

**Cleveland Row Finance No.1 DAC**

(incorporated in Ireland as a designated activity company limited by shares with registration number 597085)

**£101,620,000 Commercial Mortgage Backed Fixed Rate Notes due 2026  
(the "Notes")**

<b>Initial Principal Amount of the Notes</b>	<b>Issue Price</b>	<b>Interest Rate<sup>(1)</sup></b>	<b>Expected Maturity Date<sup>(2)</sup></b>	<b>Final Maturity Date</b>
£101,620,000	100%	8.25 per cent. per annum	15 December 2021	15 December 2026

<sup>(1)</sup> After a Cash Trap Event occurs and is continuing the Notes shall accrue interest at (a) the Reduced Fixed Rate of Interest, being 4.25 per cent per annum and (b) the Capitalised Fixed Interest Rate, being 4.00 per cent per annum. The Issuer shall pay the interest amount accrued on the Notes calculated at the Reduced Fixed Rate of Interest. Interest accrued on the Notes at the Capitalised Fixed Interest Rate, representing Capitalised Interest, shall be added to the Principal Amount Outstanding of the Notes. For further details, see Condition 5(c) (*Rate of Interest*).

<sup>(2)</sup> Subject to the following sentence, the Expected Maturity of the Notes is based on the assumptions set out in "*YIELD, PREPAYMENT AND MATURITY CONSIDERATIONS*" at page 86. The Initial Mezzanine Redemption Date can be extended twice by one year each at the option of the Mezzanine Issuer subject to the satisfaction of certain conditions under the Mezzanine Note Issuance Agreement. If the Mezzanine Issuer exercises (a) the First Extension Option, the Initial Mezzanine Redemption Date shall be extended to the First Extended Mezzanine Redemption Date and (b) the Second Extension Option, the First Extended Mezzanine Redemption Date shall be extended to the Second Mezzanine Redemption Date. The Expected Maturity of the Notes assumes that both extension options under the Mezzanine Note Issuance Agreement are exercised by the Mezzanine Issuer. For further details see the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT – Redemption and extension*".

<b>Closing Date</b>	The Issuer expects to issue the Notes on or about 23 February 2017 (the " <b>Closing Date</b> ").
<b>Underlying Assets</b>	<p>The Issuer will make payments on the Notes from interest and principal received in respect of the £101,620,000 mezzanine notes (the "<b>Mezzanine Notes</b>") issued by BSREP Citypoint Mezz Limited (the "<b>Mezzanine Issuer</b>") pursuant to a note issuance agreement dated 15 December 2016 (the "<b>Mezzanine Note Issuance Agreement</b>").</p> <p>On the Closing Date, each of the original mezzanine noteholders under the Mezzanine Note Issuance Agreement will sell and transfer by novation their respective rights and obligations in the Mezzanine Notes held by them to the Issuer.</p> <p>Payments of amounts under the Mezzanine Notes will be applied in accordance with the Pre-Enforcement Priority of Payments or the Post-Enforcement Priority of Payments, as applicable, and allocated to the Notes.</p> <p>The Mezzanine Notes are secured by the Property, the rental income from the Property and certain other assets that are subject to security interests created pursuant to the English Common Security Agreements and the Mezzanine Security Agreements as more particularly described in the section entitled "<i>THE KEY CHARACTERISTICS OF THE MEZZANINE NOTE SECURITY</i>".</p> <p>During the life of the Notes, the Revenue Receipts are expected to be sufficient to pay the interest amounts under the Notes.</p> <p>See the sections entitled "<i>DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT</i>", "<i>DESCRIPTION OF THE PROPERTY</i>" and "<i>SALE OF ASSETS</i>" for more details.</p>
<b>Redemption Provisions</b>	Information on any optional and mandatory redemption of the Notes is summarised in the section entitled " <i>OVERVIEW OF THE TRANSACTION – OVERVIEW OF THE KEY TERMS OF THE NOTES</i> " at page 11 and set out in full in Condition 6 ( <i>Redemption and Cancellation</i> ).
<b>Credit Ratings</b>	Ratings have not been requested or assigned to the Notes.

*Before making any decision to invest in the Notes, prospective Noteholders should pay particular attention to the section entitled "RISK FACTORS" in this Offering Circular, starting on page 32.*

**Arranger  
Cheyne Capital Management (UK) LLP**

**Lead Manager  
Cheyne Capital Management (UK) LLP**

**The date of this Offering Circular is 22 February 2017**

<b>Listing</b>	This Offering Circular (" <b>Offering Circular</b> ") comprises a prospectus (the " <b>Prospectus</b> "), for the purpose of Directive 2003/71/EC (as amended by the Commission Powers (Prospectus) Directive 2008/11 EC and the Amending Directive 2010/73 EU) (the " <b>Prospectus Directive</b> "). References throughout this document to this "Offering Circular" shall be taken to read "Prospectus" for such purpose. The Prospectus has been approved by the Central Bank of Ireland (the " <b>Central Bank</b> ") as competent authority under the Prospectus Directive. The Central Bank only approves this Offering Circular as meeting the requirements imposed under Irish and EU law pursuant to the Prospectus Directive. Application has been made to The Irish Stock Exchange plc (the " <b>Irish Stock Exchange</b> ") for the Notes to be admitted to the Official List (the " <b>Official List</b> ") and trading on its regulated market. The regulated market of the Irish Stock Exchange is a regulated market for the purposes of Directive 2004/39/EC.
<b>Obligations</b>	The Notes will be limited recourse obligations of the Issuer alone and will not be guaranteed by, or be the responsibility of, any other entity. The Notes will not be obligations of the Arranger, the Lead Manager, the Mezzanine Note Sellers, any of their affiliates or any other party named in this Offering Circular.
<b>Retention Undertaking</b>	The Issuer is of the opinion that Article 405 of Regulation (EU) No. 575/2013 of the European Parliament and of the Council of June 21, 2013, referred to as the Capital Requirements Regulation (" <b>CRR</b> "), and Article 51 of Regulation (EU) 231/2013 (the " <b>AIFM Regulation</b> ") and Article 254 of Regulation (EU) 2015/35 (the " <b>Solvency II Regulation</b> ") do not apply to the issue of the Notes. See the sections entitled " <i>REGULATORY DISCLOSURE</i> " and " <i>RISK FACTORS – C. LEGAL AND REGULATORY REQUIREMENTS – Regulatory initiatives may result in increased regulatory capital requirements and/or decreased liquidity in respect of the Notes</i> " of this Offering Circular for more details.
<b>Volcker Rule</b>	The Issuer expects to conduct its activities in a manner such that the Issuer will not be treated as a "covered fund" for the purposes of regulations adopted under Section 13 of the Bank Holding Company Act 1956, as amended (commonly known as the " <b>Volcker Rule</b> ").
<b>Credit Enhancement</b>	No structural credit support will be provided for the Notes. In connection with the Mezzanine Note, a loan to value ratio is required to be maintained by the Mezzanine Issuer in accordance with the Mezzanine Note Issuance Agreement, the details of which are set out in the section entitled " <i>DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT – Financial Covenants</i> ".

THE NOTES OFFERED HEREBY HAVE NOT BEEN AND WILL NOT BE REGISTERED UNDER THE SECURITIES ACT, OR ANY STATE SECURITIES LAWS, THE NOTES ARE BEING OFFERED AND SOLD ONLY TO PERSONS WHO ARE NOT U.S. PERSONS (AS DEFINED IN REGULATION S ("**REGULATION S**") IN OFFSHORE TRANSACTIONS IN RELIANCE ON REGULATION S UNDER THE SECURITIES ACT. IN ADDITION, NO HOLDER OF ANY INTEREST IN THE NOTES MAY EFFECT ANY SUBSEQUENT TRANSFER THEREOF WITHIN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OR BENEFIT OF, ANY U.S. PERSONS (AS DEFINED IN REGULATION S UNDER THE SECURITIES ACT). THE ISSUER IS NOT REQUIRED TO REGISTER AS AN "INVESTMENT COMPANY" UNDER THE U.S. INVESTMENT COMPANY ACT OF 1940 (THE "**INVESTMENT COMPANY ACT**") BECAUSE (A) IT IS NOT ORGANIZED OR OTHERWISE CREATED UNDER THE LAWS OF THE UNITED STATES OF AMERICA OR OF A STATE THEREOF AND (B) NONE OF ITS SECURITIES WILL BE HELD BY ANY RESIDENT OF THE UNITED STATES. HOWEVER, IF THE ISSUER WERE ORGANIZED OR OTHERWISE CREATED UNDER THE LAWS OF THE UNITED STATES OF AMERICA OR OF A STATE THEREOF, THE ISSUER WOULD NOT BE AN "INVESTMENT COMPANY" BY REASON OF THE EXCEPTION CONTAINED IN SECTION 3(C)(5) OF THE INVESTMENT COMPANY ACT.

THE "*RISK FACTORS*" SECTION CONTAINS DETAILS OF CERTAIN RISKS AND OTHER FACTORS THAT SHOULD BE GIVEN PARTICULAR CONSIDERATION BEFORE INVESTING IN THE NOTES.

PROSPECTIVE INVESTORS SHOULD BE AWARE OF THE ISSUES SUMMARISED WITHIN THAT SECTION.

The Notes are not intended to be offered, sold or otherwise made available to and should not be offered, sold or otherwise made available to any retail investor in the European Economic Area ("**EEA**"). For these purposes, a retail investor means a person who is one (or more) of: (i) a retail client as defined in point (11) of Article 4(1) of Directive 2014/65/EU ("**MiFID II**"); (ii) a customer within the meaning of Directive 2002/92/EC ("**IMD**"), where that customer would not qualify as a professional client as defined in point (10) of Article 4(1) of MiFID II; or (iii) not a qualified investor as defined in Directive 2003/71/EC (as amended, the "**Prospectus Directive**"). Consequently no key information document required by Regulation (EU) No 1286/2014 (the "**PRIIPs Regulation**") for offering or selling the Notes or otherwise making them available to retail investors in the EEA has been prepared and therefore offering or selling the Notes or otherwise making them available to any retail investor in the EEA may be unlawful under the PRIIPS Regulation.

If any withholding or deduction for or on account of tax is applicable to payments of interest on and/or repayments of principal of the Notes, such payments and/or repayments will be made subject to such withholding or deduction, without the Issuer being obliged to pay any additional amounts as a consequence.

The Notes will be represented by a global note in registered form (the "**Global Note**") and will be deposited with, and registered in the name of a nominee for the common depositary (the "**Common Depositary**") for Euroclear Bank S.A./N.V., 1 Boulevard du Roi Albert II, 1210 Brussels, Belgium, as operator of the Euroclear system ("**Euroclear**") and Clearstream Banking, société anonyme, 42 Avenue J.F. Kennedy, L-1855 Luxembourg ("**Clearstream, Luxembourg**") on or about the Closing Date. Ownership interests in the Global Note will be shown on, and transfers thereof will only be effected through, records maintained by Euroclear and Clearstream, Luxembourg and their respective participants. The Global Note will be exchangeable for Definitive Notes in registered form only in certain limited circumstances as set out in the section of this Offering Circular entitled "*DESCRIPTION OF THE NOTES – ISSUANCE OF DEFINITIVE NOTES*".

#### **IMPORTANT NOTICE**

The distribution of this Offering Circular and the offering of the Notes in certain jurisdictions may be restricted by law. No representation is made by the Issuer, the Mezzanine Note Sellers, the Note Trustee, the Issuer Security Trustee, the Lead Manager, the Arranger or any other Issuer Related Party that this Offering Circular may be lawfully distributed, or that the Notes may be lawfully offered in compliance with any applicable registration or other requirements in any such jurisdiction, or pursuant to an exemption available thereunder, and none of them assumes any responsibility for facilitating any such distribution or offering. In particular, no action has been taken by the Issuer, the Mezzanine Note Sellers, the Note Trustee, the Issuer Security Trustee, the Arranger, the Lead Manager or any other Issuer Related Party which would permit a public offering of the Notes or distribution of this Offering Circular in any jurisdiction where action for that purpose is required. Accordingly, the Notes may not be offered or sold, directly or indirectly, and neither this Offering Circular nor any advertisement or other offering material may be distributed or published, in any jurisdiction, except under circumstances that will result in compliance with any applicable laws and regulations and the Lead Manager has represented that all offers and sales by it will be made on such terms. Persons into whose possession this Offering Circular comes are required by the Issuer and the Lead Manager to inform themselves about and to observe any such restrictions.

The Issuer accepts responsibility for the information contained in this Offering Circular. To the best of the knowledge and belief of the Issuer (having taken all reasonable care to ensure that such is the case), the information contained in this Offering Circular is in accordance with the facts and does not omit anything likely to affect the import of such information.

Where information has been indicated to have been sourced from a third party, the Issuer confirms that this information has been accurately reproduced and that, as far as the Issuer is aware and is able to ascertain from information published by such third party, no facts have been omitted which would render the reproduced information inaccurate or misleading. The Issuer has not verified the figures, market data and other information contained in the publicly available sources and does not assume any responsibility for the accuracy of the figures, market data or other information from the publicly available sources.

U.S. Bank Trustees Limited, Elavon Financial Services DAC, UK Branch and Elavon Financial Services DAC accept joint and several responsibility for the information contained in the section of this Offering Circular entitled "*DESCRIPTION OF THE NOTE TRUSTEE, THE ISSUER SECURITY TRUSTEE, THE CASH MANAGER, THE OPERATING BANK, THE AGENT BANK, THE PRINCIPAL PAYING AGENT AND REGISTRAR*" at page 63 (insofar as the same relates to each of them respectively). To the best of the knowledge and belief of U.S. Bank Trustees Limited, Elavon Financial Services DAC, UK Branch and Elavon Financial Services DAC (each having taken all reasonable care to ensure that such is the case), the information contained in the section of this Offering Circular entitled "*DESCRIPTION OF THE NOTE TRUSTEE, THE ISSUER SECURITY TRUSTEE, THE CASH MANAGER, THE OPERATING BANK, THE AGENT BANK, THE PRINCIPAL PAYING AGENT AND REGISTRAR*" at page 63 (insofar as the same relates to each of them respectively) is in accordance with the facts and does not omit anything likely to affect the import of such information.

This information relating to the Mezzanine Issuer contained in the section of this Offering Circular entitled "*THE MEZZANINE ISSUER*" at page 92, has been accurately reproduced and as far as the Issuer is aware and is able to ascertain from information published by the Mezzanine Issuer no facts have been omitted which would render the reproduced information inaccurate or misleading.

This information relating to the Mezzanine Note Obligors contained in the section of this Offering Circular entitled "*THE MEZZANINE NOTE OBLIGORS*" at page 94, has been accurately reproduced and as far as the Issuer is aware and is able to ascertain from information published by the Mezzanine Note Obligors no facts have been omitted which would render the reproduced information inaccurate or misleading.

Savills Advisory Services Limited ("**Savills**") accepts responsibility for the Initial Valuation. To the best of Savills' knowledge and belief (having taken all reasonable care to ensure that such is the case), the information contained in the Initial Valuation is in accordance with the facts and does not omit anything likely to affect its import. (See also "*INITIAL VALUATION DISCLAIMER*" below.).

No person is or has been authorised in connection with the issue and sale of the Notes to give any information or to make any representation not contained in this Offering Circular and, if given or made, such information or representation must not be relied upon as having been authorised by or on behalf of the Issuer, the Mezzanine Note Sellers, the Arranger, the Lead Manager or any associated body of the Mezzanine Note Sellers, the Arranger or the Lead Manager or any other Issuer Related Party or any of their respective affiliates or shareholders or the shareholders of the Issuer. Neither the delivery of this Offering Circular nor any sale or allotment made in connection with the offering of any of the Notes shall, under any circumstances, constitute a representation or create any implication that there has been any change in the information contained herein since the date hereof or that the information contained herein is correct as of any time subsequent to its date.

Each original purchaser of an interest in the Notes and any subsequent purchaser of the Notes (whether directly from the Issuer or from a holder of the Notes) will be required to complete and deliver to the Issuer and the Lead Manager an investor representation letter in relation to its purchase of an interest in the Notes.

The Notes have not been and will not be registered under the U.S. Securities Act or any state securities laws. The Notes may not be offered, sold or delivered, directly or indirectly, whether as part of the initial distribution thereof or in any subsequent transfer, within the United States or to, or for the account or benefit of, any U.S. Persons (as defined in Regulation S under the Securities Act).

THE NOTES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION, ANY STATE SECURITIES COMMISSION OR ANY OTHER REGULATORY AUTHORITY, NOR HAVE ANY OF THE FOREGOING AUTHORITIES PASSED UPON THE ACCURACY OR ADEQUACY OF THIS OFFERING CIRCULAR. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENCE.

The Notes and interest thereon will not be obligations or responsibilities of any person other than the Issuer, which obligations will be limited recourse obligations in accordance with the terms thereof. In particular, the Notes will not be obligations or responsibilities of, or be guaranteed by, the Mezzanine Note Sellers, the Arranger, the Lead Manager or any associated body of the Mezzanine Note Sellers, the Arranger, the Lead Manager or any other Issuer Related Party or any of their respective affiliates or shareholders or the shareholders of the Issuer and none of such persons accepts any liability whatsoever in respect of any failure by the Issuer to make payment of any amount due on the Notes.

The Issuer is not and will not be regulated by the Central Bank as a result of issuing the Notes. Any investment in the Notes does not have the status of a bank deposit and is not within the scope of the deposit protection scheme operated by the Central Bank. Copies of this Offering Circular have been filed with and approved by the Central Bank as required by the Prospectus (Directive 2003/71/EC) Regulations 2005 as amended of Ireland (the "**Irish Prospectus Regulations**"). Upon approval of this Offering Circular by the Central Bank, this Offering Circular will be filed with the Companies Registration Office in Ireland in accordance with Regulation 38(1)(b) of the Irish Prospectus Regulations.

### **OFFEREE ACKNOWLEDGEMENTS**

Each person receiving this Offering Circular, by acceptance hereof, hereby acknowledges that:

This Offering Circular has been prepared by the Issuer solely for the purpose of offering the Notes described herein. Notwithstanding any investigation that the Lead Manager may have made with respect to the information set forth herein, this Offering Circular does not constitute, and shall not be construed as, any representation or warranty by the Lead Manager as to the adequacy or accuracy of the information set forth herein. Delivery of this Offering Circular to any person other than a prospective Noteholder and those persons, if any, retained to advise such prospective Noteholder with respect to the possible offer and sale of the Notes is unauthorised, and any disclosure of any of its contents for any purpose other than considering an investment in the Notes is strictly prohibited. A prospective Noteholder shall not be entitled to, and must not rely on this Offering Circular unless it was furnished to such prospective Noteholder directly by the Issuer or the Lead Manager.

The obligations of the parties to the transactions contemplated herein are set forth in and will be governed by certain documents described herein, and all of the statements and information contained herein are qualified in their entirety by reference to such documents. This Offering Circular contains summaries, which the Issuer believes to be accurate, of certain of these documents, but for a complete description of the rights and obligations summarised herein, reference is hereby made to the actual documents, copies of which may (on giving reasonable notice) be obtained from the Principal Paying Agent.

EACH PERSON RECEIVING THIS OFFERING CIRCULAR ACKNOWLEDGES THAT (A) SUCH PERSON HAS BEEN AFFORDED AN OPPORTUNITY TO REQUEST AND TO REVIEW, AND HAS RECEIVED, ALL ADDITIONAL INFORMATION CONSIDERED BY IT TO BE NECESSARY TO VERIFY THE ACCURACY OF OR TO SUPPLEMENT THE INFORMATION HEREIN, (B) SUCH PERSON HAS NOT RELIED ON THE LEAD MANAGER OR ANY PERSON AFFILIATED WITH THE LEAD MANAGER IN CONNECTION WITH ITS INVESTIGATION OF THE ACCURACY OF SUCH INFORMATION OR ITS INVESTMENT DECISION, (C) NO PERSON HAS BEEN AUTHORISED TO GIVE ANY INFORMATION OR TO MAKE ANY REPRESENTATION REGARDING THE NOTES OTHER THAN AS CONTAINED HEREIN, AND IF GIVEN OR MADE, ANY SUCH OTHER INFORMATION OR REPRESENTATION SHOULD NOT BE RELIED UPON AS HAVING BEEN AUTHORISED, AND (D) NEITHER THE DELIVERY OF THIS OFFERING CIRCULAR NOR ANY SALE MADE HEREUNDER WILL CREATE ANY IMPLICATION THAT THE INFORMATION HEREIN IS CORRECT AS AT ANY TIME SINCE THE DATE HEREOF. EACH PROSPECTIVE PURCHASER SHOULD CONSULT ITS OWN BUSINESS, LEGAL AND TAX ADVISORS FOR INVESTMENT, LEGAL AND TAX ADVICE AND AS TO THE DESIRABILITY AND CONSEQUENCES OF AN INVESTMENT IN THE NOTES.

### **FORWARD-LOOKING STATEMENTS**

Certain matters contained herein are forward-looking statements. Such statements appear in a number of places in this Offering Circular, including with respect to assumptions on prepayment and certain other characteristics of the Mezzanine Notes and reflect significant assumptions and subjective judgments by the Issuer that may or may not prove to be correct. Such statements may be identified by reference to a future period or periods and the use of forward-looking terminology such as "may", "will", "could", "believes", "expects", "projects", "anticipates", "continues", "intends", "plans" or similar terms. Consequently, future results may differ from the Issuer's expectations due to a variety of factors, including (but not limited to) the economic environment and changes in governmental regulations, fiscal policy, planning or tax laws in Ireland and the United Kingdom. Moreover, past financial performance should not be considered a reliable indicator of future performance and prospective purchasers of the Notes are cautioned that any such statements are not guarantees of performance and involve risks and uncertainties, many of which are beyond the control of the Issuer. The Lead Manager has

not attempted to verify any such statements, nor do they make any representation, express or implied, with respect thereto.

Prospective purchasers should therefore not place undue reliance on any of these forward-looking statements. Neither the Issuer nor the Lead Manager assumes any obligation to update these forward-looking statements or to update the reasons for which actual results could differ materially from those anticipated in the forward-looking statements.

### **REFERENCES TO CURRENCIES**

All references in this Offering Circular to "sterling" or "pounds", or "£" are to the lawful currency for the time being of the United Kingdom of Great Britain and Northern Ireland (the "**UK**" or the "**United Kingdom**") and references to "euro", "€" or "Euro" are to the currency introduced at the commencement of the third stage of European economic and monetary union pursuant to the Treaty establishing the European Community, as amended by the Treaty on European Union, as amended by the Treaty of Amsterdam.

Websites referred to in this Offering Circular do not form part of this Offering Circular.

### **INTERPRETATION**

The language of this Offering Circular is English.

An index of capitalised terms used in this Offering Circular is set in the section entitled "*INDEX OF DEFINED TERMS*" on page 273.

### **GENERAL NOTICE TO INVESTORS**

Other than the approval by the Central Bank of this Offering Circular as a "prospectus" in accordance with the requirements of the Prospectus Directive and the relevant implementing measures in Ireland, no action has been or will be taken to permit a public offering of the Notes or the distribution of this Offering Circular in any jurisdiction where action for that purpose is required. The distribution of this Offering Circular and the offering of the Notes in certain jurisdictions may be restricted by law. Persons into whose possession this Offering Circular (or any part hereof) comes are required by the Issuer and the Lead Manager to inform themselves about, and to observe, any such restrictions. Neither this Offering Circular nor any part of it constitutes an offer of, or an invitation by or on behalf of the Issuer or the Lead Manager to subscribe for or purchase any of the Notes and neither this Offering Circular, nor any part hereof, may be used for or in connection with an offer to, or solicitation by, any person in any jurisdiction or in any circumstances in which such offer or solicitation is not authorised or to any person to whom it is unlawful to make such offer or solicitation.

For a further description of certain restrictions on offers and sales of the Notes and distribution of this Offering Circular (or any part hereof), see the section entitled "*SUBSCRIPTION AND SALE*" at page 268.

### **FURTHER NOTES**

Subject to the satisfaction of certain conditions as more particularly set out in Condition 20 (*Further Issuance of Notes*), the Issuer will be entitled, without the consent of the holders of the Notes to issue Further Notes having the same terms and conditions (except as to issue date and the first Interest Period) as, and being fungible with, the Notes.

## REGULATORY DISCLOSURE

The Issuer is of the opinion that, for the reasons set out below, the transaction described in this Offering Circular in connection with the issuance of the Notes (the "**Transaction**") is not a "securitisation" for the purposes of Article 405 of the CRR, Article 51 of the AIFM Regulation or Article 254 of the Solvency II Regulation (together the "**Risk Retention Requirements**").

For the purposes of the Risk Retention Requirements, Article 4(1)(61) of the CRR defines a "securitisation" as *"a transaction or scheme, whereby the credit risk associated with an exposure or pool of exposures is tranced, having both of the following characteristics: (a) payments in the transaction or scheme are dependent upon the performance of the exposure or pool of exposures; and (b) the subordination of tranches determines the distribution of losses during the ongoing life of the transaction or scheme."*

Pursuant to Article 4(1)(61) of the CRR, a transaction constitutes a "**securitisation**" if the credit risk associated with an exposure or pool of exposures is tranced and the transaction has certain characteristics.

"Tranche" is defined under Article 4(1)(67) of the CRR as *"a contractually established segment of the credit risk associated with an exposure or a number of exposures, where a position in the segment entails a risk of credit loss greater than or less than a position of the same amount in each other such segment, without taking account of credit protection provided by third parties directly to the holders of positions in the segment or in other segments"*.

In the context of the Transaction, any principal payments on the Mezzanine Note received by or on behalf of the Issuer before enforcement will be passed through to make payments of principal and (after the delivery of a Note Acceleration Notice) principal and interest on the Notes. The Transaction does not involve the issuance of a separate tranche of notes which are subordinated to the Notes in right of any payments. Therefore, an investment in the Notes will not entail a risk of credit loss greater than the exposure to the underlying Mezzanine Note. Also, the Issuer is of the view that the Mezzanine Notes, which provided part financing for the purpose of the acquisition of the Property, do not constitute a securitisation exposure.

Although the Transaction has the characteristic that the *"payments in the transaction or scheme are dependent upon the performance of the exposure"*, there is an absence of credit risk tranching. No subordinated note will be issued which can absorb principal losses in order to permit ongoing payments to be made to the Notes.

Notwithstanding the foregoing analysis, each prospective Noteholder is responsible for determining its own regulatory position and independently assessing whether or not Article 405 of the CRR, Article 51 of the AIFM Regulation or Article 254 of the Solvency II Regulation (as the case may be) will be applied to its exposure to the Notes. Investors subject to the CRR, the AIFM Regulation or the Solvency II Regulation should consult their regulator should they require guidance in relation to the regulatory capital treatment that their regulator would apply to an investment in the Notes. Article 405 of the CRR, Article 51 of the AIFM Regulation, the Article 254 of Solvency II Regulation and/or any further change thereto, regulation or regulatory treatment of the Notes for some or all investors may negatively impact the regulatory position of individual investors and have a negative impact on the price and liquidity of the Notes in the secondary market.

### "Volcker Rule"

The Issuer expects to conduct its activities in a manner so that the Issuer will not be treated as a "covered fund" within the meaning given to such term in Section 13 of the U.S. Bank Holding Company Act of 1956, as amended, and Regulation VV of the Board of Governors of the Federal Reserve System promulgated thereunder. This statutory provision and the related regulations issued thereunder are commonly referred to as the Volcker Rule. The Issuer expects to avoid treatment as a "covered fund" by reason of the following: (1) if the Issuer were organized or otherwise created under the laws of the United States of America or of a state thereof, the Issuer would not be required to rely solely on Section 3(c)(1) or 3(c)(7) of the Investment Company Act, in order to avoid being an "investment company" under the Investment Company Act, (2) if the Issuer were organized or otherwise created under the laws of the United States of America or of a state thereof, the Issuer would be able to avoid being an "investment company" by reason of the exception contained in Section 3(c)(5) of the Investment Company Act and (3) the Issuer does not expect to be a "commodity pool" under Section 1a(10) of the U.S. Commodity Exchange Act.

None of the Issuer, the Mezzanine Note Sellers, the Note Trustee, the Issuer Security Trustee, the Lead Manager, the Arranger, the Issuer Corporate Services Provider nor any other Issuer Related Party makes any representation that the information described above or in this Offering Circular is sufficient in all circumstances for prospective Noteholders for the purpose of enabling them to determine their regulatory position. See the section entitled "*RISK FACTORS – C. LEGAL AND REGULATORY REQUIREMENTS – Regulatory initiatives may result in increased regulatory capital requirements and/or decreased liquidity in respect of the Notes*" of this Offering Circular.

The registered office of each of Cheyne Real Estate Debt Fund and Cheyne Real Estate Credit Holdings Fund III 94 Solaris Avenue, Camana Bay, P.O. Box 1348, Grand Cayman KY1-1108, Cayman Islands. The registered office of Real Estate Credit Investments Limited is First Floor, Dorey Court, Admiral Park, St. Peter Port, Guernsey GY1 6HJ. Cheyne Real Estate Debt Fund, Cheyne Real Estate Credit Holdings Fund III and Real Estate Credit Investments Limited are, together, the "**Mezzanine Note Sellers**" and each a "**Mezzanine Note Seller**". Each of the Mezzanine Note Sellers are established as alternative investment funds for the purposes of the alternative investment fund managers directive 2011/61/EU. One of the significant business activities of each of the Mezzanine Note Sellers is investing in real estate related debt and securities.



## INITIAL VALUATION DISCLAIMER

The Originator and the Mezzanine Note Agent engaged Savills (a member of the Royal Institution of Chartered Surveyors ("**RICS**")) to produce an appraisal of the Property, with the valuation date of 10 November 2016 in accordance with the Royal Institution of Chartered Surveyors (RICS) Valuation – Professional Standards January 2014. A copy of such appraisal which sets out both the valuation of the Property and the rental income can be found at <http://www.ise.ie/Market-Data-Announcements/Debt/Individual-Debt-Instrument-Data/Dept-Security-Documents/?progID=-1&uID=9081&FIELDSORT=fileDate> (the "**Initial Valuation**").

The Initial Valuation has been incorporated by reference into this Offering Circular.

The valuation in the Initial Valuation has been used for the purposes of this transaction and throughout this Offering Circular.

Savills does not have any material interest in the Issuer.

Savills (a) has given and has not withdrawn its written consent both to the inclusion in this Offering Circular of the Initial Valuation and to references to the Initial Valuation in the form and context in which they appear, and (b) has authorised and accepts responsibility for the Initial Valuation. With the exception of this Initial Valuation, Savills does not accept any liability in relation to the information contained in this Offering Circular or any other information provided by the Issuer or any other party in connection with the issue of the Notes.

Except for any responsibility arising under the Prospectus (Directive 2003/71/EC) Regulations 2005 and the Prospectus rules issued by the Central Bank of Ireland (the "**Irish Regulations and Rules**") to any person as and to the extent there provided, to the fullest extent permitted by law Savills do not assume any responsibility and will not accept any liability to any person for any loss suffered by any such person as a result of, arising out of, or in accordance with the Initial Valuation or the responsibility statement Savills, required by and given solely for the purposes of complying with the Irish Regulations and Rules and the Prospectus Directive.

Prospective Noteholders should be aware that the valuations of the Property set out in the Initial Valuation are as at 10 November 2016 and were carried out prior to the date of this Offering Circular. Savills has not been requested to update or revise the valuation of any of the Property for the purposes of the Initial Valuation, nor will it be asked to do so prior to the issue of the Notes. Accordingly, the information included in the Initial Valuation may not reflect the current physical, economic, competitive, market or other conditions with respect to the Property. None of the Mezzanine Issuer, the Arranger, the Lead Manager, the Sellers, the Cash Manager, the Note Trustee, the Issuer Security Trustee, the Mezzanine Note Agent, the Mezzanine Security Agent, the Issuer Corporate Services Provider, the Principal Paying Agent, the Agent Bank, the Account Bank, the Registrar or any other Issuer Related Party or any other party referred to in this Offering Circular (other than Savills) are responsible for the information contained in the Initial Valuation.

The information contained in the Initial Valuation must be considered together with all of the information contained elsewhere in this Offering Circular, including, without limitation, the statements made in the section entitled "*RISK FACTORS – F. CONSIDERATIONS TO THE MEZZANINE NOTES AND THE RELATED SECURITY – Valuation*". All of the information contained in the Initial Valuation is subject to the same limitations, qualifications and restrictions contained in the other portions of this Offering Circular. Prospective Noteholders are strongly urged to read this Offering Circular in its entirety prior to accessing the Initial Valuation.

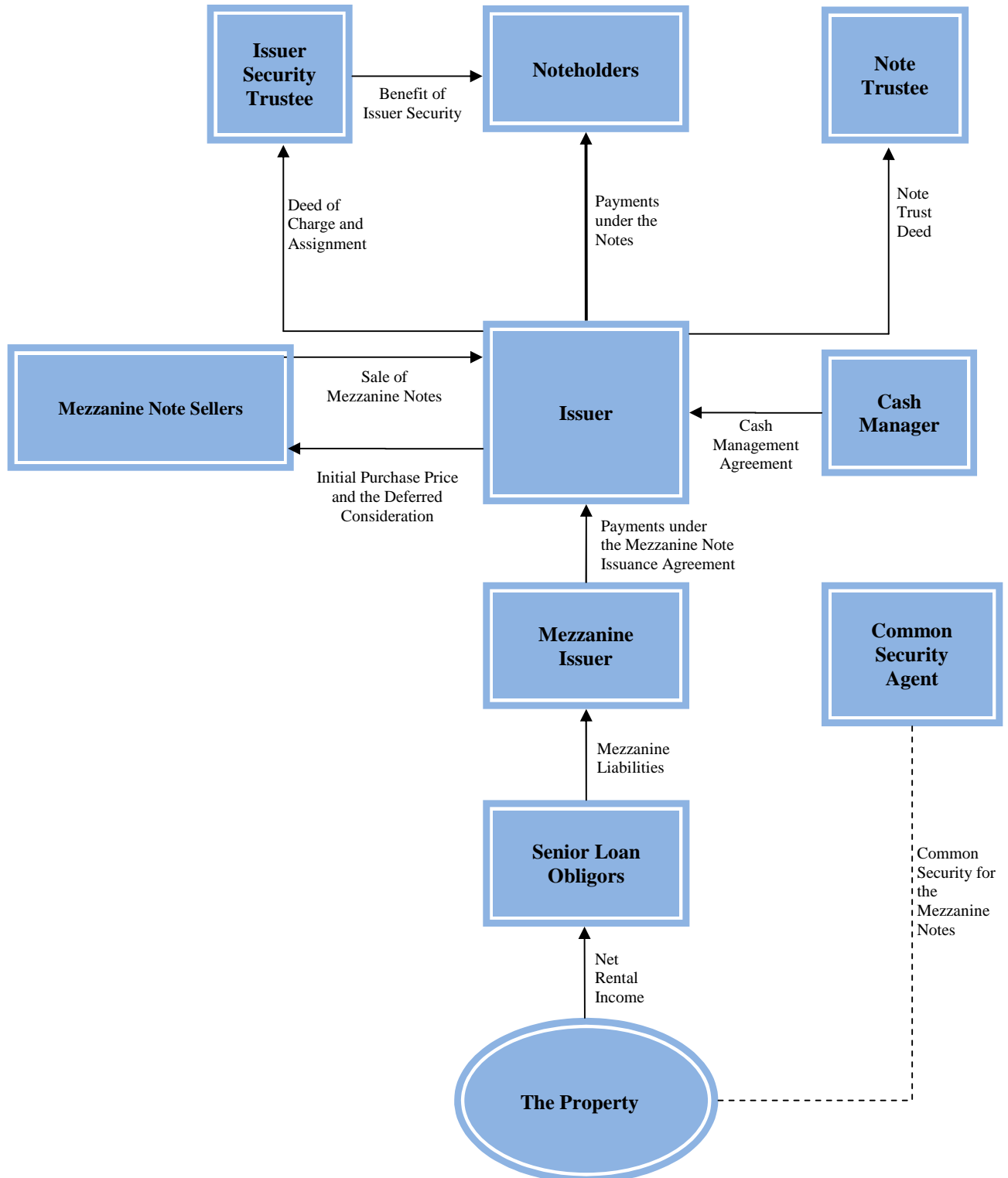
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## OVERVIEW OF THE TRANSACTION

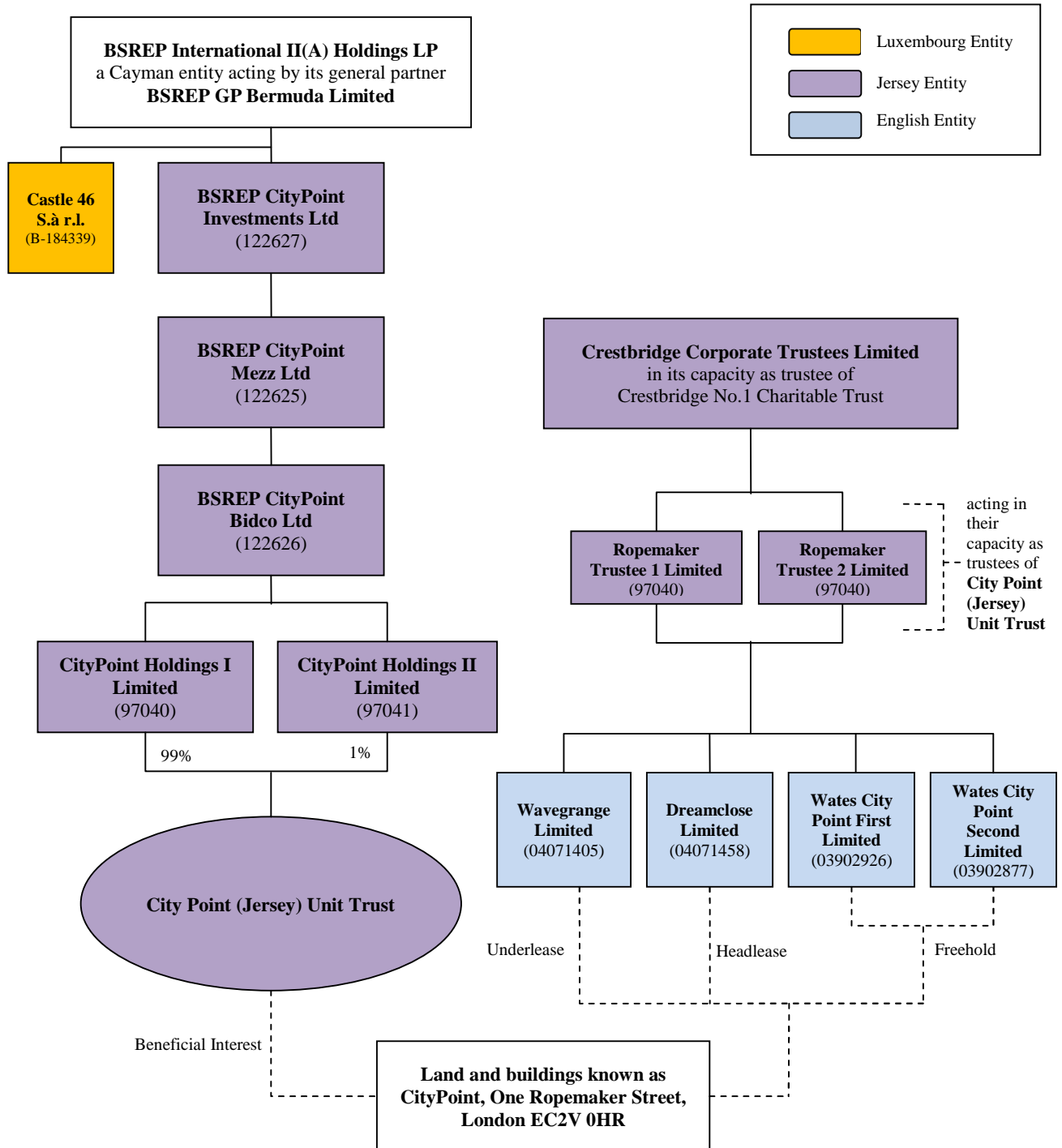
### TRANSACTION OVERVIEW DIAGRAM

The diagram below is intended to highlight the structure of this transaction. It is not intended to be an exhaustive description of this transaction. Prospective Noteholders should review the detailed information set out elsewhere in this offering circular for a description of the transaction structure and relevant cash flows prior to making any investment decision.



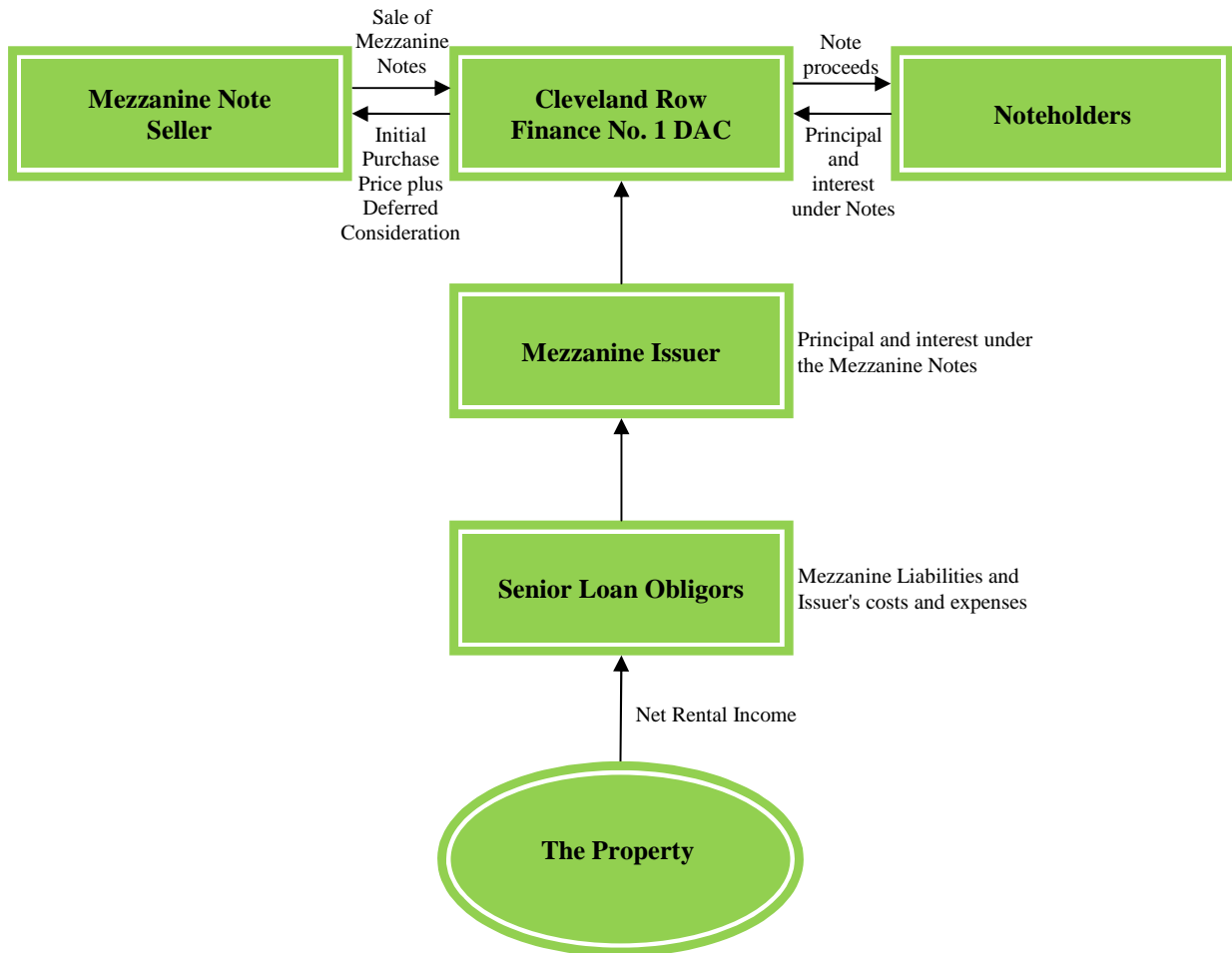
## DIAGRAM OF THE MEZZANINE ISSUER GROUP STRUCTURE

The diagram on this page sets out the corporate structure of the Mezzanine Issuer and certain of its affiliates as at the Closing Date. It is not intended to be an exhaustive description or depiction of the Mezzanine Issuer's group. Prospective Noteholders should note that only the Property will form the security for the Mezzanine Notes and ultimately, the Notes. None of the entities depicted on this diagram have any obligations under the Notes. Prospective Noteholders should review the detailed information set out elsewhere in this Offering Circular for a description of the transaction structure and relevant cash flows prior to making any investment decision.



## DIAGRAMMATIC OVERVIEW OF ON-GOING CASH FLOWS

The diagram below highlights the structure and cash flows for the transaction. It is not intended to be an exhaustive description of such matters. Prospective investors should also review the detailed information set out elsewhere in this Offering Circular for a more detailed description of the transaction structure and relevant cash flows prior to making any investment decision.



→ indicates payment flows

### Cash flows

- (a) Under the Senior Facility Agreement each Senior Loan Obligor is required to pay all net rental income from the Property received by it into the Rent Account of the Senior Borrower. The Senior Loan Obligors include the Propcos, the Unit Trust and the Unitholders.
- (b) On each Senior Loan Interest Payment Date all amounts credited to the Rent Account are applied by the Common Security Agent to make payments (i) in respect of the Mezzanine Liabilities, provided no Cash Trap Event is continuing and no Payment Stop Notice is outstanding and (ii) the Issuer's company costs and expenses subject to a yearly limit of £100,000 (the "**Mezzanine Issuer Payments**"). For more details see the section entitled "*DESCRIPTION OF THE SENIOR FACILITY AGREEMENT – Bank Accounts – Rent Account*".

- (c) The Mezzanine Issuer Payments are paid after all debt service and other high ranking amounts have been paid in accordance with priority of payments set out in the Rent Account provisions of the Senior Facility Agreement.
- (d) The Mezzanine Issuer Payments are paid into the Mezzanine Issuer's Mezzanine Finance Account. On each Mezzanine Interest Payment Date amounts credited to the Mezzanine Finance Account are applied to make payments under the Mezzanine Notes in the order of priority set out in the Mezzanine Finance Account provisions of the Mezzanine Note Issuance Agreement. For further details see the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT – Bank Accounts – Mezzanine Finance Account*".
- (e) To cover interest payments on the Mezzanine Notes an Interest Reserve Account Withdrawal can be made by the Mezzanine Note Agent (acting on the instructions of the Majority Mezzanine Noteholders). See the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT – Bank Accounts – Interest Reserve Account*" for more details.
- (f) The rights of the Issuer under the Mezzanine Note are subordinated both in terms of priority of payment and the ranking of security to the liabilities due under the Senior Loan in accordance with the provisions of the Intercreditor Agreement. For more details see the sections entitled "*DESCRIPTION OF THE INTERCREDITOR AGREEMENT*", "*KEY CHARACTERISTICS OF THE MEZZANINE NOTE SECURITY*", "*RISK FACTORS – F. CONSIDERATIONS RELATING TO THE MEZZANINE NOTES AND THE RELATED SECURITY– Mezzanine Note security enforcement*" and "*RISK FACTORS – F. CONSIDERATIONS RELATING TO THE MEZZANINE NOTES AND THE RELATED SECURITY– The Common Transaction Security is shared between the Common Secured Parties*".

## OVERVIEW OF THE TRANSACTION PARTIES

The information set out below is an overview of various aspects of the transaction. This overview is not purported to be complete and should be read in conjunction with, and is qualified in its entirety by, references to the detailed information presented elsewhere in this Offering Circular.

### The Issuer and its Issuer Related Parties on the Closing Date

Party	Name	Address	Document under which Appointed/Further Information
"Issuer"	Cleveland Row Finance No.1 Designated Activity Company	1 <sup>st</sup> Floor, 1-2 Victoria Buildings, Haddington Road, Dublin 4, Ireland	N/A. See " <i>THE ISSUER</i> " for further information.
"Cash Manager" and "Operating Bank"	Elavon Financial Services DAC, UK Branch	125 Old Broad Street, London EC2N 1AR, United Kingdom	The Cash Manager and Operating Bank appointed pursuant to a cash management agreement to be entered into on the Closing Date between, among others, the Cash Manager, the Operating Bank, the Issuer Security Trustee and the Issuer (the " <b>Cash Management Agreement</b> "). See " <i>CASH MANAGEMENT – Cash Manager</i> " for further information.
"Agent Bank" and "Principal Paying Agent"	Elavon Financial Services DAC, UK Branch	125 Old Broad Street, London EC2N 1AR, United Kingdom	The Principal Paying Agent (together with any other paying agent appointed pursuant to the Agency Agreement, the " <b>Paying Agents</b> ") and Agent Bank appointed pursuant to an agency agreement to be entered into on the Closing Date between, among others, the Paying Agents, the Agent Bank and the Issuer (the " <b>Agency Agreement</b> "). See " <i>TERMS AND CONDITIONS OF THE NOTES</i> " for further information.
"Registrar"	Elavon Financial Services DAC	2 <sup>nd</sup> Floor, Block E Cherrywood Business Park, Loughlinstown, Co. Dublin	The Registrar appointed pursuant to the Agency Agreement in its capacity as registrar in relation to the Notes. See " <i>DESCRIPTION OF THE NOTES</i> " for further

Party	Name	Address	Document under which Appointed/Further Information
			details.
<b>"Note Trustee"</b>	U.S. Bank Trustees Limited	125 Old Broad Street, London EC2N 1AR, United Kingdom	The Note Trustee will act as trustee for the holders of the Notes pursuant to the Note Trust Deed between the Note Trustee, the Issuer Security Trustee and the Issuer. See <i>"AVAILABLE FUNDS AND THEIR PRIORITY OF APPLICATION: THE NOTES – Description of Note Trust Deed"</i> for further information.
<b>"Issuer Security Trustee"</b>	U.S. Bank Trustees Limited	125 Old Broad Street, London EC2N 1AR, United Kingdom	The Issuer Security Trustee will act as security trustee and hold on trust for itself and the other Issuer Secured Creditors the security granted by the Issuer in favour of the Issuer Secured Creditors pursuant to the Issuer Security Documents. See <i>"TERMS AND CONDITIONS OF THE NOTES"</i> for further information.
<b>"Issuer Corporate Services Provider"</b>	Intertrust Finance Management (Ireland) Limited	1 <sup>st</sup> Floor, 1-2 Victoria Buildings, Haddington Road, Dublin 4, Ireland	The Issuer Corporate Services Provider will act as corporate services provider to the Issuer pursuant to a corporate services agreement between, among others, the Issuer and the Issuer Corporate Services Provider and entered into on or prior to the Closing Date (the <b>"Issuer Corporate Services Agreement"</b> ). See <i>"THE ISSUER"</i> for further information.
<b>"Share Trustee"</b>	Intertrust Corporate Services 2 (Ireland) Limited	1 <sup>st</sup> Floor, 1-2 Victoria Buildings, Haddington Road, Dublin 4, Ireland	The Share Trustee will hold the issued share capital of the Issuer as trustee under the terms of a charitable trust for the benefit of one or more



Party	Name	Address	Document under which Appointed/Further Information
			charitable purposes.
"Mezzanine Note Sellers"	Cheyne Real Estate Debt Fund	94 Solaris Avenue, Camana Bay, P.O. Box 1348, Grand Cayman KY1-1108, Cayman Islands.	The Mezzanine Note Sellers will transfer and novate the Mezzanine Note to the Issuer. See "SALE OF ASSETS" for further information.
	Cheyne Real Estate Credit Holdings Fund III	94 Solaris Avenue, Camana Bay, P.O. Box 1348, Grand Cayman KY1-1108, Cayman Islands.	
	Real Estate Credit Investments Limited	First Floor, Dorey Court, Admiral Park, St. Peter Port, Guernsey GY1 6HJ.	
"Mezzanine Note Agent"	Mount Street Mortgage Servicing Limited	Third Floor, New City Court, 20 St Thomas Street, London SE1 9RS	The Mezzanine Note Agent acts as note agent under the Mezzanine Note Issuance Agreement. In addition, the Mezzanine Note Issuance Agreement will have certain reporting functions under the Mezzanine Note Agent Letter Agreement. See the sections entitled "DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT" for further information and "CASH MANAGEMENT – Mezzanine Note Level Information Reporting".
"Mezzanine Security Agent"	Mount Street Mortgage Servicing Limited	Third Floor, New City Court, 20 St Thomas Street, London SE1 9RS	The Mezzanine Security Agent acts as security agent of the Mezzanine Secured Parties under Mezzanine Note Issuance Agreement (the "Finance Parties") and will hold, manage and, upon instructions of the relevant Mezzanine Secured Parties, enforce the Related Security in accordance with the Mezzanine Finance Documents.

## Other Parties

Party	Name	Address	Document under which Appointed/Further Information
"Listing Agent"	McCann FitzGerald Listing Services Limited	Riverside One 37-42 Sir John Rogerson's Quay Dublin 2 Ireland	N/A
"Listing Authority" and "Stock Exchange"	The Irish Stock Exchange plc	The Irish Stock Exchange 28 Anglesea Street Dublin 2 Ireland	N/A
"Clearstream, Luxembourg"	Clearstream	42 Avenue JF Kennedy L-1855 Luxembourg	N/A
"Euroclear"	Euroclear	1 Boulevard du Roi Albert II, B-1210 Brussels, Belgium	
"Clearing Systems"	Clearstream and Euroclear	N/A	N/A

Each of the Note Trustee, the Issuer Security Trustee, any Appointee, the Cash Manager, the Operating Bank, the Agent Bank, the Principal Paying Agent, the Registrar, the Issuer Corporate Services Provider and any other Paying Agent are together referred to in this Offering Circular as the **"Issuer Related Parties"**.

### Summary of the Terms and Conditions of the Notes

Please refer to the section entitled "*TERMS AND CONDITIONS OF THE NOTES*" for further detail in respect of the terms of the Notes.

## OVERVIEW OF THE KEY TERMS OF THE NOTES

<b>Currency</b>	Sterling
<b>Initial Principal Amount</b>	£101,620,000
<b>Interest Rate</b>	The interest rate applicable to the Notes shall be 8.25% per cent per annum. After a Cash Trap has occurred and is continuing, interest shall accrue on the Notes at (a) the Reduced Fixed Rate of Interest, being 4.25 per cent per annum and (b) the Capitalised Fixed Interest Rate, being 4.00 per cent per annum. The Capitalised Interest, calculated at the Capitalised Fixed Interest Rate, will be added to the Principal Amount Outstanding of the Notes.
<b>Distribution Dates</b>	On each Mezzanine Note Interest Payment Date and on the Final Maturity Date.

### Summary of Certain Additional Features of the Notes

<b>Credit Enhancement</b>	None
<b>Issue Price</b>	100%
<b>Interest Accrual Method</b>	Actual/365
<b>Business Day Convention</b>	Modified following
<b>First Distribution Date</b>	20 April 2017
<b>First Interest Period</b>	From (and including) the Closing Date ending on the Mezzanine Note Interest Payment Date falling on 20 April 2017
<b>Redemption Profile</b>	There is no scheduled amortisation under the Mezzanine Notes up to the Expected Maturity Date but to the extent received prior to the Expected Maturity Date, there will be a pass through of Principal Receipts
<b>Other Early Redemption in full Events</b>	Tax event or reduction in the amount payable by the Mezzanine Issuer in respect of the Issuer Assets <sup>(1)</sup>
<b>Final Maturity Date</b>	15 December 2026
<b>Form of the Notes</b>	Global note in registered form <sup>(2)</sup>

(1) See Condition 6(c) (*Optional Redemption for Tax or Other Reasons*) for further details.

(2) Notes in definitive form will be issued in limited circumstances.

<b>Application for Listing</b>	Ireland
<b>ISIN</b>	XS1564882915
<b>Common Code</b>	156488291
<b>Clearance/Settlement</b>	Euroclear / Clearstream, Luxembourg
<b>Minimum Denomination</b>	£1,000,000 with integral multiples of £1,000 in excess thereof.
<b>Commission</b>	Nil

## Ranking

The Notes constitute direct, limited recourse and secured obligations of the Issuer and the Notes will rank *pro rata* and *pari passu* without any preference or priority among themselves as to payments of interest and principal at all times.

## Form

The Notes will be represented by a global note in registered form (a "**Global Note**") without coupons or talons attached and which will represent the aggregate Principal Amount Outstanding of the Notes. On the Closing Date, the Global Note will be deposited on behalf of the subscribers of the Notes with and registered in the name of a nominee for the common depositary (the "**Common Depositary**") for Clearstream Banking, société anonyme ("**Clearstream, Luxembourg**") and Euroclear Bank S.A./N.V. ("**Euroclear**"). The Global Note will be exchangeable for notes in registered definitive form ("**Definitive Notes**") of the Notes only in certain limited circumstances as set out in the section of this Offering Circular, entitled "*DESCRIPTION OF THE NOTES – Issuance of Definitive Notes*".

## Security

The Notes are secured by the Issuer Security in favour of the Issuer Security Trustee for itself and on trust for the Noteholders and the Issuer Related Parties (the Issuer Security Trustee and all of the Issuer Related Parties and, including the Noteholders, being collectively the "**Issuer Secured Creditors**") as set out in the Deed of Charge and Assignment described in Condition 3(b) (*Security and Priority of Payments*). The security granted by the Issuer includes:

- (a) a first fixed charge over the Issuer's rights, title, interest and benefit, present and future in, to and under the Mezzanine Notes and the Related Security;
- (b) an assignment by way of first-ranking security of the Issuer's rights, title, interest and benefit, present and future, in, to and under, among other things, the Issuer Transaction Documents (other than the Issuer Corporate Services Agreement), all other contracts, agreements, deeds and documents present and future, to which the Issuer is or may become a party or have the benefit, including all reports, valuations and opinions (other than any Issuer Security Document);
- (c) a first fixed charge over the Issuer's rights, title, interest and benefit, present and future in, to and under the Issuer Transaction Account and any other bank account in England and Wales and in which the Issuer may at any time acquire any right, title, interest or benefit or otherwise place and hold its cash, and in the funds from time to time standing to the credit of such accounts and in the debts represented thereby excluding the amounts recorded in the Issuer Profit Account;
- (d) a first-ranking floating charge governed by English law over the whole of the undertaking and assets of the Issuer, present and future (other than the fixed charges and assignments set out in paragraphs (a) to (c) above) (but excluding the Irish Excluded Assets); and
- (e) continuing first priority security interests in the Issuer's benefit in contractual rights that are subject to Jersey security interests law.

Some of the other Issuer Secured Creditors rank senior to the Issuer's obligations under the Notes in respect of the allocation of proceeds as set out in the Post-Enforcement Priority of Payments.

## Interest Provisions

Interest on the Notes will be payable in arrear in sterling on each Mezzanine Note Interest Payment Date and the Final Maturity Date (each such day being, a "**Distribution Date**"). The first Distribution Date will be the Distribution Date falling in April 2017.

"**Mezzanine Note Interest Payment Date**" means 20 January, 20 April, 20 July and 20 October in each year and the Redemption Date, with the first Mezzanine Note Interest Payment Date being 20 April 2017. If, however, any such day is not a Business Day, the Mezzanine Note 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).

"**Redemption Date**" means the date falling on:

- (a) 15 December 2019;
- (b) if the first extension option under the Mezzanine Note Issuance Agreement is exercised by the Mezzanine Issuer, 15 December 2020; and
- (c) if the second extension option under the Mezzanine Note Issuance Agreement is exercised by the Mezzanine Issuer, 15 December 2021.

