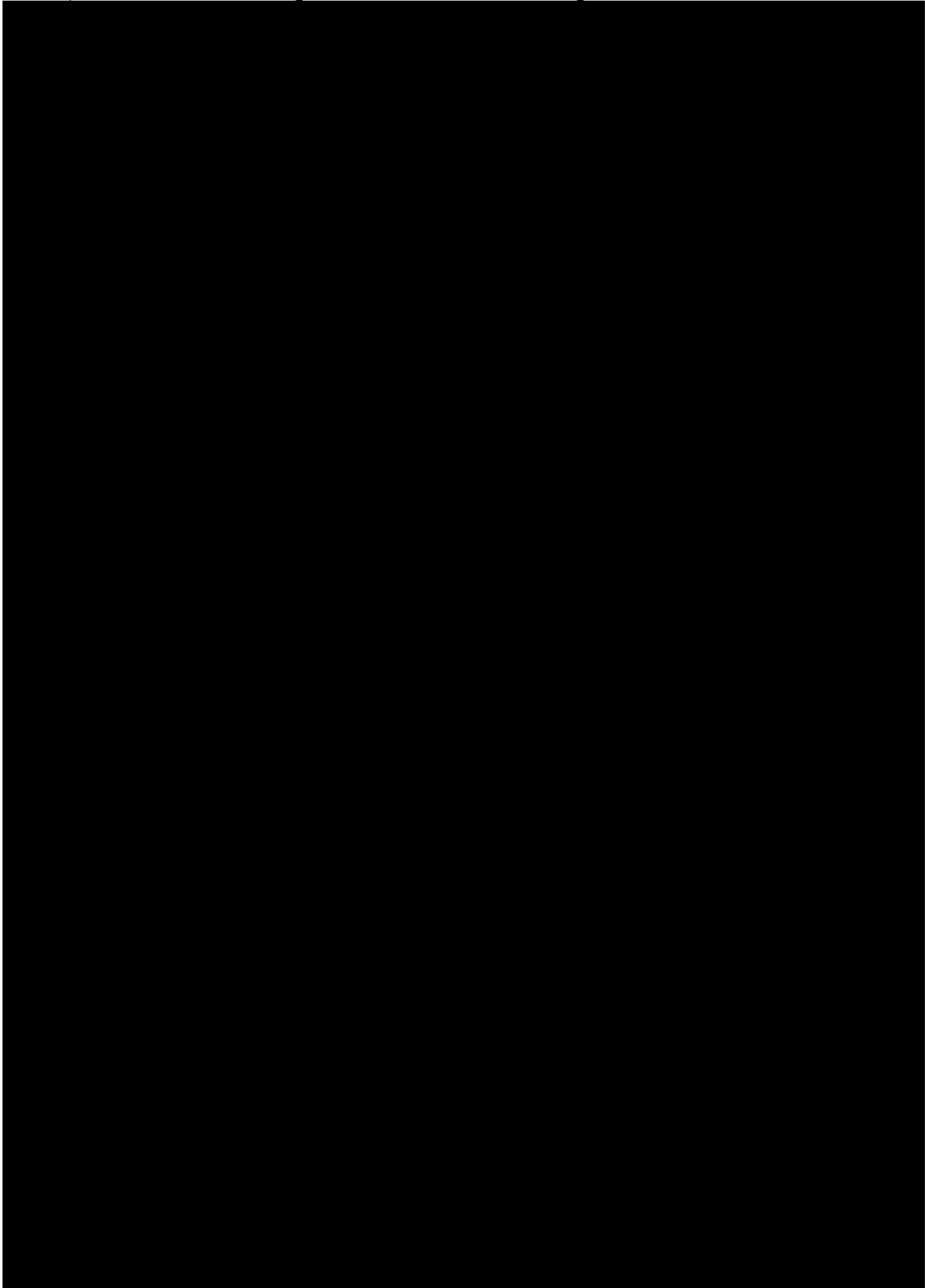
- (a) Infrastructure Works : £[●];
- (b) Drawdown Date: [●];
- (c) Payment instructions: [●];

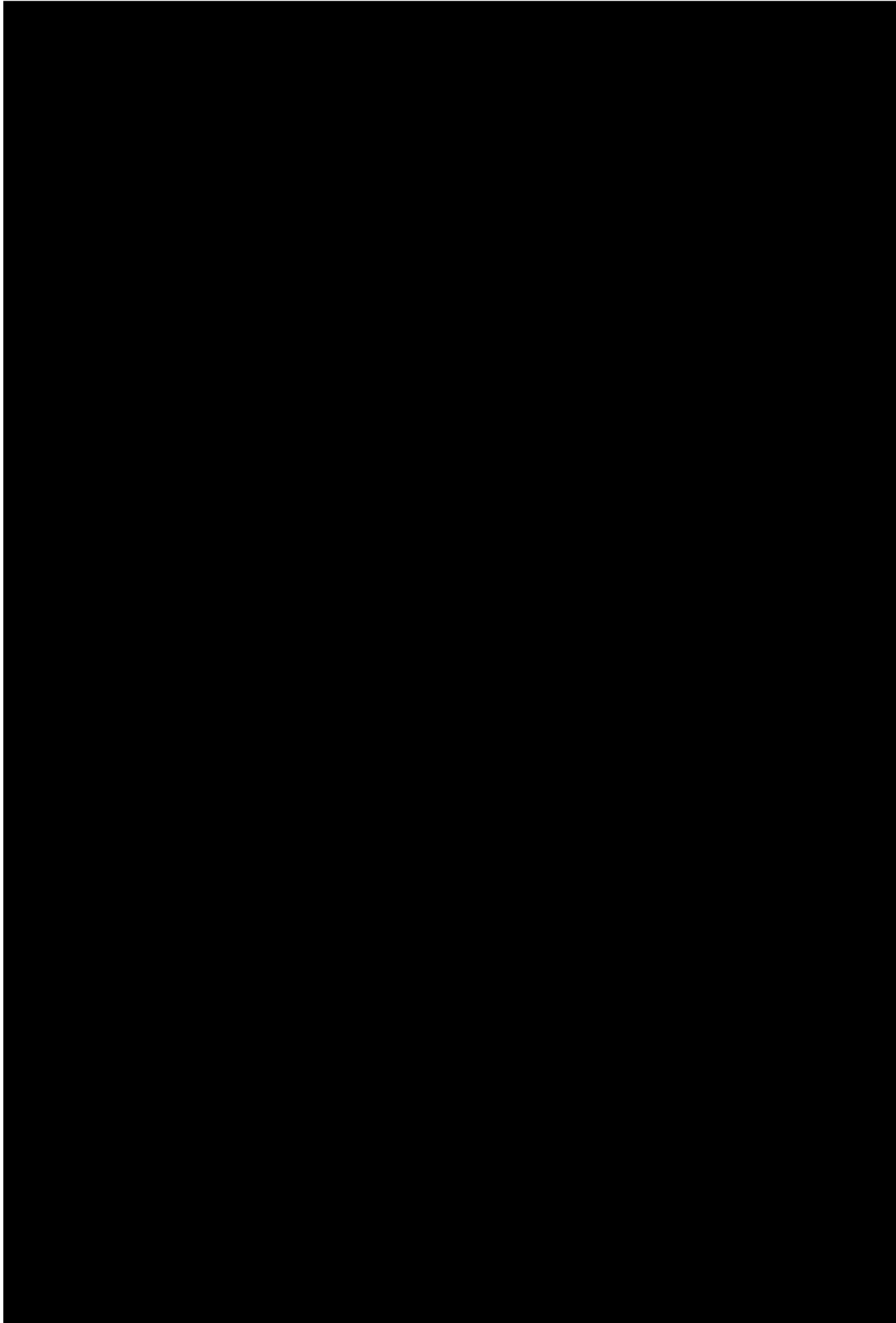
We confirm that each condition specified in Clause 4.2 (*Further conditions precedent*) is satisfied on the date of this Request.

