SINGLE CURRENCY TERM FACILITY AGREEMENT FOR REAL ESTATE FINANCE
MULTIPROPERTY INVESTMENT TRANSACTIONS

FACILITY AGREEMENT
dated [                          ]

for

[NAME OF PRINCIPAL COMPANY]

arranged by

[NAME OF ARRANGERS]

with

[NAME OF AGENT]
acting as Agent

and

[NAME OF SECURITY AGENT]
acting as Security Agent

[NAME OF LAW FIRM]
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THIS AGREEMENT is dated [                            ] and made between:

(1)  [                     ] (registered number [         ]) (the "Company");

(2)  THE SUBSIDIARIES of the Company listed in Part I of Schedule 1 (The Original Parties and Properties) as borrowers (the "Borrowers");

(3)  [               ] as mandated lead arranger[s] ([whether acting individually or together] the "Arranger");

(4)  THE FINANCIAL INSTITUTIONS listed in Part II and Part III of Schedule 1 (The Original Parties and Properties) as lenders (the "Original Lenders");

(5)  [THE FINANCIAL INSTITUTIONS] as hedge counterparties (the [Original] Hedge Counterparties”)]1;

(6)  [               ] as agent of the other Finance Parties (the "Agent"); and

(7)  [               ] as security trustee for the Secured Parties (the "Security Agent").

IT IS AGREED as follows:

SECTION 1
INTERPRETATION

1.  DEFINITIONS AND INTERPRETATION

1.1  Definitions
In this Agreement:

["1992 ISDA Master Agreement" means the Master Agreement (Multicurrency – Cross Border) as published by the International Swaps and Derivatives Association, Inc.

"2002 ISDA Master Agreement" means the 2002 Master Agreement as published by the International Swaps and Derivatives Association, Inc.]2

"Account" means the General Account, the Deposit Account, the Disposals Account or the Rent Account.

["Additional Hedge Counterparty" means a bank or financial institution which becomes a Hedge Counterparty in accordance with Clause 25.8 ([Additional Hedge Counterparties]).]3

1  Include for a floating rate loan with hedging by way of an interest rate swap.

2  Include for a floating rate loan.

3  Include for a floating rate loan with hedging by way of an interest rate swap.
"Affiliate" means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company.

"Agreement for Lease" means an agreement to grant an Occupational Lease for all or part of a Property.

["Allocated Loan Amount" means with respect to a Property, [the amount set opposite that Property in Part V of Schedule 1 (The Original Parties and Properties)\(^4\)].

"Asset Manager" means [____] or any other asset manager appointed by the Company in respect of the Properties in accordance with Clause 23.10 (Asset Managers).

["Assignation of Rent" means an assignation of rent derived from a Property located in Scotland entered into or to be entered into by an Obligor in favour of the Security Agent in an agreed form.\(^5\)]

"Assignment Agreement" means an agreement substantially in the form set out in Schedule 7 (Form of Assignment Agreement) or any other form agreed between the relevant assignor and assignee.

"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 [______].

"Available Commitment" means a Lender's Commitment minus:

(a) the amount of its participation in any outstanding Loans; and

(b) in relation to any proposed Utilisation, the amount of its participation in any Loans that are due to be made on or before the proposed Utilisation Date.

"Available Facility" means the aggregate for the time being of each Lender's Available Commitment.

["Benchmark Rate" means, in relation to any Loan:

(a) the applicable Screen Rate as of the Specified Time for [sterling]\(^6\) /[euro]\(^7\)/[other]\(^8\) and for a period equal in length to the Interest Period of that Loan; or

---

\(^4\) The Allocated Loan Amount is used in connection with permitted Property disposals. It may not be appropriate for all transactions. If it is not to be used, appropriate amendments will need to be made to the provisions in which it is used in this document.

\(^5\) Include if a Property is located in Scotland.

\(^6\) Include if the Loan is in sterling.

\(^7\) Include if the Loan is in euro.

\(^8\) If the Loan is in a currency other than sterling or euro include reference to that currency here.
(b) as otherwise determined pursuant to Clause 10.1 *(Unavailability of Screen Rate)*,[9]

... and if, in either case, that rate is less than zero, the Benchmark Rate shall be deemed to be zero.[9]

"Break Costs" means the amount (if any) by which:

(a) the interest 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 Unpaid Sum to the last day of the current Interest Period in respect of that Loan or Unpaid Sum, had the principal amount 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 the principal amount or Unpaid Sum received by it on deposit with a leading bank for a period starting on the Business Day following receipt or recovery and ending on the last day of the current Interest Period.[10]

"Break Costs" means [ ].[11]

"Business Day" means a day (other than a Saturday or Sunday) on which banks are open for general business in London /[and which is a TARGET Day] /[and any day specified as such in Schedule 13 (Benchmark)].[14]


"Commitment" means:

(a) in relation to an Original Lender, the amount set opposite its name under the heading "Commitment" in Part II or Part III of Schedule 1 *(The Original Parties and Properties)* and the amount of any other Commitment transferred to it under this Agreement; 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.

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9 Include if the interest rate is not determined by reference to LIBOR or EURIBOR.

10 Include for a floating rate loan.

11 Include for a fixed rate loan. Calculation to be determined on a transaction by transaction basis.

12 If the Loan is in sterling delete the wording that follows.

13 Include if the Loan is in euros.

14 Include if the interest rate is not determined by reference to LIBOR or EURIBOR.
"Compensation Prepayment Proceeds" means the proceeds of all compensation and / or damages for the compulsory purchase of, or any blight or disturbance affecting, any Property [but excluding any Excluded Compensation Proceeds].

["Compliance Certificate" means a certificate [substantially in the form set out in Schedule 10 (Form of Compliance Certificate)] /[in form and substance satisfactory to the Agent].]

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

(a) any member of the Group or any of its advisers; or

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

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

(i) information that:

(A) is or becomes public information other than as a direct or indirect result of any breach by that Finance Party of Clause 38 39 (Confidential Information); or

(B) is identified in writing at the time of delivery as non-confidential by any member of the Group or any of its 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 Group and which, in either case, as far as that Finance Party is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality; and

(ii) any Funding Rate [or Reference Bank Quotation].

"Confidentiality Undertaking" means a confidentiality undertaking substantially in a recommended form of the LMA as set out in Schedule 11 ([LMA Form of Confidentiality Undertaking]) or in any other form agreed between the Company and the Agent.

"CTA" means the Corporation Tax Act 2009.

["Debt Purchase Transaction" means, in relation to a person, a transaction where such person;]
(a) purchases by way of assignment or transfer;
(b) enters into any sub-participation in respect of; or
(c) enters into any other agreement or arrangement having an economic effect substantially similar to a sub-participation in respect of, any Commitment or amount outstanding under this Agreement.\(^\text{15}\)

"Default" means an Event of Default or any event or circumstance specified in Clause 24 (Events of Default) 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.

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

"Deposit Account" means the account designated as such under Clause 17.1 (Designation of Accounts) and includes any replacement of that account.

"Disposal Proceeds" means the net disposal proceeds derived from the disposal of a Property or the shares in a Borrower in accordance with paragraph (c) of Clause 22.4 (Disposals).

"Disposals Account" means the account designated as such under Clause 17.1 (Designation of Accounts) and includes any replacement of that account.

"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.

\(^{15}\) Whether or not provisions on prohibition on debt purchase transactions by obligors and disenfranchisement of sponsor affiliates who enter into debt purchase transactions should be inserted is to be considered on a transaction by transaction basis.
"Duty of Care Agreement" means a duty of care agreement entered into or to be entered into by a Managing Agent, one or more Obligors and the Security Agent:

(a) a Managing Agent, one or more Obligors and the Security Agent; or

(b) an Asset Manager, one or more Obligors and the Security Agent,

in each case in an agreed form.

"Environment" means humans, animals, plants and all other living organisms including the ecological systems of which they form part and the following media:

(a) air (including, without limitation, air within natural or man-made structures, whether above or below ground);

(b) water (including, without limitation, territorial, coastal and inland waters, water under or within land and water in drains and sewers); and

(c) land (including, without limitation, land under water).

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

"Environmental Law" means any applicable law or regulation which relates to:

(a) the pollution or protection of the Environment;

(b) the conditions of the workplace; or

(c) the generation, handling, storage, use, release or spillage of any substance which, alone or in combination with any other, is capable of causing harm to the Environment, including, without limitation, any waste.

"Environmental Permits" means any permit and other Authorisation and the filing of any notification, report or assessment required under any Environmental Law for the operation of the business of any Obligor conducted on or from the properties owned or used by any Obligor.

["EURIBOR" means, in relation to any Loan:

(c) the applicable Screen Rate as of the Specified Time for euro and for a period equal in length to the Interest Period of that Loan; or

(d) as otherwise determined pursuant to Clause 10.1 (Unavailability of Screen Rate)],

and if, in either case, that rate is less than zero, EURIBOR shall be deemed to be zero].

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14 Include this definition if (a) the Loan is in euros and (b) the interest rate for euros is to be determined by reference to EURIBOR not euro-LIBOR.
"Event of Default" means any event or circumstance specified as such in Clause 24 (Events of Default).

["Excluded Compensation Proceeds" means any proceeds of compensation and/or any damages for the compulsory purchase of, or any blight or disturbance affecting, any Property which the Company notifies the Agent are, or are to be, applied in the replacement, reinstatement and/or repair of that Property, if those proceeds are so applied as soon as possible (but in any event within [ ] days, or such longer period as the Majority Lenders may agree) after receipt.]

"Excluded Recovery Proceeds" means any proceeds of a Recovery Claim which the Company notifies the Agent are, or are to be, applied:

(a) to satisfy (or reimburse an Obligor which has discharged) any liability, charge or claim upon an Obligor by a person which is not an Obligor or an Affiliate of an Obligor; or

(b) in the replacement, reinstatement and/or repair of assets of an Obligor which have been lost, destroyed or damaged,

in each case as a result of the events or circumstances giving rise to that Recovery Claim, if those proceeds are so applied as soon as possible (but in any event within [ ] days, or such longer period as the Majority Lenders may agree) after receipt.

"Facility" means the term loan facility made available under this Agreement as described in Clause 2 (The Facility).

"Facility Office" means the office or offices notified by a Lender to the Agent in writing on or before the date it becomes a Lender (or, following that date, by not less than five Business Days' written notice) as the office or offices through which it will perform its obligations under this Agreement.

["Fallback Interest Period" means [ ]/the period specified as such in Schedule 13 (Benchmark).]  

"FATCA" means:

(a) sections 1471 to 1474 of the Code or any associated regulations;

(b) any treaty, law or regulation of any other jurisdiction, or relating to an intergovernmental agreement between the US and any other jurisdiction, which (in either case) facilitates the implementation of any law or regulation referred to in paragraph (a) above; or

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1617 If using Historic Screen Rates as a fallback option users should consider the length of this period in the context of (a) the maturities for which the applicable Screen Rates are quoted and (b) the period of time for which the use of a Historic Screen Rate is considered appropriate.

1718 Include the first option if the interest rate is determined by reference to LIBOR or EURIBOR and the second if the interest rate is not determined by reference to LIBOR or EURIBOR.
(c) any agreement pursuant to the implementation of any treaty, law or regulation referred to in paragraphs (a) or (b) above with the US Internal Revenue Service, the US government or any governmental or taxation authority in any other jurisdiction.

"FATCA Application Date" means:

(a) in relation to a "withholdable payment" described in section 1473(1)(A)(i) of the Code (which relates to payments of interest and certain other payments from sources within the US), 1 July 2014;

(b) in relation to a "withholdable payment" described in section 1473(1)(A)(ii) of the Code (which relates to "gross proceeds" from the disposition of property of a type that can produce interest from sources within the US), 1 January 2019; or

(c) in relation to a "passthru payment" described in section 1471(d)(7) of the Code not falling within paragraphs (a) or (b) above, 1 January 2019,

or, in each case, such other date from which such payment may become subject to a deduction or withholding required by FATCA as a result of any change in FATCA after the date of this Agreement.

"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.

"Fee Letter" means any letter or letters dated on or about the date of this Agreement between any of the Arranger, the Agent or the Security Agent and the Company setting out any of the fees referred to in Clause 11 (Fees).

"Finance Document" means this Agreement, any Security Document, [any Hedging Agreement,] any Subordination Agreement, any Duty of Care Agreement, any Fee Letter, [any Hedge Counterparty Accession Letter,] any Resignation Letter or any other document designated as such by the Agent and the Company.

"Finance Party" means the Agent, the Security Agent, the Arranger[ a Hedge Counterparty] or a Lender.

"Financial Indebtedness" means any indebtedness for or in respect of:

(a) moneys borrowed;

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18 Include for a floating rate loan with hedging by way of an interest rate swap.
19 Include for a floating rate loan with hedging by way of an interest rate swap.
20 Include for a floating rate loan with hedging by way of an interest rate swap.
(b) any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;

(c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;

(d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with GAAP, be treated as a balance sheet liability [other than any liability in respect of a lease or hire purchase contract which would, in accordance with GAAP in force [prior to 1 January 2019] / [prior to [ ]] / [ ]2223 have been treated as an operating lease];

(e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);

(f) any amount raised under any other transaction (including any forward sale or purchase agreement) of a type not referred to in any other paragraph of this definition having the commercial effect of a borrowing;

(g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value (or, if any actual amount is due as a result of the termination or close-out of that derivative transaction, that amount) shall be taken into account);

(h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and

(i) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (h) above.

"Fixed Rate" means [ ] per cent. per annum.]2324

"Funding Rate" means any individual rate notified by a Lender to the Agent pursuant to paragraph (a)(ii) of Clause 10.4 (Cost of funds).

"GAAP" means generally accepted accounting principles in [ ]/[including IFRS].

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2122 Insert the appropriate reference point for the applicable GAAP (see footnote 2223 below).

2223 IFRS 16 will require most leases to appear as balance sheet liabilities in relation to accounting periods from 1 January 2019. Similar changes are expected to be made in other accounting regimes. Insert this exclusion if the commercial agreement is to exclude the effect of old “operating leases” appearing as balance sheet liabilities and insert the appropriate reference point for the applicable GAAP. For example, the reference point of 1 January 2019 is only suitable if the applicable GAAP is IFRS. If the Agreement is entered into before the accounting change under the applicable GAAP takes effect, a reference to GAAP in force "as at the date of this Agreement" may be an appropriate reference point.

2324 Include for a fixed rate loan.
"General Account" means the account designated as such under Clause 17.1 (Designation of Accounts) and includes any replacement of that Account.

"Group" means the Company and its Subsidiaries for the time being.

["Headlease" means a lease under which a Borrower holds title to [all or any part of] a Property].

["Hedge Counterparty" means any Original Hedge Counterparty or any Additional Hedge Counterparty.

"Hedge Counterparty Accession Letter" means a document substantially in the form set out in Schedule 8 (Form of Hedge Counterparty Accession Letter).]^[24][25]

["Hedging Agreement" means any master agreement, confirmation, transaction, schedule or other agreement [in agreed form] entered into or to be entered into by [the Company/a Borrower] for the purpose of hedging [interest payable] under this Agreement.]^[25][26]

["Hedging Prepayment Proceeds" means any amount payable to [the Company/a Borrower] as a result of termination or closing out under a Hedging Agreement.]^[25][27]

["Historical Interest Cover"]^[27][28] means, as at any date, passing rental as a percentage of finance costs at that date. For the purposes of this definition:

(a) "calculation period" means a period of [three/six/12 months] or, if less, the period from the [first] Utilisation Date to the date as at which the relevant calculation is made;

(b) "finance costs" means the aggregate amount [of interest [and periodic fees]] paid to the Finance Parties under this Agreement during any calculation period in respect of which passing rental has been calculated;

(c) "passing rental" means, as at any date, the passing net rental income that was received on a regular [quarterly/periodical] basis by the Borrowers under the Lease Documents during the calculation period ending on that date;

(d) [in calculating finance costs any amount paid or received by the [Company/the Borrowers] during the relevant calculation period under any Hedging Agreements will be taken into account].[28][29]

^[24][25] Include for a floating rate loan with hedging by way of an interest rate swap.

^[25][26] Include for a floating rate loan with hedging.

^[25][27] Include for a floating rate loan with hedging by way of an interest rate swap.

^[27][28] This definition is for a circumstance where the Parties require a backward looking interest cover calculation.

^[28][29] Include for a floating rate loan with hedging by way of an interest rate swap. Consider whether this treatment is appropriate for interest rate caps.
(e) in calculating passing rental:

(i) [a break clause under any Lease Document will be deemed to have been exercised at the earliest date available to the relevant tenant;]

(ii) net rental income will be ignored:

(A) if paid by a tenant that is an Obligor or affiliated or related to an Obligor; and

(B) if not paid under an unconditional and binding Lease Document;

(iii) [net rental income increases as a result of rent reviews will be ignored until unconditionally ascertained;]

(iv) net rental income paid by a tenant that is more than in arrears on any of its rental payments will be ignored;

(v) [net rental income will be reduced by the amount of any deduction or withholding for or on account of Tax from that net rental income;] and

(vi) net rental income will be reduced by the amounts (together with any related VAT):

(A) of ground rent [and other sums payable under Headleases], rates and insurance premia;

(B) in respect of costs and expenses incurred in complying with applicable laws and regulations relating to any Property;

(C) in respect of management, maintenance, repair or similar fees, costs and expenses in relation to any Property; and

(D) in respect of the provision of services relating to any Property,

2930 Depending on the transaction it may be appropriate to include non-lease income (e.g. income derived from car parks, shopping centre aisle income). For an historic test all of that income may be included. For a projected test it is likely that only a percentage of that income would be included because of its lack of certainty.

3031 Depending on the transaction it may be appropriate to ignore net rental income payable by a tenant that is, or the guarantor of which is, insolvent or subject to an insolvency proceeding.

3132 Users may wish to consider deleting this paragraph if they are retaining the concept of Projected Interest Cover and/or they would like Historical Interest Cover to be an actual cash flow test.

3233 Users may wish to consider deleting this paragraph if they are retaining the concept of Projected Interest Cover and/or they would like Historical Interest Cover to be an actual cash flow test.

3334 Commonly a period of one, two or three months.

3435 Users may wish to consider deleting this paragraph if they are retaining the concept of Projected Interest Cover and/or they would like Historical Interest Cover to be an actual cash flow test.
to the extent that any of those items are not funded by the tenants, any tenant, by way of Tenant Contributions or otherwise, under the Lease Documents (including as a result of any lettable space in any Property being vacant); and

(f) the Company shall calculate Historical Interest Cover pursuant to Clause 20.2 (Compliance Certificate) or otherwise at the request of the Agent. However, if:

(A) the Company does not provide a calculation pursuant to Clause 20.2 (Compliance Certificate) or when requested by the Agent (as applicable); or

(B) the [Agent/Majority Lenders] disagree[s] with the calculation provided,

then the [Agent/Majority Lenders] may calculate Historical Interest Cover and that calculation of the [Agent/Majority Lenders] shall prevail over any calculation by the Company.

"Historic Screen Rate" means, in relation to any Loan, the most recent applicable Screen Rate for [sterling]3536/euro3637/other3738 and for a period equal in length to the Interest Period of that Loan and which is as of a day which is no more than [   ] days before the Quotation Day.

"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.

"Initial Valuation" means the Valuation of the Properties supplied to the Agent as a condition precedent under this Agreement on or before the [first] Utilisation Date.

"Insurance Prepayment Proceeds" means any proceeds of Insurances required to be paid into the Deposit Account in accordance with paragraph (i) of Clause 23.101 (Insurances).

"Insurances" means any contract of insurance required under Clause 23.101 (Insurances).

"Interest Payment Date" means [      ], [      ], [      ] and [      ] in each year and the Termination Date[, with the first Interest Payment Date being [      ]]3839. If, however,
any such day is not a Business Day, the Interest Payment Date will instead be the next Business Day in that calendar month (if there is one) or the preceding Business Day (if there is not).

"Interest Period" means, in relation to a Loan, each period determined in accordance with Clause 9 (Interest Periods) and, in relation to an Unpaid Sum, each period determined in accordance with Clause 8.54 (Default interest).

["Interpolated Historic Screen Rate" means, in relation to any Loan, the rate [(rounded [to the same number of decimal places as the two relevant Screen Rates])] which results from interpolating on a linear basis between:

(d) the most recent applicable Screen Rate for the longest period (for which that Screen Rate is available) which is less than the Interest Period of that Loan; and

(e) the most recent applicable Screen Rate for the shortest period (for which that Screen Rate is available) which exceeds the Interest Period of that Loan,

each for [sterling]£3940/[euro]€4041/[other]€4142 and each of which is as of a day which is no more than [   ] days before the Quotation Day.]

["Interpolated Screen Rate" means, in relation to any Loan, the rate [(rounded [to the same number of decimal places as the two relevant Screen Rates])] which results from interpolating on a linear basis between:

(a) the applicable Screen Rate for the longest period (for which that Screen Rate is available) which is less than the Interest Period of that Loan; and

(b) the applicable Screen Rate for the shortest period (for which that Screen Rate is available) which exceeds the Interest Period of that Loan,

each as of the Specified Time for the currency of that Loan.]

["ISDA Master Agreement" means a 1992 ISDA Master Agreement or a 2002 ISDA Master Agreement.]4344


"Lease Document" means:

(a) an Agreement for Lease;

3940 Include if the Loan is in sterling.

4041 Include if the Loan is in euros.

4142 If the Loan is in a currency other than sterling or euros, insert reference to that currency here.

4243 If specifying the rounding convention users may wish to consider altering this suggested convention to that used in any corresponding hedging product.

4344 Include for a floating rate loan.
(b) an Occupational Lease; or

(c) any other document designated as such by the Agent and the Company.

"Lease Prepayment Proceeds" means any premium or other amount paid to a Borrower in respect of any agreement to amend, supplement, extend, waive, surrender or release a Lease Document.

"Legal Reservations" means:

(a) the principle that equitable remedies may be granted or refused at the discretion of a court and the limitation of enforcement by laws relating to insolvency, reorganisation and other laws generally affecting the rights of creditors;

(b) the time barring of claims under the Limitation Acts, the possibility that an undertaking to assume liability for or indemnify a person against non-payment of UK stamp duty may be void and defences of set-off or counterclaim;

(c) the limitation of the enforcement of the terms of leases of real property by laws of general application to those leases;

(d) similar principles, rights and remedies under the laws of any Relevant Jurisdiction; and

(e) any other matters which are set out as qualifications or reservations as to matters of law of general application in any legal opinions supplied to the Agent as a condition precedent under this Agreement on or before the [first] Utilisation Date.

"Lender" means:

(a) any Original Lender; and

(b) any other person which has become a Lender in accordance with Clause 25 (Changes to the Lenders and Hedge Counterparties),

which in each case has not ceased to be a Party in accordance with the terms of this Agreement.45

4446 "LIBOR" means, in relation to any Loan:

(a) the applicable Screen Rate as of the Specified Time for [sterling]/[euro]/[other] and for a period equal in length to the Interest Period of that Loan.4748 or

45 This Agreement does not contain provisions on defaulting lenders and impaired agents. If users wish to insert those provisions they will find them in the LMA recommended form of senior multicurrency term and revolving facilities agreement for leveraged acquisition finance transactions. Whether or not those provisions should be inserted should be considered on a transaction by transaction basis.

4446 Delete this definition if (a) the Loan is fixed rate or (b) the Loan is in euros and the interest rate is to be determined by reference to EURIBOR.
(b) as otherwise determined pursuant to Clause 10.1 (Unavailability of Screen Rate),

and if, in either case, that rate is less than zero, LIBOR shall be deemed to be zero.


"LMA" means the Loan Market Association.

"Loan" means a loan made or to be made under the Facility or the principal amount outstanding for the time being of that loan.

"Loan to Value" means, at any time, the Loans[, less so much of the amount standing to the credit of the Disposals Account as is required to be applied in prepayment of the Loans,] as a percentage of the aggregate market value of the Properties (determined in accordance with the most recent Valuation of the Properties at that time).

["Major Tenant" means [     ].]

"Majority Lenders" means a Lender or Lenders whose Commitments aggregate more than [66\(\frac{2}{3}\)]\% of the Total Commitments or, if the Total Commitments have been reduced to zero, aggregated more than [66\(\frac{2}{3}\)]\% of the Total Commitments immediately prior to the reduction.

"Managing Agent" means [       ] or any other managing agent appointed by [the Company/a Borrower] in respect of a Property in accordance with Clause 23.9 (Managing Agents).

["Mandatory Cost" means the percentage rate per annum calculated by the Agent in accordance with Schedule 5 (Mandatory Cost formula).]

"Margin" means [ ] per cent. per annum.

"Material Adverse Effect" means a material adverse effect on:

(a) [the business, operations, property, condition (financial or otherwise) or prospects of an Obligor; or

(b) the ability of an Obligor to perform its obligations under the Finance Documents; or

\[\text{\underline{4547}}\text{ Include if the Loan is in sterling.}\]

\[\text{\underline{4648}}\text{ Include if the Loan is in euros and the interest rate is to be determined by reference to euro-LIBOR.}\]

\[\text{\underline{4749}}\text{ If the Loan is in a currency other than sterling or euros, insert reference to that currency here.}\]

\[\text{\underline{4850}}\text{ Users should note that ICE LIBOR (formerly known as BBA LIBOR) is produced for a limited range of tenors and currencies. See the Intercontinental Exchange Group website for more information.}\]

\[\text{\underline{4951}}\text{ Consider whether the Hedge Counterparties should be included for certain key decisions such as acceleration.}\]
(c) the validity or enforceability of, or the effectiveness or ranking of any Security granted or purported to be granted pursuant to any of, the Finance Documents; or

(d) the rights or remedies of any Finance Party under any of the Finance Documents.[5052]

"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) below) if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day;

(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./OR

[the rules specified as Business Day Conventions in Schedule 13 (Benchmark) shall apply][5052].

"Net Rental Income" means Rental Income other than Tenant Contributions.

"New Lender" has the meaning given to that term in Clause 25 (Changes to the Lenders [and Hedge Counterparties]).

"Obligor" means the Company or a Borrower.

"Occupational Lease" means any lease or licence or other right of occupation or right to receive rent to which a Property may at any time be subject and includes any guarantee of a tenant's obligations under the same.

["Original Financial Statements" means:

(a) in relation to the Company, the audited consolidated financial statements of the Group for the financial year ended [ ]; and

(b) in relation to each Borrower, its audited financial statements for its financial year ended [ ].][5254]

5052  To be considered on a transaction by transaction basis.

5153  Include if the interest rate is not determined by reference to LIBOR or EURIBOR and business day conventions different to those set out in paragraphs (a) to (c) above are to apply.
"Original Jurisdiction" means, in relation to any Obligor, the jurisdiction under whose laws that Obligor is incorporated as at the date of this Agreement.

"Participating Member State" means any member state of the European Union that has the euro as its lawful currency in accordance with legislation of the European Union relating to Economic and Monetary Union.

"Party" means a party to this Agreement.

"Perfection Requirements" means the making or the procuring of filings, stampings, registrations, notarisations, endorsements, translations and/or notifications of any Finance Document (and/or any Security created under it) necessary for the validity, enforceability (as against the relevant Obligor or any relevant third party) and/or perfection of that Finance Document.

["Permitted Payment" means a payment by an Obligor to [a/the] Shareholder or a Subordinated Creditor out of moneys standing to the credit of the General Account in circumstances where no Default is continuing and no Default would result from the payment.]5355

["Projected Interest Cover"5456 means, as at any date, passing rental as a percentage of finance costs at that date. For the purposes of this definition:

(a) "calculation period" means a period of [three/six/12 months] [or, if less, the period from the date as at which the relevant calculation is made to the Termination Date]/[assuming, in respect of any period that would include the Termination Date, that no amounts are due on the Termination Date pursuant to paragraph [ ] of Clause 6.1 (Repayment of Loans)];5557

(b) "finance costs" means the aggregate amount [of interest [and periodic fees]] payable to the Finance Parties under this Agreement during any calculation period in respect of which passing rental has been calculated;

(c) "passing rental" means, as at any date, the passing net rental income that will be received on a regular [quarterly/periodical] basis by the Borrowers under the Lease Documents during the calculation period commencing on that date;

5355 This definition may be irrelevant if each Obligor is a newly formed company.

5456 Permitted Payments are an exception to the general prohibition on dividends and other distributions set out in Clause 22.11 (Shares, dividends and share redemption). It would also typically be used in the Subordination Agreement as an exception to the prohibitions on payments with respect to Subordinated Debt. It needs to be considered on a transaction by transaction basis.

5557 This definition is for circumstances where the Parties require a forward looking interest cover calculation.

5657 To be considered on a transaction by transaction basis. On some transactions it is appropriate to deem the Loans to be outstanding and finance costs payable for the remainder of the calculation period after the Termination Date.
(d) in calculating finance costs any amount payable or receivable by the [Company/the Borrowers] during the relevant calculation period under any Hedging Agreements will be taken into account;

(e) in calculating passing rental:

(i) a break clause under any Lease Document will be deemed to be exercised at the earliest date available to the relevant tenant;

(ii) net rental income will be ignored:

(A) if payable by a tenant that is an Obligor or affiliated or related to an Obligor; and

(B) if not payable under an unconditional and binding Lease Document;

(iii) potential net rental income increases as a result of rent reviews will be ignored until unconditionally ascertained;

(iv) net rental income payable by a tenant that is more than [ ] in arrears on any of its rental payments will be ignored;

(v) net rental income will be reduced by the amount of any deduction or withholding for or on account of Tax from that net rental income; and

(vi) net rental income will be reduced by the amounts (together with any related VAT):

(A) of ground rent [and other sums payable under Headleases], rates and insurance premia;

(B) in respect of costs and expenses incurred in complying with applicable laws and regulations relating to any Property;

(C) in respect of management, maintenance, repair or similar fees, costs and expenses in relation to any Property; and

(D) in respect of the provision of services relating to any Property,

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5658 Consider whether this treatment is appropriate for interest rate caps and floating rate element of interest. For example, where interest rate caps are used it may be appropriate to assume LIBOR/EURIBOR will be the capped rate. If an element of interest is unhedged some Arrangers prefer to apply 12 month LIBOR/EURIBOR.

5759 Depending on the transaction it may be appropriate to include non-lease income (e.g. income derived from car parks, shopping centre aisle income). For an historic test all of that income may be included, for a projected test it is likely that only a percentage of that income would be included because of its lack of certainty.

5860 Depending on the transaction it may be appropriate to ignore net rental income payable by a tenant that is, or the guarantor of which is, insolvent or subject to an insolvency proceeding.

5961 Commonly a period of one, two or three months.
to the extent that any of those items are not funded by the [tenant, any]
[tenant], by way of Tenant Contributions or otherwise, under the Lease
Documents (including as a result of any lettable space in any Property,
being vacant); and

(f) the Company shall calculate Projected Interest Cover pursuant to Clause 20.2
(Compliance Certificate) or at the request of the Agent. However, if:

(A) the Company does not provide a calculation pursuant to Clause
20.2 (Compliance Certificate) or when requested by the Agent (as
applicable); or

(B) the [Agent/Majority Lenders] disagree[s] with the calculation
provided,

then the [Agent/Majority Lenders] may calculate Projected Interest Cover
and that calculation of the [Agent/Majority Lenders] shall prevail over
any calculation of the Company.]

"Property" means a property listed in Part V of Schedule 1 (The Original Parties and
Properties) as described in a Security Document and, where the context so requires,
includes the buildings on that Property.