Interest on the Notes is payable by reference to successive interest periods (each, an "**Interest Period**") which shall correspond to each successive Mezzanine Note Interest Period provided that the first Interest Period will commence on the Closing Date and end on the Mezzanine Note Interest Payment Date in April 2017. 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).

The Notes shall bear interest on their respective Principal Amounts Outstanding from and including the Closing Date at the Fixed Rate of Interest.

"**Fixed Rate of Interest**" means the Whole Fixed Rate of Interest or the Reduced Fixed Rate of Interest, as applicable.

"**Whole Fixed Rate of Interest**" means provided:

- (a) that no Cash Trap Event occurs and is continuing; or
- (b) if an Interest Reserve Account Withdrawal (for the avoidance of any doubt, for the Full Mezzanine Note Interest Amount) is received or expected to be received by the Issuer,

8.25 per cent. per annum.

"**Interest Reserve Account Withdrawal**" means a withdrawal made from the Interest Reserve Account in accordance with the Mezzanine Note Issuance Agreement to pay the Full Mezzanine Note Interest Amount on any Mezzanine Note Interest payment Date on which such interest is not or cannot be paid.

"**Full Mezzanine Note Interest Amount**" means the accrued interest amount payable on the Mezzanine Notes calculated at a rate equal to 8.25 per cent. per annum.

**"Reduced Fixed Rate of Interest"** means, after a Cash Trap Event occurs and while it is continuing, 4.25 per cent. per annum unless an Interest Reserve Account Withdrawal (for the avoidance of any doubt, for the Full Mezzanine Note Interest Amount) is received or expected to be received by the Issuer.

The amount of interest payable in respect of the Notes for each Interest Period will be calculated and set on, in respect of the first Interest Period, the Closing Date and, in respect of all subsequent Interest Periods, the first day of each such Interest Period by applying the Fixed Rate of Interest to the Principal Amount Outstanding of the Notes and multiplying such sum by a fraction where the actual number of days in the relevant Interest Period is the numerator and a 365 day year is the denominator and rounding the resultant figure downward to the nearest pence.

After a Cash Trap has occurred and is continuing, interest shall accrue at the Capitalised Fixed Interest Rate, representing the Capitalised Interest, which shall be added to the Principal Amount Outstanding under the Notes.

**"Capitalised Fixed Interest Rate"** means 4.00 per cent. per annum.

**"Capitalised Interest"** means an amount equal to the interest accrued on the Notes at the Capitalised Fixed Interest Rate.

#### **Default Interest**

Any payments of Default Interest received by the Issuer corresponding to its interest in the Mezzanine Notes shall be allocated by the Cash Manager on the immediately following Distribution Date to the Notes and paid pursuant to Condition 5(d) (*Default Interest*) and in accordance with the applicable Issuer Priority of Payments.

**"Default Interest"** means, with respect to any amount a Mezzanine Note Obligor has failed to pay under the Mezzanine Finance Documents, the interest accrued and payable by a Mezzanine Note Obligor to the Mezzanine Note Agent on any such overdue amount as calculated in accordance with the default interest provisions of the Mezzanine Note Issuance Agreement.

#### **Gross-up**

None of the Issuer or any Paying Agent will be obliged to gross-up if there is any withholding or deduction in respect of the Notes on account of taxes. See the section entitled "*RISK FACTORS – C. LEGAL AND REGULATORY REQUIREMENTS – Withholding tax under the Notes*".

#### **Redemption**

Unless previously redeemed in full, the Notes are expected to mature on the Distribution Date falling on 15 December 2021 (the "**Expected Maturity Date**"). The Notes may mature if redeemed in full, either on (a) the Distribution Date falling on 15 December 2020 (if the Second Extension Option is not exercised) or 15 December 2019 (if the First Extension Option is not exercised).

The Notes will, in any event, mature no later than the Distribution Date falling on 15 December 2026 (the "**Final Maturity Date**"). Before the Expected Maturity Date and the Final Maturity Date, the Notes will be subject to mandatory and/or optional redemption in whole or in part in certain circumstances (as set out in Condition 6 (*Redemption and Cancellation*) of the terms and conditions of the Notes (the "**Conditions**").

The Notes may be redeemed in whole or in part (as applicable) in connection with the following optional or mandatory redemption events:

- a final redemption in whole at their Principal Amount Outstanding together with accrued interest on the Final Maturity Date, being the

Distribution Date falling on 15 December 2026 as more fully described in Condition 6 (*Redemption and Cancellation*);

- mandatory early redemption in full or, as the case may be, in part on each Distribution Date, or on an Intra-Mezzanine Note Interest Payment Date, as applicable, by applying an amount equal to any Principal Receipts to redeem the Notes as fully described in Condition 6(b) (*Mandatory Redemption from Principal Receipts*); and
- optional redemption in full exercisable by the Issuer on the Distribution Date on which the Issuer satisfies the Note Trustee: (A) that by virtue of a change in tax law from that in effect on the Closing Date, on the next Distribution Date the Issuer will be obliged to make any withholding or deduction from payments of principal or interest in respect of the Notes on account of any present or future taxes; or (B) that any amount payable by the Mezzanine Issuer in respect of the Issuer Assets is reduced or ceases to be receivable by the Issuer during the Interest Period preceding the next Distribution Date; as fully described in Condition 6(c) (*Optional Redemption for Tax or Other Reasons*).

#### **Note Events of Default**

As fully set out in Condition 10 (*Note Events of Default*) which broadly includes (where relevant, subject to the applicable grace period):

- non-payment of interest when due for a period of twelve Business Days and/or non-payment of principal when due for a period of three Business Days in respect of the Notes;
- default in the performance or observance of any other obligation binding upon the Issuer, under the Notes, the Note Trust Deed, the Issuer Security Documents or under the Issuer Transaction Documents;
- the Issuer ceases to carry on business or a substantial part of its business or is deemed unable to pay its debts as and when they fall due;
- an order is made or an effective resolution is passed for the winding-up of the Issuer; or
- proceedings are initiated against the Issuer under any applicable liquidation, insolvency, examinership, composition, reorganisation or other similar laws.

#### **Limited Recourse**

The Notes are limited recourse obligations of the Issuer, and, if not repaid in full following the Final Maturity Date, or realisation or enforcement of all of the Issuer Security, amounts outstanding are subject to a final write-off, which is described in more detail in Condition 3(b) (*Security and Priority of Payments*).

#### **Non-Petition**

The Noteholders will not be entitled to take any steps (otherwise than in accordance with the Note Trust Deed and the Conditions):

- to enforce the Issuer Security other than when expressly permitted to do so under Condition 10 (*Note Events of Default*);
- to take or join in any steps against the Issuer to obtain payment of any amount due from the Issuer to it;

- to initiate or join in initiating any insolvency, examinership or moratorium proceedings in relation to the Issuer; or
- to take any steps which would result in any of the Issuer Priority of Payments not being observed.

#### Governing Law

English law.

#### Noteholder Reporting Obligations

Each purchaser, beneficial owner and subsequent transferee of Notes or interest therein, by acceptance of such Notes or such an interest in such Notes, agrees or is deemed to agree (A) that it will (1) be required to agree to provide the Issuer and Note Trustee and their agents and delegates (i) any information as is necessary (in the sole determination of the Issuer or its agents and delegates, as applicable) for the Issuer or its agents and delegates to determine whether such purchaser, beneficial owner or transferee is (x) either a specified United States person as defined in Section 1473(3) of the Code ("**specified United States person**"), (y) a United States owned foreign entity as defined in Section 1471(d)(3) of the Code or a non-US entity with one or more controlling persons, as that term is defined in the intergovernmental agreement between Ireland and the United States signed on January 23, 2013 (the "**US-Irish IGA**"), that is a specified United States person ("**United States owned foreign entity**") and (ii) any additional information that the Issuer or its agent requests in connection with FATCA and (2) if it is a specified United States person or a United States owned foreign entity that is a holder or beneficial owner of Notes or an interest therein, be required to (x) provide the Issuer and Note Trustee and their agents and delegates its name, address, U.S. taxpayer identification number and, if it is a United States owned foreign entity, the name, address and taxpayer identification number of each of its substantial United States owners as defined in Section 1473(2) of the Code ("**substantial United States owner**") or controlling persons that are specified United States persons as that term is defined in the US-Irish IGA ("**controlling United States persons**") and any other information requested by the Issuer or its agent upon request and (y) update any such information provided in clause (x) promptly upon learning that any such information previously provided has become obsolete or incorrect or is otherwise required (the foregoing agreements, the "**Noteholder Reporting Obligations**"), (B) that each purchaser and subsequent transferee of Notes will be required or deemed to acknowledge that the Issuer and/or the Trustee may (1) provide such information and any other information concerning its investment in the Notes to the U.S. Internal Revenue Service and any other relevant tax authority, and (2) take such other steps as they deem necessary or helpful to achieve compliance with FATCA, including withholding on "passthru payments" (as defined in the Code).

"**FATCA**" means (a) sections 1471 to 1474 of the United States Internal Revenue Code of 1986, as amended (the "**Code**") or any associated regulations or other official guidance; (b) any treaty, law, regulation or other official guidance enacted in any other jurisdiction, or relating to an intergovernmental agreement between the US and any other jurisdiction, including the US-Irish IGA, which (in either case) facilitates the implementation of any law or regulation referred to in paragraph (a) above; or (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.



## Rights of Noteholders and Relationship with Other Secured Creditors

Please refer to sections entitled "*TERMS AND CONDITIONS OF THE NOTES*" for further details in respect of the rights of Noteholders, conditions for exercising such rights and relationship with other Issuer Secured Creditors.

**Principal Amount Outstanding** The "**Principal Amount Outstanding**" of the Notes on any date will be their face amount plus the aggregate amount of any Capitalised Interest less the aggregate amount of all principal repayments or prepayments made in respect of that Note since the Closing Date.

### Noteholders Meeting Provisions

	<i>Initial meeting</i>	<i>Adjourned meeting</i>
Notice Period:	10 days	5 days
Quorum:	Not less than 50.1 per cent. of the Principal Amount Outstanding of the Notes (other than a Basic Terms Modification, which requires not less than 75 per cent. of the Principal Amount Outstanding of the Notes).	Same Quorum requirement as for an Initial Meeting.
Required Majority:	Not less than 75 per cent. of votes cast for matters requiring Extraordinary Resolution.	Same Required Majority requirement as for an Initial Meeting.
	Not less than 50.1 per cent. of votes cast for matters requiring Ordinary Resolution.	Same Required Majority requirement as for an Initial Meeting.

**Convening a meeting** The Issuer is obliged to convene a meeting if requested in writing by Noteholders representing not less than 10 per cent of the Principal Amount Outstanding of the Notes.

**Written Resolutions** A resolution in writing by holders of not less than 75 per cent. in aggregate of the Principal Amount Outstanding of the Notes, which resolution may be contained in one document or in several documents in like form each signed by or on behalf of one or more of such holders (a "**Written Extraordinary Resolution**"). A Written Extraordinary Resolution has the same effect as an Extraordinary Resolution.

A resolution in writing by holders of not less than 50.1 per cent. in aggregate of the Principal Amount Outstanding of the Notes, which resolution may be contained in one document or in several documents in like form each signed by or on behalf of one or more of such holders (a "**Written Ordinary Resolution**"). A Written Ordinary Resolution has the same effect as an Ordinary Resolution.

**Basic Terms Modification** Any Extraordinary Resolution passed by the holders of the Notes which would have the effect of (i) modifying the date of maturity of the Notes; (ii) modifying any day for the payment of interest on the Notes; (iii) reducing the amount of principal or the rate of interest payable in respect of the Notes; (iv) modifying the method of calculating the amount payable or the date of payment in respect of any interest or principal in respect of the Notes; (v) modifying the definition of "Basic Terms Modification"; (vi) altering the currency of payment of the Notes referable thereto; or (vii) releasing any of the Issuer Security (or any part thereof) other than in accordance with the Issuer Transaction Documents will constitute a "**Basic Terms Modification**". A Basic Terms Modification may only be effected by an Extraordinary Resolution.

**Notes Held by a member of the Group or Investor Affiliate**

For the purposes of determining:

- (a) the quorum at any meeting of Noteholders considering an Extraordinary Resolution or an Ordinary Resolution or the majority of votes cast at such meeting;
- (b) the holders of Notes for the purposes of giving any direction to the Note Trustee (or any other party);
- (c) the majorities required for any written resolutions, including the majority required for passing a Written Ordinary Resolution for the purpose of appointing a Noteholder Representative;
- (d) any discretion, power or authority (whether contained in any of the Issuer Transaction Documents or conferred on it by operation of law) which the Note Trustee is required, expressly or impliedly, to exercise in or by reference to the interests of the Noteholders;
- (e) the determination by the Note Trustee whether any event or potential event is or would be materially prejudicial to the interests of the Noteholders;
- (f) the objection by Noteholders for the purpose of Negative Consent; or
- (g) the determination of how many and which Notes are for the time being outstanding in accordance with the Note Trust Deed,

any Notes held by (or in relation to which the exercise of the right to vote is directed or otherwise controlled by) (A) a Sponsor Affiliate or (B) a Senior Creditor or (C) the Issuer, in each case, have no voting rights or any right to pass an Extraordinary Resolution or an Ordinary Resolution and will be treated as if the same were not outstanding and will not be counted in or towards any required quorum or majority.

**Negative Consent**

An Extraordinary Resolution (other than an Extraordinary Resolution relating to a Basic Terms Modification, the waiver of any Note Event of Default, the acceleration of the Notes or the enforcement of the Issuer Security) or Ordinary Resolution will be deemed to have been passed by the Noteholders if, within 15 days of a notice to such Noteholders which:

- (a) contains the text of such Extraordinary Resolution or Ordinary Resolution;
- (b) invites such Noteholders to object to such Extraordinary Resolution or Ordinary Resolution;
- (c) details the manner in which objections to such Extraordinary Resolution or Ordinary Resolution should be made; and
- (d) is given to such Noteholders in accordance with the provisions of Condition 15 (*Notice to and Communication between Noteholders*) provided that any such notice will in all cases also be delivered through the systems of Bloomberg L.P. (or such other manner as may be approved in writing by the Note Trustee) by the Issuer, the Note Trustee or the Cash Manager,

holders of 25 per cent. or more (in the case of an Extraordinary Resolution) or 50 per cent. or more (in the case of an Ordinary Resolution) in aggregate of the Principal Amount Outstanding of the Notes have not informed the Note Trustee in the prescribed manner of their objection to such Extraordinary Resolution or Ordinary Resolution. See Condition 12(b) (*Quorum*) for further details.

Negative Consent shall not apply to any Mezzanine Note Level Matters.

**Matters**

The matters that require an Extraordinary Resolution to be passed include, among other

**Requiring  
Extraordinary  
Resolution**

things:

- (a) any Basic Terms Modification; and
- (b) any modification of the Notes or the Note Trust Deed (including the Conditions) or the provisions of any of the other Issuer Transaction Documents.

**Matters  
Requiring  
Ordinary  
Resolution**

The matters that require an Ordinary Resolution to be passed include the removal of the Note Trustee, the Issuer Security Trustee, the Cash Manager, the Operating Bank, the Agent Bank, the Principal Paying Agent, the Registrar or the Issuer Corporate Services Provider.

**Note Trustee**

The Note Trustee shall be bound to on-direct the Issuer to exercise the Issuer's rights in relation to Mezzanine Note Level Matters in accordance with the instructions delivered to the Note Trustee from the Noteholder Representative. Following the delivery of a Note Acceleration Notice, the Note Trustee shall itself exercise the Issuer's rights to vote in relation to all Mezzanine Note Level Matters in accordance with the directions of the Noteholder Representative. See Condition 16 (*Noteholder Representative*) for further details.

The Noteholder Representative will be the representative appointed by the Noteholders in respect of all Mezzanine Note Level Matters in accordance with Condition 16 (*Noteholder Representative*).

The Noteholder Representative will be deemed to hold and have voting rights in respect of 100 per cent. of the aggregate voting rights, held and exercisable by the Issuer as a lender of record under the Mezzanine Note Issuance Agreement and the other Mezzanine Finance Documents and will have the right to direct the Note Trustee to on-direct the Issuer to vote in relation to all Mezzanine Note Level Matters.

The Noteholder Representative shall have the right to either direct (a) the Note Trustee to on-direct the Issuer (prior to the delivery of a Note Acceleration Notice); or (b) the Note Trustee itself (following the delivery of a Note Acceleration Notice), in each case to exercise directly all of the Issuer's voting rights under the Mezzanine Note Issuance Agreement and the Mezzanine Finance Documents in relation to Mezzanine Note Level Matters in accordance with the Conditions and the Issuer Transaction Documents.

The appointment of the Noteholder Representative shall not take effect until each of the Issuer Security Trustee, the Note Trustee, the Mezzanine Note Agent and the Issuer have been notified by the Noteholder Representative in writing of its appointment (with a copy to the Cash Manager).

Should the Noteholders fail to appoint a Noteholder Representative (or a Noteholder Representative resigns or is terminated and is not replaced), the Noteholders will be deemed to have waived any rights they may have under the Conditions, including any rights to direct the Note Trustee to on-direct the Issuer with respect to any Mezzanine Note Level Matters.

The right of a Noteholder to appoint, acting alone or with one or more Noteholders, a Noteholder Representative for the purpose of directing the Note Trustee to either on-direct the Issuer to exercise or to exercise directly, as the case may be, the Issuer's votes under the Finance Documents in respect of Mezzanine Note Level Matters pursuant to the Conditions shall not extend to or be exercisable by:

- (a) a Sponsor Affiliate; and
- (b) a Senior Creditor.

The Noteholder Representative must not at any time be a member of the Group or an

Investor Affiliate.

**Notices to the Noteholders**

All notices to be given by the Issuer, the Cash Manager or the Note Trustee to Noteholders shall be given in the following manners:

- (a) for so long as the Notes are in global form, all notices shall be given:
  - (i) through the regulated information service maintained or recognised by the Irish Stock Exchange (and any notice containing material, non-public information) will be given in this manner; and
  - (ii) by delivery to Euroclear and/or Clearstream, Luxembourg for communication by them to their participants and for communication by such participants to entitled account holders; and
  - (iii) by delivery to the electronic communications systems maintained by Bloomberg L.P. for publication on the relevant page for the Notes or such other medium for electronic display of data as may be approved in writing by the Note Trustee; or
- (b) if the Notes are in definitive form, through the regulated information service maintained or recognised by the Irish Stock Exchange (and any notice containing material, non-public information).

The Issuer will give notice to the Noteholders in accordance with Condition 15 (*Notice to and Communication between Noteholders*) of any additions to, deletions from or alterations to such methods from time to time.

As described in more details in Condition 12 (*Meetings of Noteholders, Modification and Waiver, Substitution and Termination of Issuer Related Parties*), the Cash Manager shall, on receipt of a request from a Verified Noteholder, post a notice on its investor reporting website requesting other Noteholders to contact such Verified Noteholder. Such notice shall contain no more than:

- (a) an invitation to other Noteholders to contact the Verified Noteholder;
- (b) the name of the Verified Noteholder and the address, phone number, website or email address at which the Verified Noteholder can be contacted;
- (c) the date(s) from, on or between which the Verified Noteholder may be so contacted; and
- (d) a request that a Noteholder wishing to be in contact with the Verified Noteholder confirm its holding in accordance with Condition 12(e) (*Note Trustee Determinations*) and confirm that it has not been disenfranchised pursuant to Condition 12(e) (*Disenfranchised Holders*).

**Source of Funds**

The repayment or prepayment of principal and the payment of interest by the Mezzanine Issuer in respect of the Mezzanine Note will provide the principal source of funds for the Issuer to make payments of interest on and repayments of principal in respect of the Notes.

*Funds Paid into the Issuer Transaction Account:*

On each Mezzanine Note Interest Payment Date, the Mezzanine Note Agent will transfer from the Mezzanine Finance Account or any other relevant Mezzanine Note Obligor bank account to the Issuer Transaction Account an amount equal to the aggregate amounts in respect of interest, principal, fees and other amounts, if any, then payable under the Mezzanine Finance Documents which the Issuer, as a lender, is entitled to receive.

*Revenue Receipts:*

**"Revenue Receipts"** means the Issuer's interest and the income receipts which comprise, on any day, the sum of all amounts of whatever nature received or recovered by or on behalf of the Issuer under or in connection with the Mezzanine Notes (other than Principal Receipts), and standing to the credit of the Issuer Transaction Account, including, without limitation all amounts received or recovered by or on behalf of the Issuer in respect of:

- (a) interest payments received under the Mezzanine Notes;
- (b) any Default Interest;
- (c) Break Costs received under the Mezzanine Notes;
- (d) any early redemption or cancellation fees received under the Mezzanine Notes;
- (e) any costs, expenses, commissions and other sums, in each case paid by the Mezzanine Issuer or any of the Mezzanine Note Obligors in respect of the Mezzanine Notes or the Related Security (other than any repayments in respect of the Principal Receipts); and
- (f) interest on amounts standing to the credit of the Issuer Transaction Account and any cash deposits held in a bank account of the Issuer received during the Interest Period immediately preceding a Determination Date,

provided that all amounts recorded in the Issuer Profit Account shall not form part of Revenue Receipts or be applied in accordance with the applicable Issuer Priority of Payments.

*Principal Receipts:*

**"Principal Receipts"** means the Issuer's principal receipts comprising on any day, all payments and repayments of principal received or recovered by or on behalf of the Issuer in connection with the Mezzanine Notes, and standing to the credit of the Issuer Transaction Account, including, without limitation all amounts received or recovered by or on behalf of the Issuer in respect of:

- (a) amounts recovered which are applied towards the reduction of outstanding principal as a result of actions taken in accordance with the enforcement procedures in respect of the Mezzanine Notes and/or the Related Security;
- (b) any mandatory prepayment amounts of a principal nature under and in accordance with the provisions of the Mezzanine Note Issuance Agreement;
- (c) payments received by or on behalf of the Issuer as a result of an indemnity payment from or the repurchase of the Mezzanine Notes by a Mezzanine Note Seller pursuant to the Note Sale Agreement which, in each case, do not constitute Revenue Receipts;
- (d) voluntary repayments or prepayments in respect of the principal outstanding under the Mezzanine Notes made on notice in accordance with the Mezzanine Note Issuance Agreement; and
- (e) any repayments or prepayments made by or on behalf of the Mezzanine Issuer in connection with a restructuring of the Mezzanine Note Issuance Agreement or as a condition to any waiver of a Mezzanine Note Event of Default under the Mezzanine Note Issuance Agreement,

provided that all amounts recorded in the Issuer Profit Account shall not form part of the

Principal Receipts, or be applied in accordance with the applicable Issuer Priority of Payments.

*Revenue and Principal Distributions:*

On each Distribution Date, the Notes will be subject to a mandatory redemption in full or in part, as the case may be, in an amount up to the sum of the Principal Receipts available to pay principal subject to the Pre-Enforcement Principal Priority of Payments or the Post-Enforcement Priority of Payments, as applicable.

**Distribution of Revenue and Principal Receipts**

<i>Pre-Enforcement Revenue Priority of Payments</i>	<i>Pre-Enforcement Principal Priority of Payments</i>	<i>Post-Enforcement Priority of Payments</i>
<p>(a) <i>First</i>, on a <i>pro rata</i> and <i>pari passu</i> basis, fees and expenses and any other amounts owing to the Note Trustee, Issuer Security Trustee, and any Appointee;</p> <p>(b) <i>Second</i>, on a <i>pro rata</i> and <i>pari passu</i> basis, third party fees and expenses due and payable by the Issuer including a provision for expected amounts including, but not limited to auditors, tax advisors, legal counsel and anticipated winding up costs of the Issuer, fees incurred for listing on the stock exchange and company secretarial expenses and to pay each of the Tax Amounts (but only to the extent that such amounts cannot be paid from the Issuer Profit Amount) and the Issuer Profit Amount to the Issuer Profit Account;</p> <p>(c) <i>Third</i>, on a <i>pro rata</i> and <i>pari passu</i> basis, amounts due and payable to (i) Issuer Corporate Services Provider (including the fees, costs and expenses of the directors of the Issuer, and any advisors appointed by them, if any); (ii) Operating Bank; (iii) Cash Manager; and (iv) Agents;</p> <p>(d) <i>Fourth</i>, in or towards satisfaction on a <i>pro rata</i> and <i>pari passu</i> basis, of any Note Prepayment Fees due</p>	<p>(a) in or towards satisfaction on a <i>pro rata</i> and <i>pari passu</i> basis, of all principal due or overdue in respect of the Notes until the Notes have been repaid in full.</p> <p>(b) <i>Second</i>, on a <i>pro rata</i> and <i>pari passu</i> basis, third party fees and expenses due and payable by the Issuer including a provision for expected amounts including, but not limited to auditors, tax advisors, legal counsel and anticipated winding up costs of the Issuer, fees incurred for listing on the stock exchange and company secretarial expenses and to pay the Tax Amounts (but only to the extent that such amounts cannot be paid from the Issuer Profit Account) to the Issuer Profit Account;</p> <p>(c) <i>Third</i>, on a <i>pro rata</i> and <i>pari passu</i> basis, amounts due and payable to (i) Issuer Corporate Services Provider (including the fees, costs and expenses of the directors of the Issuer, and any advisors appointed by them, if any); (ii) Operating Bank; (iii) Cash Manager; and (iv) Agents;</p> <p>(d) <i>Fourth</i>, in or towards satisfaction on a <i>pro rata</i> and <i>pari passu</i> basis, of any Note Prepayment Fees due</p>	<p>(a) <i>First</i>, on a <i>pro rata</i> and <i>pari passu</i> basis, fees and expenses and any other amounts owing to the Note Trustee, Issuer Security Trustee, and any Appointee;</p> <p>(b) <i>Second</i>, on a <i>pro rata</i> and <i>pari passu</i> basis, third party fees and expenses due and payable by the Issuer including a provision for expected amounts including, but not limited to auditors, tax advisors, legal counsel and anticipated winding up costs of the Issuer, fees incurred for listing on the stock exchange and company secretarial expenses and to pay the Tax Amounts (but only to the extent that such amounts cannot be paid from the Issuer Profit Account) to the Issuer Profit Account;</p> <p>(c) <i>Third</i>, on a <i>pro rata</i> and <i>pari passu</i> basis, amounts due and payable to (i) Issuer Corporate Services Provider (including the fees, costs and expenses of the directors of the Issuer, and any advisors appointed by them, if any); (ii) Operating Bank; (iii) Cash Manager; and (iv) Agents;</p> <p>(d) <i>Fourth</i>, in or towards satisfaction on a <i>pro rata</i> and <i>pari passu</i> basis, of any Note Prepayment Fees due</p>

or overdue in respect of the Notes;

(e) *Fifth*, in or towards satisfaction on a *pro rata* and *pari passu* basis, according to the respective amounts due and payable, of interest due and overdue on the Notes;

(f) *Sixth*, in or towards satisfaction on a *pro rata* and *pari passu* basis, of Default Interest due or overdue in respect of the Notes; and

(g) *Seventh*, on a *pro rata* and *pari passu* basis, the surplus (if any) to the Mezzanine Note Sellers as Deferred Consideration in accordance with the Mezzanine Note Sellers' shares set out in the Note Sale Agreement.

or overdue in respect of the Notes;

(e) *Fifth*, in or towards satisfaction on a *pro rata* and *pari passu* basis, of all interest and Default Interest due or overdue in respect of the Notes;

(f) *Sixth*, in or towards satisfaction on a *pro rata* and *pari passu* basis, of principal due or overdue in respect of the Notes; and

(g) *Seventh*, on a *pro rata* and *pari passu* basis, the surplus (if any), to the Mezzanine Note Sellers as Deferred Consideration in accordance with the Mezzanine Note Sellers' shares set out in the Note Sale Agreement.

**General Credit Structure**

No structure credit support will be provided for the Notes. In connection with the Mezzanine Notes, a loan to value ratio is required to be maintained by the Mezzanine Issuer in accordance with the Mezzanine Note Issuance Agreement. See the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT – Financial Covenants*".

## **RISK FACTORS**

An investment in the Notes involves a degree of risk. This section sets out certain aspects of the Issuer Transaction Documents, the Mezzanine Finance Documents, the Issuer, the Mezzanine Note Obligors and the Property of which prospective Noteholders should be aware. Prospective Noteholders should carefully consider the following risk factors and the other information contained in this Offering Circular before making an investment decision.

The occurrence of any of the events described below could have a material adverse impact on the business, financial condition or results of operations of the Issuer and/or the Mezzanine Note Obligors and could lead to, among other things:

- (a) an event of default under the Senior Loan pursuant to the Senior Facility Agreement and/or an event of default under the Mezzanine Notes pursuant to the Mezzanine Note Issuance Agreement; and/or
- (b) a Cash Trap Event;
- (c) a Note Event of Default; and/or
- (d) an inability of the Issuer to repay all amounts due in respect of the Notes.

This section of this Offering Circular is not intended to be exhaustive, and prospective Noteholders should also read the detailed information set out elsewhere in this Offering Circular prior to making any investment decision. The risks described below are not the only ones faced by the Mezzanine Note Obligors or the Issuer. Additional risks not presently known to the Issuer or that the Issuer currently believes to be immaterial may also adversely affect the Issuer and/or the Mezzanine Note Obligors' business (as the case may be). If any of the following risks occur, the Issuer, the Mezzanine Note Obligors or the Property could be materially adversely affected. In any such case(s), the value of the Notes could decline, and the Issuer may not be able to pay all or part of the interest, principal or other amounts due on the Notes and investors may lose all or part of their investment. Prospective Noteholders should take their own legal, financial, accounting, tax and other relevant advice as to the structure and viability of an investment in the Notes.

In addition, while the various structural elements described in this Offering Circular are intended to lessen some of the risks discussed below for the Noteholders, there can be no assurance that these measures will be sufficient to ensure that the Noteholders receive payment of interest or repayment of principal from the Issuer on a timely basis or at all.

### **A. THE NOTES**

#### **Changes in interest or inflation rates may adversely affect the value of the Notes**

The Notes bear interest at a fixed rate rather than by reference to an underlying index. Accordingly, prospective Noteholders should note that an investment in the Notes involves the risk that subsequent changes in market interest rates may adversely affect the value of the Notes.

Furthermore, the value of future payments of interest and principal may be reduced as a result of inflation as the real rate of interest on an investment in the Notes will be reduced at rising inflation rates and may be negative if the inflation rate rises above the nominal rate of interest on the Notes.

#### **General considerations related to the Notes representing interests in the Mezzanine Notes**

Payments in respect of the Notes are dependent on, and limited to, the receipt of funds under the Mezzanine Notes. There is no liquidity facility available to the Issuer to fund any payments in respect of the Notes. The Mezzanine Issuer's sole source of income (and, therefore, the sole source of debt service payments on the Mezzanine Notes) will be payments made to it by the Senior Borrower in accordance with the Senior Facility Agreement and the Interc Creditor Agreement. The Senior Borrower's sole source of funds to make such payments will be from the Property. The risks are greater with respect to the Mezzanine Notes because amounts from the Property are only payable with respect to the Mezzanine Notes after all debt service and other amounts due on the Senior Loan have been paid in accordance with the terms of the Senior Facility Agreement and the Finance Documents.



In order to make interest payments on the Notes the Noteholders must look to payments from the Mezzanine Issuer and payments it will receive from the Senior Borrower from the net rental income with respect to the Property. The ability of the Mezzanine Issuer to repay the Mezzanine Notes on maturity will depend on sufficient amounts being available from a refinancing of the Property or proceeds from the sale or disposal of the Property, in each case, after the Senior Loan has been paid. Revenues from the Property generally will serve as the primary source for payments due under the Mezzanine Notes and will only be available after all amounts due and payable under the Senior Facility Agreement have been paid, and only in accordance with the terms of the Intercreditor Agreement. If revenue from the Property is reduced or if expenses incurred in the operation of the Property increase, the ability of the Senior Borrower to make payments with respect to the Senior Loan may be impaired. Similarly, the Senior Borrower's ability to sell or refinance the Property at the maturity date of the Senior Loan and repay the Senior Loan could be impaired by an adverse change in the value of the Property, which in turn would impair the Mezzanine Issuer's ability to repay the Mezzanine Notes.

Any losses on the Mezzanine Notes will result in the Issuer having insufficient funds to make payments in respect of the Notes resulting in losses to the holders of the Notes.

See also the section entitled "*F. CONSIDERATIONS RELATING TO THE MEZZANINE NOTES AND THE RELATED SECURITY*" for more details in relation to the refinancing risk associated with the Mezzanine Notes and the risk arising as a result of the subordination of the Mezzanine Notes.

### **Risks relating to the limited recourse of the Issuer**

On enforcement of the Issuer Security, in the event that the proceeds of such enforcement are insufficient to meet all amounts payable by the Issuer under the Notes (after payment of all other claims ranking higher in priority to or *pari passu* with amounts due under those Notes in accordance with the Post-Enforcement Priority of Payments), then the Noteholders will have no further claim against the Issuer in respect of such unpaid amounts. Accordingly, enforcement of the Deed of Charge and Assignment and appointment of a receiver over the secured assets is the only substantive remedy available for the purposes of recovering amounts owed in respect of the Notes.

The Notes and interest thereon will not be obligations or responsibilities of any person other than the Issuer. In particular, the Notes will not be obligations or responsibilities of, or be guaranteed by, the Arranger, the Lead Manager, the Mezzanine Note Sellers, the Mezzanine Security Agent, the Issuer Security Trustee, the Mezzanine Note Agent, the Cash Manager, the Note Trustee, the Issuer Corporate Services Provider, the Paying Agents, the Registrar, the Common Depositary, the Operating Bank or any other Issuer Related Party or the shareholders of the Issuer or any company in the same group of companies as the Arranger, the Lead Manager, the Mezzanine Note Sellers, the Cash Manager, the Note Trustee, the Mezzanine Security Agent, the Issuer Security Trustee, the Issuer Corporate Services Provider, the Paying Agents, the Registrar, the Common Depositary, the Operating Bank or any other Issuer Related Party or the shareholders of the Issuer and none of such persons accepts any liability whatsoever in respect of any failure by the Issuer to make payment of any amount due on the Notes.

### **Risks relating to the calculation of amounts and payments**

The Cash Manager will rely on the Issuer or the Mezzanine Note Agent to provide it with information on the basis of which it will make the determinations required to calculate payments due on the Notes on each Determination Date as described in "*CASH MANAGEMENT – Calculation of Amounts and Payments*". If the Issuer or the Mezzanine Note Agent fails to provide the relevant information to the Cash Manager, the Cash Manager may not be able to accurately determine amounts due to Noteholders on the related Distribution Date.

The Cash Management Agreement provides that if such a situation arises, the Cash Manager will make its determinations based on the information provided to it by the Issuer or the Mezzanine Note Agent on the three preceding Determination Dates and will not be liable to any person (in the absence of gross negligence, fraud and wilful default) for the accuracy of such determinations. There can, however, be no assurance that determinations made on this basis will accurately reflect amounts then due to Noteholders.

The Conditions of the Notes provide that if, for whatever reason, an incorrect payment is made to any party entitled thereto (including the Noteholders) pursuant to the Pre-Enforcement Priority of Payments, the Cash Manager will rectify the same by increasing or reducing payments to such party (including the Noteholders), as appropriate, on each subsequent Distribution Date or Distribution Dates to the extent required to correct the

same. Where such an adjustment is required to be made, the Cash Manager will notify Noteholders of the same in accordance with the terms of Condition 15 (*Notice to and Communication between Noteholders*).

Accordingly, Noteholders should be aware that in such situations increased or reduced payments may be made. Furthermore, if such adjustments are not sufficient to rectify an incorrect payment made to a party, the Noteholders may be required to repay excess amounts received by them.

Additionally, any person purchasing Notes from an existing Noteholder should make due enquiries as to whether such Noteholder has received an incorrect payment. None of the Issuer, the Cash Manager, the Agents, the Note Trustee or the Issuer Security Trustee will have any liability to any Noteholder for any losses suffered as a result of an adjustment relating to an incorrect payment made before such Noteholder acquired the Notes.

### **Considerations relating to yield and prepayments**

The yield to maturity on the Notes will depend, in significant part, upon the rate and timing of principal payments on the Mezzanine Notes. For this purpose, principal prepayments include both voluntary prepayments, if permitted, and involuntary prepayments, such as prepayments resulting from illegality, certain change of control events, disposals or failure to meet certain financial covenants. Amounts received by the Issuer in connection with a repurchase upon a breach of a warranty by a Seller under the Note Sale Agreement and any amounts provided by the Mezzanine Note Sellers to the Issuer thereunder as indemnity payments will also constitute principal for these purposes.

If any of the Notes are purchased at a premium, and if payments and other collections of principal on the Mezzanine Notes occur at a rate faster than anticipated at the time of the purchase, then the actual yield to maturity on those Notes may be lower than assumed at the time of the purchase. If any Notes are purchased at a discount, and if payments and other collections of principal on the Mezzanine Notes occur at a rate slower than anticipated at the time of the purchase, then the actual yield to maturity on the Notes may be lower than assumed at the time of the purchase. The investment performance of the Note may vary materially and adversely from expectations due to the rate of payments and other collections of principal on the Mezzanine Notes being faster or slower than anticipated. Accordingly, the actual yield may not be equal to the yield anticipated at the time the Note was purchased, and the expected total return on investment may not be realised.

An independent decision should be made by prospective Noteholders as to the appropriate prepayment assumptions to be used when deciding whether to purchase any Note.

### **Interest adjustments on account of Loan Prepayments**

If under the Mezzanine Note Issuance Agreement the Mezzanine Issuer prepays all or part of the Mezzanine Notes or any unpaid sums on an Intra-Mezzanine Note Interest Payment Date, the Agent Bank will adjust the Rate of Interest on the Notes in accordance with Condition 5(g) (*Adjusted Interest on account of Mezzanine Note payments*) the effect of which will be that the holders of those Notes will receive less than the full Interest Amount payable to them on the Distribution Date immediately following any such Intra-Mezzanine Note Interest Payment Date. None of the Noteholders shall have any claim against the Issuer in respect of an interest shortfall arising from such adjustment. See Condition 5(g) (*Adjusted Interest on account of Mezzanine Note payments*) for further details.

### **Effects of Mezzanine Issuer default**

The rate and timing of delinquencies or defaults by tenants on the assets in the Portfolio will affect repayments under the Mezzanine Notes and consequentially, will affect the aggregate amount of distributions on the Notes, their yield to maturity, the rate of principal payments and their weighted average life.

The only source of payment for the Notes will be the Mezzanine Notes. Any losses on the Mezzanine Notes will be allocated to the holders of the Notes.

If anticipated yields are calculated based on assumed rates of default and losses that are lower than the default rate and losses actually experienced and such losses are allocable to the Notes, the actual yield to maturity will be lower than the assumed yield. Under certain extreme scenarios, such yield could be negative. In general, the earlier a loss borne by the Notes occurs, the greater the effect on the related yield to maturity.

Additionally, delinquencies and defaults on the Mezzanine Notes may significantly delay the receipt of distributions on the Notes.

### **Disenfranchisement of restricted lenders**

Prospective Noteholders should be aware that the Conditions limit the rights exercisable by (1) a Sponsor Affiliate; or (2) a Senior Creditor that holds directly or indirectly any right to or interest in the Notes, in each case, in relation to Mezzanine Note Level Matters. See Condition 12(e) (*Disenfranchised Holders*) for further details.

To the extent that any prospective Noteholder is a member of the Group or an Investor Affiliate it should take note of the applicable voting restrictions relating to its holding of the relevant Notes.

### **Exercise of Mezzanine Note Level Matters by the Noteholder Representative**

Noteholders should be aware that, unlike certain other transactions involving secured real estate debt, there is no party acting in the capacity of servicer (or similar) or making financing-related commercial decisions on behalf of the Issuer pursuant to a servicing standard or other specified duty of care. Therefore, if the Issuer (as Mezzanine Noteholder) receives any request for any consent, waiver, authorisation or amendment in respect of the Mezzanine Notes, or is otherwise required to take (or refrain from taking) active steps to manage its interest in the Mezzanine Notes, the Issuer will not take any decision to act or to refrain from acting, but will instead be required to act (or refrain from acting) in accordance with the instructions or directions of the Noteholders acting through the Noteholder Representative.

Prospective investors should be aware that the Noteholder Representative will act on behalf of the Noteholders.

Prior to the delivery of a Note Acceleration Notice, the Noteholder Representative will be entitled to direct the Note Trustee to on-direct the Issuer to vote in relation to Mezzanine Note Level Matters. Following the delivery of a Note Acceleration Notice the Noteholder Representative will be entitled to direct the Note Trustee itself to vote in relation to Mezzanine Note Level Matters.

There can be no assurance that in exercising a Mezzanine Note Level Matter any direction given by the Noteholder Representative will not conflict with the direction that could have been given by a Noteholder or Noteholders. Accordingly, Noteholders should be aware that directions given by a Noteholder Representative in respect of Mezzanine Note Level Matters may ultimately adversely affect their interests in the Notes.

If a Noteholder Representative is not appointed (or if a Noteholder Representative resigns or whose appointment is terminated and is not subsequently replaced), the Noteholders shall be deemed to have waived their rights under the Conditions, including any rights to direct the Note Trustee to on-direct the Issuer to vote in relation to any Mezzanine Note Level Matter or to direct the Note Trustee itself to vote in with respect to any Mezzanine Note Level Matter in accordance with the Conditions and the Issuer Transaction Documents. See Condition 16 (*Noteholder Representative*) for further details.

Further, Noteholders should be aware that Mezzanine Note Level Matters may be voted on by all the lenders (and not just the Issuer) under the Mezzanine Notes. Noteholders should also be aware that certain matters require the consent of all the lenders under the Mezzanine Notes and other matters require the consent of the Majority Lenders (see "*Transaction Security enforcement*" for more detail).

### **Risks relating to Noteholder meetings**

A meeting of the Noteholders to pass an Ordinary Resolution or Extraordinary Resolution may be held on 10 days' notice. The requisite quorum for such meeting is one or more persons holding or representing not less than 50.1 per cent. of the Principal Amount Outstanding of the Notes except where a Basic Terms Modification is proposed. The quorum for a meeting to pass a Basic Terms Modification requires not less than 75 per cent. of the Principal Amount Outstanding of the Notes.

### **Risks relating to Adjourned Noteholder meetings**

An adjourned meeting of the Noteholders may be held on 5 days' notice. The requisite quorum for an adjourned meeting is one or more persons holding or representing not less than 50.1 per cent. of the Principal Amount

Outstanding of the Notes except where a Basic Terms Modification is proposed. The quorum for an adjourned meeting where a Basic Terms Modification is proposed requires one or more persons holding or representing not less than 75 per cent. of the Principal Amount Outstanding of the Notes.

As a result of these requirements and also those described under "*Risks relating to Noteholder meetings*", it is possible that a valid Noteholder meeting may be held without the attendance of Noteholders who may have wished to attend and/or vote.

### **Risks relating to negative consent of Noteholders**

An Extraordinary Resolution (other than an Extraordinary Resolution relating to a Basic Terms Modification, the waiver of any Note Event of Default, the acceleration of the Notes, or the enforcement of the Issuer Security) or an Ordinary Resolution may be passed by negative consent of the Noteholders. Negative consent may not be used for Mezzanine Note Level Matters.

If the negative consent process is used (other than for Mezzanine Note Level Matters), an Extraordinary Resolution or an Ordinary Resolution, as applicable, will be deemed to have been passed by the Noteholders unless, within 15 days of the requisite notice being given by the Issuer, the Note Trustee or the Cash Manager to the Noteholders in accordance with the provisions of Condition 15 (*Notice to and Communication between Noteholders*) or in such other manner as may be approved in writing by the Note Trustee, (i) in the case of an Extraordinary Resolution, the holders of 25 per cent. or more in aggregate of the Principal Amount Outstanding of the Notes or (ii) in the case of an Ordinary Resolution, the holders of 50 per cent. or more in aggregate of the Principal Amount Outstanding of the Notes, have informed the Note Trustee in the prescribed manner of their objection to such Extraordinary Resolution or Ordinary Resolution, as applicable. Therefore, it is possible that an Extraordinary Resolution could be deemed to be passed without any Noteholder casting a vote or even if holders of up to 24.99 per cent. in aggregate of the Principal Amount Outstanding of the Notes objected to it and it is possible that an Ordinary Resolution could be deemed to be passed without Noteholders casting a vote or even if holders of up to 49.99 per cent. in aggregate of the Principal Amount Outstanding of the Notes objected to it.

### **No liquidity facility or cash reserve**

In contrast to many comparable transactions, the Issuer does not have the benefit of a liquidity facility or a cash reserve. Therefore, in the event that tenants of the Property fail to pay rent after any applicable grace period that may result in a delay or failure to pay by the Senior Borrower under the Senior Facility Agreement or by the Mezzanine Issuer under the Mezzanine Note Issuance Agreement and as a result, the Issuer may be unable to meet its payment obligations under the Notes as they fall due.

### **Absence of ratings**

In contrast to many comparable transactions, the Notes will not, on the Closing Date, be rated by any rating agency. This may reduce the number of potential investors in the Notes and may affect the price and/or liquidity of the Notes in the secondary market. Notwithstanding this, it is possible that credit rating agencies could seek to rate the Notes without having been requested to do so by the Issuer. Furthermore, the Arranger may seek to obtain ratings on the Notes after they are issued. Such unsolicited ratings could have an adverse effect on the value of the Notes.

### **Forward-looking statements**

This Offering Circular includes statements that are, or may be deemed to be, forward-looking statements. By their nature, forward-looking statements involve risks and uncertainties because they relate to events and depend on circumstances that may or may not occur in the future. These risks and uncertainties include, but are not limited to, those described in this "*RISK FACTORS*" section of this Offering Circular. Such risks and uncertainties should not be construed as exhaustive and should be read in conjunction with the other cautionary statements in this Offering Circular.

The forward-looking statements are not guarantees of future performance and the actual results of operations, financial condition and liquidity, and the market in which the Issuer and the Mezzanine Note Obligors operate, may differ materially from those made in or suggested by the forward-looking statements set out in this Offering Circular. In addition, even if the results of operations, financial condition and liquidity of the Issuer and the

Mezzanine Note Obligors, and the development of the market in which the Issuer and the Mezzanine Note Obligors operate, are consistent with the forward-looking statements set out in this Offering Circular, those results or developments may not be indicative of results or developments in subsequent periods. Many factors could cause the Issuer's or the Mezzanine Note Obligors' actual results, performance or revenues to be materially different from any future results, performance or revenues that may be expressed or implied by such forward-looking statements including, but not limited to, the other risks described in this section.

Any forward-looking statements which are made in this Offering Circular speak only on the date of such statements. Neither the Issuer nor the Mezzanine Note Obligors intend, and undertake no obligation, to revise or update the forward-looking statements included in this Offering Circular to reflect any future events or circumstances.

#### **Absence of operating history of the Issuer; reliance on agents and other entities**

The Issuer is a recently formed special purpose company whose business will consist solely of the issuance of the Notes, and the entering into and performance of its obligations under the Issuer Transaction Documents, the Finance Documents and related agreements and activities, as applicable. The Issuer has no operating history.

Certain of the business activities of the Issuer are to be carried out on behalf of the Issuer by entities appointed for such purpose. Neither the Issuer nor the Issuer Corporate Services Provider will have any role in determining or verifying the data received from Cash Manager, the Operating Bank, the Agent Bank, the Principal Paying Agent, the Registrar, the Note Trustee and the Issuer Security Trustee and any calculations derived therefrom.

### **B. THE MARKET AND ECONOMY**

#### **Absence of secondary market; limited liquidity**

Application has been made to the Irish Stock Exchange for the Notes to be admitted to the Official List and to trading on its regulated market. However, if granted, there can be no assurance that a secondary market in the Notes will develop or, if it does develop, that it will provide Noteholders with liquidity of investment, or that it will continue for the life of the Notes. Consequently, any purchaser of the Notes must be prepared to hold such Notes for an indefinite period of time or until final redemption or maturity of such Notes. Lack of liquidity could result in a significant reduction in the market value of the Notes.

In addition, the market value of the Notes may fluctuate with changes in prevailing rates of interest and the performance of the Mezzanine Notes. Consequently, any sale of Notes by Noteholders in any secondary market which may develop may be at a discount to the original purchase price of those Notes.

#### **The credit crisis and downturn in the real estate market has affected the value of securities backed by real estate**

Past events in the real estate and securitisation markets, as well as the debt markets and the economy generally, have caused significant dislocations, illiquidity and volatility in the market for comparable securities, as well as in the wider global financial markets. Declining real estate values, coupled with diminished availability of leverage and/or refinancings for commercial real estate resulted in increased delinquencies and defaults on comparable loans. In addition, the related downturn in the general economy has affected the financial strength of many commercial real estate tenants and has resulted in increased rent delinquencies and increased vacancies. Another similar downturn may again lead to increased vacancies, decreased rents or other declines in income from, or the value of, commercial real estate, which would likely have an adverse effect on any notes that are backed by mortgage loans secured by such commercial real estate and thus affect the values of such notes. Any similar economic downturn may adversely affect the financial resources of the Mezzanine Issuer and may result in the inability of the Mezzanine Issuer to make principal and interest payments on, or refinance, the Mezzanine Notes when due. In the event of default by the Mezzanine Issuer under the Mezzanine Notes, the Issuer may suffer a partial or total loss with respect to the Mezzanine Notes. Any delinquency or loss on the related mortgaged properties would have an adverse effect on the distributions of principal and interest received by holders of the Notes.

In addition to credit factors directly affecting notes backed by commercial real estate, the potential fallout from a similar downturn in the residential mortgage-backed securities market and markets for other asset-backed and structured products may also affect the market for notes backed by commercial real estate by contributing to a

decline in the market value and liquidity of such investments. The deterioration of other structured products markets may adversely affect the value of notes backed by commercial real estate. Even if notes backed by commercial real estate are performing as anticipated, the value of such notes in the secondary market may nevertheless decline as a result of deterioration in general market conditions or in the market for other asset-backed or structured products or the market value for such notes may be adversely affected by market perceptions of notes backed by commercial real estate more generally.

### **The effects of a volatile economy and a repeat of the credit crisis era market conditions may increase loan defaults and affect the value and liquidity of your investment**

The global economy experienced a significant recession and many economies continue to experience on-going volatility as a result of the credit crisis and European sovereign debt crises. Disruption in the credit markets, including the general absence of investor demand for and purchases of asset-backed securities and structured financial products may re-emerge. Downward price pressures and increasing defaults and foreclosures in residential real estate or other conditions that severely depressed the overall economy and contributed to the credit crisis also led to increased vacancies, decreased rents or other declines in income from, or the value of, commercial real estate. Additionally, the reduction in credit liquidity, decreases in the value of commercial properties and, in some instances, correspondingly higher lending rates prevented many commercial real estate borrowers from refinancing their loans. These circumstances increased delinquency and default rates of commercial real estate loans. In addition, the declines in commercial real estate values resulted in reduced borrower equity, hindering the ability of borrowers to refinance. Higher loan-to-value ratios also resulted in lower recoveries on foreclosure, and an increase in loss severities above those that would have been realised had commercial property values remained the same or continued to increase. Defaults, delinquencies and losses further decreased property values, thereby resulting in additional defaults by commercial real estate borrowers, further credit constraints, further declines in property values and further adverse effects on the perception of the value of notes backed by commercial real estate.

Many commercial real estate loan lenders tightened their loan underwriting standards, which has reduced the availability of mortgage credit to prospective borrowers. These developments contributed to a weakening in the commercial real estate market as these adjustments have, among other things, inhibited refinancing and reduced the number of potential buyers of commercial real estate. The continued use or further adjustment of these loan underwriting standards may contribute to further increases in delinquencies and losses on commercial real estate loans generally.

The global markets have seen an increase in volatility due to uncertainty surrounding the level and sustainability of sovereign debt of certain countries in the euro area, including Greece, Cyprus, Spain, France, Portugal, Ireland and Italy. There can be no assurance that this uncertainty will not lead to further disruption of the credit markets in Europe. In addition, recently-enacted (and future) financial reform legislation in Europe could adversely affect the availability of credit for commercial real estate.

As a result of the credit crisis in Europe, the European Commission created the European Financial Stability Facility (the "EFSF") and the European Financial Stability Mechanism (the "EFSM") to provide funding to Eurozone countries in financial difficulty that seek such support. In March 2011, the European Council agreed on the need for Eurozone countries to establish a permanent stability mechanism, the European Stability Mechanism, which was activated by mutual agreement, to assume the role of the EFSF and the EFSM in providing external financial assistance to Eurozone countries after June 2013.

Despite these measures, concerns persist regarding the growing risk that other Eurozone countries could be subject to an increase in borrowing costs and could face an economic crisis similar to that of Greece, Cyprus, Spain, Portugal, Ireland and Italy, together with the risk that some countries could leave the Eurozone (either voluntarily or involuntarily), and that the impact of these events on Europe and the global financial system could be severe which could have a negative impact on the collateral.

Furthermore, concerns that the Eurozone sovereign debt crisis could worsen may lead to the reintroduction of national currencies in one or more Eurozone countries or, in more extreme circumstances, the possible dissolution of the Euro entirely. In particular the economic environment in Greece remains uncertain. Further deterioration of the Greek economy or increased social tensions could cause political instability or a revision of fiscal consolidation or structural adjustment policies. These factors have heightened concern about Greece's continued participation in the Eurozone. The departure or risk of departure from the Euro by one or more Eurozone countries and/or the abandonment of the Euro as a currency could have major negative effects on the

Issuer and the Notes. These potential developments, or market perceptions concerning these and related issues, could adversely affect the value of the Notes. It is difficult to predict the final outcome of the Eurozone crisis. Investors should carefully consider how changes to the Eurozone may affect their investment in the Notes.

Investors should consider that general conditions in the commercial real estate and mortgage markets may adversely affect the performance of the Mezzanine Notes and accordingly the performance of the Notes. In addition, in connection with all the circumstances described above, you should be aware in particular that:

- (a) notwithstanding that the Mezzanine Notes were fully subscribed to on 15 December 2016 (and the Property was valued within the past 12 months prior to the Closing Date), the value of any of the Property may have declined since the related Loan was originated and may decline following the issuance of the Notes and such declines may be substantial and occur in a relatively short period following the issuance of the Notes; and such declines may or may not occur for reasons largely unrelated to the circumstances of the relevant Property;
- (b) if a Noteholder determines to sell its Notes, it may be unable to do so or may be able to do so only at a substantial discount from the price originally paid; this may be the case for reasons unrelated to the then current performance of the Notes or the related Loan; and this may be the case within a relatively short period following the issuance of the Notes;
- (c) if the Mezzanine Notes default, then the return on the Notes may be substantially reduced notwithstanding that liquidation proceeds may be sufficient to result in the repayment of the principal of and accrued interest on the Notes; an earlier than anticipated repayment of principal (even in the absence of losses) in the event of a default in advance of the maturity date would tend to shorten the weighted average period during which interest is earned on Noteholders' investments; and a later than anticipated repayment of principal (even in the absence of losses) in the event of a default upon the maturity date would tend to delay the receipt of principal and the interest on the Notes may be insufficient to compensate Noteholders for that delay;
- (d) even if liquidation proceeds received on the Mezzanine Notes are sufficient to cover the principal and accrued interest on the same, the Issuer may experience losses in the form of fees and expenses, and Noteholders may bear losses as a result, and their yield will be adversely affected by such losses;
- (e) the time periods to resolve the Mezzanine Notes following the occurrence of a default may be long, and those periods may be further extended because of a Mezzanine Issuer insolvency and related litigation; and
- (f) even if Noteholders intend to hold their Notes, depending on the circumstances of particular Noteholders, Noteholders may be required to report declines in the value of their holdings in the Notes, and/or record losses, on their financial statements or regulatory or supervisory reports, and/or repay or post additional collateral for any secured financing, hedging arrangements or other financial transactions that they have entered into that are backed by or make reference to the Notes, in each case as if the Notes were to be sold immediately.

In connection with all the circumstances described above, the risks described elsewhere under "*RISK FACTORS*" in this Offering Circular are heightened substantially, and Noteholders should review and carefully consider such risk factors in light of such circumstances.

### **Political uncertainty in the United Kingdom**

On 23 June 2016 the UK held a referendum to decide on the UK's membership of the European Union. The UK vote was to leave the European Union. There are a number of uncertainties in connection with the future of the UK and its relationship with the European Union. The negotiation of the UK's exit terms is likely to take a number of years. Until the terms and timing of the UK's exit from the European Union are clearer, it is not possible to determine the impact that the referendum, the UK's departure from the European Union and/or any related matters may have on the business of the Issuer or one or more of the other parties to the Issuer Transaction Documents. As such, no assurance can be given that such matters would not adversely affect the ability of the Issuer to satisfy its obligations under the Notes and/or the market value and/or the liquidity or the Notes in the secondary market.

## C. LEGAL AND REGULATORY REQUIREMENTS

Noteholders should analyse their own regulatory position, and are encouraged to consult with their own investment and legal advisors, regarding due diligence requirements outlined in this risk factor in respect of other applicable regulations and the suitability of the offered Notes for investment.

### **Regulatory initiatives may result in increased regulatory capital requirements and/or decreased liquidity in respect of the Notes**

In Europe, the U.S. and elsewhere there is increased political and regulatory scrutiny of the asset-backed securities industry. This has resulted in a raft of measures for increased regulation which are currently at various stages of implementation and which may have an adverse impact on the regulatory capital charge to certain investors in securitisation exposures and/or the incentives for certain investors to hold asset-backed securities, and may thereby affect the liquidity of such securities. Investors in the Notes are responsible for analysing their own regulatory position and none of the Issuer, the Issuer Security Trustee, the Note Trustee, the Agents, the Lead Manager, the Arranger or the Mezzanine Note Sellers makes any representation to any prospective Noteholder or purchaser of the Notes regarding the regulatory capital treatment of their investment on the Closing Date or at any time in the future.

In particular, investors should be aware of the EU risk retention and due diligence regulatory requirements which currently apply, or are expected to apply in the future, in respect of various types of EU regulated investors including credit institutions, authorised alternative investment fund managers, investment firms, insurance and reinsurance undertakings and UCITS funds. Such regulation includes Articles 405 and 406 of the CRR. These Articles provide that an EU credit institution shall only be exposed to a credit risk of a securitisation position if (a) the originator, sponsor or original lender has represented that it will retain on an on-going basis, a material net economic interest in the securitisation of not less than 5 per cent. and (b) it is able to demonstrate to its regulator on an on-going basis that it has a comprehensive and thorough understanding of the key terms, risks and performance of each securitisation position which it is invested. Failure by an investor that is a credit institution or investment firm regulated under the CRR or by certain consolidated affiliates of such an institution, to comply with the requirements of Articles 405 and 406 in relation to any applicable investment will result in an increased capital charge to or increased risk-weighting applying to such investor in respect of that investment.

Furthermore, investors should also be aware of Article 17 of the European Union Alternative Fund Managers Directive (Directive 2011/61/EU) ("**AIFMD**"), as supplemented by Section 5 of Chapter III of the AIFM Regulation which took effect on 22 July 2013 and Article 135(2) of the European Union Solvency II Directive, as supplemented by Articles 254-257 of the Solvency II Regulation, which become applicable from 1 January 2016. Section 5 of Chapter III of the AIFM Regulation provides for risk retention and due diligence requirements in respect of alternative investment fund managers that are required to become authorised under the AIFMD and which assume exposure to the credit risk of a securitisation on behalf of one or more alternative investment funds, and Articles 254-257 of the Solvency II Regulation provide corresponding requirements in respect of investments in securitisation by insurance and reinsurance undertakings regulated under the Solvency II Regulation. While such requirements are similar to those which apply under Part 5 of the CRR, they are not identical and, in particular, additional due diligence obligations apply to the relevant alternative investment fund managers and insurance and reinsurance undertakings.