By:

**EARLS COURT PARTNERSHIP LIMITED**  
Authorised Signatory

**Schedule 4**  
**List of Major Trade Contractors and Major Professionals**









**Schedule 5**  
**LMA Form of Confidentiality Undertaking**

LMA Form of Confidentiality Undertaking

To: [•] [*insert name of Potential Purchaser*]

Re: The Agreement

Borrower: [•] (the **Borrower**)

Date: [•]

Amount: [•]

Lender: [•]

Dear Sirs

We understand that you 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 Borrower 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 us agreeing to make available to you certain information, by your signature of a copy of this letter you agree as follows:

**1 Confidentiality Undertaking**

You undertake:

- (i) to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by paragraph 2 (*Permitted Disclosure*) and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to your own confidential information; and
- (ii) until the Acquisition is completed to use the Confidential Information only for the Permitted Purpose.

**2 Permitted Disclosure**

We agree that you may disclose:

- (i) to any of your Affiliates, Related Funds and any of your or their officers, directors, employees, professional advisers and auditors such Confidential Information as you shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this paragraph 2(i) 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;
- (ii) subject to the requirements of the Agreement, to any person:

- (A) to (or through) whom you assign or transfer (or may potentially assign or transfer) all or any of your rights and/or obligations which you may acquire under the Agreement such Confidential Information as you shall consider appropriate if the person to whom the Confidential Information is to be given pursuant to this paragraph 2(ii)(A) has delivered a letter to you in equivalent form to this letter;
  - (B) with (or through) whom you 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 the Borrower such Confidential Information as you shall consider appropriate if the person to whom the Confidential Information is to be given pursuant to this paragraph 2(ii)(B) has delivered a letter to you in equivalent form to this letter;
  - (C) 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 you shall consider appropriate; and
- (iii) notwithstanding paragraph 2(i) and paragraph 2(ii), Confidential Information to such persons to whom, and on the same terms as, the Lender 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 the Lender were references to you.

**3 Notification of Disclosure**

You agree (to the extent permitted by law and regulation) to inform us:

- (i) of the circumstances of any disclosure of Confidential Information made pursuant to paragraph 2(ii)(C) 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
- (ii) upon becoming aware that Confidential Information has been disclosed in breach of this letter.

**4 Return of Copies**

If you do not enter into the Acquisition and we so request in writing, you shall return all Confidential Information supplied to you by us and destroy or permanently erase (to the extent technically practicable) all copies of Confidential Information made by you and use your reasonable endeavours to ensure that anyone to whom you 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 you 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(ii)(C) above.

## 5 Continuing Obligations

The obligations in this letter are continuing and, in particular, shall survive and remain binding on you until:

- (i) if you become a party to the Agreement as a lender of record, the date on which you become such a party to the Agreement;
- (ii) if you enter into the Acquisition but it does not result in you becoming a party to the Agreement as a lender of record, the date falling 12 months after the date on which all of your rights and obligations contained in the documentation entered into to implement that Acquisition have terminated; or
- (iii) in any other case the date falling 12 months after the date of your final receipt (in whatever manner) of any Confidential Information.

## 6 No Representation; Consequences Of Breach, Etc

You acknowledge and agree that:

- (i) neither we, nor any of our or their respective officers, employees or advisers (each a "**Relevant Person**"):
  - (A) 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 us or the assumptions on which it is based; or
  - (B) shall be under any obligation to update or correct any inaccuracy in the Confidential Information or any other information supplied by us or be otherwise liable to you or any other person in respect of the Confidential Information or any such information; and
- (ii) we 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 you.

## 7 Entire Agreement: No Waiver; Amendments, Etc

- (a) This letter constitutes the entire agreement between us in relation to your obligations regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.
- (b) 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.
- (c) The terms of this letter and your obligations under this letter may only be amended or modified by written agreement between us.

**8 Inside Information**

You 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 you undertake not to use any Confidential Information for any unlawful purpose.

**9 Nature of Undertakings**

The undertakings given by you under this letter are given to us and are also given for the benefit of the Obligors.

**10 Third Party Rights**

- (a) Subject to this paragraph 10 (*Third Party Rights*) and to paragraph 6 (*No Representation; Consequences Of Breach, Etc*) and paragraph 9 (*Nature of Undertakings*), 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.
- (b) The Relevant Persons may enjoy the benefit of the terms of paragraph 6 (*No Representation; Consequences Of Breach, Etc*) and paragraph 9 (*Nature of Undertakings*) subject to and in accordance with this paragraph 10 (*Third Party Rights*) and the provisions of the Third Parties Act.
- (c) 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**

- (a) 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.
- (b) 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 Obligors, the Finance Documents, [the/a] Facility and/or the Acquisition which is provided to you in relation to the Finance Documents or [the/a] Facility by us or any of our 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:

- (i) is or becomes public information other than as a direct or indirect result of any breach by you of this letter; or
- (ii) is identified in writing at the time of delivery as non-confidential by us or our advisers; or
- (iii) is known by you before the date the information is disclosed to you by us or any of our affiliates or advisers or is lawfully obtained by you after that date, from a source which is, as far as you are aware, unconnected with the Obligors and which, in either case, as far as you are aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality.

**"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  
**[Seller]**

To: [Seller]