["[Property Protection/Cure] Loan" means a loan made by a Lender to a Borrower
to finance:

(a) [the payment of rent or any other amount, or any cost or expense, under or in
connection with a Headlease;]

(b) [the payment of any premium for insurance, or any cost or expense required to
keep any insurance in force, in accordance with this Agreement;]

(c) [the payment of any amount under any Hedging Agreement;]

(d) [the payment of any amount which, in the opinion of the Lender concerned, is
required to preserve or protect any Security Asset;]

(e) [ , ]

in circumstances where an Obligor is obliged under a Finance Document but has failed
to pay the relevant amount.]

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6062 On certain transactions the purposes for which such loans may be made will be wider than simply preserving or
protecting assets (e.g., loans to finance payments under Hedging Agreements or to fund financial covenant cures)
and so the term Cure Loan may be more appropriate than Property Protection Loan.

6163 Consider including for a floating rate loan with hedging.

6264 To be considered on a transaction-by-transaction basis.
"Property Report" means, in respect of any Property, any certificate of or report on title supplied to the Agent as a condition precedent under this Agreement on or before the [first] Utilisation Date.

"Qualifying Lender" has the meaning given to it in Clause 12 (Tax gross up and indemnities).

["Quotation Day" means, in relation to any period for which an interest rate is to be determined, [the first day of that period]/[two Business Days before the first day of that period]/[two TARGET 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 Agent 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).] OR

["Quotation Day" means, in relation to any period for which an interest rate is to be determined, the day specified as such in Schedule 13 (Benchmark)].

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

"Recovery Prepayment Proceeds" means the proceeds of a claim (a "Recovery Claim") against:

(a) [the vendor of [the shares in any Borrower or] any Property or any of its Affiliates (or any employee, officer or adviser)]; or

(b) the provider of any Property Report or the provider of any other due diligence report (in its capacity as provider of the same) in connection with the acquisition, development, financing or refinancing of [the shares in any Borrower or] any Property,

except for Excluded Recovery Proceeds, and after deducting:

(i) any reasonable expenses incurred by an Obligor to a person who is not an Obligor or Affiliate of an Obligor;

(ii) any Tax incurred and required to be paid by an Obligor (as reasonably determined by that Obligor on the basis of existing rates and taking into account any available credit, deduction or allowance),

6365 Include if the Loan is in sterling.
6466 Include if the Loan is in dollars or a currency other than sterling or (if the interest rate is determined by reference to EURIBOR) euros.
6567 Include if the Loan is in euros and the interest rate is determined by reference to EURIBOR.
6668 Include if the interest rate is to be determined by reference to LIBOR or EURIBOR.
6669 Include if the interest rate is not determined by reference to LIBOR or EURIBOR.
in each case in relation to that Recovery Claim.

["Reference Bank Quotation" means any quotation supplied to the Agent by a Reference Bank.]

6670["Reference Bank Rate" means the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Agent at its request by the Reference Banks:

(a) [(other than where paragraph (b) below applies) as the rate at which the relevant Reference Bank could borrow funds in the London interbank market] in [sterling]/[euro]/[other] for the relevant period were it to do so by asking for and then accepting interbank offers for deposits in reasonable market size in that currency and for that period; or

(b) if different, as the rate (if any and applied to the relevant Reference Bank and the relevant currency and period) which contributors to the Screen Rate are asked to submit to the relevant administrator;]

OR

["Reference Bank Rate" means the rate specified as such in Schedule 13 (Benchmark).]

["Reference Banks" means [the principal London offices of [    ], [    ] and [    ]] or [the principal office in [     ] of [     ],[     ] and [     ]] [the entities specified as such in

Include this option (and the applicable option therein) if the interest rate is to be determined by a reference to LIBOR or EURIBOR.

Include if the Loan is in sterling.

Include if the Loan is in euros and the interest rate is to be determined by reference to euro LIBOR.

If the Loan is in a currency other than sterling or euros, insert reference to that currency here.

Include if the interest rate is to be determined by reference to LIBOR.

Include if the interest rate is to be determined by reference to EURIBOR.

Include if the interest rate is not determined by reference to LIBOR or EURIBOR.

Include if the interest rate of the Loan is to be determined by reference to LIBOR.

Include if the interest rate of the Loan is to be determined by reference to EURIBOR.
Schedule 13 (Benchmark) or such other entities as may be appointed by the Agent in consultation with the Company.]

["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 Market" means [the European interbank market] or [the market specified as such in Schedule 13 (Benchmark)] or [the London interbank market].

"Relevant Jurisdiction" means, in relation to an Obligor:

(a) its Original Jurisdiction;

(b) any jurisdiction where any asset subject to or intended to be subject to the Transaction Security to be created by it 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].

"Rent Account" means the account designated as such under Clause 17.1 (Designation of Accounts) and includes any replacement of that Account.

"Rental Income" means the aggregate of all amounts paid or payable to or for the account of any Obligor in connection with the letting, licence or grant of other rights of use or occupation of any part of a 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;

(c) a sum equal to any apportionment of rent allowed in favour of any Obligor;

(d) any other moneys paid or payable in respect of occupation and/or usage of that Property and any fixture and fitting on that Property including any fixture or fitting on that 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;

\[2279\] Include if the interest rate of the Loan is not determined by reference to LIBOR or EURIBOR.

\[2380\] Include if the interest rate of the Loan is not determined by reference to LIBOR or EURIBOR.
any sum paid or payable, or the value of any consideration given, for the grant, surrender, amendment, supplement, waiver, extension or release of any Lease Document;

(g) any sum paid or payable in respect of a breach of covenant or dilapidations under any Lease Document;

(h) any sum paid or payable by or distribution received or receivable from any guarantor of any occupational tenant under any Lease Document;

(i) any Tenant Contributions; and

(j) any interest paid or payable on, and any damages, compensation or settlement paid or payable in respect of, any sum referred to above less any related fees and expenses incurred (which have not been reimbursed by another person) by any Obligor.

["Repayment Instalment" means each scheduled instalment for the repayment of the Loans under Clause 6.1 (Repayment of Loans).]

"Repeating Representations" means each of the representations set out in Clause 19.1 (Status) to Clause 19.6 (Governing law and enforcement) and Clause 19.9 (VAT) to Clause 19.21 (Ownership).

["Representative" means any delegate, agent, manager, administrator, nominee, attorney, trustee or custodian.]

"Resignation Letter" means a letter substantially in the form set out in Schedule 9 (Form of Resignation Letter).

"Screen Rate" means \[\text{the London interbank offered rate administered by ICE Benchmark Administration Limited (or any other person which takes over the administration of that rate) for [sterling]/[euros]/[other] the euro interbank offered rate administered by the European Money Markets Institute (or any other person which takes over the administration of that rate) for the relevant period, displayed [before any correction, recalculation or republication by the administrator] on page [LIBOR01]/[LIBOR02]/[EURIBOR01] of the Thomson Reuters screen (or any replacement Thomson Reuters page which displays that rate) or on the appropriate page of such other information service which publishes that rate from time to time in place of Thomson Reuters. If such page or service ceases to be available, the Agent may specify}\]

The potential for subsequent intra-day correction, recalculation or republication of an originally published Screen Rate can raise difficult issues that should be considered carefully to ensure that the parties achieve the desired commercial outcome. Users should carefully consider the extent to which excluding the effects of any such correction, recalculation or republication is suitable for the transaction in question. See the LMA note entitled “ICE LIBOR and EURIBOR refixing policies and LMA facility documentation” (available through the LMA website).

Include if the interest rate is to be determined by reference to LIBOR. Include the currency of the Loan.

Include if the interest rate for euros is to be determined by reference to EURIBOR.
another page or service displaying the relevant rate after consultation with the Company /[the rate specified as such in Schedule 13 (Benchmark)].

"Secured Liabilities" means all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally or in any other capacity whatsoever) of each Transaction Obligor to any Secured Party under each Finance Document.

"Secured Party" means a Finance Party, or a Receiver or any Delegate.

"Security" means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

"Security Agreement" means a Security over the assets of an Obligor entered into or to be entered into by that Obligor in favour of the Security Agent in an agreed form.

"Security Asset" means all of the assets of the Transaction Obligors which from time to time are, or are expressed to be, the subject of the Transaction Security.

"Security Document" means:

(a) a Security Agreement, a Shareholder’s Security Agreement, [a Subordinated Creditor’s Security Agreement,] [a Standard Security,] or [an Assignation of Rent];

(b) any other document evidencing or creating Security over any asset to secure any obligation of any Obligor to a Secured Party under the Finance Documents; or

(c) any other document designated as such by the [Security] Agent and the Company.

"Security Property" means:

(a) the Transaction Security expressed to be granted in favour of the Security Agent as trustee for the Secured Parties and all proceeds of that Transaction Security;

(b) all obligations expressed to be undertaken by a Transaction Obligor to pay amounts in respect of the Secured Liabilities to the Security Agent as trustee for the Secured Parties and secured by the Transaction Security together with all representations and warranties expressed to be given by a Transaction Obligor

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This definition is intended to have the effect of referencing (i) the LIBOR rate which is currently known as ICE LIBOR and (ii) the euro interbank offered rate which is currently known as Euribor irrespective of any change of administrator or publisher occurring after the date of the Agreement. It may not be suitable if this effect does not represent the commercial agreement. Users should note that changes to this definition may have implications under associated interest rate hedging arrangements.

Include if the interest rate is to be determined by reference to LIBOR or EURIBOR.

Include if the interest rate is not determined by reference to LIBOR or EURIBOR.
or any other person in favour of the Security Agent as trustee for the Secured Parties; and

(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.

"Shareholder" means [      ].

"Shareholder's Security Agreement" means a Security over the shares of an Obligor [and a Security over the Shareholder's Subordinated Debt] entered into or to be entered into by [the Shareholder/the Company] in favour of the Security Agent in an agreed form.

"Specified Time" means a day or time determined in accordance with Schedule 12 (Timetables).

["Sponsor Affiliate" means [SPONSOR MANAGEMENT COMPANY] ([(XCo)], each of its Affiliates, any trust of which [XCo] or any of its Affiliates is a trustee, any partnership of which [XCo] or any of its Affiliates is a partner and any trust, fund or other entity which is managed by, or is under the control of, [XCo] or any of its Affiliates provided that any such trust, fund or other entity which has been established for at least [six] Months solely for the purpose of making, purchasing or investing in loans or debt securities and which is managed or controlled independently from all other trusts, funds or other entities managed or controlled by [XCo] or any of its Affiliates which have been established for the primary or main purpose of investing in the share capital of companies will not constitute a Sponsor Affiliate].]

["Standard Security" means a standard security over a Property located in Scotland entered into or to be entered into by an Obligor in favour of the Security Agent in an agreed form.]

"Subordinated Creditor" means:

(a) an Obligor;

(b) [      ]; or

(c) any other person who becomes a Subordinated Creditor in accordance with this Agreement.
"Subordinated Creditor's Security Agreement" means a Security over Subordinated Debt entered into or to be entered into by a Subordinated Creditor in favour of the Security Agent in an agreed form.\footnote{Security is taken over Subordinated Debt to facilitate the sale of the shares of the relevant Obligor on enforcement – it would be difficult to sell the shares if the Obligor remained indebted to the Subordinated Creditor. There are other ways of addressing this issue such as a right to cancel the Subordinated Debt in the relevant circumstances – but the tax and other implications need to be considered.}

"Subordinated Debt", in relation to a Subordinated Creditor, has the meaning given to it in the Subordination Agreement entered into by that Subordinated Creditor.\footnote{Ensure that Subordination Agreement has an appropriate definition.}

"Subordination Agreement" means a subordination agreement entered into or to be entered into by a Subordinated Creditor, an Obligor and the Security Agent in an agreed form.

"Subsidiary" means [a subsidiary undertaking within the meaning of section 1162 of the Companies Act 2006]/[a subsidiary within the meaning of section 1159 of the Companies Act 2006]/[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 the ownership of voting capital, by contract or otherwise].\footnote{Include if the Loan is in euros.}

"TARGET2" means the Trans-European Automated Real-time Gross Settlement Express Transfer payment system which utilises a single shared platform and which was launched on 19 November 2007.

"TARGET Day" means any day on which TARGET2 is open for the settlement of payments in euro.\footnote{Include if the Loan is in euros.}

"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).

"Tenant Contributions" means any amount paid or payable to an Obligor by any tenant under a Lease Document or any other occupier 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 an Obligor's 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

(v) a reserve or sinking fund; or

(b) VAT.

"Termination Date" means [ ].

"Total Commitments" means the aggregate of the Commitments being [ ] at the date of this Agreement.

"Transaction Document" means:

(a) a Finance Document;

(b) a Lease Document;

(c) [a Headlease;]

(d) a document appointing a Managing Agent;

(e) a document appointing an Asset Manager;

(f) ; or

(g) any other document designated as such by the Agent and the Company.

"Transaction Obligor" means:

(a) an Obligor;

(b) [the Shareholder]; or

(c) [a Subordinated Creditor].

"Transaction Security" means the Security created or evidenced or expressed to be created or evidenced under the Security Documents.

"Transfer Certificate" means a certificate substantially in the form set out in Schedule 6 (Form of Transfer Certificate) or any other form agreed between the Agent and the Company.

"Transfer Date" means, in relation to an assignment or a transfer, the later of:

(a) the proposed Transfer Date specified in the relevant Assignment Agreement or Transfer Certificate; and

(b) the date on which the Agent executes the relevant Assignment Agreement or Transfer Certificate.

"Unpaid Sum" means any sum due and payable but unpaid by an Obligor under the Finance Documents.
"US" means the United States of America.

"US Tax Obligor" means:

(a) a Borrower which is resident for tax purposes in the US; or
(b) an Obligor some or all of whose payments under the Finance Documents are from sources within the US for US federal income tax purposes.

"Utilisation" means a utilisation of the Facility.

"Utilisation Date" means the date of a Utilisation, being the date on which the relevant Loan is to be made.

"Utilisation Request" means a notice substantially in the form set out in Schedule 3 (Utilisation Request).

"Valuation" means a valuation of a Property or, as the context requires, the Properties by the Valuer, supplied at the request of the Agent, addressed to the [Finance Parties] and prepared on the basis of the market value as that term is defined in the then current Statements of Asset Valuation Practice and Guidance Notes issued by the Royal Institution of Chartered Surveyors.

"Valuer" means [ ] or any other surveyor or valuer appointed by the Agent.

"VAT" means:

(a) any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112); and
(b) any other tax of a similar nature, whether imposed in a member state of the European Union in substitution for, or levied in addition to, such tax referred to in paragraph (a) above, or imposed elsewhere.

1.2 Construction

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

(i) the "Agent", the "Arranger", any "Finance Party", [any "Hedge Counterparty",] any "Lender", any "Obligor", any "Party", any "Secured Party", the "Security Agent", any "Transaction Obligor" or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Finance Documents and, in the case of the Security Agent, any person for the time being appointed as Security Agent or Security Agents in accordance with the Finance Documents;

(ii) a document in "agreed form" is a document which is previously agreed in writing by or on behalf of the Company and the Agent or, if not so agreed, is in the form specified by the Agent;

- 28 -
(iii) "assets" includes present and future properties, revenues and rights of every description;

(iv) "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;

(v) 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;

(vi) "guarantee" means (other than in Clause 18 (Guarantee and indemnity)) any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets of any person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness;

(vii) "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;

(viii) a "person" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership or other entity (whether or not having separate legal personality);

(ix) a "regulation" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;

(x) a provision of law is a reference to that provision as amended or re-enacted; and

(xi) a time of day is a reference to London time.

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

(c) Section, Clause and Schedule headings are for ease of reference only.

(d) 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.

(e) A Default (other than an Event of Default) is "continuing" if it has not been remedied or waived and an Event of Default is "continuing" if it has not been remedied or waived]/[waived].

1.3 Currency symbols and definitions
["£", "GBP" and "sterling" denote the lawful currency of the United Kingdom]/["€", "EUR" and "euro" denote the single currency of the Participating Member States]/[

1.4 Third party rights
(a) [Unless expressly provided to the contrary in a Finance Document a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the "Third Parties Act") to enforce or to enjoy the benefit of any term of this Agreement.

(b) [Subject to Clause 378.3 (Other exceptions) but otherwise] notwithstanding any term of any Finance Document the consent of any person who is not a Party is not required to rescind or vary this Agreement at any time.

(c) Any Receiver, Delegate or any person described in paragraph (b) of Clause 278.11 (Exclusion of liability) may, subject to this Clause 1.4 and the Third Parties Act, rely on any Clause of this Agreement which expressly confers rights on it.]

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8992 Users should consider carefully the appropriate currency definition(s) in the context of the transaction and should consider defining any other currency referred to in the Agreement.
SECTION 2
THE FACILITY

2. THE FACILITY

2.1 The Facility
Subject to the terms of this Agreement, the Lenders make available to the Borrowers a [sterling]/[euro]/[other] term loan facility in an aggregate amount equal to the Total Commitments.

2.2 [Property Protection/Cure] Loans
(a) A Lender may, with the consent of the [Agent/Majority Lenders/Lenders], make a [Property Protection/Cure] Loan whether requested by an Obligor or not.

(b) Each [Property Protection/Cure] Loan shall:

(i) be repayable on demand made by the relevant Lender with the consent of the [Agent/Majority Lenders/Lenders] and in any event shall be repayable on the Termination Date; and

(ii) bear interest in accordance with Clause 8.4 (Default interest) as if it were an overdue amount.

2.3 Finance Parties' rights and obligations
(a) 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.

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

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

[ Include the currency of the Loan.
Inclusion of Property Protection/Cure Loans to be considered on a transaction by transaction basis. ]
2.4 Borrowers' Agent

(a) Each Borrower by its execution of this Agreement irrevocably appoints the Company to act on its behalf as its agent in relation to the Finance Documents and irrevocably authorises:

   (i) the Company on its behalf to supply all information concerning itself contemplated by this Agreement to the Finance Parties and 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 Borrower notwithstanding that they may affect the Borrower, without further reference to or the consent of that Borrower; and

   (ii) each Finance Party to give any notice, demand or other communication to that Borrower pursuant to the Finance Documents to the Company.

and in each case the Borrower shall be bound as though the Borrower itself had given the notices and instructions (including, without limitation, any Utilisation Requests) or executed or made the agreements or effected the amendments, supplements or variations, or received the relevant notice, demand or other communication.

(b) Every act, omission, agreement, undertaking, settlement, waiver, amendment, supplement, variation, notice or other communication given or made by the Company or given to the Company under any Finance Document on behalf of a Borrower or in connection with any Finance Document (whether or not known to any Borrower) shall be binding for all purposes on that Borrower as if that Borrower had expressly made, given or concurred with it. In the event of any conflict between any notices or other communications of the Company and any Borrower, those of the Company shall prevail.

3. PURPOSE

3.1 Purpose

Each Borrower shall apply all amounts borrowed by it under the Facility towards:

(a) [financing [or refinancing] the cost of acquisition of the Properties]; and

(b) [payment of any fees, costs and expenses, stamp registration and other Taxes (other than VAT)/(including recoverable VAT but excluding irrecoverable VAT)] incurred by any Obligor in connection with the acquisition of the Properties [and approved by the Majority Lenders]].

3.2 Monitoring

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

4.1 Initial conditions precedent

(a) The Lenders will only be obliged to comply with Clause 5.4 (Lenders’ participation) in relation to any Utilisation if on or before the Utilisation Date for that Utilisation, the Agent has received all of the documents and other evidence listed in Schedule 2 (Conditions Precedent) in form and substance satisfactory to the Agent. The Agent shall notify the Company and the Lenders promptly upon being so satisfied.

(b) Other than to the extent that the Majority Lenders notify the Agent in writing to the contrary before the Agent gives the notification described in paragraph (a) above, the Lenders authorise (but do not require) the Agent to give that notification. The Agent shall not be liable for any damages, costs or losses whatsoever as a result of giving any such notification.

(c) [The Agent may refuse to accept a Utilisation Request if the Agent believes that the notification described in paragraph (a) above will not be capable of being given on or before the Utilisation Date.

(d) If on the proposed Utilisation Date the Agent has not issued the notification described in paragraph (a) above then:

   (i) at the discretion of the Agent, the [relevant] Loans may still be made; and

   (ii) the proceeds of the [relevant] Loans will be paid into the client account of the solicitors to, or an account at, the Agent to be held to the order of the Agent until it gives the notification described in paragraph (a) above.]

4.2 Further conditions precedent

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

(a) on the date of the Utilisation Request and on the proposed Utilisation Date:

   (i) no Default is continuing or would result from the proposed Loan; and

   (ii) the Repeating Representations to be made by each Obligor are true in all material respects; [and]

(b) [on the basis of information available on the proposed Utilisation Date, Historical Interest Cover as at [the second Interest Payment Date after the proposed Utilisation Date] will be at least [   ] per cent.;] and

(b) immediately following the making of the Loan:

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This wording is intended to provide some protection for, and a mechanism for dealing with, situations where a Utilisation Request is delivered but the conditions precedent are not satisfied. It may not be appropriate for all transactions.
(i) [the Projected Interest Cover will be at least [ ] per cent.;] and

(ii) the Loan to Value will not exceed [ ] per cent.

4.3 **Maximum number of Loans**

A Borrower may not deliver a Utilisation Request if as a result of the proposed Utilisation [ ] or more Loans would be outstanding.
SECTION 3
UTILISATION

5. UTILISATION

5.1 Delivery of a Utilisation Request
A Borrower may utilise the Facility by delivery to the Agent of a duly completed Utilisation Request not later than the Specified Time.

5.2 Completion of a Utilisation Request
(a) Each Utilisation Request is irrevocable and will not be regarded as having been duly completed unless:
   (i) it specifies the purpose of the Loan;
   (ii) the proposed Utilisation Date is a Business Day within the Availability Period; and
   (iii) the currency and amount of the Utilisation comply with Clause 5.3 (Currency and amount).

(b) [The Utilisation Date for each Loan must be the same].

(c) [Only one Loan may be requested in each Utilisation Request.] [Multiple Utilisations may be requested in a Utilisation Request [where the proposed Utilisation Date is the same].]

5.3 Currency and amount
(a) The currency specified in a Utilisation Request must be [sterling]/[euros]/[other].

(b) The amount of the proposed Loan must be an amount which is not more than the Available Facility and which is a minimum of [ ] or, if less, the Available Facility.

5.4 Lenders' participation
(a) If the conditions set out in this Agreement have been met, each Lender shall make its participation in each Loan available by the Utilisation Date through its Facility Office.

(b) The amount of each Lender's participation in each Loan will be equal to the proportion borne by its Available Commitment to the Available Facility immediately prior to making the Loan.

(c) The Agent shall notify each Lender of the amount of each Loan and the amount of its participation in that Loan by the Specified Time.

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Include the currency of the Loan.
5.5 **Cancellation of Commitment**

The Commitments which, at that time, are unutilised shall be immediately cancelled at
the end of the Availability Period.
SECTION 4
REPAYMENT, PREPAYMENT AND CANCELLATION

6. REPAYMENT

6.1 Repayment of Loans

(a) The Borrowers shall repay the Loans [in full on the Termination Date]/[in instalments on each Interest Payment Date].

(b) [[Each Repayment Instalment [(other than the last)] will be [[ ] per cent. of the original amount of the Loans made to the Borrowers]/[insert currency of Loan] [ ]].]

(b) [Each Repayment Instalment [(other than the last)] will be the amount set opposite the Interest Payment Date on which it is due in Schedule 4 ([Amortisation Schedule].]

(c) [The last Repayment Instalment shall be repaid on the Termination Date and will be the balance of the outstanding Loans.]

6.2 Reborrowing

No Borrower may reborrow any part of the Facility which is repaid.

7. PREPAYMENT AND CANCELLATION

7.1 Illegality

If, in any applicable jurisdiction, it becomes unlawful for any Lender to perform any of its obligations as contemplated by this Agreement or to fund or maintain its participation in any Loan[ or it becomes unlawful for any Affiliate of a Lender for that Lender to do so]:

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

(b) upon the Agent notifying the Company, the Available Commitment of that Lender will be immediately cancelled; and

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

(a) If [[       ] ceases to [control the Company]/[be the beneficial owner (directly or indirectly through wholly-owned Subsidiaries) of the entire issued share capital of the Company]/[any person or group of persons acting in concert gains control of the Company]]:

(i) the Company shall promptly notify the Agent upon becoming aware of that event;

(ii) [a Lender shall not be obliged to fund a Utilisation:] and

(iii) if [the Majority Lenders so require]/[a Lender so requires and notifies the Agent within [ ] days of the Company notifying the Agent of the event]] the Agent shall, by not less than [ ] days' notice to the Company, cancel the [Total Commitments]/[Commitment of that Lender] and declare [the participation of that Lender in] all outstanding Loans, together with accrued interest, and all other amounts accrued under the Finance Documents immediately due and payable, whereupon the [Total Commitments]/[Commitment of that Lender] will be cancelled and all such outstanding Loans and amounts will become immediately due and payable.

(b) For the purpose of paragraph (a) above "control" means [       ].

(c) [For the purpose of paragraph (a) above "acting in concert" means [       ].]

7.3 **Mandatory prepayment**

Each Borrower must apply the following amounts in prepayment of the Loans, and payment of prepayment fees[, amounts under the Hedging Agreements] and other amounts referred to in paragraph (b) of Clause 7.9 (Restrictions) at the time and in the order of application contemplated by Clause 7.4 (Application of mandatory prepayments):

(a) [    ];

(b) the amount of Disposal Proceeds;

(c) [the amount of Hedging Prepayment Proceeds;]

(d) the amount of Lease Prepayment Proceeds;

(e) the amount of Insurance Prepayment Proceeds;

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94 Consider whether change of control should be dealt with as an event of default instead.
95 Include for a floating rate loan with hedging by way of an interest rate swap.
96 Provision for any amount paid into the Deposit Account in accordance with Clause 17.3(f)(vii) (Rent Account).
97 Include for a floating rate loan with hedging by way of an interest rate swap.
the amount of Compensation Prepayment Proceeds; and

(g) the amount of Recovery Prepayment Proceeds.

### 7.4 Application of mandatory prepayments

(a) An amount referred to in paragraph (a) of Clause 7.3 *(Mandatory prepayment)* shall be applied on the date provided for in accordance with paragraph (c) of Clause 17.4 *(Deposit Account)* as follows:

(i) [ ]; and

(ii) [ ]

(b) An amount referred to in paragraph (b) of Clause 7.3 *(Mandatory prepayment)* shall be applied on the date provided for in accordance with paragraph (c) of Clause 17.5 *(Disposals Account)* or paragraph (d) of Clause 22.4 *(Disposals)*, as applicable, as follows:

(i) **first:**

(A) in an amount equal to [ ] per cent. of the Allocated Loan Amount of the Property the subject of, or owned by the Borrower the shares of which were the subject of, the relevant disposal:

(1) **first**, in or towards prepayment of the Loan[s] made to the Borrower that owned that Property;

(2) **secondly**, after prepayment of [those] Loan[s], in or towards prepayment of the other Loans [pro rata]; and

(B) in or towards payment of prepayment fees [any amount that has or will become due and payable under the Hedging Agreements] and any other amount that is or will become due and payable in accordance with paragraph (b) of Clause 7.9 *(Restrictions)* as a result of those prepayments; and

(ii) **secondly**, in payment of any surplus to the General Account.

(c) An amount referred to in paragraphs (c) to (g) of Clause 7.3 *(Mandatory prepayment)* shall be applied on the date provided for in accordance with paragraph (c) of Clause 17.4 *(Deposit Account)* as follows:

(i) in or towards:

(A) **first**, prepayment of the Loan[s] made to the relevant Borrower referred to in paragraph (d) below;

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98100 To cater for the application of any amount paid into the Deposit Account in accordance with Clause 17.3(f)(ii) *(Rent Account)*.

99101 Include for a floating rate loan with hedging by way of an interest rate swap.
(B) **secondly**, after prepayment of [those] Loan[s], prepayment of the other Loans [pro rata]; and

(ii) in or towards payment of prepayment fees [, any amount that has or will become due and payable under the Hedging Agreements] and any other amount that is or will become due and payable in accordance with paragraph (b) of Clause 7.9 (Restrictions) as a result of those prepayments.

(d) For the purposes of paragraph (c)(i)(A) above, the relevant Borrower is:

(i) insofar as the relevant amount to be applied in prepayment is derived from or relates to a Borrower or the assets of or shares in a Borrower, that Borrower; and

(ii) otherwise, such Borrower or Borrowers as the [Company/Majority Lenders] elect.

7.5 Voluntary cancellation

The Company may, if it gives the Agent not less than [ ] Business Days' (or such shorter period as the Majority Lenders may agree) prior notice, cancel the whole or any part (being a minimum amount of [   ]) of the Available Facility. Any cancellation under this Clause 7.5 shall reduce the Commitments of the Lenders rateably.

7.6 Voluntary prepayment of Loans

(a) A Borrower to which a Loan has been made may, if it gives the Agent not less than [ ] 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, being an amount that reduces the amount of the Loan by a minimum amount of [   ]).

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

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

(a) If:

(i) any sum payable to any Lender by an Obligor is required to be increased under paragraph (c) of Clause 12.2 (Tax gross-up); or

(ii) any Lender claims indemnification from the Company under Clause 12.3 (Tax indemnity) or Clause 13.1 (Increased costs),

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

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100102 Include for a floating rate loan with hedging by way of an interest rate swap.
(b) On receipt of a notice of cancellation referred to in paragraph (a) above, the Commitment of that Lender shall immediately be reduced to zero.

(c) On the last day of each Interest Period which ends after the Company has given notice of cancellation under paragraph (a) above (or, if earlier, the date specified by the Company in that notice), each Borrower to which a Loan has been made shall repay that Lender's participation in that Loan.

7.8 Partial prepayment of Loans

(a) If any of the Loans are prepaid in accordance with Clause 7.1 (Illegality) or Clause 7.7 (Right of repayment and cancellation in relation to a single Lender) then the amount of the Repayment Instalment for each Interest Payment Date falling after that prepayment will reduce pro rata by the amount of the Loans prepaid.

(b) [If any of the Loans are prepaid in accordance with Clause 7.3 (Mandatory prepayment) or Clause 7.6 (Voluntary prepayment of Loans) then the amount of the Repayment Instalment for each Interest Payment Date falling after that prepayment will reduce [pro rata] [in chronological order] [in inverse chronological order] by the amount of the Loans prepaid.]

7.9 Restrictions

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

(b) Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid and subject to any Break Costs[,] [and] [amounts (if any) payable under the Hedging Agreements in connection with that prepayment] [and any prepayment and cancellation fees payable under this Agreement], without premium or penalty.

(c) No Borrower may reborrow any part of the Facility which is prepaid.

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

(e) No amount of the Total Commitments cancelled under this Agreement may be subsequently reinstated.

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Include for a floating rate loan with hedging by way of an interest rate swap.
(f) If the Agent receives a notice under this Clause 7 it shall promptly forward a copy of that notice to either the Company or the affected Lenders [and/or Hedge Counterparties], as appropriate.

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

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

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102 Include for a floating rate loan with hedging by way of an interest rate swap.
SECTION 5
COSTS OF UTILISATION

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 applicable:

(a) Margin; [and]

(b) [LIBOR]/[EURIBOR]/[the Benchmark Rate]/[the Fixed Rate] [and]

(c) Mandatory Cost, if any].

8.2 Payment of interest
The Borrower to which a Loan has been made shall pay accrued interest on that Loan on each Interest Payment Date.

8.3 [Hedging]

(a) On or before the [first] Utilisation Date, the [Company/Borrowers] shall enter into and shall thereafter maintain Hedging Agreements in accordance with this Clause 8.3.

(b) (i) The aggregate notional amount of the transactions in respect of the Hedging Agreements shall be at least [ ] per cent. of [the aggregate amount of the Loans].