Similar requirements are also expected to apply to investments in securitisations by EEA undertakings for collective investment in transferable securities.

Aspects of the requirements and what is or will be required to demonstrate compliance to national regulators remain unclear. No retention representation of the sort referred to in the preceding paragraph has been made in relation to this transaction. The Issuer has considered the applicability of Articles 405 and 406 to this transaction and is of the opinion that the Notes do not constitute an exposure to a "securitisation position" for the purposes of Articles 405 and 406. The Issuer is, therefore, of the opinion that the requirements of Articles 405 and 406 should not apply to investments in the Notes.

However, investors should be aware that the regulatory treatment of any investment in the Notes will be determined by the interpretation which an investor's regulator places on the provisions of the CRR, the AIFM Regulation, the Solvency II Regulation, as applicable, or other applicable rules and guidance. Prospective Noteholders should therefore be aware that should the relevant investor's regulator interpret the regulations such



that any of these requirements does apply to an investment in the Notes, significantly higher capital charges or other regulatory sanctions may be applied to that investor's holding. Although market participants have, in consultations relating to these regulatory reforms, requested guidance on the structures captured by the definitions, no definitive guidance has been forthcoming. Therefore, some uncertainty remains as to which transactions are subject to these requirements.

Investors in the Notes are responsible for analysing their own regulatory position and independently assessing and determining whether or not risk retention request will be applied to their exposure to the Notes and therefore prospective Noteholders should not rely on the Issuer's interpretation set out above. Further none of the Arranger, Lead Manager or the Mezzanine Note Sellers makes any representation in respect of the application of Article 405 to any investment in the Notes. Investors should consult their regulator should they require guidance in relation to the regulatory capital treatment or other measures their regulator would apply to an investment in the Notes. Article 405 and/or any further changes to the regulation or regulatory treatment of the Notes for some or all investors may negatively impact the regulatory position of individual investors and, in addition, have a negative impact on the price and liquidity of the Notes in the secondary market.

It should also be noted that the European Commission has published legislative proposals for two new regulations related to securitisation. Amongst other things, the proposals include provisions intended to implement the revised securitisation framework developed by the Basel Committee and provisions intended to harmonise and replace the risk retention and due diligence requirements (including the corresponding guidance provided through technical standards) applicable to certain EU regulated investors. There are material differences between the legislative proposals and the current requirements. It is not clear whether, and in what form, the legislative proposals (and any corresponding technical standards) will be adopted. In addition, the compliance position under any adopted revised requirements of transactions entered into prior to adoption, and of activities undertaken by a party (including an investor) in respect of such transactions, is uncertain.

Prospective investors should therefore make themselves aware of the changes and requirements described above (and any corresponding implementing rules of their regulator), where applicable to them, in addition to any other applicable regulatory requirements with respect to their investment in the Notes.

The EU risk retention described above and any other changes to the regulation or regulatory treatment of the Notes for some or all investors may negatively impact the regulatory position of individual investors and, in addition, have a negative impact on the price and liquidity of the Notes in the secondary market.

The transaction described in this Offering Circular is not intended to comply with any of the risk retention requirements described above. No party to the transaction has committed to retain a material net economic interest in the transaction in accordance with the aforementioned requirements.

#### **Implementation of and/or changes to the Basel III framework may affect the capital requirements and/or the liquidity associated with a holding of the Notes for certain investors**

The Basel Committee on Banking Supervision (the "**Basel Committee**") approved significant changes to the Basel II regulatory capital and liquidity framework in 2011 (such changes being commonly referred to as Basel III).

In particular, Basel III provides for a substantial strengthening of existing prudential rules, including new requirements intended to reinforce capital standards (with heightened requirements for global systemically important banks) and to establish a leverage ratio "backstop" for financial institutions and certain minimum liquidity standards (referred to as the liquidity coverage ratio and the net stable funding ratio).

It is intended that member countries will implement the new capital standards and the new liquidity coverage ratio as soon as possible (with provision for phased implementation, meaning that the measure will not apply in full until January 2019) and the net stable funding ratio from January 2018. Implementation of Basel III requires national (or EU) legislation (in the case of the EU member states via the CRR) and therefore the final rules and the timetable for their implementation in each jurisdiction may be subject to some level of national variation. The Basel Committee has also adopted in December 2014 (revised July 2016) revisions to the securitisation framework, including new hierarchies of approaches to calculating risk weights and a new risk weight floor of 15 per cent. intended to be implemented by January 2018.

Implementation of the Basel III framework and any changes as described above may have an impact on the capital requirements in respect of the Notes and/or on incentives to hold the Notes for investors that are subject to requirements that follow the relevant framework and, as a result, may affect the liquidity and/or value of the Notes.

In general, investors should consult their own advisers as to the regulatory capital requirements in respect of the Notes and as to the consequences for and effect on them of any changes to the existing Basel framework (including the changes described above) and the relevant implementing measures. No predictions can be made as to the precise effects of such matters on any investor or otherwise.

### **Emerging requirements of the European Union**

As part of the harmonisation of securities markets in Europe, the European Commission adopted the Prospectus Directive. The European Commission also adopted a directive known as the Transparency Directive 2004/109/EC (the "**Transparency Directive**") (which was required to be implemented by Member States by 20 January 2007) that, among other things, imposes continuing financial reporting obligations on issuers that have certain types of securities admitted to trading on an EU regulated market. In addition, the market abuse regulation (Regulation (EU) No. 596/2014) (the "**Market Abuse Regulation**") harmonises the rules on insider trading and market manipulation in respect of securities admitted to trading on an EU regulated market and requires issuers of such securities to disclose any non-public, price-sensitive information as soon as possible, subject to certain limited exemptions. The listing of Notes on the Official List of the Irish Stock Exchange and the admission of the Notes to trading on the regulated market of the Irish Stock Exchange would subject the Issuer to regulation under these directives. The Note Trust Deed will not require the Issuer to maintain a listing for Notes on an EU stock exchange if compliance with these directives (or other requirements adopted by the European Commission or a relevant Member State) is agreed by the Note Trustee to be unduly onerous.

### **Withholding tax under the Notes**

In the event that any withholding or deduction for or on account of tax is required to be made from payments due under the Notes (including in circumstances where a payment were to be made or collected through a Member State which has opted for a withholding system and an amount of, or in respect of, tax were to be withheld from that payment), neither the Issuer nor any Paying Agent nor any other person will be required to make any additional payments to Noteholders, or to otherwise compensate Noteholders for the reduction in the amounts that they will receive as a result of such withholding or deduction. If such a withholding or deduction is required to be made, the Issuer will have the option (but no obligation) to redeem all outstanding Notes in full at their Principal Amount Outstanding (together with accrued interest). (See "*TERMS AND CONDITIONS OF THE NOTES*".)

At the date of this Offering Circular, no withholding or deduction for or on account of United Kingdom tax will be required on interest payments to any holders of the Notes, provided that the Notes are and continue to be listed on a "recognised stock exchange" within the meaning of section 1005 of the Income Tax Act 2007. The Irish Stock Exchange is a recognised stock exchange for these purposes. The Notes will satisfy this requirement if they are officially listed in Ireland in accordance with provisions corresponding to those generally applicable in EEA states and are admitted to trading on the main market of the Irish Stock Exchange. Provided, therefore, that the Notes remain so listed, interest on the Notes will be payable without withholding or deduction on account of United Kingdom tax. The applicability of any withholding or deduction for or on account of United Kingdom tax on payments of interest is discussed further under the section entitled "*UNITED KINGDOM TAXATION*". Investors are referred to "*UNITED KINGDOM TAXATION*" more generally on withholding taxes and deductions.

### **Foreign Account Tax Compliance Act withholding may affect payments on the Notes**

Sections 1471 through 1474 of the U.S. Internal Revenue Code of 1986 (the "**Code**") impose a new reporting regime and, potentially, a 30 per cent. withholding tax with respect to (i) certain payments from sources within the United States; (ii) "foreign passthru payments" made to certain non-U.S. financial institutions that do not comply with this new reporting regime; and (iii) payments to certain investors that do not provide identification information with respect to interests issued by a participating non-U.S. financial institution. While the Notes are in global form and held within the Clearing Systems, in all but the most remote circumstances, it is not expected that FATCA will affect the amount of any payment received by the Clearing Systems. However, FATCA may affect payments made to custodians or intermediaries in the subsequent payment chain leading to the ultimate

investor if any such custodian or intermediary generally is unable to receive payments free of FATCA withholding. It may also affect payment to any ultimate investor that is a financial institution that is not entitled to receive payments free of withholding under FATCA, or an ultimate investor that fails to provide its broker (or other custodian or intermediary from which it receives payment) with any information, forms, other documentation or consents that may be necessary for the payments to be made free of FATCA withholding. Investors should choose the custodians or intermediaries with care (to ensure each is compliant with FATCA or other laws or agreements related to FATCA) and provide each custodian or intermediary with any information, forms, other documentation or consents that may be necessary for such custodian or intermediary to make a payment free of FATCA withholding. The Issuer's obligations under the Notes are discharged once it has made payment to, or to the order of, the common depository for the Clearing Systems (as registered holder of the Notes) and the Issuer has therefore no responsibility for any amount thereafter transmitted through the Clearing Systems and custodians or intermediaries. Prospective investors should refer to the section entitled "*FOREIGN ACCOUNT TAX COMPLIANCE ACT*".

### **The Issuer may be required to comply with FATCA reporting obligations**

The Issuer may be subject to withholding tax under FATCA unless it complies with Irish legislation that implements the US-Irish IGA with respect to the implementation of FATCA. The US-Irish IGA requires, among other things, that the Issuer collect and provide to the Irish Revenue Commissioners substantial information regarding certain direct and indirect holders of the Notes and withhold (or instruct paying agents to withhold) 30% of certain payments to certain holders of Notes (as described below). The Issuer intends to comply with its obligations under the US-Irish IGA. However, in some cases, the ability to avoid such withholding tax will depend on factors outside of the Issuer's control. For example, the Issuer may not be considered to comply with FATCA if more than 50% of the Notes are owned by a person that is, or is affiliated with, a foreign financial institution that is not compliant with FATCA. Under the US-Irish IGA, the Issuer will be required to comply with Irish legislation that has been implemented to give effect to the US-Irish IGA, the Financial Accounts Reporting (United States of America) Regulations 2014, as amended. Unless it qualifies as a Non-Reporting Irish Financial Institution, the Issuer or an agent acting on its behalf will report information to the Irish Revenue Commissioners, which will exchange reportable information with the IRS under the terms of the US-Irish IGA. Under the terms of the US-Irish IGA, withholding will not be imposed on payments made to the Issuer, or on payments made by the Issuer, unless the IRS has specifically listed the Issuer as a non-participating financial institution, the Issuer has otherwise assumed responsibility for withholding under U.S. tax law, or the Issuer cannot comply with FATCA as a result of factors outside of its control, as described above. In addition, future guidance under FATCA may subject payments on Notes to a withholding tax of 30% if each foreign financial institution that holds any such Note, or through which any such Note is held, has not entered into an information reporting agreement with the IRS or complied with the terms of a relevant intergovernmental agreement. Each owner of an interest in Notes will be required to provide the Issuer and the Note Trustee or their agents with information necessary to comply with the US-Irish IGA as discussed above. Owners that do not supply required information, or whose ownership of Notes may otherwise prevent the Issuer from complying with FATCA (for example by causing the Issuer to be affiliated with a non-compliant foreign financial institution), may be subjected to punitive measures, including forced transfer of their Notes. There can be no assurance, however, that these measures will be effective, and that the Issuer and owners of the Notes will not be subject to the noted withholding taxes. The imposition of such taxes could materially affect the Issuer's ability to make payments on the Notes or could reduce such payments.

### **The proposed financial transactions tax ("FTT")**

The European Commission has published a proposal (the "**Commission's Proposal**") for a Directive for a common FTT in Belgium, Germany, Estonia, Greece, Spain, France, Italy, Austria, Portugal, Slovenia and Slovakia (the "**participating Member States**").

The Commission's Proposal has very broad scope and could, if introduced, apply to certain dealings in the Notes (including secondary market transactions) in certain circumstances.

Under the Commission's Proposal, the FTT could apply, in certain circumstances, to persons both within and outside of the participating Member States. Generally, it would apply to certain dealings in the Notes where at least one party is a financial institution, and at least one party is established in a participating Member State. A financial institution may be, or be deemed to be, "established" in a participating Member State in a broad range of circumstances, including (a) by transacting with a person established in a participating Member State or (b) where the financial instrument which is subject to the dealings is issued in a participating Member State.

Joint statements issued by participating Member States indicated an intention to implement the FTT by 1 January 2016.

However, the FTT proposal remains subject to negotiation between the participating Member States, and the scope of any such tax is uncertain. Additional EU Member States may decide to participate.

Prospective holders of the Notes are strongly advised to seek their own professional advice in relation to the FTT.

### **Changes of law and regulation**

The structure of the issue of the Notes is based on English law and various regulatory, accounting and administrative practices in effect as at the date of this Offering Circular.

Regard has also been had to the expected tax treatment of the Issuer under the tax law and the published practice of the tax authorities of the United Kingdom as at the date of this Offering Circular.

No assurance can be given as to the impact of any possible change to law (including any change in regulation which may occur without a change in primary legislation), or the regulatory, accounting or administrative practice, or the interpretation or administration thereof, or the practices of HM Revenue & Customs ("HMRC") or the tax authorities of any other relevant taxing jurisdiction, after the date of this Offering Circular nor can any assurance be given as to whether any such change could adversely affect the ability of the Issuer to make payments under the Notes. Any changes to the accounting practices of any person may also have an effect on the tax treatment of that person.

In particular, the Issuer's ability to make (and Noteholders' entitlement to receive) payments on the Notes is therefore subject to the risk that tax law or the application of such law in any relevant jurisdiction may change and could adversely be affected by any such change.

### **Not a bank deposit**

Any investment in the Notes does not have the status of a bank deposit in Ireland and is not within the scope of the deposit protection scheme operated by the Central Bank.

### **No regulation of the Issuer by any regulatory authority**

The Issuer is not required to be licensed or authorised under any current securities, commodities or banking laws of its jurisdiction of incorporation. There is no assurance, however, that regulatory authorities in one or more jurisdictions would not take a contrary view regarding the applicability of any such laws to the Issuer. The taking of a contrary view by such regulatory authority could have an adverse impact on the Issuer or the holders of the Notes.

## **D. GENERAL FACTORS RELATING TO THE UNDERLYING ASSETS**

### **The Property: general**

#### *General risks relating to commercial real estate debt*

Commercial real estate financing is generally viewed as exposing a financier to a greater risk of loss than residential mortgage lending since the repayment of debt secured by income-producing property is typically dependent upon the successful operation of the related property. If the cash flows from the property are reduced (for example, if leases are not obtained or renewed or if tenants default in their obligations under the respective leases), a borrower's ability to repay the relevant debt may be impaired.

The volatility of property values and net operating income depends upon a number of factors, including (a) the volatility of property revenue and (b) the relevant property's operating leverage, which generally refers to (i) the percentage of total property operating expenses in relation to property revenue, (ii) the breakdown of property operating expenses between those that are fixed and those that vary with revenue and (iii) the level of capital expenditures required to maintain the property and retain or replace tenants. Even when the current net operating

income is sufficient to cover debt service, there can be no assurance that this will continue to be the case in the future.

The net operating income and value of properties may be adversely affected by a number of factors, including, but not limited to, national, regional and local economic conditions (which may be adversely affected by business closures or slowdowns and other factors); local property market conditions (such as an oversupply of office space, including market demand); perceptions by prospective tenants of the safety, convenience, condition, services and attractiveness of the properties; the proximity and availability of competing alternatives to the properties; the willingness and ability of the owners of the properties to provide capable management and adequate maintenance; demographic factors; consumer confidence; unemployment rates; customer tastes and preferences; retroactive changes to building or similar regulations; and increases in operating expenses (such as energy costs). In addition, other factors may adversely affect a property's value without affecting its current net operating income, including: changes in governmental regulations; monetary and fiscal policy and planning or tax laws; potential environmental legislation or liabilities or other legal liabilities; the availability of refinancing; and changes in interest rate or yield levels.

Any one or more of the above described factors could have an adverse effect on the income derived from, or able to be generated by, any of the Property, which could in turn cause the Mezzanine Issuer to default on the Mezzanine Notes or may impact the Mezzanine Issuer's ability to refinance the Mezzanine Notes or sell the Property to repay the Mezzanine Notes.

If the Issuer does not receive the full amount due from the Mezzanine Issuer in respect of the Mezzanine Notes, then Noteholders may receive by way of principal repayment an amount less than the face value of their Notes and the Issuer may be unable to pay, in whole or in part, interest due on the Notes. The Issuer does not guarantee or warrant full and timely payment by the Mezzanine Issuer of any sums payable under the Mezzanine Notes.

#### *Risks relating to office property*

The Property is primarily used for office purposes. The income from and market value of an office property, and a borrower's ability to meet its obligations under a loan secured by an office property, are subject to a number of risks. In particular, a given property's age, condition, design, access to transportation and ability to offer certain amenities to tenants, including sophisticated building systems (such as fibre-optic cables, satellite communications or other base building technological features) all affect the ability of such a property to compete against other office properties in the area in attracting and retaining tenants. Other important factors that affect the ability of an office property to attract or retain tenants include the quality of a building's existing tenants, the quality of the building's property manager, the attractiveness of the building and the surrounding area to prospective tenants and their customers or clients, access to public transportation and major roads and the public perception of safety in the surrounding neighbourhood. Attracting and retaining tenants often involves refitting, repairing or making improvements to office space to accommodate the type of business conducted by prospective tenants or a change in the type of business conducted by existing major tenants. Such refitting, repairing or improvements are often more costly for office properties than for other property types.

Local and regional economic conditions and other related factors also affect the demand for and operation of office properties. For example, decisions by companies to locate an office in a given area will be influenced by factors such as labour cost and quality, and quality of life issues such as those relating to schools and cultural amenities.

Also, changes in local or regional population patterns, the emergence of telecommuting, sharing of office space and employment growth also influence the demand for office properties and the ability of such properties to generate income and sustain market value. In addition, an economic decline in the businesses operated by tenants can affect a building and cause one or more significant tenants to cease operations and/or become insolvent. The risk of such an adverse effect is increased if revenue is dependent on a single tenant or a few large tenants or if there is a significant concentration of tenants in a particular business or industry.

Each of the foregoing circumstances and events may, individually or in the aggregate, adversely affect the income from and market value of any of the Property that comprise office property and thereby increase the possibility that the Mezzanine Issuer under the Mezzanine Notes secured by the Property will be unable to meet its obligations under the Mezzanine Notes.

Such factors can sometimes result in rapid, substantial increases and decreases in rental and valuation levels.

### **Risks relating to terms of leases**

Leases or licences may terminate earlier than anticipated if the relevant occupier surrenders its lease, terminates its licence or defaults in the performance of its obligations. Further, leases contain break clauses which, if exercised, will lead to a termination of the relevant lease. As such, the Mezzanine Issuer will have to either seek to renew such tenancies or find new tenants for the vacated premises.

Either of these factors might result in a decline in the income produced by the Property or the incurrence by the relevant Mezzanine Issuer of unforeseen liabilities, which may in turn adversely affect the ability of the Mezzanine Issuer to meet its obligations in respect of the Mezzanine Notes and hence the ability of the Issuer to make payments on the Notes.

### **Risks relating to frustration of tenancies**

A tenancy could, in exceptional circumstances, be frustrated under English law whereupon the parties need not perform any obligation arising under the relevant agreement after the frustration has taken place. Under English law frustration may occur where superseding events radically alter the continuance of the arrangement under the agreement for a party thereto, so that it would be inequitable for such an agreement or agreements to continue. If a tenancy granted in respect of a property is frustrated this could operate to have an adverse effect on the income derived from, or able to be generated by, a particular property, which could cause the owner of such property to default on its loan. Therefore, there can be no assurance that any lease will not terminate earlier than its term as a result of frustration.

### **Risks relating to the rights of occupiers**

Under each lease there is a landlord obligation, among other things, to allow each tenant quiet enjoyment of the commercial and/or residential parts of the Property which are leased to it and to perform certain specified obligations. Where the landlord is in default of its obligations under a tenancy, under the general law a right of set-off could be exercised against the landlord by a tenant of part of the Property in respect of its rental obligations.

In addition, risks related to occupiers may also be increased if there is a concentration of occupiers in particular industries at a property. If a property is leased predominantly to tenants in a particular industry (for example, students), the lender may not have the benefit of risk diversification that would exist in a case where tenants were not so concentrated. There can be no assurance that an economic decline in a particular sector would not adversely affect the ability of tenants in such sector to meet their payment obligations under their respective lease agreements in respect of the Property and accordingly, the Mezzanine Issuer's ability to meet its payment obligations under the Mezzanine Notes. Alternatively, a lack of tenant concentration can also expose a borrower or lender, to additional risks. If a property has multiple tenants, expenditures for re-tenancing may be more frequent than in the case of a property with fewer tenants, thereby reducing the cash flows available for debt service payments. Multi-tenanted properties also may experience higher continuing vacancy rates and greater volatility in rental income and expenses. The foregoing would apply to tenants in occupation from time to time of any parts of the Property pursuant to any lease thereof.

### **Risks relating to statutory rights of tenants**

In certain circumstances, in particular relating to the renewals of business tenancies, a tenant of a commercial property may have statutory rights to require the landlord to grant it a new lease pursuant to the Landlord and Tenant Act 1954 (such Act applies in England and Wales only). Should such a right arise, the landlord may not have their normal freedom to negotiate the terms of the new lease with the tenant, such terms being imposed by the court or being the same as those under the previous tenancy of the relevant premises.

### **Risks relating to environment**

#### *Soil and groundwater contamination*

Existing environmental legislation relating to soil and groundwater contamination allows liability for clean-up costs to be imposed primarily on a person who causes or knowingly permits pollution (a "**polluter**"), but also on the owner or occupier of land where the polluter cannot be found, or cannot effect or fund the clean-up. The term "**owner**" includes anyone with a proprietary interest in a property, other than a short-term tenant paying

periodic rent. Even if more than one polluter is responsible for the contamination, each polluter may be required to complete or fund all of the clean-up.

If any contamination liability were to exist in respect of any parts of the Property, the Mezzanine Security Agent should not incur responsibility for such liability prior to enforcement of the Mezzanine Notes and Transaction Security, unless it could be established that the Mezzanine Security Agent could be said to be a polluter whilst in control of those parts of the Property affected, or, if no polluter were able to be made liable, the Mezzanine Security Agent entered into possession of the affected parts of the Property, assuming liability as an owner. After enforcement, the Mezzanine Security Agent, if deemed to be a mortgagee or security holder in possession, or a receiver appointed on behalf of the Mezzanine Security Agent, could become responsible for environmental liabilities in respect of that Property. Therefore, the Mezzanine Security Agent will need to be adequately indemnified against any environmental claims brought against it.

If a contamination liability arises in relation to any parts of the Property and is not remedied, or is not capable of being remedied, this may restrict its use for residential or other sensitive purposes, and may result in an inability to sell the Property or in a reduction in the price obtained for the Property, resulting in a sale at a reduced value.

In addition, third parties may sue a current or previous owner, occupier or operator of a site for damages and costs resulting from substances emanating from the Property, and the presence of substances on the Property could result in personal injury or similar claims by private claimants.

Although at the time of origination of the Mezzanine Notes a soil and groundwater contamination assessment was carried out in respect of the Property, there can be no assurance that all contamination risks have been identified.

#### *Environmental compliance*

National and local environmental laws and regulations impose a range of obligations on the owners, occupiers and managers of residential and mixed-use buildings, including laws and regulations governing air and noise emissions; water use and wastewater and stormwater discharges; the maintenance of above-ground and underground storage tanks; the use, release, storage, disposal, handling and transportation of, and exposure to, oil, chemicals and hazardous substances; energy usage and carbon emissions; the management and disposal of waste; and otherwise relating to health, safety and the protection of the environment. Various permits and licences are required pursuant to environmental laws and regulations, which can result in constraints in on-site operations, and costs in compliance. These regulatory requirements change from time to time.

The owners, operators and managers of the Property may violate environmental regulations in the future. Violations of environmental laws and regulations can lead to fines and penalties and requirements for rectification, which could require expenditure, changes in site operations or temporary closures of all or part of the Property. This could affect the value of the Property and related income. Additional expenditure and other commercial and financial impacts to comply with existing as well as new or revised environmental legislation and regulations may also arise, potentially affecting the value and income from the Property.

#### **Risks relating to planning consents**

All properties are subject to compliance with various local planning rules and regulations. Such planning rules will typically require local planning board or planning authority consent or approval to any significant construction or renovations to a property or any significant change in use for a property. Obtaining planning consent can be time consuming and, depending on the request being made to the planning board or planning authority, costly and difficult to obtain. However, failure to so comply with planning rules and regulations (together with an inability to remedy such failure) could result in penalties being assessed against the related property and failure to obtain further consents necessary to complete any action to construct, modify or change usage with respect to such property.

#### **Risks relating to insurance**

The Mezzanine Issuer has undertaken to procure that the Senior Borrower ensures at all times that certain insurances in respect of each relevant Mezzanine Note Obligor's interest in the Property are maintained in full force and effect. For further details of the insurance policies that have to be maintained in respect of the

Property, refer to the section entitled "*DESCRIPTION OF THE NOTE ISSUANCE AGREEMENT – Property Undertakings*" of this Offering Circular.

There is no assurance the Mezzanine Issuer will procure the maintenance of the insurances or that such insurances will be adequate. Moreover, if reconstruction or any major repairs are required, changes in laws or planning requirements may materially affect the Senior Borrower's ability to effect any reconstruction or major repairs or may materially increase the costs of the reconstruction or repairs.

The Mezzanine Issuer must procure that the Senior Borrower notifies the Mezzanine Note Agent of any renewals or cancellations of insurance policies made, threatened or pending and the Mezzanine Note Obligors are obliged not to do or permit anything to be done which may make void or voidable any insurance policy.

Certain types of risks and losses may be or become either uninsurable or not economically insurable or are not covered by the required insurance policies. Other risks might become uninsurable (or not economically insurable) in the future. If an uninsured or uninsurable loss were to occur, the Mezzanine Issuer might not receive sufficient funds to repay in full all amounts owing under by it under the Mezzanine Note Issuance Agreement.

### **Risks relating to compulsory purchase of the Property**

Any property in the United Kingdom may at any time be compulsorily acquired by, among others, a local or public authority or a government department generally in connection with proposed redevelopment or infrastructure projects.

If a compulsory purchase order were to be made in respect of all or parts of the Property, compensation would be payable on the basis of the open market value of all of the relevant proprietary interests in the relevant part or parts of the Property at the time of the related purchase. The relevant interests would be acquired and affected tenants would cease to be obliged (wholly or partially as applicable) to make any further rental payments to the relevant Mezzanine Issuer under any affected tenancies. The risk to Noteholders is that the amount received from the proceeds of purchase allocable to the Mezzanine Notes may be less than the corresponding Principal Amount Outstanding on the Notes together with accrued interest.

There is often a delay between the compulsory purchase of a property and the payment of compensation, the length of which will largely depend upon the ability of the property owner and the entity acquiring the property to agree on the open market value. Should such a delay occur, then, unless the Mezzanine Issuer has other funds available, a Mezzanine Note Event of Default may occur.

### **Concentration of risk generally**

The only material asset securing the Mezzanine Notes is the Property and the Mezzanine Issuer will therefore not have access to any funds other than those generated through the relevant Mezzanine Note Obligor's ownership in the Property and the letting of the Property to tenants. The ability of the Mezzanine Issuer to make payments of interest and repayments of principal under the Mezzanine Note Issuance Agreement will be dependent solely on the sufficiency of income generated from the Property as well as the market value and continued successful operation and management of the Property. A decline in any of these factors will directly materially adversely affect the Issuer's ability to make payments due in respect of the Notes in full.

### **Single property asset**

The transaction underlying the issue of the Notes relates to a single financing which is secured upon a single property. Consequently losses on the Mezzanine Notes will have a substantial adverse effect on the ability of the Issuer to make payments due under the Notes. In addition, as there is only a single Property which is primarily an office property in the City of London there is an increased risk that adverse economic or other developments affecting in particular the City of London could increase the frequency and severity of losses on the Mezzanine Notes.



### **Risks relating to geographic concentration**

The Property is located in London, United Kingdom. Repayments under the Mezzanine Note Issuance Agreement and the market value of the Property could be adversely affected by conditions in the property market where the Property is located.

### **Tenant concentration and tenant default**

The Mezzanine Issuer's ability to pay interest on and to repay principal under the Mezzanine Notes depends on the occupiers' ability to make rental payments under the leases and/or licences. Any occupier of the Property may, from time to time, experience changes in their circumstances which may weaken their financial condition and result in a failure to make rental payments when due. If an occupier of the Property were to default in its obligations to pay rent, the Mezzanine Issuer is unlikely to have other funds available to enable it to make all payments due on the Mezzanine Notes. The relevant Mezzanine Note Obligors may also incur costs and experience delays associated with protecting their investment, including costs incurred in renovating and reletting that Property, thereby further reducing the amount available to make payments due in respect of the Mezzanine Notes.

No assurance can be given that tenants in the Property will continue making payments under their leases or that any such tenants will not become insolvent or subject to administration in the future or, if any such tenants become subject to administration, that they will continue to make rental payments in a timely manner. In addition, a tenant may, from time to time, experience a downturn in its business. The nature of a law firm, for example, is such that fee revenue generated by the law firm is often based upon transactions upon which the firm is instructed. Consequently, fee revenue can vary materially over a relatively short period of time. A downturn in business may weaken a tenant's financial condition and result in a failure to make rental payments when due. If a tenant, particularly a major tenant, defaults in its obligations under its occupational lease, the relevant Mezzanine Note Obligor may experience delays in enforcing its rights as lessor and may incur substantial costs and experience significant delays associated with protecting its investment, including costs incurred in renovating and re-letting the Property.

A deterioration in the financial condition of a tenant of a property can be particularly significant if a property is leased to a small number of tenants or a sole tenant. With regard to the Property, a relatively small number of the overall tenants account for a high percentage of the rental income currently received in respect of the Property. Consequently, if a tenant fails to renew its lease or otherwise defaults in making payments under its lease the effect is likely to be significant as more time may be required to re-lease the space and substantial capital costs may need to be incurred to make the space appropriate for replacement tenants.

In addition, there is a concentration of tenants which operate in the same or related industries as one another. A number of the larger tenants operate in the financial services and legal areas.

### **Due diligence; warranties**

The Mezzanine Note Sellers undertook due diligence in relation to the Mezzanine Note Obligors and the Property at the time of the issuance of the Mezzanine Note. Other than limited legal due diligence undertaken by or on behalf of the Mezzanine Note Sellers in the context of the warranties being given under the Note Sale Agreement, the due diligence previously undertaken by the Mezzanine Note Sellers will not be verified or updated prior to the sale of the Mezzanine Notes to the Issuer.

None of the Issuer, the Note Trustee or the Issuer Security Trustee has undertaken or will undertake any investigations, searches or other due diligence regarding the Mezzanine Notes or the Property or as to the status of the Mezzanine Issuer and each of them will instead rely solely on the warranties given by the Mezzanine Issuer in respect of such matters in the Note Sale Agreement. For further information regarding the warranties given by the Originator, see "*SALE OF ASSET – Mezzanine Note Sellers' Representations and Warranties*". If any breach of a warranty relating to the Securitised Loan and the Related Security is material and (if capable of remedy) is not remedied within a specified time period prescribed under the Note Sale Agreement, the relevant Mezzanine Note Seller shall either indemnify, on a *pro rata* basis, the Issuer against all losses as a result of such breach or repurchase the portion of the relevant Mezzanine Note Sellers' portion of the Mezzanine Notes sold to the Issuer.

The Issuer will have no recourse to the Mezzanine Note Sellers in respect of losses arising in relation to the Mezzanine Note or its Related Security, other than to require the Mezzanine Note Sellers to indemnify it or repurchase the Mezzanine Note. Therefore, to the extent that any loss arises as a result of a matter which is not covered by a particular warranty or warranties, the loss will remain with the Issuer.

### **Property management**

The net cash flow realised from, and/or the residual value of, the Property may be affected by management decisions. The Trustees have appointed the Managing Agent, to advise it generally in connection with matters relating to the Property, including responsibility for the general management of the Property, collection of rents, liaising with the tenants, service charge accounting and maintenance and repair of the Property. There can, however, be no assurance that decisions taken by the Managing Agents will not affect the future value and/or rental income derived from the Property.

## **E. GENERAL SECURITY AND INSOLVENCY CONSIDERATIONS**

### **Security for the Mezzanine Notes and the Notes**

The Issuer will enter into the Deed of Charge and Assignment pursuant to which it will grant the Issuer Security in respect of certain of its obligations, including its obligations under the Notes.

Certain of the Mezzanine Note Obligors have secured their obligations under the Mezzanine Finance Documents pursuant to the Common Transaction Security. In addition, the Mezzanine Issuer has secured its obligations and the obligations of certain of the other Mezzanine Note Obligors under the Mezzanine Notes pursuant to the Mezzanine Security.

In certain circumstances, including the occurrence of certain insolvency events in respect of the Issuer or a Mezzanine Note Obligor, the ability to realise the Issuer Security and/or the relevant Transaction Security, respectively, may be delayed and/or the value of the relevant security impaired. While the transaction structure is designed to minimise the likelihood of the Issuer or (by limiting their ability to incur financial indebtedness and limiting their business activities) any of the Mezzanine Note Obligors becoming insolvent, there can be no assurance that the Issuer and/or one or more of the Mezzanine Note Obligors will not become insolvent and/or the subject of insolvency proceedings and/or that the Noteholders would not be adversely affected by the application of insolvency laws (including English insolvency laws).

In addition, it should be noted that, to the extent that the assets of the Issuer or certain of the Mezzanine Note Obligors are subject only to a floating charge (including any fixed charge recharacterised by the courts as a floating charge), in relation to the English Mezzanine Note Obligors (as defined below), in certain circumstances under the provisions of section 176A of the Insolvency Act 1986, certain floating charge realisations which would otherwise be available to satisfy the claims of secured creditors under the Deed of Charge and Assignment/relevant Security Document may be used to satisfy any claims of unsecured creditors. There can be no assurance that the Noteholders will not be adversely affected by any such reduction in floating charge realisations upon the enforcement of the Issuer Security/Transaction Security.

### **Risks relating to the Mezzanine Note Obligors**

Certain of the Mezzanine Note Obligors are incorporated under the laws of England (the "**English Mezzanine Note Obligors**"). The other Mezzanine Note Obligors (including the Mezzanine Issuer) are incorporated under the laws of Jersey (the "**Jersey Mezzanine Note Obligors**") and there is one Mezzanine Note Obligor incorporated under the laws of Luxembourg (the "**Luxembourg Mezzanine Note Obligor**").

The English Mezzanine Note Obligors are subject to the provisions of English insolvency law, provided that their Centre of Main Interests is in England. The Jersey Mezzanine Note Obligors are subject to the provisions of Jersey insolvency laws. The Luxembourg Mezzanine Note Obligor is subject to the provisions of Luxembourg insolvency law. Although the Mezzanine Note Obligors have been established as limited purpose entities, they may, nonetheless, become insolvent and subject to insolvency proceedings under English law, Jersey law or Luxembourg law, as applicable.

The Mezzanine Note Agent or the Mezzanine Security Agent (as the case may be) will have certain rights under the Mezzanine Note Issuance Agreement if any of the Mezzanine Note Obligors become insolvent and subject

to insolvency proceedings, including certain rights to accelerate the Mezzanine Notes and direct the Mezzanine Security Agent to exercise all of its rights under the Mezzanine Finance Documents. However, the rights of creditors of an insolvent English or Jersey company or a company incorporated in Luxembourg are limited by law. There is no moratorium in Jersey preventing the enforcement of Jersey security. There are, however, usual set aside risks in relation to reviewable transactions in Jersey such as transactions at an undervalue, preferences and extortionate credit transactions.

In the event that the Mezzanine Notes are not repaid in full following the enforcement of the Mezzanine Notes and the related Transaction Security, the Issuer may not have sufficient resources to satisfy in full its obligations under the Notes.

### **Limitation of recoverability of legal fees in enforcement**

There can be no assurance that the Issuer will be able to recover legal fees incurred or advanced in connection with the enforcement of the Mezzanine Notes or the related Transaction Security from the Mezzanine Note Obligors, in particular, to the extent that such legal fees exceed the statutory limits provided by law. There can be no assurance that the legal fees relating to an enforcement of the Mezzanine Notes or the related Transaction Security will fall within the limitation of what can be charged to a debtor under applicable law. Any amounts of legal fees in excess of such limitation could result in a shortfall to amounts that would otherwise be distributed on the Notes.

### **Risks relating to litigation**

There may be pending or threatened legal proceedings against the Mezzanine Note Obligors arising out of the ordinary business of such Mezzanine Note Obligors.

Each of the Mezzanine Note Issuer and the Targets will represent or warranty in the Mezzanine Note Issuance Agreement that no litigation, arbitration or administrative proceedings or investigations of, or before, any court, arbitral body or agency which are reasonably likely to be adversely determined and, if adversely determined, are reasonably likely to have a Material Adverse Effect have (to the best of its knowledge and belief) been started or threatened in writing against it. However, such representation and warranty is not repeating and is only made, with respect to the Mezzanine Issuer, the Mezzanine Subscription Date and with respect to the Targets, the date on which they accede to the Mezzanine Note Issuance Agreement.

#### *Appointment of an administrator to an English company*

In certain circumstances, an administrator may be appointed in relation to an English company, the effect of which would also be that, during the period for which the order is in force, the affairs and business and property of the company shall be managed by the administrator. The appointment may be made:

- (a) by the court, on the application of the company, any or all of its creditors, or the justices' chief executive for a magistrates court, provided that the court is satisfied that the company is or is likely to become unable to pay its debts and that the administration order is reasonably likely to achieve the statutory purpose of administrations;
- (b) by the holder of a "qualifying floating charge" (as defined in the Insolvency Act 1986) over the whole or substantially the whole of the company's property who gives notice of intention to appoint an administrator to any holder of a prior qualifying floating charge and files with the court the appointment in prescribed form (including a statutory declaration that the charge was enforceable on the date of the appointment and a statement by the proposed administrator that he believes the statutory purpose of administration is reasonably likely to be achieved) and such other documents as may be requested; or
- (c) the company or its directors if it or they give notice of intention to appoint an administrator to any person who may be entitled to appoint an administrative receiver or an administrator of the company, such person declines to appoint an administrative receiver or administrator (as the case may be) and the appointment is filed with the court in prescribed form (including a statutory declaration that the company is or is likely to become unable to pay its debts and a statement by the proposed administrator that he believes the statutory purpose of administration is reasonably likely to be achieved) along with such other documents as may be provided.

An interim "moratorium" on enforcement action against the company will come into effect on the filing with the court of the application for making of an administration order by the court or the notice of intention to appoint an administrator out of court, or on the presentation of a petition for an administration order, as the case may be. During the period for which such moratorium is in force, (among other things) no steps may be taken to enforce any security over the property of the company except with the leave of the court (and subject to such terms as the court may impose). The moratorium remains in force where an administration application has been made and has not yet been granted or dismissed, or has been granted but the order has not yet taken effect, or where a floating charge holder has filed notice of intention to appoint an administrator with the court, until the appointment takes effect or until five business days expire with no administrator having been appointed, or members of the company themselves have filed with the court notice of intention to appoint an administrator, until the appointment takes effect or until 10 business days expire with no administrator having been appointed.

Accordingly, if an application is made or petition is presented for the making of an administration order by the court, or notice is filed with the court of the intention to appoint an administrator, or an administration order is made or an administrator is appointed in respect of the Mezzanine Issuer, the enforcement of the relevant Transaction Security by the Mezzanine Security Agent would not be possible unless the leave of the court or the consent of the administrator was obtained, and would in any case be delayed by the need to apply to the court for leave or to the administrator for consent.

#### *Inability to appoint an administrator to a Jersey company*

The Insolvency Act 1986 (either as originally enacted or as amended, including by the provisions of the Enterprise Act 2002) does not apply in Jersey and receivers, administrative receivers and administrators are not part of the laws of Jersey. Accordingly, the courts of Jersey are unlikely to recognise the powers of any administrator, administrative receiver or other receiver or administrator appointed in respect of Jersey-situs assets.

#### *Jersey Trusts*

The Unit Trust, City Point (Jersey) Unit Trust, is a property unit trust established under Jersey law for the purpose of holding property on trust for its beneficiaries.

A Jersey unit trust has no separate legal personality. The assets of a Jersey unit trust are held by a trustee on trust for the unitholders.

It is not clear as a matter of Jersey law whether or not the assets of a trustee as trustee of a trust can be declared "*en désastre*". If however, the assets of a Trustee were declared *en désastre* and in the event that any of the documents to which that Trustee is a party was held by the Jersey courts to constitute a transaction at an undervalue and/or the giving of a preference to any person, the Jersey courts would have the power, depending *inter alia* on the period of time elapsed since the transaction was entered into, to set aside such transaction.

Under Jersey law the liability of a Trustee for its obligations under the documents to which it is a party may extend only to the assets comprising the trust property of the relevant trust notwithstanding that a document may purport to be governed by English law. This may apply whether proceedings are brought directly in the Royal Court of Jersey, or a judgment obtained outside Jersey is sought to be enforced in the Royal Court.

Article 32 of the Trusts (Jersey) Law 1984 ("**TJL**") (which applies to trusts of which the law of Jersey is the proper law) provides as follows:

- "(1) Where a trustee is a party to any transaction or matter affecting the trust –
- a) if the other party knows that the trustee is acting as trustee, any claim by the other party shall be against the trustee as trustee and shall extend only to the trust property;
  - b) if the other party does not know that the trustee is acting as trustee, any claim by the other party may be made against the trustee personally (though, without prejudice to his or her personal liability, the trustee shall have a right of recourse to the trust property by way of indemnity)
- (2) Paragraph (1) shall not affect any liability the trustee may have for breach of trust."

In summary, Article 32 of TJJ provides a statutory protection to trustees of a trust, limiting the recourse available to a contracting third party to the value of the trust property. As the Trustees are acting in their capacities as trustees of the Unit Trusts, the recourse available to a contracting third party is only to the trust property (principally the Property) of the Unit Trust and not to the assets of the Trustees in their own corporate capacity.

Recourse is also possible in some circumstances where a Trustee is liable for wilful misconduct or gross negligence.

*Guarantees and security may constitute a transaction at an undervalue or preference*

A liquidator or administrator of an English Mezzanine Note Obligor could apply to the court to unwind the issuance of its guarantee if such liquidator or administrator believed that issuance of such guarantee constituted a transaction at an undervalue.

If the liquidator or administrator can show that any of the English Mezzanine Note Obligors have given a "preference" to any person within six months of the onset of liquidation or administration (or two years if the preference is to a "connected person") and, at the time of the preference, the relevant English Mezzanine Note Obligor was technically insolvent or became so as a result of the preferential transaction, a court has the power, among other things, to void the preferential transaction. For these purposes, a company gives preference to a person if that person is one of the company's creditors (or a surety or guarantor for any of the company's debts or liabilities) and the company takes an action which has the effect of putting that person into a position which, in the event of the company going into insolvent liquidation, will be better than the position that person would have been in if that thing had not been done. The court may not make an order avoiding a preferential transaction unless it is satisfied that the company was influenced by a desire to put that person in a better position. This provision of English insolvency law may affect transactions entered into or payments made by any of the English Mezzanine Note Obligors during the relevant period prior to the liquidation or administration of such English Mezzanine Note Obligor.

In addition, if it can be shown that a transaction entered into by an English company was made for less than fair value and was made to shield assets from creditors, then the transaction may be set aside as a transaction defrauding creditors. Any person who is a "victim" of the transaction, and not just liquidators or administrators, may assert such a claim. There is no statutory time limit within which a claim must be made and the company need not be insolvent at the time of the transaction.

*The application of the Small Companies Moratorium may limit enforcement*

Certain small companies, as part of the company voluntary arrangement procedure, may seek court protection from their creditors by way of a "moratorium" for a period of up to 28 days, with the option for creditors to extend this protection for up to a further two months (although the Secretary of State for Business, Innovation and Skills may, by order, extend or reduce the duration of either period). A company is eligible for a moratorium if, at the date of filing for moratorium, it meets two or more of the following criteria for being a "small company" under Section 382(3) of the Companies Act 2006 (as amended): (i) its turnover is not more than £6,500,000; (ii) its balance sheet, total is not more than £3,260,000; and (iii) the number of employees is not more than 50.

The position as to whether or not a company is eligible for a moratorium may change from period to period, depending on its financial position and average number of employees during that particular period. The Secretary of State for Business, Innovation and Skills may by regulations also modify the qualifications for eligibility of a company for a moratorium and may also modify the present definition of a "small company".

Accordingly, the English Mezzanine Note Obligors may, at any given time be eligible to seek a moratorium, in advance of a company voluntary arrangement.

During the period for which a moratorium is in force in relation to a company, among other things, no winding-up may be commenced or administrator appointed to that company, no administrative receiver of that company may be appointed, no security created by that company over its property may be enforced (except with the leave of the Court) and no other proceedings or legal process may be commenced or continued in relation to that company (except with the leave of the Court).

Accordingly, the provisions described above may limit the Mezzanine Security Agent's ability to enforce the Transaction Security, to the extent that an English Mezzanine Note Obligor (1) falls within the criteria for eligibility for a moratorium at the time a moratorium is sought; (2) seeks a moratorium in advance of a company voluntary arrangement (as applicable); and (3) is considered not to fall within the capital market exception (the exception being a "capital market arrangement", under which a party has incurred, or when the agreement was entered into expected to incur, a debt of at least £10,000,000 and which involved the issue of a capital market investment) or any other applicable exception at the relevant time.

### **The ability to appoint an administrative receiver will be hindered by the application of the Enterprise Act 2002 in respect of floating charges**

The provisions of the Enterprise Act restrict the right of the holder of a floating charge to appoint an administrative receiver (unless the security was created prior to 15 September 2003 or an exception applies) and instead give primacy to collective insolvency procedures (in particular, administration).

#### *Incorporation of entities in jurisdictions other than England and Wales*

If the Issuer or any Jersey Mezzanine Note Obligor were to become insolvent, given that the Issuer and the Jersey Mezzanine Note Obligors are not incorporated in England and Wales, it is unlikely that it will be possible to appoint an administrative receiver in respect of the Issuer or any Jersey Mezzanine Note Obligor in England (so as to prevent the appointment of an English administrator) using the capital markets exception referred to in the relevant legislation.

### **Jersey Mezzanine Note Obligors**

The legal system and market practice concerning security in Jersey may have substantially different features to that in England. Such differences may include:

- (a) limitations and restrictions on taking security, the rights and remedies available to a secured party and the availability of security over certain classes of asset; and
- (b) procedures for enforcement of security and the exercise of remedies by a secured party.

The above differences might potentially be disadvantageous to a secured party when compared to English law.

In relation to the Jersey Mezzanine Note Obligors, there is a potential risk that third party creditors may commence insolvency proceedings against them in Jersey.

Please see the section entitled "*CERTAIN MATTERS OF JERSEY LAW*" in this Offering Circular which sets out, a summary of the creation and enforcement of security governed by Jersey law and key feature of Jersey insolvency proceedings.

### **Risks relating to the Issuer**

#### *Centre of main interest*

The Issuer has its registered office in Ireland. As a result there is a rebuttable presumption that its centre of main interest (COMI) is in Ireland and consequently that any main insolvency proceedings applicable to it would be governed by Irish law. In the decision by the European Court of Justice (ECJ) in relation to Eurofood IFSC Limited, the ECJ restated the presumption in Council Regulation (EC) No. 1346/2000 of 29 May 2000 on Insolvency Proceedings, that the place of a company's registered office is presumed to be the company's COMI and stated that the presumption can only be rebutted if "factors which are both objective and ascertainable by third parties enable it to be established that an actual situation exists which is different from that which locating it at the registered office is deemed to reflect". As the Issuer has its registered office in Ireland, has Irish directors, is registered for tax in Ireland and has an Irish corporate services provider, the Issuer does not believe that factors exist which would rebut this presumption, although this would ultimately be a matter for the relevant court to decide, based on the circumstances existing at the time when it was asked to make that decision. If the Issuer's COMI is not located in Ireland, and is held to be in a different jurisdiction within the European Union, main insolvency proceedings may not be opened in Ireland.

### *Examinership*

Examinership is a court procedure available under the Companies Act 2014 of Ireland, as amended ("**Companies Act 2014**") to facilitate the survival of Irish companies in financial difficulties.

The Issuer, the directors of the Issuer, a contingent, prospective or actual creditor of the Issuer, or shareholders of the Issuer holding, at the date of presentation of the petition, not less than one-tenth of the voting share capital of the Issuer are each entitled to petition the relevant Irish court for the appointment of an examiner. The examiner, once appointed, has the power to halt, prevent or rectify acts or omissions, by or on behalf of the company after his appointment and, in certain circumstances, negative pledges given by the company prior to his appointment will not be binding on the company. Furthermore, where proposals for a scheme of arrangement are to be formulated, the company may, subject to the approval of the court, affirm or repudiate any contract under which some element of performance other than the payment remains to be rendered both by the company and the other contracting party or parties.

During the period of protection, the examiner will compile proposals for a compromise or scheme of arrangement to assist in the survival of the company or the whole or any part of its undertaking as a going concern. A scheme of arrangement may be approved by the relevant Irish court when a minimum of one class of creditors, whose interests are impaired under the proposals, has voted in favour of the proposals and the relevant Irish court is satisfied that such proposals are fair and equitable in relation to any class of member or creditors who have not accepted the proposals and whose interests would be impaired by implementation of the scheme of arrangement and the proposals are not unfairly prejudicial to any interested party.

The fact that the Issuer is a special purpose entity and that all its liabilities are of a limited recourse nature means that it is unlikely that an examiner would be appointed to the Issuer.

If however, for any reason, an examiner were appointed while any amounts due by the Issuer under the Notes were unpaid, the primary risk to the Noteholders would be as follows:

- (a) the potential for a scheme of arrangement to be approved involving the writing down of the debt owed by the Issuer to the holders of Notes as secured by the Deed of Charge and Assignment;
- (b) the potential for the examiner to seek to set aside any negative pledge in the Notes prohibiting the creation of security or the incurring of borrowings by the Issuer to enable the examiner to borrow to fund the Issuer during the protection period; and
- (c) in the event that a scheme of arrangement is not approved and the Issuer subsequently goes into liquidation, the examiner's remuneration and expenses (including certain borrowings incurred by the examiner on behalf of the Issuer and approved by the relevant Irish court) will take priority over the monies and liabilities which from time to time are or may become due, owing or payable by the Issuer to each of the secured creditors under the Notes or under any other secured obligations.

### *Preferred creditors under Irish law*

Under Irish law, upon an insolvency of an Irish company such as the Issuer, when applying the proceeds of assets subject to fixed security that may have been realised in the course of a liquidation or receivership, the claims of a limited category of preferential creditors will take priority over the claims of creditors holding the relevant fixed security. These preferred claims include the remuneration, costs and expenses properly incurred by any examiner of the company (that may include any borrowings made by an examiner to fund the company's requirements for the duration of his appointment) that have been approved by the Irish courts (see "*Examinership*" above).

The holder of a fixed security over the book debts of an Irish incorporated company (that would include the Issuer) may be required by the Irish Revenue Commissioners, by notice in writing from the Irish Revenue Commissioners, to pay to them sums equivalent to those that the holder received in payment of debts due to it by the company.

Where notice has been given to the Irish Revenue Commissioners of the creation of the security within 21 calendar days of its creation by the holder of the security, the holder's liability is limited to the amount of certain

outstanding Irish tax liabilities of the company (including, but not limited to, liabilities in respect of VAT) arising after the issuance of the Irish Revenue Commissioners' notice to the holder of fixed security.

The Irish Revenue Commissioners may also attach any debt due to an Irish incorporated company by another person in order to discharge any liabilities of the company in respect of outstanding tax, whether the liabilities are due on its own account or as an agent or trustee. The scope of this right of the Irish Revenue Commissioners has not yet been considered by the Irish courts and it may override the rights of holders of security (whether fixed or floating) over the debt in question.

In relation to the disposal of assets of any Irish tax resident company that are subject to security, a person entitled to the benefit of the security may be liable for tax in relation to any capital gains made by the company on a disposal of those assets on exercise of the security. The essence of a fixed charge is that the chargor does not have liberty to deal with the assets that are the subject matter of the security in the sense of disposing of such assets or expending or appropriating the monies or claims constituting such assets and accordingly, if and to the extent that such liberty is given to the Issuer, any charge constituted by the Deed of Charge and Assignment may operate as a floating, rather than a fixed charge.

In particular, the Irish courts have held that in order to create a fixed charge on receivables, it is necessary to oblige the chargor to pay the proceeds of collection of the receivables into a designated bank account and to prohibit the chargor from withdrawing or otherwise dealing with the monies standing to the credit of such account without the consent of the chargee.

Depending upon the level of control actually exercised by the chargor, there is therefore a possibility that the fixed security purported to be created by the Deed of Charge and Assignment would be regarded by the Irish courts as a floating charge.

Floating charges have certain weaknesses, including the following:

- (a) they have weak priority against purchasers (who are not on notice of any negative pledge contained in the floating charge) and the chargees of the assets concerned and against lien holders, execution creditors and creditors with rights of set-off;
- (b) as discussed above, they rank after certain preferential creditors, such as claims of employees and certain taxes on winding-up;
- (c) they rank after certain insolvency remuneration expenses and liabilities;
- (d) the examiner of a company has certain rights to deal with the property covered by the floating charge; and
- (e) they rank after fixed charges.

#### *Restriction on enforcing the Issuer Security*

If the Issuer Security has become enforceable otherwise than by reason of a default in payment of any amount due on the Notes, the Issuer Security Trustee will not be entitled to dispose of the undertaking, property or assets secured under the Issuer Security or any part thereof or otherwise realise the Issuer Security unless a sufficient amount would be realised to allow discharge in full of all amounts owing to the Noteholders and any amounts required under the Deed of Charge and Assignment to be paid *pari passu* with, or in priority to, the Notes or certain other requirements as more particularly specified in Condition 3(b) (*Security and Priority of Payments*) for further details.

## **F. CONSIDERATIONS RELATING TO THE MEZZANINE NOTES AND THE RELATED SECURITY**

### **Late payment or non-payment of rent**

If a significant number of occupiers' rental payments are not received prior to the immediately following Mezzanine Note Interest Payment Date and any shortfall is not otherwise compensated for from other resources, there may be insufficient cash available to the Mezzanine Issuer to make payments to the Issuer under the Mezzanine Notes. This will result in reduced amounts being available to the Issuer to make payments on the



Notes. This may cause a Note Event of Default unless the Issuer has or obtains other resources. However, no assurance can be given that such resources will be available or sufficient to cover any shortfalls in amounts available to the Issuer to make payments on the Notes.

### **Prepayment of the Mezzanine Notes**

The Mezzanine Issuer may be obliged or may choose, in certain circumstances, to prepay the Mezzanine Notes in whole or in part prior to the Mezzanine Note Redemption Date.

These circumstances include, but are not limited to, illegality (in certain circumstances), change of control of certain entities and the receipt of certain disposal, insurance and other proceeds. The Mezzanine Issuer may also be required to prepay a portion of the Mezzanine Notes if certain financial covenants are not met. These circumstances are described in more detail in the section entitled "*SENIOR FACILITY AGREEMENT*".

These events are, in some circumstances, beyond the control of the Mezzanine Issuer and are beyond the control of the Issuer. Any such prepayment will result in the Notes being prepaid earlier than anticipated. Refer to the risk factor above entitled "*Considerations relating to yield and prepayments*" for further details.

### **Risks of Structural Subordination of the Mezzanine Notes**

The Senior Borrower is a subsidiary of the Mezzanine Issuer and, therefore, the Mezzanine Notes are "structurally subordinate" to the Senior Loan and any other obligations of the Senior Borrower. In addition, the Mezzanine Note Sellers entered into the Intercreditor Agreement which, by its terms, subordinates the liabilities owed in connection with the Mezzanine Note Issuance Agreement to the liabilities owned in connection with the Senior Facility Agreement. The Senior Borrower is structured to be a special purpose vehicle, whose purpose is generally limited to performing its obligations under the relevant Transaction Documents, provision of Intra-Group Liabilities and acting as the holding company of each Unitholder and related activities.

Since the only source of funds for the Mezzanine Issuer to meet its obligations under the Mezzanine Note Issuance Agreement is payments made to it by the Senior Borrower and the other Senior Loan Obligors (acting through the Common Security Agent) in accordance with the Senior Facility Agreement and the Intercreditor Agreement, any additional obligations incurred by the Senior Borrower, voluntarily or involuntarily, may reduce the funds available for such distributions to the Mezzanine Issuer and may, therefore, interfere with the ability of the Mezzanine Issuer to meet its obligations under the Mezzanine Note Issuance Agreement.

In the event of default under the Senior Facility Agreement, pursuant to the terms of the Intercreditor Agreement, any amounts received in connection with the enforcement of the Common Security Documents will first be applied in satisfaction of the liabilities owed by the Senior Borrower in connection with the Senior Facility Agreement and, where there are sufficient funds remaining, in satisfaction of the liabilities owed in connection with the Mezzanine Note Issuance Agreement. Amounts received on enforcement of the Common Security Documents may be insufficient to pay all amounts due and owing under the Senior Loan and the Mezzanine Notes in full which could materially and adversely affect the Mezzanine Issuer's ability to repay the Mezzanine Notes, and in turn the Issuer's ability to make payments on the Notes.

### **Relationship between the risks relating to the Mezzanine Notes and the risks relating to the Senior Loan**

Because the performance of the Mezzanine Notes are directly dependent on the performance of the Senior Loan, which is in turn directly dependent on the value of the Property (and related rental income), the risks related to the Mezzanine Notes are similar to (and, in many cases, the same as), and related to, the risks related to the Senior Loan or secured real estate lending in general. Any risk which adversely affects the Senior Loan, the Senior Borrower or the value of the Property (and related rental income), or increases the risk of losses on the Senior Loan or a default on the Senior Loan may increase the risk of loss on the Mezzanine Notes and consequently, the Notes. These risks may include incurring losses on the Notes or the loss of the entire investment in the Notes.

### **Refinancing risk**

The Mezzanine Notes may have a substantial remaining principal balance on their scheduled maturity date.

Pursuant to the Mezzanine Note Issuance Agreement, unless previously repaid, the Mezzanine Notes will be redeemed in full and at par by the Mezzanine Issuer on the Initial Mezzanine Redemption Date, being 15 December 2019. The Mezzanine Issuer may elect to extend the Initial Mezzanine Redemption Date to the First Extended Mezzanine Redemption Date, being 15 December 2020 by satisfying certain conditions. The Mezzanine Issuer may elect to extend the First Extended Mezzanine Redemption Date to the Second Extended Mezzanine Redemption Date, being 15 December 2021 by satisfying certain conditions. See the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT AND THE RELATED SECURITY*" in this Offering Circular for further details on the Mezzanine Notes extension options.

There is no scheduled amortisation under the Mezzanine Notes up to the Initial Mezzanine Redemption Date but to the extent received prior to the Initial Mezzanine Redemption Date, there will be a pass through of Principal Receipts.