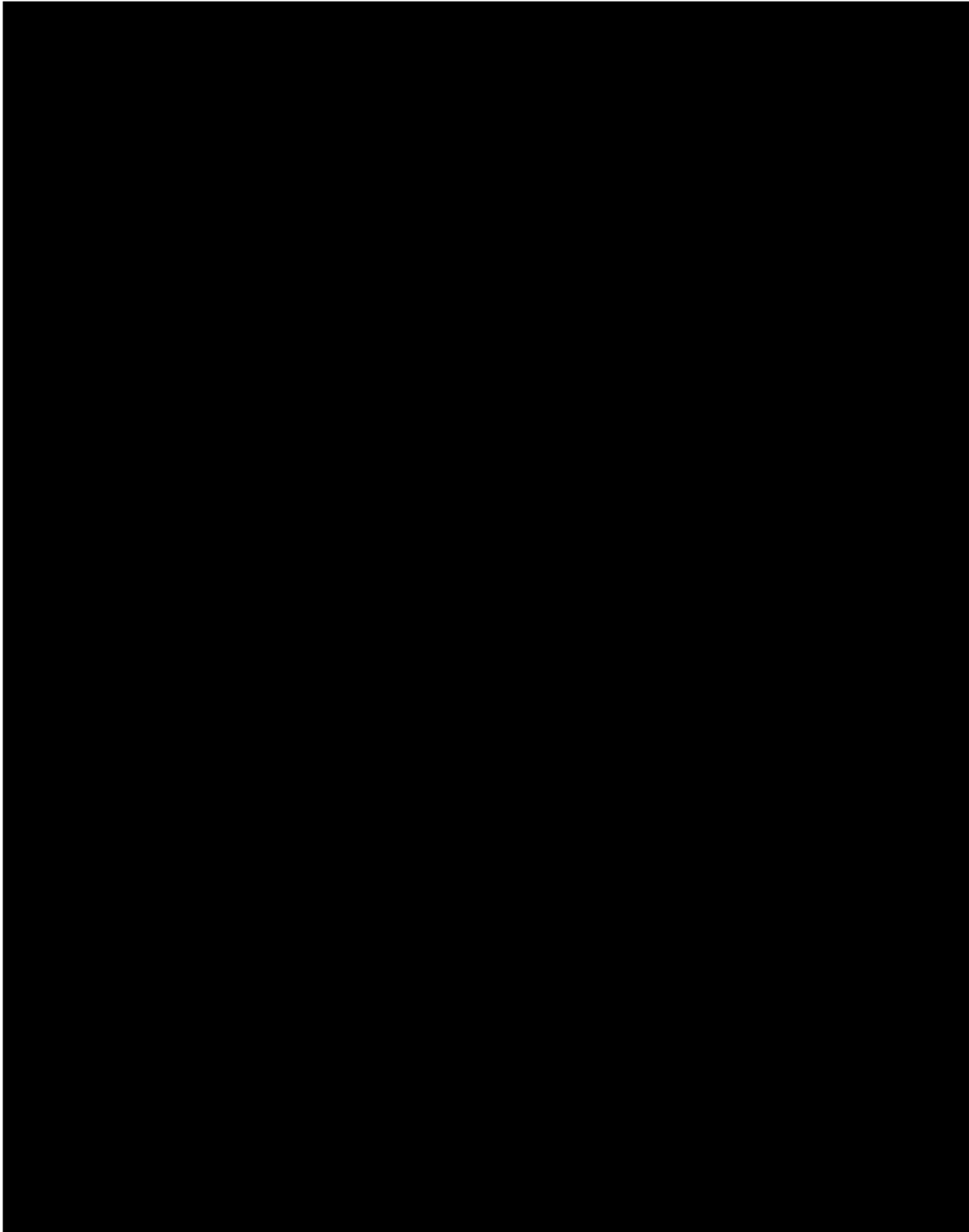
The Borrower

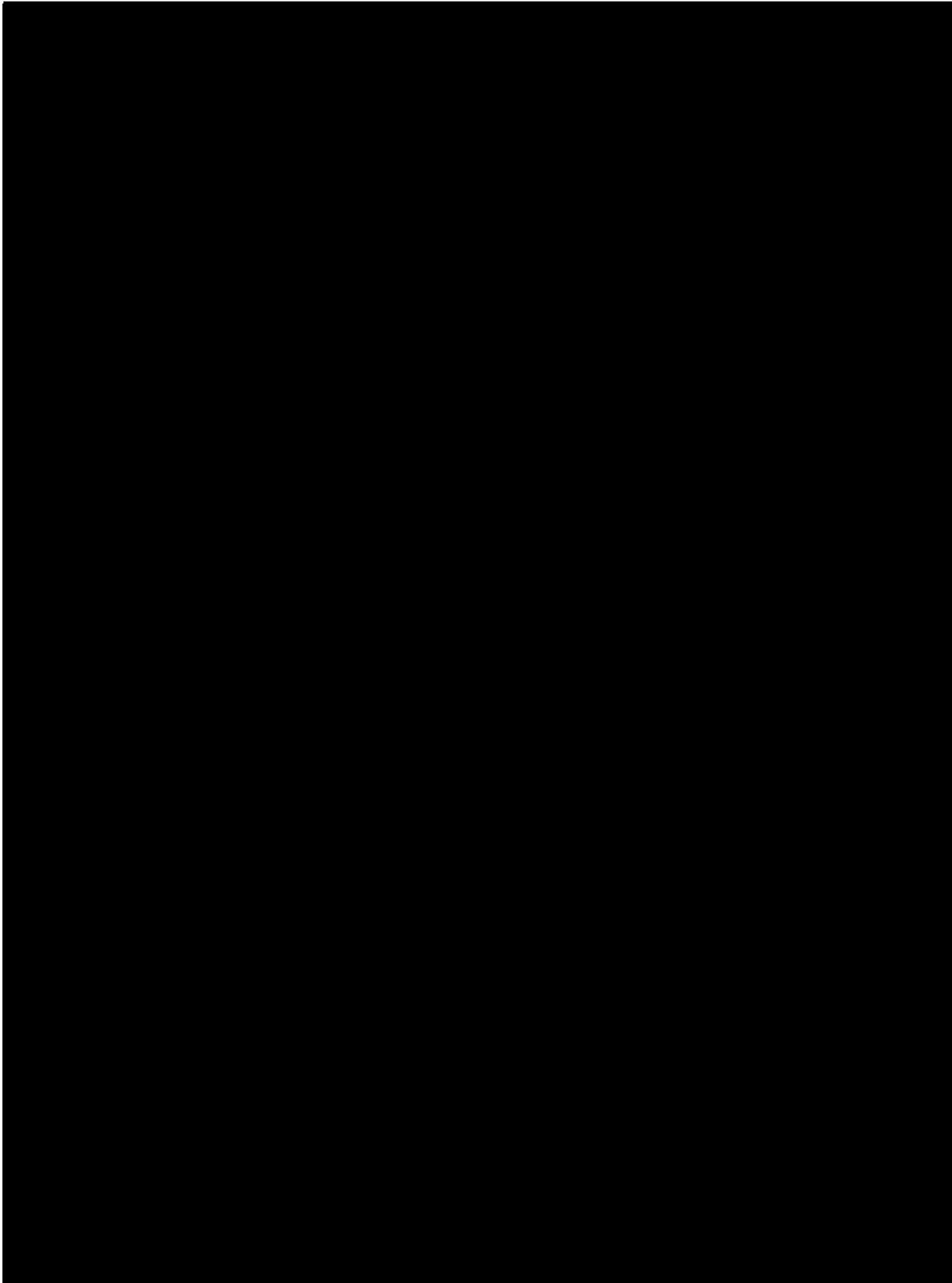
We acknowledge and agree to the above:

.....