(ii) Each Hedging Agreement shall:

(A) be with [the/a] Hedge Counterparty;

(B) be for a term ending [on the Termination Date/no earlier than the Termination Date and no later than [ ]];

(C) have settlement dates coinciding with the Interest Payment Dates; and

(D) be based on an ISDA Master Agreement and otherwise in form and substance satisfactory to the Agent.

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105 Include if the interest rate is to be determined by reference to LIBOR.
106 Include if the Loan is in euros and the interest rate is to be determined by reference to EURIBOR.
107 Include if the interest rate is not to be determined by reference to LIBOR or EURIBOR.
108 Include for a floating rate loan with hedging by way of an interest rate swap.
(iii) The rights of [the Company/each Borrower] under the Hedging Agreements shall be charged or assigned by way of security under a Security Agreement.

(c) (i) The parties to each Hedging Agreement must comply with the terms of that Hedging Agreement.

(ii) Neither [the/a] Hedge Counterparty nor [the Company/a Borrower] may amend, supplement, extend or waive the terms of any Hedging Agreement without the consent of the Agent.

(iii) Paragraph (ii) above shall not apply to an amendment, supplement, extension or waiver that is administrative and mechanical in nature and does not give rise to a conflict with any provision of this Agreement.

(d) (i) If, at any time, the aggregate notional amount of the transactions in respect of the Hedging Agreements exceeds or, as a result of a prepayment, will exceed [[ ] per cent. of] the aggregate amount of the Loans at that time, the [Company/the Borrowers] must promptly notify the Agent and must, at the request of the Agent, reduce the aggregate notional amount of those transactions by an amount and in a manner satisfactory to the Agent so that it no longer exceeds or will not exceed [[ ] per cent. of] the aggregate amount of the Loans then or that will be outstanding.

(ii) [Any reductions in the aggregate notional amount of the transactions in respect of the Hedging Agreements in accordance with paragraph (i) above will be apportioned as between those transactions pro rata.]107109

(iii) [The Agent must make a request under paragraph (i) above if so required by [a/the] Hedge Counterparty.]108110

(e) Neither [the/a] Hedge Counterparty nor [the Company/a Borrower] may terminate or close out any transactions in respect of any Hedging Agreement (in whole or in part) except:

(i) in accordance with paragraph (d) above;

(ii) [if an Illegality (as that term is defined in the applicable ISDA Master Agreement) has occurred;]

(iii) [ ;]108110

(iv) if all the Loans and other amounts outstanding under the Finance Documents (other than the Hedging Agreements) have been unconditionally and irrevocably paid and discharged in full;

107109 This may or may not be appropriate depending on the transaction.

108110 Other termination events to be considered on a transaction by transaction basis.
(v) in the case of termination or closing out by [the/a] Hedge Counterparty, if the Agent serves notice under paragraph (b) of Clause 24.18 (Acceleration) or, having served notice under paragraph (c) of Clause 24.18 (Acceleration), makes a demand; or

(vi) in the case of any other termination or closing out by a Hedge Counterparty or [the Company/a Borrower], with the consent of the Agent.

(f) If [the/a] Hedge Counterparty or [the Company/a Borrower] terminates or closes out a transaction in respect of a Hedging Agreement (in whole or in part) in accordance with paragraphs (e)(ii), (e)(iii) or (in the case of [the/a] Hedge Counterparty only) (e)(v) above, it shall promptly notify the Agent of that termination or close out.

(g) If a Hedge Counterparty is entitled to terminate or close out any transaction in respect of any Hedging Agreement under paragraph (e)(v) above, such Hedge Counterparty shall promptly terminate or close out such transaction following a request to do so by the Security Agent.

(h) [The/A] Hedge Counterparty may only suspend making payments under a transaction in respect of a Hedging Agreement if the [Company/a Borrower] is in breach of its payment obligations under any transaction in respect of that Hedging Agreement.

(i) (i) [The]/[Each] Hedge Counterparty consents to, and acknowledges notices of, the charging or assigning by way of security by [the Company/each Borrower] pursuant to the relevant Security Documents of its rights under the Hedging Agreements to which it is party in favour of the Security Agent.

(ii) Any such charging or assigning by way of security is without prejudice to, and after giving effect to, the operation of any payment or close-out netting in respect of any amounts owing under any Hedging Agreement.

(iii) The Security Agent shall not be liable for the performance of any of [the Company's/a Borrower's] obligations under a Hedging Agreement.

OR

8.3 [Hedging]

(a) On or before the [first] Utilisation Date, the [Company/Borrowers] shall enter into and shall thereafter maintain Hedging Agreements in accordance with this Clause 8.3.

[109111] Include for a floating rate loan with hedging by way of an interest rate cap.
(b) (i) The aggregate notional amount of the transactions in respect of the Hedging Agreements shall be at least [ ] per cent. of [the aggregate amount of the Loans].

(ii) Each Hedging Agreement shall:

(A) be with a hedge counterparty acceptable to the [Agent];

(B) be for a term ending [on the Termination Date/no earlier than the Termination Date and no later than [ ]];

(C) have settlement dates coinciding with the Interest Payment Dates;

(D) be in the form of an interest rate cap with a strike rate not exceeding [ ]% per annum;

(E) provide for full upfront payment of the premium; and

(F) be based on an ISDA Master Agreement and otherwise in form and substance satisfactory to the Agent.

(iii) The rights of [the Company/each Borrower] under the Hedging Agreements shall be charged or assigned by way of security under a Security Agreement.

(c) (i) The [Company/each Borrower] must comply with the terms of each Hedging Agreement[ to which it is a party].

(ii) [The Company may not]/[No Borrower] may, and [the Company] shall (ii) procure that no hedge counterparty does, amend, supplement, extend or waive the terms of any Hedging Agreement without the consent of the Agent.

(iii) Paragraph (ii) above shall not apply to an amendment, supplement, extension or waiver that is administrative and mechanical in nature and does not give rise to a conflict with any provision of this Agreement.

(d) [The Company may not]/[No Borrower] may terminate any Hedging Agreement (in whole or in part) except:

(i) [if an Illegality (as that term is defined in the applicable ISDA Master Agreement) has occurred;]

(ii) [ ]

110112

(iii) if all the Loans and other amounts outstanding under the Finance Documents (other than the Hedging Agreements) have been unconditionally and irrevocably paid and discharged in full; or

110112 Other termination events to be considered on a transaction by transaction basis.
(iv) with the consent of the Agent.

(e) The Security Agent shall not be liable for the performance of any of [the Company's/a Borrower's] obligations under a Hedging Agreement.

8.4 Default interest

(a) If an Obligor fails to pay any amount payable by it under a Finance Document [other than a Hedging Agreement] on its due date, interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate which, subject to paragraph (c) below, is [ ] per cent. per annum higher than the rate which would have been payable if the overdue amount had, during the period of non-payment, constituted a Loan in the currency of the overdue amount for successive Interest Periods, each of a duration selected by the Agent (acting reasonably), bearing an interest rate per annum which is the aggregate of:

(i) Margin; [and]

(ii) [LIBOR/EURIBOR]; and

(iii) Mandatory Cost, if any].

(b) Any interest accruing under this Clause 8.4 shall be immediately payable by the Obligor on demand by the Agent.

(c) If any overdue amount consists of all or part of a Loan which became due [on a day which was not the last day of an Interest Period relating to that Loan] /[on a day prior to the Termination Date]:

(i) the first Interest Period for that overdue amount shall have a duration equal to [the unexpired portion of the current Interest Period relating to that Loan]/[the period to the Termination Date]; and

(ii) the rate of interest applying to the overdue amount during that first Interest Period shall be [ ] per cent. per annum higher than the rate which would have applied if the overdue amount had not become due.

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111 This assumes that default interest payable to a Hedge Counterparty is payable under this Agreement.

112 Include if ordinary non-default interest to be determined by reference to a fixed rate.

113 Include for a floating rate loan with hedging by way of an interest rate swap.

114 Where interest on the Loans is calculated using LIBOR or EURIBOR.

115 Where interest on the Loans is calculated using a Fixed Rate.

116 Where interest on the Loans is calculated using LIBOR or EURIBOR.

117 Where interest on the Loans is calculated using a Fixed Rate.
8.5 Notification of rates of interest
(a) The Agent shall promptly notify the relevant Lenders and the relevant Borrower of the determination of a rate of interest under this Agreement.
(b) The Agent shall promptly notify the relevant Borrower of each Funding Rate relating to a Loan.

9. INTEREST PERIODS

9.1 Length of Interest Periods
Each Interest Period for a Loan shall start on its Utilisation Date or (if already made) on the last day of its preceding Interest Period and end on the next Interest Payment Date.

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). / OR

[The rules specified as "Business Day Conventions" in Schedule 13 (Benchmark) shall apply to each Interest Period.]117119

9.3 Consolidation of Loans
If two or more Interest Periods:
(a) relate to Loans made to the same Borrower; and
(b) end on the same date,

those Loans will be consolidated into, and treated as, a single Loan on the last day of the Interest Period.

10. CHANGES TO THE CALCULATION OF INTEREST118120

10.1 Unavailability of Screen Rate119121
(a) Interpolated Screen Rate: If no Screen Rate is available for [LIBOR]/[EURIBOR]/[the Benchmark Rate]120122 for the Interest Period of a

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117119 Include if the interest rate is not determined by reference to LIBOR or EURIBOR and business day conventions different to those set out in the first option are to apply.

118120 Clauses 10.1 ([Unavailability of Screen Rate119] - 10.4 (Cost of funds151) not relevant for fixed rate loans.

119121 Clause 10.1 ([Unavailability of Screen Rate119]) provides for a waterfall of fallbacks if a Screen Rate is unavailable. Two (alternative) forms of Clause 10.1 ([Unavailability of Screen Rate119]) are provided. The first form should be used if the commercial agreement is that Historic Screen Rates are to be used as an intermediate fallback before the use of Reference Banks or cost of funds. The second form should be used if the commercial agreement is that Historic Screen Rates are not to be used as such an intermediate fallback.

120122 Include as appropriate.
Loan, the applicable [LIBOR]/[EURIBOR]/[Benchmark Rate] shall be the Interpolated Screen Rate for a period equal in length to the Interest Period of that Loan.

(b) **Shortened Interest Period**: If no Screen Rate is available for [LIBOR]/[EURIBOR]/[the Benchmark Rate] for:

(i) [sterling] /[euro] /[other]; or

(ii) the Interest Period of a Loan and it is not possible to calculate the Interpolated Screen Rate.

the Interest Period of that Loan shall (if it is longer than the applicable Fallback Interest Period) be shortened to the applicable Fallback Interest Period and the applicable [LIBOR]/[EURIBOR]/[Benchmark Rate] for that shortened Interest Period shall be determined pursuant to the definition of ["LIBOR"]/["EURIBOR"]/["Benchmark Rate"].

(c) **Shortened Interest Period and Historic Screen Rate**: If the Interest Period of a Loan is, after giving effect to paragraph (b) above, either the applicable Fallback Interest Period or shorter than the applicable Fallback Interest Period and, in either case, no Screen Rate is available for [LIBOR]/[EURIBOR]/[the Benchmark Rate] for:

(i) [sterling] /[euro] /[other]; or

(ii) the Interest Period of that Loan and it is not possible to calculate the Interpolated Screen Rate.

the applicable [LIBOR]/[EURIBOR]/[Benchmark Rate] shall be the Historic Screen Rate for that Loan.

(d) **Shortened Interest Period and Interpolated Historic Screen Rate**: If paragraph (c) above applies but no Historic Screen Rate is available for the Interest Period of the Loan, the applicable [LIBOR]/[EURIBOR]/[Benchmark Rate] shall be the Interpolated Historic Screen Rate for a period equal in length to the Interest Period of that Loan.

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121  Include if the Loan is in sterling.

122  Include if the Loan is in euros.

123  If the Loan is in a currency other than sterling or euros, include reference to that currency here.

124  Include if the Loan is in sterling.

125  Include if the Loan is in euros.

126  If the Loan is in a currency other than sterling or euros, include reference to that currency here.
(e) [Reference Bank Rate:] /[Cost of funds:] If paragraph (d) above applies but it is not possible to calculate the Interpolated Historic Screen Rate, the Interest Period of that Loan shall, if it has been shortened pursuant to paragraph (b) above, revert to its previous length and the applicable LIBOR/EURIBOR/Benchmark Rate shall be the Reference Bank Rate as of the Specified Time for [sterling][127]/[euro][128]/[other][129] and for a period equal in length to the Interest Period of that Loan / [there shall be no LIBOR/EURIBOR/Benchmark Rate for that Loan and Clause 10.4 (Cost of funds) shall apply to that Loan for that Interest Period].

(f) [Cost of funds:] If paragraph (e) above applies but no Reference Bank Rate is available for [sterling][130]/[euro][131]/[other][132] or the relevant Interest Period there shall be no LIBOR/EURIBOR/Benchmark Rate for that Loan and Clause 10.4 (Cost of funds) shall apply to that Loan for that Interest Period.

OR

10.1 [Unavailability of Screen Rate]

(a) Interpolated Screen Rate: If no Screen Rate is available for LIBOR/EURIBOR/Benchmark Rate for the Interest Period of a Loan, the applicable LIBOR/EURIBOR/Benchmark Rate shall be the Interpolated Screen Rate for a period equal in length to the Interest Period of that Loan.

(b) [Reference Bank Rate:] /[Cost of funds:] If no Screen Rate is available for LIBOR/EURIBOR/Benchmark Rate for:

(i) [sterling][133]/[euro][134]/[other][135], or

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127 Include if the Loan is in sterling.
128 Include if the Loan is in euros.
129 If the Loan is in a currency other than sterling or euros, include reference to that currency here.
130 Include if the Loan is in sterling.
131 Include if the Loan is in euros.
132 If the Loan is in a currency other than sterling or euros, include reference to that currency here.
133 Include as appropriate.
134 Include if the Loan is in sterling.
135 Include if the Loan is in euros.
136 Include if the Loan is in a currency other than sterling or euros, include reference to that currency here.
(ii) the Interest Period of a Loan and it is not possible to calculate the Interpolated Screen Rate,

[the applicable [LIBOR]/[EURIBOR]/[Benchmark Rate] shall be the Reference Bank Rate as of the Specified Time and for a period equal in length to the Interest Period of that Loan] / [there shall be no [LIBOR]/[EURIBOR]/[Benchmark Rate] for that Loan and Clause 10.4 (Cost of funds) shall apply to that Loan for that Interest Period.]

(c) [Cost of funds: If paragraph (b) above applies but no Reference Bank Rate is available for [sterling]/[euro]/[other] or the relevant Interest Period there shall be no [LIBOR]/[EURIBOR]/[Benchmark Rate] for that Loan and Clause 10.4 (Cost of funds) shall apply to that Loan for that Interest Period.]

10.2 Calculation of Reference Bank Rate

(a) Subject to paragraph (b) below, if [LIBOR]/[EURIBOR]/[the Benchmark Rate] is to be determined on the basis of a Reference Bank Rate but a Reference Bank does not supply a quotation by the Specified Time, the Reference Bank Rate shall be calculated on the basis of the quotations of the remaining Reference Banks.

(b) If at or about [[noon] on the Quotation Day]/[the time specified in Schedule 13 (Benchmark)], none or only one of the Reference Banks supplies a quotation, there shall be no Reference Bank Rate for the relevant Interest Period.

10.3 Market disruption

If before [close of business in London on the Quotation Day for the relevant Interest Period]/[the time specified in Schedule 13 (Benchmark)] the Agent receives notifications from a Lender or Lenders (whose participations in a Loan exceed [ ] per cent. of that Loan) that the cost to it of funding its participation in that Loan [from

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140 Include if the Loan is in sterling.
141 Include if the Loan is in euros.
142 If the Loan is in a currency other than sterling or euros, include reference to that currency here.
143 The timings in this Clause are suggestions only and may need adjustment to acccord with the Agent's and Reference Banks' operational requirements.
144 Include as appropriate.
145 Include if the interest rate is determined by reference to LIBOR or EURIBOR.
146 Include if the interest rate is not determined by reference to LIBOR or EURIBOR.
whatever source it may reasonably select]/[from the wholesale market for [sterling] [euro] [other] would be in excess of [LIBOR] [EURIBOR] [the Benchmark Rate] then Clause 10.4 (Cost of funds) shall apply to that Loan for the relevant Interest Period.

10.4 Cost of funds

(a) If this Clause 10.4 applies, the rate of interest on [each Lender’s share of] the relevant Loan for the relevant Interest Period shall be the percentage rate per annum which is the sum of:

(i) the Margin;

(ii) [the rate notified to the Agent by that Lender]/[the weighted average of the rates notified to the Agent by each Lender] as soon as practicable and in any event [within [ ] Business Days of the first day of that Interest Period (or, if earlier, on the date falling [ ] Business Days before the date on which interest is due to be paid in respect of that Interest Period)]/[before interest is due to be paid in respect of that Interest Period] to be that which expresses as a percentage rate per annum the cost to the relevant Lender of funding its participation in that Loan from whatever source it may reasonably select; and

(iii) the Mandatory Cost, if any, applicable to that Lender’s participation in the Loan.

(b) If this Clause 10.4 applies and the Agent or the Company so requires, the Agent and the Company shall enter into negotiations (for a period of not more than thirty days) with a view to agreeing a substitute basis for determining the rate of interest.

(c) Any alternative basis agreed pursuant to paragraph (b) above shall, with the prior consent of all the Lenders and the Company, be binding on all Parties.

146148 Include if the Loan is in sterling.

147149 Include if the Loan is in euros.

148150 If the Loan is in a currency other than sterling or euros, include reference to that currency here.

149151 Include as appropriate.

150152 Users should consider whether the Company’s rights under Clause 7.7 (Right of repayment and cancellation in relation to a single Lender) should be extended to apply to a Lender making a notification to the Agent under Clause 10.3 (Market disruption).

151153 Users should consider whether Clause 10.4 (Cost of funds) should be amended to allow the relevant Borrower to revoke the Utilisation Request relating to a Loan which falls to be priced on a cost of funds basis.

152 Include if cost of funds is not calculated on a weighted average basis.

153 Include if cost of funds is not calculated on a weighted average basis.
10.5 Break Costs

(a) Each Borrower shall, within three Business Days of demand by a Finance Party, pay to that Finance Party its Break Costs attributable to all or any part of a Loan or Unpaid Sum being paid by that Borrower on a day other than the last day of an Interest Period for that Loan or Unpaid Sum. \[155,156\]

(b) Each Lender shall, as soon as reasonably practicable after a demand by the Agent, provide a certificate confirming the amount of its Break Costs for any Interest Period in which they accrue. \[157,158\]

11. FEES

11.1 Commitment fee

(a) The Company shall pay to the Agent (for the account of each Lender) a fee computed at the rate of \[\] per cent. per annum on that Lender’s Available Commitment for the Availability Period.

(b) The accrued commitment fee is payable [quarterly] in arrear on each Interest Payment Date during the Availability Period, on the last day of the Availability Period and, if cancelled in full, on the cancelled amount of the relevant Lender’s Commitment at the time the cancellation is effective.

11.2 Arrangement fee

The Company shall pay to the Arranger an arrangement fee in the amount and at the times agreed in a Fee Letter.

11.3 Agency fee

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

11.4 Security Agent fee

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

11.5 [Prepayment [and cancellation] fee

(a) [Subject to paragraph (c) below,] the Company must pay to the Agent for each Lender a prepayment [and cancellation] fee on the date of prepayment of all or

\[154,156\] Include if cost of funds is calculated on a weighted average basis.

\[155,157\] Words in square brackets for floating rate loans only.

\[156,158\] Include for a fixed rate loan. Calculation to be determined on a transaction by transaction basis.

\[158,160\] Words in square brackets for floating rate loans only.

\[159,160\] Include for a fixed rate loan. Calculation to be determined on a transaction by transaction basis.
any part of a Loan [and on the date of cancellation of any part of the Total Commitments].

(b) The amount of the prepayment [and cancellation] fee is:

(i) if the prepayment or cancellation occurs on or before the [   ] anniversary of the [first Utilisation Date], [   ] per cent. of the amount prepaid [or cancelled];

(ii) if the prepayment or cancellation occurs after the [   ] but on or before the [   ] anniversary of the [first Utilisation Date], [   ] per cent. of the amount prepaid [or cancelled]; and

(iii) if the prepayment or cancellation occurs after the [   ] but on or before the [   ] anniversary of the [first Utilisation Date], [   ] per cent. of the amount prepaid [or cancelled].

(c) [No prepayment [or cancellation] fee shall be payable under this Clause 11.5 if the prepayment [or cancellation] is made under [Clause 7.1 (Illegality), Clause 7.7 (Right of repayment and cancellation in relation to a single Lender) or [   ] [or the cancellation is made under paragraph (g) of Clause 7.9 (Restrictions))] Exclusions to the prepayment and cancellation fees should be considered on a transaction by transaction basis.
SECTION 6
ADDITIONAL PAYMENT OBLIGATIONS

12. TAX GROSS UP AND INDEMNITIES

12.1 Definitions

(a) In this Agreement:

"Borrower DTTP Filing" means an HM Revenue & Customs Form DTTP2 duly completed and filed by the relevant Borrower, which:

(i) where it relates to a Treaty Lender that is an Original Lender, contains the scheme reference number and jurisdiction of tax residence stated opposite that Lender's name in Part II of Schedule 1 (The Original Parties and Properties), and is filed with HM Revenue and Customs within 30 days of the date of this Agreement; or

(ii) where it relates to a Treaty Lender that is a New Lender, contains the scheme reference number and jurisdiction of tax residence stated in respect of that Lender in the relevant Transfer Certificate or Assignment Agreement, and is filed with HM Revenue & Customs within 30 days of that Transfer Date.

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

"Qualifying Lender" means:

(i) a Lender which is beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document and is:

(A) a Lender:

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

(B) [a Lender which is:

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

(2) a partnership each member of which is:

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

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

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

(C) a Treaty Lender; or

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

["Tax Confirmation" means a confirmation by a Lender that the person beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document is either:

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

(ii) a partnership each member of which is:

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

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

"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, other than a FATCA Deduction.¹⁶¹¹⁶³

"Tax Payment" means either the increase in a payment made by an Obligor to a Finance Party under Clause 12.2 (Tax gross-up) or a payment under Clause 12.3 (Tax indemnity).

"Treaty Lender" means a Lender which:

(i) is treated as a resident of a Treaty State for the purposes of the Treaty;

(ii) does not carry on a business in the United Kingdom through a permanent establishment with which that Lender's participation in the Loan is effectively connected; and

(iii) .¹⁶²¹⁶⁴

"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:

(i) where a Lender becomes a Party on the day on which this Agreement is entered into, a Lender listed in Part III of Schedule 1 (The Original Parties and Properties); and ¹⁶³¹⁶⁵

¹⁶¹¹⁶³ This may not be appropriate for all circumstances. For further information see the LMA 2014 Summary Note on FATCA (available through the LMA website).

¹⁶²¹⁶⁴ This is a complex area and in each case relevant treaties should be reviewed and, if appropriate, additional wording inserted to apportion risk as agreed by the Parties.

¹⁶³¹⁶⁵ If UK Non-Bank Lenders are to be envisaged and this definition is, therefore, included but no Original Lender is a UK Non-Bank Lender:

- delete this paragraph (i);
(ii) where a Lender becomes a Party after the day on which this Agreement is entered into, a Lender which gives a Tax Confirmation in the Assignment Agreement or Transfer Certificate which it executes on becoming a Party.

(b) Unless a contrary indication appears, in this Clause 12 a reference to "determines" or "determined" means a determination made in the absolute discretion of the person making the determination.

(c) [This Clause 12 shall not apply to any Hedging Agreement.]

12.2 Tax gross-up

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

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

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

(d) A payment shall not be increased under paragraph (c) above by reason of a Tax Deduction on account of Tax imposed by the United Kingdom, if on the date on which the payment falls due:

(i) the payment could have been made to the relevant Lender without a Tax Deduction if the Lender had been a Qualifying Lender, but on that date that Lender is not or has ceased to be a Qualifying Lender other than as a result of any change after the date it became a Lender under this Agreement in (or in the interpretation, administration, or application of) any law or Treaty or any published practice or published concession of any relevant taxing authority; or

- delete Part III of Schedule 1 (The Original Parties and Properties); and

- delete the words "other than UK Non-Bank Lenders" from the heading of Part II of Schedule 1 (The Original Parties and Properties).

Do not, however, delete this definition, as a UK Non-Bank Lender may become a Lender after the date of this Agreement.

This paragraph assumes that gross-up mechanics for hedging are included in the Hedging Agreements. Only include for floating rate loan with hedging.
(ii) the relevant Lender is a Qualifying Lender solely by virtue of paragraph (i)(B) of the definition of Qualifying Lender; and:

(A) an officer of H.M. Revenue & Customs has given (and not revoked) a direction (a "Direction") under section 931 of the ITA which relates to the payment and that Lender has received from the Obligor making the payment or from the Company a certified copy of that Direction; and

(B) the payment could have been made to the Lender without any Tax Deduction if that Direction had not been made; or

(iii) the relevant Lender is a Qualifying Lender solely by virtue of paragraph (i)(B) of the definition of Qualifying Lender and:

(A) the relevant Lender has not given a Tax Confirmation to the Company; and

(B) the payment could have been made to the Lender without any Tax Deduction if the Lender had given a Tax Confirmation to the Company, on the basis that the Tax Confirmation would have enabled the Company to have formed a reasonable belief that the payment was an "excepted payment" for the purpose of section 930 of the ITA]; or

(iv) the relevant Lender is a Treaty Lender and the Obligor making the payment is able to demonstrate that the payment could have been made to the Lender without the Tax Deduction had that Lender complied with its obligations under paragraph (g) below.

(c) If an Obligor is required to make a Tax Deduction, that Obligor shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.

(f) Within thirty days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Obligor making that Tax Deduction shall deliver to the Agent for the Finance Party entitled to the payment a statement under section 975 of the ITA or other evidence reasonably satisfactory to that Finance Party that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.

(g) (i) Subject to paragraph (ii) below, a Treaty Lender and each Obligor which makes a payment to which that Treaty Lender is entitled shall co-operate in completing any procedural formalities necessary for that Obligor to obtain authorisation to make that payment without a Tax Deduction.

(ii) (A) 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 Part II of Schedule 1 (The Original Parties and Properties); and

(B) a New Lender that is a Treaty Lender that holds a passport under the HMRC DT Treaty Passport scheme, and which wishes that scheme to apply to this Agreement, shall confirm its scheme reference number and its jurisdiction of tax residence in the Transfer Certificate or Assignment Agreement which it executes,

and, having done so, that Lender shall be under no obligation pursuant to paragraph (i) above.

(h) If a Lender has confirmed its scheme reference number and its jurisdiction of tax residence in accordance with paragraph (g)(ii) above and:

(i) a Borrower making a payment to that Lender has not made a Borrower DTTP Filing in respect of that Lender; or

(ii) a Borrower making a payment to that Lender has made a Borrower DTTP Filing in respect of that Lender but:

(A) that Borrower DTTP Filing has been rejected by HM Revenue & Customs; or

(B) HM Revenue & Customs has not given the Borrower authority to make payments to that Lender without a Tax Deduction within [60] days of the date of the Borrower DTTP Filing,

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

(i) If a Lender has not confirmed its scheme reference number and jurisdiction of tax residence in accordance with paragraph (g)(ii) above, no Obligor shall make a Borrower DTTP Filing or file any other form relating to the HMRC DT Treaty Passport Scheme in respect of that Lender's Commitment or its participation in any Loan unless the Lender otherwise agrees.

(j) A Borrower shall, promptly on making a Borrower DTTP Filing, deliver a copy of that Borrower DTTP Filing to the Agent for delivery to the relevant Lender.

(k) [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 Company by entering into this Agreement.

(l) A UK Non-Bank Lender shall promptly notify the Company and the Agent if there is any change in the position from that set out in the Tax Confirmation.]
12.3  **Tax indemnity**

(a) The Company shall (within three Business Days of demand by the Agent) pay to a Protected Party an amount equal to the loss, liability or cost which that Protected Party determines will be or has been (directly or indirectly) suffered for or on account of Tax by that Protected Party in respect of a Finance Document.

(b) Paragraph (a) above shall not apply:

   (i) 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 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; or

   (ii) to the extent a loss, liability or cost:

      (A) is compensated for by an increased payment under Clause 12.2 *(Tax gross-up)*;

      (B) would have been compensated for by an increased payment under Clause 12.2 *(Tax gross-up)* but was not so compensated solely because one of the exclusions in paragraph (d) of Clause 12.2 *(Tax gross-up)* applied; or

      (C) relates to a FATCA Deduction required to be made by a Party.165167

(c) A Protected Party making, or intending to make, a claim under paragraph (a) above shall promptly notify the Agent of the event which will give, or has given, rise to the claim, following which the Agent shall notify the Company.

(d) A Protected Party shall, on receiving a payment from an Obligor under this Clause 12.3, notify the Agent.

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165167 This may not be appropriate for all circumstances. For further information see the LMA 2014 Summary Note on FATCA (available through the LMA website).
12.4 **Tax Credit**
If an Obligor makes a Tax Payment and the relevant Finance Party determines that:

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

(b) that Finance Party has obtained and utilised that Tax Credit,

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

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

(a) not a Qualifying Lender;

(b) a Qualifying Lender (other than a Treaty Lender); or

(c) a Treaty Lender.

If a New Lender fails to indicate its status in accordance with this Clause 12.5 then such New Lender shall be treated for the purposes of this Agreement (including by each Obligor) as if it is not a Qualifying Lender until such time as it notifies the Agent which category applies (and the Agent, upon receipt of such notification, shall inform the Company). For the avoidance of doubt, a Transfer Certificate or Assignment Agreement shall not be invalidated by any failure of a Lender to comply with this Clause 12.5.

12.6 **Stamp taxes**
The Company shall pay and, within three Business Days of demand, indemnify each Secured Party against any cost, loss or liability that Secured Party incurs in relation to all stamp duty,[ land and building transaction tax,] 166168 registration and other similar Taxes payable in respect of any Finance Document.

12.7 **VAT**
(a) 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 (b) below, if VAT is or becomes chargeable on any supply made by any Finance Party to any Party under a Finance Document and such Finance Party is required to account to the relevant tax authority for the VAT, that Party must pay to such Finance Party (in addition to and at the same time as paying any other consideration for

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166168 Insert if any Properties are located in Scotland.
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).

(b) 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):

(i) (where the Supplier is the person required to account to the relevant tax authority for the VAT) the Relevant Party must also pay to the Supplier (at the same time as paying that amount) an additional amount equal to the amount of the VAT. The Recipient must (where this paragraph (i) applies) promptly pay to the Relevant Party an amount equal to any credit or repayment the Recipient receives from the relevant tax authority which the Recipient reasonably determines relates to the VAT payable on that supply; and

(ii) (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.

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

(d) Any reference in this Clause 12.7 to any Party shall, at any time when such Party is treated as a member of a group for VAT purposes, include (where appropriate and unless the context otherwise requires) a reference to the representative member of such group at such time (the term "representative member" to have the same meaning as in the Value Added Tax Act 1994).

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

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This provision does not operate in an international context, so where there is an international context, this wording should be reviewed and updated accordingly.
with such Finance Party's VAT reporting requirements in relation to such supply.\textsuperscript{168170}

12.8 **FATCA Information**

(a) Subject to paragraph (c) below, each Party shall, within [10] Business Days of a reasonable request by another Party:

(i) confirm to that other Party whether it is:

   (A) a FATCA Exempt Party; or
   
   (B) not a FATCA Exempt Party;

(ii) 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

(iii) supply to that other Party such forms, documentation and other information relating to its status as that other Party reasonably requests for the purposes of that other Party's compliance with any other law, regulation, or exchange of information regime.