The ability of the Mezzanine Issuer to repay the Mezzanine Notes in its entirety on the Initial Mezzanine Redemption Date (as may be extended) will depend, among other things, upon it having sufficient available cash or equity and upon its ability to find a lender willing to lend to the Mezzanine Issuer (secured against some or all of the relevant Property) sufficient funds to enable repayment of the Mezzanine Notes. Such lenders will generally include banks, insurance companies and finance companies. The availability of funds in the credit market fluctuates and during the credit crisis there was an acute shortage of credit to refinance commercial real estate debt such as the Mezzanine Notes. In addition, the availability of assets similar to the Property, and competition for available credit, may have a significant adverse effect on the ability of potential purchasers to obtain financing for the acquisition of the Property. There can be no assurance that the Mezzanine Issuer will be able to refinance the Mezzanine Notes on or prior to the Initial Mezzanine Redemption Date or if the Mezzanine Note extension options are exercised the First Extended Mezzanine Redemption Date or the Second Extended Mezzanine Redemption Date, as applicable.

If the Mezzanine Issuer cannot refinance the Mezzanine Notes, the Property may be required to be sold in the then current market conditions in order to repay the Mezzanine Notes. If at that point in time the Senior Discharge Date has not occurred the amounts received from the sale of the Property would have to be applied to discharge the Senior Loan in priority to the Mezzanine Notes. Failure by the Mezzanine Issuer to refinance the Mezzanine Notes or in the event that the Property cannot be sold on or prior to the Initial Mezzanine Redemption Date (as extended) may result in the Mezzanine Issuer defaulting on the Mezzanine Notes and its insolvency. See also "*E. CONSIDERATIONS RELATING TO THE INSOLVENCY OF THE OBLIGORS*" and the section entitled "*DESCRIPTION OF THE INTERCREDITOR AGREEMENT*". In the event of such a default or insolvency, the Noteholders may receive by way of principal repayment an amount less than the then Principal Amount Outstanding on their Notes and the Issuer may be unable to pay in full interest and other amounts due on the Notes.

## **Valuation**

Savills has produced the Initial Valuation. According to the Initial Valuation, the aggregate market value of the Property (the "**Market Value**") was £557,300,000 as at 10 November 2016.

Such valuation of the Property expresses the professional opinion of the relevant valuer on the Property and is no guarantee of present or future value in respect of the Property. One valuer may, in respect of the Property, reach a different conclusion than the conclusion that would be reached if a different valuer was appraising the same Property, even if theoretically prepared on the same basis. Moreover, valuations seek to establish the amount that a typically motivated buyer would pay a typically motivated seller and, in certain cases, may have taken into consideration the purchase price paid by the existing property owner.

There can be no assurance that the market value of the Property will continue to be equal to or exceed the valuations given in the Initial Valuation or that the value of the Property has not changed materially since the date of the Initial Valuation. Assumptions often differ from the current facts regarding such matters and are subject to various risks and contingencies, many of which are not within the control of the Issuer, the Note Trustee, the Issuer Security Trustee, the Mezzanine Issuer or any other Issuer Related Party or Savills. Some of the assumptions in the Initial Valuation might not materialise, and unanticipated events and circumstances may occur or have occurred subsequent to the date of the Initial Valuation.

There can be no assurance that the Market Value of the Property will be equal to or greater than the unpaid principal and accrued interest and any other amounts due on the Mezzanine Notes. The actual results achieved

on a sale may vary from the related valuation and such variations may be material. If the Property is sold following a Mezzanine Note Event of Default, enforcement of the Issuer Security or a Note Event of Default there can be no assurance that the net proceeds of such sale will be sufficient to pay in full all amounts due under the Notes.

### **Limited payment history**

The Mezzanine Note was subscribed to by the Mezzanine Note Sellers on 15 December 2016. As such, the Mezzanine Notes does not have a substantial payment history on the date of this Offering Circular upon which to base assumptions about future performance of the Mezzanine Issuer.

### **Risks relating to representations and warranties of the Senior Loan Obligors under the Senior Facility Agreement and the Mezzanine Note Obligors under the Mezzanine Note Issuance Agreement**

Representations and warranties given by the Senior Loan Obligors/Mezzanine Note Obligors under the Senior Facility Agreement or the Mezzanine Note Issuance Agreement, as applicable, are to some extent qualified by materiality and the actual knowledge of the Senior Loan Obligors/Mezzanine Note Obligors giving such representation or warranty. While reliance on representations and warranties is only commercially possible to the extent that the Senior Loan Obligors/Mezzanine Note Obligors are actually able to indemnify the recipient of such representations and warranties, so that a representation already in and as of itself only offers limited protection commercially, representations and warranties which are qualified by the actual knowledge further reduce the ability of a recipient to rely on the absence of the corresponding risks because the recipient would need to provide evidence of the Senior Loan Obligors'/Mezzanine Note Obligors' actual knowledge of the relevant risk represented which might be difficult if not impossible to demonstrate successfully in practice.

### **Risks relating to special purpose entity covenants of the Mezzanine Note Obligors**

Special purpose entity covenants are generally designed to limit the purpose of the borrowing entity to owning the related property, making payments on the related loan and taking such other actions as may be necessary to carry out the foregoing in order to reduce the risk that circumstances unrelated to the loan and related property result in borrower insolvency. Special purpose entities are generally used in commercial loan transactions to satisfy requirements of institutional lenders and recognised credit rating agencies. In order to minimise the possibility that special purpose entities will be the subject of insolvency proceedings, provisions are generally contained in the borrower's documentation relating to the loan which, among other things, limit the indebtedness that can be incurred by such entities and restrict such entities from conducting business as an operating company generally (thus limiting exposure to outside creditors).

The Mezzanine Note Issuance Agreement contains provisions that require the Mezzanine Note Obligors to conduct themselves in accordance with certain special purpose entity covenants. Each Mezzanine Note Obligor represents that it does not have, and has not had, any employees. However, there can be no assurance that all or most of the special purpose entity covenants will be complied with by the Mezzanine Note Obligors (however, a breach of an undertaking or representation would, in certain circumstances, lead to a Mezzanine Note Event of Default) and even if all or most of such restrictions have been complied with by the Mezzanine Note Obligors there can be no assurance that the Mezzanine Note Obligors will not nonetheless become insolvent.

### **Limitations of representations and warranties given by the Mezzanine Note Sellers**

Neither the Issuer nor the Issuer Security Trustee has undertaken or will undertake any investigations, searches or other actions as to the Mezzanine Note Sellers' status, and each will rely instead solely on the warranties given by the Mezzanine Note Sellers in respect of such matters in the Note Sale Agreement. In the event of a material breach of Loan Warranty (as defined below) (which is capable of being remedied, but not remedied within the period specified in the Note Sale Agreement), the Mezzanine Note Sellers will be entitled (but will not be obliged) as an alternative to indemnifying the Issuer against all losses, claims, demands, taxes and other expenses or liabilities incurred by the Issuer as a result of such breach, to repurchase the Mezzanine Notes. For further details see the section entitled "*SALE OF ASSETS*".

### **Mezzanine Note security enforcement**

Under the Intercreditor Agreement, the Issuer as a Mezzanine Noteholder, is restricted from instructing the Common Security Agent to enforce the Common Transaction Security prior to the Senior Discharge Date. The Common Transaction Security includes security over the Property.

Therefore, if a Mezzanine Event of Default occurs prior to the Senior Discharge Date, the Common Security Agent will only act in accordance of the instruction of the Majority Senior Lenders, who will comprise the Instructing Group for the purposes of the Intercreditor Agreement.

The Issuer will therefore prior to the Senior Discharge Date be reliant on (a) the Majority Senior Lenders instructing the Common Security Agent to enforce the Common Transaction Security and (b) there being sufficient amounts recovered from such enforcement to first repay all Senior Secured Liabilities and then to repay the Mezzanine Liabilities. Where insufficient funds are realised, the Issuer will not receive all required payments under the Mezzanine Notes and, accordingly, the Issuer may not have sufficient funds available to make all required payments to the Noteholders.

There can be no assurance that:

- (a) prior to the Senior Discharge Date, the Senior Majority Lenders will choose to enforce the Common Transaction Security;
- (b) the Common Security Agent would recover sufficient amounts upon enforcement of the Common Transaction Security to satisfy first the Senior Liabilities and then the Mezzanine Liabilities; and
- (c) sufficient funds may be realised or available to make all required payments to the Issuer under the Mezzanine Notes and, accordingly, the Issuer may not have sufficient funds available to make all required payments to the Noteholders.

See the section entitled "*DESCRIPTION OF THE INTERCREDITOR AGREEMENT*" for further details.

### **The Common Transaction Security is shared between the Common Secured Parties**

The Common Transaction Security has been granted by the Senior Loan Obligors over all their present and future assets and is created in favour of the Common Security Agent and held on trust for the Common Secured Parties. The Common Transaction Security includes security over the Property. In addition, the Mezzanine Security has been granted by the Mezzanine Issuer and the Mezzanine Holdco over their assets and which is created in favour of the Mezzanine Security Agent and held on trust for the Secured Creditors under the Mezzanine Finance Documents. The Mezzanine Security secures assets and rights of the Mezzanine Issuer and Mezzanine Holdco which do not include the Property.

### **Mortgagee in possession liability**

The Mezzanine Security Agent may be deemed to be a mortgagee in possession if there is physical entry into possession of the Property or an act of control or influence which may amount to possession (such as receiving rents directly from the relevant tenant or sub-tenant). A mortgagee in possession may incur liabilities to third parties in nuisance and negligence and, under certain statutes (including environmental legislation) and in certain circumstances, can incur the liabilities of a property owner.

### **Transaction Security enforcement**

In the event of acceleration of the Mezzanine Notes, recourse will be available only to the Transaction Security. Enforcement under the Security Documents may not result in immediate realisation of the Transaction Security and a significant delay could be experienced in recovery by the Common Security Agent and/or the Mezzanine Security Agent of, amongst other things, amounts owed under the Mezzanine Notes.

There can be no assurance that the Mezzanine Security Agent would recover all amounts secured upon enforcement of the Transaction Security.

Accordingly, sufficient funds may not be realised or available to make all required payments to the Issuer under the Mezzanine Notes and, accordingly, the Issuer may not have sufficient funds available to make all required payments to the Noteholders and other Issuer Secured Creditors.

#### **Risks relating to clawback under the Mezzanine Note Issuance Agreement**

The Mezzanine Note Issuance Agreement provides that if the Mezzanine Note Agent pays an amount to another party (including the Issuer) without actually receiving that amount, then such party to whom payment has been made shall on demand refund the amount paid to the Mezzanine Note Agent together with interest on that amount from the date of payment to the date of receipt by the Mezzanine Note Agent, calculated to reflect the Mezzanine Note Agent's cost of funds.

In addition, if the Issuer (or the Cash Manager on its behalf) receives or recovers an amount from an Obligor other than by means of a payment or distribution made by the Mezzanine Note Agent in accordance with the Mezzanine Note Issuance Agreement, it may be required to repay all or some of such amount to the Mezzanine Note Agent.

Accordingly, the amounts received by the Issuer and ultimately the Noteholders may in the circumstances outlined above have to be repaid to the Mezzanine Note Agent. In this scenario, the Issuer (or the Cash Manager on its behalf) would need to recover such amounts from Noteholders in accordance with Condition 7(h) (*Incorrect Payments*) in the first instance and then transfer such funds to the Mezzanine Note Agent. See also "*Risks relating to the Calculation of Amounts and Payments*" above.

#### **G. CONFLICTS OF INTEREST**

##### **Conflicts between the Arranger, the Lead Manager, the Mezzanine Note Sellers and affiliates of the Arranger, the Lead Manager or the Mezzanine Note Sellers, on one hand, and the Issuer, on the other hand**

Conflicts of interest between affiliates of the Arranger, the Lead Manager or the Mezzanine Note Sellers that engage in the acquisition, development, operation, financing and disposal of commercial property, the Arranger, the Lead Manager and the Mezzanine Note Sellers, on one hand, and the Issuer, on the other hand, may arise because such affiliates, the Arranger, the Lead Manager and the Mezzanine Note Sellers will not be prohibited in any way from engaging in business activities similar to or competitive with those of the Mezzanine Note Obligor.

The Arranger, the Lead Manager, the Mezzanine Note Sellers and their respective affiliates, intend to continue to actively acquire, develop, operate, finance and dispose of property related assets in the ordinary course of their businesses. During the course of their business activities, the Arranger, the Lead Manager, the Mezzanine Note Sellers and their respective affiliates may provide liquidity facility and swap counterparty services or acquire, own or sell properties or finance loans secured by properties which are in the same markets as the Property. In such a case, the interests of such affiliates, the Arranger, the Lead Manager and/or the Mezzanine Note Sellers may differ from and compete with the interests of the Issuer, and decisions made with respect to such assets may adversely indirectly affect the amount and timing of distributions with respect to the Notes.

In addition, the Arranger, the Lead Manager and the Mezzanine Note Sellers and their respective affiliates may have business, lending or other relationships with, or equity investments in, obligors under loans or tenants and conflicts of interest could arise between the interests of the Issuer and the interests of the Arranger, the Lead Manager, the Mezzanine Note Sellers and such affiliates arising from such business relationships.

#### **H. GENERAL: RISKS NOT EXHAUSTIVE**

The Issuer believes that the risks described above are the principal risks inherent in an investment in the Notes for Noteholders, but the inability of the Issuer to pay interest, principal or other amounts on or in connection with the Notes may occur for other reasons and the Issuer does not represent that the above statements regarding the risks relating to the Notes are exhaustive. Although the Issuer believes that the various structural elements described in this Offering Circular might to some degree lessen some of these risks for Noteholders, there can be no assurance that these measures will be sufficient to ensure payment to Noteholders of interest, principal or any other amounts on or in connection with the Notes on a timely basis or at all.

## **INCORPORATION BY REFERENCE**

This Offering Circular should be read and construed in conjunction with the Initial Valuation. Such document shall be incorporated in and form part of this Offering Circular.

Copies of the Valuation Report incorporated by reference in this Offering Circular may be obtained (without charge) from the Irish Stock Exchange's website at <http://www.ise.ie/Market-Data-Announcements/Debt/Individual-Debt-Instrument-Data/Dept-Security-Documents/?progID=-1&uID=9081&FIELDSORT=fileDate>.

The Initial Valuation may not be reproduced or used in connection with any other purpose and without the prior written consent of Savills.

Other than the website listed above in this section other websites referred to in this Offering Circular do not form part of this Offering Circular.

**DESCRIPTION OF THE NOTE TRUSTEE, THE ISSUER SECURITY TRUSTEE, THE CASH  
MANAGER, THE OPERATING BANK, THE AGENT BANK, THE PRINCIPAL PAYING AGENT  
AND REGISTRAR**

**ELAVON FINANCIAL SERVICES DAC**

U.S. Bank Global Corporate Trust Services, which is a trading name of Elavon Financial Services DAC (a U.S. Bancorp group company), is an integral part of the worldwide Corporate Trust business of U. S. Bank. U.S. Bank Global Corporate Trust Services in Europe conducts business primarily through the U.K. Branch of Elavon Financial Services DAC from its offices in London at 125 Old Broad Street, London EC2N 1AR, United Kingdom.

Elavon Financial Services DAC is a bank incorporated in Ireland and a wholly owned subsidiary of U.S. Bank National Association. Elavon Financial Services DAC is authorised by the Central Bank of Ireland and the activities of its U.K. Branch are also subject to the limited regulation of the U.K. Financial Conduct Authority and Prudential Regulation Authority.

U.S. Bank Global Corporate Trust Services in combination with U. S. Bank National Association, the legal entity through which the Corporate Trust Division conducts business in the United States, is one of the world's largest providers of trustee services with more than \$4 trillion in assets under administration in municipal, corporate, asset-backed and international bonds. The division provides a wide range of trust and agency services such as calculation/paying agent, collateral administration and document custody through its network of 48 U.S.-based offices, an Argentinean office and European offices in London and Dublin.

U.S. Bancorp (NYSE: USB), with \$410 billion in assets at March 31, 2015, is the parent company of U.S. Bank National Association, the 5th largest commercial bank in the United States. The Company operates 3,172 banking offices in 25 states and 5,016 ATMs and provides a comprehensive line of banking, brokerage, insurance, investment, mortgage, trust and payment services products to consumers, businesses and institutions. Visit U.S. Bancorp on the web at [usbank.com](http://usbank.com).

**U.S. BANK TRUSTEES LIMITED**

U.S. Bank Trustees Limited is a limited liability company incorporated under the laws of England and Wales with its office at 125 Old Broad Street, London, EC2N 1AR, United Kingdom.

U.S. Bank Trustees limited, as part of the U.S. Bancorp group and in combination with Elavon Financial Services DAC (the legal entity through which European agency and banking appointments are conducted) and U.S. Bank National Association, (the legal entity through which the Corporate Trust Division conducts business in the United States), is one of the world's largest providers of trustee services with more than \$4 trillion in assets under administration in municipal, corporate, asset-backed and international bonds. The division provides a wide range of trust and agency services such as calculation/paying agent, collateral administration and document custody through its network of 48 U.S.-based offices, an Argentinean office and European offices in London and Dublin.

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## MANAGEMENT AND ADMINISTRATION OF THE PROPERTY

### Property Management Agreement

On 15 December 2016, the beneficial owners of the Property, the Trustees in their capacity as joint trustees of the Unit Trust (the "**Trust**") entered into a property management agreement with CBRE Limited (as "**Managing Agent**") in respect of the Property (the "**Property Management Agreement**"), pursuant to which the Trustees have appointed the Managing Agent to provide certain property management services in relation to the Property held by them. The Property Management Agreement is governed by English law.

#### *Term and termination of the Property Management Agreement*

The Property Management Agreement came into force on 15 December 2016 and will remain in force for a fixed period of three years and after that period from year to year, subject to the termination provisions of the Property Management Agreement. Those termination provisions include, among other things, termination if (a) the Managing Agent commits any material breach of any of its obligations under the Property Management Agreement and (if capable of remedy) neglects or otherwise fails to remedy such breach within two weeks of being required to do so (b) any material change occurs in the management or control of the Managing Agent unless otherwise agreed by the Trust prior to the change or (c) an insolvency act occurs in respect of the Managing Agent or the Trust. The Property Management Agreement can be terminated by the Trust or Managing Agent at any time without cause with 3 months written notice, or on written notice by the Trust with as much notice as reasonably practicable in the event of a sale of the Property.

#### *Property Management Services*

Pursuant to the Property Management Agreements, the Managing Agent as the property manager is mandated to carry out general Property management, repair and maintenance, monitoring, technical, administrative, financial and operational management services in respect of the Property. The Trust and Managing Agent can also agree at an additional cost for the Managing Agent to provide additional services which include (among other things) valuations, work on refurbishments or redevelopments and certain advisory services.

### Property Management Agreement Duty of Care Letter

The Managing Agent acting as the property manager and the Trust entered into a duty of care letter in favour of the Security Agent in respect of the Property Management Agreement on 15 December 2016 (the "**PMA Duty of Care Agreement**").

Pursuant to the PMA Duty of Care Agreement, the property manager has undertaken, among other things, to:

- (a) comply with the terms of and fulfil its obligations set out in the Property Management Agreement (which include, without limitation, the collection of all rental income);
- (b) perform its obligations under the Property Management Agreement with the skill, care and diligence expected from a reasonably qualified and competent managing agent experienced in carrying out obligations of a similar scope and complexity as provided for in the Property Management Agreements; and
- (c) pay all sums due and give notices under the Property Management Agreement until receipt of a notice to the contrary from the Common Security Agent.

The PMA Duty of Care Agreement is governed by English law.

### The Asset Management Agreement

On 15 December 2016, the beneficial owners of the Property, the Trustees in their capacity as joint trustees of the Trust entered into an asset management agreement with Brookfield Developments Europe Limited (the "**Manager**") in respect of the Property (the "**Asset Management Agreement**"), pursuant to which the Manager has been appointed asset manager to provide certain asset management services in relation to the Property held by them. The Asset Management Agreement is governed by English law.



### *Term and termination of the Asset Management Agreement*

The Asset Management Agreement came into force on 15 December 2016 and shall remain in force until terminated.

The termination provisions under the Asset Management Agreement include, among other things, (a) immediately on service of written notice (or such longer period of up to (but not exceeding) three months as specified in the notice) if the Manger commits any material breach of any of its obligations under the Asset Management Agreement and (if capable of remedy) neglects or otherwise fails to remedy such breach within four weeks of being required to do so, or (b) if the Manager is suspected of committing or commits any act involving fraud, gross negligence or wilful default.

The Asset Management Agreement may be terminated by the Trust or Manager on 30 Business Days' written notice. The Trust or Manager may also terminate the Asset Management Agreement on 10 Business Days' written notice in the event of a sale of either the legal and beneficial interests in the Property or at least 50% of the partnership in BSREP Citypoint Bidco Limited of any entity or undertaking controlled by BSREP Citypoint Bidco Limited to a third party or if there is a change of control of the Manager. Termination can also take place on service of 10 Business Day's written notice by the Trust if the Manager becomes insolvent.

### *Asset Management Services*

Pursuant to the Asset Management Agreement, the Manager as asset manager is mandated to, among other things, to implement business strategy against investment objectives and provide tax administration services in relation to the Property.

### **Asset Manager Duty of Care Agreement**

The Manager acting as the asset manager entered into a duty of care agreement in favour of Mount Street the Common Security Agent in respect of the Asset Management Agreement dated 15 December 2016 (the "**AM Duty of Care Agreement**").

Pursuant to the AM Duty of Care Agreement, the Manager has undertaken, among other things, to:

- (a) comply with the terms of and fulfil its obligations set out in the Asset Management Agreement; and
- (b) exercise all reasonable skill, care and diligence in performing its obligations under the Asset Management Agreement, provided that the Asset Manager shall have no greater liability to the Common Security Agent than it would have had if the Common Security Agent was party to the Asset Management Agreement when signed.

## THE ORIGINATION AND DUE DILIGENCE PROCESS

### Origination process

In connection with the subscription of the Mezzanine Note, the Mezzanine Note Sellers ensured that certain due diligence procedures were undertaken as would customarily be undertaken by a prudent lender making loans secured on commercial properties of the type comprising the Property.

### Property Title Investigation

The Mandated Lead Arranger's solicitors prepared a property overview legal due diligence report of the legal due diligence conducted pursuant to the Senior Facility Agreement (the "**Overview Report**"). The Overview Report summarised issues contained in the Senior Loan Obligors' Agent's solicitors the City of London Law Society Land Law Committee long form certificate of title (seventh edition) dated 15 December 2016 for the Property (the "**Certificate of Title**") delivered as a condition precedent under the Senior Facility Agreement.

The Certificate of Title stated that Wates City Point First Limited and Wates City Point Second Limited (in respect of their respective freehold interest in the Property), Dreamclose limited (in respect of its legal estate in the underleasehold interest in the Property), Wavegrange Limited (in respect of its legal estate in the underleasehold interest in the Property) and the Unit Trust (in respect of its beneficial interest in the Property) has good and marketable title to the Property and is solely legally and beneficially entitled to the Property (subject to the disclosures in the Certificate of Title) and neither the solicitors to the aforementioned companies nor any of those companies know of any reason why the Common Security Agent should not be registered as registered proprietor of the legal charge over the Property in favour of the Common Security Agent.

Prior to the subscription of the Mezzanine Notes the Mezzanine Note Sellers' solicitors reviewed the Overview Report.

### Valuation

Prior to the subscription of the Mezzanine Note, Savills was engaged to carry out a valuation of each of the Property in the capacity of external valuer. The Initial Valuation which, subject to certain assumptions, valued the Property at 10 November 2016. A copy of the Initial Valuation can be found at <http://www.ise.ie/Market-Data-Announcements/Debt/Individual-Debt-Instrument-Data/Dept-Security-Documents/?progID=-1&uID=9081&FIELDSORT=fileDate>.

There can be no assurance that another valuer would have arrived at the same opinion of value or that the value of the Property has not changed since 10 November 2016 (the valuation date set out in the Initial Valuation). See the risk factor entitled "*Valuation*" within the section entitled "*RISK FACTORS*" above.

There has been no re-valuation of the Property since the date set out in the Initial Valuation for the purposes of the issue of the Notes.

### *Tax due diligence report*

Prior to the origination of the Mezzanine Notes, a tax due diligence assessment was conducted of the issues surrounding members of the Target in relation to the Acquisition.

There can be no assurance that another tax consultant would have arrived at the same opinion of tax findings or that the tax status of members of the Target has not changed since 15 December 2016 (being the date of the report).

### *Financial due diligence report*

Prior to the origination of the Mezzanine Notes, a financial due diligence assessment was conducted of the issues surrounding members of the Target in relation to the Acquisition.

There can be no assurance that another financial consultant would have arrived at the same opinion of financial analysis or that the financial status of members of the Target has not changed since 15 December 2016 (being the date of the report).

*Tax Structuring Memorandum*

Prior to the origination of the Mezzanine Notes, the Acquisition was the subject of a tax structuring memorandum.

*Technical Due Diligence Report*

The Property was, prior to the origination of the Mezzanine Notes, subject to technical due diligence. There can be no assurance that all technical risks have been identified.

## DESCRIPTION OF THE PROPERTY

### The Property

#### Property Information

Market Valuation (£)	557,300,000
ERV (£)	37,269,000
ERV per square foot (£)	52.5
Total Contracted Rent	25,366,020
Total Passing Rent	20,521,980
Net Rental Income (£)	18,718,150
Net Rental Income per square foot (£)	26.4
Net Initial Yield	3.15%
Tenure	Freehold
Valuer	Savills
Date of Valuation	10 November 2016
Property Size (Square foot)	709,501
Occupancy by Area	89%
Weighted Average Time to Lease Expiry (years)	7.1
Weighted Average Time to Earlier of First Break or Lease Expiry (years)	5.5
Number of Tenants	34
Number of Occupational Leases	51
<b>Major Tenants</b>	<b>% of Contracted Rent</b>
Simmons & Simmons	26.7%
Simpson Thacher Bartlett LLP	10.1%
London CityPoint Centre Ltd t/a Regus	9.7%

### Location

The Property is known as CityPoint, One Ropemaker Street, London, EC2Y 9SS and comprises a single building subject to multiple underlettings. It is principally used for office purposes although it has limited a number of retail units.

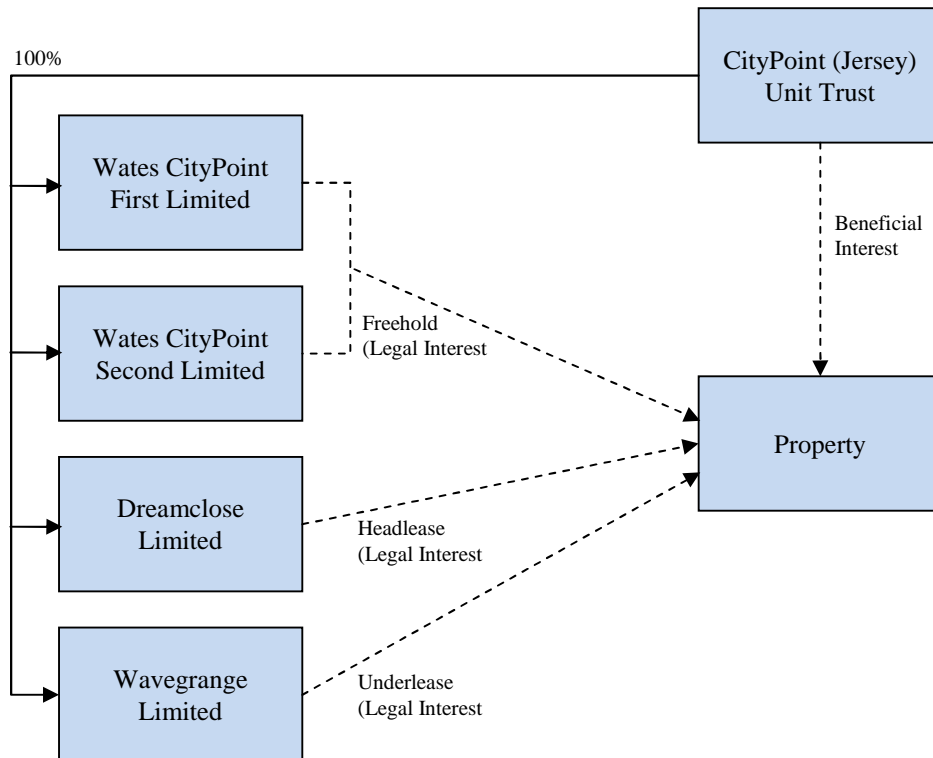
The Property was originally constructed in 1967 as the worldwide headquarters of the British Petroleum (BP) Group but was substantially redeveloped and enlarged in 2001. It comprises a total of approximately 709,501 sq ft arranged on four basement levels, lower ground, ground and 34 upper floors.

### Title

The Property is divided into freehold, headleasehold and underleasehold estates (the Property Freehold, the Property Headlease and the Property Underlease respectively) (which are further divided between the legal and beneficial interests), and is subject to various occupational leases. The legal interest in the Property Freehold is vested jointly in the Freehold Propcos, the legal interest in the Property Headlease is vested in the Headlease Propco and the legal interest in the Property Underlease is vested in the Underlease Propco. Each of the Headlease Propco and the Underlease Propco are duly constituted trust corporations. The beneficial interests in each of the Property Freehold, the Property Headlease and the Property Underlease (and accordingly the

beneficial interest in the net rental income generated by the occupational leases) are vested in the Trustees in their capacity as joint trustees of the Unit Trust. The Unit Trust is a property unit trust, established under Jersey law for the purposes of holding property on trust for its beneficiaries.

A diagram showing the different layers of title is set out below:



Each of the Property Freehold, the Property Headlease and the Property Underlease, and the legal and beneficial interests in each of these, is charged by way of first legal mortgage or first fixed charge in favour of the Common Security Agent. The net rental income generated by the occupational leases is all paid into a single transaction rent account. See the section entitled "*DESCRIPTION OF THE SENIOR FACILITY AGREEMENT*" for further detail. The terms of the Property Headlease and Property Underlease, and rents payable pursuant to them, are accordingly disregarded.

Where:

**"Freehold Propcos"** means Wates City Point First Limited (registered number 03902926) and Wates City Point Second Limited (registered number 03902877).

**"Headlease Propco"** means Dreamclose Limited (registered number 04071458).

**"Property"** means the Property Freehold, the Property Headlease and the Property Underlease.

**"Property Freehold"** means the freehold land and buildings known as CityPoint, One Ropemaker Street, London EC2V 0HR registered at the Land Registry with title number NGL745546.

**"Property Headlease"** means the leasehold land and buildings known as CityPoint, One Ropemaker Street, London EC2V 0HR registered at the Land Registry with title number NGL794089.

**"Property Underlease"** means the leasehold land and buildings known as CityPoint, One Ropemaker Street, London EC2V 0HR registered at the Land Registry with title number NGL794088.

**"Underlease Propco"** means Wavegrange Limited (registered number 04071405).

### **Tenancies**

The Property is underlet under various leases to 34 different tenants generating a total rental income, net of unrecoverable service charge and empty rates payments, as of the Valuation Date of £18,718,150. Please see the Initial Valuation for further details of the tenants.

### **Subtenancies**

The only sublettings are the whole of levels 6, 7 and 8 (which are sublet to three different companies by Simmons & Simmons), part of level 28, and the whole of Retail Unit 5. In total, approximately 15% of the area in the property is currently sublet. The largest lessor of sublet space is Simmons & Simmons, which sublets 105,714 sq ft, approximately 37% of total Simmons & Simmons space. The largest lessee of sublet space is Mimecast Services, which occupies approximately 41,311 sq ft of sublet space, 38% of total sublet space.

### **Valuation**

The legal and beneficial interests in the Property were valued for the purposes of the Mezzanine Notes by Savills on 10 November 2016 at £557,300,000.

## SALE OF ASSETS

### Note Sale Agreement

On or around the Closing Date, each Mezzanine Note Seller will transfer by way of novation to the Issuer and the Issuer will acquire from each Mezzanine Note Seller, its rights, title, interests and benefits in respect of the relevant proportion of the relevant Mezzanine Note Seller's commitment in the Mezzanine Notes, as set out in the relevant Mezzanine Note Transfer Certificate dated on or about the Closing Date executed by the relevant Mezzanine Note Seller, the Issuer and the Mezzanine Note Agent (the "**Mezzanine Note Seller Commitment**") and its interest in the Related Security corresponding to that Mezzanine Note Seller Commitment (together, the "**Mezzanine Note Assets**"). For the avoidance of doubt, the Mezzanine Note Assets include, subject to the subsisting rights of redemption of the Mezzanine Note Obligors, all the rights, interest title, and benefit (both present and future) of each Mezzanine Note Seller in its capacity as a lender in, to and under its Mezzanine Note Seller Commitment, and its interest in the corresponding Related Security and without limitation, including in respect of:

- (a) its right as a lender to demand, sue for, recover, receive and give receipts for all moneys payable or to become payable in respect of its Mezzanine Note Seller Commitment, as applicable, but so that the Mezzanine Note Seller shall not transfer or assign and shall retain for its own benefit the amount of any interest or other sum (other than principal) paid in respect of any period ending on (and including) the day immediately preceding the Closing Date and the amount of principal paid or due to be paid prior to (but excluding) the Closing Date;
- (b) the benefit of and the right of the Mezzanine Note Seller to sue on all covenants with and undertakings to the Mezzanine Note Seller or for its benefit in respect of its Mezzanine Note Seller Commitment, as applicable, and its interest in the Related Security with respect to its Mezzanine Note Seller Commitment and its right to exercise all rights and powers of the Mezzanine Note Seller in relation to its Mezzanine Note Seller Commitment, as applicable;
- (c) all estate, title and interest in any of the Property vested in the Mezzanine Note Seller as security for its Mezzanine Note Seller Commitment, subject to redemption or cesser;
- (d) all reports, valuations, opinions, certificates and consents given in connection with the Mezzanine Notes, which are assignable or transferable to the Issuer and all of its causes and rights of action against any person in connection with any report, valuation, opinion, certificate, consent or other statement of fact or opinion given in connection with the Mezzanine Notes, as applicable;
- (e) (subject to the subsisting rights (if any) of a Mortgagor) all the estate, rights, title, interests and benefits of the Mezzanine Note Seller in each insurance policy taken out in respect of any of the Property including, without limitation, the right (if any) to receive the proceeds of any claim;
- (f) all scheduled payments of interest and all principal due on or with respect to its Mezzanine Note Seller Commitment after the Closing Date;
- (g) all other payments of interest, principal, indemnities for costs and expenses or any other amounts received on or with respect to its Mezzanine Note Seller Commitment after the Closing Date; and
- (h) all rights under all subordination agreements relating to the Mezzanine Notes, (including, without limitation, the Intercreditor Agreement),

in each case to the extent such Mezzanine Note Seller would, but for the transfer contemplated by the Note Sale Agreement, be entitled to claim any of the foregoing in respect of the relevant Mezzanine Note Assets transferred.

Therefore, on the Closing Date, the Issuer, the Issuer Security Trustee, the Cash Manager, the Agent Bank, the and the Mezzanine Note Sellers will enter into a note sale agreement (the "**Note Sale Agreement**") and, in the case of the Issuer and each of the Mezzanine Note Sellers, the Mezzanine Note Transfer Certificates in respect of each Mezzanine Note Seller dated on or about the Closing Date executed by the relevant Mezzanine Note Seller, the Issuer and the Mezzanine Note Agent, pursuant to the terms of which, among other things, each Mezzanine Note Seller will transfer and the Issuer will acquire from each Mezzanine Note Seller the right, title,

interests and benefits of each Mezzanine Note Seller in respect of its Mezzanine Note Seller Commitment and its interests in the Related Security.

In consideration of the sale of the Mezzanine Notes, the Issuer will pay on the Closing Date £101,625,000 to the Mezzanine Note Sellers, being equal to the principal balance of the Mezzanine Notes as at the Closing Date (the "**Initial Purchase Price**") to be paid to the Mezzanine Note Sellers in accordance with the proportions set out in the Note Sale Agreement.

In addition to the Initial Purchase Price, the Issuer will, to the extent it is available, pay to the Mezzanine Note Sellers deferred consideration ("**Deferred Consideration**") in proportion to each Mezzanine Note Seller's share of the Initial Purchase Price on each Distribution Date, which consideration comprises any surplus Available Funds following the prior application of such Available Funds sequentially:

- (a) prior to the service of a Note Acceleration Notice, in accordance with paragraphs (a) to (f) of the Pre-Enforcement Revenue Priority of Payments, and
- (b) following the service of a Note Acceleration Notice, in accordance with paragraphs (a) to (f) of the Post-Enforcement Priority of Payments.

It is not expected that any Deferred Consideration will accrue and the fine is payable to the Mezzanine Note Sellers.

Following the transfer of the Mezzanine Notes to the Issuer, (i) as and from the Closing Date, the Issuer will be a lender under the Mezzanine Note Issuance Agreement in respect of the Mezzanine Notes, and (ii) the original Mezzanine Finance Documents will be held by the Mezzanine Security Agent on behalf of the Issuer.

Pursuant to the Note Sale Agreement the Issuer is restricted from agreeing to any amendment or modification or entering into any agreement or arrangement with any party which would have the effect of (i) reducing or cancelling the amount of Deferred Consideration due and payable to the Mezzanine Note Sellers; (ii) modifying the method of calculating the Deferred Consideration; (iii) postponing any date on which the payment of the Deferred Consideration are to be made or (iv) adversely affecting the right of the Mezzanine Note Sellers to receive payment of the Deferred Consideration under the Note Sale Agreement, in each case, without the Mezzanine Note Sellers' prior written consent (in the Mezzanine Note Sellers' absolute discretion).

Pursuant to the Note Sale Agreement, a Mezzanine Note Seller may assign, transfer or charge its interest in its entitlement to the Stripped Interest Payments to one or more third parties.

#### *Several Liability*

The obligations of each Mezzanine Note Seller under the Note Sale Agreement are several and not joint.

#### *Mezzanine Note Sellers' Representations and Warranties*

None of the Issuer or the Issuer Related Parties has made or will make any of the enquiries, searches or investigations which a prudent purchaser of similar assets would normally make, nor has any such entity made any enquiry at any time in relation to compliance by the with its lending criteria or the legality, validity, perfection, adequacy or enforceability of the Issuer Assets or the transfer thereof pursuant to the Note Sale Agreement.

In relation to all of the foregoing matters, the Issuer will, in relation to the Mezzanine Notes and the Related Security rely solely on the representations and warranties given by each Mezzanine Note Seller in the Note Sale Agreement. None of the Issuer Related Parties will be obliged to verify compliance by the Mezzanine Note Sellers with such representations and warranties.

In the event of a Material Breach of Note Warranty (as defined below), the relevant Seller will be required, within 60 days (or such longer period not exceeding 90 days as the Issuer may agree) of receipt of written notice of the relevant Material Breach of Note Warranty from the Issuer, to remedy the matter giving rise to such breach of representation or warranty, if such matter is capable of remedy.



If a Material Breach of Note Warranty is not capable of remedy or is not remedied within the specified period, the relevant Mezzanine Note Seller will (subject to the repurchase provision below) be required to indemnify on a *pro rata* basis in proportion to the Mezzanine Note Seller Commitment that it transferred to the Issuer on the Closing Date, on a several basis, on demand the Issuer against all losses, claims, demands, taxes and all other expenses or other liabilities incurred by the Issuer as a result of such Material Breach of Note Warranty.

Neither the Issuer nor the Issuer Security Trustee will have any claim in respect of any breach of any Note Warranty that is not a Material Breach of Note Warranty.

In the event that the Issuer makes a demand for indemnity in respect of a Material Breach of Note Warranty, the relevant Mezzanine Note Seller will be entitled (but will not be obliged), as an alternative to the Mezzanine Note Sellers being required to indemnify the Issuer, to repurchase the Mezzanine Notes and the Related Security pertaining to it on a *pro rata* basis in proportion to the Mezzanine Note Seller Commitment that it transferred to the Issuer on the Closing Date, on a several basis, a date not later than the second Distribution Date following the demand. The consideration payable in these circumstances will be an amount equal to the principal balance of the Mezzanine Notes then outstanding, any accrued but unpaid interest thereon plus all other amounts outstanding to the Issuer as a Finance Party under the Mezzanine Note Issuance Agreement, in each case in proportion to the Mezzanine Note Seller Commitment that it transferred to the Issuer.

The representations and warranties (the "**Loan Warranties**") to be given by each Mezzanine Note Seller in the Note Sale Agreement in respect of itself and in respect of its share in the Mezzanine Notes that is being transferred to the Issuer, which are qualified as set out in this section below, will comprise statements to the following effect, including:

- (a) *No Governmental Authority approval*: other than as specified in the Mezzanine Finance Documents, no notice to, registration with, consent or approval of or any other action by any relevant Governmental Authority is or will be required for each Mezzanine Note Seller to execute, deliver and perform its obligations under the Note Sale Agreement.
- (b) *Unencumbered title*: it is the sole legal and beneficial owner of the rights pertaining to its share under the Mezzanine Notes and is the sole beneficial owner of the interest in the Related Security, insofar as it pertains to the Mezzanine Notes in respect of which it is a Mezzanine Noteholder, in each case free and clear of all encumbrances, claims and equities.
- (c) *No other documents*: other than the Mezzanine Finance Documents, there are no other documents executed by it which would materially and adversely affect the Mezzanine Notes or the Related Security and (other than the documentation contemplated by the Mezzanine Finance Documents) it has not executed any other documentation relating to the Mezzanine Finance Documents except for those documents that are required to be executed in the Mezzanine Note Seller's capacity as Mezzanine Noteholder.
- (d) *No default*: it is not in material default of any of its obligations in relation to the Mezzanine Notes and Related Security.
- (e) *Alienability*: subject to the obtaining of any necessary consents, licenses, and authorisations, all rights and benefits (including proprietary rights under any relevant security documentation) and, where applicable, all its obligations under the Mezzanine Finance Documents which the Mezzanine Note Seller has agreed will be novated, assigned or otherwise effectively transferred or participated to the Issuer pursuant to the transaction are capable of being so novated, assigned or otherwise transferred or participated.
- (f) *No acceleration or payment default*: so far as it is aware, no decision has been taken to accelerate or enforce its rights under the Mezzanine Finance Documents and no amount of principal or interest is due and unpaid under the Mezzanine Finance Documents.
- (g) *No set-off*: pursuant to the terms of the Mezzanine Finance Documents, no Mezzanine Note Obligor is entitled to exercise any right of set-off (except to the extent required by law) under the Mezzanine Finance Documents.

- (h) *Sale of the Mezzanine Notes*: the sale of the Mezzanine Notes and the Related Security occurs in the ordinary course of the business of the Mezzanine Note Seller.

Pursuant to the Note Sale Agreement, the Mezzanine Note Warranties are qualified by reference to all general principles of law limiting the same as set out in the legal opinions referred to in the Mezzanine Finance Documents.

Where:

**"Governmental Authority"** means any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government;

**"Material Breach of Note Warranty"** means a breach of any of the Mezzanine Note Warranties in any material respect where the facts and circumstances giving rise to that breach have a material adverse effect on the ability of the Issuer to make timely payment in full of its obligations under the Notes.

**"Mezzanine Note Transfer Certificate"** means the transfer certificate substantially in the form set out in the Mezzanine Note Issuance Agreement dated on or about the Closing Date signed by the relevant Mezzanine Note Seller (as existing noteholder), the Issuer (as new noteholder) and the Mezzanine Note Agent.

**"Mortgage"** means the first legal mortgage and first legal charge created over the Property pursuant to the relevant Security Document.

**"Mortgagor"** means the grantor of a Mortgage.

**"Related Security"** means all right, title and interest of the Mezzanine Note Sellers or all rights, title and interest of the Issuer following the execution of the Note Sale Agreement, present and future, in, to and under the Security Documents and any other security agreements as they relate to the Mezzanine Notes;

**"Issuer Assets"** means the Mezzanine Notes and the Issuer's interest in the Related Security and all monies derived therefrom from time to time, all of which will be sold and transferred to the Issuer on the Closing Date pursuant to the Note Sale Agreement; and

**"Security Interest"** means any mortgage or sub-mortgage, standard security, fixed or floating charge or sub-charge, pledge, lien, assignment or assignation by way of security or subject to a proviso for redemption, encumbrance, hypothecation, retention of title, or other security interest whatsoever howsoever created or arising and its equivalent or analogue whatever called in any other jurisdiction, and any agreement or arrangement having substantially the same economic or financial effect as any of the foregoing.

## AVAILABLE FUNDS AND THEIR PRIORITY OF APPLICATION: THE NOTES

### Source of Funds

The repayment of principal and the payment of interest by the Mezzanine Issuer in respect of the Mezzanine Notes will provide the only source of funds for the Issuer to make payments of interest on and repayments of principal in respect of the Notes.

### Determination Date

On the date which is one Business Day prior to each Distribution Date (each, a "**Determination Date**") the Cash Manager will be required to calculate and/or determine, based on information provided to it by (or on behalf of) the Issuer or the Mezzanine Note Agent, the following:

- (a) the amount and allocation of Revenue Receipts and Principal Receipts received and that are payable into the Issuer Transaction Account on or prior to the Distribution Date immediately following a Determination Date;
- (b) the Available Funds available to the Issuer for distribution on the following Distribution Date; and
- (c) all amounts due according to the applicable Issuer Priority of Payments. Funds Paid into the Issuer Transaction Account

On each Mezzanine Note Interest Payment Date, the Mezzanine Note Agent will transfer from the Mezzanine Finance Account or any other relevant Mezzanine Note Obligor bank account to the Issuer Transaction Account an amount equal to the aggregate amounts in respect of interest, principal, fees and other amounts, if any, then payable under the Mezzanine Finance Documents to which the Issuer, as a lender, is entitled to receive.

The Issuer's interest and income receipts (the "**Revenue Receipts**") will comprise, on any day, the sum of all amounts of whatever nature received or recovered by or on behalf of the Issuer under or in connection with the Mezzanine Notes (other than Principal Receipts), and including, without limitation all amounts received or recovered by or on behalf of the Issuer in respect of:

- (a) interest payments received under the Mezzanine Notes;
- (b) any Default Interest;
- (c) Break Costs received under the Mezzanine Notes;
- (d) any early redemption or cancellation fees received under the Mezzanine Notes;
- (e) any costs, expenses, commissions and other sums, in each case paid by the Mezzanine Issuer or any of the Mezzanine Note Obligors in respect of the Mezzanine Notes or the Related Security (other than any repayments in respect of Principal Receipts); and
- (f) interest on amounts standing to the credit of the Issuer Transaction Account and any cash deposits held in a bank account of the Issuer) received during the Interest Period immediately preceding a Determination Date,

provided that all amounts recorded in the Issuer Profit Account shall not form part of Revenue Receipts, or be applied in accordance with the applicable Issuer Priority of Payments.

Where:

**"Break Costs"** means the breakage costs payable to the Issuer corresponding to the Issuer's interest in the Mezzanine Notes redeemed in full or in part on an Intra-Mezzanine Note Interest Payment Date pursuant to the Mezzanine Note Issuance Agreement; and

**"Default Interest"** means, with respect to any amount which a Mezzanine Note Obligor fails to pay under the Mezzanine Note Issuance Agreement or any other related mezzanine finance document on its due date, the interest accrued and payable by a Mezzanine Note Obligor to the Mezzanine Note Agent on any such overdue amount as calculated in accordance with the default interest provisions of the Mezzanine Note Issuance Agreement.

The Issuer's principal receipts (the **"Principal Receipts"**) will comprise on any day all payments and repayments of principal received or recovered by or on behalf of the Issuer in connection with the Mezzanine Notes and standing to the credit of the Issuer Transaction Account, including, without limitation all amounts received or recovered by or on behalf of the Issuer in respect of:

- (a) amounts recovered in respect of the Mezzanine Notes which are applied towards the reduction of outstanding principal as a result of any action taken to enforce the Mezzanine Notes and/or the Related Security;
- (b) any mandatory prepayment amounts of a principal nature under and in accordance with the provisions of the Mezzanine Note Issuance Agreement;
- (c) voluntary repayments or prepayments in respect of the principal outstanding under the Mezzanine Notes made on notice in accordance with the Mezzanine Note Issuance Agreement;
- (d) payments received by or on behalf of the Issuer as a result of an indemnity payment from or the repurchase of the Mezzanine Notes by a Mezzanine Note Seller pursuant to the Note Sale Agreement which, in each case, do not constitute Revenue Receipts; and
- (e) any repayments or prepayments made by or on behalf of the Mezzanine Issuer in connection with a restructuring of the Mezzanine Note Issuance Agreement or as a condition to any waiver of a Mezzanine Note Event of Default under the Mezzanine Note Issuance Agreement,

provided that all amounts recorded in the Issuer Profit Account shall not form part of the Principal Receipts, or be applied in accordance with the applicable Issuer Priority of Payments.

Where:

**"Available Funds"** means as at a Distribution Date, an amount equal to the aggregate of the Revenue Receipts and the Principal Receipts received or expected to be received and that are payable into the Issuer Transaction Account on or prior to such Distribution Date.

### **Default Interest**

Upon receipt of any Default Interest by or on behalf of the Issuer during an Interest Period, the amount of Default Interest shall on the immediately following Distribution Date be payable by the Cash Manager to the Noteholders pursuant to Condition 5(d) (*Default Interest*) in accordance with the applicable Issuer Priority of Payments. For further details of the rate and method of calculating Default Interest in respect of the Mezzanine Notes, see the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT-Interest*" of this Offering Circular.

### **Principal Distributions**

On each Distribution Date, the Notes will be subject to a mandatory redemption in part in an amount up to the sum of the Principal Receipts available to pay principle subject to the Pre-Enforcement Principal Priority of Payments or the Post-Enforcement Priority of Payments, as applicable.

### **Issuer Priority Payments**

Prior to the service of a Note Acceleration Notice, the Cash Manager will apply all Revenue Receipts received by the Issuer on or prior to each Distribution Date, as determined on the immediately preceding Determination Date in the following manner and order of priority, including, other than where expressly set out below, any value added tax (including any reverse-charge value added tax) properly payable thereon (the **"Pre-**

**Enforcement Revenue Priority of Payments**") (in each case only if and to the extent that payments or provisions of a higher priority have been made in full):

- (a) *first*, in or towards satisfaction on a *pro rata* and *pari passu* basis, according to the respective amounts due and payable, of the fees or other remuneration of (and amounts payable in respect of indemnity protection) and any costs, charges, liabilities and expenses incurred by the Note Trustee and the Issuer Security Trustee (and, in each case, including any attorney, agent, manager, delegate, nominee or other person appointed by the Note Trustee under the Note Trust Deed or any receiver, agent, delegate, nominee, custodian or other person appointed by the Issuer Security Trustee under the Deed of Charge and Assignment) (the "**Appointees**");
- (b) *second*, in or towards satisfaction on a *pro rata* and *pari passu* basis, according to the respective amounts due and payable, of the amounts, including, but not limited to, tax adviser fees, legal fees, audit fees, anticipated winding-up costs of the Issuer, fees due to the stock exchange where the Notes are then listed and company secretarial expenses, which are payable by the Issuer to third parties and incurred without breach by the Issuer of this Deed or the Note Trust Deed and not provided for payment elsewhere, and to provide for the Issuer's liability or possible liability for Irish tax, other than the Issuer's liability to Irish corporation tax (which shall be payable by the Issuer in the ordinary course), (such taxes referred to as the "**Tax Amounts**") and to pay the Tax Amounts and the Issuer Profit Amount to the Issuer Profit Account;
- (c) *third*, in or towards satisfaction on a *pro rata* and *pari passu* basis, according to the respective amounts due and payable, of (i) all amounts due to the Issuer Corporate Services Provider under the Issuer Corporate Services Agreement, (ii) fees, costs and expenses of the directors of the Issuer and any advisors appointed by them, if any, (iii) all amounts due to the Operating Bank under the Cash Management Agreement, (iv) all amounts due to the Cash Manager under the Cash Management Agreement and (v) all amounts due to the Agents under the Agency Agreement;
- (d) *fourth*, on a *pro rata* and *pari passu* basis, in or towards satisfaction of any Note Prepayment Fees due or overdue in respect of the Notes;
- (e) *fifth*, in or towards satisfaction on a *pro rata* and *pari passu* basis, according to the respective amounts due and payable, of interest due and overdue on the Notes;
- (f) *sixth*, in or towards satisfaction on a *pro rata* and *pari passu* basis, of Default Interest due or overdue in respect of the Notes; and
- (g) *seventh*, on a *pro rata* and *pari passu* basis, the surplus (if any) to the Mezzanine Note Sellers as Deferred Consideration in accordance with the Mezzanine Note Sellers' shares set out in the Note Sale Agreement.

#### **Application of Principal Receipts Prior to Enforcement**

Prior to the service of a Note Acceleration Notice, the Cash Manager will apply Principal Receipts received by the Issuer on or prior to each Distribution Date, as determined on the immediately preceding Determination Date in the following manner and order of priority (the "**Pre-Enforcement Principal Priority of Payments**", (only if and to the extent that payments or provisions of a higher priority have been made in full) in or towards satisfaction, on a *pro rata* and *pari passu* basis, of all principal due or overdue in respect of the Notes until the Notes have been repaid in full.

The Pre-Enforcement Principal Priority of Payments, together with the Pre-Enforcement Revenue Priority of Payments are referred to as the "**Pre-Enforcement Priority of Payments**".

#### **Post-Enforcement Priority of Payments**

Following the service of a Note Acceleration Notice, the Issuer Security Trustee will apply all monies and receipts (whether of principal or interest or otherwise), received by the Issuer and/or the Issuer Security Trustee or a receiver appointed by it, on each Distribution Date (which for the avoidance of doubt shall not cover any tax credits (whether of principal or interest or otherwise), unless an amount in respect of such tax credit has actually been received) in the following manner and order of priority, including, other than where expressly set

out below, any VAT (including any reverse-charge VAT) properly payable thereon (the "**Post-Enforcement Priority of Payments**") and together with the Pre-Enforcement Revenue Priority of Payments and the Pre-Enforcement Principal Priority of Payments, the "**Issuer Priority of Payments**") (in each case only if and to the extent that payments of a higher priority have been made in full):

- (a) *first*, in or towards satisfaction on a *pro rata* and *pari passu* basis, according to the respective amounts due and payable, of the fees or other remuneration of (and amounts payable in respect of indemnity protection) and any costs, charges, liabilities and expenses incurred by the Note Trustee and the Issuer Security Trustee (and, in each case, including any Appointee);
- (b) *second*, in or towards satisfaction on a *pro rata* and *pari passu* basis, according to the respective amounts due and payable, of the amounts, including, but not limited to, tax adviser fees, costs of tax compliance, legal fees, audit fees, anticipated winding-up costs of the Issuer, fees due to the stock exchange where the Notes are then listed and company secretarial expenses, which are payable by the Issuer to third parties and incurred without breach by the Issuer of the Note Trust Deed or the Deed of Charge and Assignment and to provide for the Issuer's liability or possible liability for the Tax Amounts (but only to the extent that such amounts cannot be paid or provided for the Issuer Profit Amount) and to pay the Tax Amounts to the Issuer Profit Account;
- (c) *third*, in or towards satisfaction on a *pro rata* and *pari passu* basis, according to the respective amounts due and payable, of (i) all amounts due to the Issuer Corporate Services Provider under the Issuer Corporate Services Agreement, (ii) fees, costs and expenses of the directors of the Issuer and any advisors appointed by them, if any, (iii) all amounts due to the Operating Bank under the Cash Management Agreement, (iv) all amounts due to the Cash Manager under the Cash Management Agreement and (v) all amounts due to the Agents under the Agency Agreement;
- (d) *fourth*, in or towards satisfaction on a *pro rata* and *pari passu* basis of any Note Prepayment Fees due or overdue in respect of the Notes;
- (e) *fifth*, in or towards satisfaction on a *pro rata* and *pari passu* basis of all interest and Default Interest due or overdue in respect of the Notes;
- (f) *sixth*, in or towards satisfaction on a *pro rata* and *pari passu* basis of all principal due or overdue in respect of the Notes; and
- (g) *seventh*, the surplus (if any) on a *pro rata* and *pari passu* basis to the Mezzanine Note Sellers as Deferred Consideration in accordance with the Mezzanine Note Sellers' shares set out in the Note Sale Agreement.

### **Description of Note Trust Deed**

The Note Trustee will be appointed pursuant to the Note Trust Deed to represent the interests of the Noteholders. The Note Trustee will agree to hold the benefit of the covenants of the Issuer contained in the Note Trust Deed on behalf of itself and on trust for the Noteholders.

Among other things, the Note Trust Deed:

- (a) sets out when, and the terms upon which, the Note Trustee will be entitled or obliged, as the case may be, to take steps to enforce the Issuer's obligations under the Notes (or certain other relevant documents);
- (b) contains various covenants of the Issuer relating to repayment of principal and payment of interest in respect of the Notes, to the conduct of its affairs generally and to certain ongoing obligations connected with its issuance of the Notes;
- (c) provides for the remuneration of the Note Trustee, the payment of expenses incurred by it in the exercise of its powers and performance of its duties and provides for the indemnification of the Note Trustee against liabilities, losses and costs arising out of the Note Trustee's exercise of its powers and performance of its duties;

- (d) provides that so long as any Notes are outstanding and there is a conflict between the interests of the Noteholders and any other Issuer Secured Creditor, the Note Trustee will take into account only the interests of the Noteholders in the exercise of its discretions, rights or powers;
- (e) provides that the determinations of the Note Trustee will be conclusive and binding on the Noteholders;
- (f) sets out the extent of the Note Trustee's powers and discretions, including its rights to delegate the exercise of its powers or duties to agents, to seek and act upon the advice of certain experts and to rely upon certain documents without further investigation;
- (g) sets out the scope of the Note Trustee's liability for any fraud, gross negligence or wilful default in connection with the exercise of its duties;
- (h) sets out the terms upon which the Note Trustee may, without the consent of the Noteholders, waive or authorise any breach or proposed breach of covenant by the Issuer or determine that a Note Event of Default or an event which will become a Note Event of Default with the giving of notice or the passage of time will not be treated as such;
- (i) sets out the terms upon which the Note Trustee may, without the consent of the Noteholders, make or sanction any modification to the Conditions or to the terms of the Note Trust Deed or certain other relevant documents; and
- (j) sets out the requirements for and organisation of Noteholder meetings and the provisions for appointing a Noteholder Representative.

The Note Trust Deed also contains provisions governing the retirement or removal of the Note Trustee and the appointment of a successor Note Trustee. The Note Trustee may at any time and for any reason resign as Note Trustee upon giving not less than three months' prior written notice to the Issuer. The holders of the Notes acting together by Ordinary Resolution may together remove the Note Trustee from office. No retirement or removal of the Note Trustee (or any successor Note Trustee) will be effective until a trust corporation has been appointed to act as successor Note Trustee.

The appointment of a successor Note Trustee will be made by the Issuer or, where the Note Trustee has given notice of its resignation and the Issuer has failed to make any such appointment by the expiry of the applicable notice period, by the Note Trustee itself.

## NOTEHOLDER COMMUNICATIONS

Any Verified Noteholder will be entitled from time to time to request the Cash Manager to request other Noteholders to contact it subject to and in accordance with the following provisions.

For these purposes "**Verified Noteholder**" means a Noteholder which has satisfied the Cash Manager in accordance with Condition 12(d)(iv) (*Note Trustee Determinations*) and Condition 12(e) (*Disenfranchised Holders*) that it is a Noteholder.