For and on behalf of  
**[Potential Purchaser]**

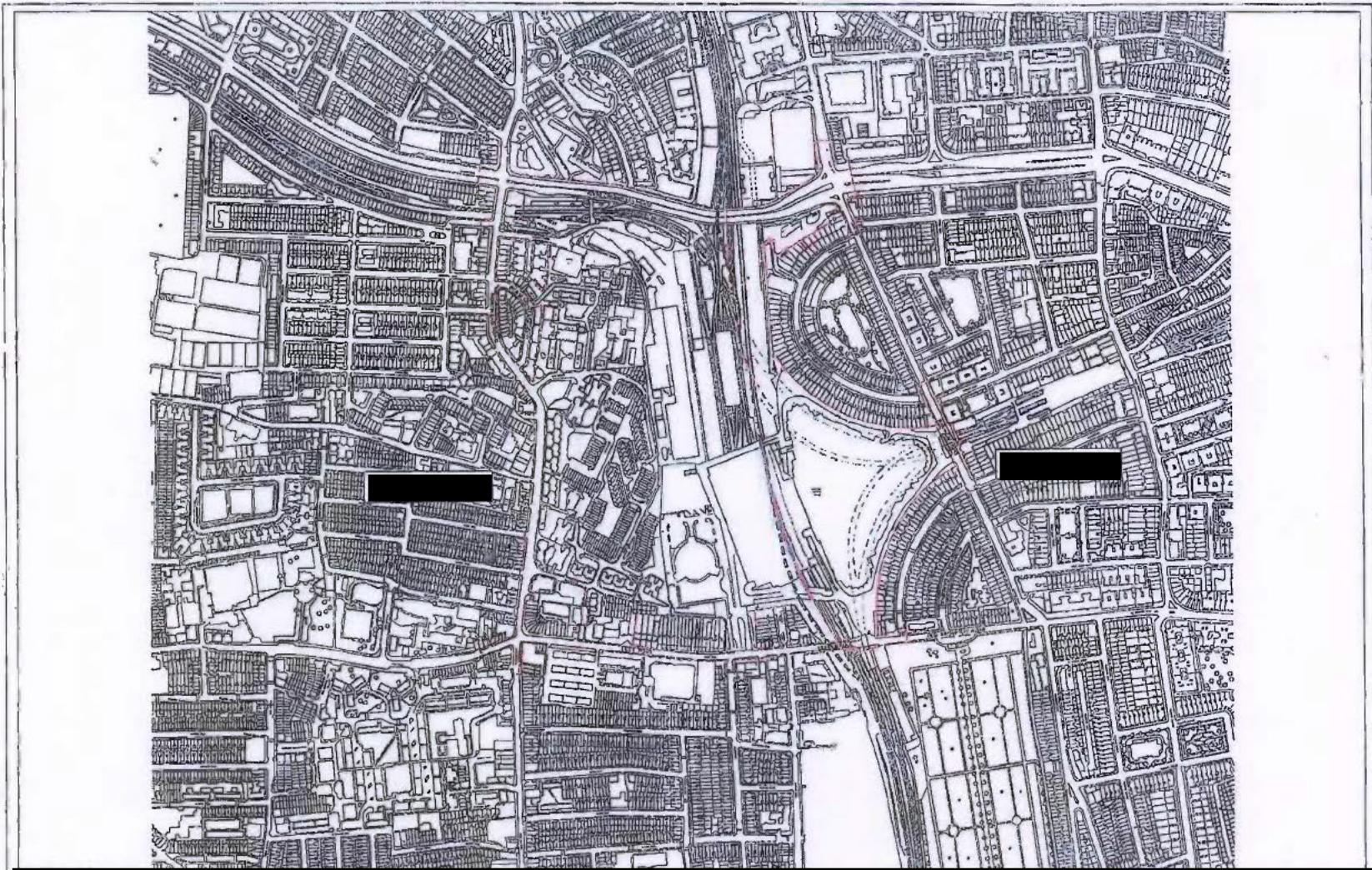
**Schedule 6**  
**The Original Site**





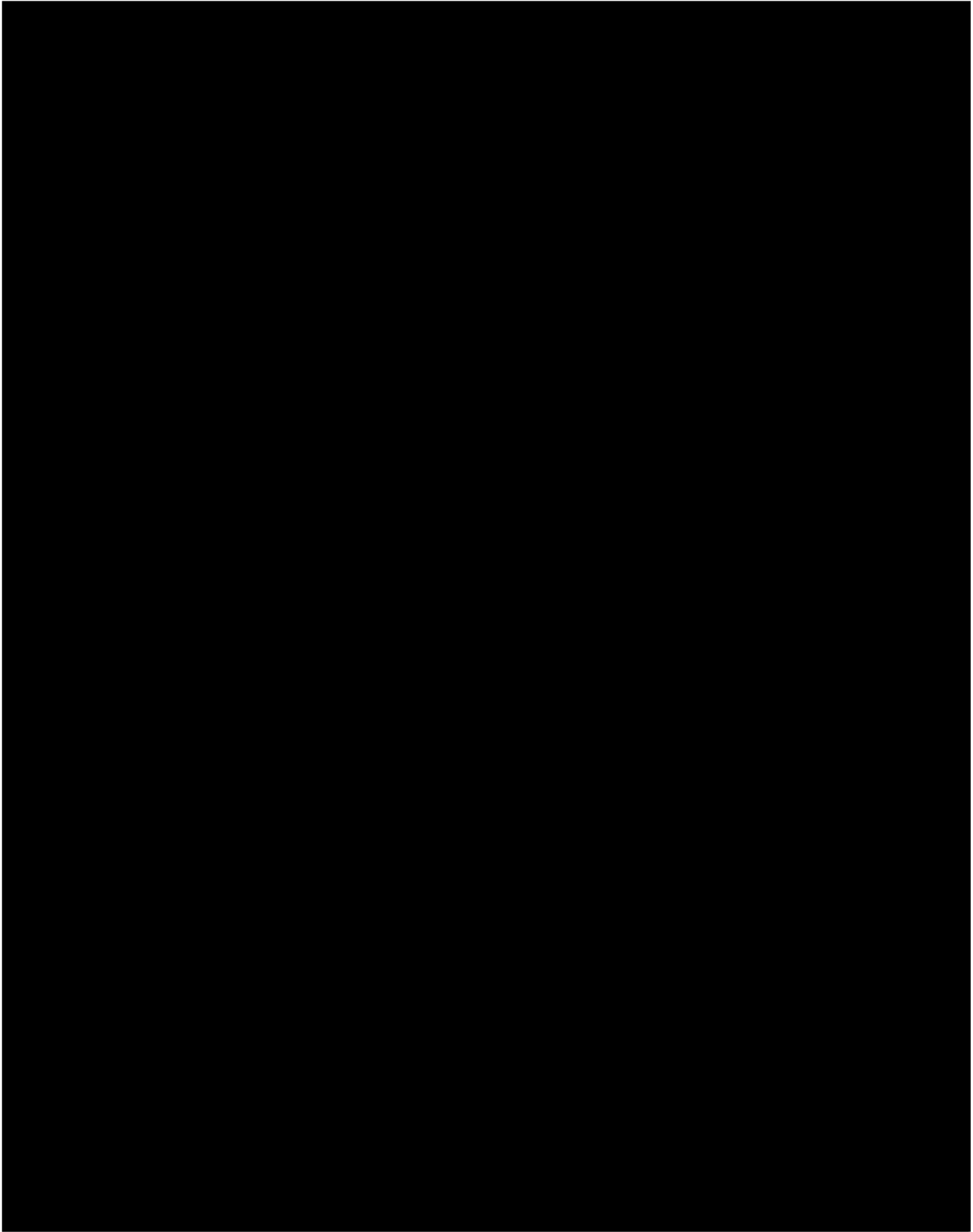