(b) If a Party confirms to another Party pursuant to paragraph (a)(i) above that it is a FATCA Exempt Party and it subsequently becomes aware that it is not or has ceased to be a FATCA Exempt Party, that Party shall notify that other Party reasonably promptly.

(c) Paragraph (a) above shall not oblige any Finance Party to do anything, and paragraph (a)(iii) above shall not oblige any other Party to do anything, which would or might in its reasonable opinion constitute a breach of:

(i) any law or regulation;

(ii) any fiduciary duty; or

(iii) any duty of confidentiality.

(d) If a Party fails to confirm whether or not it is a FATCA Exempt Party or to supply forms, documentation or other information requested in accordance with paragraph (a)(i) or (ii) above (including, for the avoidance of doubt, where paragraph (c) above applies), then such Party shall be treated for the purposes of the Finance Documents (and payments under them) as if it is not a FATCA Exempt Party until such time as the Party in question provides the requested confirmation, forms, documentation or other information.

\textsuperscript{168170} This provision does not operate for the benefit of non-Finance Parties and whether this is correct should be considered on a case by case basis.
(e) If a Borrower is a US Tax Obligor or the Agent reasonably believes that its obligations under FATCA or any other applicable law or regulation require it, each Lender shall, within [10] Business Days of:

(i) where an Original Borrower is a US Tax Obligor and the relevant Lender is an Original Lender, the date of this Agreement;

(ii) where a Borrower is a US Tax Obligor on a Transfer Date and the relevant Lender is a New Lender, the relevant Transfer Date;

(iii) the date a new US Tax Obligor accedes as a Borrower; or

(iv) where a Borrower is not a US Tax Obligor, the date of a request from the Agent,
supply to the Agent:

(A) a withholding certificate on Form W-8, Form W-9 or any other relevant form; or

(B) any withholding statement or other document, authorisation or waiver as the Agent may require to certify or establish the status of such Lender under FATCA or that other law or regulation.

(f) The Agent shall provide any withholding certificate, withholding statement, document, authorisation or waiver it receives from a Lender pursuant to paragraph (e) above to the relevant Borrower.

(g) If any withholding certificate, withholding statement, document, authorisation or waiver provided to the Agent by a Lender pursuant to paragraph (e) above is or becomes materially inaccurate or incomplete, that Lender shall promptly update it and provide such updated withholding certificate, withholding statement, document, authorisation or waiver to the Agent unless it is unlawful for the Lender to do so (in which case the Lender shall promptly notify the Agent). The Agent shall provide any such updated withholding certificate, withholding statement, document, authorisation or waiver to the relevant Borrower.

(h) The Agent may rely on any withholding certificate, withholding statement, document, authorisation or waiver it receives from a Lender pursuant to paragraph (e) or (g) above without further verification. The Agent shall not be liable for any action taken by it under or in connection with paragraphs (e), (f) or (g) above.[\\169][\\171]

169 Paragraphs (e), (f), (g) and (h) of Clause 12.8 (FATCA Information) may be used for loans entered into with US borrowers (or loans where a US borrower may become an additional borrower).
12.9 **FATCA Deduction**

(a) 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.

(b) 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 Company and the Agent and the Agent shall notify the other Finance Parties.

13. **INCREASED COSTS**

13.1 **Increased costs**

(a) Subject to Clause 13.3 (Exceptions) the Company shall, within three Business Days of a demand by the Agent, pay for the account of a Finance Party the amount of any Increased Costs incurred by that Finance Party or any of its Affiliates as a result of (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation or (ii) compliance with any law or regulation made after the date of this Agreement.

(b) In this Agreement "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 due and payable under any Finance Document,

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

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170 This Clause may not be appropriate for all circumstances. For further information see the LMA 2014 Summary Note on FATCA (available through the LMA website).

172 The form of increased costs clause in this Agreement is drafted in deliberately wide terms in an attempt to cover all circumstances which could increase a Lender's costs as a result of a change in law or regulation. The European legislation (often referred to as "CRD IV") which implements the Basel Committee on Banking Supervision’s proposed new standards for bank capital and liquidity requirements (labelled “Basel III”) has come into force and potentially involves greater costs than those envisaged by Basel III. Users may wish to consider whether to supplement the clause to address expressly the extent to which both Basel III costs and CRD IV costs are intended to be within, or outside, the scope of the clause.
13.2 Increased cost claims

(a) A Finance Party intending to make a claim pursuant to Clause 13.1 (Increased costs) shall notify the Agent of the event giving rise to the claim, following which the Agent shall promptly notify the Company.

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

13.3 Exceptions

(a) Clause 13.1 (Increased costs) does not apply to the extent any Increased Cost is:

(i) attributable to a Tax Deduction required by law to be made by an Obligor;

(ii) attributable to a FATCA Deduction required to be made by a Party;

172174 Basel II was finalised in 2004 and implemented in Europe during 2007 and so it may not be necessary to include a Basel II carve out from the increased costs clause where the syndicate consists of European Lenders. If it is agreed by the parties to exclude Basel II from the increased costs clause, and for example this may be relevant where there are US Lenders in the syndicate as Basel II has not been fully implemented in the US, then users should note that elements of the Basel III papers amend the Basel II paper and so care needs to be taken with the drafting of the carve out. The following provision may be inserted at the end of Clause 13.3(a) (Exceptions) to address this point:

"(v) 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 Basel III) ("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)."

The following definition should be added to paragraph (b) of Clause 13.1 (Increased costs):

"Basel III" means:

(a) 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;

(b) 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

(c) any further guidance or standards published by the Basel Committee on Banking Supervision relating to "Basel III".

Users should note that this definition of Basel III is deliberately wide and includes future Basel III publications. It is, therefore, unlikely to be suitable to describe Basel III in the context of excluding Basel III costs from the scope of the increased costs clause generally.

173175 This may not be appropriate for all circumstances. For more information see the LMA 2014 Summary Note on FATCA (available through the LMA website).
(iii) compensated for by Clause 12.3 (Tax indemnity) (or would have been compensated for under Clause 12.3 (Tax indemnity) but was not so compensated solely because any of the exclusions in paragraph (b) of Clause 12.3 (Tax indemnity) applied);

(iv) [compensated for by the payment of the Mandatory Cost;] or

(v) attributable to the wilful breach by the relevant Finance Party or its Affiliates of any law or regulation.

(b) [Clause 13.1 (Increased costs) does not apply to the extent the Increased Cost is incurred by a Hedge Counterparty in its capacity as such.]

(c) In this Clause 13.3, a reference to a "Tax Deduction" has the same meaning given to the term in Clause 12.1 (Definitions).

14. OTHER INDEMNITIES

14.1 Currency indemnity

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

(i) making or filing a claim or proof against that Obligor; or

(ii) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

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

(b) 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.

(c) [This Clause 14.1 does not apply to any sum due under a Hedging Agreement.]
14.2 Other indemnities
The Company shall (or shall procure that an Obligor will), within three Business Days of demand, indemnify each Secured Party against any cost, loss or liability incurred by that Secured Party as a result of:

(a) the occurrence of any Event of Default;

(b) a failure by an Obligor to pay any amount due under a Finance Document on its due date, including without limitation, any cost, loss or liability arising as a result of Clause 30.31 (Sharing among the Finance Parties);

(c) funding, or making arrangements to fund, its participation in a Loan requested by a Borrower in a Utilisation Request but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by that Secured Party alone); or

(d) a Loan (or part of a Loan) not being prepaid in accordance with a notice of prepayment given by a Borrower or the Company.

14.3 Indemnity to the Agent
Each Obligor jointly and severally shall promptly indemnify the Agent against:

(a) any cost, loss or liability incurred by the Agent (acting reasonably) as a result of:
   (i) investigating any event which it reasonably believes is a Default; or
   (ii) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised.; or
   (iii) instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under this Agreement; and

(b) any cost, loss or liability [(including, without limitation, for negligence or any other category of liability whatsoever)]\(^{126}\) incurred by the Agent (otherwise than by reason of the Agent's gross negligence or wilful misconduct) [(or, in the case of any cost, loss or liability pursuant to Clause 34.2.10 (Disruption to Payment Systems etc.) notwithstanding the Agent's negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent)]\(^{127}\) in acting as Agent under the Finance Documents.

\(^{126}\) Users should consider including this wording if the optional Clause 32.10 (Disruption to Payment Systems etc.) has been included.

\(^{127}\) Include words in brackets if optional Clause 32.10 (Disruption to Payment Systems etc.) has been included.
14.4 **Indemnity to the Security Agent**

(a) Each Obligor jointly and severally shall promptly indemnify the Security Agent and every Receiver and Delegate against any cost, loss or liability incurred by any of them as a result of:

(i) any failure by the Company to comply with its obligations under Clause 16 (Costs and expenses);

(ii) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised;

(iii) the taking, holding, protection or enforcement of the Transaction Security;

(iv) the exercise of any of the rights, powers, discretions, authorities and remedies vested in the Security Agent and each Receiver and Delegate by the Finance Documents or by law;

(v) any default by any Transaction Obligor in the performance of any of the obligations expressed to be assumed by it in the Finance Documents;

(vi) instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under this Agreement; or

(vii) acting as Security Agent, or Receiver or Delegate under the Finance Documents or which otherwise relates to any of the Security Property (otherwise, in each case, than by reason of the relevant Security Agent's or Receiver's or Delegate's gross negligence or wilful misconduct).

(b) The Security Agent and every Receiver and Delegate may, in priority to any payment to the Secured Parties, indemnify itself out of the Security Assets in respect of, and pay and retain, all sums necessary to give effect to the indemnity in this Clause 14.4 and shall have a lien on the Transaction Security and the proceeds of the enforcement of the Transaction Security for all moneys payable to it.

15. **MITIGATION BY THE LENDERS**

15.1 **Mitigation**

(a) Each Finance Party shall, in consultation with the Company, take all reasonable steps to mitigate any circumstances which arise and which would result in the Facility ceasing to be available or any amount becoming payable under or pursuant to, or cancelled pursuant to, any of Clause 7.1 (Illegality), Clause 12 (Tax gross up and indemnities) or Clause 13 (Increased costs) including (but not limited to) transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.
Paragraph (a) above does not in any way limit the obligations of any Obligor under the Finance Documents.

15.2 Limitation of liability
(a) The Company shall promptly 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 15.1 (Mitigation).

(b) A Finance Party is not obliged to take any steps under Clause 15.1 (Mitigation) if, in the opinion of that Finance Party (acting reasonably), to do so might be prejudicial to it.

16. COSTS AND EXPENSES

16.1 Transaction expenses
The Company shall promptly on demand pay each of the Agent, the Arranger and the Security Agent the amount of all costs and expenses (including legal fees) reasonably incurred by any of them (and, in the case of the Security Agent, by any Receiver or Delegate) 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) any other Finance Documents executed after the date of this Agreement.

16.2 Amendment costs
If:

(a) an Obligor requests an amendment, waiver or consent; or

(b) an amendment is required pursuant to Clause 34.2.9 (Change of currency),

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

16.3 Valuations
(a) The Agent may request a Valuation at any time.

(b) The Company shall promptly on demand pay to the Agent the costs of:

(i) the Initial Valuation;

(ii) a Valuation obtained by the Agent on an annual basis;

(iii) a Valuation obtained by the Agent in connection with the compulsory purchase of all or part of any Property; and
(iv) a Valuation obtained by the Agent at any time when a Default is continuing or is likely to occur as a result of obtaining that Valuation.

(c) The Company must supply to the Agent a copy of any valuation of any Property an Obligor obtains, promptly upon obtaining it.

(d) Any Valuation not referred to in paragraph (b) above will be at the cost of the Lenders.

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

When Valuations may be obtained at the cost of the Company will be determined on a transaction-by-transaction basis.
SECTION 7

BANK ACCOUNTS

17. BANK ACCOUNTS

17.1 Designation of Accounts

(a) The Borrowers must maintain the following bank accounts in the name of the Borrowers:

(i) a rent account designated the "Rent Account";

(ii) a deposit account designated the "Deposit Account";

(iii) a deposit account designated the "Disposals Account"; and

(iv) a current account designated the "General Account".

(b) No Borrower may, without the prior consent of the Agent, maintain any other bank account.

17.2 Account bank

(a) Subject to paragraphs (b) and (c) below, each Account must be held at [     ].

(b) An Account must be replaced with a bank account at the same or another bank at any time if the Agent so requests (acting reasonably).

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

17.3 Rent Account

(a) The Security Agent has sole signing rights in relation to the Rent Account.

(b) (i) Each [Borrower/Obligor] must ensure that:

(A) all Net Rental Income is; [and

(B) any amounts payable to it under any Hedging Agreements are], paid into the Rent Account.

(ii) Paragraph (i) above shall not apply to:

(A) Hedging Prepayment Proceeds; or
(B) Lease Prepayment Proceeds.

(c) [A Borrower may satisfy its obligations under paragraph (b)(i)(A) above by ensuring that:

(i) a Managing Agent promptly collects all Rental Income and [at least two Business Days before each Interest Payment Date/promptly] pays all Net Rental Income received by it into the Rent Account; and

(ii) pending payment into the Rent Account, the Managing Agent holds that Net Rental Income in a trust account in the name of the Managing Agent[, into which only amounts representing Rental Income are paid,] with a bank approved by the Agent].

(d) If any payment of any amount referred to in paragraph (b) above is paid into an Account other than the Rent Account, that payment must be paid immediately into the Rent Account.

(e) [On any day on which an amount is due under a Headlease, the Security Agent may, and is irrevocably authorised by each Borrower to:

(i) withdraw from the Rent Account an amount necessary to meet that due amount; and

(ii) apply that amount in payment of that due amount.] (ii)

(f) Except as provided in Clause 312.5 (Partial payments) and paragraph (g) below, on each Interest Payment Date, the Security Agent must withdraw from, and apply amounts standing to the credit of, the Rent Account, in the following order:

(i) first, in or towards payment pro rata of any unpaid amounts owing to the Agent, the Arranger or the Security Agent under the Finance Documents;

(ii) [secondly, in or towards payment pro rata to the Agent for the relevant Lenders of any accrued interest on any [Property Protection/Cure] Loans due but unpaid under this Agreement;

(iii) thirdly, in or towards payment pro rata to the Agent for the relevant Lenders of any principal of [Property Protection/Cure] Loans due but unpaid under this Agreement.]
(iv) **fourthly**, in or towards payment pro rata:

(A) to the Agent for the Lenders of any accrued interest and fees due but unpaid under this Agreement; [and

(B) to the [Hedge Counterparty]/[Hedge Counterparties] of any periodical payments (not being payments as a result of termination or closing out) due but unpaid under the Hedging Agreements;]185187

(v) **fifthly**, in or towards payment pro rata:

(A) to the Agent for the Lenders of any principal due but unpaid under this Agreement; [and

(B) to the [Hedge Counterparty]/[Hedge Counterparties] of any payments as a result of termination or closing out due but unpaid under the Hedging Agreements;]186188

(vi) **sixthly**, in or towards payment pro rata of any other sum due but unpaid to the Finance Parties under the Finance Documents;

(vii) **seventhly**, [payment of [                          ] 187189 into the Deposit Account; and

(viii) **eighthly**, payment of any surplus into the General Account. (viii)

(g) The Security Agent is obliged to make a withdrawal from the Rent Account in accordance with paragraph (f) above only if:

(i) no Default is continuing; and

(ii) the Repeating Representations are correct in all material respects and will be correct in all material respects immediately after the withdrawal.

17.4 **Deposit Account**

(a) The Security Agent has sole signing rights in relation to the Deposit Account.

(b) (i) [The Security Agent shall pay amounts into the Deposit Account in accordance with Clause 17.3 (**Rent Account**).]188190

(ii) [The Obligors must ensure that all Hedging Prepayment Proceeds are promptly upon receipt paid into the Deposit Account.]191192

185187 Include for a floating rate loan with hedging by way of an interest rate swap.
186188 Include for a floating rate loan with hedging by way of an interest rate swap.
187189 To cater for cash sweeps etc.
190191 Include only if Clause 17.3(f)(vii) (**Rent Account**) included.
(iii) The Obligors must ensure that all Lease Prepayment Proceeds are promptly upon receipt paid into the Deposit Account.

(iv) The Obligors must ensure that all Insurance Prepayment Proceeds are promptly upon receipt paid into the Deposit Account.\footnote{Include depending on the terms of Clause 23.11(i) \((23.10\text{Insurances})\).}

(v) The Obligors must ensure that all Compensation Prepayment Proceeds are promptly upon receipt paid into the Deposit Account.

(vi) The Obligors must ensure that all Recovery Prepayment Proceeds are promptly upon receipt paid into the Deposit Account.

\begin{enumerate}[(c)]
\item Except as provided in Clause 34.2.5 \((Partial payments)\) and paragraph (d) below, on each Interest Payment Date, or earlier at the request of the Company if it gives the Agent not less than [ ] Business Days' notice, the Security Agent must withdraw from, and apply amounts standing to the credit of, the Deposit Account in accordance with paragraph (b) above in accordance with Clause 7.3 \((Mandatory prepayment)\).
\item The Security Agent is obliged to make a withdrawal from the Deposit Account in accordance with paragraph (c) above only if:
\begin{enumerate}[(i)]
\item no Default is continuing; and
\item the Repeating Representations are correct in all material respects and will be correct in all material respects immediately after the withdrawal.
\end{enumerate}
\end{enumerate}

17.5 \textbf{Disposals Account}

\begin{enumerate}[(a)]
\item The Security Agent has sole signing rights in relation to the Disposals Account.
\item [The Obligors must ensure that the Disposal Proceeds of a Property are, unless immediately applied in accordance with Clause 7.3 \((Mandatory prepayment)\), paid into the Disposals Account in accordance with Clause 22.4 \((Disposals)\).]\footnote{Include depending on terms of Clause 22.4 \((Disposals)\).}
\item Except as provided in Clause 34.2.5 \((Partial payments)\) and paragraph (d) below, on each Interest Payment Date, or earlier at the request of the Company if it gives the Agent not less than [ ] Business Days' notice, the Security Agent must withdraw from, and apply amounts standing to the credit of, the Disposals Account in accordance with Clause 7.3 \((Mandatory prepayment)\):
\item The Security Agent is obliged to make a withdrawal from the Disposals Account in accordance with paragraph (c) above only if:
\end{enumerate}
(i) no Default is continuing; and

(ii) the Repeating Representations are correct in all material respects and will be correct in all material respects immediately after the withdrawal.

17.6 **General Account**

(a) Except as provided in paragraph (d) below, the Company has signing rights in relation to the General Account.

(b)  

(i) Each Borrower must ensure that all Tenant Contributions[,] unless held in a trust account in the name of the Managing Agent[,] are paid into the General Account.

(ii) Each Obligor must ensure that any other amount received or receivable by it, other than any amount specifically required under this Agreement to be paid into any other Account, is paid into the General Account.

(c) Except as provided in paragraph (d) below and subject to:

(i) any restriction in any Subordination Agreement; and

(ii) the requirement that amounts paid into the General Account for a particular purpose must be used for that purpose,

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

(d) At any time when a Default is continuing or the Repeating Representations are not correct, the Security Agent may:

(i) operate the General Account;

(ii) notify the Company that its rights to operate the General Account are suspended, such notice to take effect in accordance with its terms; and

(iii) withdraw from, and apply amounts standing to the credit of, the General Account in or towards any purpose for which moneys in any Account may be applied.

17.7 **Miscellaneous Accounts provisions**

(a) The Company must ensure that no Account goes into overdraft.

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

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

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

(e) No Finance Party is responsible or liable to any Obligor for:

   (i) any non-payment of any liability of an Obligor which could be paid out of moneys standing to the credit of an Account; or

   (ii) any withdrawal wrongly made, if made in good faith.

(f) The Company must, within five Business Days of any request by the Agent, supply the Agent with the following information in relation to any payment received in an Account:

   (i) the date of payment or receipt;

   (ii) the payer; and

   (iii) the purpose of the payment or receipt.
SECTION 8
GUARANTEE

18. GUARANTEE AND INDEMNITY

18.1 Guarantee and indemnity
Each Obligor irrevocably and unconditionally jointly and severally:

(a) guarantees to each Finance Party punctual performance by each Obligor of all that Obligor's obligations under the Finance Documents;

(b) undertakes with each Finance Party that whenever another Obligor does not pay any amount when due under or in connection with any Finance Document, that Obligor shall immediately on demand pay that amount as if it was the principal obligor; and

(c) agrees with each Finance Party that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligation, indemnify that Finance Party immediately on demand against any cost, loss or liability it incurs as a result of an Obligor not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under any Finance Document on the date when it would have been due. The amount payable by an Obligor under this indemnity will not exceed the amount it would have had to pay under this Clause 18 if the amount claimed had been recoverable on the basis of a guarantee.

18.2 Continuing guarantee
This guarantee is a continuing guarantee and will extend to the ultimate balance of sums payable by any Obligor under the Finance Documents, regardless of any intermediate payment or discharge in whole or in part.

18.3 Reinstatement
If any discharge, release or arrangement (whether in respect of the obligations of any Obligor or any security for those obligations or otherwise) is made by a Finance Party in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then the liability of each Obligor under this Clause 18 will continue or be reinstated as if the discharge, release or arrangement had not occurred.

18.4 Waiver of defences
The obligations of each Obligor under this Clause 18 will not be affected by an act, omission, matter or thing which, but for this Clause, would reduce, release or prejudice any of its obligations under this Clause 18 (without limitation and whether or not known to it or any Finance Party) including:

(a) any time, waiver or consent granted to, or composition with, any Obligor or other person;

(b) the release of any other Obligor or any other person under the terms of any composition or arrangement with any creditor of any member of the Group;
(c) 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, any 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;

(d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of an Obligor or any other person;

(e) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of any Finance Document or any other document or security including without limitation any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under any Finance Document or other document or security;

(f) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security; or

(g) any insolvency or similar proceedings.

18.5 Guarantor Intent
Without prejudice to the generality of Clause 18.4 (Waiver of defences), each Obligor expressly confirms that it intends that this guarantee shall extend from time to time to any (however fundamental) variation, increase, extension 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: acquisitions of any nature; increasing working capital; enabling 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 facility or amount might be made available from time to time; and any fees, costs and/or expenses associated with any of the foregoing.

18.6 Immediate recourse
Each Obligor waives any right it may have of first requiring any Finance Party (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 that Obligor under this Clause 18. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

18.7 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, each Finance Party (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 that Finance Party (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 (whether against those amounts or otherwise) and no Obligor shall be entitled to the benefit of the same; and
(b) hold in an interest-bearing suspense account any moneys received from any Obligor or on account of any Obligor's liability under this Clause 18.

18.8 **Deferral of Obligors' rights**

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 and unless the Agent otherwise directs, no Obligor will exercise any rights which it may have by reason of performance by it of its obligations under the Finance Documents or by reason of any amount being payable, or liability arising, under this Clause 18:

(a) to be indemnified by an Obligor;

(b) to claim any contribution from any other guarantor of any Obligor's obligations under the Finance Documents;

(c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Finance Parties under the Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, the Finance Documents by any Finance Party;

(d) to bring legal or other proceedings for an order requiring any Obligor to make any payment, or perform any obligation, in respect of which any Obligor has given a guarantee, undertaking or indemnity under Clause 18.1 (**Guarantee and indemnity**);

(e) to exercise any right of set-off against any Obligor; and/or

(f) to claim or prove as a creditor of any Obligor in competition with any Finance Party.

If an Obligor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Finance Parties by the Obligors under or in connection with the Finance Documents to be repaid in full on trust for the Finance Parties and shall promptly pay or transfer the same to the Agent or as the Agent may direct for application in accordance with Clause 31-32 (**Payment mechanics**).

18.9 **Release of Obligor's right of contribution**

If any Borrower (a "Retiring Borrower") ceases to be a Borrower in accordance with the terms of the Finance Documents for the purpose of any sale or other disposal of that Retiring Borrower then on the date such Retiring Borrower ceases to be a Borrower:

(a) that Retiring Borrower is released by each other Obligor from any liability (whether past, present or future and whether actual or contingent) to make a contribution to any other Obligor arising by reason of the performance by any other Obligor of its obligations under the Finance Documents; and

(b) each other Obligor waives any rights it may have by reason of the performance of its obligations under the Finance Documents to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the
Finance Parties under any Finance Document or of any other security taken pursuant to, or in connection with, any Finance Document where such rights or security are granted by or in relation to the assets of the Retiring Borrower.

18.10 **Additional security**

This guarantee is in addition to and is not in any way prejudiced by any other guarantee or security now or subsequently held by any Finance Party.
SECTION 9
REPRESENTATIONS, UNDERTAKINGS AND EVENTS OF DEFAULT

19. REPRESENTATIONS

Each Obligor makes the representations and warranties set out in this Clause 19 to each Finance Party on the date of this Agreement.

19.1 Status

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

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

19.2 Binding obligations

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

19.3 Non-conflict with other obligations

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

(a) any law or regulation applicable to it;

(b) its constitutional documents; or

(c) any agreement or instrument binding upon it or any of its assets or constitute a default or termination event (however described) under any such agreement or instrument.

19.4 Power and authority

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

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

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Lenders may wish to consider amendments, as appropriate, to reflect sanctions laws and regulations that may affect them depending on their jurisdiction of incorporation or business, for example US and EU sanctions (which may prohibit lenders from advancing funds to be made available to targets of any relevant sanctions authority, as well as other restrictions). In addition, lenders in some jurisdictions should take advice in relation to possible conflict of laws that may impact on their ability to include clauses of this nature. For further information see LMA Guidance Note: United States and European Union Sanctions (available through the LMA website).

Lenders may wish to consider amendments, as appropriate, if any of the landlords on their transaction are not resident in the UK for tax purposes.
19.5 **Validity and admissibility in evidence**

(a) All Authorisations required or desirable:

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

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

have been obtained or effected and are in full force and effect [except any Authorisation referred to in paragraph (a) of Clause 19.8 (No filing or stamp taxes) [and [ ]], which Authorisation[s] will be promptly obtained or effected after [the date of this Agreement]/[the [first] Utilisation Date].

(b) 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 [if failure to obtain or effect those Authorisations has or is reasonably likely to have a Material Adverse Effect].

19.6 **Governing law and enforcement**

(a) The **Subject to the Legal Reservations, the** choice of the governing law of the Finance Documents will be recognised and enforced in its Relevant Jurisdictions.

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

19.7 **Deduction of Tax**

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

(i) a Qualifying Lender:

(A) falling within paragraph (i)(A) of the definition of "Qualifying Lender"; [or

(B) [except where a Direction has been given under section 931 of the ITA in relation to the payment concerned, falling within paragraph (i)(B) of the definition of "Qualifying Lender"]; or

(C) falling within paragraph (ii) of the definition of Qualifying Lender; or]

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194 This representation should be considered on a case-by-case basis and modified, or deleted, as appropriate. If tax other than UK tax may be relevant, this should be taken into account.

195 Include if paragraph (i)(B) of the definition of Qualifying Lender is included in Clause 12.1 (Definitions).

196 Include if paragraph (ii) of the definition of Qualifying Lender is included in Clause 12.1 (Definitions)

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(ii) 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).

(b) No Rental Income payable to any Obligor is subject to a requirement to make a deduction or withholding for or on account of Tax from that Rental Income.

19.8 No filing or stamp taxes

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

(i) registration of particulars of [the Security Documents] at Companies House under the Companies Act 2006 and payment of associated fees; and

(ii) registration of [the Security Agreement[s]] at the Land Registry or Land Charges Registry in England and Wales [and the Standard Security/ies] at the Land Register of Scotland] and payment of associated fees,

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

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

19.9 VAT

It is not a member of a value added tax group [other than a group made up solely of Obligors].

19.10 No default

(a) No Event of Default and, as at the date of this Agreement and [the/each] Utilisation Date, no Default is continuing or is reasonably likely to result from the making of any Utilisation or the entry into, or the performance of, or any transaction contemplated by, any Transaction Document.

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

[228] Wording to be considered on a transaction by transaction basis.
19.11 Information

(a) All information supplied by it or on its behalf to any Finance Party in connection with the Transaction Documents was true and accurate as at the date it was provided or as at any date at which it was stated to be given.

(b) Any financial projections contained in the information referred to in paragraph (a) above have been prepared as at their date on the basis of recent historical information and on the basis of reasonable assumptions.

(c) It has not omitted to supply any information which, if disclosed, would make the information referred to in paragraph (a) above untrue or misleading in any respect.

(d) As at the [first] Utilisation Date, nothing has occurred since the date of the information referred to in paragraph (a) above which, if disclosed, would make that information untrue or misleading in any material respect.

19.12 Financial statements

(a) Its Original Financial Statements were prepared in accordance with GAAP consistently applied [unless expressly disclosed to the Agent in writing to the contrary before the date of this Agreement].

(b) Its Original Financial Statements give a true and fair view of its financial condition as at the end of the relevant financial year and results of operations during the relevant financial year (consolidated in the case of the Company) [unless expressly disclosed to the Agent in writing to the contrary prior to the date of this Agreement].

(c) There has been no material adverse change in its assets, business or financial condition (or the assets, business or consolidated financial condition of the Group, in the case of the Company) since [ ].

(d) Its most recent financial statements delivered pursuant to Clause 20.1 (Financial statements):

   (i) have been prepared in accordance with GAAP as applied to the Original Financial Statements; and

   (ii) give a true and fair view of (if audited) or fairly represent (if unaudited) its financial condition as at the end of the relevant financial year and operations during the relevant financial year (consolidated in the case of the Company).

(e) Since the date of the most recent financial statements delivered pursuant to Clause 20.1 (Financial statements) there has been no material adverse change in its business, assets or financial condition (or the business—assets or consolidated financial condition of the Group, in the case of the Company).
19.13 **Pari passu ranking**

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

19.14 **No proceedings pending or threatened**

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

19.15 **Valuation**

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

(b) Any financial projections contained in the information referred to in paragraph (a) above have been prepared as at their date, on the basis of recent historical information and on the basis of reasonable assumptions.

(c) It has not omitted to supply any information to the Valuer which, if disclosed, would adversely affect the Valuation.

(d) As at the [first] Utilisation Date, nothing has occurred since the date the information referred to in paragraph (a) above was supplied which, if it had occurred prior to the Initial Valuation, would have adversely affected the Initial Valuation.

19.16 **Title to Property**

(a) The Borrower named as owner of each Property in Part V of Schedule 1 (*The Original Parties and Properties*) will, from the [first] Utilisation Date:

(i) [(subject to registration of the relevant transfer under the Land Registration Act 2002 [or the Land Registration (Scotland) Act 1979])] be the legal and beneficial owner of that Property; and

(ii) have good and marketable title to that Property, in each case free from Security (other than those created by or pursuant to the Security Documents) and restrictions and onerous covenants (other than those set out in the Property Report in relation to that Property).

(b) From the [first] Utilisation Date except as disclosed in the Property Report relating to a Property:

(i) no breach of any law, regulation or covenant is outstanding which adversely affects or might reasonably be expected to adversely affect the value, saleability or use of that Property;
(ii) there is no covenant, agreement, stipulation, reservation, condition, interest, right, easement or other matter whatsoever adversely affecting that Property;

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

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

(v) none of the facilities referred to in paragraph (iv) above are enjoyed on terms:

(A) entitling any person to terminate or curtail its use of that Property; or

(B) which conflict with or restrict its use of that Property;

(vi) the relevant Obligor has not received any notice of any adverse claim by any person in respect of the ownership of that Property or any interest in it which might reasonably be expected to be determined in favour of that person, nor has any acknowledgement been given to any such person in respect of that Property; and

(vii) that Property is held by the relevant Obligor free from any lease or licence (other than those entered into in accordance with this Agreement).