Following receipt of a request for the publication of a notice from a Verified Noteholder, the Cash Manager will publish such notice on its investor reporting website and as an addendum to any report to Noteholders due for publication within 2 Business Days of receipt of the same (or, if there is no such report, through a special notice for such purpose as soon as is reasonably practical after receipt of the same) provided that such notice contains no more than:

- (a) an invitation to other Noteholders to contact the Verified Noteholder;
- (b) the name of the Verified Noteholder and the address, phone number, website or email address at which the Verified Noteholder can be contacted;
- (c) the date(s) from, on or between which the Verified Noteholder may be so contacted; and
- (d) a request that a Noteholder wishing to be in contact with the Verified Noteholder confirm its holding in accordance with Condition 12(d)(iv) (*Note Trustee Determinations*) and confirm that it has not been disenfranchised pursuant to Condition 12(e) (*Disenfranchised Holders*).

The Cash Manager will not be permitted to publish any further or different information through this mechanism.

The Cash Manager will have no responsibility or liability for the contents, completeness or accuracy of any such published information and will have no responsibility (beyond publication of the same in the manner described above) for ensuring Noteholders receive the same.



## CASH MANAGEMENT

### Cash Manager

Pursuant to the Cash Management Agreement to be entered into on or prior to the Closing Date between the Issuer, the Issuer Security Trustee, the Note Trustee, the Cash Manager and the Operating Bank, the Issuer will appoint Elavon Financial Services DAC, UK Branch (the "**Cash Manager**") to be its agent to provide certain cash management services (the "**Cash Management Services**") in relation to the Issuer Transaction Account, and any other Issuer Accounts. The Cash Manager will undertake with the Issuer and the Issuer Security Trustee that in performing the services to be performed and in exercising its discretions under the Cash Management Agreement, the Cash Manager will perform such responsibilities and duties diligently and in conformity with the Issuer's obligations with respect to the transaction and that it will comply with any directions, orders and instructions which the Issuer or the Issuer Security Trustee may from time to time give to the Cash Manager in accordance with the Cash Management Agreement.

### Operating Bank and Issuer Accounts

Pursuant to the Cash Management Agreement, Elavon Financial Services DAC, UK Branch will act as operating bank (the "**Operating Bank**") and, as such, will open and maintain (a) the "**Issuer Transaction Account**" and (b) such other accounts as may be required to be opened for or on behalf of the Issuer from time to time, each in the name of the Issuer but excluding, for the avoidance of doubt, the Issuer Profit Account (together, the "**Issuer Accounts**"). The Operating Bank has agreed to comply with any direction of the Cash Manager or the Issuer Security Trustee to effect payments from the Issuer Transaction Account or any other Issuer Accounts if such direction is made in accordance with the Cash Management Agreement and the mandate governing the applicable account.

### Calculation of Amounts and Payments

On each Determination Date, the Cash Manager will be required to determine the various amounts required to pay interest due on the Notes on the immediately following Distribution Date and all other amounts then payable by the Issuer and the amounts available to make such payments. In addition, the Cash Manager will calculate the Principal Amount Outstanding for the Interest Period commencing on such forthcoming Distribution Date and the amount of each principal payment (if any) due on the Notes on the next following Distribution Date, in each case pursuant to Condition 6(d) (*Principal Amount Outstanding*).

In addition, the Cash Manager will:

- (a) from time to time, pay on behalf of the Issuer all payments and expenses required to be paid by the Issuer to third parties by way of Issuer Priority of Payments or otherwise; and
- (b) make all payments required to carry out an optional redemption of Notes pursuant to and in accordance with the provisions of Condition 6(c) (*Optional Redemption for Tax or Other Reasons*).

For further information on the responsibility of the Cash Manager in respect of the Notes, see "**TERMS AND CONDITIONS OF THE NOTES**" at page 209.

If the Issuer or the Mezzanine Note Agent fails to supply the Cash Manager with any information it requires to make these determinations, it will make its determinations based on the information provided to it by the Issuer or the Mezzanine Note Agent on the three preceding Determination Dates and will not be liable to any person (in the absence of gross negligence, fraud or wilful default) for the accuracy of such determinations.

Furthermore, if for whatever reason an incorrect payment is made to any party entitled thereto pursuant to the Pre-Enforcement Priority of Payments, the Cash Manager will rectify the same by increasing or reducing payments to such party, as appropriate, on each subsequent Distribution Date or Distribution Dates (if applicable) to the extent required to correct the same. Where such an adjustment is required to be made, the Cash Manager will notify Noteholders of the same in accordance with the terms of Condition 15 (*Notice to and Communication between Noteholders*). Neither the Issuer nor the Cash Manager will have any liability to any person for making any such correction.

### **Cash Manager Quarterly Report**

The Cash Manager has agreed on each Distribution Date to make available electronically to the Arranger, the Issuer, the Issuer Security Trustee and the Note Trustee (for the benefit and on behalf of each Noteholder) a statement to the Noteholders in respect of each Distribution Date in which it will notify the recipients of, among other things, all amounts received in the Issuer Transaction Account and payments made with respect thereto (the "**Cash Manager Quarterly Report**").

The Cash Manager will publish each Cash Manager Quarterly Report at [www.usbank.com/abs](http://www.usbank.com/abs) and registration may be required for access to such website. It is not intended that any Cash Manager Quarterly Report will be made available in any other format, save in certain limited circumstances with the Cash Manager's agreement (acting in accordance with the instructions of the Arranger). The Cash Manager's website does not form part of the information provided for the purposes of this Offering Circular and disclaimers may be posted with respect to the information posted thereon.

### **Mezzanine Note Level Information Reporting**

In addition to the Cash Manager Quarterly Report, the Cash Manager will also make available certain information in respect of the Mezzanine Notes provided to it directly by the Mezzanine Note Agent in relation to the immediately preceding Mezzanine Interest Payment Date to the Noteholders by posting it on its website at [www.usbank.com/abs](http://www.usbank.com/abs) in accordance with the Cash Management Agreement. Such mezzanine note level information (the "**Mezzanine Note Level Information**") will comprise:

- (a) a compliance certificate delivered by the Mezzanine Issuer to the Mezzanine Note Agent setting out computations as to compliance by the Mezzanine Issuer with the financial covenants in the Mezzanine Note Issuance Agreement;
- (b) the Mezzanine Note Quarterly Property Report;
- (c) the Servicer Quarterly Report; and
- (d) to the extent deliverable by the Mezzanine Issuer on or prior to a particular Mezzanine Note Interest Payment Date, all other information provided by the Mezzanine Issuer pursuant to the information covenants contained in the Mezzanine Note Issuance Agreement.

Pursuant to the Mezzanine Note Agent Letter Agreement, the Mezzanine Note Agent agrees to deliver or communicate to the Issuer and the Noteholder Representative:

- (a) all Mezzanine Note Level Information (other than the Mezzanine Note Quarterly Report and Servicer Quarterly Report) received by the Mezzanine Note Agent under the Mezzanine Finance Documents no later than one Business Day following the date on which the Mezzanine Note Agent is obliged to make such information available to the Mezzanine Noteholders under the Mezzanine Note Issuance Agreement;
- (b) the Servicer Quarterly Report, in respect of each Mezzanine Note Interest Period, no later than fifteen Business Days (or such late date as may be agreed between the Mezzanine Note Agent, the Issuer and the Noteholder Representative) from the Mezzanine Note Interest Payment Date falling on the last day of the then Mezzanine Note Interest Period;
- (c) the Mezzanine Note Quarterly Property Report no later than one Business Day immediately following the date that such information is received by the Mezzanine Note Agent under the Mezzanine Note Issuance Agreement;
- (d) any communication that is required to or would otherwise make available to the Issuer from time to time under the terms of the Mezzanine Finance Documents no later than one Business Day following the date on which the Mezzanine Note Agent is obliged to make such information available to the Mezzanine Noteholders under the Mezzanine Note Issuance Agreement.

The Mezzanine Note Agent also agrees to, no later than three Business Days prior to a Mezzanine Note Interest Payment Date, provide the Cash Manager (as agent of the Issuer) with information in connection with the

Mezzanine Notes (other than the Servicer Quarterly Report), including confirmations of the amount and allocation of interest, principal, fees and any other monies due and payable to the Issuer in connection with the Mezzanine Finance Documents on each Mezzanine Note Interest Payment Date, as the Cash Manager may reasonably request from time to time (provided that such information is in the possession or control of the Mezzanine Note Agent as a consequence of the performance of its duties under the Mezzanine Finance Documents).

For the purposes of Mezzanine Note Level Information:

**"Mezzanine Note Agent Letter Agreement"** means the letter agreement dated on or about the Closing Date between, among others, the Mezzanine Note Agent, the Issuer and the Note Trustee.

**"Mezzanine Note Quarterly Property Report"** means a quarterly management report in respect of the Property and the business of the Mezzanine Note Obligors which is to be supplied to the Mezzanine Note Agent by the Senior Borrower pursuant to the Mezzanine Note Issuance Agreement, in the form set out in the Mezzanine Note Issuance Agreement.

**"Servicer Quarterly Report"** means, in respect of each Mezzanine Note Interest Period, the CREFC European Investor Reporting Package and a report containing the following information regarding the Mezzanine Notes and the Property in relation to the immediately preceding Mezzanine Note Interest Period:

- (i) a report setting out the information provided by the Mezzanine Note Obligors pursuant to the information covenants contained in the Mezzanine Finance Documents and information about compliance with the financial covenants contained in the Mezzanine Note Issuance Agreement;
- (ii) a report setting out, among other things, general information in relation to the Mezzanine Notes (including where applicable, the mortgage rate, maturity date and general payment information, as well as financial data); and
- (iii) a report setting out, among other things, information regarding the Mezzanine Notes or the Property.

The **"CREFC European Investor Reporting Package"** means:

- (1) a report setting out certain Mezzanine Note information, including the mortgage rate, maturity date and general payment information, as well as financial data (as set out in the **"CREFC E-IRP Loan Set up File"**);
- (2) a report setting out quarterly remittances on the Mezzanine Note, as well as the tracking of both scheduled and unscheduled payments in respect thereof (as set out in the **"CREFC E-IRP Loan Periodic Update File"**);
- (3) a report setting out information regarding the Property including, property name, address and identification number (as set out in the **"CREFC E-IRP Property File"**); and
- (4) a report setting out, among other things, details of any event that would cause the Mezzanine Note to be included on the servicer watchlist (as set out in the **"CREFC E-IRP Servicer Watchlist Criteria and Servicer Watchlist File"**).

All information required to be disclosed by the Cash Manager pursuant to the Cash Management Agreement by making it available on its website will be published on [www.usbank.com/abs](http://www.usbank.com/abs). Persons wishing to access Mezzanine Note Level Information made available on the website will be required to certify that they are the Noteholder Representative or a Noteholder, as applicable.

For so long as the Notes are admitted to trading on the regulated market of the Irish Stock Exchange, in the event that the Cash Manager comes into possession of information as a result of performing its services pursuant to the Cash Management Agreement which amounts to inside information (for the purpose of the Market Abuse Regulation relating to the Notes, the Cash Manager shall promptly notify the Issuer of such information and the Issuer (if its directors determine in accordance with their obligations under the Market Abuse Regulations) shall file that information with the Companies Announcement Office of the Irish Stock Exchange.

To the extent that the Cash Manager receives any notification by the Mezzanine Note Agent or the Issuer in connection with any amendment or waiver of, or in relation to, any term of any Finance Documents or request to exercise any vote by the Issuer in relation to a Mezzanine Note Level Matter, the Cash Manager shall not later than one Business Day after the receipt of any such notification or request make that information available to the Noteholder Representative by electronic mail.

### **Delegation by the Cash Manager**

The Cash Manager is not permitted to subcontract or delegate the performance of any of its obligations under the Cash Management Agreement to any subcontractor, agent, representative or delegate without the prior written consent of the Issuer and the Issuer Security Trustee, such consent not to be unreasonably withheld. Subject to the provisions of the Cash Management Agreement, any delegated or subcontracted obligations, when the necessary consent is given, will not relieve the Cash Manager from any liability under the Cash Management Agreement.

### **Fees**

Pursuant to the Cash Management Agreement, the Issuer will pay to the Cash Manager in advance an annual cash management fee as agreed between the Cash Manager and the Issuer and will reimburse the Cash Manager for all costs and expenses properly incurred by the Cash Manager in the performance of the Cash Management Services.

### **Termination of Appointment of the Cash Manager**

The appointment of Elavon Financial Services DAC, UK Branch as Cash Manager under the Cash Management Agreement may be terminated by virtue of its resignation or its removal by the Issuer or the Issuer Security Trustee. The Issuer (prior to a Note Acceleration Notice being given and not withdrawn) or the Issuer Security Trustee may terminate the Cash Manager's appointment upon not less than 90 days' written notice or immediately upon the occurrence of a termination event as prescribed under the Cash Management Agreement, including, among other things, (a) provided there are sufficient funds available a failure by the Cash Manager to make when due a payment required to be made by the Cash Manager in accordance with the Cash Management Agreement, (b) a failure by the Cash Manager to maintain all appropriate licences, consents, approvals and authorisations required to perform its obligations under the Cash Management Agreement, (c) a material default by the Cash Manager in the performance of any of its other duties under the Cash Management Agreement (other than a default in its payment obligations described in paragraph (a) above) which continues unremedied for ten Business Days, or (d) a petition is presented or an effective resolution passed or any order is made by a competent court for the winding up (including, without limitation, the filing of documents with the court or the service of a notice of intention to appoint an administrator) or dissolution (other than in connection with a reorganisation, the terms of which have previously been approved in writing by the Issuer Security Trustee or by Extraordinary Resolutions of the Noteholders and where the Cash Manager is solvent) of the Cash Manager or the appointment of an administrator or similar official in respect of the Cash Manager or other creditor enforcement proceedings or arrangements are taken or instituted with respect to its assets. On the termination of the appointment of the Cash Manager by the Issuer Security Trustee, the Issuer may, subject to certain conditions, appoint a successor cash manager, as applicable.

The Cash Manager may resign as Cash Manager, upon not less than 90 days' written notice of resignation to each of the Issuer, the Operating Bank and the Issuer Security Trustee provided that such resignation will not become effective until a suitably qualified successor Cash Manager, has been appointed and if no replacement has been appointed after two months of the date of the resignation notice, it may appoint the successor itself.

The Noteholders may by an Ordinary Resolution require the removal and replacement of the Cash Manager provided that a suitably qualified successor Cash Manager has been appointed.

### **Termination of Appointment of the Operating Bank**

The Cash Management Agreement requires that the Operating Bank is, except in certain limited circumstances, a bank which meets at least two of the following three long-term rating for its unguaranteed, unsecured and unsubordinated debt obligations of at least (i) "A3(LT)" by Moody's Investors Service Ltd, (ii) "A-(LT)" by Standard and Poor's Credit Market Services Europe Limited and (iii) "A-(LT)" by Fitch Ratings Ltd, (the "**Operating Bank Required Ratings**").

If the Operating Bank ceases to have the Operating Bank Required Ratings, the Operating Bank will give written notice of such event to the Issuer, the Cash Manager and the Issuer Security Trustee, and the Operating Bank shall, within 30 days of such downgrade procure the transfer of any account held by the Issuer with the Operating Bank to another bank with the Operating Bank Required Ratings after having obtained the prior written consent of the Issuer and the Issuer Security Trustee and subject to establishing substantially similar arrangements to those contained in the Cash Management Agreement. If at the time when a transfer of such account or accounts would otherwise have to be made, there is no other bank with the Operating Bank Required Ratings or if no other bank with the Operating Bank Required Ratings agrees to such a transfer, the Operating Bank will consult with the Issuer and the Issuer Security Trustee to consider alternative criteria for a replacement and shall consider any views they may express during the consultation. Following such consultation, if a replacement entity is appointed, such appointment will be notified by the Operating Bank to the Issuer, the Note Trustee and the Issuer Security Trustee promptly. Neither the Operating Bank nor the Cash Manager will have any liability to any person for any delay or failure to procure such transfer.

The Operating Bank may resign as Operating Bank, upon not less than 90 days' written notice of resignation to each of the Issuer, the Issuer Security Trustee and the Cash Manager provided that such resignation will not become effective until a suitably qualified successor Operating Bank has been appointed and if no replacement has been appointed after two months of the date of the resignation notice, it may appoint the successor itself.

If, other than in the circumstances specified above, the Cash Manager wishes the bank or branch at which any account of the Issuer is maintained to be changed, the Cash Manager will obtain the prior written consent of the Issuer and the Issuer Security Trustee, and the transfer of such account will be subject to the same directions and arrangements as are provided for above.

The Noteholders may by an Ordinary Resolution require the prompt removal and replacement of the Operating Bank provided that by such Ordinary Resolution, the Noteholders ratify the appointment of a suitably qualified successor Operating Bank, and such replacement is appointed by the Issuer prior to the removal of the existing Operating Bank.

## **YIELD, PREPAYMENT AND MATURITY CONSIDERATIONS**

### **Yield**

The yield to maturity on the Notes will depend upon the price paid by the Noteholders, the interest rate thereof from time to time, the rate and timing of the distributions in reduction of the Principal Amount Outstanding of the Notes and the rate, timing and severity of losses on the Mezzanine Notes, as well as prevailing interest rates at the time of payment or loss realisation.

The distributions of principal that Noteholders receive in respect of the Notes are derived from principal repayments on the Mezzanine Notes.

The rate of distributions of principal in reduction of the Principal Amount Outstanding of the Notes, the aggregate amount of distributions in principal on the Notes and the yield to maturity on the Notes will be directly related to the rate of payments of principal on the Mezzanine Notes, the amount and timing of defaults by the Mezzanine Issuer and the severity of losses occurring upon a default.

In addition, such distributions in the reduction of the Principal Amount Outstanding of the Notes may result from the repurchase of the Mezzanine Notes or indemnity payment by a Seller in accordance with the Note Sale Agreement following a breach by the Mezzanine Note Sellers of the representations and warranties that it has given under that agreement in relation to the Mezzanine Notes.

Losses with respect to the Mezzanine Notes may occur in connection with a default on the Mezzanine Notes.

Noteholders will only receive distributions of principal or interest when due to the extent that the related payments under the Mezzanine Notes and the Related Security are actually received. Consequently, any defaulted payment will, to the extent of the principal portion thereof, tend to extend the weighted average lives of the Notes.

The rate at which voluntary prepayments occur on the Mezzanine Notes will be affected by a variety of factors, including, without limitation, the terms of the Mezzanine Note Issuance Agreement, the level of prevailing interest rates, the availability of mortgage credit, the occurrence of casualties or natural disasters and economic, demographic, tax, legal and other factors, and no representation is made as to the anticipated rate of prepayments on the Mezzanine Notes.

The rate of payments (including voluntary and involuntary prepayments) on the Mezzanine Notes are influenced by a variety of economic, geographic, social and other factors, including the level of interest rates, the amount of prior refinancing effected by the Mezzanine Issuer, the rate of tenant defaults and the extent to which the Mezzanine Issuer defaults on payments under the Mezzanine Notes. The terms of the Mezzanine Note Issuance Agreement and, in particular, the extent to which the Mezzanine Issuer is entitled to prepay the Mezzanine Notes, the ability of the Mezzanine Issuer to realise income from the Property in excess of that required to meet scheduled payments of interest on the Mezzanine Notes, the obligation of the Mezzanine Issuer to ensure that certain debt service coverage tests are met as a condition to the disposal of the Property, the risk of compulsory purchase of the Property and the risk that payments by the Mezzanine Issuer may become subject to tax or result in an increased cost for the Issuer may affect the rate of principal payments on the Mezzanine Notes and, consequently, the yield to maturity of the Notes.

The timing of changes in the rate of prepayment on the Mezzanine Notes may significantly affect the actual yield to maturity experienced by an investor even if the average rate of principal payments experienced over time is consistent with such investor's expectation. In general, the earlier a prepayment of principal on the Mezzanine Notes, the greater the effect on such investor's yield to maturity. As a result, the effect on such investor's yield of principal payments occurring at a rate higher (or lower) than the rate anticipated by the investor during the period immediately following the issuance of the Notes would not be fully offset by a subsequent like reduction (or increase) in the rate of principal payments.

No representation is made as to the rate of principal payments on the Mezzanine Notes or as to the yield to maturity of any of the Notes. An investor is urged to make an investment decision with respect to the Notes based on the anticipated yield to maturity of the Notes resulting from its purchase price and such investor's own determination as to anticipated prepayment rates in respect of the Mezzanine Notes under a variety of scenarios. The extent to which any of the Notes is purchased at a discount or a premium and the degree to which the timing

of payments on such Notes is sensitive to prepayments will determine the extent to which the yield to maturity of such Notes may vary from the anticipated yield. An investor should carefully consider the associated risks, including, in the case of any Notes purchased at a discount, the risk that a slower than anticipated rate of principal payments on the Mezzanine Notes could result in an actual yield to such investor that is lower than the anticipated yield and, in the case of any Notes purchased at a premium, the risk that a faster than anticipated rate of principal payments could result in an actual yield to such investor that is lower than the anticipated yield.

An investor should consider the risk that rapid rates of prepayments on the Mezzanine Notes, and therefore of amounts distributable in reduction of the principal balance of the Notes may coincide with periods of low prevailing interest rates. During such periods, the effective interest rates on securities in which an investor may choose to reinvest such amounts distributed to it may be lower than the applicable rate of interest on the Notes. Conversely, slower rates of prepayments on the Mezzanine Notes, and therefore, of amounts distributable in reduction of principal balance of the Notes entitled to distributions of principal, may coincide with periods of high prevailing interest rates. During such periods, the amount of principal distributions resulting from prepayments available to an investor in Notes for reinvestment at such high prevailing interest rates may be relatively small.

### **Weighted Average Life of the Notes**

The weighted average life of a Note refers to the average amount of time that will elapse from the date of its issuance until each sterling allocable to principal of such Note is distributed to the investor. For the purposes of this Offering Circular, the weighted average life of a Note is determined by (a) multiplying the amount of each principal distribution thereon by the number of years from the Closing Date to the related Distribution Date, (b) summing the results and (c) dividing the sum by the Principal Amount Outstanding of such Note. Accordingly, the weighted average life of any such Note will be influenced by, among other things, the rate at which principal of the Mezzanine Notes are paid or otherwise collected or advanced and the extent to which such payments, collections or advances of principal are in turn applied in reduction of the Principal Amount Outstanding of the Notes to which such Note belongs.

For the purposes of preparing the following tables, it was assumed that:

- (a) the initial Principal Amount Outstanding of, and the interest rates for, the Notes are as set forth herein;
- (b) the scheduled quarterly payments for the Mezzanine Notes are based on stated quarterly interest payments;
- (c) all scheduled quarterly payments are assumed to be timely received on the due date of each quarter commencing on the first Distribution Date;
- (d) there are no delinquencies or losses in respect of the Mezzanine Notes, there are no extensions of maturity in respect of the Mezzanine Notes and there are no casualties or compulsory purchases affecting the Property;
- (e) no prepayments are made on the Mezzanine Notes (except as otherwise assumed in the Scenarios);
- (f) the Issuer does not exercise the right of optional termination described herein and in Condition 6(c) (*Optional Redemption for Tax or Other Reasons*) as applicable;
- (g) the Mezzanine Notes are not repurchased by any of the Mezzanine Note Sellers;
- (h) there are no additional unanticipated administrative expenses;
- (i) interest payments on the Notes are made on each Distribution Date, commencing in April 2017;
- (j) the prepayment provisions for the Mezzanine Notes are as set forth in this Offering Circular, assuming the term for the prepayment provisions begin on the Mezzanine Notes' first Mezzanine Note Interest Payment Date;
- (k) the Closing Date is on or around 23 February 2017; and

- (l) no Note Acceleration Notice has been served.

Assumptions (a) through (l) above are collectively referred to as, the "**Modelling Assumptions**".

*Scenario 1:* it is assumed that the Mezzanine Notes are repaid in full on the initial redemption date under the Mezzanine Note Issuance Agreement, being 15 December 2019. This scenario assumes that neither the First Extension Option nor the Second Extension Option is exercised.

*Scenario 2:* it is assumed that the Mezzanine Notes are repaid in full on the First Extended Mezzanine Redemption Date, being 15 December 2020.

*Scenario 3:* it is assumed that the Mezzanine Notes are repaid in full on the Second Extended Mezzanine Redemption Date, being 15 December 2021.

*Scenario 4:* it is assumed that the Mezzanine Notes are prepaid in full on the first Mezzanine Note Interest Payment Date on which prepayments can be made without any prepayment penalties, being 20 January 2020.

Scenarios 1 to 4 are collectively referred to herein as, the "**Scenarios**".

Based on the Modelling Assumptions, the following table indicates the resulting weighted average lives of the Notes.

#### **Yield, Prepayment and Maturity Considerations**

<b>Yield Scenario</b>	<b>WAL</b>
1. It is assumed that the Mezzanine Notes are repaid in full on 15 December 2019	2.81 years
2. It is assumed that the Mezzanine Notes are repaid in full on the First Extended Mezzanine Redemption Date, being 15 December 2020	3.8 years
3. It is assumed that the Mezzanine Notes are repaid in full on the Second Extended Mezzanine Redemption Date, being 15 December 2021	4.81 years
4. It is assumed that the Mezzanine Notes are repaid in full on the first Mezzanine Note Interest Payment Date on which prepayments can be made without any prepay penalties, being 20 January 2020	2.91 years



## THE ISSUER

The Issuer is a special purpose vehicle established in Ireland for the purpose of issuing asset-backed securities, and was incorporated in Ireland, on 24 January 2017 as a designated activity company limited by shares under the Companies Act 2014 of Ireland with company registration number 597085. The registered office of the Issuer is at 1<sup>st</sup> Floor, 1-2 Victoria Buildings, Haddington Road, Dublin 4, Ireland. The telephone number of the Issuer's registered office is +353 (0)1 697 5350. The Issuer has no subsidiaries.

### Principal Activities

The principal activities of the Issuer are set out in clause 3 of its memorandum of association and are, among other things, to purchase, take transfer of, invest in and acquire loans and any security given or provided by any person in connection with such loans, to hold and manage and deal with, sell or alienate such loans and related security, to borrow, raise and secure the payment of money by the creation and issue of bonds, debentures, notes or other securities and to charge or grant security over the Issuer's property or assets to secure its obligations.

Since the date of its incorporation, the Issuer has not commenced operations and no accounts have been made up as at the date of this Offering Circular. The activities in which the Issuer has engaged are those incidental to its incorporation and registration as a designated activity company under the Companies Act 2014 of Ireland, the authorisation of the issue of the Notes, the matters referred to or contemplated in this Offering Circular and the authorisation, execution, delivery and performance of the other documents referred to in this document to which it is a party and matters which are incidental or ancillary to the foregoing.

The Issuer will covenant to maintain independent directors and to observe certain restrictions on its activities which are detailed in Condition 4(a) (*Restrictions*) of the Notes, of the Deed of Charge and Assignment and the Note Trust Deed. In addition, the Issuer will covenant in the Note Trust Deed to provide written confirmation to the Note Trustee, on an annual basis, that no Note Event of Default, or an event which will become a Note Event of Default with the giving of notice or the expiry of any grace period (or other matter which is required to be brought to the Note Trustee's attention), has occurred in respect of the Notes.

The Issuer is expected to receive the Issuer Profit Amount as retained profit payable to it as consideration for entering into the transactions contemplated by the Transaction Documents.

Other than the Mezzanine Notes, the Issuer has, and will have, no material assets other than the sum of €1.00 representing the proceeds of its issued share capital, the Issuer Profit Amount payable to it in connection with the issue of the Notes or the purchase, sale or incurring of other obligations and the Issuer Security on which the Notes are secured. Save in respect of the fees generated in connection with the issue of the Notes, any related profits and the proceeds of any deposits and investments made from such fees or from amounts representing the proceeds of the Issuer's issued share capital, the Issuer will not accumulate any surpluses.

### Directors and Secretary

- (a) The Issuer's articles of association provide that the board of directors of the Issuer will consist of at least two directors (the "**Directors**").
- (b) The Directors of the Issuer and their other principal activities are:

<b>Name</b>	<b>Principal Activities</b>
Áine Hickey	Director
Gerard Brennan	Director

- (c) The Directors may from time to time act as directors, or be otherwise involved in, other companies which have similar objectives to those of the Issuer. It is therefore possible that any of them may, in the course of their business, have potential conflicts of interests with the Issuer. Each will respectively endeavour to ensure that such conflicts are resolved fairly in accordance with the obligations applicable to such party. At the date of this Offering Circular there are no principal activities performed by them outside those of the Issuer where these are significant with respect to the Issuer.

- (d) The business address for each Director is 1<sup>st</sup> Floor, 1-2 Victoria Buildings, Haddington Road, Dublin 4, Ireland. The Company Secretary of the Issuer is Intertrust Finance Management (Ireland) Limited whose principal address is at 1<sup>st</sup> Floor, 1-2 Victoria Buildings, Haddington Road, Dublin 4, Ireland.
- (e) As at the date of this Offering Circular, there are no potential conflicts of interests between any duties of each Director and its private interests and or other duties.
- (f) The Directors do not, and it is not proposed that they will, have service contracts with the Issuer. No Director has entered into any transaction on behalf of the Issuer which is or was unusual in its nature of conditions or is or was significant to the business of the Issuer since its incorporation.
- (g) At the date of this Offering Circular there were no loans granted or guarantees provided by the Issuer to any Director.
- (h) The Constitution of the Issuer provides that:
  - (i) Any Director may vote on any proposal, arrangement or contract in which he is interested; and
  - (ii) Subject to the provisions of the Constitution, a Director will hold office until such time as he is removed from office by resolution of the Issuer in general meeting or is otherwise removed or becomes ineligible to act as a Director in accordance with the Constitution.
- (i) The Issuer Corporate Services Provider will, under the terms of the Issuer Corporate Services Agreement provide certain corporate services to the Issuer and certain related corporate administrative services. The Issuer Corporate Services Agreement may be terminated by either the Issuer or the Issuer Corporate Services Provider upon notice. Such termination will not take effect, however, until a replacement corporate services provider has been appointed.

Since the date of incorporation of the Issuer, the Issuer has not traded, no profits or losses have been made or incurred and no dividends have been paid.

### **Capitalisation and Indebtedness Statement**

The authorised share capital of the Issuer is €100 divided into 100 ordinary shares of €1.00 each. The Issuer has issued one share (the "**Share**"), which is fully paid and is held on trust by Intertrust Corporate Services 2 (Ireland) Limited as trustee (the "**Share Trustee**") pursuant to the terms of a declaration of trust (the "**Share Declaration of Trust**") dated 24 January 2017, under which the Share Trustee holds the Share on trust for charitable purposes. The rights of the Share Trustee as a shareholder in the Issuer are contained in the articles of association of the Issuer and the Issuer will be managed by its directors in accordance with those articles of association and in accordance with the laws of Ireland.

The Share Trustee has no beneficial interest in and derives no benefit (other than its fees for acting as Share Trustee) from its holding of the Shares of the Issuer. The Share Trustee will apply any income derived from the Issuer solely for the above purposes.

### **Issuer Corporate Services Agreement**

Pursuant to the terms of the Issuer Corporate Services Agreement, the Issuer Corporate Services Provider will perform various management functions on behalf of the Issuer, including the provision of certain clerical, reporting, accounting, administrative and other services until termination of the Issuer Corporate Services Agreement. In consideration of the foregoing, the Issuer Corporate Services Provider receives various fees and other charges payable by the Issuer at rates agreed upon from time to time plus expenses. The terms of the Issuer Corporate Services Agreement provide that either party may terminate the Issuer Corporate Services Agreement upon the occurrence of certain stated events, including any material breach by the other party of its obligations under the Issuer Corporate Services Agreement which is not cured within 30 days from the date on which it was notified of such breach. In addition, either party may terminate the Issuer Corporate Services Agreement at any time by giving not less than 90 days' written notice to the other party. Such termination will not take effect, however, until a replacement corporate services provider has been appointed.

## **Financial Statements**

Since its date of incorporation, the Issuer has not commenced operations and no financial statements of the Issuer have been prepared as at the date of this Offering Circular. The Issuer intends to publish its first financial statements in respect of the period ending on 31 December 2017. The Issuer will not prepare interim financial statements. The financial year of the Issuer ends on 31 December in each year.

The profit and loss account and balance sheet can be obtained free of charge from the registered office of the Issuer. The Issuer must hold its first annual general meeting within 18 months of the date of its incorporation and thereafter the gap between its annual general meetings must not exceed 15 months. One annual general meeting must be held in each calendar year.

The auditors of the Issuer are Deloitte of Deloitte & Touche House, 29 Earlsfort Terrace, Dublin 2, who are chartered accountants and are members of the Institute of Chartered Accountants and registered auditors qualified to practise in Ireland.

## THE MEZZANINE ISSUER

### The Mezzanine Issuer

The Mezzanine Issuer is BSREP CityPoint Mezz Limited, a private limited liability company incorporated in Jersey on 23 November 2016 under the Companies (Jersey) Law 1991, with registered number 122625, having its registered office at 47 Esplanade, St Helier, Jersey JE1 0BD. The Mezzanine Issuer can be contacted at +44 1534 835 600.

### Corporate Structure

The Mezzanine Issuer is a special purpose vehicle established in Jersey for the purposes of, amongst other things:

- (a) the acquisition by its direct subsidiary, BSREP CityPoint Bidco Limited, of two Jersey companies being CityPoint Holdings I Limited and CityPoint Holdings II Limited which hold all of the units in the Unit Trust which in turn holds the legal interest in the Property Freehold, the Property Headlease and the Property Underlease (through the Freehold Propcos, the Headlease Propco, and the Underlease Propco respectively and the beneficial title to the Property (the "**Acquisition**"). See the section entitled "*DESCRIPTION OF THE PROPERTY*" in this Offering Circular for further details of the Property;
- (b) the financing of the Acquisition; and
- (c) issuing the Mezzanine Notes to be listed on the Channel Islands Securities Exchange in connection with the Acquisition.

The articles of association of the Mezzanine Issuer (the "**Mezzanine Issuer's Articles**") were adopted at incorporation.

### Capitalisation

The authorised share capital of the Mezzanine Issuer is £10,000 divided into 10,000 ordinary shares of £1 each. The Mezzanine Issuer has issued one share (the "**Share**"), which is fully paid and is held by its sole shareholder, BSREP CityPoint Investments Limited.

### Description of all direct and indirect subsidiaries of the Mezzanine Issuer

Details of all of the direct and indirect subsidiaries of the Mezzanine Issuer (collectively, the "**Subsidiaries**") appear below:

Name	Date of Incorporation	Country of Incorporation	Nature / Business of Subsidiary	Issued Share Capital	% of Capital Held / Intended to be Held Directly or Indirectly by Issuer
BSREP CityPoint Bidco Limited	23 November 2016	Jersey	Holding company	1 ordinary par value share of £1.00	100% (directly)
CityPoint Holdings I Limited	2 April 2007	Jersey	Holding company (holds units in City Point (Jersey) Unit Trust)	133,341,704 ordinary shares of no par value	100% (indirectly)
CityPoint Holdings II	2 April 2007	Jersey	Holding company (holds units in City	330,221 ordinary shares	100% (indirectly)

Limited

Point (Jersey) of no par value  
Unit Trust)

### **Directors, Management and Administration of the Mezzanine Issuer**

- (a) The Mezzanine Issuer's articles of association provide that the board of directors of the Mezzanine Issuer will consist of at least two directors (the "**Directors**").
- (b) As at the date of this Offering Circular, the Directors of the Mezzanine Issuer and their other principal activities are:

<i>Name</i>	<i>Principal Activities</i>
Rose Meller	Director
Simon Todd	Director
Andy Williams	Director

- (a) The business address for each Director is 47 Esplanade, St Helier, Jersey JE1 0BD.
- (b) There are no employees of the Mezzanine Issuer.

The Directors of the Mezzanine Issuer may from time to time act as directors, or be otherwise involved in, other companies which may have similar objectives to those of the Mezzanine Issuer. It is therefore possible that any of them may, in the course of their business, have potential conflicts of interest with the Mezzanine Issuer. Each will respectively endeavour to ensure that such conflicts are resolved fairly and in accordance with the obligations applicable to such party. As of the date of this Offering Circular there are no principal activities performed by them outside the Mezzanine Issuer where these are significant with respect to the Mezzanine Issuer.

#### *Control of the Mezzanine Issuer*

Except for the general restrictive provisions in the Mezzanine Note Issuance Agreement, there are no specific measures in place to ensure that control of the Mezzanine Issuer by its directors is not abused.

#### *Financial Statements*

Since its date of incorporation, no financial statements of the Mezzanine Issuer have been prepared as at the date of this Offering Circular. The Mezzanine Issuer intends to publish its first financial statements in respect of the period ending on 31 December 2016. The Mezzanine Issuer will not prepare interim financial statements. The financial year of the Mezzanine Issuer ends on 31 December in each year. The Mezzanine Issuer is not required by Jersey law to appoint auditors and its accounts will be published unaudited.

Copies of the most recent annual consolidated financial statements can be obtained during normal business hours from the registered office of the Mezzanine Issuer.

#### *Legal and arbitration proceedings*

Other than the appointment of receivers on 10 October 2012 over the respective interests held by the Trustees, the Freehold Propcos, the Headlease Propco and the Underlease Propco, in each case, in the Property, the Mezzanine Issuer is not, and has not been, involved in any governmental, legal or arbitration proceedings (including any such proceedings which are pending or threatened of which the Mezzanine Issuer is aware) which may have, or have had, since the date of its incorporation, a significant effect on the Mezzanine Issuer's financial position or profitability. That receivership terminated on 15 December 2016. For further details of the receivership, see paragraph 1.2 of the Initial Valuation for further details of the receivership.

## THE MEZZANINE NOTE OBLIGORS

The Mezzanine Issuer, being BSREP CityPoint Mezz Limited, is the issuer under the Note Issuance Agreement. In addition, the Mezzanine Issuer and each of the English Mezzanine Note Obligors (listed below) are obligors under the Note Issuance Agreement. For further information on the Mezzanine Issuer, see the section entitled "*THE MEZZANINE ISSUER*".

### The Jersey Mezzanine Note Obligors

Each of the following Jersey Mezzanine Note Obligors is a private limited company incorporated under the laws of Jersey and registered with the following number:

BSREP CityPoint Bidco Limited	122626
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BSREP CityPoint Mezz Limited	122625
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The registered office of each of the above Jersey Mezzanine Note Obligors is 47 Esplanade, St Helier, Jersey JE1 0BD.

Each of the following Jersey Mezzanine Note Obligors is a private limited company incorporated under the laws of Jersey and registered with the following number:

CityPoint Holdings I Limited	97040
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CityPoint Holdings II Limited	97041
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The registered office of each of the above Jersey Mezzanine Note Obligors CityPoint Holdings I Limited and CityPoint Holdings II Limited is 47 Esplanade, St Helier, Jersey JE1 0BD.

Each of CityPoint Holdings I Limited and CityPoint Holdings II Limited are the unitholders in the Unit Trust.

The Unit Trust, being City Point (Jersey) Unit is a also a Jersey Mezzanine Note Obligor and was established under Jersey law as a property unit trust. For more details of the Unit Trust and the Trustees see the section entitled "*DESCRIPTION OF THE PROPERTY*".

Crestbridge Corporate Trustees Limited is the sole shareholder of each of the Trustees, being Ropemaker Trustee 1 Limited and Ropemaker Trustee 2 Limited. Crestbridge Corporate Trustees Limited holds the shares in the Trustees on trust for Crestbridge No.1 Charitable Trust.

Crestbridge Corporate Trustees Limited is a private limited company incorporated under the laws of Jersey and registered with registration number 73883. The registered office of Crestbridge Corporate Trustees Limited is 47 Esplanade, St Helier, Jersey JE1 0BD.

### The English Mezzanine Note Obligors

Each English Mezzanine Note Obligor is a private limited company incorporated under the laws of England and Wales. Each English Mezzanine Note Obligor is registered with the following number:

Dreamclose Limited	4071458
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Wates City Point First Limited	03902926
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Wates City Point Second Limited	03902877
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Wavegrange Limited	04071405
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The registered office of each English Mezzanine Note Obligor is 99 Bishopsgate, Second Floor Bishopsgate, London EC2M 3XD.

Each of the above English Mezzanine Note Obligors is a property holding company which holds an interest in the Property. For more details see the section entitled "*DESCRIPTION OF THE PROPERTY*".

### **The Luxembourg Mezzanine Note Obligor**

Castle 46 S.à.r.l. is a private limited company (*société à responsabilité limitée*) incorporated and existing under the laws of the Grand Duchy of Luxembourg. Castle 46 S.à.r.l. is registered with the Luxembourg trade and companies register under number B184339. The registered office of Castle 46 S.à.r.l. is 13-15 avenue de la Liberté, L-1931, Luxembourg, Grand Duchy of Luxembourg.

### **Generally**

Each of the Jersey Mezzanine Note Obligors are indirectly majority owned by BSREP International II(A) Holdings LP (a Cayman entity acting by its general partner BSREP GP Bermuda Limited).

Each Jersey Mezzanine Note Obligor is a limited purpose entity. BSREP CityPoint Mezz Limited's business consists primarily of providing Mezzanine Issuer Liabilities, performance of its obligations under the Transaction Documents and acting as the holding company of BSREP CityPoint Bidco Limited. BSREP CityPoint Bidco Limited's business consists primarily of providing Intra-Group Liabilities, performance of its obligations under the Transaction Documents and acting as the holding company of each Unitholder.

Each English Mezzanine Note Obligor's business consists primarily of owning, financing and management of its interests in the Property and the performance of its obligations under the Transaction Documents.

Each Jersey Mezzanine Note Obligor and each English Mezzanine Note Obligor has represented in the Note Issuance Agreement or the Senior Facility Agreement (as the case may be) that it has not traded or carried on any business since the date of its incorporation except for the aforementioned activities and save as disclosed in the Legal Due Diligence Reports.

None of the Jersey Mezzanine Note Obligors nor any of the English Mezzanine Note Obligors has any employees.

Each Jersey Mezzanine Note Obligor and English Mezzanine Note Obligor has represented in the Note Issuance Agreement or the Senior Facility Agreement (as the case may be) that no litigation, arbitration or administrative proceedings or investigations of, or before, any court, arbitral body or agency which are reasonably likely to be adversely determined and, if adversely determined are reasonably likely to have a Material Adverse Effect have (to the best of its knowledge and belief) been started or threatened in writing against it.

As at the date of the Note Issuance Agreement and the Senior Facility Agreement (being 15 December 2016), none of the Jersey Mezzanine Note Obligors or English Mezzanine Note Obligors are party to any material agreement other than the applicable Transaction Documents and any Permitted Contracts.

## DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT

*The following is a summary of the principle terms of the Mezzanine Note Issuance Agreement and is qualified in its entirety by the detailed provisions of the Mezzanine Note Issuance Agreement itself.*

### Mezzanine Notes Information

Cut-off date	21 February 2017
Original Mezzanine Notes Balance	£101,620,000
Cut-Off Date Mezzanine Notes	£101,620,000
Purpose	Financing the acquisition of the Property through the acquisition of the entire issued share capital of CityPoint Holdings I Limited and CityPoint Holdings II Limited, which together hold all of the issued units in the Unit Trust and refinancing the existing debt of the Target companies, being the legal owners of the Property, and payment of any fees, costs or expenses payable in connection with the Acquisition or in connection with entry into or the negotiation of the Finance Documents.
Utilisation Date	15 December 2016.
Mezzanine Note Redemption Date	Provided that neither the First Extension Option nor the Second Extension Option is exercised, the Mezzanine Note Redemption Date is 15 December 2019.  If the First Extension Option is exercised, the Mezzanine Note Redemption Date will be the First Extended Mezzanine Redemption Date, being 15 December 2020.  If the Second Extension Option is exercised, the Mezzanine Note Redemption Date will be the Second Extended Mezzanine Redemption Date, being 15 December 2021.
Remaining Term (as at Cut-Off Date)	2 years 10 months to first maturity date of the Mezzanine Notes.
Interest Rate	The rate of interest on the Mezzanine Notes for each Mezzanine Note Interest Period is 8.25 per cent. per annum.
Governing Law	England and Wales.
Mezzanine Note Security	The Mezzanine Note Obligors have created English and Jersey law governed security (as applicable) over the assets pursuant to the Security Documents.
Sponsor	BSREP International II(A) Holdings L.P. (acting by its general partner, Sponsor GP), an exempted limited partnership registered under the laws of the Cayman Islands.
Mezzanine Issuer	BSREP CityPoint Mezz Limited
Mezzanine Issuer's jurisdiction	Jersey.
Jersey Mezzanine Note Obligors	(a) the Mezzanine Issuer; (b) BSREP CityPoint Bidco Limited.



English Mezzanine Note Obligors	(a)	Dreamclose Limited, a company incorporated in England and Wales with registration number 04071458, having its registered office at 99 Bishopsgate, Second Floor Bishopsgate, London EC2M 3XD;
	(b)	Wates City Point First Limited, a company incorporated in England and Wales with registration number 03902926, having its registered office at 99 Bishopsgate, Second Floor Bishopsgate, London EC2M 3XD;
	(c)	Wates City Point Second Limited, a company incorporated in England and Wales with registration number 03902877, having its registered office at 99 Bishopsgate, Second Floor Bishopsgate, London EC2M 3XD;
	(d)	Wavegrange Limited, a company incorporated in England and Wales with registration number 04071405, having its registered office at 99 Bishopsgate, Second Floor Bishopsgate, London EC2M 3XD.

#### **Financial Information (at Initial Valuation)**

Market Value	£557,300,000 (£785.50 per sq ft)
Valuer	Savills
Date of Initial Valuation	10 November 2016
Net Rental Income (per annum)	£18,718,150

#### **Financial Ratio at Closing**

	At Cut-Off Date
LTV	78.2%
Debt Yield	4.55 % (in accordance with the definition of Debt Yield, this calculation takes into account the Projected Net Rental Income as defined below in this section. However, if Debt Yield is calculated using current Net Rental Income instead of Projected Net Rental Income, Debt Yield is 4.5%).

#### **Additional Mezzanine Note Features**

Guarantee and indemnity	Each Mezzanine Note Obligor irrevocably and unconditionally, jointly and severally:
	(a) guarantees to each Mezzanine Secured Party punctual performance by each other Mezzanine Note Obligor of all that Mezzanine Note Obligor's obligations under the Mezzanine Finance Documents;
	(b) agrees with each Mezzanine Secured Party that whenever another Mezzanine Note Obligor does not pay any amount when due under or in connection with any Mezzanine Finance Document, that Mezzanine Note Obligor shall immediately on demand pay that amount as if it was the principal obligor; and
	(c) agrees with each Mezzanine Secured Party that if any obligation guaranteed by it becomes enforceable, invalid or illegal, it will, as

an independent and primary obligation, indemnify that Mezzanine Secured Party immediately on demand against any cost, loss or liability it incurs as a result of a Mezzanine Note Obligor not paying any amount which would have been payable but for such unenforceability, invalidity or illegality.

#### Covenants

Non-compliance with the financial covenants will constitute a Mezzanine Note Event of Default under the Mezzanine Note Issuance Agreement. To avoid a Mezzanine Note Event of Default, the following levels for each relevant year must be maintained:

- (a) The Mezzanine Note Loan to Value does not, at any time during the relevant year, equal or exceed the following percentages:
  - (i) Year 1 – 87.50%
  - (ii) Year 2 – 87.50%
  - (iii) Year 3 – 87.50%
  - (iv) Year 4 – 85.00%
  - (v) Year 5 – 82.50%
  
- (b) The Mezzanine Note Debt Yield is, at all times during the Relevant Year, is greater than or equal to the following percentages:
  - (i) Year 1 – 4.25%
  - (ii) Year 2 – 4.75%
  - (iii) Year 3 – 5.25%
  - (iv) Year 4 – 5.25%
  - (v) Year 5 – 5.75%

#### Cash Trap Events

A Cash Trap Event means:

- (a) a Senior Loan Default has occurred and is continuing; or
- (b) on any Senior Loan Interest Payment Date either:
  - (i) the Senior Loan to Value exceeds, for Year 1 to Year 3, 65% and, for Year 4 to Year 5, 62.5%; or
  - (ii) the Senior Loan Debt Yield for each relevant year is less than the following percentages:
    - Year 1 - 5.50%
    - Year 2 – 6.25%
    - Year 3 – 7.00%
    - Year 4 – 7.00%
    - Year 5 – 7.50%

#### General

The Mezzanine Note Issuance Agreement is governed by English law. A summary of the principal terms of the Mezzanine Note Issuance Agreement is set out below.

## **Mezzanine Note amount and subscription**

The aggregate of the Mezzanine Commitments under the Mezzanine Note Issuance Agreement was £101,620,000. The Mezzanine Notes were subscribed for in full at par on the Mezzanine Subscription Date, being 15 December 2016, by the Original Mezzanine Noteholders. The Mezzanine Note Issuance Agreement does not place an obligation on the Issuer to subscribe for any additional principal amount of Mezzanine Notes.

## **Purpose and application**

The Mezzanine Issuer has undertaken to apply all proceeds from the issuance of the Mezzanine Notes (directly or indirectly through advancing intercompany loans to the Senior Borrower) in or towards (a) refinancing the Existing Debt and (b) payment of any fees, costs and expenses, stamp registration and other Taxes (including recoverable VAT but excluding irrecoverable VAT) and any other amounts incurred by any Mezzanine Note Obligor in connection with the Acquisition or the Mezzanine Finance Documents, in each case, as contemplated by the Mezzanine Funds Flow Statement.

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

## **Payment of interest**

Under the Mezzanine Note Issuance Agreement:

- (a) subject to paragraph (b) below, the Mezzanine Issuer must pay accrued interest on the Mezzanine Notes on each Mezzanine Interest Payment Date; and
- (b) after a Cash Trap Event occurs and while it is continuing:
  - (i) the Mezzanine Issuer must pay on each Mezzanine Interest Payment Date interest accrued on the Mezzanine Notes in the amount equal to 4.25 per cent. per annum; and
  - (ii) the remaining amount of interest which has accrued on the Mezzanine Notes in the amount equal to 4.00 per cent. per annum on each Mezzanine Interest Payment Date shall be added to the principal amount outstanding under the Mezzanine Notes (which includes capitalised interest added to it).

The Mezzanine Note Agent shall, if instructed by the Majority Mezzanine Noteholders, request that a withdrawal is made from the Interest Reserve Account on any Mezzanine Interest Payment Date on which interest is not or cannot be paid by the Mezzanine Issuer from the Mezzanine Finance Account. For further details of the Interest Reserve Account, see the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT – Interest Reserve Account*".

The rate of interest on the Mezzanine Notes for each Mezzanine Note Interest Period is the percentage rate per annum which is the Coupon.

Default interest will apply on any overdue amount which a Mezzanine Note Obligor fails to pay under a Mezzanine Finance Document from the due date up to the date of actual payment at a rate of 3.00 per cent. per annum plus the rate which would have been payable if the unpaid sum had, during the period of non-payment, in the currency of the overdue amount for successive Mezzanine Note Interest Periods. Any default interest accruing is immediately payable by the relevant obligor on demand by the Mezzanine Note Agent. Unpaid default interest arising on an unpaid sum will be compounded with the unpaid sum at the end of each Mezzanine Note Interest Period applicable to that overdue amount but will remain immediately due and payable.

## **Redemption and extension**

The Mezzanine Issuer must redeem all of the outstanding Mezzanine Notes in full and at par on the Initial Mezzanine Redemption Date, being 15 December 2019. The Mezzanine Issuer may not reissue any Mezzanine Notes which have been redeemed. The maturity of the Mezzanine Notes is subject to two extension options which may be exercised by the Mezzanine Issuer. Those extension options and the conditions applicable to their exercise are summarised below.

### *The First Extended Mezzanine Redemption Date*

The Mezzanine Issuer may request (the "**First Extension Request**") to extend the Initial Mezzanine Redemption Date to the First Extended Mezzanine Redemption Date, being 15 December 2020 by delivering a First Extension Request to the Mezzanine Note Agent no earlier than three months prior to, and no later than one month prior to, the Initial Mezzanine Redemption Date (the "**First Extension Option**"). The First Extension Option will take effect subject to certain conditions being satisfied including: (i) provision of evidence to the Mezzanine Note Agent 10 Business Days before the Initial Mezzanine Redemption Date that the Senior Loan Termination Date will be extended to the Senior Loan First Extended Termination Date; (ii) Hedging Agreements being entered into by the Senior Borrower for the period from the Initial Mezzanine Redemption Date to the First Extended Mezzanine Redemption Date in compliance with the Senior Facility Agreement; and (iii) on the date of the First Extension Request and the Initial Mezzanine Redemption Date no Mezzanine Note Default is continuing or would result from the proposed extension of the Mezzanine Note Redemption Date to the First Extended Mezzanine Redemption Date.

### *The Second Extended Mezzanine Redemption Date*

The Mezzanine Issuer may request (the "**Second Extension Request**") to extend the First Extended Mezzanine Redemption Date to the Second Extended Mezzanine Redemption Date, being 15 December 2021, by delivering a Second Extension Request to the Mezzanine Note Agent no earlier than three months prior to, and no later than one month prior to, the First Extended Mezzanine Redemption Date (the "**Second Extension Option**"). The Second Extension Option will take effect subject to certain conditions being satisfied including: (i) provision of evidence to the Mezzanine Note Agent 10 Business days before the First Extended Redemption Date that the Senior Loan Termination Date will be extended to the Senior Second Extended Termination Date; (ii) Hedging Agreements being entered into by the Senior Borrower for the period from the First Extended Mezzanine Redemption Date to the Second Extended Mezzanine Redemption Date in compliance with the Senior Facility Agreement; and (iii) on the date of the Second Extension Request and on the First Extended Mezzanine Redemption Date no Mezzanine Note Default is continuing or would result from the proposed extension of the Mezzanine Note Redemption Date to the Second Extended Mezzanine Redemption Date.

## **Early redemption and cancellation**

### *Illegality*

If it becomes unlawful in any applicable jurisdiction for any Mezzanine Noteholder to perform any of its obligations under the Mezzanine Note Issuance Agreement or to fund, acquire or maintain its holding in the Mezzanine Notes or it becomes unlawful for any Affiliate of a Mezzanine Noteholder to do so: (i) that Mezzanine Noteholder must promptly notify the Mezzanine Note Agent upon becoming aware of that event and the Mezzanine Note Agent must notify the Mezzanine Issuer; (ii) upon the Mezzanine Note Agent notifying the Mezzanine Issuer of such event, the Available Mezzanine Commitment (if any) of that Mezzanine Noteholder will be immediately cancelled; and (iii) the Mezzanine Issuer must redeem all of the Mezzanine Notes held by that Mezzanine Noteholder at par on the last day of the Mezzanine Note Interest Period occurring after the Mezzanine Note Agent has notified the Mezzanine Issuer or, if earlier, the date specified by the Mezzanine Noteholder in the notice delivered to the Mezzanine Note Agent (being no earlier than the last day of any applicable grace period permitted by law).

### *Change of control*

Under the Mezzanine Note Issuance Agreement, a change of control occurs if: (i) Brookfield Asset Management Inc. ceases to control (directly or indirectly) the Sponsor GP, the Sponsor GP ceases to be the sole general partner of the Sponsor, or the Sponsor ceases to control (directly or indirectly) the Mezzanine Issuer (each such event, a "**Holding Entity Review Event**"); or (ii) if the Mezzanine Issuer ceases to control any Mezzanine Note Obligor (each a "**Mezzanine Note Obligor Review Event**").

If there is a change of control:

- (a) the Mezzanine Issuer must promptly notify the Mezzanine Note Agent upon becoming aware of that change of control;
- (b) a Mezzanine Noteholder will not be obliged to fund the Mezzanine Subscription; and

- (c) the Mezzanine Note Agent shall, if it is notified by a Mezzanine Noteholder, within five Business Days of the Mezzanine Issuer notifying it of the change of control, by not less than 15 Business Days' notice to the Mezzanine Issuer, cancel the Mezzanine Commitment of that Mezzanine Noteholder and declare the participation of that Mezzanine Noteholder in the outstanding Mezzanine Notes, together with accrued interest, and all other amounts accrued under the Mezzanine Finance Documents immediately due and payable, whereupon the Mezzanine Commitment of that Mezzanine Noteholder will be cancelled, and all such outstanding Mezzanine Notes will become immediately due and payable.

For the purposes of the above "**control**" means:

- (a) the ability (whether by way of ownership of shares, proxy, contract, agency or otherwise) to:
- (i) cast, or control the casting of:
    - (A) in relation to any Holding Entity Review Event more than half; or
    - (B) in relation to any Mezzanine Note Obligor Review Event, 100%; of the maximum number of votes that might be cast at a general meeting of a person; and
  - (ii) give directions with respect of the operating and financial policies of a person with which the directors or other equivalent officers of a person are obliged to comply; and
- (b) the holding beneficially of:
- (i) in relation to any Holding Entity Review Event, more than half (in respect of the Sponsor GP or the Issuer); or
  - (ii) in relation to any Mezzanine Note Obligor Review Event, 100%, of the issued share capital of a person (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital).

#### *Voluntary redemption*

The Mezzanine Issuer may, if it gives the Mezzanine Note Agent not less than three Business Days' prior notice, redeem some or all of the Mezzanine Notes at par (but, if not all of the Mezzanine Notes are redeemed, the Mezzanine Issuer shall redeem the Mezzanine Notes by a minimum amount of £1,000,000). Such notice and minimum amount requirements do not apply in the case of redemption in accordance with the cure provisions of the Mezzanine Note Issuance Agreement.

The Mezzanine Issuer may: (i) at any time during the period in which it is entitled to cure a breach of the Mezzanine Note Debt Yield Covenant or the Mezzanine Note Loan to Value Covenant in accordance with the cure provisions of the Mezzanine Note Issuance Agreement, apply any Cure Payment Amounts in redemption of the whole or any part of the Mezzanine Notes as contemplated by the cure provisions of the Mezzanine Note Issuance Agreement; or (ii) at any time, apply amounts in voluntary redemption as contemplated by the Mezzanine Cure Account provisions of the Mezzanine Note Issuance Agreement.

Any voluntary redemption of the Mezzanine Notes shall be made on a *pro rata* basis and shall include all applicable early redemption fees and Break Costs.

#### *Right of redemption and cancellation in relation to a single Mezzanine Noteholder*

If:

- (a) any sum payable to any Mezzanine Noteholder by the Mezzanine Issuer is required to be increased under the tax gross up provisions of the Mezzanine Note Issuance Agreement; or
- (b) any Mezzanine Noteholder claims indemnification from the Mezzanine Issuer under the tax indemnity or increased costs provisions of the Mezzanine Note Issuance Agreement,

the Mezzanine Issuer may give the Mezzanine Note Agent notice of cancellation of the Mezzanine Commitment of that Mezzanine Noteholder and its intention to procure the redemption of all the Mezzanine Notes held by that Mezzanine Noteholder. On receipt of such notice of cancellation, the Mezzanine Commitment of that Mezzanine Noteholder shall immediately be reduced to zero.

On the last day of each Mezzanine Note Interest Period which ends after the Mezzanine Issuer has given notice of cancellation, the Mezzanine Issuer shall redeem all of the Mezzanine Notes held by that Mezzanine Noteholder at par and pay all interest and other amounts accrued under the Mezzanine Finance Documents.

#### *Right of redemption and cancellation in relation to a Defaulting Mezzanine Noteholder*

If any Mezzanine Noteholder becomes a Defaulting Mezzanine Noteholder, the Mezzanine Issuer may give the Mezzanine Note Agent five Business Days' notice of cancellation of each Available Mezzanine Commitment of that Mezzanine Noteholder. On such notice becoming effective, each Available Mezzanine Commitment of the Defaulting Mezzanine Noteholder shall immediately be reduced to zero. As soon as practicable after receipt of such notice, the Mezzanine Note Agent shall notify all the Mezzanine Noteholders.