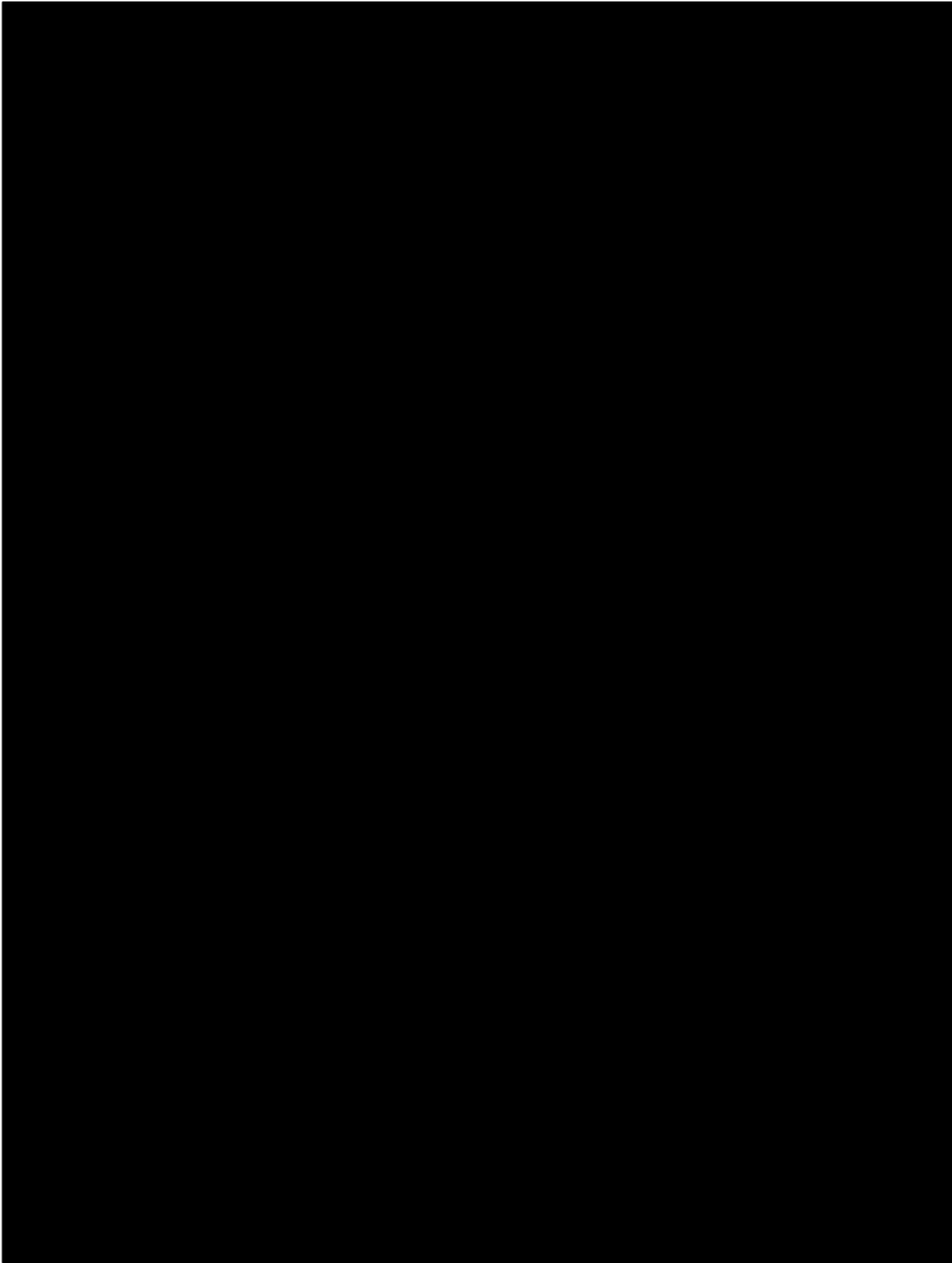
**Schedule 7**  
**The Masterplan Site**

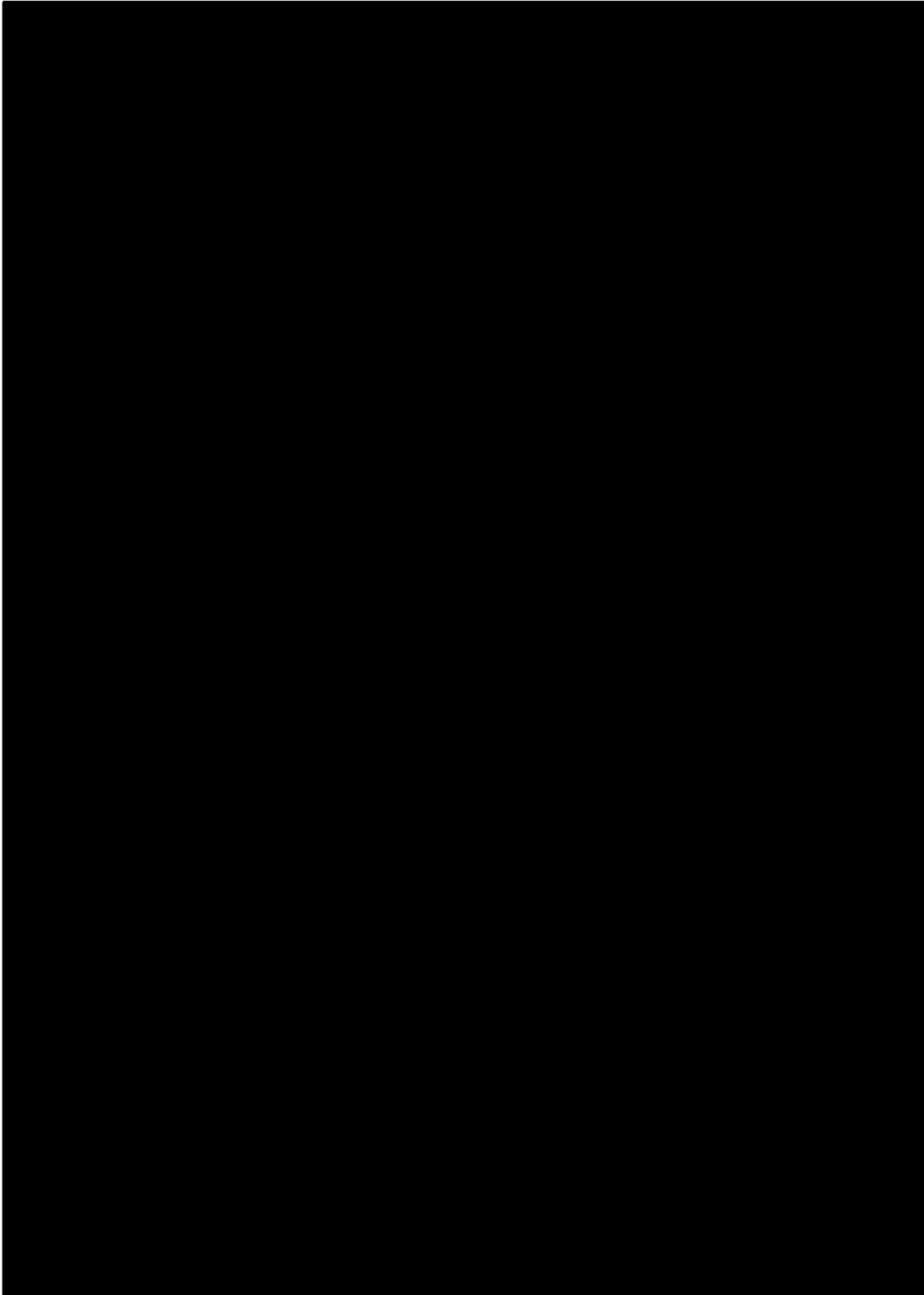


Small, illegible text or a scale bar located along the left edge of the drawing area.