(c) All deeds and documents necessary to show good and marketable title to a Borrower's interests in a Property will from the [first] Utilisation Date be:

(i) in possession of the Security Agent;

(ii) held [at the applicable Land Registry] to the order of the Security Agent; or

(iii) held to the order of the Agent by a firm of solicitors approved by the Security Agent for that purpose.

19.17 Information for Property Reports

(a) The information supplied by it or on its behalf to the lawyers who prepared any Property Report for the purpose of that Property Report was true and accurate as at the date of the Property Report or (if appropriate) as at the date (if any) at which it is stated to be given.

(b) The information referred to in paragraph (a) above was at the date it was expressed to be given complete and did not omit any information which, if disclosed would make that information untrue or misleading in any material respect.
(c) As at the [first] Utilisation Date, nothing has occurred since the date of any information referred to in paragraph (a) above which, if disclosed, would make that information untrue or misleading in any material respect.

19.18 **No other business**

(a) No Obligor has traded or carried on any business since the date of its incorporation except for:

(i) in the case of the Company, the ownership of the Borrowers; and

(ii) in the case of each Borrower, the ownership[, development] and management of its interests in the Properties.

(b) As at the date of this Agreement, it is not party to any material agreement other than the Transaction Documents.

(c) As at the date of this Agreement:

(i) the Company does not have any Subsidiaries other than the Borrowers; and

(ii) no Borrower has any Subsidiaries.

(d) No Obligor:

(i) has, or has had, any employees; and

(ii) has any obligation in respect of any retirement benefit or occupational pension scheme.

19.19 **Centre of main interests and establishments**

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

19.20 **Ranking of Security**

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

19.21 **Ownership**

(a) The Company's entire issued share capital is legally and beneficially owned and controlled by [the Shareholder].

(b) Each Borrower's entire issued share capital is legally and beneficially owned and controlled by the Company.

(c) The shares in the capital of each Obligor are fully paid and are not subject to any option to purchase or similar rights.
(d) The constitutional documents of each Obligor do not and could not restrict or inhibit any transfer of the shares of that Obligor on creation or enforcement of the security conferred by the Security Documents.

19.22 Repetition
The Repeating Representations are deemed to be made by each Obligor by reference to the facts and circumstances then existing on the date of each Utilisation Request, on [the/each] Utilisation Date and the first day of each Interest Period (except that those contained in paragraphs (a) - (c) of Clause 19.12 (Financial statements) will cease to be so made once subsequent financial statements have been delivered under this Agreement).

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

20.1 Financial statements
The Company shall supply to the Agent in sufficient copies for all the Lenders:

(a) as soon as they are available, but in any event within [ ] days after the end of each of its financial years:
   (i) its audited consolidated financial statements for that financial year; and
   (ii) the audited financial statements of each Obligor for that financial year; and

(b) as soon as the same become available, but in any event within [ ] days after the end of each half of each of its financial years:
   (i) its consolidated financial statements for that financial half year; and
   (ii) the financial statements of each Obligor for that financial half year.

20.2 Compliance Certificate
(a) [The Company shall supply to the Agent, with each set of financial statements delivered pursuant to paragraph (a)(i) or (b)(i) of Clause 20.1 (Financial statements), a Compliance Certificate setting out (in reasonable detail) computations as to compliance with Clause 21 (Financial covenants) as at the date as at which those financial statements were drawn up.

(b) The Company shall supply to the Agent, with each quarterly report delivered pursuant to Clause 20.4 (Monitoring of Property), a Compliance Certificate setting out (in reasonable detail) computations as to compliance with Clause 21 (Financial covenants) as at the Interest Payment Date [falling immediately after the date of delivery of that report].

This wording needs to tie in with the timing and delivery of the quarterly report.
(c) Each Compliance Certificate shall be signed by two directors of the Company.

20.3 Requirements as to financial statements

(a) Each set of financial statements delivered by the Company pursuant to Clause 20.1 (Financial statements) shall be certified by a director of the relevant company as giving a true and fair view (if audited) or fairly representing (if unaudited) its financial condition as at the date as at which those financial statements were drawn up.

(b) [The Company shall procure that each set of financial statements delivered pursuant to Clause 20.1 (Financial statements) is prepared using GAAP.]

(c) [The Company shall procure that each set of financial statements of an Obligor delivered pursuant to Clause 20.1 (Financial statements) is prepared using GAAP, accounting practices and financial reference periods consistent with those applied in the preparation of the Original Financial Statements for that Obligor unless, in relation to any set of financial statements, it notifies the Agent that there has been a change in GAAP, the accounting practices or reference periods and its auditors (or, if appropriate, the auditors of the Obligor) deliver to the Agent:

(i) a description of any change necessary for those financial statements to reflect the GAAP, accounting practices and reference periods upon which that Obligor's Original Financial Statements were prepared; and

(ii) sufficient information, in form and substance as may be reasonably required by the Agent, to enable the Lenders to make an accurate comparison between the financial position indicated in those financial statements and that Obligor's Original Financial Statements.

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

20.4 Monitoring of Property

(a) On or before the date [five] Business Days before each Interest Payment Date, the Company must supply to the Agent a report containing the following information, in form and substance satisfactory to the Agent, in respect of (except in the case of proposed or required capital expenditure or repairs under paragraphs (viii) and (ix) below) the quarterly period ending [ten] Business Days before that Interest Payment Date:

(i) a schedule of the existing occupational tenants of each Property, showing for each tenant the rent, service charge, value added tax and any other amounts payable in that period by that tenant;

(ii) copies of any management accounts and management cashflows produced by, or for, any Obligor;
(iii) details of:

(A) any arrears of rents or service charges under any Lease Document;
and

(B) any other breaches of covenant under any Lease Document,
and any step being taken to recover or remedy them;

(iv) details of any insolvency or similar proceedings affecting any occupational tenant of a Property or any guarantor of that occupational tenant;

(v) details of any rent reviews with respect to any Lease Document in progress or agreed;

(vi) details of any Lease Document which has expired or been determined or surrendered and any new letting proposed;

(vii) copies of all material correspondence with insurance brokers handling the insurance of any Property;

(viii) details of any actual or proposed capital expenditure with respect to each Property;

(ix) details of any actual or required material repairs to each Property;

(x) details of any notice it is entitled to serve on any former tenant of any Occupational Lease under section 17(2) of the Landlord and Tenant (Covenants) Act 1995 or on any guarantor of any such former tenant under section 17(3) of that Act; and

(xi) any other information in relation to a Property reasonably requested by the Agent.

(b) The Company must notify the Agent of:

(i) any likely occupational tenant of any part of a Property; and

(ii) any likely buyer of any part of a Property (including terms of reference).

20.5 Information: miscellaneous
The Company shall supply to the Agent (in sufficient copies for all the Lenders, if the Agent so requests):

(a) at the same time as they are dispatched, copies of all documents dispatched by the Company to its shareholders generally (or any class of them) or its creditors generally (or any class of them) at the same time as they are dispatched;

(b) promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings or investigations which are current, threatened or
pending against any member of the Group, and which, if adversely determined, are reasonably likely to have a Material Adverse Effect; and

(c) promptly, such further information regarding the financial condition, business and operations of any member of the Group as any Finance Party (through the Agent) may reasonably request.

20.6 Notification of default

(a) Each Obligor shall notify the Agent of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence (unless that Obligor is aware that a notification has already been provided by another Obligor).

(b) Promptly upon a request by the Agent, the Company shall supply to the Agent a certificate signed by two of its directors or senior officers on its behalf certifying that no Default is continuing (or if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it).

20.7 "Know your customer" checks

(a) If:

(i) 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;

(ii) any change in the status of an Obligor or the composition of the shareholders of an Obligor, after the date of this Agreement; or

(iii) a proposed assignment or transfer by a Lender of any of its rights and/or obligations under this Agreement to a party that is not a Lender prior to such assignment or transfer,

obliges the Agent or any Lender (or, in the case of paragraph (iii) 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 Agent or any Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself or on behalf of any Lender) or any Lender (for itself or, in the case of the event described in paragraph (iii) above, on behalf of any prospective new Lender) in order for the Agent, such Lender or, in the case of the event described in paragraph (iii) 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.

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

21. FINANCIAL COVENANTS

21.1 [Historical Interest Cover]
The Company must ensure that Historical Interest Cover is, at all times, at least [ ] per cent.

21.2 [Projected Interest Cover]
The Company must ensure that Projected Interest Cover is, at all times, at least [ ] per cent.

21.3 Loan to Value
The Company must ensure that the Loan to Value does not, at any time, exceed [ ] per cent.

22. GENERAL UNDERTAKINGS

The undertakings in this Clause 22 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.

22.1 Authorisations
Each Obligor 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 Agent of,

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

(i) enable it to perform its obligations under the Transaction Documents and to ensure the legality, validity, enforceability or admissibility in evidence of any Transaction Document; or

(ii) own its assets and carry on its business as it is being conducted.

22.2 Compliance with laws
Each Obligor shall comply in all respects with all laws to which it may be subject, if failure so to comply has or is reasonably likely to have a Material Adverse Effect.

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Lenders may wish to consider amendments, as appropriate, to reflect sanctions laws and regulations that may affect them depending on their jurisdiction of incorporation or business, for example US and EU sanctions (which may prohibit lenders from advancing funds to be made available to targets of any relevant sanctions authority, as well as other restrictions). In addition, lenders in some jurisdictions should take advice in relation to possible conflict of laws that may impact on their ability to include clauses of this nature. For further information see LMA Guidance Note: United States and European Union Sanctions (available through the LMA website).
22.3 **Negative pledge**
In this Clause 22.3, "**Quasi-Security**" means an arrangement or transaction described in paragraph (b) below.

(a) No Obligor shall create or permit to subsist any Security over any of its assets.

(b) No Obligor shall:

(i) sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by an Obligor;

(ii) sell, transfer or otherwise dispose of any of its receivables on recourse terms;

(iii) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or

(iv) enter into any other preferential arrangement having a similar effect, in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.

(c) Paragraphs (a) and (b) above do not apply to any Security or (as the case may be) Quasi-Security, listed below:

(i) the Transaction Security;

(ii) any lien arising by operation of law and in the ordinary course of trading; or

(iii) any Security that is released prior to the [first] Utilisation.

22.4 **Disposals**

(a) No Obligor shall enter into a single transaction or a series of transactions (whether related or not and whether voluntary or involuntary) to dispose of all or any part of any asset.

(b) Paragraph (a) above does not apply to any disposal:

(i) permitted under Clause 23.2 (Occupational Leases);

(ii) of a Property or the shares in a Borrower, in each case in accordance with paragraph (c) below;

(iii) of cash by way of a payment out of an Account in accordance with this Agreement; or

(iv) made in the ordinary course of trading of any asset subject to the floating charge created under a Security Agreement.
An Obligor may dispose of its Property or its shares in a Borrower if:

(i) the [Majority] Lenders have given their consent to that disposal;

(ii) no Default is continuing or would result from that disposal;

(iii) that disposal is on arm's length terms to an unrelated third party; and

(iv) the net disposal proceeds are not less than [the aggregate of:

(A) [ ] per cent. of the Allocated Loan Amount of that Property or the Property owned by that Borrower; and

(B) an amount determined by the Agent [(in connection with the Hedging Agreements only, in consultation with the Hedge Counterparties)] to provide for prepayment fees[, any amount that will become due and payable under the Hedging Agreements] and any other amount that is or will become due and payable in accordance with paragraph (b) of Clause 7.9 (Restrictions) as a result of the application of the net disposal proceeds in prepayment of the Loans.]

(d) [The Obligors must ensure that the Disposal Proceeds are immediately applied either:

(i) in accordance with Clause 7.3 (Mandatory prepayment); or

(ii) (in the case of the disposal of a Property) paid into the Disposals Account for application in accordance with Clause 17.5 (Disposals Account).]

For the purposes of this Clause 22, net disposal proceeds means the gross proceeds of any disposal permitted under paragraph (c) above less an amount determined by the Agent as the reasonable costs and expenses associated with that disposal.

A Property disposed of, or a Property owned by a Borrower the shares of which are disposed of, in accordance with paragraph (c) above will cease to be a Property.

22.5 Financial Indebtedness

(a) No Obligor may incur or permit to be outstanding any Financial Indebtedness.

The minimum disposal proceeds requirement will differ from transaction to transaction. Sometimes it is by reference to the Initial Valuation of the relevant Property, in which case check that the definition of Initial Valuation is appropriately worded. In other cases it may be by reference to the Allocated Loan Amount or to the current Valuation.

Include for a floating rate loan with hedging by way of an interest rate swap.

Include for a floating rate loan with hedging by way of interest rate swap.
(b) Paragraph (a) above does not apply to:

(i) any Financial Indebtedness incurred under the Finance Documents;

(ii) any Financial Indebtedness repaid prior to the [first] Utilisation; or

(iii) any Subordinated Debt.

22.6 Lending and guarantees
(a) No Obligor may be the creditor in respect of any loan or any form of credit to any person other than another Obligor by way of Subordinated Debt.

(b) No Obligor may give or allow to be outstanding any guarantee or indemnity to or for the benefit of any person in respect of any obligation of any other person or enter into any document under which that Obligor assumes any liability of any other person other than any guarantee or indemnity given under the Finance Documents.

22.7 Merger
(a) No Obligor shall enter into any amalgamation, demerger, merger or corporate reconstruction.

(b) Paragraph (a) above does not apply to any disposal permitted pursuant to Clause 22.4 (Disposals).

22.8 Change of business
(a) No Obligor may carry on any business other than:

(i) in the case of the Company, the ownership of the Borrowers; and

(ii) in the case of each Borrower, the ownership, development and management of its interests in the Property or Properties in which it has an interest.

(b) The Company must not have any Subsidiary other than the Borrowers.

(c) No Borrower may have any Subsidiary.

22.9 Acquisitions
No Obligor may make any acquisition or investment other than as permitted under this Agreement.

22.10 Other agreements
No Obligor may enter into any material agreement other than:

(a) the Transaction Documents;

(b) any other agreement expressly allowed under any other term of this Agreement; and
22.11 Shares, dividends and share redemption

(a) No Obligor shall issue any further shares or amend any rights attaching to its issued shares.

(b) Except as permitted under paragraph (c) below, no Obligor shall:

(i) declare, make or pay any dividend, charge, fee or other distribution (or interest on any unpaid dividend, charge, fee or other distribution) (whether in cash or in kind) on or in respect of its share capital (or any class of its share capital);

(ii) repay or distribute any dividend or share premium reserve;

(iii) pay any management, advisory or other fee to or to the order of any of the shareholders of the Company; or

(iv) redeem, repurchase, defease, retire or repay any of its share capital or resolve to do so.

(c) Paragraph (b) above does not apply to a Permitted Payment.

22.12 VAT group

No Obligor may be a member of a value added tax group [other than a group made up solely of Obligors].

22.13 Taxes

(a) Each Obligor must pay all Taxes due and payable by it prior to the accrual of any fine or penalty for late payment[, unless (and only to the extent that):

(i) payment of those Taxes is being contested in good faith;

(ii) adequate reserves are being maintained for those Taxes and the costs required to contest them; and

(iii) failure to pay those Taxes is not reasonably likely to have a Material Adverse Effect].

(b) Each Obligor must ensure that its residence for Tax purposes is in its Original Jurisdiction.

22.14 Ownership

The Company must ensure that at all times it legally and beneficially owns and controls the entire share capital of each Borrower.

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Consider whether there are any other categories of material agreement that should be provided for.

Wording to be considered on a transaction by transaction basis.
23. **PROPERTY UNDERTAKINGS**

23.1 **Title**

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

(b) No Borrower may agree to any amendment, supplement, waiver, surrender or release of any covenant, stipulation or obligation (restrictive or otherwise) at any time affecting its Property.

(c) Each Borrower must promptly take all such steps as may be necessary or desirable to enable the Security created by the Security Documents to be registered, where appropriate, at [the applicable Land Registry].

23.2 **Occupational Leases**

(a) No Borrower may without the consent of the [Agent/Majority Lenders]:

(i) enter into any Agreement for Lease;

(ii) other than under an Agreement for Lease, grant or agree to grant any new Occupational Lease;

(iii) agree to any amendment, supplement, extension, waiver, surrender or release in respect of any Lease Document;

(iv) exercise any right to break, determine or extend any Lease Document;

(v) commence any forfeiture or irritancy proceedings in respect of any Lease Document;

(vi) grant any licence or right to use or occupy any part of a Property;

(vii) consent to any sublease or assignment of any tenant's interest under any Lease Document;

(viii) agree to any change of use under, or (except where required to do so under the terms of the relevant Lease Document) rent review in respect of, any Lease Document; or

(ix) serve any notice on any former tenant under any Lease Document (or on any guarantor of that former tenant) which would entitle it to a new lease or tenancy.

(b) Each Borrower must:

(i) diligently collect or procure to be collected all Rental Income;

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205 Lenders may wish to consider amendments, as appropriate, if any of the landlords on their transaction are not resident in the UK for tax purposes.

206 Consideration should be given to carve-outs to paragraph (a) on a transaction by transaction basis.
(ii) exercise its rights and comply with its obligations under each Lease Document; and

(iii) use its reasonable endeavours to ensure that each tenant complies with its obligations under each Lease Document,

in a proper and timely manner.

(c) Any Lease Prepayment Proceeds must be paid into the Deposit Account for application in accordance with Clause 17.4 (Deposit Account).

(d) Each Obligor must supply to the Agent a copy of each Lease Document, a copy of each amendment, supplement or extension to a Lease Document and a copy of each document recording any rent review in respect of a Lease Document promptly upon entering into the same.

(e) The Obligors must use their reasonable endeavours to find tenants for any vacant lettable space in the Properties with a view to granting a Lease Document with respect to that space.

(f) No Obligor may grant or agree to grant any Lease Document without including in the alienation covenant a provision for the proposed assignor on any assignment to guarantee the obligations of the proposed assignee until that assignee is released as tenant under the terms of the Landlord and Tenant (Covenants) Act 1995.

23.3 [Headleases

(a) Each Borrower must:

(i) exercise its rights and comply with its obligations under each Headlease;

(ii) use its reasonable endeavours to ensure that each landlord complies with its obligations under each Headlease; and

(iii) if so required by the Security Agent, apply for relief against forfeiture of any Headlease,

in a proper and timely manner.

(b) No Borrower may:

(i) agree to any amendment, supplement, waiver, surrender or release of any Headlease;

(ii) exercise any right to break, determine or extend any Headlease;

(iii) [agree to any rent review in respect of any Headlease;] or

(iv) do or allow to be done any act as a result of which any Headlease may become liable to forfeiture or otherwise be terminated.]
23.4 Maintenance

(a) Each Borrower must ensure that all buildings, plant, machinery, fixtures and fittings on its Property are in, and maintained in:

(i) good and substantial repair and condition and, as appropriate, in good working order; and

(ii) such repair, condition and, as appropriate, good working order as to enable them to be let in accordance with all applicable laws and regulations; for this purpose, a law or regulation will be regarded as applicable if it is either:

(b) Each Borrower must carry out any energy efficiency improvements necessary, or take any other steps necessary, to ensure that at all times each part of its Property which is designed to be let can be let or can continue to be let without breaching any applicable laws or regulations in respect of minimum levels of energy efficiency for properties,

(i) in force; or

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

23.5 Development

(a) No Borrower may:

(i) make or allow to be made any application for planning permission in respect of any part of its Property; or

(ii) carry out, or allow to be carried out, any demolition, construction, structural alterations or additions, development or other similar operations in respect of any part of its Property.

(b) Paragraph (a) above shall not apply to:

(i) the maintenance of the buildings, plant, machinery, fixtures and fittings in accordance with the Transaction Documents; or

(ii) any alterations or improvements which a tenant is entitled to undertake in accordance with the terms of the relevant Lease Document and in respect of which a Borrower in its capacity as landlord is required to give its consent pursuant to the terms of that Lease Document; or

(iii) the carrying out of non-structural improvements or alterations which affect only the interior of any building on a Property.

(c) Each Borrower must comply in all respects with all planning laws, permissions, agreements and conditions to which its Property may be subject.
23.6 **Notices**
Each Borrower must, within 14 days after the receipt by the Borrower of any application, requirement, order or notice served or given by any public or local or any other authority or any landlord with respect to its Property (or any part of it):

(a) deliver a copy to the Security Agent; and

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

23.7 **Investigation of title**
Each Borrower must grant the Security Agent or its lawyers on request all facilities within the power of the Borrower to enable the Security Agent or its lawyers to:

(a) carry out investigations of title to any Property; and

(b) make such enquiries in relation to any part of any Property as a prudent mortgagee might carry out.

23.8 **Power to remedy**

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

   (i) to enter any part of its Property;

   (ii) to comply with or object to any notice served on the Borrower in respect of its Property; and

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

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

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

23.9 **Managing Agents**

(a) No Obligor may:

   (i) appoint any Managing Agent;

   (ii) amend, supplement, extend or waive the terms of appointment of any Managing Agent; or

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207 Users should note that this Clause 23.9 (Managing Agents) deals with managing agents only and not also asset managers, provision for which is not made in this Agreement.
(iii) terminate the appointment of any Managing Agent,
without the prior consent of, and on terms approved by, the Agent.

(b) Each Obligor must ensure that each Managing Agent of any Property:

(i) enters into a Duty of Care Agreement with the Security Agent in form
and substance satisfactory to the Agent;

(ii) acknowledges to the Security Agent that it has notice of the Security
created by the Finance Documents; and

(iii) agrees to pay all Net Rental Income received by it into the Rent
Account without any withholding, set-off or counterclaim.

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

(i) terminate the management agreement; and

(ii) appoint a new Managing Agent in accordance with this Clause 23.9.

23.9 Asset Managers

(a) The Company may not:

(i) appoint any Asset Manager;

(ii) amend, supplement, extend or waive the terms of appointment of any
Asset Manager; or

(iii) terminate the appointment of any Asset Manager,
without the prior consent of, and on terms approved by, the Agent.

(b) The Company must ensure that any Asset Manager:

(i) enters into a Duty of Care Agreement with the Security Agent in form
and substance satisfactory to the Agent; and

(ii) acknowledges to the Security Agent that it has notice of the Security
created by the Finance Documents.

(c) If an Asset Manager is in default of its obligations under its asset management
agreement and, as a result, the Company is entitled to terminate that asset
management agreement, then, if the Agent so requires, the Company must
promptly use all reasonable endeavours to:

(i) terminate the asset management agreement; and

(ii) appoint a new Asset Manager in accordance with this Clause 23.10.
23.11 Insurances

(a) The Company must ensure that at all times from the [first] Utilisation Date Insurances are maintained in full force and effect, which:

(i) insure each Obligor in respect of its interests in each Property and the plant and machinery on each 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);

(ii) provide cover against loss or damage by fire, storm, tempest, flood, earthquake, lightning, explosion, impact, aircraft and other aerial devices and articles dropped from them, riot, civil commotion and malicious damage, bursting or overflowing of water tanks, apparatus or pipes and all other normally insurable risks of loss or damage for a property of the type of the Properties;

(iii) provide cover for site clearance, shoring or propping up, professional fees and value added tax together with adequate allowance for inflation;

(iv) provide cover against acts of terrorism, including any third party liability arising from such acts;

(v) provide cover for loss of rent (in respect of a period of not less than three years or, if longer, the minimum period required under the Lease Documents) including provision for any increases in rent during the period of insurance;

(vi) include property owners’ public liability and third party liability insurance;

(vii) insure such other risks as a prudent company or other person in the same business as the Obligors would insure; and

(viii) in each case are in an amount, and in form, and with an insurance company or underwriters, acceptable at all times to the Agent.

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

(i) any liability on the part of the Security Agent or any other Finance Party for any premium in relation to those Insurances (unless the
Security Agent has expressly and specifically requested to be made liable in respect of any [increase in premium] [or] [unpaid premium] in respect of any of those Insurances); or

(ii) any obligation on the part of the Security Agent or any other Finance Party to make any disclosure to any insurer or any insurance broker in relation to those Insurances unless and until the Security Agent becomes a mortgagee in possession of any Property, in which circumstance an obligation shall apply on the part of the Security Agent or any other Finance Party to make disclosure to any insurer or any insurance broker in relation to the Insurance or Insurances in respect of that Property pursuant to the terms of that Insurance or those Insurances.

(c) The Company must procure that the Insurances comply with the following requirements:

(i) each of the Insurances must contain:

(A) a non-invalidation and non-vitiation clause under which the Insurances will not be avoided or vitiated as against any insured party as a result of any circumstances beyond the control of that insured party or any misrepresentation, non-disclosure, or breach of any policy term or condition, on the part of any other insured party or any agent of any other insured party;

(B) a waiver of the rights of subrogation of the insurer as against each Obligor, each Secured Party and the tenants of each Property other than any such rights arising in connection with any fraud or criminal offence committed by any of those persons in respect of any Property or any Insurance; and

(C) a loss payee clause under which the Security Agent is named as first loss payee [in respect of any claim or series of connected claims in excess of GBP[ ]] (other than in respect of any claim under any public liability and third party liability insurances);

(ii) each insurer must give at least 30 days' notice to the Security Agent if it proposes to:

(A) repudiate, rescind or cancel any Insurance;

(B) treat any Insurance as avoided in whole or in part;

(C) treat any Insurance as expired due to non-payment of premium; or

(D) otherwise decline any claim under any Insurance by or on behalf of any insured party,
and, in respect of paragraph (C) above, must in the notice give the Security Agent the opportunity to rectify any such non-payment of premium within the notice period; and

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

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

(e) The Company must promptly notify the Agent of:

(i) the proposed terms of any future renewal of any of the Insurances;

(ii) any amendment, supplement, extension, termination, avoidance or cancellation of any of the 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 Insurances; and

(iv) any event or circumstance which has led or may lead to a breach by any Obligor of any term of this Clause.

(f) Each Obligor must:

(i) comply with the terms of the Insurances;

(ii) not do or permit anything to be done which may make void or voidable any of the Insurances; and

(iii) comply with all reasonable risk improvement requirements of its insurers.

(g) The Company must ensure that:

(i) each premium for the Insurances is paid promptly and in any event prior to the commencement of within the period of insurance permitted for which payment of that premium is payable; and

(ii) all other things necessary are done so as to keep each of the Insurances in force.

(h) If an Obligor fails to comply with any term of this Clause 23.10, the Agent may, at the expense of the Obligors, effect any insurance and generally do such things and take such other action as the Agent may reasonably consider necessary or desirable to prevent or remedy any breach of this Clause 23.10.
Except as provided below, the proceeds of any Insurances must, if the Agent so requires, be paid into the Deposit Account for application in accordance with Clause 17.4 (Deposit Account).

To the extent required by the basis of settlement under any Insurances or under any Lease Document, each Obligor must apply moneys received under any Insurances in respect of a Property towards replacing, restoring or reinstating that Property.

The proceeds of any loss of rent insurance will be treated as Rental Income and applied in such manner as the Agent (acting reasonably) requires to have effect as if it were Rental Income received over the period of the loss of rent.

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.

Environmental matters

(a) Each Obligor must:

(i) comply and ensure that any relevant third party complies with all Environmental Law;

(ii) obtain, maintain and ensure compliance with all requisite Environmental Permits applicable to it or to a Property; and

(iii) implement procedures to monitor compliance with and to prevent liability under any Environmental Law applicable to it or a Property, where failure to do so has or is reasonably likely to have a Material Adverse Effect or result in any liability for a Finance Party.

(b) Each Obligor must, promptly upon becoming aware, notify the Agent of:

(i) any Environmental Claim started, or to its knowledge, threatened;

(ii) any circumstances reasonably likely to result in an Environmental Claim; or

(iii) any suspension, revocation or notification of any Environmental Permit.

(c) Each Obligor must indemnify each Finance Party against any loss or liability which:

(i) that Finance Party incurs as a result of any actual or alleged breach of any Environmental Law by any person; and

(ii) would not have arisen if a Finance Document had not been entered into,
unless it is caused by that Finance Party's gross negligence or wilful misconduct.

24. **EVENTS OF DEFAULT**

Each of the events or circumstances set out in this Clause 24 is an Event of Default (save for Clause 24.18 (*Acceleration*)).

24.1 **Non-payment**

An 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:
   (i) (in the case of paragraph (a)(i) above) [ ] Business Days of its due date; or
   (ii) (in the case of paragraph (a)(ii) above) [ ] Business Days of its due date.]

24.2 **Financial covenants**

Any requirement of Clause 21 (*Financial covenants*) is not satisfied.

24.3 **Other obligations**

(a) An Obligor does not comply with any term of:
   (i) Clause 20.6 (*Notification of default*);
   (ii) [Clause 22 (*General undertakings*)]; or
   (iii) Clause 23.2 (*Occupational Leases*), [Clause 23.3 (*Headleases*)] or Clause 23.101 (*Insurances*).

(b) A Transaction Obligor does not comply with any provision of the Finance Documents (other than those referred to in Clause 24.1 (*Non-payment*), Clause 24.2 (*Financial covenants*) and paragraph (a) above).

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Whether this should apply to all of Clause 22 (*General undertakings*) should be considered on a transaction by transaction basis.
(c) No Event of Default under paragraph (b) above will occur if the failure to comply is capable of remedy and is remedied within [ ] Business Days of the earlier of (i) the Agent giving notice to the Company and (ii) any Transaction Obligor becoming aware of the failure to comply.

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

24.5 **Cross default**
(a) Any Financial Indebtedness of any Obligor is not paid when due nor within any originally applicable grace period.

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

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

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

24.6 **Insolvency**
(a) A Transaction Obligor:

(i) is unable or admits inability to pay its debts as they fall due;

(ii) [is deemed to, or is declared to, be unable to pay its debts under applicable law];

(iii) suspends or threatens to suspend making payments on any of its debts; or

(iv) by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors (excluding any Finance Party in its capacity as such) with a view to rescheduling any of its indebtedness.

(b) The value of the assets of any Transaction Obligor is less than its liabilities (taking into account contingent and prospective liabilities).

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The application of this event of default to Transaction Obligors other than Obligors will depend on the nature of their obligations and whether they provide security.
(c) A moratorium is declared in respect of any indebtedness of any Transaction Obligor. If a moratorium occurs, the ending of the moratorium will not remedy any Event of Default caused by that moratorium.

24.7 Insolvency proceedings

(a) Any corporate action, legal proceedings or other procedure or step is taken in relation to:

(i) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of any Transaction Obligor;

(ii) a composition, compromise, assignment or arrangement with any creditor of any Transaction Obligor;

(iii) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of any Transaction Obligor or any of its assets; or

(iv) enforcement of any Security over any assets of any Transaction Obligor,

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

(b) Paragraph (a) above shall not apply to any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within [ ] days of commencement.

24.8 Creditors’ process

Any expropriation, attachment, sequestration, distress or execution or any analogous process in any jurisdiction affects any asset or assets of a Transaction Obligor and is not discharged within [ ] days.

24.9 Cessation of business

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

24.10 Unlawfulness and invalidity

(a) It is or becomes unlawful for a Transaction Obligor to perform any of its obligations under the Finance Documents or any Transaction Security created or expressed to be created or evidenced by the Security Documents ceases to be

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The application of this event of default to Transaction Obligors other than Obligors will depend on the nature of their obligations and whether they provide security.

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effective or any subordination created under a Subordination Agreement is or becomes unlawful.