#### *Amount of redemption*

Any redemption of the Mezzanine Notes shall be made at par and paid together with accrued interest on the amount redeemed up to and including the relevant redemption date, the applicable Break Costs and any redemption fees payable under the Mezzanine Note Issuance Agreement. Subject to the aforementioned, any redemption may be made without premium or penalty.

#### *Effect of redemption*

No amount of the Total Mezzanine Commitments cancelled under the Mezzanine Note Issuance Agreement may be subsequently reinstated.

Any redemption of the Mezzanine Notes, other than a redemption to a single Mezzanine Noteholder, shall be applied *pro rata* to each Mezzanine Noteholder's holding of the Mezzanine Notes.

#### **Fees and early redemption fee**

##### *Mezzanine Note Agent's fee and the Mezzanine Security Agent's fee*

The Mezzanine Issuer shall pay to the Mezzanine Note Agent and the Mezzanine Security Agent (each for its own account) a fee in the amount and at the times agreed with the Mezzanine Note Agent and the Mezzanine Security Agent.

##### *Early redemption fee*

In the event of an early redemption or cancellation of Available Mezzanine Commitment at any time prior to the Mezzanine Note Redemption Date, the Mezzanine Issuer shall pay to the Mezzanine Note Agent for the account of each Mezzanine Noteholder in accordance with the respective Mezzanine Noteholder's pro rata share in the amount of the redeemed Mezzanine Notes or the cancelled Available Mezzanine Commitment a fee as follows:

- (a) if the early redemption/cancellation occurs on or prior to the second anniversary of the Mezzanine Subscription Date, an amount equal to the sum of:
  - (i) the aggregate amount of interest which would have accrued on the principal amount of the Mezzanine Notes if such Mezzanine Notes remained outstanding until the second anniversary of the Mezzanine Subscription Date or in the case of cancelled Available Mezzanine Commitment that same amount of interest which would have been payable if the Mezzanine Notes were issued in the principal amount of the cancelled Available Mezzanine Commitment on the final day of the Availability Period and remained outstanding until the second anniversary of the Mezzanine Subscription Date; and

- (ii) an amount equal to 2 per cent. of the principal amount of the Mezzanine Notes so redeemed or Available Mezzanine Commitment so cancelled.
- (b) if the early redemption/cancellation occurs after the second anniversary of the Mezzanine Subscription Date but on or prior to the third anniversary of the Mezzanine Subscription Date, a fee in an amount equal to 2 per cent. of the principal amount of the Mezzanine Notes so redeemed or Available Mezzanine Commitment so cancelled.

No fee shall be payable if the early redemption/cancellation occurs after the third anniversary of the Mezzanine Subscription Date but prior to the Mezzanine Note Redemption Date.

#### *Voluntary cancellation*

The Mezzanine Issuer may if it gives the Mezzanine Noteholder three Business Days prior notice, cancel the whole or part (being a minimum amount of £1,000,000 of the Mezzanine Total Commitment, reducing the Mezzanine Commitments of the Mezzanine Noteholders rateably.

#### **Tax gross up and indemnities**

A Mezzanine Note Obligor shall make all payment without a Tax Deduction, unless required by law. Subject to certain conditions, if a Tax Deduction is required by law to be made by an Mezzanine Note Obligor, the amount of the payment due from such obligor must be increased to an amount (after making any Tax Deduction) that leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.

The Mezzanine Issuer confirms under the Mezzanine Note Issuance Agreement that, in its opinion, it regards payment of interest on the Mezzanine Notes as interest "which arises in the UK" for the purposes of section 874 ITA and intends to deduct United Kingdom income tax from payments of interest made under the Mezzanine Note Issuance Agreement in circumstances where the benefit of the Mezzanine Notes has been assigned to a person who is not entitled to receive such interest without deduction of tax by virtue of the ITA or Treaty.

Subject to certain conditions, the Mezzanine Issuer shall within five Business Days of demand by the Mezzanine Note Agent pay to a Protected Party an amount equal to the loss, liability or costs which that Protected Party determines will be or has been suffered for or on account of Tax by that Protected Party in respect of a Mezzanine Finance Document.

A "**Protected Party**" means a Mezzanine 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 Mezzanine Finance Document.

Each party to the Mezzanine Note Issuance Agreement 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 to the Mezzanine Note Issuance Agreement 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.

#### **Bank accounts**

##### *Designation of Accounts*

The Mezzanine Issuer has opened and is required to maintain the following bank accounts located in Jersey in its name:

- (a) a deposit account and designated the "**Interest Reserve Account**";
- (b) a deposit account and designated the "**Mezzanine Cure Account**";
- (c) a current account and designated the "**Mezzanine Finance Account**"; and
- (d) a current account and designated the "**Mezzanine General Account**".

No Mezzanine Note Obligor may, without the prior consent of the Mezzanine Note Agent, maintain any other bank account other than:

- (a) an Account; or
- (b) any other bank account which such Mezzanine Note Obligor is expressly permitted to maintain pursuant to the Senior Facility Agreement.

#### *Account Bank*

Each Account must be held at a Mezzanine Account Bank with a Minimum Required Rating, subject to the below.

If a Mezzanine Account Bank ceases to have a Minimum Required Rating or the Mezzanine Note Agent so requests (acting reasonably), a Mezzanine Account must if there is a bank in Jersey with a Minimum Required Rating be replaced with a bank account at another bank in Jersey with a Minimum Required Rating no later than 90 days after that Mezzanine Account Bank has ceased to have a Minimum Required Rating or that request (as applicable).

The replacement of a Mezzanine Account or change of Mezzanine Account Bank only becomes effective when: (i) the relevant bank agrees with the Mezzanine Note Agent and the Mezzanine Issuer to fulfil such role; (ii) the new Mezzanine Account is made subject to the Transaction Security on the same terms as the relevant Security Documents; and (iii) any Perfection Requirements in respect of that Transaction Security are carried out in respect of the new Mezzanine Accounts (including provision of account mandates, notices and acknowledgements).

#### *Mezzanine Finance Account*

The Mezzanine Security Agent has sole signing rights in relation to the Mezzanine Finance Account.

The Mezzanine Issuer must ensure that all sums which are to be paid to the Mezzanine Finance Account in accordance with the terms of the Senior Facility Agreement and/or the Intercreditor Agreement are deposited into the Mezzanine Finance Account.

On each Mezzanine Interest Payment Date, the Mezzanine Note Agent shall withdraw from the Mezzanine Finance Account such amount as is necessary for application in or towards:

- (i) *firstly*, payment pro rata of any unpaid costs, fees and expenses then due and payable to the Mezzanine Security Agent (including any due to any Mezzanine Receiver or Mezzanine Delegate) and the Mezzanine Note Agent under the Mezzanine Finance Documents;
- (ii) *secondly*, payment pro rata of any unpaid costs, fees and expenses then due and payable to the Mezzanine Finance Parties (other than the Mezzanine Security Agent, any Mezzanine Receiver or any Mezzanine Delegate and the Mezzanine Note Agent) under the Mezzanine Finance Documents;
- (iii) *thirdly*, payment pro rata of all accrued interest then due and payable to the Mezzanine Noteholders under the Mezzanine Finance Documents;
- (iv) *fourthly*, payment of any other amounts (if any) then due and payable under the Mezzanine Finance Documents; and
- (v) *fifthly*, any surplus shall be paid into the Mezzanine General Account.

#### *Mezzanine Cure Account*

The Mezzanine Security Agent has sole signing rights in relation to the Mezzanine Cure Account.



The Mezzanine Note Obligors to the Mezzanine Note Issuance Agreement must, to the extent that they elect to exercise a cure right, ensure that any Cure Payment Amounts that are not applied in voluntary redemption of the Mezzanine Notes are paid into the Mezzanine Cure Account.

If on any Mezzanine Interest Payment Date (the "**Second Mezzanine Interest Payment Date**") and the Mezzanine Interest Payment Date immediately prior to the Second Mezzanine Interest Payment Date, the Mezzanine Note Obligors to the Mezzanine Note Issuance Agreement (disregarding in the calculation amounts in the Mezzanine Cure Account) are and were in compliance with the Mezzanine Note Debt Yield Covenant and the Mezzanine Note Loan to Value Covenant, the Mezzanine Security Agent shall withdraw all Cure Payment Amounts standing to the credit of the Mezzanine Cure Account and transfer such amounts to the Mezzanine General Account.

If the Mezzanine Note Obligors to the Mezzanine Note Issuance Agreement are and were not in compliance with the and/or the Mezzanine Note Loan to Value Covenant on two consecutive Mezzanine Note Interest Payment Dates falling immediately after any Cure Payment Amount (the latest such Mezzanine Note Interest Payment Date being the Second Mezzanine Interest Payment Date) has been deposited into the Mezzanine Cure Account in accordance with the cure provisions of the Mezzanine Note Issuance Agreement (disregarding in the calculation any amounts in the Mezzanine Cure Account), the Mezzanine Security Agent shall, if instructed by the Majority Mezzanine Noteholders withdraw all Cure Payment Amounts standing to the credit of the Mezzanine Cure Account on the Second Mezzanine Interest Payment Date and apply such amounts in redemption of the Mezzanine Notes in accordance with the voluntary redemption provisions of the Mezzanine Note Issuance Agreement and all amounts payable in connection with such prepayment pursuant to the redemption provisions of the Mezzanine Note Issuance Agreement shall be payable from such amounts (and deducted from the principal amount prepaid).

The Mezzanine Issuer may at any time elect that all or part of any Cure Payment Amount standing to the credit of the Mezzanine Cure Account is applied in redemption of the Mezzanine Notes in accordance with the voluntary redemption provisions of the Mezzanine Note Issuance Agreement and all amounts payable in connection with such prepayment pursuant to the restrictions provisions of the Mezzanine Note Issuance Agreement shall be payable from such amounts (and deducted from the principal amount prepaid).

The Mezzanine Security Agent is obliged to make a withdrawal from the Mezzanine Cure Account in accordance with the above only if no Mezzanine Note Event of Default is continuing and the Mezzanine Note Repeating Representations are correct and will be correct in all material respects immediately after the withdrawal.

#### *Interest Reserve Account*

The Mezzanine Security Agent has sole signing rights in relation to the Interest Reserve Account.

The Mezzanine Issuer was required to ensure that on the Mezzanine Subscription Date, the balance of the Interest Reserve Account shall be not less than £1,000,000.

Subject to the interest rate provisions of the Mezzanine Note Issuance Agreement, the Mezzanine Note Agent (acting on the instructions of the Majority Mezzanine Noteholders) shall request that a withdrawal is made from the Interest Reserve Account on any Mezzanine Interest Payment Date on which interest is not or cannot be paid by the Mezzanine Issuer from the Mezzanine Finance Account. For further details of the interest rate provisions in the Mezzanine Note Issuance Agreement, see the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT – Payment of Interest*".

The Sponsor may at any time pay additional amounts to the Interest Reserve Account by way of Subordinated Debt or equity contribution. Payment of interest from the funds standing to the credit of the Interest Reserve Account will not be considered as a cure of a breach of the Mezzanine Note Issuance Agreement.

#### *Mezzanine General Account*

The Mezzanine Issuer has signing rights in relation to the Mezzanine General Account.

Provided no Mezzanine Note Event of Default is continuing and subject to any restriction in the Mezzanine Finance Documents and any requirement that amounts paid into the Mezzanine General Account for a particular

purpose be used for that purpose, the Mezzanine Issuer may withdraw an amount from the Mezzanine General Account at any time, to be applied for any purpose in compliance with the Mezzanine Finance Documents, including the making of Mezzanine Note Permitted Payments.

The Mezzanine Issuer must ensure that any amount received or receivable by it is paid into the Mezzanine General Account, unless otherwise unspecified.

At any time when an Mezzanine Note Event of Default is continuing the Mezzanine Security Agent may operate the Mezzanine General Account, notify the Mezzanine Issuer that its rights to operate the Mezzanine General Account are suspended and withdraw from, and apply amounts standing to the credit of, the Mezzanine General Account in or towards any purpose for which moneys in any Mezzanine Account may be applied.

#### *Existing Accounts*

The Targets must procure that: (i) the Mezzanine Security Agent is provided with evidence when an Existing Account has been closed; (ii) no Existing Account shall become overdrawn; (iii) no withdrawal is made from any Existing Account other than that required for payment into an Account; and (iv) on or before the date an Existing Account is closed, the balance of such account is promptly transferred into the appropriate Account.

#### *Miscellaneous provisions*

The Mezzanine Note Obligors to the Mezzanine Note Issuance Agreement must ensure that no Account goes into overdraft.

Any amount received or recovered by a Mezzanine Note Obligor otherwise than by credit to an Account must be held subject to the security created by the Mezzanine Finance Documents and immediately paid to the relevant Account or to the Mezzanine Note Agent.

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

Any money standing to the credit of a Mezzanine Account may be applied by the Mezzanine Security Agent in payment of any amount due but unpaid to a Mezzanine Finance Party under the Mezzanine Finance Documents or money standing to the credit of an Existing Account may be applied by the Common Security Agent in payment of any amount due but unpaid to a Mezzanine Finance Party under the Finance Documents.

No Mezzanine Finance Party is responsible or liable to any Mezzanine Note Obligor for non payment of any liability of a Mezzanine Note Obligor which could be paid from an Account or if wrongly made in good faith.

#### **Guarantee**

Each Mezzanine Note Obligor has irrevocably and unconditionally, on a joint and several basis:

- (a) guaranteed to each Mezzanine Secured Party the punctual performance by each Mezzanine Note Obligor of all that Mezzanine Note Obligor's obligations under the Mezzanine Finance Documents;
- (b) undertaken that, if any Mezzanine Note Obligor does not pay any amount when due in connection with a Mezzanine Finance Document it will immediately on demand pay that amount as if it were the principal obligor; and
- (c) agrees to indemnify each Mezzanine Secured Party if any obligation guaranteed becomes unenforceable, invalid or illegal, it will as an independent and primary obligation indemnify that Mezzanine Secured Party immediately on demand against any cost, loss or liability it incurs as a result of an Mezzanine Note Obligor not paying any amount which would, but for much enforceability, invalidity or illegality, have been payable by it under any Mezzanine Finance Document on the date when it would have been due. The amount payable by an Mezzanine Note Obligor under the indemnity

will not exceed the amount it would have had to pay under this paragraph if the amount claimed had been recoverable on the basis of a guarantee.

The guarantee is a continuing guarantee and will extend to the ultimate balance of the sums payable by any Mezzanine Note Obligor, regardless of any intermediate payment or discharge in whole or in part.

### **Representations and warranties**

Under the Mezzanine Note Issuance Agreement, certain representations and warranties were given by the Mezzanine Issuer to each Mezzanine Finance Party on the date of the Mezzanine Note Issuance Agreement and on the Mezzanine Subscription Date. Each Target also makes the following representations and warranties to each Mezzanine Finance Party on the date of its accession to the terms of the Mezzanine Note Issuance Agreement.

The representations and warranties relate to the matters which are normally the subject of representations and warranties in loan agreements including, but not limited to, (a) the status of each Mezzanine Note Obligor, each Trustee and the Unit Trust; (b) the obligations expressed to be assumed by it are, subject to the Legal Reservations and the Perfection Requirements, legal, valid, binding and enforceable obligations; (c) there being no conflict with applicable law, its constitutional documents or any agreement binding on it or any of its assets; (d) declaration around the power and authority to enter into the Key Transaction Documents; (e) having all Authorisations required to enable it to lawfully enter the Key Transaction Documents and to make such documents admissible in evidence in its Relevant Jurisdictions; (f) the governing law and enforcement provisions; (g) how Tax Deductions are not required from certain payments to a Mezzanine Noteholder and rental income in respect of the Property rental income; (h) there being no filing or stamp taxes in respect of the Mezzanine Finance Documents; (i) how it is not a member of a VAT group other than a group made up solely of Mezzanine Note Obligors to the Mezzanine Note Issuance Agreement; (j) how no Mezzanine Note Event of Default and no Mezzanine Note Default is continuing or reasonably likely to result from the making of any Mezzanine Subscription or the entry into any Transaction Document; (k) the accuracy of information supplied (including financial projections and information supplied to the Valuer for the purposes of each Valuation); (l) that its Original Financial Statements and most recent financial statements have been prepared in accordance with GAAP; (m) that its payment obligations under the Mezzanine 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; (n) that no proceedings which are likely to have a Material Adverse Effect are pending or threatened; (o) the accuracy of the valuation information provided; (p) confirmations in respect of ownership and title to Property; (q) the accuracy of information in respect of the Reports; (r) that save as disclosed in the Legal Due Diligence Reports, no other Mezzanine Note Obligor has carried on any business except as provided for in the Mezzanine Note Issuance Agreement; (s) that its centre of main interest is situated in its Original Jurisdiction and it has no establishment in any other jurisdiction; (t) that 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 and those assets are not subject to any prior or *pari passu* Security; (u) the ownership of share capital and the Units; (v) that each Trustee has been validly appointed as a trustee of the Unit Trust and the Unit Trust is duly constituted and validly existing under the laws of Jersey; (w) declaration confirmation with Jersey regulation; (x) confirmation in respect of ongoing trust matters; (y) confirming the Acquisition Documents contain all the terms of the Acquisition; (z) declaration about not being subject to Sanctions; (aa) declaration around compliance with anti-bribery and corruption; (bb) declaration around Anti-Money Laundering Laws; and (cc) confirmation that the Mezzanine Note Repeating Representations are deemed to be made on the Initial Mezzanine Redemption Date, the First Extended Mezzanine Redemption Date, the Second Extended Mezzanine Redemption Date and the first day of each Mezzanine Note Interest Period.

### **Undertakings**

Each Mezzanine Note Obligor and the Unitholder has given various undertakings under the Mezzanine Note Issuance Agreement which remain in force from the date of the Mezzanine Note Issuance Agreement for so long as any amount is outstanding under the Mezzanine Finance Documents or any Mezzanine Commitment is in force. These undertakings generally include, among other things, the following undertakings (subject, in each case, to the specific terms and concessions in the Mezzanine Note Issuance Agreement):

### *Information undertakings*

The Mezzanine Issuer is required to provide to the Mezzanine Note Agent copies of its financial statements, the financial statements of each Mezzanine Note Obligor and a trial balance in respect of the Minority Unitholder for that financial year. The Mezzanine Issuer is also required to provide (if prepared) its financial statements for each of its financial half years and the financial statements of each Mezzanine Note Obligor (other than the Minority Unitholder) for each of its financial half years as soon as the same become available but in any event within 90 days of each half of each of its financial years. The Mezzanine Issuer must provide any audited financial statements that become available after the provision of unaudited statements as soon as they become available. Each set of financial statements must be certified by a director of the relevant Mezzanine Note Obligor as giving a true and fair view (if audited) or fairly representing (if unaudited) its financial condition.

The Mezzanine Issuer must also provide to the Mezzanine Note Agent various documents including: (i) an updated Business Plan (on a yearly basis) or confirmation that the then current Business Plan remains unchanged, (ii) at the same time as they are dispatched copies of all documents dispatched by an Mezzanine Note Obligor to its shareholders or unitholders in accordance with its constitutional documents or applicable law or regulation, or to its creditors generally, (iii) promptly upon becoming aware of them (a) the details of any litigation, arbitration or administrative proceedings or investigations which are current, threatened or pending against any member of the Mezzanine Group and which if adversely determined would reasonably be likely to have a Material Adverse Effect, (b) details of any Material Environmental Claim which is current, threatened or pending against any Mezzanine Note Obligor and any facts or circumstances which are reasonably likely to result in a Material Environmental Claim being commenced or threatened against any Mezzanine Note Obligor, (c) the details of any claim in excess of £100,000 a party has made under any Acquisition Document or under the Warranty and Indemnity Insurance (to the extent that it can lawfully), (iv) promptly (a) such further information regarding the financial condition, business and operations of any Mezzanine Note Obligor, the Mezzanine Holdco, the Security Assets and compliance with the Security Documents as required, (b) after request by the Mezzanine Note Agent a copy of each Occupational Lease and any related relevant documents, (c) upon receipt of notices regarding claims with respect to Sanctions by any Sanctions Authority, and (d) upon becoming aware of them, the details of terms entitling any person to terminate or curtail its use of the Property.

Each Mezzanine Note Obligor must notify the Mezzanine Note Agent and the Mezzanine Security Agent of any Mezzanine Note Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence. The Mezzanine Issuer must promptly supply, upon a request by the Mezzanine Note Agent, a certificate signed by two of its directors or senior officers on its behalf certifying that no Mezzanine Note Default is continuing (or if a Mezzanine Note Default is continuing, specifying the Mezzanine Note Default and the steps, if any, being taken to remedy it).

The Mezzanine Issuer is required to, on or before the date five Business Days before each Mezzanine Interest Payment Date procure that the Senior Borrower provides the Mezzanine Note Agent with a Quarterly Property Report in respect of the quarterly period ending on the last day of the Month immediately preceding the relevant Mezzanine Interest Payment Date. The Mezzanine Issuer is also required to deliver a Compliance Certificate to the Mezzanine Note Agent with each such quarterly report setting out computations as to compliance with the financial covenants of the Mezzanine Note Issuance Agreement.

Each Mezzanine Note Obligor must provide such documentation to the Mezzanine Note Agent or a Mezzanine Noteholder to carry out all necessary "know your customer" or other similar checks under all applicable laws and regulations.

### **Financial Covenants**

#### *Mezzanine Note Debt Yield Covenant*

The Mezzanine Note Obligors to the Mezzanine Note Issuance Agreement must ensure that at all times during the relevant Year in which Mezzanine Note Debt Yield is being tested, Mezzanine Note Debt Yield is greater than or equal to the relevant percentages for that Year, as follows: Year 1 – 4.25%, Year 2 – 4.75%, Year 3 – 5.25%, Year 4 – 5.25% and Year 5 – 5.75% (the "**Mezzanine Note Debt Yield Covenant**").

### *Mezzanine Note Loan to Value Covenant*

The Mezzanine Note Obligors to the Mezzanine Note Issuance Agreement are required to ensure that at all times during the relevant Year in which Mezzanine Note Loan to Value is being tested, Mezzanine Note Loan to Value is greater than or equal to the relevant percentages for that Year, as follows: Year 1 – 87.50%, Year 2 – 87.50%, Year 3 – 87.50%, Year 4 – 85.00% and Year 5 – 82.50% (the "**Mezzanine Note Loan to Value Covenant**").

### *Cure Covenants*

If there is a breach of the Mezzanine Note Debt Yield Covenant and/or the Mezzanine Note Loan to Value Covenant, the Mezzanine Note Obligors to the Mezzanine Note Issuance Agreement may remedy that breach by delivering a written notice to the Mezzanine Note Agent confirming their intention to cure in accordance with the cure provisions of the Senior Facility Agreement (a "**Senior Cure**") or, on and after the Senior Discharge Date, to cure the relevant breach in accordance with the cure provisions of the Mezzanine Note Issuance Agreement within 10 Business Days of the relevant breach occurring and, on or before the date falling 15 Business Days after the date of the relevant breach occurring, by either: (i) applying an amount equal to the Cure Payment Amount in respect of that breach in voluntary redemption of the Mezzanine Notes in accordance with the voluntary redemption clause in the Mezzanine Note Issuance Agreement; or (ii) depositing an amount equal to the Cure Payment Amount in respect of that breach into the Mezzanine Cure Account in accordance with the Mezzanine Cure Account provisions in the Mezzanine Note Issuance Agreement each such pre payment or deposit being a "**Cure Payment**".

If a Senior Cure, redemption or a deposit is made in accordance with the cure provisions of the Mezzanine Note Issuance Agreement, the Mezzanine Note Obligors will not be regarded as being in breach of the Mezzanine Note Debt Yield Covenant and/or the Mezzanine Note Loan to Value Covenant without prejudice to any subsequent breach.

A "**Cure Payment Amount**" is the aggregate of:

- (a) an amount equal to the amount that, if deduced from the Mezz Notes Outstandings would have meant that the Mezzanine Note Obligors would have been in compliance with the Mezzanine Note Debt Yield Covenant and Mezzanine Note Loan to Value Covenant at the relevant time; and
- (b) if the cure is being exercised by way of a redemption, an amount equal to all other amounts including Break Costs and fees that the Mezzanine Issuer is required to pay on the relevant redemption date pursuant to the early redemption provisions in the Mezzanine Note Issuance Agreement will be incurred as a result of the redemptions referred to in paragraph (a) above.

### *General undertakings*

The general undertakings by the Mezzanine Note Obligors to the Mezzanine Note Issuance Agreement under the Mezzanine Note Issuance Agreement include amongst others, undertakings:

- (a) to obtain, comply with and supply to the Mezzanine Note Agent any Authorisation required under any relevant law to enable it to perform its obligations under the Key Transaction Documents;
- (b) to comply in all respects with all laws to which it may be subject if failure to do so has or is reasonably likely to have a Material Adverse Effect and all relevant Sanctions-related laws;
- (c) not to create or permit to subsist security over any of its assets other than under, or as contemplated by, the Transaction Security, liens arising under law on ordinary trading, security released prior to the issuance of the Mezzanine Note on security consented to by the Majority Mezzanine Noteholders ;
- (d) not to dispose of any asset except as permitted by the Mezzanine Note Issuance Agreement. Such exceptions include, amongst others, disposals of the Property, shares in Bidco or the Unitholder or the units in the Unit Trust, of cash by way of payment out of an Account, of obsolete fixtures, fittings and chattels, made in the ordinary course of trading of any asset subject to the floating charge, or made with the prior consent of all the Mezzanine Noteholders; a Mezzanine Note Obligor may dispose of the Property, the shares in Bidco or the Unitholders or its units in the Unit Trust provided that the

aggregate outstanding principal amount of the Mezzanine Notes is repaid and all other Secured Liabilities are discharged in full;

- (e) not to incur any Financial Indebtedness other than that incurred under the Finance Documents, repaid prior to the Mezzanine Subscription Date, incurred with the consent of the Mezzanine Note Agent or any Subordinated Debt;
- (f) not to make any loans, grant any credit or (except as required under any Finance Document) give any guarantee or indemnity to or for the benefit of any person or otherwise assume any liability in respect of any obligation of any other person otherwise than as contemplated by the Finance Documents;
- (g) not to enter into any amalgamation, demerger, merger or corporate reconstruction except as permitted by the disposals provisions of the Mezzanine Note Issuance Agreement;
- (h) not to carry on any other business, have any Subsidiaries or own shares or in the case of the Unitholders not own other shares or units in any person other than as permitted by the Mezzanine Note Issuance Agreement;
- (i) other than in accordance with the Acquisition Documents or as permitted by the Finance Documents, not to acquire a company, any shares, business, undertaking or real estate assets from any person, incorporate or establish a company, partnership, firm or any other form of corporation or organisation or acquire or allow to be transferred to it any assets other than those necessary for the performance of its obligations under the Finance Documents, or as otherwise permitted;
- (j) not to enter into any material agreement other than the Transaction Documents, the Permitted Contracts, the Acquisition Documents, any agreement required to effect the refinancing of the Castle 46 Retained Debt and any other agreement which is expressly allowed under the Mezzanine Note Issuance Agreement;
- (k) not to issue any further shares or Units or amend any rights attaching thereto with the exception of further issues by a Mezzanine Note Obligor to an existing shareholder or unitholder except as permitted by the Note Issuance Agreement;
- (l) with the exception of Mezzanine Note Permitted Payments, not to declare, make or pay any dividend, charge, fee or other distribution on or in respect of its share capital or the Units, repay or distribute any dividend or share premium reserve, pay any management, advisory or other fee to or to the order of any of its direct or indirect shareholders or unitholders, make any payment in respect of any Intra-Group Liabilities, Existing Facility Liabilities, Mezzanine Issuer Liabilities or Mezzanine Holdco Liabilities or redeem, repurchase, defease, retire or repay any of its share capital or the Units;
- (m) no Mezzanine Note Obligor may be a member of a value added tax group other than a group made up solely of Mezzanine Note Obligors to the Mezzanine Note Issuance Agreement;
- (n) pay all Taxes due and payable by it, ensure that its residence for tax purposes is its Original Jurisdiction. The Unit Trust, Unitholders and the Trustees must remain resident for tax purposes in Jersey and ensure the Unit Trust remains exempt from Jersey Tax on income arising outside of Jersey, and exempt from Tax on interest which may accrue to the Unit in relation to Jersey bank interest and that payments to the Trustees and to the Unitholder can be made gross and free from deduction of withholding in Jersey;
- (o) not to enter into any Treasury Transaction other than in accordance with the hedging provisions of the Mezzanine Note Issuance Agreement;
- (p) Bidco must ensure that the entire issued share capital of the Unitholders is legally and beneficially wholly owned and controlled by it. The Mezzanine Issuer must ensure that the entire issued share capital of Bidco is legally and beneficially owned and controlled by it. The Unitholders must ensure that they legally and beneficially own and control all the Units in the Unit Trust. The Unit Trust must ensure that it wholly owns and controls the Trust Property subject to and in accordance with the Unit Trust Instrument and the Nominee Declarations of Trust. The Trustees must ensure that they wholly own the entire issued share capital of the Propcos for and on behalf of the Unit Trust;

- (q) each Mezzanine Note Obligor agrees, amongst other things: (i) that the Mezzanine Finance Parties may syndicate and/or subject to a Securitisation all or part of the Mezzanine Notes or any Mezzanine Commitment or the Original Mezzanine Noteholder's interest therein or under any Mezzanine Finance Document; (ii) to provide such information as any Mezzanine Finance Party may reasonably require in connection with any Securitisation and/or syndication; (iii) to provide such access to the Property, at reasonable times, as the Mezzanine Note Agent may require (subject to the terms of the Occupational Leases); (iv) that the Original Mezzanine Noteholders may sub divide, split, sever or modify the terms and the amount of the Mezzanine Notes; and (v) to certain amendments to the Mezzanine Finance Documents;
- (r) no Mezzanine Note Obligor shall, and each Mezzanine Note Obligor shall ensure that no Trustee shall, without the prior consent of the Majority Mezzanine Noteholders: (i) terminate the Unit Trust; (ii) terminate, amend or waive the Unit Trust Instrument (or agree to such action, other than minor administrative amendments); (iii) enter into any agreement or arrangement in breach of the Unit Trust Instrument or which is inconsistent with the Unit Trust Instrument other than in respect of the amendment and restatement of the Unit Trust Instrument on or prior to the Mezzanine Subscription Date; (iv) admit, replace or remove any trustee of the Unit Trust or appoint a new trustee of the Unit Trust except to the extent that such trustee is in breach of any obligation to an Mezzanine Note Obligor or any applicable law or regulation; (v) amend or permit the amendment of the terms of issue of any Units in the Unit Trust or any rights attaching thereto or permit any change in the capital structure of the Unit Trust other than in respect of the amendment and restatement of the Unit Trust Instrument on or prior to the Mezzanine Subscription Date; or (vi) take any step that would result in the Unit Trust ceasing to be a "unit trust scheme" for the purposes of section 237 of the Financial Services and Markets Act 2000;
- (s) each Mezzanine Note Obligor agrees and undertakes to procure that no Trustee shall be permitted to retire from its position as a trustee of the Unit Trust except with the prior written consent of the Mezzanine Note Agent. The Headlease Propco and Underlease Propco undertake to maintain their status as "trust corporation" as defined in Section 68(18) of the Trustees Act 1925;
- (t) each Unitholder agrees that the rent and any other Trust Income arising in respect of the Unit Trust and belonging to the Unitholders may be applied in accordance with the terms of the Mezzanine Note Issuance Agreement to meet the amounts due under the Mezzanine Finance Documents;
- (u) no Mezzanine Note Obligor shall (and procures that no other person shall) amend, vary, novate, forego or waive a provision, right or condition arising in or under any Acquisition Document or the Warranty and Indemnity Insurance, except with the prior consent of the Mezzanine Note Agent or as required by law or regulation;
- (v) each Mezzanine Note Obligor shall, and shall procure that each member of the Mezzanine Group shall, supply to the Mezzanine Note Agent details of any claim, action, suit, proceedings or investigations against it with respect to Sanctions by any Sanctions Authority, not permit any person to use the proceeds of the Mezzanine Note Facility to facilitate activities involving a Restricted Party or a country subject to sanctions or that could result in a violation of any Sanctions;
- (w) no Mezzanine Note Obligor shall use the proceeds of a Mezzanine Note Facility lend, contribute or make available such proceeds to any Subsidiary, Affiliate, joint venture partner or other entity for the purpose of financing or facilitating any activity that would violate any anti-corruption law or any Anti-Money Laundering Law. Each Mezzanine Note Obligor shall conduct its business in compliance with applicable anti-corruption laws or any Anti-Money Laundering Laws;
- (x) each Mezzanine Note Obligor agrees that no part of the proceeds of the Mezzanine Notes shall be used (i) for any purpose which would be inconsistent with the Margin Regulations; or (ii) to acquire any security in a transaction that is subject to the reporting requirements of ss13 and ss14 of the United States Securities Exchange Act of 1934;
- (y) until the Secured Liabilities have been unconditionally and irrevocably discharged and paid in full, each Mezzanine Note Obligor shall procure that no member of the Mezzanine Group, the Sponsor or any of their Affiliate with reliance of a Report will not bring proceeds or receive distributions in respect

of any suit, proceedings or demand from any provider of a Report without the prior written consent of the Mezzanine Security Agent (acting reasonably).

- (z) the Mezzanine Issuer shall maintain the listing of the Mezzanine Notes on the Channel Islands Securities Exchange; and

#### *Property Undertakings*

The property undertakings remain in force for so long as any amount is outstanding under any Mezzanine Finance Document or any commitment is in force.

- (a) *Title.* The Mezzanine Note Obligors to the Mezzanine Note Issuance Agreement must exercise material rights and comply with any covenant, stipulation or obligation affecting its Property and may not agree to any material amendment, supplement, waiver, surrender or release of any covenant, stipulation or obligation affecting its Property;
- (b) *Occupational Leases.* No Mezzanine Note Obligor may without the consent of the Majority Mezzanine Noteholders: enter into any Agreement for Lease, grant any new Occupational Lease, agree to any amendment, supplement, extension, waiver, surrender or release in respect of any Mezzanine Lease Document (except where to do so is necessary to effect the Simmons Re-gear Agreement), exercise any forfeiture proceedings in respect of any Mezzanine Lease Document, grant any licence or right to use or occupy any part of the Property, consent to any sublease or assignment of any tenant's interest under any Mezzanine Lease Document, agree to any change of use under, or (except where required to do so under the terms of the relevant Mezzanine Lease Document) downward rent review in respect of, any Mezzanine Lease Document, or serve any notice on any former tenant under any Mezzanine Lease Document (or their guarantor) which would entitle it to a new lease or tenancy, except as specifically permitted by the Mezzanine Note Issuance Agreement.
- (c) *Headleases.* Each Mezzanine Note Obligor must: (i) exercise its rights and comply with its obligations under each Headlease; (ii) ensure that each landlord complies with its obligations under each Headlease; and (iii) if so required by the Common Security Agent apply for relief against forfeiture of any Headlease.

No Mezzanine Note Obligor 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 any act which results in any Headlease becoming liable to forfeiture or otherwise being terminated.

- (d) *Maintenance.* Each Mezzanine Note Obligor must ensure that all buildings, plant, machinery, fixtures and fittings on the Property are in, and maintained in: (i) accordance with the terms of any Occupational Lease or maintained in good and substantial repair except to the extent required under the development provisions of the Mezzanine Note Issuance Agreement; and (ii) except to the extent required under the development provisions of the Mezzanine Note Issuance Agreement such repair, condition and order as to enable them to be let in accordance with all applicable laws and regulations;
- (e) *Development.* Except where required under an Occupational Lease, no Mezzanine Note Obligor may make any application for planning permission in respect of any part of the Property or carry out, any demolition, construction, structural alterations or additions, development or other similar operations in respect of any part of the Property provided that the Mezzanine Noteholder will not unreasonably withhold or delay consent where the Mezzanine Issuer requests such a consent: (i) in respect of development of the plaza of the Property which is value enhancing (a "**Permitted Plaza Development**"); (ii) where the proposed Permitted Plaza Development is funded entirely from equity contributions made, or intercompany indebtedness advanced to the relevant Mezzanine Note Obligor into an Account, for that purpose; or without prejudice to the Senior Facility Agreement, amounts standing to the credit of the Senior Borrower's Capex Reserve Account or amounts standing to the credit of the Senior Borrower's General Account; (iii) where sufficient details of the proposed Permitted Plaza Development are provided to the Mezzanine Noteholders; and (iv) in respect of any proposed Permitted Plaza Development that is funded from the Senior Borrower's Capex Reserve



Account, the costs of that proposed Permitted Plaza Development do not exceed the costs for that Permitted Plaza Development specified in the Business Plans.

- (f) *Notices.* Each Mezzanine Note Obligor must, within 14 days after receipt of any application, requirement, order or notice with respect to the Property deliver a copy to the Common Security Agent and inform the Common Security Agent of the steps taken or proposed to be taken to comply with the relevant requirement, order or notice.
- (g) *Power to remedy.* If an Mezzanine Note Obligor fails to perform any obligations under the relevant Transaction Documents affecting the Property, the Mezzanine Note Obligors to the Mezzanine Note Issuance Agreement must allow the Common Security Agent or its agents and contractors: (i) to enter any part of the Property; (ii) to comply with or object to any notice served on an Mezzanine Note Obligor in respect of the Property; and (iii) to take any action that the Common 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.

The relevant Mezzanine Note Obligor must on request by the Common Security Agent pay the associated costs and expenses of the Common Security Agent or its agents and contractors. No Mezzanine Finance Party shall be obliged to account as mortgagee in possession as a result of any such action.

- (h) *Investigation of title.* Each Mezzanine Note Obligor must grant the Common Security Agent or its lawyers on reasonable request the ability to carry out investigations of title to the Property.
- (i) *Managing Agents and Asset Managers.* No Mezzanine Note Obligor may appoint any Managing Agent, amend, supplement, extend or waive the terms of any Managing Agent Agreement or terminate any Managing Agent Agreement, without the prior consent of the Mezzanine Note Agent.

Each Mezzanine Note Obligor must ensure that each Managing Agent of the Property: enters into a Duty of Care Agreement with the Common Security Agent; acknowledges to the Common Security Agent that it has notice of the Security created by the Finance Documents; and agrees to pay all Net Rental Income received by it into the Senior Borrower's Rent Account without any withholding, set-off or counterclaim.

If the Managing Agent does not comply with its obligations under the Managing Agent Agreement, an Mezzanine Note Obligor must terminate such agreement (where permitted to do so) if the Mezzanine Note Agent so requires and must appoint a new Managing Agent.

The same restrictions apply in relation to Asset Managers and Asset Management Agreements.

- (j) *Insurances:* The Mezzanine Issuer must procure that the Senior Borrower shall ensure that there is maintained, at all times from the Mezzanine Subscription Date, insurances which (a) insure each Mezzanine Note Obligor in respect of its interests in the Property and other fixtures and plant and machinery on the Property against (i) loss or damage by fire, storm, flood, tempest, 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 normally insurable risks of loss or damage, (ii) provide cover for site clearance, sharing on popping up, professional fees and value added tax together with adequate inflation, (iii) provide cover against acts of terrorism and any third party liability arising from such acts, and (b) provide cover for not less than three years' loss of rents or if longer the minimum period required under the lease documents (each an "**Insurance Policy**"), in each case, with an insurance company or underwriter that has a Minimum Required Rating.

The Mezzanine Issuer must procure that the Common Security Agent (as agent and trustee for the Common Secured Parties) is named as composite insured under each of the Insurance Policies (other than any public liability and third party liability insurances) with no liability for any premium.

The Senior Borrower is required to ensure that each Insurance Policy: (a) contains a clause whereby such Insurance Policy will not be vitiated or avoided as against any insured party as a result of any circumstances beyond the control of that insured party or of certain acts on the part of any insured party

or any agent of any insured party, a waiver of all rights of subrogation and a loss payee clause; (b) provides that such Insurance Policy will not be invalidated for failure to pay any premium due without the insurer first giving the Common Security Agent at least 30 days' written notice; (c) provides that the relevant Mezzanine Note Obligor is free to assign all amounts payable to it in favour of the Common Security Agent; and (d) does not impose any disclosure obligations on the Common Security Agent unless the Common Security Agent becomes a mortgagee in possession.

The Mezzanine Issuer must procure that the Senior Borrower shall: (a) ensure that the Mezzanine Note Agent receives such information in connection with, and copies of, the Insurances as the Mezzanine Note Agent may reasonably require; and (b) notify the Mezzanine Note Agent of any amendments, supplements, extensions, termination, avoidance, cancellations of Insurances made or, to the knowledge of the Senior Borrower, threatened or pending or any claim in excess of £100,000 refusal of any claim in excess of £100,000 actual or threatened.

Each Mezzanine Note Obligor must comply with the terms of the Insurances and not do anything which may void any Insurances. The Mezzanine Issuer must ensure that all premiums are paid within the payment terms of the relevant Insurances and all other things are done so as to keep each of the Insurances in force.

The proceeds of any Insurance Policies must (if so required by the Senior Agent) be paid into the Account for application in accordance with the Senior Facility Agreement, subject to the following:

- (i) the Mezzanine Note Obligors to the Mezzanine Note Issuance Agreement may deal with any proceeds of insurance of less than £100,000 in aggregate per annum;
- (ii) to the extent required, under the Insurances or under any lease documentation, each Mezzanine Note Obligor must (to the extent required by any settlement) apply moneys received under any Insurances in respect of the Property towards that Property;
- (iii) the proceeds of any loss of rent insurance will be treated as Rental Income; and
- (iv) moneys received under liability policies held by an Mezzanine Note Obligor which are required to satisfy established liabilities of that Mezzanine Note Obligor must be used to satisfy such liabilities.

(k) *Environmental matters*

- (i) Each Mezzanine Note 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 the Property; and (iii) implement procedures to monitor compliance with and to prevent liability under any Environmental Law applicable to it or the Property, where failure to do so has or is likely to have a Material Adverse Effect or result in any liability for a Mezzanine Finance Party.
- (ii) Each Mezzanine Note Obligor must promptly notify the Mezzanine Note Agent of any Environmental Claim started or threatened, any circumstances reasonably likely to result in an Environmental Claim or any suspension, revocation or notification of any Environmental Permit.
- (iii) Each Mezzanine Note Obligor must indemnify each Mezzanine Finance Party against any loss or liability which that Mezzanine Finance Party incurs as a result of any actual or alleged breach of any Environmental Law by any person and would not have arisen if a Mezzanine Finance Document had not been entered into, unless it is caused by that Mezzanine Finance Party's gross negligence or wilful misconduct.

- (l) *Simmons Re-gear Agreement.* No Mezzanine Note Obligor may amend, supplement, extend or waive the terms of the Simmons Re-gear Agreement without the prior consent of, and on terms approved by, the Mezzanine Note Agent (acting on the instructions of the Majority Mezzanine Noteholders).

### *Events of Default*

The Mezzanine Note Issuance Agreement contains the typical events of default for commercial loans including: (i) non-payment of sums due (subject to (a) a three Business Day grace period for a non-payment caused by technical or administrative error or a Disruption Event or (b) in respect of a non-payment of interest, a Business Day grace period for a non-payment caused by the occurrence of a Cash Trap Event which occurs no more than ten Business Days prior to an Interest Payment Date); (ii) breach of financial covenants (unless cured as described under the section entitled "*Financial Covenants*" above); (iii) breach of certain terms of the Mezzanine Finance Documents (other than those relating to non-payment and the financial covenants subject to certain conditions set out in the Mezzanine Note Issuance Agreement and a 15 Business Day grace period); (iv) misrepresentation (subject to a 15 Business Day remedial period); (v) any Financial Indebtedness of any Mezzanine Note Obligor not being paid when due nor within any applicable grace period or being declared due prior to maturity or any commitment for Financial Indebtedness is cancelled or suspended; (vi) or any creditor of any Mezzanine Note Obligor becomes entitled to declare any Financial Indebtedness due and payable prior to its specified maturity as a result of a Mezzanine Note Event of Default (however described) (except with respect to: (v) and (vi) any Financial Indebtedness which is incurred under any Finance Document or which is a Subordinated Debt; and provided that an aggregate amount of Financial Indebtedness not less than £100,000 (or its equivalent in any other currency or currencies); (vii) an Mezzanine Note Obligor becoming insolvent or having insolvency proceedings commenced against them; (viii) any creditors' process against the assets of a Mezzanine Note Obligor with an aggregate value in excess of £100,000 (subject to a 21 day grace period); (ix) cessation of all or material part of business of an Mezzanine Note Obligor (except as a result of a disposal permitted under the Mezzanine Note Issuance Agreement); (x) any obligations of a party to the Mezzanine Finance Documents ceases to become legal, valid binding or enforceable; (xi) a party to a Mezzanine Finance Document (except a Finance Party or Managing Agent) rescinds or repudiates a Mezzanine Finance Document or any of the Transaction Security (or purports to do so or evidences an intention to do so); (xii) any part of the Property is compulsorily purchased, destroyed or damaged and such action has or will have a Material Adverse Effect; (xiii) a Headlease is forfeited or forfeiture proceedings in respect of a Headlease are commenced; (xiv) subject to the terms of the Mezzanine Note Issuance Agreement, the existing corporate holding structure of the Mezzanine Note Obligors ceases to apply including if the Mezzanine Issuer ceases to be a wholly owned Subsidiary of the Mezzanine Holdco; and (xv) an event occurs which has or is reasonably likely to have a Material Adverse Effect (except where a decrease in the value of the Property or the reduction in Rental Income payable under any Mezzanine Lease Document occurs provided that the Mezzanine Note Debt Yield Covenant and the Mezzanine Note Loan to Value Covenant are satisfied at the time).

### *Acceleration*

If an Mezzanine Note Event of Default is continuing, the Mezzanine Note Agent shall if so instructed by the Majority Mezzanine Noteholders, by notice to the Mezzanine Issuer: cancel the Total Mezzanine Commitments; declare that all or part of the Mezzanine Notes, together with accrued interest, and all other amounts accrued or outstanding under the Mezzanine Finance Documents be immediately due and redeemable; declare that all or part of the Mezzanine Notes be payable on demand, whereupon they shall immediately become redeemable on demand by the Mezzanine Note Agent on the instructions of the Majority Noteholders; and/or exercise or direct the Mezzanine Security Agent to exercise any or all of its rights, remedies, powers or discretions under the Mezzanine Finance Documents.

### *Partial payments*

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

- (i) *first*, payment pro rata of any unpaid costs, fees, expenses, liabilities or other unpaid amount over to the Mezzanine Note Agents, the Mezzanine Security Agent and any Mezzanine Receiver or any Mezzanine Delegate under the Mezzanine Finance Documents;
- (ii) *secondly*, in or towards payment pro rata of any interest on any property protection loans due but unpaid under the Mezzanine Note Issuance Agreement;

- (iii) *thirdly*, in or towards payment pro rata of any principal of any property protection loans due but unpaid under the Mezzanine Note Issuance Agreement;
- (iv) *fourthly*, in or towards payment pro rata of any accrued interest and fees due but unpaid under the Mezzanine Note Issuance Agreement;
- (v) *fifthly*, in or towards payment pro rata of any principal due but unpaid under the Mezzanine Note Issuance Agreement; and
- (vi) *sixthly*, in or towards payment pro rata of any other sum due but unpaid to the Mezzanine Finance Parties under the Mezzanine Finance Documents.

The Mezzanine Note Agent may vary the order if so directed by all of the Mezzanine Noteholders.

Paragraphs (a) and (b) above will override any appropriation made by a Mezzanine Obligor to the Mezzanine Note Purchase Agreement.

#### *Amendments and waivers*

Subject to the below, any term of the Mezzanine Finance Documents may be amended or waived only with the consent of the Majority Mezzanine Noteholders and the Mezzanine Issuer and any such amendment or waiver will be binding on all Parties. The Mezzanine Note Agent may effect, on behalf of any Mezzanine Finance Party, any amendment or waiver permitted below.

The Mezzanine Note Issuance Agreement provides that any amendment or waiver of that has the effect of changing or which relates to:

- (a) any change to the definition of Majority Mezzanine Noteholders in the Mezzanine Note Issuance Agreement;
- (b) an extension to the date of payment of any amount under the Mezzanine Finance Documents;
- (c) a reduction in the interest or a reduction in the amount of any payment of principal, interest, fees or commission payable;
- (d) a change in currency of payment of any amount;
- (e) an increase in any Mezzanine Commitment or the Total Mezzanine Commitment or an extension of any Availability Period; or a requirement that a cancellation of Mezzanine Commitments reduces the Mezzanine Commitment's rateability.
- (f) a change to a Mezzanine Note Obligor other than in accordance with the changes to the obligors provisions of the Mezzanine Note Issuance Agreement;
- (g) any provision which expressly requires the consent of all the Mezzanine Noteholders;
- (h) the provisions in the Mezzanine Note Issuance Agreement relating to the finance parties' rights and obligations, change of control, illegality, changes to the noteholders, sharing among the finance parties, amendments and waivers or governing law and jurisdiction;
- (i) (other than as expressly permitted by the provisions of any Mezzanine Finance Document) the nature or scope of the guarantee and indemnity, the Security Assets; or the manner in which the proceeds of enforcement of the Transaction Security are distributed;
- (j) the release of any guarantee and indemnity granted under the guarantee and indemnity provision of the Mezzanine Note Issuance Agreement or of any Transaction Security unless permitted under the Mezzanine Note Issuance Agreement or any other Mezzanine 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 the Mezzanine Note Issuance Agreement or any other Mezzanine Finance Document,

shall not be made or given without the prior consent of all the Mezzanine Noteholders.

- (k) An amendment or waiver which relates to the rights, authorities, powers, protections, indemnities or obligations of the Mezzanine Note Agent or the Mezzanine Security Agent (each in their capacity as such) may not be effected without the consent of the Mezzanine Note Agent (acting on its own initiative and not on the instructions of the Mezzanine Noteholders) or the Mezzanine Security Agent (acting on its own initiative and not on the instructions of the Mezzanine Noteholders) as the case may be.
- (l) A Fee Letter may be amended or waived with the agreement of the Mezzanine Note Agent or the Mezzanine Security Agent (as the case may be) that is party to that Fee Letter and the Mezzanine Issuer.

For so long as a Defaulting Mezzanine Noteholder has any Available Mezzanine Commitment, in ascertaining whether any given percentage of the Total Mezzanine Commitments or the agreement of any specified group of Mezzanine Noteholders has been obtained to approve any request for a consent, waiver or amendment or other vote of the Mezzanine Noteholder's that Defaulting Mezzanine Noteholder's Mezzanine Commitments will be reduced by the amount of its Available Mezzanine Commitments.

#### **Debt Purchases**

No Mezzanine Note Obligor may enter into any Debt Purchase Transaction.

Sponsor Affiliates and Senior Creditors are not prohibited from beneficially owning a participation in the Mezzanine Notes, or any Mezzanine Commitment, or an entered into sub-participation or a similar arrangement, but, if they do so, they are "disenfranchised". The Mezzanine Noteholders are obliged to notify the Mezzanine Note Agent if they enter into a debt purchase transaction with a Sponsor Affiliate or a Senior Creditor or if such a transaction is terminated or ceases to be with a Sponsor Affiliate or a Senior Creditor.

#### **Definitions**

For the purposes of this section of the Offering Circular entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT*", the following definitions apply.

**"Account"** means:

- (a) any "Account" as defined in the paragraph titled "*DESCRIPTION OF THE SENIOR FACILITY AGREEMENT*"; and
- (b) any Mezzanine Account.

**"Acquisition"** means the acquisition by Bidco of the entire issued share capital of each Unitholder in accordance with the terms of the Acquisition Agreement.

**"Acquisition Agreement"** means the agreement for the sale and purchase of the shares in each Unitholder dated on or about the Mezzanine Subscription Date between the Vendors and Bidco.

**"Acquisition Document"** means:

- (a) the Acquisition Agreement;
- (b) the Beacon Termination Agreement, the Disclosure Letter, the Consent Deed and the other Transaction Documents (each as defined in the Acquisition Agreement); and

- (c) any other document designated as an Acquisition Document by the Senior Agent and Bidco (in accordance with the Senior Facility Agreement) or the Mezzanine Note Agent and the Mezzanine Issuer.

**"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 the Property.

**"Anti-Money Laundering Laws"** means applicable laws or regulations in any jurisdiction in which any Mezzanine Note Obligor or any member of the Mezzanine Group is located or doing business that relate to money laundering, any predicate crime to money laundering or related financial record keeping and reporting requirements.

**"Asset Management Agreement"** means:

- (a) the asset management agreement dated 15 December 2016 between the Initial Asset Manager and the Mezzanine Note Obligors party to it and delivered to the Mezzanine Note Agent pursuant to the provisions setting out the initial conditions precedent in the Mezzanine Note Issuance Agreement; or
- (b) any other asset management agreement entered into in accordance with the Asset Managers provisions set out in the Mezzanine Note Issuance Agreement.

**"Asset Manager"** means the Initial Asset Manager or any other asset manager appointed by a Mezzanine Note Obligor in respect of the Property in accordance with the Asset Managers provisions set out in the Mezzanine Note Issuance Agreement.

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

**"Availability Period"** means the period from and including 15 December 2016 to and including 20 December 2016.

**"Available Mezzanine Commitment"** means a Mezzanine Noteholder's Mezzanine Commitment minus:

- (a) the amount of its participation in any outstanding Mezzanine Notes; and
- (b) in relation to any proposed Mezzanine Subscription, the amount of its participation in the Mezzanine Notes that are due to be issued on or before the Mezzanine Subscription Date.

**"Bidco"** means BSREP CityPoint Bidco Limited, a limited liability company registered in Jersey (registered number 122626) having its registered office at 47 Esplanade, St Helier, Jersey JE1 0BD.

**"Break Costs"** means in respect of a redemption occurring after the second anniversary of the Mezzanine Subscription Date, an amount equal to 25 per cent. of the amount of interest which a Mezzanine Noteholder should have received for the period from the date of redemption of all or any part of its investment in the Mezzanine Notes to the last day of the current Mezzanine Note Interest Period, had the principal amount received been paid on the last day of that Mezzanine Note Interest Period.

**"Business Day"** means a day (other than a Saturday or Sunday) on which banks are open for general business in London, New York, the Cayman Islands and Jersey.

**"Business Plan"** means the Initial Business Plan or an Updated Business Plan.

**"Calculation Period"** means, on any date, the period of 12 months starting on that date.

**"Cash Trap Event"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE SENIOR FACILITY AGREEMENT*".

**"Castle 46"** means Castle 46 S.à r.l., a private limited liability company (*société à responsabilité limitée*) incorporated and existing under the laws of Grand Duchy of Luxembourg, having its registered office at 13-15 avenue de la Liberté, L-1931, Luxembourg, Grand Duchy of Luxembourg and registered with the Luxembourg trade and companies register under number B184339.

**"Castle 46 Retained Debt"** has the meaning given to that term in paragraph (a) of the definition of "Retained Debt".

**"Compliance Certificate"** means the certificate evidencing the Mezzanine Notes in the form set out in the Mezzanine Note Issuance Agreement.

**"Closing Date"** means the date on or around 23 February 2017.

**"Code"** means the US Internal Revenue Code of 1986.

**"Common Secured Party"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE INTERCREDITOR AGREEMENT*".

**"Common Security Agent"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE INTERCREDITOR AGREEMENT*".

**"Common Security Agreement"** means:

- (a) a security agreement governed by English law over the assets of Bidco entered into or to be entered into by Bidco in favour of the Common Security Agent in an agreed form; and
- (b) a security agreement governed by English law over the assets of each Target entered into or to be entered into by each Target in favour of the Common Security Agent in agreed form.

**"Common Transaction Security"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE INTERCREDITOR AGREEMENT*".

**"Coupon"** means 8.25 per cent. per annum.

**"Cure Payment"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT – Cure Covenants*".

**"Cure Payment Amount"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT – Cure Covenants*".

**"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 Mezzanine Commitment or amount outstanding under the Mezzanine Note Issuance Agreement.

**"Defaulting Mezzanine Noteholder"** means any Mezzanine Noteholder (other than a Mezzanine Noteholder which is a Sponsor Affiliate):

- (a) which has failed to make its participation in the Mezzanine Commitment available (or has notified the Mezzanine Note Agent or the Mezzanine Issuer (which has notified the Mezzanine Note Agent) that it will not make its participation in the Mezzanine Commitment available) by the Mezzanine Subscription Date of that Mezzanine Commitment in accordance with the provisions in the Mezzanine Note Issuance Agreement regarding payment of the Mezzanine Subscription Price;

- (b) which has otherwise rescinded or repudiated a Finance Document; or
- (c) with respect to which an Insolvency Event has occurred and is continuing,

unless, in the case of paragraphs (a) and (c) above:

- (i) its failure to pay is caused by:
  - (A) administrative or technical error; or
  - (B) a Disruption Event; andpayment is made within three Business Days of its due date; or
- (ii) the Mezzanine Noteholder is disputing in good faith whether it is contractually obliged to make the payment in question.

**"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 Mezzanine Notes (or otherwise in order for the transactions contemplated by the Mezzanine 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 Mezzanine Finance Documents; or
  - (ii) from communicating with other Parties in accordance with the terms of the Mezzanine Finance Documents,

and which (in either such case) is not caused by, and is beyond the control of, the Party whose operations are disrupted.

**"Duty of Care Agreement"** means:

- (a) a duty of care agreement entered into or to be entered into by a Managing Agent, one or more Mezzanine Note Obligors, the Senior Agent, the Mezzanine Note Agent and the Common Security Agent in an agreed form in respect of the Property; or
- (b) a duty of care agreement entered into or to be entered into by an Asset Manager, one or more Mezzanine Note Obligors, the Senior Agent, the Mezzanine Note Agent and the Common Security Agent in an agreed form in respect of the Property.

**"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 Mezzanine Note Obligor conducted on or from the Property owned or used by any Mezzanine Note Obligor.

**"Event of Default"** means any event or circumstance specified as such in the Mezzanine Note Issuance Agreement.

**"Existing Account"** means each account held by a Target as specified in the Mezzanine Note Issuance Agreement.

**"Existing Debt"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE SENIOR FACILITY AGREEMENT*".

**"Existing Facility Liabilities"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE INTERCREDITOR AGREEMENT*".

**"Existing Trustee"** means:

- (a) BNP Paribas Securities Services Trust Company (Jersey) Limited (formerly known as amongst other names, The Royal Bank of Scotland Trust Company (Jersey) Limited) a private limited company incorporated in Jersey with registration number 6043 and having its registered office at Liberte House 19-23 La Motte Street, St Helier, Jersey JE2 4SY; or
- (b) BNP Paribas Securities Services Trust Company Limited (formerly known as, amongst other names, RBSI Trust Company Limited) a private limited company incorporated in Jersey with registration number 14168 and having its registered office at Liberte House, 19-23 La Motte Street, St Helier, Jersey JE2 4SY.

**"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
- (c) any agreement pursuant to the implementation of any treaty, law or regulation referred to in paragraph (a) or (b) above with the US Internal Revenue Service, the US government or any governmental or taxation authority in any other jurisdiction.

**"FATCA Deduction"** means a deduction or withholding from a payment under a Mezzanine Finance Document required by FATCA.

**"Fee Letter"** means any letter or letters dated on or about 15 December 2016 between any of the Mezzanine Note Agent, the Original Mezzanine Noteholders or the Mezzanine Security Agent, a Mezzanine Note Obligor and/or the Mezzanine Issuer setting out any of the fees referred to in the fees provisions of the Mezzanine Note Issuance Agreement and any subsequent letter designated as a Fee Letter by the Mezzanine Note Agent and the Mezzanine Issuer.