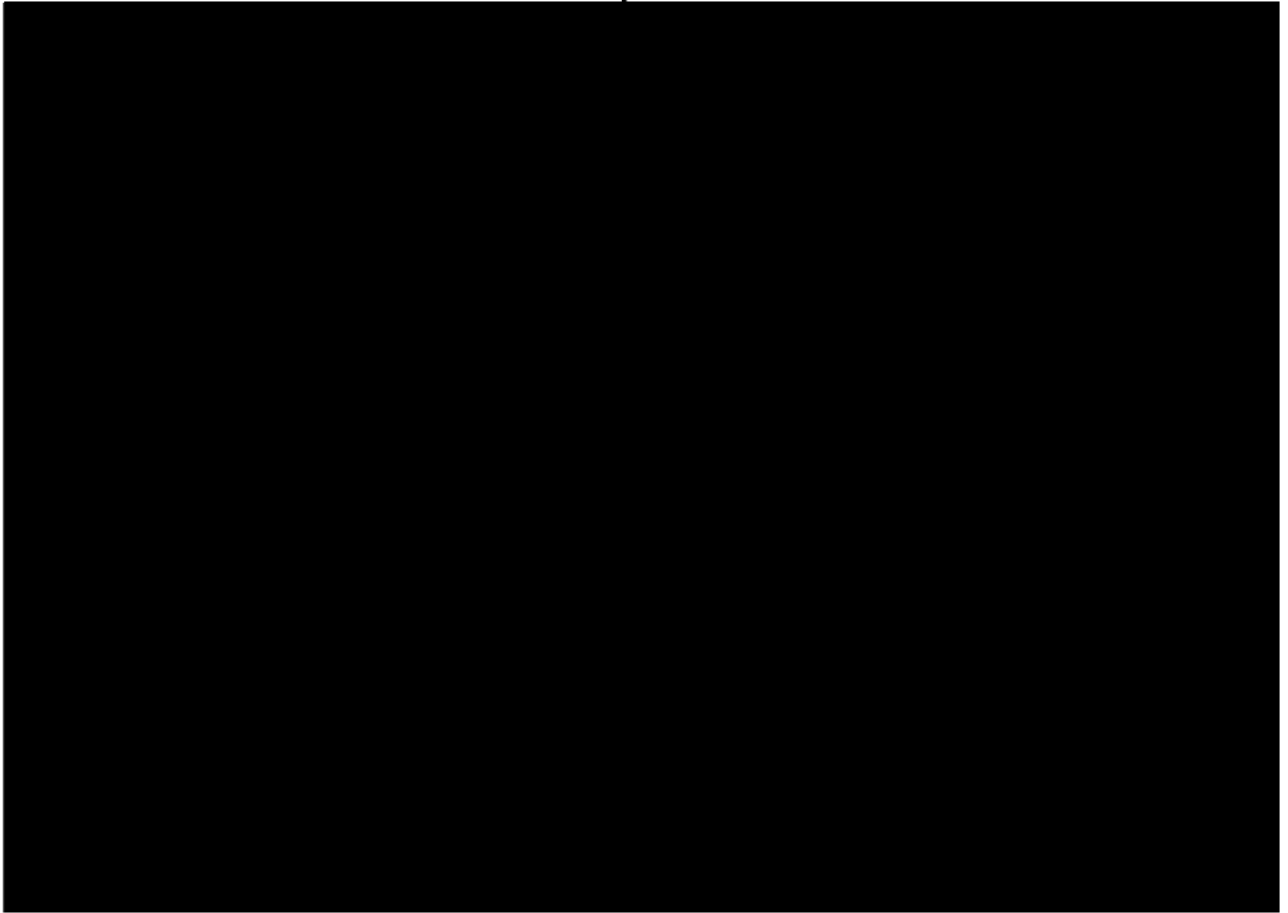
**Schedule 8**  
**Intercreditor Principles**







**Schedule 9  
Excluded Properties**



**Schedule 10**  
**Form of Accession Deed**

To:

From: Earls Court Partnership Limited and [*Acceding Obligor*]

Dated:

Dear Sirs

**[Earls Court Partnership Limited] - Credit Agreement dated [ ] (the "Credit Agreement")**

1. We refer to the Credit Agreement. This deed (the "**Accession Deed**") shall take effect as an Accession Deed for the purposes of the Credit Agreement. Terms defined in the Credit Agreement have the same meaning in this Accession Deed unless given a different meaning in this Accession Deed.
2. [*Acceding Obligor*] agrees to become an Obligor and to be bound by the terms of the Credit Agreement and the other Finance Documents as an Obligor pursuant to the terms of the Credit Agreement. [*Acceding Obligor*] is a company duly incorporated under the laws of England and is a limited liability company with registered number [ ].
3. [*Acceding Obligor's*] administrative details for the purposes of the Credit Agreement are as follows:

Address:

Fax No.:

Attention:

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

**THIS ACCESSION DEED** has been signed on behalf of the Borrower and executed as a deed by [Acceding Obligor] and is delivered on the date stated above. The Lender has signed this Accession Deed to acknowledge its terms only.

**[Acceding Obligor]**

EXECUTED AS A DEED

By: [Acceding Obligor]

Signature of Director

Name of Director

Signature of Director/Secretary

Name of Director/Secretary

**The Borrower**

By:

**The Lender**

By:

Date:



**Schedule 11**  
**Form of Borrower Novation Deed**

To:

From: Earls Court Partnership Limited and [*New Borrower*]

Dated:

Dear Sirs

**[Earls Court Partnership Limited] - Credit Agreement dated [ ] (the "Credit Agreement")**

4. We refer to the Credit Agreement. This deed (the "**Borrower Novation Deed**") shall take effect as a Borrower Novation Deed for the purposes of the Credit Agreement. Terms defined in the Credit Agreement have the same meaning in this Borrower Novation Deed unless given a different meaning in this Borrower Novation Deed.
5. With effect on and from the date of this Borrower Novation Deed (the "**Substitution Date**") the New Borrower hereby agrees to become the Borrower, undertakes to be bound by the terms of the Credit Agreement as the Borrower and to observe and perform all the rights, obligations and liabilities (actual or contingent) of the Original Borrower under the Credit Agreement (including any such obligations or liabilities as may have accrued or become due in respect thereof prior to the Substitution Date).
6. The Original Borrower and the New Borrower confirm that no Default is continuing or would result as a result of the New Borrower becoming the Borrower under the Credit Agreement. By delivery of this Deed to the Lender, each of the Original Borrower and the New Borrower confirms that all Repeating Representations are true and correct in relation to it in all material respects as at the date of such delivery.
7. [*New Borrower's*] administrative details for the purposes of the Credit Agreement are as follows:

Address:

Attention:

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

**THIS BORROWER NOVATION DEED** has been signed on behalf of the Original Borrower and executed as a deed by [New Borrower] and is delivered on the date stated above. The Lender has signed this Borrower Novation Deed to acknowledge its terms only.

**[ *New Borrower* ]**

EXECUTED AS A DEED

By: [*Acceding Obligor*]

Signature of Director

Name of Director

Signature of Director

Name of Director/Secretary

**The Original Borrower**

By:

**The Lender**

By:

Date:

**Schedule 12  
Form of Resignation Letter**

To:

From: [resigning Guarantor] (the **Resigning Guarantor**) and [Earls Court Partnership Limited]

Dated: [•]

Dear Sirs,

**[Earls Court Partnership Limited] - Credit Agreement dated [ ] (the "Credit Agreement")**

1. We refer to the Credit Agreement. This is a Resignation Letter. Terms defined in the Credit Agreement have the same meaning in this Resignation Letter unless given a different meaning in this Resignation Letter.
2. Pursuant to Clause 26.9 (*Resignation and release*) of the Credit Agreement, we request that the Resigning Guarantor be released from its obligations as an Obligor under the Credit Agreement.
3. We confirm that:
  - (a) no Default is continuing or would result from the acceptance of this request;
  - (b) no payment is due from the Resigning Guarantor under Clause 14 (*Guarantee*).
4. This Resignation Letter and any non-contractual obligations arising out of or in connection with it are governed by English law.

**Borrower**

**[EARLS COURT PARTNERSHIP LIMITED]**

By: .....