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

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

24.11 **Repudiation and rescission of agreements**

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

24.12 **Compulsory purchase**

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

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

24.13 **Major damage**

(a) Any part of any Property is destroyed or damaged; and

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

24.14 **[Major Tenant]**

Any of the events or circumstances set out in Clause 24.6 (*Insolvency*), Clause 24.7 (*Insolvency proceedings*) or Clause 24.8 (*Creditors’ process*) applies to the Major Tenant.

24.15 **[Headlease]**

Forfeiture or irritancy proceedings with respect to a Headlease are commenced or a Headlease is forfeited or irritated.
24.16 **Ownership of the Obligors**

(a) The Company is not or ceases to be a legally and beneficially wholly owned Subsidiary of [the Shareholder].

(b) A Borrower is not or ceases to be a legally and beneficially wholly owned Subsidiary of the Company.

24.17 **Material adverse change**

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

24.18 **Acceleration**

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

(a) cancel the Total Commitments whereupon they 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 due and payable, whereupon they shall become immediately due and payable;

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

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

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212213 Consider this wording in context of Clause 7.2 (Change of control).

213214 This wording should be considered on a transaction-by-transaction basis.
SECTION 10
CHANGES TO PARTIES

25. CHANGES TO THE LENDERS[ AND HEDGE COUNTERPARTIES]

25.1 Assignments and transfers by the Lenders

Subject to this Clause 25, a Lender (the "Existing Lender") may:

(a) assign any of its rights; or

(b) transfer by novation any of its rights and obligations,

to any other person other than an individual (the "New Lender").

25.2 Conditions of assignment or transfer

(a) An assignment will only be effective on:

(i) receipt by the Agent (whether in the Assignment Agreement or otherwise) of written confirmation from the New Lender (in form and substance satisfactory to the Agent) that the New Lender will assume the same obligations to the other Finance Parties as it would have been under if it was an Original Lender; and

(ii) performance by the Agent of all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to such assignment to a New Lender, the completion of which the Agent shall promptly notify to the Existing Lender and the New Lender.

(b) A transfer will only be effective if the procedure set out in Clause 25.5 (Procedure for transfer) is complied with.

(c) If:

(i) a Lender assigns or transfers any of its rights or obligations under the Finance Documents or changes its Facility Office; and

(ii) as a result of circumstances existing at the date the assignment, transfer or change occurs, an Obligor would be obliged to make a payment to the New Lender or Lender acting through its new Facility Office under Clause 12 (Tax gross up and indemnities) or Clause 13 (Increased costs),

then the New Lender or Lender acting through its new Facility Office is only entitled to receive payment under those Clauses to the same extent as the

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Include for a floating rate loan with hedging by way of an interest rate swap.

Users should consider whether they wish to expressly address the extent to which transfers to members of the Group are permitted or restricted. The LMA Leveraged Finance Facilities Agreement contains wording alternatively regulating or prohibiting transfers to members of the Group which can be adapted for use in this Agreement.
Existing Lender or Lender acting through its previous Facility Office would have been if the assignment, transfer or change had not occurred. This paragraph (c) shall not apply:

(iii) in respect of an assignment or transfer made in the ordinary course of the primary syndication of the Facility; or

(iv) in relation to Clause 12.2 (Tax gross-up), to a Treaty Lender that has included a confirmation of its scheme reference number and its jurisdiction of tax residence in accordance with paragraph (g)(ii)(B) of Clause 12.2 (Tax gross-up) if the Obligor making the payment has not made a Borrower DTTP Filing in respect of that Treaty Lender.

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

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

25.4 Limitation of responsibility of Existing Lenders
(a) Unless expressly agreed to the contrary, an Existing Lender makes no representation or warranty and assumes no responsibility to a New Lender for:

(i) the legality, validity, effectiveness, adequacy or enforceability of the Finance Documents or any other documents;

(ii) the financial condition of any Obligor;

(iii) the performance and observance by any Obligor of its obligations under the Finance Documents or any other documents; or

(iv) 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.

(b) Each New Lender confirms to the Existing Lender and the other Finance Parties that it:

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

(c) Nothing in any Finance Document obliges an Existing Lender to:

(i) accept a re-transfer or re-assignment from a New Lender of any of the rights and obligations assigned or transferred under this Clause 25; or

(ii) support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by any Obligor of its obligations under the Finance Documents or otherwise.

25.5 Procedure for transfer

(a) Subject to the conditions set out in Clause 25.2 (Conditions of assignment or transfer) a transfer is effected in accordance with paragraph (c) below when the Agent executes an otherwise duly completed Transfer Certificate delivered to it by the Existing Lender and the New Lender. The Agent shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a duly completed Transfer Certificate appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Transfer Certificate.

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

(c) [Subject to Clause 25.10 (Pro rata interest settlement),] on the Transfer Date:

(i) to the extent that in the Transfer Certificate the Existing Lender seeks to transfer by novation its rights and obligations under the Finance Documents each of the Obligors and the Existing Lender shall be released from further obligations towards one another under the Finance Documents and their respective rights against one another under the Finance Documents shall be cancelled (being the "Discharged Rights and Obligations");

(ii) each of the Obligors and the New Lender shall assume obligations towards one another and/or acquire rights against one another which differ from the Discharged Rights and Obligations only insofar as that Obligor and the New Lender have assumed and/or acquired the same in place of that Obligor and the Existing Lender;

(iii) the Agent, the Arranger, the New Lender and other Lenders shall acquire the same rights and assume the same obligations between themselves as they would have acquired and assumed had the New Lender been an Original Lender with the rights and/or obligations acquired or assumed by it as a result of the transfer and to that extent
the Agent, the Arranger and the Existing Lender shall each be released from further obligations to each other under the Finance Documents; and

(iv) the New Lender shall become a Party as a "Lender".

25.6 Procedure for assignment

(a) Subject to the conditions set out in Clause 25.2 (Conditions of assignment or transfer) an assignment may be effected in accordance with paragraph (c) below when the Agent executes an otherwise duly completed Assignment Agreement delivered to it by the Existing Lender and the New Lender. The Agent shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a duly completed Assignment Agreement appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Assignment Agreement.

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

(c) [Subject to Clause 25.10 ([Pro rata interest settlement]),] on the Transfer Date:

(i) the Existing Lender will assign absolutely to the New Lender the rights under the Finance Documents expressed to be the subject of the assignment in the Assignment Agreement;

(ii) the Existing Lender will be released by each Obligor and the other Finance Parties from the obligations owed by it (the "Relevant Obligations") and expressed to be the subject of the release in the Assignment Agreement; and

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

(d) Lenders may utilise procedures other than those set out in this Clause 25.6 to assign their rights under the Finance Documents (but not without the consent of the relevant Obligor or unless in accordance with Clause 25.5 (Procedure for transfer), to obtain a release by that Obligor from the obligations owed to that Obligor by the Lenders nor the assumption of equivalent obligations by a New Lender) provided that they comply with the conditions set out in Clause 25.2 (Conditions of assignment or transfer).

216217 If the Assignment Agreement is used in place of a Transfer Certificate in order to avoid a novation of rights/obligations for reasons relevant to a civil jurisdiction, local law advice should be sought to check the suitability of the Assignment Agreement due to the assumption of obligations referred to in paragraph (c)(iii) of Clause 25.6 (Procedure for assignment).
25.7 **Copy of Transfer Certificate or Assignment Agreement to Company**
The Agent shall, as soon as reasonably practicable after it has executed a Transfer Certificate or an Assignment Agreement, send to the Company a copy of that Transfer Certificate or Assignment Agreement.

25.8 **Additional Hedge Counterparties**
(a) The Company [or a Lender] may request that [a Lender or an Affiliate of a Lender/a person] becomes an Additional Hedge Counterparty, with the prior approval of the [Agent/Majority Lenders] and (in the case of a request by a Lender) the Company, by delivering to the Agent a duly executed Hedge Counterparty Accession Letter.

(b) The relevant [Lender or Affiliate/person] will become an Additional Hedge Counterparty when the Agent enters into the relevant Hedge Counterparty Accession Letter.

25.9 **Security over Lenders' rights**
In addition to the other rights provided to Lenders under this Clause 25, each Lender may without consulting with or obtaining consent from any Obligor, at any time charge, assign or otherwise create Security in or over (whether by way of collateral or otherwise) all or any of its rights under any Finance Document to secure obligations of that Lender including, without limitation:

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

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

except that no such charge, assignment or Security shall:

(i) release a Lender from any of its obligations under the Finance Documents or substitute the beneficiary of the relevant charge, assignment or Security for the Lender as a party to any of the Finance Documents; or

(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 relevant Lender under the Finance Documents.]

25.10 **Pro rata interest settlement**
(a) If the Agent has notified the Lenders that it is able to distribute interest payments on a "pro rata basis" to Existing Lenders and New Lenders then (in respect of any transfer pursuant to Clause 25.5 (Procedure for transfer) or any

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*Include for a floating rate loan with hedging by way of an interest rate swap.*
assignment pursuant to Clause 25.6 (Procedure for assignment) the Transfer Date of which, in each case, is after the date of such notification and is not on the last day of an Interest Period):

(i) 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

(ii) the rights assigned or transferred by the Existing Lender will not include the right to the Accrued Amounts, so that, for the avoidance of doubt:

(A) when the Accrued Amounts become payable, those Accrued Amounts will be payable to the Existing Lender; and

(B) the amount payable to the New Lender on that date will be the amount which would, but for the application of this Clause 25.10, have been payable to it on that date, but after deduction of the Accrued Amounts.

(b) In this Clause 25 references to "Interest Period" shall be construed to include a reference to any other period for accrual of fees.

26. [RESTRICTION ON DEBT PURCHASE TRANSACTIONS]

26.1 Prohibition on Debt Purchase Transactions by the Group

The Company may not, and must procure that each other member of the Group does not, enter into any Debt Purchase Transaction or [beneficially own all or any part of the share capital of a company that is] a Lender or a party to a Debt Purchase Transaction of the type referred to in paragraphs (b) or (c) of the definition of Debt Purchase Transaction.

26.2 Disenfranchisement on Debt Purchase Transactions entered into by Sponsor Affiliates

(a) For so long as a Sponsor Affiliate:

(i) beneficially owns a Commitment; or

(ii) has entered into a sub-participation agreement relating to a Commitment or other agreement or arrangement having a substantially similar economic effect and such agreement or arrangement has not been terminated.

in ascertaining:

(A) the Majority Lenders; or

(b) whether:
(1) any given percentage (including, for the avoidance of doubt, unanimity) of the Total Commitments; or

(2) the agreement of any specified group of Lenders,

has been obtained to approve any request for a consent, waiver, amendment or other vote under the Finance Documents such Commitment will be deemed to be zero and such Sponsor Affiliate or the person with whom it has entered into such sub-participation, other agreement or arrangement will be deemed not to be a Lender for the purposes of paragraphs (A) and (B) above (unless in the case of a person not being a Sponsor Affiliate it is a Lender by virtue otherwise than by beneficially owning the relevant Commitment).

(b) Each Lender must, unless such Debt Purchase Transaction is an assignment or transfer, promptly notify the Agent in writing if it knowingly enters into a Debt Purchase Transaction with a Sponsor Affiliate (a Notifiable Debt Purchase Transaction), such notification to be substantially in the form set out in Part I of Schedule 14 (Forms of Notifiable Debt Purchase Transaction Notice).

(c) A Lender must promptly notify the Agent if a Notifiable Debt Purchase Transaction to which it is a party:

(i) is terminated; or

(ii) ceases to be with a Sponsor Affiliate,

such notification to be substantially in the form set out in Part II of Schedule 14 (Forms of Notifiable Debt Purchase Transaction Notice).

(d) Each Sponsor Affiliate that is a Lender agrees that:

(i) in relation to any meeting or conference call to which all the Lenders are invited to attend or participate, it will not attend or participate in the same if so requested by the Agent or, unless the Agent otherwise agrees, be entitled to receive the agenda or any minutes of the same; and

(ii) in its capacity as Lender, unless the Agent otherwise agrees, it will not be entitled to receive any report or other document prepared at the behest of, or on the instructions of, the Agent or one or more of the Lenders.

26.3 Sponsor Affiliates' notification to other Lenders of Debt Purchase Transactions

Any Sponsor Affiliate which is or becomes a Lender and which enters into a Debt Purchase Transaction as a purchaser or a participant must, by 5:00 p.m. on the Business Day following the day on which it entered into that Debt Purchase Transaction, notify the Agent of the extent of the Commitment(s) or amount outstanding to which that Debt
26. CHANGES TO THE TRANSACTION OBLIGORS

26.1 Assignments and transfer by Obligors

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

26.2 Resignation of a Borrower

(a) The Company may request that a Borrower ceases to be a Borrower by delivering to the Agent a Resignation Letter.

(b) The Agent shall accept a Resignation Letter and notify the Company and the Lenders of its acceptance if:

   (i) no Default is continuing or would result from the acceptance of the Resignation Letter (and the Company has confirmed this is the case);

   (ii) the Borrower is under no actual or contingent obligations (other than under Clause 18 (Guarantee and indemnity)) under any Finance Document;

   (iii) either:

       (A) the Borrower has ceased to have an interest in any Property and all the Lenders have consented to the Company’s request; or

       (B) the Company is disposing of its shares in the Borrower in accordance with Clause 22.4 (Disposals); and

   (iv) [                    ].

(c) On acceptance by the Agent of a Resignation Letter the relevant Borrower shall cease to be a Borrower and shall have no further rights or obligations under the Finance Documents.

26.3 Release of Security

(a) If a Borrower has ceased to be a Borrower in a manner allowed by this Agreement and has no further rights or obligations under the Finance Documents any Security created by that Borrower over its assets under the Security Documents will be released.

(b) If a disposal of any asset subject to Security created by a Security Document is made in the following circumstances:

   (i) the disposal is permitted by the terms of this Agreement;

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219 Whether or not provisions on prohibition on debt purchase transactions by Obligors and disenfranchisement of Sponsor Affiliates who enter into debt purchase transactions should be inserted is to be considered on a transaction by transaction basis.
(ii) the Majority Lenders/all the Lenders agree to the disposal;

(iii) the disposal is being made at the request of the Security Agent in circumstances where any Security created by the Security Documents has become enforceable; or

(iv) the disposal is being effected by enforcement of a Security Document, the Security Agent may release the asset(s) being disposed of (and, in the case of a disposal of shares in a Borrower which results in it [or any of its Subsidiaries] ceasing to be a member of the Group, all the assets of that Borrower [and those Subsidiaries] from any security over those assets created by a Security Document.

(A) all the assets of that Borrower [and those Subsidiaries] from any Security over those assets created by a Security Document; and

(B) all liabilities and obligations (present and future, actual or contingent and whether owed jointly or severally or in any other capacity whatsoever) of that Borrower [and those Subsidiaries] under any Finance Document.

However, the proceeds of any disposal (or an amount corresponding to them) must be applied in accordance with the requirements of the Finance Documents (if any).

(c) If the Security Agent is satisfied that a release is allowed under this Clause 26.3, (at the request and expense of the Company) each Finance Party must enter into any document and do all such other things which are reasonably required to achieve that release. Each other Finance Party irrevocably authorises the Security Agent to enter into any such document. Any release will not affect the obligations of any other Obligor under the Finance Documents.

26.4 Additional Subordinated Creditors

(a) The Company may request that any person becomes a Subordinated Creditor, with the prior approval of the Agent, by delivering to the Agent:

(i) a duly executed Subordination Agreement;

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218 This wording would only be required if a Borrower has any subsidiaries, which is not the assumed structure of this Agreement.

219 This wording would only be required if a Borrower has any subsidiaries, which is not the assumed structure of this Agreement.

220 This wording would only be required if a Borrower has any subsidiaries, which is not the assumed structure of this Agreement.

221 This wording would only be required if a Borrower has any subsidiaries, which is not the assumed structure of this Agreement.

222 This wording would only be required if a Borrower has any subsidiaries, which is not the assumed structure of this Agreement.
(ii) [a duly executed Subordinated Creditor's Security Agreement;] and

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

(b) A person referred to in paragraph (a) above will become a Subordinated Creditor on the date the Agent enters into the Subordination Agreement [and the Subordinated Creditor's Security Agreement] delivered under paragraph (a) above.
SECTION 11
THE FINANCE PARTIES


28.1 The Agent and the Security Agent

(a) Each of the Arranger[,[ and] the Lenders [and the Hedge Counterparties]
appoints the Agent to act as its agent under and in connection with the Finance Documents.

(b) The Security Agent declares that it holds the Security Property on trust for the Secured Parties on the terms contained in this Agreement.

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

28.2 Enforcement through Security Agent only

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

28.3 Instructions

(a) Each of the Agent and the Security Agent shall:

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

(A) all Lenders if the relevant Finance Document stipulates the matter is an all Lender decision; and

(B) in all other cases, the Majority Lenders; and

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

(b) Each of the Agent and the Security Agent shall be entitled to request instructions, or clarification of any instruction, from the Majority Lenders (or, if the relevant Finance Document stipulates the matter is a decision for any other Finance Party or group of Finance Parties, from that Finance Party or group of Finance Parties).

Include for a floating rate loan with hedging by way of an interest rate swap.
Finance Parties) as to whether, and in what manner, it should exercise or refrain
from exercising any right, power, authority or discretion and the Agent or
Security Agent (as applicable) may refrain from acting unless and until it
receives any such instructions or clarification that it has requested.

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

(d) Paragraph (a) above shall not apply:

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

(ii) where a Finance Document requires the Agent or the Security Agent to
act in a specified manner or to take a specified action;

(iii) in respect of any provision which protects the Agent's or Security
Agent's own position in its personal capacity as opposed to its role of
Agent or Security Agent for the relevant Finance Parties or Secured
Parties (as applicable) including, without limitation, Clause 2.78.6 (No
fiduciary duties) to Clause 2.78.11 (Exclusion of liability), Clause
2.78.14 (Confidentiality) to Clause 2.78.22 (Custodians and nominees)
and Clause 2.78.25 (Acceptance of title) to Clause 2.78.28
(Disapplication of Trustee Acts);

(iv) in respect of the exercise of the Security Agent's discretion to exercise
a right, power or authority under any of:

(A) Clause 2.82.1 (Order of application);

(B) Clause 2.82.2 (Prospective liabilities); and

(C) Clause 2.82.5 (Permitted Deductions).

(e) If giving effect to instructions given by the Majority Lenders would (in the
Agent's or (as applicable) the Security Agent's opinion) have an effect
equivalent to an amendment or waiver referred to in Clause 3.38
(Amendments and waivers), the Agent or (as applicable) Security Agent shall not act in
accordance with those instructions unless consent to it so acting is obtained
from each Party (other than the Agent or Security Agent) whose consent would
have been required in respect of that amendment or waiver.

(f) In exercising any discretion to exercise a right, power or authority under the
Finance Documents where either:

(i) it has not received any instructions as to the exercise of that discretion;
or
(ii) the exercise of that discretion is subject to paragraph (d)(iv) above,

the Agent or Security Agent shall do so having regard to the interests of (in the case of the Agent) all the Finance Parties and (in the case of the Security Agent) all the Secured Parties.

(g) The Agent or the Security Agent (as applicable) may refrain from acting in accordance with any instructions of any Finance Party or group of Finance Parties until it has received any indemnification and/or security that it may in its discretion require (which may be greater in extent than that contained in the Finance Documents and which may include payment in advance) for any cost, loss or liability (together with any applicable VAT) which it may incur in complying with those instructions.

(h) Without prejudice to the remainder of this Clause 27.3 (Instructions), in the absence of instructions, each of the Agent and the Security Agent may act (or refrain from acting) as it considers to be in the best interest of (in the case of the Agent) the Finance Parties and (in the case of the Security Agent) the Secured Parties.

(i) Neither the Agent nor the Security Agent is authorised to act on behalf of a Finance Party (without first obtaining that Finance Party's consent) in any legal or arbitration proceedings relating to any Finance Document. This paragraph (i) shall not apply to any legal or arbitration proceeding relating to the perfection, preservation or protection of rights under the Security Documents or enforcement of the Transaction Security or Security Documents.

27.4 Duties of the Agent and Security Agent

(a) The duties of the Agent and the Security Agent under the Finance Documents are solely mechanical and administrative in nature.

(b) Subject to paragraph (c) below, each of the Agent and the Security Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Agent or Security Agent (as applicable) for that Party by any other Party.

(c) Without prejudice to Clause 25.7 (Copy of Transfer Certificate or Assignment Agreement to Company), paragraph (b) above shall not apply to any Transfer Certificate or any Assignment Agreement.

(d) Except where a Finance Document specifically provides otherwise, neither the Agent nor the Security Agent is obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.

(e) If the Agent or the Security Agent receives notice from a Party referring to any Finance Document, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the other Finance Parties.

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

(g) The Agent shall provide to the Company[, within [ ] Business Days of the last Business Day of each calendar month][within [ ] Business Days of a request by the Company (but no more frequently than once per calendar month)], a list (which may be in electronic form) setting out the names of the Lenders [as at that Business Day][as at the date of that request], their respective Commitments, the address and fax number (and the department or officer, if any, for whose attention any communication is to be made) of each Lender for any communication to be made or document to be delivered under or in connection with the Finance Documents, the electronic mail address and/or any other information required to enable the sending and receipt of information by electronic mail or other electronic means to and by each Lender to whom any communication under or in connection with the Finance Documents may be made by that means and the account details of each Lender for any payment to be distributed by the Agent to that Lender under the Finance Documents.

(h) Each of the Agent and the Security Agent shall have only those duties, obligations and responsibilities expressly specified in the Finance Documents to which it is expressed to be a party (and no others shall be implied).

28.5 27.5 Role of the Arranger
Except as specifically provided in the Finance Documents, the Arranger has no obligations of any kind to any other Party under or in connection with any Finance Document.

28.6 27.6 No fiduciary duties
(a) Nothing in any Finance Document constitutes:

(i) the Agent or the Arranger as a trustee or fiduciary of any other person; or

(ii) the Security Agent as an agent, trustee or fiduciary of any Transaction Obligor.

(b) None of the Agent, the Security Agent or the Arranger shall be bound to account to any other Finance Party or (in the case of the Security Agent) any Secured Party for any sum or the profit element of any sum received by it for its own account.

28.7 27.7 Business with the Group
The Agent, the Security Agent and the Arranger may accept deposits from, lend money to and generally engage in any kind of banking or other business with any Transaction Obligor or Affiliate of a Transaction Obligor.

28.8 27.8 Rights and discretions
(a) Each of the Agent and the Security Agent may:
(i) rely on any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised;

(ii) assume that:

(A) any instructions received by it from the Majority Lenders, any Finance Parties or any group of Finance Parties are duly given in accordance with the terms of the Finance Documents; and

(B) unless it has received notice of revocation, that those instructions have not been revoked; and

(iii) rely on a certificate from any person:

(A) as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or

(B) to the effect that such person approves of any particular dealing, transaction, step, action or thing,

as sufficient evidence that that is the case and, in the case of paragraph (A) above, may assume the truth and accuracy of that certificate.

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

(i) no Default has occurred (unless, in the case of the Agent, it has actual knowledge of a Default arising under Clause 24.1 (Non-payment));

(ii) any right, power, authority or discretion vested in any Party or any group of Finance Parties has not been exercised; and

(iii) any notice or request made by the Company (other than a Utilisation Request) is made on behalf of and with the consent and knowledge of all the Transaction Obligors.

(c) Each of the Agent and the Security Agent may engage and pay for the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts.

(d) Without prejudice to the generality of paragraph (c) above or paragraph (e) below, each of the Agent and the Security Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the Agent or Security Agent (as applicable), (and so separate from any lawyers instructed by the Lenders) if the Agent or Security Agent (as applicable), in its reasonable opinion deems this to be desirable.

(e) Each of the Agent and the Security Agent may rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts (whether obtained by the Agent or by the Security Agent or by any
other Party) and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.

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

   (i) be liable for any error of judgment made by any such person; or

   (ii) be bound to supervise, or be in any way responsible for any loss incurred by reason of misconduct, omission or default on the part, of any such person,

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

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

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

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

28.9 27.9 Responsibility for documentation

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

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

(b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document or the Security Property or any other agreement, arrangement or
28.10 **No duty to monitor**

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

(a) whether or not any Default has occurred;

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

(c) whether any other event specified in any Finance Document has occurred.

28.11 **Exclusion of liability**

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

(i) any damages, costs or losses to any person, any diminution in value, or any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Finance Document or the Security Property, unless directly caused by its gross negligence or wilful misconduct;

(ii) exercising, or not exercising, any right, power, authority or discretion given to it by, or in connection with, any Finance Document, the Security Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Finance Document or the Security Property;

(iii) any shortfall which arises on the enforcement or realisation of the Security Property; or

(iv) without prejudice to the generality of paragraphs (i) to (iii) above, any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of:

(A) any act, event or circumstance not reasonably within its control; or

(B) the general risks of investment in, or the holding of assets in, any jurisdiction,

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

(b) No Party (other than the Agent, the Security Agent, or that Receiver or that Delegate (as applicable)) may take any proceedings against any officer, employee or agent of the Agent, the Security Agent, or a Receiver or a Delegate, in respect of any claim it might have against the Agent, the Security Agent or a Receiver or a Delegate or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document or any Security Property [and any officer, employee or agent of the Agent, the Security Agent or a Receiver or a Delegate may rely on this Clause 278.11 [subject to Clause 1.4 (Third party rights) and the provisions of the Third Parties Act].

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

(d) Nothing in this Agreement shall oblige the Agent, the Security Agent or the Arranger to carry out:

   (i) any "know your customer" or other checks in relation to any person; or

   (ii) any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any Finance Party,

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

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

28.12 27.12 Lenders' indemnity to the Agent and Security Agent

(a) Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify the Agent, the Security Agent and every Receiver and every Delegate, within three Business Days of demand, against any cost, loss or liability [(including, without limitation, for negligence or any other category of liability whatsoever)] incurred by any of them (otherwise than by reason of the Agent's, the Security Agent's or the Receiver's or Delegate's gross negligence or wilful misconduct) [(or, in the case of any cost, loss or liability pursuant to Clause 312.10 (Disruption to Payment Systems etc.), notwithstanding the Agent's negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent)] in acting as Agent, Security Agent— or Receiver or Delegate—under the Finance Documents (unless the relevant Agent, Security Agent— or Receiver or Delegate—has been reimbursed by an Obligor pursuant to a Finance Document).

(b) Subject to paragraph (c) below, the Company shall immediately on demand reimburse any Lender for any payment that Lender makes to the Agent or the Security Agent pursuant to paragraph (a) above.

(c) Paragraph (b) above shall not apply to the extent that the indemnity payment in respect of which the Lender claims reimbursement relates to a liability of the Agent or the Security Agent to an Obligor.

28.13 27.13 Resignation of the Agent and the Security Agent

(a) Each of the Agent and the Security Agent may resign and appoint one of its Affiliates acting through an office [in the United Kingdom] as successor by giving notice to the other Finance Parties and the Company.

(b) Alternatively the Agent or the Security Agent may resign by giving 30 days' notice to the other Finance Parties and the Company, in which case the Majority Lenders (after consultation with the other Finance Parties and the Company) may appoint a successor Agent or Security Agent (as applicable).

(c) If the Majority Lenders have not appointed a successor Agent or Security Agent in accordance with paragraph (b) above within 20 days after notice of

Users should consider including this wording if the optional Clause 32.10 (31.10) (Disruption to Payment Systems etc.) has been included.
resignation was given, the retiring Agent or Security Agent (as applicable) (after consultation with the other Finance Parties and Company) may appoint a successor Agent or Security Agent (as applicable) [(acting through an office in the United Kingdom)].

(d) If the Agent wishes to resign because (acting reasonably) it has concluded that it is no longer appropriate for it to remain as agent and the Agent is entitled to appoint a successor Agent under paragraph (c) above, the Agent may (if it concludes (acting reasonably) that it is necessary to do so in order to persuade the proposed successor Agent to become a party to this Agreement as Agent) agree with the proposed successor Agent amendments to this Clause 27-28 [and any other term of this Agreement dealing with the rights or obligations of the Agent] consistent with then current market practice for the appointment and protection of corporate trustees together with any reasonable amendments to the agency fee payable under this Agreement which are consistent with the successor Agent's normal fee rates and those amendments will bind the Parties.

(e) The retiring Agent or Security Agent (as applicable) shall, [at its own cost,] make available to the successor Agent or Security Agent (as applicable) such documents and records and provide such assistance as the successor Agent or Security Agent may reasonably request for the purposes of performing its functions as Agent or Security Agent (as applicable) under the Finance Documents. [The Company shall, within three Business Days of demand, reimburse the retiring Agent or Security Agent (as applicable) for the amount of all costs and expenses (including legal fees) properly incurred by it in making available such documents and records and providing such assistance.]

(f) The resignation notice of the Agent or Security Agent (as applicable) shall only take effect upon:

(i) the appointment of a successor; and

(ii) (in the case of the Security Agent) the transfer of the Security Property to that successor.

(g) Upon the appointment of a successor, the retiring Agent or Security Agent (as applicable) shall be discharged from any further obligation in respect of the Finance Documents (other than its obligations under paragraph (b) of Clause 27-28 (Winding up of trust) and (e) above) but shall remain entitled to the benefit of Clause 14.3 (Indemnity to the Agent), Clause 14.4 (Indemnity to the Security Agent) and this Clause 27-28 (and any fees for the account of the retiring Agent or Security Agent (as applicable) shall cease to accrue from (and shall be payable on) that date). Any successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.

(h) After consultation with the Company, the Majority Lenders may, by giving 30 days' notice to the Agent or Security Agent (as applicable), require it to resign in accordance with paragraph (b) above. In this event, the Agent or Security
Agent (as applicable) shall resign in accordance with paragraph (b) above [but the cost referred to in paragraph (e) above shall be for the account of the Company].

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

(i) the Agent fails to respond to a request under Clause 12.8 (FATCA Information) and [the Company or] a Lender reasonably believes that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;

(ii) the information supplied by the Agent pursuant to Clause 12.8 (FATCA Information) indicates that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date; or

(iii) the Agent notifies the Company and the Lenders that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;

and (in each case) [the Company or] a Lender reasonably believes that a Party will be required to make a FATCA Deduction that would not be required if the Agent were a FATCA Exempt Party, and [the Company or] that Lender, by notice to the Agent, requires it to resign.222225

28.14 27.14 Confidentiality

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

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

28.15 27.15 Relationship with the other Finance Parties

(a) [Subject to Clause 25.10 (Pro rata interest settlement), the]/[The] Agent may treat the person shown in its records as Lender [or Hedge Counterparty]222226 at the opening of business (in the place of the Agent's principal office as notified

222225 This may not be appropriate for all circumstances. For further information see the LMA 2014 Summary Note on FATCA (available through the LMA website).

222226 Include for a floating rate loan with hedging by way of an interest rate swap.
to the Finance Parties from time to time) as the Lender acting through its Facility Office [or, as the case may be, Hedge Counterparty]°.

(i) [entitled to or liable for any payment due under any Finance Document on that day; and]

(ii) entitled to receive and act upon any notice, request, document or communication or make any decision or determination under any Finance Document made or delivered on that day,

unless it has received not less than five Business Days’ prior notice from that Lender [or Hedge Counterparty]° to the contrary in accordance with the terms of this Agreement.