**"Finance Document"** means a Senior Finance Document or a Mezzanine Finance Document.

**"Financial Due Diligence Report"** means the report dated on or about 15 December 2016 titled "Project Sherborune: Draft Red Flag Report", prepared by an accountancy firm, addressed to, or capable of being relied upon by, the Mezzanine Finance Parties.

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

- (a) moneys borrowed;
- (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 finance or capital 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.

**"Financial Quarter"** means each three Month period expiring on 31 March, 30 June, 30 September, 31 December in each year.

**"Financial Quarter Date"** means the last day of each Financial Quarter.

**"First Extended Mezzanine Redemption Date"** means the date falling on the fourth anniversary of the date of the issuance of the Mezzanine Notes.

**"First Extension Option"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT – The First Extended Mezzanine Redemption Date*".

**"First Extension Request"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT – The First Extended Mezzanine Redemption Date*".

**"Fitch"** means Fitch Ratings Limited or any successor to its ratings business.

**"GAAP"** means generally accepted accounting principles in the United Kingdom or IFRS to the extent applicable to the relevant financial statements.

**"General Account"** means an account designated as such in the Mezzanine Note Issuance Agreement and includes any replacement of that Account.

**"Headlease"** means the Property Headlease or the Property Underlease.

**"Headlease Propco"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE PROPERTY*".

**"Hedging Agreement"** means any master agreement, confirmation, transaction, schedule or other agreement in agreed form entered into or to be entered into by the Senior Borrower for the purpose of hedging interest payable under the Senior Facility Agreement.

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

**"Holding Entity Review Event"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT – Change of control*".

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

**"Initial Account Bank"** means The Royal Bank of Scotland International Limited in Jersey.

**"Initial Asset Manager"** means Brookfield Developments Europe Limited, a limited liability company registered in England and Wales (registered number 04852612) whose registered office is at 99 Bishopsgate, London EC2M 3XD.

**"Initial Business Plan"** means the Business Plan prepared in accordance with the Mezzanine Note Issuance Agreement and delivered by the Mezzanine Issuer to the Mezzanine Note Agent on or prior to the Mezzanine Subscription Date pursuant to the conditions precedent under the Mezzanine Note Issuance Agreement.

**"Initial Managing Agent"** means CBRE Limited, a limited liability company registered in England and Wales (registered number 3536032) having its registered office at St Martin's Court, 10 Paternoster Road, London EC4M 7HP.

**"Initial Mezzanine Redemption Date"** means the date falling three years after the date of the issuance of the Mezzanine Notes.

**"Insolvency Event"** in relation to an entity means that the entity:

- (a) is dissolved (other than pursuant to a consolidation, amalgamation or merger);
- (b) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;
- (c) makes a general assignment, arrangement or composition with or for the benefit of its creditors;
- (d) institutes or has instituted against it, by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organisation or the jurisdiction of its head or home office, a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation by it or such regulator, supervisor or similar official;
- (e) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition is instituted or presented by a person or entity not described in paragraph (d) above and:
- (d) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation; or
- (e) is not dismissed, discharged, stayed, recalled or restrained in each case within 30 days of the institution or presentation thereof;

- (f) has exercised in respect of it one or more of the stabilisation powers pursuant to Part 1 of the Banking Act 2009 and/or has instituted against it a bank insolvency proceeding pursuant to Part 2 of the Banking Act 2009 or a bank administration proceeding pursuant to Part 3 of the Banking Act 2009;
- (g) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
- (h) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets (other than, for so long as it is required by law or regulation not to be publicly disclosed, any such appointment which is to be made, or is made, by a person or entity described in paragraph (d) above);
- (i) has a Secured Party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such Secured Party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter;
- (j) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in paragraphs (a) to (g) above; or
- (k) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

**"Insurance Policy"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT – Property Undertakings*".

**"Insurances"** means any contract of insurance required under the Mezzanine Note Issuance Agreement.

**"Intercreditor Agreement"** means the intercreditor agreement dated 15 December 2016 between, amongst others, the Mezzanine Issuer, the Mezzanine Security Agent, the Mezzanine Note Agent, and the Common Security Agent.

**"Interest Reserve Account"** means an account designated as such in the Mezzanine Note Issuance Agreement and includes any replacement of that Account.

**"Intra-Group Liabilities"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE INTERCREDITOR AGREEMENT*".

**"Irrecoverable Service Charge Expenses"** means any amount (in each case including any VAT paid in respect thereof):

- (a) in respect of any management, maintenance, insurance, repair or similar expense in respect of the provision of services relating to the Property to the extent that such amount is not recoverable from a tenant; or
- (b) which the Mezzanine Note Obligors are obliged to discharge in respect of any unlet part of the Property or in respect of any shortfall in Tenant Contributions,

other than, in each case, (i) any amount in respect of asset management or any corporation or other tax on income or profits or (ii) any expense that is recoverable under any Insurances.

**"Issuer"** means Cleveland Row Finance No.1 Designated Activity Company.

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

**"Jersey"** means the Bailiwick of Jersey.

**"Key Transaction Document"** means:

- (a) a Finance Document;
- (b) any Hedging Agreement;
- (c) a Lease Document;
- (d) a Headlease;
- (e) any Asset Management Agreement;
- (f) the Warranty and Indemnity Insurance;
- (g) the Unit Trust Instrument;
- (h) the Nominee Declarations of Trust; or
- (g) any other document designated as such by the Senior Agent and Bidco (in accordance with the Senior Facility Agreement) or the Note Agent and the Mezzanine Issuer.

**"Legal Due Diligence Report"** means:

- (a) the Jersey due diligence report in respect of the Targets dated on or about 15 December 2016 prepared by a law firm and capable of being relied upon by, the Mezzanine Finance Parties; and
- (b) the English legal due diligence report in respect of the Propcos dated on or about 15 December 2016 prepared by a law firm and capable of being relied upon by the Mezzanine Finance Parties.

**"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 United Kingdom 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 Mezzanine Note Agent as a condition precedent under the Mezzanine Note Issuance Agreement on or before the Mezzanine Subscription Date.

**"Liabilities"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE INTERCREDITOR AGREEMENT*".

**"Limitation Acts"** means the Limitation Act 1980 and the Foreign Limitation Periods Act 1984.

**"Majority Mezzanine Noteholders"** means a Mezzanine Noteholder or Mezzanine Noteholders whose Mezzanine Commitments aggregate more than 66⅔% of the Total Mezzanine Commitments or, if the Total Mezzanine Commitments have been reduced to zero, aggregated more than 66⅔% of the Total Mezzanine Commitments immediately prior to the reduction.

**"Majority Senior Lenders"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE SENIOR FACILITY AGREEMENT*".

**"Managing Agent"** means the Initial Managing Agent or any other managing agent appointed by Mezzanine Note Obligor in respect of the Property in accordance with the provisions set out in the Mezzanine Note Issuance Agreement.

**"Managing Agent Agreement"** means:

- (a) the managing agent agreement dated on or about the Mezzanine Subscription Date between the Initial Managing Agent and the Mezzanine Note Obligors party to it and delivered to the Mezzanine Note Agent pursuant to the provision setting out initial conditions precedent set out in the Mezzanine Note Issuance Agreement; or
- (b) any other managing agent agreement entered into in accordance with the Mezzanine Note Issuance Agreement.

**"Margin Regulations"** means Regulations U and X issued by the Board of Governors of the United States Federal Reserve System.

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

- (a) the business, or financial condition of the Mezzanine Note Obligors (taken as a whole); or
- (b) the ability of the Mezzanine Note Obligors (taken as a whole) to perform their payment or other material obligations under the Mezzanine Finance Documents; or
- (c) subject to the Legal Reservations, the validity or enforceability of, or the effectiveness or ranking of any Security granted or purported to be granted pursuant to any of, the Mezzanine Finance Documents; or
- (d) subject to the Legal Reservations, the rights or remedies of any Mezzanine Finance Party under any of the Mezzanine Finance Documents.

**"Material Environmental Claim"** means an Environmental Claim which, if adversely determined, would be likely to result in a liability in excess of £100,000.

**"Mezzanine Account"** means each of the Interest Reserve Account, the Mezzanine Cure Account, the Mezzanine Finance Account and the Mezzanine General Account.

**"Mezzanine Account Bank"** means:

- (a) the Initial Account Bank; or
- (b) any other bank approved by the Mezzanine Note Agent in accordance with the Mezzanine Account Bank provisions of the Mezzanine Note Issuance Agreement.

**"Mezzanine Commitment"** means:

- (a) in relation to each Original Mezzanine Noteholder as follows:
  - (i) Cheyne Real Estate Debt Fund - £37,710,000
  - (ii) Cheyne Real Estate Credit Holdings Fund III - £48,500,000
  - (iii) Real Estate Credit Investments Limited - £15,410,000,

and the amount of any other Mezzanine Commitment transferred to it under the Mezzanine Note Issuance Agreement; and

- (b) in relation to any other Mezzanine Noteholder, the amount of any Mezzanine Commitment transferred to it under the Mezzanine Note Issuance Agreement,

to the extent not cancelled, reduced or transferred by it under the Mezzanine Note Issuance Agreement.

**"Mezzanine Cure Account"** means an account designated as such in the Mezzanine Note Issuance Agreement and includes any replacement of that Account.

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

**"Mezzanine Extension Request"** means the notice delivered by the Mezzanine Issuer to the Mezzanine Note Agent requesting an extension of the Mezzanine Note Redemption Date to the First Extended Mezzanine Redemption Date or the Second Extended Mezzanine Redemption Date.

**"Mezzanine Facility"** means the term loan facility made available under the Mezzanine Note Issuance Agreement.

**"Mezzanine Finance Account"** means an account designated as in the Mezzanine Note Issuance Agreement and includes any replacement of that Account.

**"Mezzanine Finance Document"** means the Mezzanine Note Issuance Agreement, any Mezzanine Security Document, any Target Accession Letter, any Target Intercreditor Accession Deed, any Fee Letter, any Mezzanine Subscription Request, any Mezzanine Extension Request or any other document designated as such by the Mezzanine Note Agent and the Mezzanine Issuer.

**"Mezzanine Finance Party"** means the Common Security Agent, the Mezzanine Note Agent, the Mezzanine Security Agent or a Mezzanine Noteholder.

**"Mezzanine Funds Flow Statement"** means the funds flow statement delivered by the Mezzanine Issuer or a Mezzanine Note Obligor as a condition precedent in accordance with the initial conditions precedent provisions of the Mezzanine Note Issuance Agreement.

**"Mezzanine General Account"** means an account designated as such in the Mezzanine Note Issuance Agreement and includes any replacement of that Account.

**"Mezzanine Group"** means the Mezzanine Issuer and its respective Subsidiaries for the time being.

**"Mezzanine Holdco"** means.

- (a) BSREP CityPoint Investments Limited, a private limited company incorporated in Jersey with registration number 122627 and having its registered office at 47 Esplanade, St Helier, Jersey JE1 0BD; and
- (b) any other person that becomes a Mezzanine Holdco in accordance with the terms of the Intercreditor Agreement (as amended from time to time in accordance with the Intercreditor Agreement).

**"Mezzanine Holdco Intercompany Loan"** means any intercompany loan agreement between the Mezzanine Issuer as borrower and Mezzanine Holdco as lender.

**"Mezzanine Holdco Jersey Share and Receivables Security Interest Agreement"** means a Jersey law governed security interest agreement between the Mezzanine Holdco as grantor and the Common Security Agent in relation to all the shares held by it in the Mezzanine Issuer and all Subordinated Debt owed to it by the Mezzanine Issuer.

**"Mezzanine Holdco Liabilities"** means all liabilities owed by the Mezzanine Issuer to Mezzanine Holdco under any Mezzanine Holdco Intercompany Loan or otherwise.

**"Mezzanine Interest Payment Date"** means 20 January, 20 April, 20 July and 20 October in each year and the Mezzanine Note Redemption Date, with the first Mezzanine Interest Payment Date being 20 April 2017. If, however, any such day is not a Business Day, the Mezzanine 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).

**"Mezzanine Issuer"** means BSREP CityPoint Mezz Limited.

**"Mezzanine Issuer Intercompany Loan"** means a loan advanced to Bidco by the Mezzanine Issuer under a Mezzanine Issuer Intercompany Loan Agreement or otherwise.

**"Mezzanine Issuer Intercompany Loan Agreement"** means any intercompany loan agreement between Bidco as borrower and the Mezzanine Issuer as lender.

**"Mezzanine Issuer Jersey Bank Account Security Interest Agreement"** means a Jersey law governed security interest agreement between the Mezzanine Issuer as grantor and the Mezzanine Security Agent in relation to certain Accounts held by it and located in Jersey.

**"Mezzanine Issuer Jersey Share and Receivables Security Interest Agreement"** means a Jersey law governed security interest agreement between the Mezzanine Issuer as grantor and the Mezzanine Security Agent in relation to: (a) shares in Bidco; and (b) contract rights in or pursuant to certain loan agreements (as Subordinated Debt).

**"Mezzanine Issuer Liabilities"** means all Liabilities owed by Bidco to the Mezzanine Issuer under any Mezzanine Issuer Intercompany Loan.

**"Mezzanine Lease Document"** means:

- (a) an Agreement for Lease;
- (b) an Occupational Lease; or
- (c) any other document designated as such by the Mezzanine Note Agent and the Mezzanine Issuer.

**"Mezzanine Note Agent"** means Mount Street Mortgage Servicing Limited.

**"Mezzanine Note Debt Yield"** means, on any date:

- (a) the aggregate of:
  - (i) amounts then standing to the credit of the Mezzanine Issuer's Interest Reserve Account; and
  - (ii) the Mezzanine Note Projected Net Rental Income for the Calculation Period starting on the Financial Quarter Date falling immediately prior to that date;

as a percentage of:

- (b) the aggregate of:
  - (i) the Senior Loan then outstanding (less an amount equal to the aggregate of: (1) the amount then standing to the credit of the Senior Borrower's Cure Account, disregarding any amount to be transferred to the Senior Borrower's General Account on that date; and (2) any amount then standing to the credit of the Senior Borrower's Deposit Account, to the extent that such amount then standing to the credit of the Senior Borrower's Deposit Account is obliged under the Senior Facility Agreement to be applied in mandatory prepayment of the Senior Loan); and
  - (ii) the aggregate amounts then outstanding under the Mezzanine Notes in accordance with the Mezzanine Note Issuance Agreement (less an amount equal to the amount then standing to the



credit of the Mezzanine Cure Account, disregarding any amount to be transferred to the Mezzanine General Account on that date).

**"Mezzanine Note Debt Yield Covenant"** has the meaning given to that term in the section entitled *"DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT – The Mezzanine Note Debt Yield Covenant"*.

**"Mezzanine Note Default"** means a Mezzanine Note Event of Default or any event or circumstance specified in the Events of Default provisions of the Mezzanine Note Issuance Agreement which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Mezzanine Finance Documents or any combination of any of the foregoing) be a Mezzanine Note Event of Default.

**"Mezzanine Note Event of Default"** means any event or circumstance specified as an "Event of Default" in the Mezzanine Note Issuance Agreement.

**"Mezzanine Note Facility"** means the term loan facility made available under the Mezzanine Note Issuance Agreement.

**"Mezzanine Note Interest Period"** means, in relation to the Mezzanine Notes, each period determined in accordance with the Mezzanine Note Interest Period provisions of the Mezzanine Note Issuance Agreement and, in relation to an Unpaid Sum, each period determined in accordance with the default interest of the Mezzanine Issuance Note Agreement.

**"Mezzanine Note Issuance Agreement"** means the mezzanine note issuance agreement dated 15 December 2016 between, among others, the Mezzanine Issuer and the Mezzanine Note Agent.

**"Mezzanine Note Loan to Value"** means, at any time, the:

- (a) aggregate of:
  - (i) the Senior Loan then outstanding (less (i) the amount then standing to the credit of the Senior Borrower's Cure Account (disregarding any amount to be transferred to the Senior Borrower's General Account on that date) and (ii) any amount then standing to the credit of the Senior Borrower's Deposit Account, to the extent that such amount then standing to the credit of the Senior Borrower's Deposit Account is obliged under the Senior Facility Agreement to be applied in mandatory prepayment of the Senior Loan) (the **"Senior Loan Outstandings"**); and
  - (ii) the aggregate amounts then outstanding under the Mezzanine Notes in accordance with the Mezzanine Note Issuance Agreement (less the amount then standing to the credit of the Mezzanine Cure Account) (the **"Mezz Notes Outstandings"**);

as a percentage of

- (b) the aggregate market value of the Property (determined in accordance with the most recent Valuation of the Property at that time).

**"Mezzanine Note Loan to Value Covenant"** has the meaning given to that term in the section entitled *"DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT – Mezzanine Note Loan to Value Covenant"*.

**"Mezzanine Note Obligor"** means the Mezzanine Obligors or the Mezzanine Issuer or, following their accession to the terms of the Mezzanine Note Issuance Agreement:

- (a) a Target; or
- (b) Castle 46.

**"Mezzanine Note Obligor Review Event"** has the meaning given to that term in the section entitled *"DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT – Change of control"*.

**"Mezzanine Note Permitted Payment"** means:

- (a) provided no Default is continuing or would result from such a payment, any payment in respect of Subordinated Debt to the Mezzanine Holdco out of monies standing to the credit of the Mezzanine General Account that are not required to be applied for a specific purpose under the terms of the Mezzanine Note Issuance Agreement; or
- (b) any Permitted Payment (as defined in the section titled *"DESCRIPTION OF THE SENIOR FACILITY AGREEMENT"*).

**"Mezzanine Note Projected Net Rental Income"** means, on any date, the passing rental for the Calculation Period starting on that date. For the purposes of this definition:

- (a) **"passing rental"** means, in respect of any Calculation Period, the passing rental income that will be received on a regular periodical basis by the Mezzanine Note Obligors to the Mezzanine Lease Documents during that Calculation Period calculated by the Mezzanine Issuer (acting reasonably); and
- (b) in calculating passing rental:
  - (i) break clauses exercisable by the relevant tenant during that period in respect of any Occupational Lease will be treated as having been exercised on the earliest date on which the relevant tenant can exercise such break clause unless evidence is provided to the satisfaction of the Mezzanine Note Agent (acting reasonably) that such break clause will not be exercised;
  - (ii) rental income will be ignored:
    - (A) if payable by a tenant that is Mezzanine Note Obligor or related to a Mezzanine Note Obligor or the Sponsor;
    - (B) if not payable under an unconditional and binding Mezzanine Lease Document; and
    - (C) if payable under a Mezzanine Lease Document, the tenant in respect of which is the subject of any of the events referred to in the provisions covering insolvency and insolvency proceedings of the Mezzanine Note Issuance Agreement unless any guarantor of that tenant's obligations under that Mezzanine Lease Document is not the subject of any of the events referred to in covering insolvency and insolvency proceedings of the Mezzanine Note Issuance Agreement and the Mezzanine Note Agent has been provided with evidence satisfactory to it (acting reasonably) that the obligation of that tenant to pay rent will be performed as it falls due under that Mezzanine Lease Document;
  - (iii) potential rental income increases as a result of rent reviews will be ignored until unconditionally ascertained other than where there are fixed rental increases pursuant to the relevant Mezzanine Lease Document or pursuant to notified indexation;
  - (iv) rental income payable by a tenant that is more than 90 days in arrears on any of its rental payments will be ignored;
  - (v) rental income for any Calculation Period will be reduced by the amount of any deduction or withholding for or on account of Tax from that rental income;
  - (vi) any Surrender Premiums (other than Surrender Permitted Amounts) contracted to be received during the Calculation Period will be ignored; and
  - (vii) rental income for any Calculation Period will be reduced by the amounts (together with any related irrecoverable VAT):

- (A) of ground rent and other sums payable under Headleases, rates and insurance premia;
- (B) in respect of taxes, costs and expenses incurred in complying with applicable laws and regulations relating to the Property;
- (C) any service or other charge in respect of an Note Issuance Agreement costs in connection with any repair, maintenance or similar obligation or in provided services to a tenant of, or with respect to, the Property which is irrecoverable from any tenant of that Property; and
- (D) in respect of the provision of services relating to the Property other than where such amounts relate to fees payable to the Asset Manager, Sponsor or Sponsor Affiliate,

to the extent that any of those items are not funded by the tenants, by way of Tenant Contributions or otherwise, under the Mezzanine Lease Documents during that Calculation Period.

**"Mezzanine Note Redemption Date"** means, subject to the first extension option and second extension option provisions of the Mezzanine Note Issuance Agreement, the Initial Mezzanine Redemption Date.

**"Mezzanine Note Repeating Representations"** means the repeating representations to be made by the Mezzanine Issuer and each of the Targets under the Mezzanine Note Issuance Agreement relating to status, governing law and enforcement, no default, money laundering laws, subject to the exclusions set out in the Mezzanine Note Issuance Agreement.

**"Mezzanine Noteholder"** means a holder of the Mezzanine Notes, from time to time, in accordance with and under the Mezzanine Note Issuance Agreement and, on the Closing Date, means the Issuer.

**"Mezzanine Notes"** means notes issued by the Mezzanine Issuer to the Mezzanine Noteholders on the Mezzanine Subscription Date pursuant to the Mezzanine Note Issuance Agreement.

**"Mezzanine Obligor"** means BSREP CityPoint Bidco Limited.

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

**"Mezzanine Secured Party"** means each Mezzanine Finance Party from time to time party to the Mezzanine Note Issuance Agreement and any Mezzanine Receiver or Mezzanine Delegate.

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

**"Mezzanine Security Agent"** means Mount Street Mortgage Servicing Limited.

**"Mezzanine Security Document"** means:

- (a) the Mezzanine Holdco Jersey Share and Receivables Security Interest Agreement;
- (b) the Mezzanine Issuer Jersey Share and Receivables Security Interest Agreement; or
- (c) the Mezzanine Issuer Jersey Bank Account Security Interest Agreement.

**"Mezzanine Subscription"** means a subscription for the Mezzanine Notes by Mezzanine Noteholders in accordance with the Mezzanine Note Issuance Agreement.

**"Mezzanine Subscription Date"** means the 15 December 2016.

**"Mezzanine Subscription Price"** means a subscription for the Mezzanine Notes in accordance with the Mezzanine Note Issuance Agreement.

**"Mezzanine Subscription Request"** means a notice substantially in the form set out in the Mezzanine Note Issuance Agreement.

**"Minimum Required Rating"** means that:

- (a) in relation to a Mezzanine Account Bank (provided that for the purposes of determining the requisite rating of a Mezzanine Account Bank, the ratings held by a Holding Company of such Mezzanine Account Bank may be used), that bank or financial institution has:
  - (i) in the case of the Initial Account Bank, at least two of the following:
    - (A) a minimum long term rating of BBB+ and minimum short term rating of F2 by Fitch;
    - (B) a minimum long term rating of BBB+ and minimum short term rating of A-2 by S&P; and
    - (C) a minimum long term rating of A3 and a minimum short term rating of P-2 by Moody's; or
  - (ii) in any other case, at least two of the following:
    - (A) a minimum long term rating of A and minimum short term rating of F1 by Fitch; or
    - (B) a minimum long term rating of A and minimum short term rating of A-1 by S&P; and
    - (C) a minimum long term rating of A2 and minimum short term rating of P-1 by Moody's; or
- (b) in relation to an insurance company or underwriter, that insurance company or underwriter has an insurance financial strength rating of the following:
  - (A) A (or better) by Fitch; and
  - (B) A (or better) by S&P.

**"Minority Unitholder"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE SENIOR FACILITY AGREEMENT*".

**"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 a Mezzanine Note Interest Period begins on the last Business Day of a calendar month, that Mezzanine Note Interest Period shall end on the last Business Day in the calendar month in which that Mezzanine Note Interest Period is to end.

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

**"Moody's"** means Moody's Investors Services Limited and any successor to its credit rating business.

**"Net Rental Income"** means Rental Income less:

- (a) Tenant Contributions; and

(b) Irrecoverable Service Charge Expenses.

**"Nominee Declarations of Trust"** means:

- (a) the property trust deed dated 20 March 2000 made between (1) Wates City Point Limited (2) Violetdew Limited (now known as Wates City Point First Limited) and Chalklight Limited (now known as Wates City Point Second Limited) and (3) Depfa Deutsche Pfandbriefbank AG;
- (b) the declaration of trust dated 24 November 2000 made between (1) Dreamclose Limited and (2) Wates City Point Limited; and
- (c) the declaration of trust dated 24 November 2000 made between (1) Wavegrange Limited and (2) Wates City Point Limited.

**"Note Trustee"** means U.S. Bank Trustees Limited.

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

**"Original Financial Statements"** means in respect of each Target other than the Minority Unitholder, its financial statements for its financial year ended 31 December 2015.

**"Original Jurisdiction"** means, in relation to any Mezzanine Note Obligor, the jurisdiction under whose laws that Mezzanine Note Obligor is incorporated or formed as at the date of the Mezzanine Note Issuance Agreement.

**"Original Mezzanine Noteholder"** means Cheyne Real Estate Debt Fund, Cheyne Real Estate Credit Holdings Fund III and Real Estate Credit Investments Limited.

**"Party"** means a party to the Mezzanine Note Issuance Agreement.

**"Perfection Requirements"** means any and all registrations, filings, notices and other actions and steps required to be made in any jurisdiction in order to perfect the Security created by the Security Documents or in order to achieve the relevant priority for such Security.

**"Permitted Contracts"** means:

- (a) any contract or agreement entered into by an Mezzanine Note Obligor with external professional advisors for the provision of professional tax, legal, valuation, accounting or audit advice reasonably required in connection with its day to day operations;
- (b) any contract or agreement on arms' length terms with unrelated third parties entered into by a Mezzanine Note Obligor required to implement the "Asset Management and Leasing Strategy" and "CapEx Plan" as set out in the Business Plan;
- (c) any contract or agreement on arms' length terms with unrelated third parties required for the day to day management, operation and ownership of the Property in the ordinary course of a Mezzanine Note Obligor's business which has been conducted in accordance with the Mezzanine Note Issuance Agreement provided that either:
  - (i) the aggregate liability of the Mezzanine Note Obligors pursuant to all such agreements is not greater than £1,000,000 per annum; or,
  - (ii) if the aggregate liability of the Mezzanine Note Obligors pursuant to all such agreements is greater than £1,000,000 per annum, any such liability in excess of £1,000,000 per annum is either:
    - (A) due in relation to contracts which (x) can be terminated by the relevant Mezzanine Note Obligor on two Months' notice (or less, as the case may be) or (y) with a

liability for a termination payment of two Months or; thereunder (as the case may be ,or less)of payments

- (B) (1) due in relation to contracts (x) which cannot be terminated by the relevant Mezzanine Note Obligor on two Months' notice or less or (y) with a liability for a termination payment of more than two Months of payments thereunder; and
- (2) the total aggregate liability of the Mezzanine Note Obligors under all such contracts which is in excess of £1,000,000 per annum must be entirely funded by way of amounts then standing to the credit of the Senior Borrower's General Account which have been allocated by the Mezzanine Note Obligors for that purpose;
- (d) any contract or agreement (or other document) with an appropriate authority or utility company relating to the passage or transmission of gas, water, electricity, foul or surface water drainage or any other services; or
- (e) any other contract or agreement entered into by a Mezzanine Note Obligor with the prior written consent of the Mezzanine Note Agent or otherwise expressly permitted to be entered into under a Finance Document.

**"Permitted Plaza Development"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT – Property Undertakings*".

**"Propco"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE SENIOR FACILITY AGREEMENT*".

**"Property"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE PROPERTY*".

**"Property Headlease"** means the leasehold land and buildings known as CityPoint, One Ropemaker Street, London EC2V 0HR registered at the Land Registry with title number(s) NGL794089;

**"Property Report"** means, in respect of the Property, any certificate of or report on title supplied to the Mezzanine Note Agent as a condition precedent under the Mezzanine Note Issuance Agreement on or before the Mezzanine Subscription Date.

**"Property Underlease"** means the leasehold land and buildings known as CityPoint, One Ropemaker Street, London EC2V 0HR registered at the Land Registry with title number(s) NGL794088;

**"Protected Party"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT – Tax gross up and indemnities*".

**"Quarterly Property Report"** means a quarterly management report in respect of the Property and the business of each Mezzanine Note Obligor in the form set out in the Mezzanine Note Issuance Agreement.

**"Relevant Jurisdiction"** means, in relation to an Mezzanine Note 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 it by it.

**"Rental Income"** means the aggregate of all amounts paid or payable to or for the account of any Mezzanine Note Obligor in connection with the letting, licence or grant of other rights of use or occupation of any part of the Property, including each of the following amounts:

- (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 (excluding any sum which is payable to that tenant);
- (c) a sum equal to any apportionment of rent allowed in favour of any Mezzanine Note 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;
- (f) any sum paid or payable, or the value of any consideration given, for the grant, surrender, amendment, supplement, waiver, extension or release of any Mezzanine Lease Document;
- (g) any sum paid or payable in respect of a breach of covenant or dilapidations under any Mezzanine Lease Document;
- (h) any sum paid or payable by or distribution received or receivable from any guarantor of any occupational tenant under any Mezzanine 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 Mezzanine Note Obligor.

**"Report"** means:

- (a) the Property Report;
- (b) the Tax Due Diligence Report;
- (c) the Tax Structuring Memorandum;
- (d) the Financial Due Diligence Report;
- (e) each Legal Due Diligence Report; or
- (f) a Technical Due Diligence Report.

**"Restricted Party"** means a person:

- (a) whose name is listed on, or is owned or controlled by a person whose name is listed on, or acting on behalf of a person whose name is listed on, any Sanctions List;
- (b) that is incorporated under the laws of, or owned or controlled by, or acting on behalf of, a person incorporated under the laws of, a country or territory that is the target of country-wide or territory-wide Sanctions (including, without limitation, Crimea, Cuba, Iran, North Korea, Sudan and Syria); or
- (c) that is otherwise the target of any Sanction or operating in any sector that is the target of any Sanction.

**"Retained Debt"** means the financial indebtedness:

- (a) owing by the Senior Borrower to Castle 46 under the terms of a credit agreement dated 10 May 2007 between, among others, the Senior Borrower and Castle 46 as lender (the **"Castle 46 Retained Debt"**);
- (b) owing by the Senior Borrower to Bidco under the terms of a loan agreement dated 22 December 2010 and an additional intercompany balance, as novated to Bidco from CityPoint Co-Investment LLC pursuant to a deed of novation dated on or about the Mezzanine Subscription Date in accordance with the terms of the Acquisition Agreement and as amended pursuant to an amendment letter dated on or about the Mezzanine Subscription Date; and
- (c) owing by the Minority Unitholder to Bidco under the terms of a loan agreement dated 10 May 2007, as novated to Bidco from MetLife Properties Ventures LLC pursuant to a deed of novation dated on or about the Mezzanine Subscription Date in accordance with the terms of the Acquisition Agreement, and as amended pursuant to an amendment letter dated on or about the Mezzanine Subscription Date.

**"S&P"** means Standard & Poor's Rating Services or any successor to its rating business.

**"Sanctions"** means the economic, financial or other sanctions laws, regulations or embargoes administered and enforced from time to time by any Sanctions Authority.

**"Sanctions Authority"** means:

- (a) the United Nations Security Council;
- (b) the European Union; or
- (c) the governmental institutions and agencies of the United States of America, including, without limitation, the Office of Foreign Assets Control of the United States Department of Treasury ("**OFAC**") or the governmental institutions and agencies of the United Kingdom, including, without limitation, Her Majesty's Treasury ("**HMT**").

**"Sanctions List"** means:

- (a) the "Specially Designated Nationals List" and the "Consolidated Non-SDN List" each administered and enforced by OFAC;
- (b) the "Financial Sanctions: Consolidated List of Targets" administered and enforced by HMT; or
- (c) any other list maintained or public designation made by any Sanctions Authority in respect of the targets or scope of the Sanctions that are administered and enforced by that Sanctions Authority,

in each case as amended, supplemented or substituted from time to time.

**"Second Extended Mezzanine Redemption Date"** means the date falling on the fifth anniversary of the issuance of the Mezzanine Notes.

**"Second Extension Option"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT – The Second Extended Mezzanine Redemption Date*".

**"Second Extension Request"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT – The Second Extended Mezzanine Redemption Date*".

**"Second Mezzanine Interest Payment Date"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT – Mezzanine Cure Account*".

**"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 Mezzanine Note Obligor to any Mezzanine Secured Party under each Mezzanine Finance Document.



**"Secured Party"** means a Common Secured Party and a Mezzanine Secured Party.

**"Securitisation"** means any securitisation or transaction of broadly equivalent economic effect relating to, or using as a reference, the whole or part of the Mezzanine Commitment (whether alone or in conjunction with other loans) through the issue of notes on the capital markets.

**"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 Asset"** means all of the assets of a Mezzanine Note Obligor which from time to time are, or are expressed to be, the subject of the Transaction Security.

**"Security Document"** means:

- (a) a Mezzanine Security Document;
- (b) a Common Security Agreement;
- (c) any other document evidencing or creating Security over any asset to secure any obligation of any Mezzanine Note Obligor to a Secured Party under the Finance Documents; or
- (d) any other document designated as such by the Mezzanine Security Agent and the Mezzanine Issuer.

**"Senior Agent"** means the agent under the Senior Facility Agreement, being Mount Street Mortgage Servicing Limited as at the date of the Senior Facility Agreement.

**"Senior Borrower"** means CityPoint Holdings I Limited a limited liability company registered in Jersey (company number 97040), having its registered office at 47 Esplanade, St Helier, Jersey, JE1 0BD.

**"Senior Borrower's Capex Reserve Account"** has the meaning given to "Capex Reserve Account" in the Senior Facility Agreement.

**"Senior Borrower's Cure Account"** has the meaning given to the term "Cure Account" in the Senior Facility Agreement.

**"Senior Borrower's Deposit Account"** has the meaning given to the term "Deposit Account" in the Senior Facility Agreement.

**"Senior Borrower's General Account"** has the meaning given to the term "General Account" in the Senior Facility Agreement.

**"Senior Borrower's Rent Account"** has the meaning given to the term "Rent Account" in the Senior Facility Agreement.

**"Senior Creditor"** has the meaning given to that term in the paragraph titled "Intercreditor Agreement".

**"Senior Cure"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT – Cure Covenants*".

**"Senior Discharge Date"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE INTERCREDITOR AGREEMENT*".

**"Senior Facility Agreement"** means the senior facility agreement dated 15 December 2016 between, among others, Bidco, Mount Street Mortgage Servicing Limited as agent and security agent pursuant to which the Lenders (as defined therein) make available to the Senior Borrower a £334,380,000 term loan facility on the terms stated therein.

**"Senior Finance Document"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE SENIOR FACILITY AGREEMENT*".

**"Senior Loan"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE SENIOR FACILITY AGREEMENT*".

**"Senior Loan Debt Yield"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE SENIOR FACILITY AGREEMENT*".

**"Senior Loan Default"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE SENIOR FACILITY AGREEMENT*".

**"Senior Loan Facility"** means the term loan facility made available under the Senior Facility Agreement.

**"Senior Loan First Extended Termination Date"** means the date falling on the first anniversary of the Senior Loan Utilisation Date.

**"Senior Loan Interest Payment Date"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE SENIOR FACILITY AGREEMENT*".

**"Senior Loan Obligor"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE SENIOR FACILITY AGREEMENT*".

**"Senior Loan Termination Date"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE SENIOR FACILITY AGREEMENT*".

**"Senior Loan to Value"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE SENIOR FACILITY AGREEMENT*".

**"Senior Loan Utilisation Date"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE SENIOR FACILITY AGREEMENT*".

**"Senior Second Extended Termination Date"** means the date falling on the fifth anniversary of the Senior Loan Utilisation Date.

**"Simmons Re-gear Agreement"** means the re-gear agreement dated 23 March 2016 entered into between Sands Service Company (No.2), Wavegrange (acting by the Receivers (as defined therein)), the Receivers (as defined therein) and Simmons & Simmons LLP, relating to various arrangements in respect of leases of levels 0 to 8 of the Property.

**"Sponsor"** means BSREP International II(A) Holdings L.P. (acting by its general partner, Sponsor GP), an exempted limited partnership registered under the laws of the Cayman Islands whose registered office is at PO Box 309, Uglan House, Grand Cayman, KY1-1104, Cayman Islands.

**"Sponsor Affiliate"** means the Sponsor each of its Affiliates, any trust of which the Sponsor or any of its Affiliates is a trustee, any partnership of which the Sponsor 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 the Sponsor or any of its Affiliates.

**"Sponsor GP"** means as at the date of the Mezzanine Note Issuance Agreement, BSREP GP Bermuda Limited, an exempted company incorporated under the laws of Bermuda (registered number 46626) or any other general partner or partners of the Sponsor from time to time.

**"Subordinated Debt"** means:

- (a) in relation to Intra-Group Liabilities or the Existing Facility Liabilities (including, for the avoidance of doubt, the Retained Debt), that:
  - (i) such liabilities are subordinated to the Secured Liabilities pursuant to the terms of the Intercreditor Agreement; and
  - (ii) the creditor in respect of such Liabilities shall (and to the extent such rights are not already automatically subject to the Common Transaction Security) grant security over its rights in

respect of such Liabilities in favour of the Common Security Agent on substantially the same terms as the Common Security Documents or otherwise on terms acceptable to the Common Security Agent; and

- (b) in relation to any Mezzanine Holdco Liabilities or the Mezzanine Issuer Liabilities that:
  - (i) such liabilities are subordinated to the Mezzanine Issuer's liabilities under the Mezzanine Finance Documents pursuant to the terms of the Subordination Agreement and the Intercreditor Agreement, respectively; and
  - (ii) the creditor in respect of such liabilities shall (to the extent such rights are not already automatically subject to the Transaction Security) grant security over its right in respect of such in favour of the Mezzanine Security Agent on substantially the same terms as the Security Documents or otherwise on terms acceptable to the Mezzanine Security Agent.

**"Subordination Agreement"** means a subordination agreement dated on or about the Mezzanine Subscription Date and made between the Mezzanine Issuer, the Mezzanine Holdco and the Mezzanine Security Agent.

**"Subsidiary"** means:

- (a) an entity of which a person has direct or indirect control or owns directly or indirectly more than 50% 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; or
- (b) an entity within the meaning of Articles 2 and 2A of the Companies (Jersey) Law 1991,

provided that, for the avoidance of doubt, the Unit Trust shall be deemed a Subsidiary of the Senior Borrower for all purposes under the Mezzanine Note Issuance Agreement.

**"Surrender Permitted Amount"** means, on each Mezzanine Interest Payment Date following the surrender of an Occupational Lease, an amount equal to the amount of the Surrender Premium divided by the number of Mezzanine Interest Payment Dates falling in the period from the date of receipt of the Surrender Premium in respect of that surrender until the expiry date (assuming such Occupational Lease was not surrendered or the break option had not been exercised) in respect of that Occupational Lease.

**"Surrender Premium"** means in respect of a surrender of an Occupational Lease, the amount of any surrender premium payment (excluding, for the avoidance of doubt, any payment for dilapidations) received by a Mezzanine Note Obligor.

**"Target"** means:

- (a) the Unit Trust;
- (b) a Unitholder; or
- (c) a Propco.

**"Target Accession Letter"** means a document substantially in the form set out in the Mezzanine Note Issuance Agreement, with any amendments that the Mezzanine Issuer, and the Mezzanine Note Agent may agree.

**"Target Intercreditor Accession Deed"** has the meaning given to that term in the section entitled *"DESCRIPTION OF THE INTERCREDITOR AGREEMENT"*.

**"Tax"** means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

**"Tax Deduction"** means a deduction or withholding for or an account of Tax from a payment under a Mezzanine Finance Document other than a FATCA Deduction.

**"Tax Due Diligence Report"** means the report dated on or about 15 December 2016 titled "Project Sherbourne Tax Due Diligence", prepared by an accountancy firm, addressed to (or capable of being relied upon) by the Mezzanine Finance Parties.

**"Tax Structuring Memorandum"** means the report dated on or about 15 December 2016 titled "Project Sherbourne Tax Structuring", prepared by an accountancy firm, addressed to (or capable of being relied upon) by the Mezzanine Finance Parties.

**"Technical Due Diligence Report"** means the report dated on or about 15 November 2016 titled "Building Inspection Report", prepared by a building surveyor firm, addressed to (or capable of being relied upon) the Mezzanine Finance Parties.

**"Tenant Contributions"** means any amount paid or payable to a Mezzanine Note Obligor by any tenant under a Mezzanine Lease Document or any other occupier of the Property, by way of:

- (a) contribution to:
  - (i) ground rent or any other amount payable under a Headlease;
  - (ii) insurance premia;
  - (iii) the cost of an insurance valuation;
  - (iv) a service or other charge in respect of a Senior Loan 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, the Property; or
  - (v) a reserve or sinking fund; or
- (b) VAT.

**"Total Mezzanine Commitments"** means the aggregate of the Mezzanine Commitments being £101,620,000 at the date of the Mezzanine Note Issuance Agreement.

**"Transaction Document"** means:

- (a) a Finance Document;
- (b) any Hedging Agreement;
- (c) a Mezzanine Lease Document;
- (d) a Headlease;
- (e) any Managing Agent Agreement;
- (f) any Asset Management Agreement;
- (g) any document which documents any Intra-Group Liabilities, Existing Facility Liabilities, Mezzanine Issuer Liabilities or Mezzanine Holdco Liabilities;
- (h) an Acquisition Document;
- (i) the Warranty and Indemnity Insurance;
- (j) the Unit Trust Instrument;
- (k) the Nominee Declarations of Trust; or

(l) any other document designated as such by the Mezzanine Note Agent and the Mezzanine Issuer.

**"Transaction Security"** means the Common Transaction Security and any security created or expressed to be created in favour of the Mezzanine Security Agent pursuant to the Security Documents.

**"Treasury Transaction"** means any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (including any currency or interest purchase, cap or collar agreement, forward rate agreement, interest rate or currency future or option contract, foreign exchange or currency purchase or sale agreement, interest rate swap, currency swap or combined interest rate and currency swap agreement and any other similar agreement).

**"Treaty"** has the meaning given to that term in the definition of "Treaty State".

**"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.

**"Trust Income"** has the meaning given to the term "Income" in the Unit Trust Instrument.

**"Trust Property"** means all cash and other assets from time to time being held by the Trustees on trust pursuant to the terms of the Unit Trust Instrument (and for the avoidance of doubt such term shall not include Trust Income).

**"Trustee"** means:

- (a) Ropemaker Trustee 1 Limited a private limited company incorporated in Jersey with registration number 122622 and having its registered office at 47 Esplanade, St. Helier, Jersey JE1 0BD, Channel Islands; or
- (b) Ropemaker Trustee 2 Limited a company incorporated in Jersey with registration number 122623 and having its registered office at 47 Esplanade, St. Helier, Jersey JE1 0BD, Channel Islands.

**"Underlease Propco"** means Wavegrange Limited, a limited liability company registered in England and Wales (registered number 04071405).

**"Unit"** means an individual unit in the Unit Trust and includes fractions of a Unit.

**"Unit Trust"** means the property unit trust established in accordance with Article 7(3) of the Trusts (Jersey) Law 1984 upon the terms set out in the Unit Trust Instrument in each case acting through the Trustees.

**"Unit Trust Instrument"** means the trust instrument in respect of City Point (Jersey) Unit Trust originally entered into on 29 November 2005 between, amongst others, the Existing Trustees, as amended and restated on 10 May 2007, 20 January 2016 and on or about the Mezzanine Subscription Date and as further amended from time to time.

**"Unitholder"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE SENIOR FACILITY AGREEMENT*".

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

**"Updated Business Plan"** means any business plan delivered to the Mezzanine Note Agent after the Mezzanine Subscription Date and approved by the Majority Mezzanine Noteholders in accordance with the Business Plan provisions of the Mezzanine Note Issuance Agreement.

**"US"** means the United States of America.

**"Valuation"** means a valuation of the Property by the Valuer, supplied at the request of the Mezzanine Note Agent or Senior Agent (in accordance with the Valuations provisions of the Intercreditor Agreement addressed to or capable of being relied upon by the Mezzanine Finance Parties and the Senior Creditors 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 as at the date of the Mezzanine Note Issuance Agreement, Savills plc, JLL, Cushman & Wakefield (DTZ), Knight Frank or any other surveyor or valuer appointed by the Senior Agent or the Mezzanine Note Agent (and notified to the Mezzanine Issuer in writing five Business Days prior to such appointment).

**"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 (including, without limitation, goods and services tax as provided for under the Goods and Services Tax (Jersey) Law 2007).

**"Vendor"** means:

- (a) CityPoint Co-Investment LLC (a limited liability company incorporated in the state of Delaware, USA whose registered company number is 4340871 and whose registered agent is the Corporate Trust Company (whose registered address is Corporation Trust Center 1209 Orange Street, Wilmington, New Castle, Delaware 19801)); or
- (b) MetLife Properties Ventures LLC (a limited liability company incorporated in the state of Delaware, USA whose registered company number is 2833934 and whose registered agent is the Corporate Trust Company (whose registered address is Corporation Trust Center 1209 Orange Street, Wilmington, New Castle, Delaware 19801)).

**"Warranty and Indemnity Insurance"** means the warranty and indemnity insurance policy issued by Ambridge Europe Limited (acting as Underwriting Representative, as defined therein) to Bidco on or about the Mezzanine Subscription Date.

**"Year"** means, Year 1, Year 2, Year 3, Year 4 or Year 5.

**"Year 1"** means the period from and including the Mezzanine Subscription Date to (but excluding) the first anniversary of the Mezzanine Subscription Date.

**"Year 2"** means the period from and including the first anniversary of the Mezzanine Subscription Date to (but excluding) the second anniversary of the Mezzanine Subscription Date.

**"Year 3"** means the period from and including the second anniversary of the Mezzanine Subscription Date to (but excluding) the third anniversary of the Mezzanine Subscription Date.

**"Year 4"** means the period from and including the third anniversary of the Mezzanine Subscription Date to (but excluding) the fourth anniversary of the Mezzanine Subscription Date.

**"Year 5"** means the period from and including the fourth anniversary of the Mezzanine Subscription Date to (but excluding) the fifth anniversary of the Mezzanine Subscription Date.

## DESCRIPTION OF THE SENIOR FACILITY AGREEMENT

*The following is a summary of the principle terms of the Senior Facility Agreement and is qualified in its entirety by the detailed provisions of the Senior Facility Agreement itself.*

The Senior Facility Agreement is governed by English law. The principal terms (other than obligors, facility amounts, margin and fees) of the Senior Facility Agreement are substantially the same as the principal terms of the Mezzanine Note Issuance Agreement. To the extent that the principal terms of the Senior Facility Agreement differ from the principal terms of the Mezzanine Note Issuance Agreement, those terms are summarised below.

### **Purpose and application**

The Senior Borrower has undertaken to apply all amounts borrowed by it under the Senior Facility in or towards: the refinancing the Existing Debt and payment of any fees, costs and expenses, stamp registration and other Taxes (including recoverable VAT but excluding irrecoverable VAT) and any other amounts incurred by any Senior Loan Obligor in connection with the Acquisition or the Senior Finance Documents, in each case, as contemplated by the Senior Loan Funds Flow Statement.

### **Senior Loan amount and drawdown**

The maximum amount of borrowing under the Senior Facility Agreement was £334,380,000. The Senior Loan Facility has been drawn in full and the Senior Facility Agreement does not place an obligation on the Issuer to make any further advances to the Senior Borrowers.

### **Payment of interest**

The Senior Borrower must pay accrued interest on the Senior Loan on each Senior Loan Interest Payment Date.

The rate of interest on the Senior Loan for each Senior Loan Interest Period is the percentage rate per annum which is the aggregate of the applicable Margin and LIBOR.

### **Repayment and extension**

The Senior Borrower must repay the outstanding principle amount of the Senior Loan and each Senior Loan Interest Payment Date falling after the second anniversary of the Senior Loan Utilisation Date in as follows: during Year 3, an amount equal to 0.125%, during Year 4, an amount equal to 0.3125% and during Year 5, an amount equal to 0.5%, in each case, of the Senior Loan utilised on the Senior Loan Utilisation Date. Where applicable, the following contingent amounts are also payable: if the Senior Loan to Value on the previous Senior Loan Interest Payment Date was 55% - 57.5%, an amount equal to 0.125%; 57.5% - 60.0%, an amount equal to 0.1875%; or more 60%, an amount equal to 0.375%, in each case, of the Senior Loan on the Senior Loan Utilisation Date.

The Senior Borrower shall repay the Secured Liabilities in full on the Senior Loan Termination Date.

#### *First Extension Option*

The Senior Loan Obligors' Agent may request (the "**Senior Loan First Extension Request**") to extend the Senior Loan Termination Date to the First Extended Senior Loan Termination Date, being 15 December 2020, by delivering a Senior Loan First Extension Request to the Senior Agent no earlier than three months prior to, and no later than one month prior to, the Initial Senior Loan Termination Date.

Such extension will take effect subject to certain conditions being satisfied including: (i) provision of evidence to the Senior Agent 10 Business Days before the Initial Senior Loan Termination Date that the Mezzanine Note Redemption Date will be extended to the First Extended Mezzanine Redemption Date or on or before the Initial Senior Loan Termination Date, the Mezzanine Liabilities will be repaid or prepaid in full by way of equity contributions or intercompany indebtedness made available to the Mezzanine Issuer by a Sponsor Affiliate; (ii) Hedging Agreements being entered into by the Senior Borrower for the period from the Initial Senior Loan Termination Date to the First Extended Senior Loan Termination Date pursuant to the hedging provisions of the Senior Facility Agreement; and (iii) on the date of the Senior Loan First Extension Request and the Initial Senior Loan Termination Date, no Senior Loan Default and no Cash Trap Event is continuing or would result

from the proposed extension of the Senior Loan Termination Date to the First Extended Senior Loan Termination Date.

#### *Second Extension Option*

The Senior Loan Obligors' Agent may request (the "**Senior Loan Second Extension Request**") to extend the Senior Loan Termination Date to the Second Extended Senior Loan Termination Date, being 15 December 2021 by delivering a Senior Loan Second Extension Request to the Senior Agent no earlier than three months prior to, and no later than one month prior to, the First Extended Senior Loan Termination Date.

Such extension will take effect subject to certain conditions being satisfied including: (i) provision of evidence to the Senior Agent 10 Business Days before the First Extended Senior Loan Termination Date that the Mezzanine Note Redemption Date will be extended to the Second Extended Mezzanine Redemption Date or on or before the First Extended Senior Loan Termination Date, the Mezzanine Liabilities will be repaid or prepaid in full by way of equity contributions or intercompany indebtedness made available to the Mezzanine Issuer by a Sponsor Affiliate; (ii) Hedging Agreements being entered into by the Senior Borrower for the period from the First Extended Senior Loan Termination Date to the Second Extended Senior Loan Termination Date pursuant to the Senior Facility Agreement; and (iii) on the date of the Senior Loan Second Extension Request and the First Extended Senior Loan Termination Date, no Senior Loan Default and no Cash Trap Event is continuing or would result from the proposed extension of the Senior Loan Termination Date to the Second Extended Senior Loan Termination Date.

#### **Prepayments**

##### *Mandatory prepayment*

The Senior Loan Obligors must apply the following amounts in prepayment of the Senior Loan: accrued interest on the amount prepaid; any Senior Loan Break Costs arising as a result of that prepayment; any prepayment and cancellation fees payable under the Senior Facility Agreement; and the amount of Hedging Prepayment Proceeds, Insurance Prepayment Proceeds, Compensation Prepayment Proceeds and Recovery Prepayment Proceeds.

#### **Bank accounts**

##### *Designation of Accounts*

The Senior Loan Obligors' Agent has opened and is required to maintain a current account located in Jersey and designated a General Account. On and from the date falling 30 days after the Senior Loan Utilisation Date the Senior Borrower must maintain the following bank accounts in its name:

- (a) a rent account designated the "**Rent Account**";
- (b) a deposit account designated the "**Capex Reserve Account**";
- (c) a deposit account designated the "**Cash Trap Account**";
- (d) a deposit account designated the "**Deposit Account**";
- (e) a deposit account designated the "**Cure Account**"; and
- (f) a current account designated a "**General Account**".

The Minority Senior Unitholder must maintain a current account located in Jersey designated a "General Account".

No Senior Loan Obligor may, without the prior consent of the Senior Agent, maintain any bank account other than:

- (a) a Senior Account; or



- (b) until the date falling 60 days after the Senior Loan Utilisation Date, an Existing Senior Account.

*Senior Account Bank*

Each Senior Account must be held at a Senior Account Bank with a Senior Loan Minimum Required Rating.

If a Senior Account Bank ceases to have a Senior Loan Minimum Required Rating or the Senior Agent requests, a Senior Account must be replaced with a bank account at another bank in Jersey with a Senior Loan Minimum Required Rating, if there are any, no later than 90 days after that Account Bank ceases to have a Senior Loan Minimum Required Rating or that request.

The replacement of a Senior Account or change of Senior Account Bank only becomes effective when: (i) the relevant bank agrees with the Senior Agent and the Senior Loan Obligors' Agent to fulfil such role; (ii) the new Senior Account is made subject to the Common Transaction Security on the same terms as the relevant Common Security Documents; and (iii) any Perfection Requirements in respect of that Common Transaction Security are carried out in respect of the new Senior Accounts (including provision of account mandates, notices and acknowledgements).

*Rent Account*

The Common Security Agent has sole signing rights in relation to the Rent Account. All Net Rental Income and any amounts payable under any Hedging Agreements (except Hedging Prepayment Proceeds) must be paid into the Rent Account at least 5 Business Days prior to a Senior Loan Interest Payment Date.

Except as provided in the partial payments provisions of the Senior Facility Agreement, on each Senior Loan Interest Payment Date, the Common Security Agent shall (and is irrevocably authorised by the Senior Loan Obligors to) withdraw from, and apply amounts standing to the credit of, the Rent Account, in the following order:

- (a) *first*, an amount equal to the aggregate amount of Corporate Costs due or projected to be due in the Senior Loan Interest Period commencing on that Senior Loan Interest Payment Date shall be paid into the General Account of the Senior Borrower provided that the aggregate amount of Corporate Costs that may be paid from the Rent Account in any Year will not exceed £250,000 (all as set out in the most recent Compliance Certificate delivered to the Senior Agent);
- (b) *secondly*, in or towards any payment pro rata of any unpaid amount owing to the Senior Agent, the Arranger or the Common Security Agent under the Senior Finance Documents and all other amounts due but unpaid to the Senior Agent, the Arranger and the Common Security Agent;
- (c) *thirdly*, in or towards payment pro rata to the Senior Agent for the relevant Senior Lenders of any accrued interest on any Property Protection Loans due but unpaid under the Senior Facility Agreement;
- (d) *fourthly*, in or towards payment pro rata to the Senior Agent for the relevant Senior Lenders of any principal of Property Protection Loans due but unpaid under the Senior Facility Agreement;
- (e) *fifthly*, in or towards payment pro rata to the Senior Agent for the Senior Lenders of any accrued interest and fees due but unpaid under the Senior Facility Agreement;
- (f) *sixthly*, in or towards payment pro rata to the Senior Agent for the Senior Lenders of any principal due but unpaid under the Senior Facility Agreement;
- (g) *seventhly*, in or towards payment of any other sum due by a Senior Loan Obligor but unpaid to the Senior Finance Parties under the Senior Facility Agreement;
- (h) *eighthly*, if a Cash Trap Event is continuing, an amount equal to the aggregate amount of:
  - (A) amounts payable to the Managing Agent and Asset Manager due or projected to be due in the Senior Loan Interest Period commencing on that Senior Loan Interest Payment Date provided

that the aggregate of such amount that may be paid in any Year will not exceed £1,000,000 to be paid into the Senior Borrower's General Account; and

- (B) leasing commissions, letting agent costs and tenant improvements provided that the aggregate of such amount that may be paid in any Year will not exceed £2,000,000; and
- (C) maintenance capital expenditure at the Property provided that the aggregate of such amount that may be paid in any Year will not exceed £1,000,000,

(together, the "**Capex Amounts**") to be paid into the Capex Reserve Account, to the extent that the amount standing to the credit of the Capex Reserve Account on the relevant Senior Loan Interest Payment Date is insufficient to pay those Capex Amounts due or projected to be due in the Senior Loan Interest Period commencing on that Senior Loan Interest Payment Date,

in each case as set out in the most recent Compliance Certificate delivered to the Senior Agent under the Senior Facility Agreement;

- (i) *ninthly*, pro rata and pari passu:
  - (A) an amount equal to the aggregate amount of Mezzanine Corporate Costs due or projected to be due in the Senior Loan Interest Period commencing on that Senior Loan Interest Payment Date shall be paid into the Mezzanine Finance Account provided that the aggregate amount of such Mezzanine Corporate Costs that may be paid from the Rent Account in any Year will not exceed £100,000 (plus VAT); and
  - (B) an amount equal to the agency fees of the Mezzanine Note Agent and the Mezzanine Security Agent that are then due and payable under the agency provisions of the Mezzanine Note Issuance Agreement provided that the aggregate amount of such agency fees that may be paid from the Rent Account in any Year will not exceed £26,000 (plus VAT) in any Year;
- (j) *tenthly*, if no Cash Trap Event is continuing and no Payment Stop Notice is outstanding, an amount equal to the Mezzanine Liabilities which are due and payable on that Senior Loan Interest Payment Date as notified to the Common Security Agent by the Mezzanine Note Agent under the Intercreditor Agreement into the Mezzanine Finance Account;
- (k) *eleventhly*, if a Cash Trap Event is continuing, payment of any surplus (other than the aggregate of any Surrender Retention Amounts) into the Cash Trap Account; and
- (l) *twelfthly*, if no Cash Trap Event is continuing, payment of any surplus (other than the aggregate of any Surrender Retention Amounts) into the General Account of the Senior Borrower.

The Common Security Agent must (within five Business Days of a request by the Senior Loan Obligors' Agent) withdraw from, and apply out of any Surrender Retention Amount (the "**Relevant Surrender Retention Amount**") standing to the credit of the Rent Account, for payment into the General Account of the Senior Borrower of such amount that is required to be paid in respect of tenant improvements and leasing incentives in respect of vacant lettable space for application by the Senior Borrower for such purpose.

The Common Security Agent is only required to withdraw from the Rent Account if no Senior Loan Event of Default is continuing and the Senior Loan Repeating Representations are and will be correct.

#### *Deposit Account*

The Common Security Agent has sole signing rights in relation to the Deposit Account. All Hedging Prepayment Proceeds, Insurance Prepayment Proceeds, Compensation Prepayment Proceeds and Recovery Prepayment Proceeds must be paid into the Deposit Account.

Except as provided in the partial payments provision of the Senior Facility Agreement and the paragraph below, on each Senior Loan Interest Payment Date or if requested with five days' notice by the Senior Loan Obligor's Agent, the Common Security Agent must withdraw from, and apply amounts that are paid into the Deposit

Account in accordance with the above and that are standing to the credit of the Deposit Account in accordance with provisions regarding mandatory prepayment and application of mandatory prepayments in the Senior Facility Agreement.

The Common Security Agent is only required to make a withdrawal from the Deposit Account in accordance with the above if no Senior Loan Event of Default is continuing and the Senior Loan Repeating Representations are correct and will be correct in all material respects immediately after the withdrawal.

#### *Cash Trap Account*

The Common Security Agent has sole signing rights in relation to the Cash Trap Account and must pay amounts into the Cash Trap Account in accordance with the rent account provisions of the Senior Facility Agreement.