**Resigning Guarantor**

[ . ]

By: .....

**Lender**

**HOMES AND COMMUNITIES AGENCY**

By: .....

**Schedule 13**  
**Form of Permitted Part Confirmation**

**[ON HEADED PAPER OF BORROWER]**

To: Homes and Communities Agency (the "**Security Agent**")

Dear Sirs,

**Re: Earls Court Village - Disposal of Part of Site**

In connection with the disposal of the part of the Site shown edged red on the plan attached hereto (the "**Relevant Part**"), we hereby confirm that:

- (a) the Relevant Part consists of:
  - (i) (or is suitable for development as) buildings or structures which are physically independent and capable of separate beneficial occupation and use; or
  - (ii) part of a building or structure where an appropriate mechanism for recovery of costs of maintaining common parts has been put in place;
- (b) either:
  - (i) all buildings within the Relevant Part are not dependent upon any retained part of the Site for structural integrity or support and part or parts of the Site retained by the Obligors is similarly not dependent on the part to be transferred however for the avoidance of doubt this provision does not apply where the Relevant Part consists of part of a building; or
  - (ii) an appropriate mechanism for the repair and maintenance of Common Structures has been put in place;
- (c) in respect of any load bearing structure or any roads, footpaths, estate areas or other areas intended for common use which may cross the boundaries of the Relevant Part are in each case capable of being independently accessed, maintained and/or replaced as necessary or appropriate rights to allow for access, maintenance and/or replacement as necessary have been included;
- (d) all such rights are reserved as are believed necessary and appropriate to serve the retained parts of the Site and to facilitate the completion of the Infrastructure Works in accordance with the requirements of this Agreement;
- (e) appropriate arrangements have been made to provide for payments to be made in respect of any maintenance and lifecycle account;
- (f) to the extent appropriate, a service charge structure has been included providing contributions to expenditure in respect of infrastructure and other items intended to benefit the Relevant Part and the parts of the Site to be retained by the Obligors;
- (g) the requirements of the Headleases and all other documents to which the Site is subject have been complied with;
- (h) the requirements of the Landowners Agreement can continue to be met;

- (i) the disposal will involve terms we consider appropriate regarding the ability of any Obligor to comply with the terms of the Planning Permissions and Section 106 Agreements without requiring the consent of any third party; and
- (j) [the only exception to the confirmations above are [ ] and these exceptions have been specifically drawn to the attention of the Valuer in making its Valuation addressed to you].

Capitalised terms used in this letter have the same meanings as when used in the Facility Agreement dated [●] 2016 between the Homes and Communities Agency (as Lender and Security Agent) and ourselves as Borrower.

Yours faithfully

---

Earls Court Partnership Limited as Borrower

**Solicitor's Confirmation**

We hereby confirm we have acted for the Borrower in connection with the disposal of the Relevant Part referred to above.

We have provided such reports and summaries to the Valuer as have been required and we acknowledge a duty of care to you in respect of such reports and summaries to the extent the Valuer has relied upon them for the purpose of providing a confirmation or Valuation to you.

*[Where the Borrower Confirmation is given]* We acknowledge the confirmations given by the Borrower set out above and confirm that (disregarding any matter which is of a technical and non-legal nature) we are not aware of any reason why the Borrower cannot issue such confirmations.

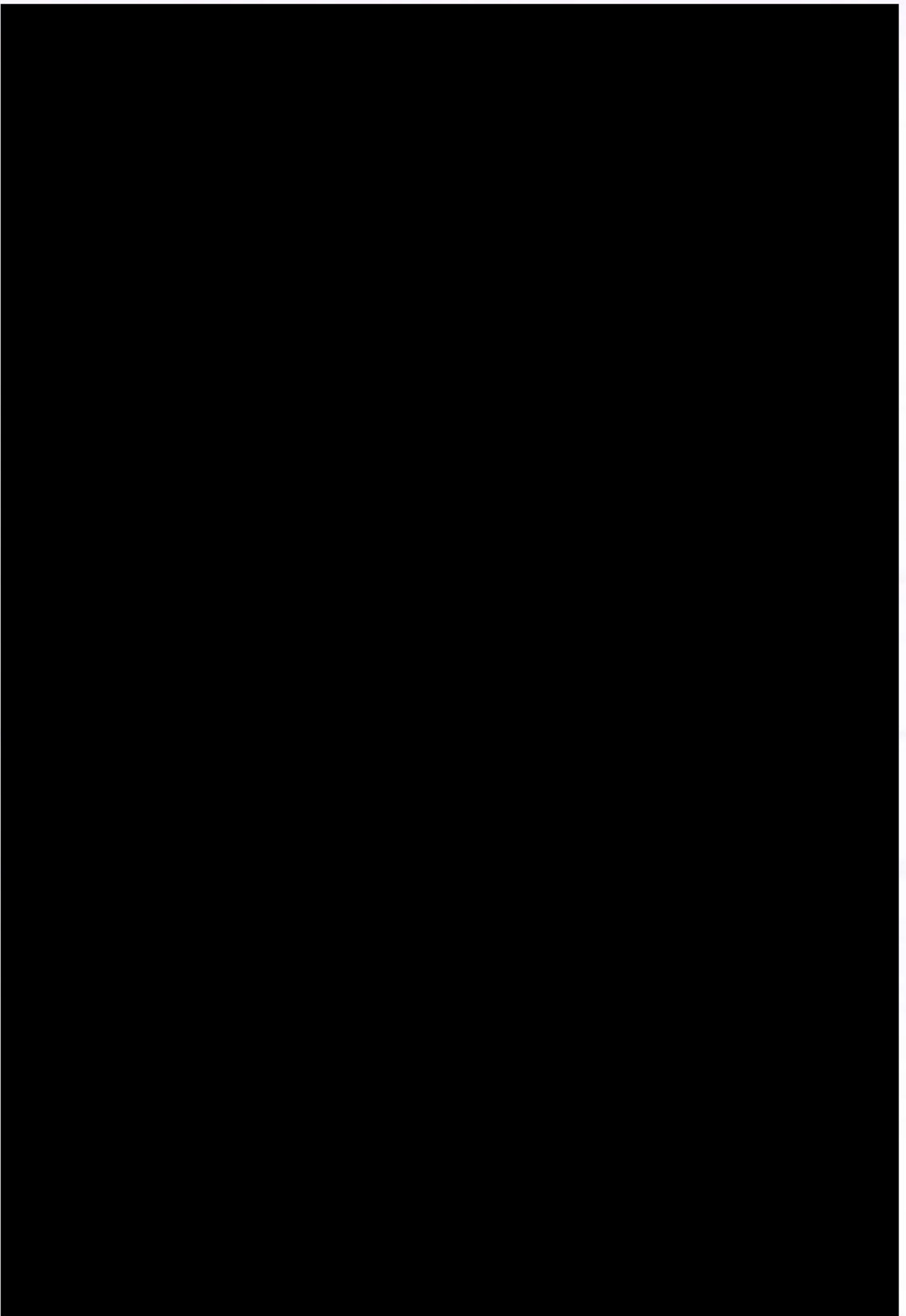
Yours faithfully

---

[Solicitors for the Obligor]