(b) [Each Lender shall supply the Agent with any information required by the Agent in order to calculate the Mandatory Cost in accordance with Schedule 5 (Mandatory Cost formula).]°

(c) Any Lender [or Hedge Counterparty]° may by notice to the Agent appoint a person to receive on its behalf all notices, communications, information and documents to be made or despatched to that Lender [or Hedge Counterparty]° 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 3.4.5 (Electronic communication)) electronic mail address and/or any other information required to enable the transmission of information by that means (and, in each case, the department or officer, if any, for whose attention communication is to be made) and be treated as a notification of a substitute address, fax number, electronic mail address (or such other information), department and officer by that Lender for the purposes of Clause 3.4.2 (Addresses) and paragraph (a)(ii) of Clause 3.4.5 (Electronic communication) and the Agent shall be entitled to treat such person as the person entitled to receive all such notices, communications, information and documents as though that person were that Lender [or Hedge Counterparty]°.

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

° Include for a floating rate loan with hedging by way of an interest rate swap.
° Include for a floating rate loan with hedging by way of an interest rate swap.
° This reference is suitable if the LMA Mandatory Cost Schedule is used.
° Include for a floating rate loan with hedging by way of an interest rate swap.
° Include for a floating rate loan with hedging by way of an interest rate swap.
28.16 Credit appraisal by the Lenders[ and Hedge Counterparties]

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

(a) the financial condition, status and nature of each member of the Group;

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

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

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

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

28.17 Agent's and Security Agent's management time

(a) Any amount payable to the Agent or Security Agent under Clause 14.3 (Indemnity to the Agent), Clause 14.4 (Indemnity to the Security Agent), Clause 16 (Costs and expenses) and Clause 27.12 (Lenders' indemnity to the Agent and Security Agent) shall include the cost of utilising the management time or other resources of the Agent or Security Agent (as applicable) and will be calculated on the basis of such reasonable daily or hourly rates as the Agent or Security Agent may notify to the Company and the other Finance Parties, and is in addition to any fee paid or payable to the Agent or Security Agent under Clause 11 (Fees).

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230 Include for a floating rate loan with hedging by way of an interest rate swap.

231 Include for a floating rate loan with hedging by way of an interest rate swap.
Without prejudice to paragraph (a) above, in the event of:

(i) a Default;

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

(iii) the Security Agent and the Company agreeing that it is otherwise appropriate in the circumstances,

the Company shall pay to the Security Agent any additional remuneration that may be agreed between them or determined pursuant to paragraph (c) below.

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

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

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

No responsibility to perfect Transaction Security
The Security Agent shall not be liable for any failure to:
require the deposit with it of any deed or document certifying, representing or constituting the title of any Transaction Obligor to any of the Security Assets;

obtain any licence, consent or other authority for the execution, delivery, legality, validity, enforceability or admissibility in evidence of any Finance Document or the Transaction Security;

register, file or record or otherwise protect any of the Transaction Security (or the priority of any of the Transaction Security) under any law or regulation or to give notice to any person of the execution of any Finance Document or of the Transaction Security;

take, or to require any Transaction Obligor to take, any step to perfect its title to any of the Security Assets or to render the Transaction Security effective or to secure the creation of any ancillary Security under any law or regulation; or


**28.21 Insurance by Security Agent**

(a) The Security Agent shall not be obliged:

(i) to insure any of the Security Assets;

(ii) to require any other person to maintain any insurance; or

(iii) to verify any obligation to arrange or maintain insurance contained in any Finance Document,

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

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

**28.22 Custodians and nominees**

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

**28.23 Delegation by the Security Agent**

(a) Each of the Security Agent-- and any Receiver and any Delegate-- may, at any time, delegate by power of attorney or otherwise to any person for any period, all or any right, power, authority or discretion vested in it in its capacity as such.
(b) That delegation may be made upon any terms and conditions (including the power to sub-delegate) and subject to any restrictions that the Security Agent, or that Receiver or that Delegate (as the case may be) may, in its discretion, think fit in the interests of the Secured Parties.

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

28.24 Additional Security Agents

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

(i) if it considers that appointment to be in the interests of the Secured Parties;

(ii) for the purposes of conforming to any legal requirement, restriction or condition which the Security Agent deems to be relevant; or

(iii) for obtaining or enforcing any judgment in any jurisdiction,

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

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

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

28.25 Acceptance of title

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

28.26 Winding up of trust

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

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

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

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

(ii) any Security Agent which has resigned pursuant to Clause 278.13 (Resignation of the Agent and the Security Agent) shall release, without recourse or warranty, all of its rights under each Security Document.

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

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

28.29 Role of Reference Banks
(a) No Reference Bank is under any obligation to provide a quotation or any other information to the Agent.

(b) No Reference Bank will be liable for any action taken by it under or in connection with any Finance Document, or for any Reference Bank Quotation, unless directly caused by its gross negligence or wilful misconduct.

(c) No Party (other than the relevant Reference Bank) may take any proceedings against any officer, employee or agent of any Reference Bank in respect of any claim it might have against that Reference Bank or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document, or to any Reference Bank Quotation, and any officer, employee or agent of each Reference Bank may rely on this Clause 28.29 subject to Clause 1.4 (Third party rights) and the provisions of the Third Parties Act.

28.30 Third party Reference Banks
A Reference Bank which is not a Party may rely on Clause 28.29 (Role of Reference Banks), Clause 378.3 (Other exceptions) and Clause 39–40 (Confidentiality of Funding
APPLICATION OF PROCEEDS

Order of application

Subject to Clause 28.2 (Prospective liabilities), all amounts from time to time received or recovered by the Security Agent pursuant to the terms of any Finance Document or in connection with the realisation or enforcement of all or any part of the Transaction Security (for the purposes of this Clause 28.1, the "Recoveries") shall be held by the Security Agent on trust to apply them at any time as the Security Agent (in its discretion) sees fit, to the extent permitted by applicable law (and subject to the provisions of this Clause 28.1, in the following order:

(a) in discharging any sums owing to the Security Agent—or any Receiver—or any Delegate;

(b) in payment of all costs and expenses incurred by the Agent or any Secured Party in connection with any realisation or enforcement of the Transaction Security taken in accordance with the terms of this Agreement; and

(c) in payment to the Agent for application in accordance with Clause 34.2.5 (Partial payments).

Prospective liabilities

Following [acceleration]/[enforcement of any of the Transaction Security] the Security Agent may, in its discretion, hold any amount of the Recoveries in an interest bearing suspense or impersonal account(s) in the name of the Security Agent with such financial institution (including itself) and for so long as the Security Agent shall think fit (the interest being credited to the relevant account) for later application under Clause 28.1 (Order of application) in respect of:

(a) any sum to the Security Agent—or any Receiver—or any Delegate; and

(b) any part of the Secured Liabilities,

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

Investment of proceeds

Prior to the application of the proceeds of the Recoveries in accordance with Clause 28.1 (Order of application) the Security Agent may, in its discretion, hold all or part of those proceeds in an interest bearing suspense or impersonal account(s) in the name of the Security Agent with such financial institution (including itself) and for so long as the Security Agent shall think fit (the interest being credited to the relevant account) pending the application from time to time of those moneys in the Security Agent's discretion in accordance with the provisions of this Clause 28.3.

If this Clause is included use the second option in Clause 1.4 (Third party rights).
29.4 **Currency Conversion**

(a) For the purpose of, or pending the discharge of, any of the Secured Liabilities the Security Agent may convert any moneys received or recovered by the Security Agent from one currency to another, at a market rate of exchange.

(b) The obligations of any Transaction Obligor to pay in the due currency shall only be satisfied to the extent of the amount of the due currency purchased after deducting the costs of conversion.

29.5 **Permitted Deductions**

The Security Agent shall be entitled, in its discretion:

(a) to set aside by way of reserve amounts required to meet, and to make and pay, any deductions and withholdings (on account of taxes or otherwise) which it is or may be required by any applicable law to make from any distribution or payment made by it under this Agreement; and

(b) to pay all Taxes which may be assessed against it in respect of any of the Security Assets, or as a consequence of performing its duties, or by virtue of its capacity as Security Agent under any of the Finance Documents or otherwise (other than in connection with its remuneration for performing its duties under this Agreement).

29.6 **Good Discharge**

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

(b) The Security Agent is under no obligation to make the payments to the Agent under paragraph (a) above in the same currency as that in which the obligations and liabilities owing to the relevant Finance Party are denominated.

30. **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.

31. **SHARING AMONG THE FINANCE PARTIES**

31.1 **Payments to Finance Parties**

If a Finance Party (a "Recovering Finance Party") receives or recovers any amount from an Obligor other than in accordance with Clause 31–32 (Payment mechanics) (a
"Recovered Amount") and applies that amount to a payment due under the Finance Documents then:

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

(b) the Agent shall determine whether the receipt or recovery is in excess of the amount the Recovering Finance Party would have been paid had the receipt or recovery been received or made by the Agent and distributed in accordance with Clause 31.32 (Payment mechanics), without taking account of any Tax which would be imposed on the Agent in relation to the receipt, recovery or distribution; and

(c) the Recovering Finance Party shall, within three Business Days of demand by the Agent, pay to the Agent an amount (the "Sharing Payment") equal to such receipt or recovery less any amount which the Agent determines may be retained by the Recovering Finance Party as its share of any payment to be made, in accordance with Clause 31.32.5 (Partial payments).

31.2 Redistribution of payments
The Agent shall treat the Sharing Payment as if it had been paid by the relevant Obligor and distribute it between the Finance Parties (other than the Recovering Finance Party) (the "Sharing Finance Parties") in accordance with Clause 31.32.5 (Partial payments) towards the obligations of that Obligor to the Sharing Finance Parties.

31.3 Recovering Finance Party’s rights
On a distribution by the Agent under Clause 30.1.2 (Redistribution of payments) of a payment received by a Recovering Finance Party from an Obligor, as between the relevant Obligor and the Recovering Finance Party, an amount of the Recovered Amount equal to the Sharing Payment will be treated as not having been paid by that Obligor.

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

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

(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.

31.5 Exceptions
(a) This Clause 30.31 shall not apply to the extent that the Recovering Finance Party would not, after making any payment pursuant to this Clause, have a valid and enforceable claim against the relevant Obligor.
(b) A Recovering Finance Party is not obliged to share with any other Finance Party any amount which the Recovering Finance Party has received or recovered as a result of taking legal or arbitration proceedings, if:

(i) it notified that other Finance Party of the legal or arbitration proceedings; and

(ii) that other Finance Party had an opportunity to participate in those legal or arbitration proceedings but did not do so as soon as reasonably practicable having received notice and did not take separate legal or arbitration proceedings.
SECTION 12
ADMINISTRATION

32.4.1 Payments to the Agent

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

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

32.4.2 Distributions by the Agent

Each payment received by the Agent under the Finance Documents for another Party shall, subject to Clause 32.4.3 (Distributions to an Obligor) and Clause 32.4.4 (Clawback and pre-funding) be made available by the Agent as soon as practicable after receipt to the Party entitled to receive payment in accordance with this Agreement (in the case of a Lender, for the account of its Facility Office), to such account as that Party may notify to the Agent by not less than five Business Days’ notice with a bank specified by that Party in the principal financial centre of the country of that currency (or, in relation to euro, in the principal financial centre of a Participating Member State or London, as specified by that Party).

32.4.3 Distributions to an Obligor

The Agent may (with the consent of the Obligor or in accordance with Clause 32.4.3 (Set-off)) apply any amount received by it for that Obligor in or towards payment (on the date and in the currency and funds of receipt) of any amount due from that Obligor under the Finance Documents or in or towards purchase of any amount of any currency to be so applied.

32.4.4 Clawback and pre-funding

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

(b) Unless paragraph (c) below applies, if the Agent pays an amount to another Party and it proves to be the case that the Agent had not actually received that amount, then the Party to whom that amount (or the proceeds of any related exchange contract) was paid by the Agent shall on demand refund the same to the Agent together with interest on that amount from the date of payment to the date of receipt by the Agent, calculated by the Agent to reflect its cost of funds.
(c) If the Agent [has notified the Lenders that it] is willing to make available amounts for the account of a Borrower before receiving funds from the Lenders then if and to the extent that the Agent does so but it proves to be the case that it does not then receive funds from a Lender in respect of a sum which it paid to a Borrower:

(i) [the Agent shall notify the Company of that Lender's identity and] the Borrower to whom that sum was made available shall on demand refund it to the Agent; and

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

32.5 Partial payments

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

(i) first, in or towards payment pro rata of any unpaid amount owing to the Agent, the Security Agent, or any Receiver or any Delegate under the Finance Documents;

(ii) secondly, in or towards payment pro rata of any accrued interest on any Property Protection/Cure Loans due but unpaid under this Agreement;

(iii) thirdly, in or towards payment pro rata of any principal of Property Protection/Cure Loans due but unpaid under this Agreement;

(iv) fourthly, in or towards payment pro rata of:

(A) any accrued interest and fees due but unpaid under this Agreement; and

(B) any periodical payments (not being payments as a result of termination or closing out) due but unpaid under the Hedging Agreements;

(v) fifthly, in or towards payment pro rata of:

To be included if Property Protection/Cure Loans are provided for.

Include for a floating rate loan with hedging by way of an interest rate swap.
(A) any principal due but unpaid under this Agreement; and

(B) [any payments as a result of termination or closing out due but unpaid under the Hedging Agreements; and

(vi) **sixthly**, in or towards payment pro rata of any other sum due but unpaid under the Finance Documents.

(b) The Agent shall, if so directed by [all the Lenders][the Majority Lenders] [and the Hedge Counterparties], vary, or instruct the Security Agent to vary (as applicable), the order set out in paragraphs (a)(ii) to (vi) above. Any such variation may include the re-ordering of obligations set out in any such paragraph.

(c) Paragraphs (a) and (b) above will override any appropriation made by an Obligor.

32.6 **31.6** No set-off by Obligors

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

(b) [Paragraph (a) above shall not affect the operation of any payment or close-out netting in respect of any amounts owing under any Hedging Agreement.]  

32.7 **31.7** Business Days

(a) Any payment under the Finance Documents which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).

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

32.8 **31.8** Currency of account

(a) Subject to paragraphs (b) and (c) below, [insert currency of Loan] is the currency of account and payment for any sum due from an Obligor under any Finance Document.

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

(c) Any amount expressed to be payable in a currency other than [insert currency of Loan] shall be paid in that other currency.

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235 Include for a floating rate loan with hedging by way of an interest rate swap.

236 Include for a floating rate loan with hedging by way of an interest rate swap.

237 Include for a floating rate loan with hedging.
32.9 Change of currency

(a) Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:

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

(ii) any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the Agent (acting reasonably).

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

32.10 Disruption to Payment Systems etc.

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

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

(b) the Agent shall not be obliged to consult with the Company in relation to any changes mentioned in paragraph (a) above if, in its opinion, it is not practicable to do so in the circumstances and, in any event, shall have no obligation to agree to such changes;

(c) the Agent may consult with the Finance Parties in relation to any changes mentioned in paragraph (a) above but shall not be obliged to do so if, in its opinion, it is not practicable to do so in the circumstances;

(d) any such changes agreed upon by the Agent and the Company shall (whether or not it is finally determined that a Disruption Event has occurred) be binding upon the Parties as an amendment to (or, as the case may be, waiver of) the terms of the Finance Documents notwithstanding the provisions of Clause 37.38 (Amendments and waivers);

(e) the Agent shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever (including, without limitation for negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent) arising as a result
of its taking, or failing to take, any actions pursuant to or in connection with this Clause 34.2.10; and

(f) the Agent shall notify the Finance Parties of all changes agreed pursuant to paragraph (d) above.]

33. SET-OFF

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

34. NOTICES

34.1 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.

34.2 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 the Company, that identified with its name below;

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

(c) in the case of the Agent and the Security Agent, that identified with its name below,

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

34.3 Delivery

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

(i) if by way of fax, when received in legible form; or

(ii) if by way of letter, when it has been left at the relevant address or [five] Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address;

[Include for a floating rate loan with hedging by way of an interest rate swap.]
and, if a particular department or officer is specified as part of its address details provided under Clause 34.2 (Addresses), if addressed to that department or officer.

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

(c) All notices from or to an Obligor shall be sent through the Agent.

(d) Any communication or document made or delivered to the Company in accordance with this Clause will be deemed to have been made or delivered to each of the Obligors.

(e) Any communication or document which becomes effective, in accordance with paragraphs (a) to (d) above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

34.4 Notification of address and fax number

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

34.5 Electronic communication

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

(i) notify each other in writing of their electronic mail address and/or any other information required to enable the transmission of information by that means; and

(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 such electronic communication as specified in paragraph (a) above to be made between an Obligor and a Finance Party may only be made in that way to the extent that those two Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication.

(c) Any such electronic communication as specified in paragraph (a) above made between any two Parties will be effective only when actually received (or made available) in readable form and in the case of any electronic communication made by a Party to the Agent or the Security Agent only if it is addressed in such a manner as the Agent or the Security Agent shall specify for this purpose.
(d) Any electronic communication which becomes effective, in accordance with paragraph (c) above, after 5:00 p.m. in the place in which the Party to whom the relevant communication is sent or made available has its address for the purpose of this Agreement shall be deemed only to become effective on the following day.

(e) Any reference in a Finance Document to a communication being sent or received shall be construed to include that communication being made available in accordance with this Clause 301.5.

34.6 English language

(a) Any notice given under or in connection with any Finance Document must be in English.

(b) All other documents provided under or in connection with any Finance Document must be:

(i) in English; or

(ii) if not in English, and if so required by the Agent, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

35. CALCULATIONS AND CERTIFICATES

35.1 Accounts

In any litigation or arbitration proceedings arising out of or in connection with a Finance Document, the entries made in the accounts maintained by a Finance Party are _prima facie_ evidence of the matters to which they relate.

35.2 Certificates and Determinations

Any certification or determination by a Finance Party of a rate or amount under any Finance Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

35.3 Day count convention

Any interest, commission or fee accruing under a Finance Document will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of \(\frac{360}{365}\) days or, in any case where the practice in the Relevant Market differs, in accordance with that market practice.

36. PARTIAL INVALIDITY

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

\[\text{Sterling and Hong Kong dollars follow a day count convention of 365 days.}\]
37. **REMEDIES AND WAIVERS**

No failure to exercise, nor any delay in exercising, on the part of any Finance Party, any right or remedy under a Finance Document shall operate as a waiver of any such right or remedy or constitute an election to affirm any of the Finance Documents. No election to affirm any Finance Document on the part of any Finance Party shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in each Finance Document are cumulative and not exclusive of any rights or remedies provided by law.

38. **AMENDMENTS AND WAIVERS**

38.1 **Required consents**

(a) Subject to Clause 37.2 (All Lender matters) and Clause 37.3 (Other exceptions), any term of the Finance Documents may be amended or waived only with the consent of the Majority Lenders and the Company and any such amendment or waiver will be binding on all Parties.

(b) The Agent may effect, on behalf of any Finance Party, any amendment or waiver permitted by this Clause 37.

(c) Without prejudice to the generality of paragraphs (c), (d) and (e) of Clause 27.8 (Rights and discretions), the Agent may engage, pay for and rely on the services of lawyers in determining the consent level required for and effecting any amendment, waiver or consent under this Agreement.

(d) Each Obligor agrees to any such amendment or waiver permitted by this Clause 37 which is agreed to by the Company. This includes any amendment or waiver which would, but for this paragraph (d), require the consent of all of the Obligors.

38.2 **All Lender matters**

[Subject to Clause 37.4 (Replacement of Screen Rate) an amendment, waiver or (in the case of a Security Document) a consent of, or in relation to, any term of a Finance Document that has the effect of changing or which relates to:

(a) the definition of "Majority Lenders" in Clause 1.1 (Definitions);

(b) an extension to the date of payment of any amount under the Finance Documents [(other than in relation to Clause 7.3 (Mandatory prepayment) and Clause 7.4 (Application of mandatory prepayments)];

(c) a reduction in the Margin or a reduction in the amount of any payment of principal, interest, fees or commission payable;]

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Lenders should consider sensitivities which they may have to the consequences of such amendments or waivers which change or relate to Clause 7.3 (Mandatory prepayment) and Clause 7.4 (Application of mandatory prepayments) being subject to Majority Lender consent only.
(d) [a change in currency of payment of any amount under the Finance Documents;]

(e) an increase in any Commitment or the Total Commitments, an extension of any Availability Period or any requirement that a cancellation of Commitments reduces the Commitments rateably under the Facility;

(f) a change to the Company or the Borrowers other than in accordance with Clause 26-27 (Changes to the Transaction Obligors);

(g) any provision which expressly requires the consent of all the Lenders;

(h) Clause 2.3 (Finance Parties’ rights and obligations), [Clause 7.3 (Mandatory prepayment), Clause 7.4 (Application of mandatory prepayments),] Clause 25 (Changes to the Lenders and Hedge Counterparties), [Clause 30-31 (Sharing among the Finance Parties),] this Clause 37, Clause 41-42 (Governing Law) or Clause 42.3.1 (Jurisdiction);

(i) (other than as expressly permitted by the provisions of any Finance Document) the nature or scope of:

   (i) the guarantee and indemnity granted under Clause 18 (Guarantee and indemnity);

   (ii) the Security Assets; or

   (iii) the manner in which the proceeds of enforcement of the Transaction Security are distributed

(except in the case of paragraphs (ii) and (iii) above, insofar as it relates to a sale or disposal of an asset which is the subject of the Transaction Security where such sale or disposal is expressly permitted under this Agreement or any other Finance Document);

(j) the release of any guarantee and indemnity granted under Clause 18 (Guarantee and indemnity) or of any Transaction Security unless permitted under this Agreement or any other Finance Document or relating to a sale or disposal of an asset which is the subject of the Transaction Security where such sale or disposal is expressly permitted under this Agreement or any other Finance Document; or

(k) [                     ],

shall not be made, or given, without the prior consent of all the Lenders.

38.3 37.3 Other exceptions

(a) An amendment or waiver which relates to the rights or obligations of the Agent, the Security Agent[,][or] the Arranger [or a Reference Bank] (each in their capacity as such) may not be effected without the consent of the Agent, the Security Agent[,][or] the Arranger [or that Reference Bank], as the case may be.
(b) [An amendment or waiver which relates to the rights or obligations of [the]/[a] Hedge Counterparty (in its capacity as such) may not be effected without the consent of [the]/[that] Hedge Counterparty.] 241

38.4  [Replacement of Screen Rate]

(a) Subject to Clause 37.3 (Other exceptions), if the Screen Rate is not available for [sterling]/[euro]/[other], any amendment or waiver which relates to providing for another benchmark rate to apply in relation to [sterling]/[euro]/[other] in place of that Screen Rate (or which relates to aligning any provision of a Finance Document to the use of that benchmark rate) may be made with the consent of the Majority Lenders and the Obligors.

(b) [If any Lender fails to respond to a request for an amendment or waiver described in paragraph (a) above within [   ] Business Days (unless the Company and the Agent agree to a longer time period in relation to any request) of that request being made:

(i) its Commitment shall not be included for the purpose of calculating the Total Commitments when ascertaining whether any relevant percentage of Total Commitments has been obtained to approve that request; and

(ii) its status as a Lender shall be disregarded for the purpose of ascertaining whether the agreement of any specified group of Lenders has been obtained to approve that request.]

39. CONFIDENTIAL INFORMATION

39.1 Confidentiality

Each Finance Party agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by Clause 38.2 (Disclosure of Confidential Information) [and Clause 38.3 ([Disclosure to numbering service providers])], and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information.

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241 Include for a floating rate loan with hedging by way of an interest rate swap.

242 Include if the Loan is in sterling.

243 Include if the Loan is in euro.

244 If the Loan is in a currency other than sterling or euro include reference to that currency here.

245 Include if the Loan is in sterling.

246 Include if the Loan is in euro.

247 If the Loan is in a currency other than sterling or euro include reference to that currency here.
Disclosure of Confidential Information

Any Finance Party may disclose:

(a) to any of its Affiliates [and Related Funds] and any of its or their officers, directors, employees, professional advisers, auditors, partners and [Representatives] such Confidential Information as that Finance Party shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this paragraph (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 Agent or Security Agent and, in each case, 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 any Finance Party or by a person to whom paragraph (b)(i) or (ii) above applies to receive communications, notices, information or documents delivered pursuant to the Finance Documents on its behalf (including, without limitation, any person appointed under paragraph (c) of Clause 278.15 (Relationship with the other Finance Parties));

(iv) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in paragraph (b)(i) or (ii) above;

(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) to whom information is required to be disclosed in connection with any Insurance;

(viii) [to whom or for whose benefit that Finance Party charges, assigns or otherwise creates Security (or may do so) pursuant to Clause 25.9 (Security over Lenders' rights)]

(ix) who is a Party, a member of the Group or any related entity of an Obligor; or

(x) with the consent of the Company;

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

(A) in relation to paragraphs (b)(i), (b)(ii) and (b)(iii) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking except that there shall be no requirement for a Confidentiality Undertaking if the recipient is a professional adviser and is subject to professional obligations to maintain the confidentiality of the Confidential Information;

(B) in relation to paragraph (b)(iv) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking or is otherwise bound by requirements of confidentiality in relation to the Confidential Information they receive and is informed that some or all of such Confidential Information may be price-sensitive information;

(C) in relation to paragraphs (b)(v) to (b)(viii) above, the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of that Finance Party, it is not practicable so to do in the circumstances; [and]

(c) to any person appointed by that Finance Party or by a person to whom paragraph (b)(i) or (b)(ii) above applies to provide administration or settlement services in respect of one or more of the Finance Documents including without limitation, in relation to the trading of participations in respect of the Finance Documents, such Confidential Information as may be required to be disclosed to enable such service provider to provide any of the services referred to in this paragraph (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

\[248251\] Include if optional Clause 25.9 (Security over Lenders' rights) is included.
confidentiality undertaking agreed between the Company 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].

39.3 Disclosure to numbering service providers

(a) Any Finance Party may disclose to any national or international numbering service provider appointed by that Finance Party to provide identification numbering services in respect of this Agreement, the Facility and/or one or more Obligors the following information:

(i) names of Obligors;

(ii) country of domicile of Obligors;

(iii) place of incorporation of Obligors;

(iv) date of this Agreement;

(v) Clause 41-42 (Governing Law);

(vi) the names of the Agent and the Arranger;

(vii) date of each amendment of this Agreement;

(viii) amount of Total Commitments;

(ix) currency of the Facility;

(x) type of Facility; 249252

(xi) ranking of Facility;

(xii) Termination Date for Facility;

(xiii) changes to any of the information previously supplied pursuant to paragraphs (i) to (xii) above; and

(xiv) such other information agreed between such Finance Party and the Company,

to enable such numbering service provider to provide its usual syndicated loan numbering identification services. 249253

249252 Term.
(b) The Parties acknowledge and agree that each identification number assigned to this Agreement, the Facility and/or one or more Obligors by a numbering service provider and the information associated with each such number may be disclosed to users of its services in accordance with the standard terms and conditions of that numbering service provider.

(c) [The Company]/[Each Obligor] represents that none of the information set out in paragraphs (a)(i) to (xiv) of paragraph (a) above is, nor will at any time be, unpublished price-sensitive information.

(d) [The Agent shall notify the Company and the other Finance Parties of:

(i) the name of any numbering service provider appointed by the Agent in respect of this Agreement, the Facility and/or one or more Obligors; and

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[250] This wording has been included to ensure that disclosure is made only for the purposes of enabling a numbering service provider to allocate an identification number to a syndicated facility agreement, one or more facilities made available under such facility agreement or any Obligor party to such facility agreement. The purpose of disclosure is not therefore to enable products that are directly or indirectly related to a facility agreement, its facilities or its Obligors to be allocated an identification number.

[251] The information listed in paragraph (a) reflects the information that is likely to be required to enable a numbering service provider ("NSP") to assign identification numbers/codes to this Agreement, the Facility and their ranking. Disclosure has been restricted to descriptive information about the Facility Agreement (including changes to that information) for two main reasons. Firstly, because once delivered to the NSP that information will not be subject to any confidentiality obligations on the part of the NSP or subscribers to the NSP. It has been assumed that as the NSP needs to disclose the information to its subscribers they would not be prepared to sign up to a confidentiality undertaking or require their subscribers to do so to protect Borrower confidential information. However, no dialogue has been had with NSP's in this regard.

The second reason for restricting the information that can be disclosed to NSP's is to limit the risk of that information being unpublished price-sensitive or inside-information (meaning, if it were known to the public it would likely have an effect on the price of securities issued by the relevant Borrower that are publicly traded). If unpublished price-sensitive or inside information were disclosed to a NSP (with or without the consent of the Borrower) by a Lender in circumstances where that information will be disclosed only to subscribers of the NSP (and not to the public), that Lender and the individuals concerned could be guilty of an offence under the insider dealing/market abuse regime in the UK. Restricting the information that can be disclosed by Lenders to NSP's to relatively anodyne and descriptive information helps to minimise the risk that the information will be unpublished price-sensitive or inside information.

However, because of the potential seriousness of this issue, because it is possible to envisage circumstances where all or part of the information specified in paragraph (a) may be unpublished price-sensitive or inside information and because only the Obligors can know with certainty whether any of that information is unpublished price-sensitive or inside information, the permission also requires the Obligors to represent to the Lenders that none of that information is unpublished price-sensitive information. The representation is contained in paragraph (c) as a means of ensuring reasonable steps have been taken to avoid inside or price-sensitive information being selectively disclosed with no confidentiality restrictions.

In most cases where the relevant Obligor has publicly traded securities, the information that is listed in paragraph (a) would, in any event, need to be disclosed by that Obligor in accordance with the UK disclosure requirements on issuers of listed securities and so the representation should not be onerous for such Obligors.
(ii) the number or, as the case may be, numbers assigned to this Agreement, the Facility and/or one or more Obligors by such numbering service provider.\[252\]

39.4 **Entire agreement**

This Clause 38-39 constitutes the entire agreement between the Parties in relation to the obligations of the Finance Parties under the Finance Documents regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.

39.5 **Inside information**

Each of the Finance Parties acknowledges that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and each of the Finance Parties undertakes not to use any Confidential Information for any unlawful purpose.

39.6 **Notification of disclosure**

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

(a) of the circumstances of any disclosure of Confidential Information made pursuant to paragraph (b)(v) of Clause 38.2 (Disclosure of Confidential Information) 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

(b) upon becoming aware that Confidential Information has been disclosed in breach of this Clause 38.2.

39.7 **Continuing obligations**

The obligations in this Clause 38-39 are continuing and, in particular, shall survive and remain binding on each Finance Party for a period of [twelve] 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.

\[252\] This requirement has been limited to the Agent on the assumption that if the Agent requests an identification number, it will, in any event, require all Parties to use that number in communications etc. If this is not the case, this Clause can be deleted.
40. **CONFIDENTIALITY OF FUNDING RATES [AND REFERENCE BANK QUOTATIONS]**

40.1 **Confidentiality and disclosure**

(a) The Agent and each Obligor agree to keep each Funding Rate [(and, in the case of the Agent, each Reference Bank Quotation)] confidential and not to disclose it to anyone, save to the extent permitted by paragraphs (b), (c) [and (d)] below.

(b) The Agent may disclose:

(i) any Funding Rate [(but not, for the avoidance of doubt, any Reference Bank Quotation)] to the relevant Borrower pursuant to Clause 8.65 (Notification of rates of interest); and

(ii) any Funding Rate [or any Reference Bank Quotation] to any person appointed by it to provide administration services in respect of one or more of the Finance Documents to the extent necessary to enable such service provider to provide those services if the service provider to whom that information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Agent and the relevant Lender [or Reference Bank, as the case may be].

(c) The Agent may disclose any Funding Rate [or any Reference Bank Quotation], and each Obligor may disclose any Funding Rate, to:

(i) any of its Affiliates and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives if any person to whom that Funding Rate [or Reference Bank Quotation] is to be given pursuant to this paragraph (i) is informed in writing of its confidential nature and that it may be price sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of that Funding Rate [or Reference Bank Quotation] or is otherwise bound by requirements of confidentiality in relation to it;

(ii) any person to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation if the person to whom that Funding Rate [or Reference Bank Quotation] is to be given is informed in writing of its confidential nature and that it may be price sensitive information except that there shall be no requirement to so inform if, in the opinion of the Agent or the relevant Obligor, as the case may be, it is not practicable to do so in the circumstances;

(iii) any person to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes if the person to whom that
Funding Rate [or Reference Bank Quotation] is to be given is informed in writing of its confidential nature and that it may be price sensitive information except that there shall be no requirement to so inform if, in the opinion of the Agent or the relevant Obligor, as the case may be, it is not practicable to do so in the circumstances; and

(iv) any person with the consent of the relevant Lender [or Reference Bank, as the case may be].

(d) [The Agent's obligations in this Clause 39-40 relating to Reference Bank Quotations are without prejudice to its obligations to make notifications under Clause 8.65 (Notification of rates of interest) provided that (other than pursuant to paragraph (b)(i) above) the Agent shall not include the details of any individual Reference Bank Quotation as part of any such notification.]

40.2 Related obligations

(a) The Agent and each Obligor acknowledge that each Funding Rate [(and, in the case of the Agent, each Reference Bank Quotation)] is or may be price sensitive information and that its use may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and the Agent and each Obligor undertake not to use any Funding Rate [or, in the case of the Agent, any Reference Bank Quotation] for any unlawful purpose.

(b) The Agent and each Obligor agree (to the extent permitted by law and regulation) to inform the relevant Lender [or Reference Bank, as the case may be]:

(i) of the circumstances of any disclosure made pursuant to paragraph (c)(ii) of Clause 39.1-40.1 (Confidentiality and disclosure) 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 any information has been disclosed in breach of this Clause 39-40.

40.3 No Event of Default

No Event of Default will occur under Clause 24.3 (Other obligations) by reason only of an Obligor's failure to comply with this Clause 39-40.

41. COUNTERPARTS

Each Finance Document may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of the Finance Document.
SECTION 13
GOVERNING LAW AND ENFORCEMENT

42. GOVERNING LAW
This Agreement [and any non-contractual obligations arising out of or in connection with it] are governed by English law.

43. ENFORCEMENT
43.1 Jurisdiction
(a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement any Finance Document (including a dispute relating to the existence, validity or termination of this Agreement any Finance Document) (a "Dispute").

(b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.

(c) This Clause 43.1 is for the benefit of the Finance Parties only. As a result, no Finance Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Finance Parties may take concurrent proceedings in any number of jurisdictions.

43.2 Service of process
(a) Without prejudice to any other mode of service allowed under any relevant law, each Obligor (other than an Obligor incorporated in England and Wales):

(i) irrevocably appoints [the Company] as its agent for service of process in relation to any proceedings before the English courts in connection with any Finance Document; and

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This wording is intended to make non-contractual obligations arising out of or in connection with the agreement subject to English law. However, if the document is used in a cross-border transaction where different transaction documents are governed by different governing laws, consider whether it is appropriate, in the context of that transaction, for English law to apply to non-contractual obligations arising out of or in connection with the transaction documents which are not governed by English law.

Users should consider the extent to which this clause may require amendment in light of the decision of the French Cour de cassation in Mme X v Rothschild. For a discussion of the issues involved, see the LMA note entitled "Jurisdiction Clauses in LMA facility documentation" available through the LMA website.

To the extent that the square bracketed wording relating to non-contractual obligations in Clause 42 (41.Governing Law) is included, this wording should be included in paragraph (a) of Clause 43.1 (42.1Jurisdiction).

To the extent that the square bracketed wording relating to non-contractual obligations in Clause 42 (41.Governing Law) is included, this wording should be included in paragraph (a) of Clause 43.1 (42.1Jurisdiction2).
(ii) agrees that failure by a process agent to notify the relevant Obligor of the process will not invalidate the proceedings concerned.

(b) If any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, the Company (on behalf of all the Obligors) must immediately (and in any event within [   ] days of such event taking place) appoint another agent on terms acceptable to the Agent. Failing this, the Agent may appoint another agent for this purpose.

(c) [insert name of Obligor] expressly agrees and consents to the provisions of this Clause 42-43 and Clause 41-42 (Governing Law).

This Agreement has been entered into on the date stated at the beginning of this Agreement.
## SCHEDULE 1

### THE ORIGINAL PARTIES AND PROPERTIES

**Part I**

**The Borrowers**

<table>
<thead>
<tr>
<th>Name of Borrower</th>
<th>Registration number (or equivalent, if any)</th>
</tr>
</thead>
</table>
**Part II**

The Original Lenders [- other than UK Non-Bank Lenders]  

<table>
<thead>
<tr>
<th>Name of Original Lender</th>
<th>Commitment</th>
<th>Treaty reference number</th>
<th>Passport scheme reference number and jurisdiction of tax residence (if applicable)</th>
</tr>
</thead>
</table>

256 259 If no Original Lender is a UK Non-Bank Lender, delete the words in square brackets from the heading of this Part.

257 260 Each of these must be included if the Original Lender holds a passport under the HMRC DT Treaty Passport Scheme and wishes that scheme to apply to the Agreement.
<table>
<thead>
<tr>
<th>Name of Original Lender</th>
<th>Commitment</th>
</tr>
</thead>
</table>

If no Original Lender is a UK Non-Bank Lender, delete this part of the Schedule and all references to it in the body of the Agreement.
Part IV

[The Original Hedge Counterparties]

[Name of Original Hedge Counterparty]

Include for a floating rate loan with hedging by way of an interest rate swap.
### Part V
#### Properties

<table>
<thead>
<tr>
<th>Owner</th>
<th>Address of Property</th>
<th>Allocated Loan Amount</th>
</tr>
</thead>
</table>

LMA.REF.IP.02 (investment properties)
SCHEDULE 2
CONDITIONS PRECEDENT

1. Transaction Obligors

(a) A copy of the constitutional documents of each Transaction Obligor.

(b) A copy of a resolution of the board of directors of each Transaction Obligor:

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

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

(iii) 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.

(c) A specimen of the signature of each person authorised by the resolution referred to in paragraph (b) above.

(d) [A copy of a resolution signed by all the holders of the issued shares in each Borrower, approving the terms of, and the transactions contemplated by, the Finance Documents to which the Borrower is a party.]

(e) A certificate of [the Company]/[each Transaction Obligor] (signed by a director) confirming that borrowing or guaranteeing or securing, as appropriate, the Total Commitments would not cause any borrowing, guarantee, security or similar limit binding on [any Transaction Obligor]/[it] to be exceeded.

(f) A certificate of an authorised signatory of the relevant Transaction Obligor certifying that each copy document relating to it specified in this Schedule 2 is correct, complete and in full force and effect as at a date no earlier than the date of this Agreement.

(g) A structure chart setting out the ownership of each Obligor, each Subordinated Creditor and each Property.

---

The LMA understands that it is common in the real estate finance market to include a condition precedent regarding "know your customer" procedures. Lenders may wish to consider the following wording "Evidence required by each Lender and the Agent for the purpose of any "know your customer" or similar identification procedures".
2. Financial Information

(a) A pro forma balance sheet of each Obligor as at the [first] Utilisation Date.
(b) The Original Financial Statements.
(c) The most recent audited consolidated financial statements of the Shareholder.
(d) Evidence that there is outstanding £[ ] by way of Subordinated Debt.
(e) [Evidence of the financial standing of each tenant of each Property.]
(f) Copies of the bank mandates for the Accounts.
(g) A funds flow statement setting out the funding and application of funds in relation to [acquisition of the Properties and the financing or refinancing of that acquisition and payment of fees, costs and expenses and Taxes in connection with the same].

3. Valuation and Survey

(a) A copy of the Initial Valuation.
(b) [Confirmation that the Agent's internal valuer has carried out a satisfactory inspection of each Property.]
(c) [An archaeological report/environmental report/ground condition report/measurement survey/structural survey/rights of light report/[ ] on each Property addressed to the Finance Parties.]
(d) A copy of the current energy performance certificate(s) in respect of each Property or evidence that an energy performance certificate is not required under applicable law or regulation.

4. Insurance

(a) Evidence[, by way of a letter from the Company's insurance brokers addressed to the Finance Parties,] that the insurance cover in force in respect of each Property complies with the terms of this Agreement and the necessary premia have been paid.
(b) An insurance valuation of each Property.

5. Property

[In this section an "acceptable undertaking" means a solicitor's undertaking from a firm of solicitors regulated by the Law Society of England and Wales[ in respect of the Properties located in England or Wales or the Law Society of Scotland in respect of the Properties located in Scotland] and approved for this purpose by the Agent and in form and substance satisfactory to the Agent.]

261264 Consider inserting if some of the Properties are located in Scotland.
(a) All title documents relating to the relevant Borrower's interests in each Property [or an acceptable undertaking to hold the same to the order of the Security Agent];

(b) Copies of all Lease Documents in electronic format;

(c) [For Properties in England and Wales, a clear Land Charges Registry search against the relevant Borrower or the results of Land Registry searches in favour of the Security Agent on the appropriate forms against all of the registered titles comprising the relevant Borrower's interests in the Properties and:

(i) giving not less than 20 Business Days' priority beyond the date of the relevant Security Agreement; and

(ii) showing no adverse entries.]

(d) [For Properties in Scotland, a clear search in the Property and Personal Registers for the relevant prescriptive periods or clear Land Register reports, as the case may be, together with clear searches in the Register of Inhibitions against the relevant Obligors showing:

(i) no adverse entries;

(ii) an advance notice as defined in the Land Registration etc. (Scotland) Act 2012 for each Standard Security giving not less than 20 protected Business Days beyond the date of the relevant Standard Security; and

(iii) no other advance notices as defined in the Land Registration etc. (Scotland) Act 2012.

(e) A copy of each advance notice referred to in paragraph (d) above.]

(f) A [certificate of/report on] title to each Property incorporating a report on the Lease Documents prepared by [[/the Company's solicitors] and addressed to the Finance Parties.

(g) An overview report prepared by [[/the Security Agent's solicitors] on each [certificate of/report on] title addressed to the Finance Parties.

(h) Evidence that all Security (other than under a Security Document) affecting the relevant Borrower's interests in the relevant Properties has been, or will be, discharged by the [first] Utilisation Date.

(i) All necessary Land Registry application forms in relation to [the transfer of each Property to the relevant Borrower and] the charging of [that/each] Property in favour of the Security Agent (including a form to note the obligation to make further advances, a form to register the restriction contained in the Security Agreement and a form for disclosable overriding interests), duly completed, accompanied by payment of the applicable Land Registry fees [or an acceptable undertaking in relation to the same].
(j) A land transaction return in relation to any stamp duty land tax payable in connection with the transfer of each Property to the relevant Borrower, duly completed (stating the Company's solicitors as the relevant Borrower's agent and directing the HM Revenue & Customs to send its certificate to the Company's solicitors), accompanied by payment of that stamp duty land tax and an undertaking from the Company's solicitors to deliver the land transaction return certificate to the Security Agent or its solicitors within three Business Days of receipt [or an acceptable undertaking in relation to the same].

(k) Copies of all Authorisations required in connection with [the transfer of each Property to the relevant Borrower and] the charging of [that/each] Property in favour of the Security Agent.

(l) [A copy of a notice to the reversioner of [the assignment/transfer of each Headlease to the relevant Obligor and] the charging of each Headlease to the Security Agent, accompanied by payment of the appropriate registration fees [or an acceptable undertaking to serve the same].]

(m) [A copy of the relevant rent demand for the latest instalment of rent under each Headlease.]

(n) Copies of rent authority letters to each tenant under any Lease Documents, together with a complete set of address labels [or an acceptable undertaking to serve the same].

(o) [A copy of the sale and purchase agreement for each Property and the relevant transfer of the Property.]

(p) [A copy of the vendor's completion statement relating to its sale of each Property.]

6. Security and other Finance Documents

(a) A Security Agreement executed by each Obligor and the Security Agent.

(b) [A Standard Security (together with all relevant intimation letters) executed by each Borrower that owns a Property in Scotland [and the Security Agent].]

(c) [An Assignation of Rent (together with all relevant intimation letters) executed by each Borrower that owns a Property in Scotland [and the Security Agent].]

(d) A Shareholder's Security Agreement executed by the Shareholder and the Security Agent.

(e) A Subordinated Creditor's Security Agreement executed by each Subordinated Creditor and the Security Agent.

(f) A Subordination Agreement executed by each Subordinated Creditor, each [Obligor] and the Security Agent.
(g) [Copies of each Hedging Agreement executed by [the/a] [Hedge Counterparty]/[hedge counterparty] and [the Company/the Borrower.].]

(h) Share certificates, duly executed stock transfer forms and the updated register of members of each Obligor.

(i) Completed forms MR01 in respect of each Security Document.

(j) (i) A notice to each occupational tenant, each [bank] operating an Account[, each party to a Hedging Agreement] and [ ], [substantially in the relevant form set out in the Security Agreement];

(ii) confirmation from each [bank] operating an Account [and each party to a Hedging Agreement] that it will acknowledge the notice to be sent to it, [substantially in the relevant form set out in the Security Agreement]; and

(iii) in the case of a notice to each tenant under a Lease Document, an appropriate address label to that tenant.

7. Managing Agent

(a) A copy of the appointment of the Managing Agent.

(b) A Duty of Care Agreement between the Managing Agent, the [Borrowers] one or more Obligors and the Security Agent.

8. Asset Manager

(a) A copy of the appointment of the Asset Manager.

(b) A Duty of Care Agreement between the Asset Manager, the Company and the Security Agent.

9. Tax

(a) A copy of the VAT registration certificate for each Obligor.

(b) [Evidence that each Borrower has duly elected to waive exemption in relation to each Property and that HM Revenue & Customs has received that election.]

(c) [Evidence that each Borrower has obtained an approval of HM Revenue & Customs for Non-Residents to the payment of rent by tenants without deduction of withholding tax.]

262265  Include for a floating rate loan with hedging.

263266   Include for a floating rate loan with hedging.

264267   Include for a floating rate loan with hedging.
10. Legal opinions

(a) A legal opinion of [ ], legal advisers to the Arranger and the Agent in England, substantially in the form distributed to the Original Lenders prior to signing this Agreement.

(b) If an Original Obligor is incorporated in a jurisdiction other than England and Wales, a legal opinion of the legal advisers to [the Arranger and the Agent] in the relevant jurisdiction, substantially in the form distributed to the Original Lenders prior to signing this Agreement.

11. Other documents and evidence

(a) Evidence that any process agent referred to in Clause 423.2 (Service of process), if not an Original Obligor, has accepted its appointment.

(b) Evidence of the payment of all outstanding arrangement fees and outstanding fees of [lawyers] and the Valuer.

(c) Evidence that any other fees, and the costs and expenses then due from the Company pursuant to Clause 11 (Fees) and Clause 16 (Costs and expenses) have been paid or will be paid by the [first] Utilisation Date.

(d) A copy of any other Authorisation or other document, opinion or assurance which the Agent considers to be necessary or desirable (if it has notified the Company accordingly) in connection with the entry into and performance of the transactions contemplated by any Finance Document or for the validity and enforceability of any Finance Document.
SCHEDULE 3

UTILISATION REQUEST

From: [Borrower]

To: [Agent]

Dated:

Dear Sirs

[Company] – [ ] Facility Agreement
dated [ ] (the "Agreement")

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

2. We wish to borrow a Loan on the following terms:

   Proposed Utilisation Date: [ ] (or, if that is not a Business Day, the next Business Day)
   Amount: [ ] or, if less, the Available Facility

3. We confirm that each condition specified in Clause 4.2 (Further conditions precedent) is satisfied on the date of this Utilisation Request.

4. The proceeds of this Loan should be credited to [account].

5. The purpose of the Loan is [ ].

6. [We confirm that you may [disburse the Loan through [LAWYERS] and] deduct from the Loan (although the amount of the Loan will remain the amount requested above):

   (a) the outstanding balance of the arrangement fee being £[ ];
   (b) any commitment fee due and payable at the Utilisation Date;
   (c) [ ] fees;
   (d) The fees of the Valuer and [ ];
   (e) Land Registry fees; and
   (f) Stamp duty land tax.]
7. This Utilisation Request is irrevocable.

Yours faithfully

...........................................

authorised signatory for

[name of relevant Borrower]
### SCHEDULE 4

[AMORTISATION SCHEDULE]

<table>
<thead>
<tr>
<th>Interest Payment Date</th>
<th>Amount</th>
</tr>
</thead>
</table>

Include only if required under Clause 6.1 *(Repayment of Loans)*
The extent to which Mandatory Costs are chargeable to the borrower on any transaction, and the method for calculating any such mandatory costs, is a matter for commercial agreement between the parties. Users should refer to the LMA note entitled "Withdrawal of the Mandatory Costs Schedule" (available through the LMA website) for a discussion of some of the issues involved in formulating any calculation methodology.
SCHEDULE 6
FORM OF TRANSFER CERTIFICATE

To: [ ] as Agent

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

Dated:

[Company] – [ ] Facility Agreement
dated [ ] (the "Agreement")

1. We refer to the Agreement. This is a Transfer Certificate. Terms defined in the Agreement have the same meaning in this Transfer Certificate unless given a different meaning in this Transfer Certificate.

2. We refer to Clause 25.5 (Procedure for transfer):
   (a) The Existing Lender and the New Lender agree to the Existing Lender transferring to the New Lender by novation and in accordance with Clause 25.5 (Procedure for transfer) all of the Existing Lender's rights and obligations under the Agreement and the other Finance Documents which relate to that portion of the Existing Lender's Commitment and participation in Loans under the Agreement as specified in the Schedule.
   (b) The proposed Transfer Date is [ ].
   (c) The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of Clause 334.2 (Addresses) are set out in the Schedule.

3. The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in paragraph (c) of Clause 25.4 (Limitation of responsibility of Existing Lenders).

4. The New Lender confirms, for the benefit of the Agent and without liability to any Obligor, that it is:
   (a) [a Qualifying Lender (other than a Treaty Lender);]
   (b) [a Treaty Lender;]
   (c) [not a Qualifying Lender].

---

Delete as applicable - each New Lender is required to confirm which of these three categories it falls within.
5. [The New Lender confirms that the person beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document is either:

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

(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

(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.]  

6. [The New Lender confirms that it holds a passport under the HMRC DT Treaty Passport scheme (reference number [ ] ) and is tax resident in [ ] , so that interest payable to it by borrowers is generally subject to full exemption from UK withholding tax, and requests that the Company notify each Borrower that it wishes that scheme to apply to this Agreement.]  

[6/7]. This Transfer Certificate may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Transfer Certificate.

[7/8]. This Transfer Certificate [and any non-contractual obligations arising out of or in connection with it] [is/are] governed by English law.

[8/9]. This Transfer Certificate has been entered into on the date stated at the beginning of this Transfer Certificate.

Note: The execution of this Transfer Certificate may not transfer a proportionate share of the Existing Lender's interest in the Transaction Security in all jurisdictions. It is the responsibility of the New Lender to ascertain whether any other documents or
other formalities are required to perfect a transfer of such a share in the Existing Lender's Transaction Security in any jurisdiction and, if so, to arrange for execution of those documents and completion of those formalities.
THE SCHEDULE

Commitment/rights and obligations to be transferred

[insert relevant details]

[Facility Office address, fax number and attention details for notices and account details for payments.]

[Existing Lender] [New Lender]

By: By:

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

[Agent]

By:
SCHEDULE 7
FORM OF ASSIGNMENT AGREEMENT

To: [ ] as Agent and [ ] as Company, for and on behalf of each Obligor

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

Dated:

[Company] - [ ] Facility Agreement
dated [ ] (the "Agreement")

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

2. We refer to Clause 25.6 (Procedure for assignment):

   (a) The Existing Lender assigns absolutely to the New Lender all the rights of the Existing Lender under the Agreement and the other Finance Documents which relate to that portion of the Existing Lender's Commitment and participations in Loans under the Agreement as specified in the Schedule.

   (b) The Existing Lender is released from all the obligations of the Existing Lender which correspond to that portion of the Existing Lender's Commitment and participations in Loans under the Agreement specified in the Schedule.

   (c) The New Lender becomes a Party as a Lender and is bound by obligations equivalent to those from which the Existing Lender is released under paragraph (b) above.

3. The proposed Transfer Date is [ ].

4. On the Transfer Date the New Lender becomes Party to the Finance Documents as a Lender.

5. The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of Clause 33.2 (Addresses) are set out in the Schedule.

6. The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in paragraph (c) of Clause 25.4 (Limitation of responsibility of Existing Lenders).

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If the Assignment Agreement is used in place of a Transfer Certificate in order to avoid a novation of rights/obligations for reasons relevant to a civil jurisdiction, local law advice should be sought to check the suitability of the Assignment Agreement due to the assumption of obligations contained in paragraph 2(c). This issue should be addressed at primary documentation stage.
7. The New Lender confirms, for the benefit of the Agent and without liability to any Obligor, that it is:

(a) [a Qualifying Lender falling (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;

(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

(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.]

9. [The New Lender confirms that it holds a passport under the HMRC DT Treaty Passport scheme (reference number [ ] and is tax resident in [ ] so that interest payable to it by borrowers is generally subject to full exemption from UK withholding tax, and requests that the Company notify each Borrower that it wishes that scheme to apply to this Agreement.]}

[9/10]. This Assignment Agreement acts as notice to the Agent (on behalf of each Finance Party) and, upon delivery in accordance with Clause 25.7 (Copy of Transfer Certificate or Assignment Agreement to Company), to the Company (on behalf of each Obligor) of the assignment referred to in this Assignment Agreement.

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273276 Delete as applicable - each New Lender is required to confirm which of these three categories it falls within.

274277 Include only if New Lender is a UK Non-Bank Lender - i.e. falls within paragraph (i)(B) of the definition of Qualifying Lender in Clause 12.1 (Definitions).

275278 Insert jurisdiction of tax residence.

276279 Include if New Lender holds a passport under the HMRC DT Treaty Passport Scheme and wishes that scheme to apply to the Facility Agreement.
This Assignment Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Assignment Agreement.

This Assignment Agreement [and any non-contractual obligations arising out of or in connection with it] [is/are] governed by English law.

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

This clause should follow the approach adopted as regards non-contractual obligations in Clause 41. This should be done (and this footnote deleted) before the Facility Agreement is signed.
THE SCHEDULE

Rights to be assigned and obligations to be released and undertaken

[insert relevant details]

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

[Existing Lender] [New Lender]

By: By:

This Assignment Agreement is accepted by the Agent and the Transfer Date is confirmed as [ ].

Signature of this Assignment Agreement by the Agent constitutes confirmation by the Agent of receipt of notice of the assignment referred to herein, which notice the Agent receives on behalf of each Finance Party.

[Agent]

By:

Note: The execution of this Assignment Agreement may not transfer a proportionate share of the Existing Lender's interest in the Security in all jurisdictions. It is the responsibility of the New Lender to ascertain whether any other documents or other formalities are required to perfect a transfer of such a share in the Existing Lender's Security in any jurisdiction and, if so, to arrange for execution of those documents and completion of those formalities.
SCHEDULE 8
FORM OF HEDGE COUNTERPARTY ACCESSION LETTER

To: [ ] as Agent

From: [Additional Hedge Counterparty] (the "Additional Hedge Counterparty")

Date: [ ]

[Company] – [ ] Facility Agreement
dated [ ] (the "Agreement")

We refer to the Agreement. This is a Hedge Counterparty Accession Letter. Terms defined in the Agreement have the same meaning in this Hedge Counterparty Accession Letter.

We refer to Clause 25.8 (Additional Hedge Counterparties). The Additional Hedge Counterparty agrees to become an Additional Hedge Counterparty and to be bound by the terms of the Agreement as an Additional Hedge Counterparty.

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

[Additional Hedge Counterparty]

By:

[Agent]

By:
SCHEDULE 9
FORM OF RESIGNATION LETTER

To: [ ] as Agent
From: [resigning Borrower] and [Company]
Dated:

Dear Sirs

[Company] – [ ] Facility Agreement
dated [ ] (the "Agreement")

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

2. Pursuant to [Clause 26.2 (Resignation of a Borrower), we request that [resigning Borrower] be released from its obligations as a Borrower under the Agreement.

3. We confirm that:
   (a) no Default is continuing or would result from the acceptance of this request; and
   (b) [ ]*

4. This Resignation Letter [and any non-contractual obligations arising out of or in connection with it] [is/are] governed by English law.

[Company] [Borrower]
By: By:

* Insert any other conditions required by the Facility Agreement.

This clause should follow the approach adopted as regards non-contractual obligations in Clause 41.42 (41.Governing Law). This should be done (and this footnote deleted) before the Facility Agreement is signed.
SCHEDULE 10
FORM OF COMPLIANCE CERTIFICATE

To: [ ] as Agent

From: [Company]

Dated:

Dear Sirs

[Company] – [ ] 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:
   (a) Loan to Value is [ ] per cent.; [and]
   (b) Historical Interest Cover is [ ] per cent. [; and]
   (c) [Projected Interest Cover is [ ] per cent.]

3. We set out below calculations establishing the figures in paragraph 2 above:
   [ ].

4. [We confirm that no Default is continuing.] *

Signed: …............ …............
        Director  Director
        of       of
        [Company] [Company]

[insert applicable certification language]**

---------------------------
for and on behalf of
**[name of auditors of the Company]**

* 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.

** To be agreed with the Company's auditors and the Lenders prior to signing the Agreement.

*** Only applicable if the Compliance Certificate accompanies the audited financial statements and is to be signed by the auditors. To be agreed with the Company's auditors prior to signing the Agreement.
SCHEDULE 11

[LMA FORM OF CONFIDENTIALITY UNDERTAKING]

The current form of LMA Confidentiality Letter (Seller) or Confidentiality Letter (Purchaser) for the secondary trading of loans should be included in this Schedule. In the case where primary syndication takes place after the Facility Agreement is signed, the current LMA Confidentiality and Front Running Letter should also be included to avoid confusion over which form of confidentiality letter is appropriate.
Delivery of a duly completed Utilisation Request (Clause 5.1 (Delivery of a Utilisation Request))

Agent notifies the Lenders of the Loan in accordance with Clause 5.4 (Lenders’ participation)

[LIBOR]/[EURIBOR] is fixed

[Quotation Day 11:00 a.m.] / [Quotation Day 11:00 a.m. Brussels time]

[Reference Bank Rate calculated by reference to available quotations in accordance with Clause 10.2 (Calculation of Reference Bank Rate)]

[As specified in Schedule 13 (Benchmark)]

Choose the timetable applicable for the currency of the Loan.

Insert if the interest rate is to be determined by reference to LIBOR.

Insert if the interest rate is to be determined by reference to EURIBOR.

Insert if the interest rate is not determined by reference to LIBOR or EURIBOR.

Insert if the interest rate is to be determined by reference to EURIBOR.
(Benchmark) Insert if the interest rate is not determined by reference to LIBOR or EURIBOR.
SCHEDULE 13
[BENCHMARK]

[Definitions]

Business Day: [__________]

Business Day Conventions (definition of "Month" and Clause 9.2 (Non-Business Days)):[__________]

[Fallback Interest Period: ][__________]

Quotation Day: [______]

Reference Bank Rate: [______]

Reference Banks: [______]

Relevant Market: [______]

Screen Rate: [__________]. If [such page or service] ceases to be available, the Agent may specify another page or service displaying the relevant rate after consultation with the Company.

Rate fixing timings

Time at which Benchmark Rate is fixed (Schedule 12 (Timetables)): [______]

[Time at which Reference Bank Rate falls to be calculated by reference to available quotations (Schedule 12 (Timetables))]: [______]

Deadline for quotations to establish a Reference Bank Rate (paragraph (b) of Clause 10.2 (Calculation of Reference Bank Rate)): [______]

Deadline for Lenders to report market disruption (Clause 10.3 (Market disruption)): [______]
**SCHEDULE 14**

**FORMS OF NOTIFIABLE DEBT PURCHASE TRANSACTION NOTICE**

**Part I**

**Form of Notice on entering into Notifiable Debt Purchase Transaction**

To: [ ] as Agent

From: [Lender]

Dated: [ ]

[Company] – [ ] Facility Agreement dated [ ] (the "Agreement")

1. We refer to paragraph (b) of Clause 26.2 (Disenfranchisement on Debt Purchase Transactions entered into by Sponsor Affiliates) of the Agreement. Terms defined in the Agreement have the same meaning in this notice unless given a different meaning in this notice.

2. We have entered into a Notifiable Debt Purchase Transaction.

3. The Notifiable Debt Purchase Transaction referred to in paragraph 2 above relates to the amount of our Commitment(s) as set out below.

<table>
<thead>
<tr>
<th>Commitment</th>
<th>Amount of our Commitment to which Notifiable Debt Purchase Transaction relates [(Base Currency)]</th>
</tr>
</thead>
<tbody>
<tr>
<td>[Commitment]</td>
<td>[insert amount (of that Commitment) to which the relevant Debt Purchase Transaction applies]</td>
</tr>
</tbody>
</table>

[Lender]

By:
Part II
Form of Notice on Termination of Notifiable Debt Purchase Transaction / Notifiable Debt Purchase Transaction ceasing to be with Sponsor Affiliate

To: [    ] as Agent

From: [Lender]

Dated: [    ]

[Company] – [    ] Facility Agreement
dated [    ] (the Agreement)

1. We refer to paragraph (c) of Clause 26.2 (Disenfranchisement on Debt Purchase Transactions entered into by Sponsor Affiliates) of the Agreement. Terms defined in the Agreement have the same meaning in this notice unless given a different meaning in this notice.

2. A Notifiable Debt Purchase Transaction which we entered into and which we notified you of in a notice dated [    ] has [terminated]/[ceased to be with a Sponsor Affiliate].

3. The Notifiable Debt Purchase Transaction referred to in paragraph 2 above relates to the amount of our Commitment(s) as set out below.

<table>
<thead>
<tr>
<th>Commitment</th>
<th>Amount of our Commitment to which Notifiable Debt Purchase Transaction relates [(Base Currency)]</th>
</tr>
</thead>
<tbody>
<tr>
<td>[Commitment]</td>
<td>[insert amount (of that Commitment) to which the relevant Debt Purchase Transaction applies]</td>
</tr>
</tbody>
</table>

By:

292 Delete as applicable.
SIGNATURES

THE COMPANY

[INSERT NAME OF COMPANY]

By:

Address:

Fax:

Attention:

THE BORROWERS

[INSERT NAMES OF BORROWERS]

By:

Address:

Fax:

Attention:

THE ARRANGERS

[INSERT NAME OF ARRANGERS]

By:

Address:

Fax:

Attention:

THE AGENT

[INSERT NAME OF AGENT]

By:

Address:

Fax:

Attention:
THE SECURITY AGENT

[INSERT NAME OF SECURITY AGENT]

By:

Address:

Fax:

Attention:

THE ORIGINAL LENDERS

[  ]

[THE [ORIGINAL] HEDGE COUNTERPARTIES

[  ]]
## Comparison Details

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## Sources

| Original Document | [#36273629] [v2] LMA REF investment FA (with IFRS 16 changes) |
| Modified Document | [#22015292] [v35] LMA REF Multiple Property Investment CA |

## Comparison Statistics

| Insertions | 122 |
| Deletions | 67 |
| Changes | 852 |
| Moves | 10 |
| TOTAL CHANGES | 1051 |

## Word Rendering Set Markup Options

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