**Schedule 14**



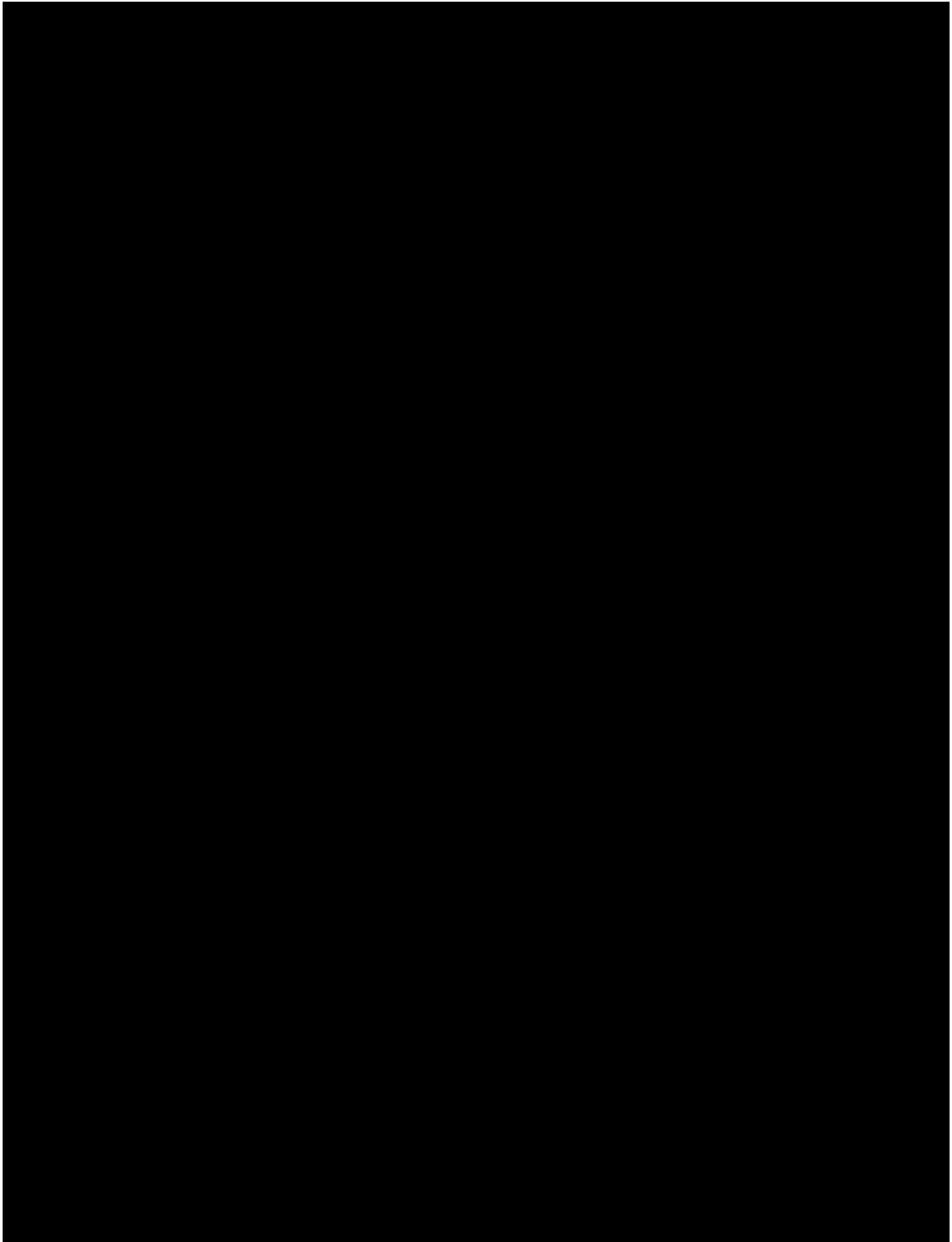


**Schedule 15**  
**Lillie Bridge Depot**

The land and buildings known as Lillie Bridge Depot, London shown for the purposes of identification coloured red in the plan attached as Annexure 5 to the Certificate of Title together with, [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]



**Schedule 16**  
**Form of Overriding Purpose Certificate**



**Schedule 17**  
**Freehold Properties**

<b>Property Description</b>	<b>Title Number</b>	<b>Proprietor</b>
Cluny Mews – Land and buildings lying on the south east side of West Cromwell Road	BGL67822	ECPL
348 Old Brompton Road	NGL574190	ECPL
350 Old Brompton Road	LN69144	ECPL
Prince of Wales Public House, 14 Lillie Road, London SW6 1TU and 1-5(odd) Empress Place, London, SW6 1TT	BGL8199	ECPL
14 Lillie Road, London, SW6 1TU	BGL30328	ECPL
12 Lillie Road and land forming part of the sites of 14 Lillie Road and 1 Empress Place, London, SW6 1TU	LN37009	ECPL
2 Empress Place, London, SW6 1TT	LN53750	ECPL
4 Empress Place, Fulham, London	LN90171	ECPL
6 Empress Place, London, SW6 1TT	331308	ECPL
8 Empress Place, London, SW6 1TT	BGL99373	ECPL
9 Empress Place, London, SW6 1TT	261903	ECPL
10 Empress Place, London, SW6 1TT	261528	ECPL
11 Empress Place, London, SW6 1TT	LN53405	ECPL
13 Empress Place, London, SW6 1TT	LN15811	ECPL
14 Empress Place, London, SW6 1TT	NGL207330	ECPL
15 Empress Place, London, SW6 1TT	NGL585097	ECPL
16 – 18 Empress Place, London, SW6 1TT	BGL34746	ECPL
17 Empress Place, London, SW6 1TT	BGL43841	ECPL
2 Lillie Road, London, SW6 1TU	NGL119480	ECPL
4 Lillie Road, London, SW6 1TU	264507	ECPL
6 Lillie Road, London, SW6 1TU	BGL100426	ECPL
8 Lillie Road, London, SW6 1TU	265439	ECPL
10 Lillie Road, London, SW6 1TU	BGL100429	ECPL
16 Lillie Road, London, SW6 1TS	NGL533666	ECPL
18 Lillie Road, London, SW6 1TS	NGL614305	ECPL
20 Lillie Road, London, SW6 1TS	NGL493522	ECPL
22 Lillie Road, London, SW6 1TS	268481	ECPL
24 Lillie Road, London, SW6 1TS	264605	ECPL
26 Lillie Road, London, SW6 1TS	264773	ECPL

**EXECUTION PAGE**

**The Borrower**

EXECUTED AS A DEED  
by **EARLS COURT PARTNERSHIP  
LIMITED**  
acting by:

)  
)  
)  
)



Director

~~Director/Secretary~~

Name:

Name:

Address: 15 Grosvenor Street  
London  
W1K 4QZ

Attention: Company Secretary

**The Lender**

The Common Seal of  
**HOMES AND COMMUNITIES AGENCY**  
was hereunto affixed

)  
)  
)

**The Security Agent**

The Common Seal of  
**HOMES AND COMMUNITIES AGENCY**  
was hereunto affixed

)  
)  
)

**EXECUTION PAGE**

**The Borrower**

EXECUTED AS A DEED )  
by **EARLS COURT PARTNERSHIP** )  
**LIMITED** )  
acting by: )

Director

Director/Secretary

Name:

Name:

Address: 15 Grosvenor Street  
London  
W1K 4QZ

Attention: Company Secretary

**The Lender**

The Common Seal of )  
**HOMES AND COMMUNITIES AGENCY** )  
was hereunto affixed )



**The Security Agent** Bayo Dosunmu  
Assistant Chief Executive

The Common Seal of )  
**HOMES AND COMMUNITIES AGENCY** )  
was hereunto affixed )



Bayo Dosunmu  
Assistant Chief Executive

Assistant Chief Executive