If there are two consecutive Senior Loan Interest Payment Dates on which a Cash Trap Event is continuing, the Common Security Agent must apply any amount standing to the credit of the Cash Trap Account in prepayment of the Senior Loan and in payment of any other amount due therein.

The Common Security Agent will transfer the amount standing to the credit of the Cash Trap Account to the General Account of the Senior Borrower promptly following the occurrence of two consecutive Senior Loan Interest Payment Dates on which no Cash Trap Event was continuing provided that no Senior Loan Default is continuing or would occur as a result of that withdrawal and the Senior Loan Repeating Representations are correct in all material respects.

#### *Capex Reserve Account*

The Common Security Agent has sole signing rights in relation to the Capex Reserve Account. On the Senior Loan Utilisation Date, The Senior Loan Obligors' Agent was required to deposit an amount equal to £8,500,000 into its General Account (the "**Initial Capex Deposit**"). The Senior Loan Obligors' Agent must not withdraw any part of the Initial Capex Deposit from its General Account. The Senior Loan Obligors' Agent was required to transfer the Initial Capex Deposit to the Capex Reserve Account promptly after the date that the Capex Reserve Account is opened and by no later than the date falling 30 days after the Senior Loan Utilisation Date.

Except as provided in the paragraph below, not more than twice per calendar month (at the request of the Senior Loan Obligors' Agent), the Common Security Agent must, withdraw from, and apply an amount standing to the credit of, the Capex Reserve Account which is equal to the Senior Borrower's costs and expenses in respect of the refurbishment, development and/or tenant improvement of the Property, tenant initiatives, letting costs, including broker's fees and legal fees and leasing commissions that are or will be due for payment during the current Senior Loan Interest Period in accordance with the Business Plan. Any request by the Senior Loan Obligors' Agent must be accompanied by copies of invoices for the relevant costs that are due and payable.

The Common Security Agent is only obliged to make a withdrawal from the Capex Reserve Account if no Senior Loan Event of Default is continuing or would occur as a result of that withdrawal and the Senior Loan Repeating Representations are correct in all material respects.

#### *General Accounts*

Each relevant Senior Loan Obligor has signing rights in relation to its General Account, except when a Senior Loan Event of Default is continuing.

The Senior Borrower must ensure that all Tenant Contributions and any deductions from Rental Income which are required to pay for Irrevocable Service Charge Expenses are paid into its General Account (unless held in a trust account in the name of the Managing Agent). Each Senior Loan Obligor must ensure that any other amount received or receivable by it is paid into any General Account.

A Senior Loan Obligor may withdraw any amount from an General Account opened in the name of that Senior Loan Obligor for any purpose, except when a Senior Loan Event of Default is continuing and subject to any restriction in the Senior Finance Documents and the requirement that amounts paid into a General Account for a particular purpose must be used for that purpose.

At any time when a Senior Loan Event of Default is continuing, the Common Security Agent may operate any General Account, notify an Senior Loan Obligor that its rights to operate its General Account are suspended and withdraw from, and apply amounts standing to the credit of, any General Account in or towards any purpose for which moneys in any Senior Account may be applied.

#### *Cure Account*

The Common Security Agent has sole signing rights in relation to the Cure Account. The Senior Loan Obligors must ensure that any Cure Payment Amounts that are not applied in voluntary prepayment of the Senior Loan are paid into the cure account in accordance the provisions of the Senior Facility Agreement.

If on any Senior Loan Interest Payment Date (the "**Second Senior Loan Interest Payment Date**") and the Senior Loan Interest Payment Date immediately prior to the Second Senior Loan Interest Payment Date, the Senior Loan Obligors are and were in compliance with the Senior Loan Debt Yield Covenant and the Senior Loan to Value Covenant, the Common Security Agent shall withdraw all Cure Payment Amounts standing to the credit of the Cure Account and transfer such amounts to a General Account.

If the Senior Loan Obligors are and were not in compliance with the Senior Loan Debt Yield Covenant and the Senior Loan to Value Covenant on two consecutive Senior Loan Interest Payment Dates falling immediately after any Cure Payment Amount has been deposited into the Cure Account, the Common Security Agent shall (if instructed by the Majority Senior Lenders) withdraw all Cure Payment Amounts standing to the credit of the Cure Account on the Second Senior Loan Interest Payment Date and apply such amounts in prepayment of the Senior Loan in accordance with the voluntary prepayment provided in the Senior Facility Agreement and all amounts payable with such prepayment shall be payable from such amounts.

The Senior Loan Obligors may at any time elect that all or part of any Cure Payment Amount standing to the credit of the Cure Account are applied in prepayment of the Senior Loan.

The Common Security Agent is only obliged to make a withdrawal from the Cure Account if no Senior Loan Event of Default is continuing and the Senior Loan Repeating Representations are correct and will be correct in all material respects immediately after the withdrawal.

#### *Existing Accounts*

Subject to the above, the Targets will procure that the Common Security Agent is provided with evidence when an Existing Senior Account has been closed, no Existing Senior Account shall become overdrawn, no withdrawal is made from any Existing Senior Account and the balance of any Existing Senior Account is promptly transferred into the appropriate Senior Account.

#### *Miscellaneous Accounts provisions*

The Senior Loan Obligors must ensure that no Senior Account goes into overdraft.

Any amount received or recovered by a Senior Loan Obligor must be held subject to the security created by the Senior Finance Documents and immediately be paid to the relevant Senior Account or to the Senior Agent.

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

No Senior Finance Party is responsible or liable to any Senior Loan Obligor for any non-payment of any liability of a Senior Loan Obligor which could be paid out of moneys standing to the credit of an Senior Account or any withdrawal wrongly made, if made in good faith.

The Senior Loan Obligors' Agent must, within five Business Days of any request by the Senior Agent, inform the Senior Agent of the date of payment or receipt, the payer and the purpose of the payment or receipt in relation to any payment received in a Senior Account.

## **Financial covenants**

### *Debt Yield*

The Senior Loan Obligors must ensure that at all times during the relevant Year, the Senior Loan Debt Yield is greater than or equal to the following: Year 1 – 5.00%, Year 2 – 5.75%, Year 3 – 6.50%, Year 4 – 6.50% and Year 5 – 7.00% (the "**Senior Loan Debt Yield Covenant**").

### *Loan to Value*

The Senior Loan Obligors must ensure that at all times during the relevant Year, the Senior Loan to Value does not exceed the following: Year 1 – 70.0%, Year 2 – 70.0%, Year 3 – 70.0%, Year 4 – 67.5% and Year 5 – 65.0% (the "**Senior Loan to Value Covenant**").

### *Cure*

If there is a breach of the Senior Loan Debt Yield Covenant and/or the Senior Loan to Value Covenant, the Senior Loan Obligors may remedy that breach by notifying the Senior Agent of their intention to cure the relevant breach within 10 Business Days of the relevant breach occurring and, on or before the date falling 15 Business Days after the date of the relevant breach occurring, by either:

- (a) applying the Cure Payment Amount in respect of that breach in voluntary prepayment of the Senior Loan; or
- (b) depositing the Cure Payment Amount in respect of that breach into the Cure Account,

each a "**Cure Payment**".

If a prepayment or a deposit is made in accordance with paragraph (a) above the Senior Loan Obligors will not be regarded as being in breach of the Senior Loan Debt Yield Covenant or the Senior Loan to Value Covenant (as applicable), without prejudice to any subsequent breach.

A "**Cure Payment Amount**" is the aggregate of:

- (a) an amount equal to the amount that, if deducted from the Senior Loan would have meant that the Senior Loan Obligors would have been in compliance with the Senior Loan Debt Yield Covenant and Senior Loan to Value Covenant at the relevant time; and
- (b) if the cure is being exercised by way of a redemption, an amount equal to all accrued interest on the amount prepaid, any Senior Loan Break Costs and any prepayment and cancellation fees payable under the Senior Facility Agreement will be incurred as a result of the prepayment referred to in paragraph (a) above.

The Senior Loan Obligors may only exercise their right to cure any breach of the Senior Loan Debt Yield Covenant or the Senior Loan to Value Covenant on four separate occasions and in not more than two consecutive Senior Loan Interest Payment Dates. Any such right which cures simultaneous breaches of both the Senior Loan Debt Yield Covenant and the Senior Loan to Value Covenant will constitute a single exercise of a right to cure.

## **Dividends and distributions**

The Senior Loan Obligor may only issue further shares or Units to an existing shareholder or Unitholder which are subject to the transaction security.

With the exception of a Permitted Payment, no Senior Loan Obligor shall pay any dividend, charge, fee or other distribution in respect of its share capital or the Units, repay or distribute any dividend or share premium reserve, pay any management, advisory or other fee to its direct or indirect shareholders or Unitholders, make any payment in respect of any Intra-Group Liabilities, Existing Facility Liabilities or Mezzanine Issuer Liabilities or redeem any of its share capital or the Units.

## Senior Loan Event of Default

For the purposes of the Senior Loan Event of Default:

- (a) the definition of "Finance Document" in the Senior Facility Agreement does not include the "Mezzanine Finance Documents"; and
- (b) Financial Indebtedness of any Senior Loan Obligor which is incurred under any Mezzanine Finance Document or which is Subordinated Debt is excluded from the Financial Indebtedness cross-default Senior Loan Event of Default.

## Definitions

For the purposes of this section of the Offering Circular entitled "*DESCRIPTION OF THE SENIOR FACILITY AGREEMENT*", the following definitions apply:

**"Acquisition"** means the acquisition by the Senior Loan Obligors' Agent of the entire issued share capital of each Unitholder in accordance with the terms of the Acquisition Agreement.

**"Acquisition Agreement"** means the agreement for the sale and purchase of the shares in each Unitholder dated on or about the Senior Loan Utilisation Date between the Vendors and the Senior Loan Obligors' Agent.

**"Affiliate"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT*".

**"Agreement for Lease"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT*".

**"Asset Manager"** means the Initial Asset Manager or any other asset manager appointed by a Senior Loan Obligor in respect of the Property in accordance with the Senior Facility Agreement.

**"Business Day"** means a day (other than a Saturday or Sunday) on which banks are open for general business in London, New York and Jersey.

**"Business Plan"** means the Initial Business Plan or an Updated Business Plan.

**"Calculation Period"** means, on any date, the period of 12 months starting on that date.

**"Capex Amounts"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE SENIOR FACILITY AGREEMENT – Rent Account*".

**"Capex Reserve Account"** means an account designated as such under the relevant provisions in the Senior Facility Agreement and includes any replacement of that Senior Account.

**"Cash Trap Account"** means an account designated as such under the designation of accounts provisions in the Senior Facility Agreement and includes any replacement of that account.

**"Cash Trap Event"** means:

- (a) a Senior Loan Default has occurred and is continuing; or
- (b) on a Senior Loan Interest Payment Date falling during the relevant Year set out in the table below, either:
  - (i) Senior Loan Debt Yield is less than; or
  - (ii) Senior Loan to Value exceeds,

the applicable percentage set out opposite that Year as set out in the table below:

<i>Year</i>	<i>Senior Loan Debt Yield</i>	<i>Senior Loan to Value</i>
Year 1	5.50	65.0
Year 2	6.25	65.0
Year 3	7.00	65.0
Year 4	7.00	62.5
Year 5	7.5	62.5

"**Castle 46**" has the meaning given to that term in the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT*".

"**Castle 46 Accession Date**" means the date on which Castle 46 accedes to the Senior Facility Agreement as a Senior Loan Obligor pursuant to the accession of Castle 46 provisions in the Senior Facility Agreement;

"**Castle 46 Novation Date**" means the date on which Castle 46 has assigned all of its rights and interests in the Castle 46 Retained Debt to the Senior Loan Obligors' Agent.

"**Castle 46 Retained Debt**" has the meaning given to that term in paragraph (a) of the definition of Retained Debt.

"**Castle 46 Treaty Clearance Date**" means the date on which the Senior Loan Obligor's Agent has been provided with evidence in form and substance satisfactory to the Senior Lenders that:

- (a) clearance from HMRC under the UK-Luxembourg double taxation treaty that payments of interest on the Castle 46 Retained Debt can be paid free from UK withholding tax has been obtained; or
- (b) payments of interest on the Castle 46 Retained Debt can otherwise be paid free from UK withholding tax.

"**Common Secured Party**" has the meaning given to that term in the section entitled "*DESCRIPTION OF THE INTERCREDITOR AGREEMENT*".

"**Common Security Agent**" has the meaning given to that term in the section entitled "*DESCRIPTION OF THE INTERCREDITOR AGREEMENT*".

"**Common Security Agreement**" means:

- (a) a security agreement governed by English law over the assets of the Senior Loan Obligors' Agent entered into or to be entered into by the Senior Loan Obligors' Agent in favour of the Common Security Agent in an agreed form; and
- (b) a security agreement governed by English law over the assets of each Target entered into or to be entered into by each Target in favour of the Common Security Agent in agreed form.

"**Common Security Document**" means:

- (a) a Common Security Agreement;
- (b) a Jersey Security Interest Agreement;
- (c) any other document evidencing or creating Security over any asset to secure any obligation of any Senior Loan Obligor or the Security Provider to a Common Secured Party under the Senior Finance Documents; or

- (d) any other document designated as such by the Common Security Agent and the Senior Loan Obligors' Agent.

**"Common Transaction Security"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE INTERCREDITOR AGREEMENT*".

**"Compensation Prepayment Proceeds"** means the proceeds of all compensation and damages for the compulsory purchase of, or any blight or disturbance affecting the whole or any part of the Property after deducting any reasonable fees, costs and expenses incurred in relation thereto by a Senior Loan Obligor which are payable to a person who is not a Senior Loan Obligor, an Affiliate of a Senior Loan Obligor, the Sponsor or an Affiliate of the Sponsor and which is in excess of £100,000.

**"Compliance Certificate"** means the compliance certificate substantially in the form scheduled to the Senior Facility Agreement which the Senior Loan Obligors' Agent is required to supply to the Senior Agent on a quarterly basis setting out computations as to Compliance with the financial covenants in the Senior Facility Agreement.

**"Corporate Costs"** means, in relation to each Senior Loan Obligor, its day-to-day corporate operating expenditure incurred in connection with its audit and accountancy, legal and corporate services, registration, trustee, manager, property advisers, tax advisers, domiciliation fees, overhead expenses (including holding charges), expenses relating to advertising, marketing and related taxes, but excluding fees payable to the Asset Manager.

**"Cure Account"** means an account designated as such under the designation of accounts provision in the Senior Facility Agreement and includes any replacement of that Senior Account.

**"Cure Payment Amount"** is the aggregate of:

- (a) an amount equal to the amount that, if deducted from the amount of the Senior Loan would have meant that the Senior Loan Obligors would have been in compliance with the Senior Loan Debt Yield and Senior Loan to Value provisions of the Senior Facility Agreement at the relevant time; and
- (b) if the cure is being exercised by way of a prepayment, an amount equal to all other amounts referred to in the restrictions provisions of the Senior Facility Agreement which will be incurred as a result of the prepayment of the amounts referred to in the cure provisions of the Senior Facility Agreement.

**"Deposit Account"** means an account designated as such in the Senior Facility Agreement and includes any replacement of that account.

**"Duty of Care Agreement"** means:

- (a) a duty of care agreement entered into or to be entered into by a Managing Agent, one or more Senior Loan Obligors, the Senior Agent, the Mezzanine Note Agent and the Common Security Agent in an agreed form in respect of the Property; or
- (b) a duty of care agreement entered into or to be entered into by an Asset Manager, one or more Senior Loan Obligors, the Senior Agent, the Mezzanine Note Agent and the Common Security Agent in an agreed form in respect of the Property.

**"Excluded Recovery Proceeds"** means any proceeds of a Recovery Claim which the Senior Loan Obligors' Agent notifies the Senior Agent are, or are to be, applied:

- (a) to satisfy (or reimburse a Senior Loan Obligor which has discharged) any liability, charge or claim upon a Senior Loan Obligor by a person which is not a Senior Loan Obligor, an Affiliate of a Senior Loan Obligor, the Sponsor or an Affiliate of a Sponsor; or
- (b) in the replacement, reinstatement and/or repair of assets of a Senior Loan 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 180 days, or such longer period as the Majority Senior Lenders may agree) after receipt.

**"Existing Debt"** means all existing financial indebtedness of the Targets as detailed in the Senior Loan Funds Flow Statement (other than the Retained Debt).

**"Existing Facility Liabilities"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE INTERCREDITOR AGREEMENT*".

**"Extension Request"** means the notice delivered by the Senior Loan Obligors' Agent to the Senior Agent requesting an extension of the Senior Loan Termination Date to:

- (a) the First Extended Senior Loan Termination Date in accordance with the first extension option provisions in the Senior Facility Agreement; or
- (b) the Second Extended Senior Loan Termination Date in accordance with the second extension option provisions in the Senior Facility Agreement.

**"Existing Senior Account"** means each account held by a Target listed in the Senior Facility Agreement.

**"Fee Letter"** means any letter or letters dated on or about 15 December 2016 between any of the arranger, the Senior Agent, the original lender or the Common Security Agent, a Senior Loan Obligor and/or the Senior Loan Obligors' Agent setting out any of the fees referred to in the fees provisions of the Senior Facility Agreement and any subsequent letter designated as a Fee Letter by the Senior Agent and the Senior Loan Obligors' Agent;

**"Financial Due Diligence Report"** means the report dated on or about 15 December 2016" titled "Project Sherbourne: Draft Red Flag Report", prepared by an accountancy firm, addressed to, or capable of being relied upon by, the Senior Finance Parties.

**"Financial Indebtedness"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT*".

**"Financial Quarter"** means each three Month period expiring on 31 March, 30 June, 30 September and 31 December in each year.

**"Financial Quarter Date"** means the last day of each Financial Quarter.

**"First Extended Mezzanine Redemption Date"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT*".

**"First Extended Senior Loan Termination Date"** means the date falling on the fourth anniversary of the Senior Loan Utilisation Date.

**"Fitch"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT*".

**"General Account"** means an account designated as such in the Senior Facility Agreement and includes any replacement of that Senior Account.

**"Headlease"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT*".

**"Hedge Counterparty"** means a counterparty (other than a Senior Loan Obligor) to a Hedging Agreement.

**"Hedging Agreement"** means any master agreement, confirmation, transaction, schedule or other agreement in agreed form entered into or to be entered into by a Senior Loan Obligor for the purpose of hedging interest payable under the Senior Facility Agreement.

**"Hedging Prepayment Proceeds"** means any amount which is in excess of £100,000 and which is payable to an Senior Loan Obligor as a result of termination or closing out under a Hedging Agreement to the extent that such amount is not applied in or towards purchasing another Hedging Agreement in order for the Senior Loan Obligors to comply with their obligations in the hedging provision of the Senior Facility Agreement.

**"Holding Company"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT*".

**"Initial Account Bank"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT*".

**"Initial Asset Manager"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT*".

**"Initial Business Plan"** means the Business Plan prepared in accordance with the Business Plan provisions in the Senior Facility Agreement and delivered by the Senior Loan Obligors' Agent to the Senior Agent on or prior to the Senior Loan Utilisation Date pursuant to the initial conditions precedent to the Senior Facility Agreement.

**"Initial Capex Deposit"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE SENIOR FACILITY AGREEMENT – Capex Reserve Account*".

**"Initial Managing Agent"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT*".

**"Initial Senior Loan Termination Date"** means the date falling three years after the Senior Loan Utilisation Date.

**"Insurances"** means any contract of insurance required under the insurance provision in the Senior Facility Agreement.

**"Insurance Prepayment Proceeds"** means any proceeds of Insurances required to be paid into the Deposit Account in accordance with the provisions on Insurances in the Senior Facility Agreement.

**"Intercreditor Agreement"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT*".

**"Intra-Group Liabilities"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE INTERCREDITOR AGREEMENT*".

**"Irrecoverable Service Charge Expenses"** means any amount (in each case including any VAT paid in respect thereof):

- (a) in respect of any management, maintenance, insurance, repair or similar expense in respect of the provision of services relating to the Property to the extent that such amount is not recoverable from a tenant; or
- (b) which the Senior Loan Obligors are obliged to discharge in respect of any unlet part of the Property or in respect of any shortfall in Tenant Contributions,

other than, in each case, (i) any amount in respect of asset management or any corporation or other tax on income or profits or (ii) any expense that is recoverable under any Insurances.

**"Issuer"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT*".

**"Jersey"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT*".

**"Jersey Bidco (Accounts) Security Interest Agreement"** means a Jersey law governed security interest agreement between the Senior Loan Obligors' Agent as grantor and the Common Security Agent, in relation to certain Senior Accounts held by it and located in Jersey.

**"Jersey Bidco (Shares and Receivables) Security Interest Agreement"** means a Jersey law governed security interest agreement between the Senior Loan Obligors' Agent as grantor and the Common Security Agent, in relation to: (a) shares in the Unitholders; and (b) contract rights in or pursuant to certain loan agreements (as Subordinated Debt).

**"Jersey Castle 46 (Receivables) Security Interest Agreement"** means a Jersey law governed security interest agreement between Castle 46 as grantor and the Common Security Agent, in relation to contract rights in or pursuant to certain loan agreements (being the Retained Debt and as Subordinated Debt).

**"Jersey Majority Unitholder (Accounts) Security Interest Agreement"** means a Jersey law governed security interest agreement between the Majority Senior Unitholder as grantor and the Common Security Agent, in relation to certain Senior Accounts held by it and located in Jersey.

**"Jersey Majority Unitholder (Units and Receivables) Security Interest Agreement"** means a Jersey law governed security interest agreement between the Majority Senior Unitholder as grantor and the Common Security Agent, in relation to: (a) units in the Unit Trust; and (b) contract rights in or pursuant to certain loan agreements (as Subordinated Debt).

**"Jersey Minority Unitholder (Accounts) Security Interest Agreement"** means a Jersey law governed security interest agreement between the Minority Senior Unitholder as grantor and the Common Security Agent, in relation to certain Senior Accounts held by it and located in Jersey.

**"Jersey Minority Unitholder (Units and Receivables) Security Interest Agreement"** means a Jersey law governed security interest agreement between the Minority Senior Unitholder as grantor and the Common Security Agent, in relation to: (a) units in the Unit Trust; and (b) contract rights in or pursuant to certain loan agreements (as Subordinated Debt).

**"Jersey Security Interest Agreement"** means:

- (a) the Jersey Bidco (Accounts) Security Interest Agreement;
- (b) the Jersey Bidco (Shares and Receivables) Security Interest Agreement;
- (c) the Jersey Castle 46 (Receivables) Security Interest Agreement;
- (d) the Jersey Majority Unitholder (Accounts) Security Interest Agreement;
- (e) the Jersey Majority Unitholder (Units and Receivables) Security Interest Agreement;
- (f) the Jersey Minority Unitholder (Accounts) Security Interest Agreement;
- (g) the Jersey Minority Unitholder (Units and Receivables) Security Interest Agreement;
- (h) the Jersey Trustees (Receivables) Security Interest Agreement;
- (i) any other Jersey governed security interest agreement evidencing or creating Security over any Jersey situs asset to secure any obligation of any Senior Loan Obligor or the Security Provider to a Common Secured Party under the Senior Finance Documents; or
- (j) any other document designated as such by the Common Security Agent and the Senior Loan Obligors' Agent.

**"Jersey Trustees (Receivables) Security Interest Agreement"** means a Jersey law governed security interest agreement between the Trustees as grantor and the Common Security Agent, in relation to contract rights in or pursuant to certain loan agreements (as Subordinated Debt).

**"Legal Due Diligence Report"** means:

- (a) the Jersey due diligence report in respect of the Targets dated on or about 15 December 2016 prepared by a law firm and capable of being relied upon by, the Senior Finance Parties; and
- (b) the English legal due diligence report in respect of the Propcos dated on or about 15 December 2016 prepared by a law firm and capable of being relied upon by the Senior Finance Parties.

**"LIBOR"** means, in relation to the Senior Loan:

- (a) the applicable Screen Rate as of the Specified Time for sterling and for a period equal in length to the Senior Loan Interest Period of that Senior Loan; or
- (b) as otherwise determined pursuant to the provisions on unavailability of Screen Rate in the Senior Facility Agreement.

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

**"Majority Senior Lenders"** means a Senior Lender or Senior Lenders whose Commitments aggregate more than 66⅔% of the Total Senior Commitments or, if the Total Senior Commitments have been reduced to zero, aggregated more than 66⅔% of the Total Senior Commitments immediately prior to the reduction.

**"Majority Senior Unitholder"** means CityPoint Holdings I Limited.

**"Managing Agent"** means the Initial Managing Agent or any other managing agent appointed by an Senior Loan Obligor in respect of the Property in accordance with the Senior Facility Agreement.

**"Margin"** means the percentage rate set out in the Margin Letter.

**"Margin Letter"** means the letter from the Senior Agent and the arranger dated on or about the date of the Senior Facility Agreement to the Senior Loan Obligors' Agent setting out the margin payable in respect of the Senior Facility.

**"Mezzanine Corporate Costs"** means all corporate, filing, audit, rating agency, trustee, cash manager, stock exchange and other company costs and expenses of the Mezzanine Issuer and any Securitisation Issuer in connection with a Mezzanine Securitisation (in each case as defined in the Intercreditor Agreement).

**"Mezzanine Creditor"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE INTERCREDITOR AGREEMENT*".

**"Mezzanine Finance Account"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT*".

**"Mezzanine Finance Document"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT*".

**"Mezzanine Issuer"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT*".

**"Mezzanine Liabilities"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE INTERCREDITOR AGREEMENT*".

**"Mezzanine Note Agent"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT*".

**"Mezzanine Note Issuance Agreement"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE INTERCREDITOR AGREEMENT*".

**"Mezzanine Note Redemption Date"** has the meaning given to that term in the section entitled *"DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT"*.

**"Mezzanine Securitisation"** has the meaning given to that term in the section entitled *"DESCRIPTION OF THE INTERCREDITOR AGREEMENT"*.

**"Mezzanine Security Agent"** has the meaning given to that term in the section entitled *"DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT"*.

**"Minority Senior Unitholder"** means CityPoint Holdings II Limited.

**"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 a Senior Loan Interest Period begins on the last Business Day of a calendar month, that Senior Loan Interest Period shall end on the last Business Day in the calendar month in which that Senior Loan Interest Period is to end.

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

**"Moody's"** has the meaning given to that term in the section entitled *"DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT"*.

**"Net Rental Income"** means Rental Income less:

- (a) Tenant Contributions; and
- (b) Irrecoverable Service Charge Expenses.

**"Occupational Lease"** has the meaning given to that term in the section entitled *"DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT"*.

**"Party"** means a party to the Senior Facility Agreement.

**"passing rental"** means, in respect of any Calculation Period, the passing rental income that will be received on a regular periodical basis by the Senior Loan Obligors under the Senior Lease Documents during that Calculation Period calculated by the Senior Loan Obligors' Agent (acting reasonably); and

- (a) in calculating passing rental:
  - (i) break clauses exercisable by the relevant tenant during that period in respect of any Occupational Lease will be treated as having been exercised on the earliest date on which the relevant tenant can exercise such break clause unless evidence is provided to the satisfaction of the Senior Agent (acting reasonably) that such break clause will not be exercised;
  - (ii) rental income will be ignored:
    - (A) if payable by a tenant that is an Senior Loan Obligor or related to an Senior Loan Obligor or the Sponsor;
    - (B) if not payable under an unconditional and binding Senior Lease Document; and

- (C) if payable under a Senior Lease Document, the tenant in respect of which is the subject of any of the events referred to in provisions relating to insolvency and insolvency proceedings in the Senior Facility Agreement unless any guarantor of that tenant's obligations under that Senior Lease Document is not the subject of any of the events referred to provisions relating to insolvency and insolvency proceedings in the Senior Facility Agreement and the Senior Agent has been provided with evidence satisfactory to it (acting reasonably) that the obligation of that tenant to pay rent will be performed as it falls due under that Senior Lease Document;
- (iii) potential rental income increases as a result of rent reviews will be ignored until unconditionally ascertained other than where there are fixed rental increases pursuant to the relevant Senior Lease Document or pursuant to notified indexation;
- (iv) rental income payable by a tenant that is more than 90 days in arrears on any of its rental payments will be ignored;
- (v) rental income for any Calculation Period will be reduced by the amount of any deduction or withholding for or on account of Tax from that rental income;
- (vi) any Surrender Premiums (other than Surrender Permitted Amounts) contracted to be received during the Calculation Period will be ignored; and
- (vii) rental income for any Calculation Period will be reduced by the amounts (together with any related irrecoverable VAT):
  - (A) of ground rent and other sums payable under Headleases, rates and insurance premia;
  - (B) in respect of taxes, costs and expenses incurred in complying with applicable laws and regulations relating to the Property;
  - (C) any service or other charge in respect of a Senior Loan Obligor's costs in connection with any repair, maintenance or similar obligation or in provided services to a tenant of, or with respect to, the Property which is irrecoverable from any tenant of that Property; and
  - (D) in respect of the provision of services relating to the Property other than where such amounts relate to fees payable to the Asset Manager, the Sponsor or Sponsor Affiliate,

to the extent that any of those items are not funded by the tenants, by way of Tenant Contributions or otherwise, under the Senior Lease Documents during that Calculation Period.

**"Payment Stop Notice"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE INTERCREDITOR AGREEMENT*".

**"Perfection Requirements"** means any and all registrations, filings, notices and other actions and steps required to be made in any jurisdiction in order to perfect the Security created by the Common Security Documents or in order to achieve the relevant priority for such Security.

**"Permitted Payment"** means:

- (a) a payment as between Senior Loan Obligors contemplated under the bank accounts provision of the Senior Facility Agreement;
- (b) a payment to an Asset Manager in accordance with the general accounts provision of the Senior Facility Agreement;

- (c) a repayment of principal in respect of the Castle 46 Retained Debt out of amounts standing to the credit of the General Account in accordance with the general accounts provision of the Senior Facility Agreement;
- (d) on or after the Castle 46 Treaty Clearance Date, a repayment of interest in respect of the Castle 46 Retained Debt out of amounts standing to the credit of the General Account in accordance with the general accounts provision of the Senior Facility Agreement; or
- (e) a payment to the Mezzanine Issuer by the Senior Borrower (via the Senior Loan Obligors' Agent) referred to in the rent account and general account provision of the Senior Facility Agreement,

in each case, if that payment is permitted under the Intercreditor Agreement.

**"Propco"** means

- (a) Dreamclose Limited a limited liability company registered in England and Wales (registered number 04071458);
- (b) Wates City Point First Limited a limited liability company registered in England and Wales (registered number 03902926);
- (c) Wates City Point Second Limited a limited liability company registered in England and Wales (registered number 03902877);
- (d) Wavegrange Limited a limited liability company registered in England and Wales (registered number 04071405).

**"Property"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE PROPERTY*".

**"Property Headlease"** has the meaning given to that term in the table set out in the Senior Facility Agreement.

**"Property Protection Loan"** means a loan made by a Senior Lender to the Senior Borrower to finance the payment of any amount which, in the opinion of the Senior Lender (acting reasonably) concerned, is required to preserve or protect any Security Asset, in circumstances where a Senior Loan Obligor is obliged to pay that amount under a Senior Finance Document but has failed to pay the relevant amount as soon as reasonably practicable following a request to do so.

**"Property Report"** means, in respect of the Property, any certificate of or report on title supplied to the Senior Agent as a condition precedent under the Senior Facility Agreement on or before the Senior Loan Utilisation Date.

**"Property Underlease"** has the meaning given to that term in the table set out in the Senior Facility Agreement;

**"Recoveries Side Letter"** means the letter dated on or about Senior Loan Utilisation Date between, amongst others, the Sponsor, and the Common Security Agent.

**"Recovery Claim"** has the meaning given to that term in the definition of "Recovery Prepayment Proceeds".

**"Recovery Prepayment Proceeds"** means the proceeds of a claim (a "**Recovery Claim**");

- (a) against a Vendor or any of its Affiliates (or any employee, officer or adviser);
- (b) against the provider of any 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 Acquisition or the Property; or
- (a) under the Warranty and Indemnity Insurance,

except for Excluded Recovery Proceeds, and after deducting:

- (i) any reasonable expenses incurred by a Senior Loan Obligor, an Affiliate of a Senior Loan Obligor, the Sponsor or an Affiliate of the Sponsor;
- (ii) any Tax incurred and required to be paid by a Senior Loan Obligor (as reasonably determined by that Senior Loan Obligor on the basis of existing rates and taking into account any available credit, deduction or allowance),

In each case in relation to that Recovery Claim and which is in excess of £100,000.

**"Relevant Market"** means the London interbank market.

**"Relevant Surrender Retention Amount"** has the meaning given to that term in the section entitled *"DESCRIPTION OF THE SENIOR FACILITY AGREEMENT – Rent Account"*.

**"Rent Account"** means an account designated as such under the designation of accounts provisions in the Senior Facility Agreement 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 Senior Loan Obligor in connection with the letting, licence or grant of other rights of use or occupation of any part of the Property, including each of the following amounts:

- (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 (excluding any sum which is payable to that tenant);
- (c) a sum equal to any apportionment of rent allowed in favour of any Senior Loan 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;
- (f) any sum paid or payable, or the value of any consideration given, for the grant, surrender, amendment, supplement, waiver, extension or release of any Senior Lease Document;
- (g) any sum paid or payable in respect of a breach of covenant or dilapidations under any Senior Lease Document;
- (h) any sum paid or payable by or distribution received or receivable from any guarantor of any occupational tenant under any Senior 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 Senior Loan Obligor.

**"Report"** means:

- (a) the Property Report;
- (b) the Tax Due Diligence Report;
- (c) the Tax Structuring Memorandum;



- (d) the Financial Due Diligence Report;
- (e) each Legal Due Diligence Report; or
- (f) a Technical Due Diligence Report.

**"Retained Debt"** means the financial indebtedness:

- (a) owing by the Senior Borrower to Castle 46 under the terms of a credit agreement dated 10 May 2007 between, among others, the Senior Borrower and Castle 46 as Senior Lender (the "**Castle 46 Retained Debt**");
- (b) owing by the Senior Borrower to the Senior Loan Obligors' Agent under the terms of a loan agreement dated 22 December 2010 and an additional intercompany balance, as novated to the Senior Loan Obligors' Agent from CityPoint Co-Investment LLC pursuant to a deed of novation dated on or about the Senior Loan Utilisation Date in accordance with the terms of the Acquisition Agreement and as amended pursuant to an amendment letter dated on or about the Senior Loan Utilisation Date; and
- (c) owing by the Minority Senior Unitholder to the Senior Loan Obligors' under the terms of a loan agreement dated 10 May 2007, as novated to the Senior Loan Obligors' Agent from MetLife Properties Ventures LLC pursuant to a deed of novation dated on or about the Senior Loan Utilisation Date in accordance with the terms of the Acquisition Agreement, and as amended pursuant to an amendment letter dated on or about the Senior Loan Utilisation Date.

**"S&P"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT*".

**"Screen Rate"** means the London interbank offered rate administered by ICE Benchmark Administration Limited (or any other person which takes over the administration of that rate) for the relevant, period, displayed (before any correction, recalculation or republication by the administrator) on page LIBOR01 of the Thomson Reuters screen (or any replacement Thomson Reuters page which displays that rate) or on the appropriate page of such other information service which publishes that rate from time to time in place of Thomson Reuters. If such page or service ceases to be available, the Senior Agent may specify another page or service displaying the relevant rate after consultation with the Senior Loan Obligors' Agent.

**"Second Extended Mezzanine Redemption Date"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT*".

**"Second Extended Senior Loan Termination Date"** means the date falling on the fifth anniversary of the Senior Loan Utilisation Date.

**"Second Senior Loan Interest Payment Date"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE SENIOR FACILITY AGREEMENT – Cure Account*".

**"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 Senior Loan Obligor to any Common Secured Party under each Senior Finance Document.

**"Securitisation"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT*".

**"Securitisation Issuer"** means a special purpose vehicle which will issue note instruments in respect of a Securitisation.

**"Security"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT*".

**"Security Asset"** means all of the assets of a Senior Loan Obligor or the Security Provider which from time to time are, or are expressed to be, the subject of the Common Transaction Security.

**"Security Provider"** means, at any time prior to the earlier to occur of the Castle 46 Novation Date or the Castle 46 Accession Date, Castle 46.

**"Senior Account"** means the Capex Reserve Account, the Cash Trap Account, the Deposit Account, the Rent Account, the Cure Account or a General Account.

**"Senior Account Bank"** means:

- (a) the Initial Account Bank; or
- (b) in respect of any Senior Account, any other bank approved by the Senior Agent in accordance with provisions relating to account bank in the Senior Facility Agreement.

**"Senior Agent"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT*".

**"Senior Borrower"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT*".

**"Senior Facility"** means the term loan facility made available under the Senior Facility Agreement.

**"Senior Facility Agreement"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT*".

**"Senior Finance Documents"** means the Senior Facility Agreement, the Target Accession Letter, the Target Intercreditor Accession Deed, any Common Security Document, the Intercreditor Agreement, any Duty of Care Agreement, any Fee Letter, the Recoveries Side Letter, a Margin Letter, any Utilisation Request, any Extension Request or any other document designated as such by the Senior Agent and the Senior Loan Obligors' Agent.

**"Senior Finance Party"** means the Senior Agent, the Common Security Agent, the arranger or Senior Lender.

**"Senior Lease Document"** means:

- (a) an Agreement for Lease;
- (b) an Occupational Lease; or
- (c) any other document designated as such by the Senior Agent and the Senior Loan Obligors' Agent.

**"Senior Lender"** means:

- (a) the original lender; and
- (b) any other person which has become a Senior Lender in accordance with the Senior Facility Agreement,

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

**"Senior Liabilities"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE INTERCREDITOR AGREEMENT*".

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

**"Senior Loan Break Costs"** means:

- (a) in respect of any period when LIBOR is greater than or equal to zero, the amount (if any) by which:
  - (i) the interest (excluding Margin) which a Senior Lender should have received for the period from the date of receipt of all or any part of its participation in the Senior Loan to the last day

of the current Senior Loan Interest Period in respect of that Senior Loan, had the principal amount received been paid on the last day of that Senior Loan Interest Period;

exceeds:

- (ii) the amount which that Senior Lender would be able to obtain by placing an amount equal to the principal amount received by it on deposit with a leading bank in the Relevant Market for a period starting on the Business Day following receipt and ending on the last day of the current Senior Loan Interest Period; or
- (b) in respect of any period which LIBOR is less than zero, the cost to a Senior Lender for placing any part of its participation in the Senior Loan received by it on deposit with a leading bank in the Relevant Market for a period starting on the Business Day following receipt or recovery and ending on the last day of the current Senior Loan Interest Period in respect of the Senior Loan.

**"Senior Loan Debt Yield"** means, on any date, the Senior Loan Projected Net Rental Income for the Calculation Period starting on the Financial Quarter Date falling immediately prior to that date as a percentage of the Senior Loan outstanding less an amount equal to the aggregate of (i) the amount then standing to the credit of the Cure Account (disregarding any amount to be transferred to the General Account on that date) and (ii) any amount then standing to the credit of the Deposit Account, to the extent that such amount then standing to the credit of the Deposit Account is obliged under the Senior Facility Agreement to be applied in mandatory prepayment of the Senior Loan on that date.

**"Senior Loan Debt Yield Covenant"** has the meaning given to that term in the section entitled *"DESCRIPTION OF THE SENIOR FACILITY AGREEMENT – Debt Yield"*.

**"Senior Loan Default"** means a Senior Loan Event of Default or any event or circumstance specified in the Senior Facility Agreement which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Senior Finance Documents or any combination of any of the foregoing) be a Senior Loan Event of Default.

**"Senior Loan Event of Default"** means any event or circumstance specified as a "Event of Default" in the Senior Facility Agreement.

**"Senior Loan Facility"** has the meaning given to that term in the section entitled *"DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT"*.

**"Senior Loan First Extension Request"** has the meaning given to that term in the section entitled *"DESCRIPTION OF THE SENIOR FACILITY AGREEMENT – First Extension Option"*.

**"Senior Loan Funds Flow Statement"** means the funds flow statement delivered by the Senior Loan Obligors' Agent to the Senior Agent as a condition precedent in accordance with the initial conditions precedent provision set out in the Senior Facility Agreement.

**"Senior Loan Interest Payment Date"** means 20 January, 20 April, 20 July and 20 October in each year and the Senior Loan Termination Date, with the first Senior Loan Interest Payment Date being 20 April 2017. If, however, any such day is not a Business Day, the Senior Loan 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).

**"Senior Loan Interest Period"** means, in relation to the Senior Loan, each period determined in accordance with the interest period provision of the Senior Facility Agreement and, in relation to an Unpaid Sum, each period determined in accordance with the default interest provision in the Senior Facility Agreement.

**"Senior Loan Minimum Required Rating"** means that:

- (a) in relation to a Senior Account Bank (provided that for the purposes of determining the requisite rating of a Senior Account Bank, the ratings held by a Holding Company of such Senior Account Bank may be used), that bank or financial institution has:
  - (i) in the case of the Initial Account Bank, at least two of the following:

- (A) a minimum long term rating of BBB+ and minimum short term rating of F2 by Fitch;
  - (B) a minimum long term rating of BBB+ and minimum short term rating of A-2 by S&P; and
  - (C) a minimum long term rating of A3 and minimum short term rating of P-2 by Moody's; or
- (ii) in any other case, at least two of the following:
- (A) a minimum long term rating of A and minimum short term rating of F1 by Fitch; or
  - (B) a minimum long term rating of A and minimum short term rating of A-1 by S&P; and
  - (C) a minimum long term rating of A2 and minimum short term rating of P-1 by Moody's;
- (b) in relation to a Hedge Counterparty, that Hedge Counterparty has:
- (i) long term unsecured debt instruments in issue that:
- (A) are neither subordinated nor guaranteed; and
  - (B) have a rating of the following:
    - I. A (or better) by Fitch; and
    - II. A+ (or better) by S&P; and
- (ii) short term unsecured debt instruments in issue that:
- (A) are neither subordinated nor guaranteed; and
  - (B) have a rating of the following:
    - I. F1 (or better) by Fitch; and
    - II. A-2 (or better) by S&P; or
- (c) in relation to an insurance company or underwriter, that insurance company or underwriter has an insurance financial strength rating of the following:
- (i) A (or better) by Fitch; and
  - (ii) A (or better) by S&P.

**"Senior Loan Obligor"** means:

- (a) the Senior Loan Obligors' Agent; or
- (b) following their accession to the terms of the Senior Facility Agreement:
  - (i) a Target; or
  - (ii) Castle 46.

**"Senior Loan Obligor's Agent"** means BSREP CityPoint Bidco Limited, a private limited company incorporated in Jersey with registration number 122626 and having its registered office at 47 Esplanade, St Helier, Jersey JE1 0BD;

**"Senior Loan Projected Net Rental Income"** means, on any date, the passing rental for the Calculation Period starting on that date. For the purposes of this definition:

**"Senior Loan Repeating Representations"** means the repeating representations to be made by the Senior Loan Obligors' Agent and each of the Targets under the Senior Facility Agreement relating to status, governing law and enforcement, no default, money laundering laws, subject to the exclusions set out in the Senior Facility Agreement.

**"Senior Loan Second Extension Request"** has the meaning given to that term in the section entitled *"DESCRIPTION OF THE SENIOR FACILITY AGREEMENT – Second Extension Option"*.

**"Senior Loan Second Extension Request"** has the meaning given to that term in the section entitled *"DESCRIPTION OF THE SENIOR FACILITY AGREEMENT – Second Extension Option"*.

**"Senior Loan Termination Date"** means the date falling on:

- (a) 15 December 2019;
- (b) if the first extension option under the Senior Facility Agreement is exercised by the Senior Loan Obligors' Agent, 15 December 2020; and
- (c) if the second extension option under the Senior Facility Agreement is exercised by the Senior Loan Obligors' Agent, 15 December 2021.

**"Senior Loan to Value"** means, at any time, the Senior Loan (less (i) the amount then standing to the credit of the Cure Account (disregarding any amount to be transferred to the General Account on that date) and (ii) any amount then standing to the credit of the Deposit Account, to the extent that such amount then standing to the credit of the Deposit Account is obliged under the Senior Facility Agreement to be applied in mandatory prepayment of the Senior Loan) as a percentage of the aggregate market value of the Property (determined in accordance with the most recent Valuation of the Property at that time).

**"Senior Loan to Value Covenant"** has the meaning given to that term in the section entitled *"DESCRIPTION OF THE SENIOR FACILITY AGREEMENT – Loan to Value"*.

**"Senior Loan Utilisation"** means the utilisation of the Senior Facility which was 15 December 2016.

**"Senior Loan Utilisation Date"** means the 15 December 2016.

**"Specified Time"** means a day or time determined in accordance with the Senior Facility Agreement or such later time agreed to by all the Senior Lenders.

**"Sponsor"** has the meaning given to that term in the section entitled *"DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT"*.

**"Sponsor Affiliate"** has the meaning given to that term in the section entitled *"DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT"*.

**"Subordinated Debt"** means in relation to any Intra-Group Liabilities or the Existing Facility Liabilities (including, for the avoidance of doubt, the Retained Debt), that:

- (a) such liabilities are subordinated to the Senior Liabilities pursuant to the terms of the Intercreditor Agreement; and
- (b) the creditor in respect of such Intra-Group Liabilities or Existing Facility Liabilities (as applicable) shall (and to the extent such rights are not already automatically subject to the Common Transaction Security) grant security over its rights in respect of such Intra-Group Liabilities or Existing Facility Liabilities (as applicable in favour of the Common Security Agent on substantially the same terms as the Common Security Documents or otherwise on terms acceptable to the Common Security Agent).

**"Surrender Permitted Amount"** means, on each Senior Loan Interest Payment Date following the surrender of an Occupational Lease, an amount equal to the amount of the Surrender Premium divided by the number of Senior Loan Interest Payment Dates falling in the period from the date of receipt of the Surrender Premium in respect of that surrender until the expiry date (assuming such Occupational Lease was not surrendered or the break option had not been exercised) in respect of that Occupational Lease.

**"Surrender Premium"** means in respect of a surrender of an Occupational Lease, the amount of any surrender premium payment (excluding, for the avoidance of doubt, any payment for dilapidations) received by an Senior Loan Obligor.

**"Surrender Retention Amount"** means, on any Senior Loan Interest Payment Date in relation to any Occupational Lease, the greater of:

- (a) zero; and
- (b) the Surrender Premium minus the aggregate of:
  - (i) the Surrender Permitted Amount on that Senior Loan Interest Payment Date;
  - (ii) the Surrender Permitted Amount on any prior Senior Loan Interest Payment Date, in each case, in relation to such Occupational Lease; and
  - (iii) all amounts withdrawn from the Rent Account in respect of that Surrender Retention Amount under the rent account provision of the Senior Facility Agreement,

provided that if the lettable area previously demised by that Occupational Lease is the subject of an Occupational Lease in respect of which any rent free periods have expired, the Surrender Retention Amount for that Occupational Lease shall be zero.

**"Target"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT*".

**"Target Accession Letter"** means a document substantially in the form set out in the Senior Facility Agreement, with any amendments that the Senior Agent and the Senior Loan Obligors' Agent may agree.

**"Target Intercreditor Accession Deed"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE INTERCREDITOR AGREEMENT*".

**"Tax"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT*".

**"Tax Due Diligence Report"** means the report dated 15 December 2016 titled "Project Sherbourne Tax Due Diligence", prepared by an accountancy firm, addressed to (or capable of being relied upon) by the Senior Finance Parties.

**"Tax Structuring Memorandum"** means the report dated 15 December 2016 titled "Project Sherbourne Tax Structuring", prepared by an accountancy firm, addressed to (or capable of being relied upon) by the Senior Finance Parties.

**"Technical Due Diligence Report"** means the report dated 15 November 2016 titled "Building Inspection Report", prepared by a building surveyor firm, addressed to (or capable of being relied upon) the Senior Finance Parties.

**"Tenant Contributions"** means any amount paid or payable to an Senior Loan Obligor by any tenant under a Senior Lease Document or any other occupier of the Property, by way of:

- (a) contribution to:
  - (i) ground rent or any other amount payable under a Headlease;

- (ii) insurance premia;
  - (iii) the cost of an insurance valuation;
  - (iv) a service or other charge in respect of a Senior Loan 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, the Property; or
  - (v) a reserve or sinking fund; or
- (b) VAT.

**"Total Senior Commitments"** means the aggregate of the commitments being £334,380,000 at the date of the Senior Facility Agreement.

**"Transfer Certificate"** means, in relation to a transfer of a portion or all of the Senior Loan held by a Senior Lender, a transfer certificate substantially in the form set out in the Senior Facility Agreement or any other form agreed between the Senior Agent and the Senior Loan Obligors' Agent.

**"Trustee"** means:

- (a) Ropemaker Trustee 1 Limited a private limited company incorporated in Jersey with registration number 122622 and having its registered office at 47 Esplanade, St Helier, Jersey JE1 0BD Channel Islands; and
- (b) Ropemaker Trustee 2 Limited a company incorporated in Jersey with registration number 122623 and having its registered office at 47 Esplanade, St Helier, Jersey JE1 0BD Channel Islands.

**"Updated Business Plan"** means any business plan delivered to the Senior Agent after the Senior Loan Utilisation Date and approved by the Majority Senior Lenders in accordance with the Business Plan provisions in the Senior Facility Agreement.

**"Unit"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT*".

**"Unit Trust"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT*".

**"Unitholders"** means CityPoint Holdings I Limited, a private limited company incorporated in Jersey with registration number 97040 and (when changed as part of the completion process) intended to have its registered office at 47 Esplanade, St Helier, Jersey JE1 0BD and CityPoint Holdings II Limited, a private limited company incorporated in Jersey with registration number 97041 and (when changed as part of the completion process) intended to have its registered office at 47 Esplanade, St Helier, Jersey JE1 0BD.

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

**"Utilisation Request"** means a notice substantially in the form set out in the Senior Facility Agreement.

**"Valuation"** means a valuation of the Property by the Valuer, supplied at the request of the Senior Agent, addressed to or capable of being relied upon by the Senior Finance Parties and the Mezzanine Creditors 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 Savills plc, JLL, Cushman & Wakefield (DTZ), Knight Frank or any other surveyor or valuer appointed by the Senior Agent (and notified to the Senior Loan Obligors' Agent in writing five Business Days prior to such appointment).

"**VAT**" has the meaning given to that term in the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT*".

"**Vendor**" has the meaning given to that term in the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT*".

"**Warranty and Indemnity Insurance**" means the warranty and indemnity insurance policy issued by Ambridge Europe Limited (acting as Underwriting Representative, as defined therein) to the Senior Loan Obligors' Agent on or about the Senior Loan Utilisation Date.

"**Year**" means, Year 1, Year 2, Year 3, Year 4 or Year 5.

"**Year 1**" means the period from and including the Senior Loan Utilisation Date to (but excluding) the first anniversary of the Senior Loan Utilisation Date.

"**Year 2**" means the period from and including the first anniversary of the Senior Loan Utilisation Date to (but excluding) the second anniversary of the Senior Loan Utilisation Date.

"**Year 3**" means the period from and including the second anniversary of the Senior Loan Utilisation Date to (but excluding) the third anniversary of the Senior Loan Utilisation Date.

"**Year 4**" means the period from and including the third anniversary of the Senior Loan Utilisation Date to (but excluding) the fourth anniversary of the Senior Loan Utilisation Date.

"**Year 5**" means the period from and including the fourth anniversary of the Senior Loan Utilisation Date to (but excluding) the fifth anniversary of the Senior Loan Utilisation Date.



## DESCRIPTION OF THE INTERCREDITOR AGREEMENT

### Ranking

Pursuant to the Intercreditor Agreement: (a) the Liabilities owed by the Debtors to the Primary Creditors, rank in right and priority of payment; and (b) the Common Transaction Security rank shall secure such Liabilities, in, each case, the following order:

- (a) *first*, the Senior Liabilities; and
- (b) *second*, the Mezzanine Liabilities.

The Subordinated Liabilities are postponed and subordinate to the Liabilities owed by the Debtors to the Primary Creditors, but the Intercreditor Agreement does not purport to rank any of the Subordinated Liabilities as between themselves.

### Restrictions on payment

Prior to the Senior Discharge Date, the Mezzanine Holdco, the Mezzanine Issuer and the Debtors have agreed pursuant to the Intercreditor Agreement that they shall not and shall procure that no other member of the Larger Group will, make any Payments of the Mezzanine Liabilities unless the taking or receipt of that Payment is permitted pursuant to the Intercreditor Agreement (as described in "*Payment Restrictions – Mezzanine Permitted Payments*" below).

Pursuant to the Intercreditor Agreement, prior to the Final Discharge Date:

- (a) the Debtors shall not, and shall procure that no other member of the Group will, make any Payments of the Intra-Group Liabilities;
- (b) the Senior Parent shall not make any Payment of the Mezzanine Issuer Liabilities,

unless at any time that payment is permitted pursuant to the Intercreditor Agreement (as described in "*Payment restrictions – Intra-Group Permitted Payments*" and "*Payment restrictions – Mezzanine Issuer Permitted Payments*" below).

Prior to the earlier of the Castle 46 Novation Date and the Final Discharge Date, no Senior Loan Obligor shall, and shall procure that no member of the Group shall, make any payment of the Existing Facility Liabilities unless that Payment is permitted pursuant to the Intercreditor Agreement (as described in "*Payment Restrictions – Existing facility permitted payments*" section below) or the taking or receipt of payment is permitted pursuant to the Intercreditor Agreement (as described in "*Enforcement Action – Subordinated Lender Enforcement Action*" below).

### Amendments and waivers

#### *Senior Creditors*

Except with the with the prior consent of the Mezzanine Note Agent (acting on the instructions of a majority of the Majority Mezzanine Noteholders, the Senior Creditors are not permitted to amend, consent to or waive certain specific terms of the Senior Finance Documents. Such restrictions relate to amendments, consents or waivers that would:

- (a) increase the margin or rate payable relating to under the Senior Facility Agreement or provide for an additional margin to be payable (except to the extent that such increase or addition was agreed in writing between the Senior Lenders and the Mezzanine Noteholders prior to the date of the Intercreditor Agreement or is contemplated by the Senior Finance Documents);
- (b) change the basis on which interest, fees or commission accrue or are calculated or payable under the Senior Facility Agreement, unless the relevant change: (i) is contemplated by the Senior Finance Documents; (ii) is minor or administrative and not prejudicial to the Mezzanine Noteholders; (iii) does

not increase the overall cost to the Senior Loan Obligors of the Senior Liabilities; or (iv) relates to reasonable fees or charges charged in connection with amendment, waiver or consent requests;

- (c) is not contemplated by the Senior Facility Agreement and which increases the overall cost to the Senior Loan Obligors of the Senior Liabilities (except for reasonable fees or charges in respect of requests for amendments, waivers or consents);
- (d) make any principal or interest under the Senior Finance Documents payable at an earlier date than that specified in the Senior Finance Documents;
- (e) change the currency of any amount payable under the Senior Finance Documents;
- (f) result in extension of the term of the Senior Loans or Senior Facility other than in accordance with the terms of the Senior Facility Agreement;
- (g) increase the principal amount of the Senior Facility, other than as described under "*Senior Principal Increase*" section below;
- (h) cause existing financial covenants, events of default or defaults contained in the Senior Facility Agreement to be more onerous on the Senior Loan Obligors or introduce new financial covenants to the Senior Facility Agreement;
- (i) change the strike rate referred to in the hedging provisions of the Senior Facility Agreement;
- (h) change the timing of payments under the Senior Facility Agreement (including (i) any change to the definition of the term "*Interest Period*" in the Senior Facility Agreement, or (ii) an extension or reduction of the term of the Senior Loan) unless permitted under the Intercreditor Agreement as described in "*Extension of the Senior Facility Maturity Date*" below;
- (i) change or grant consent in relation to: (i) certain definitions in the Senior Facility Agreement including Cash Trap Event, Cure Payment Amount, excluded recovery proceeds, Interest Period, Mezzanine Corporate Costs, Majority Senior Lenders and Permitted Payment, Valuer or Valuation; (ii) the valuations provisions of the Senior Facility Agreement (iii) the definition of Senior Loan Event of Default or Senior Loan Default under the Senior Finance Documents, causing this to be more onerous on the Senior Loan Obligors, or the inclusion by any additional events of default which are not included in the Senior Facility Agreement; and (iv) the debt purchase and disenfranchisement provisions of the Senior Facility Agreement;
- (j) change, or grant consent to an amendment in respect of a breach of the negative pledge or the provisions restricting the payments of dividends or other distributions contained in the Senior Facility Agreement;
- (k) result in the terms and conditions as to insurance becoming less onerous for the Senior Loan Obligors than contemplated by the Senior Facility Agreement;
- (l) result in the prohibition or restriction of the ability of the Senior Borrower to make a Permitted Payment;
- (m) have the effect of releasing the Common Transaction Security other than as permitted by the Senior Facility Agreement or the provision on enforcement of the common transaction security in the Intercreditor Agreement;
- (n) amend or waive or provide a consent in respect of the accounts, partial payments or application of mandatory prepayments provisions of the Senior Facility Agreement unless it is contemplated by the Senior Finance Documents or is a minor or administrative change or correction which is not prejudicial to the Mezzanine Noteholders;
- (o) result in or allow a cross default of any Senior Liabilities to any default under any Mezzanine Liabilities or subordination of the Senior Liabilities to any indebtedness;

- (p) permits any Senior Creditors to acquire any direct or indirect equity interest in the Mezzanine Issuer or any additional interest based on cash flow or appreciation of the Property;
- (q) without prejudice to any permitted distressed disposals provisions in the Intercreditor Agreement, would release, waive or compromise any Mezzanine Issuer Liabilities;
- (r) which has the effect of changing the change of control provisions of the Senior Facility Agreement (unless Mezzanine Note Agent consent has been obtained); and
- (s) change or release the guarantee or indemnity under the Senior Facility Agreement other than as permitted under the Intercreditor Agreement.

*Extension of the Senior Facility Maturity Date*

The maturity date of the Senior Facility Agreement may be extended by up to one year beyond the then applicable Senior Loan Termination Date, provided that such extension does not require any other consent or waiver from the Mezzanine Noteholders pursuant to the terms of the Intercreditor Agreement.

*Deemed consent*

Such consent will be deemed to have been given by a Mezzanine Noteholder or the Mezzanine Note Agent if they fail to respond to both: (i) a request for consent within ten Business Days (or such longer time period as the Majority Senior Lenders may agree in relation to any request) of such request being made (the "**First Request**"); and (ii) a second request for such consent (the "**Second Request**") within five Business Days (or such longer time period as the Majority Senior Lenders may agree in relation to any request) of such request being made.

*Senior Principal Increase*

The Senior Lenders may from time to time effect a Senior Principal Increase in an amount which does not exceed the Senior Headroom at that time and the amount of such Senior Principal Increase (together with interest, fees and commission on that amount) shall be treated as being part of the Senior Lender Liabilities provided that:

- (a) any such Senior Principal Increase shall not bear interest or accrue fees or commission in excess of the interest, fees or commission in relation to the Senior Liabilities as set out in the original form Senior Facility Agreement subject to any amendments permitted under the Intercreditor Agreement, see the section entitled "*Amendments and Waivers – Senior Creditors*" above, and any prior Senior Principal Increases; and
- (b) the Senior Agent shall notify the Mezzanine Note Agent promptly of the intention of the Senior Lenders to implement a Senior Principal Increase.

*Deemed consent*

Such consent will be deemed to have been given by a Mezzanine Noteholder or the Mezzanine Note Agent if they fail to respond to both: (i) a request for consent within ten Business Days (or such longer time period as the Majority Senior Lenders may agree in relation to any request) of such request being made (the First Request); and (ii) a second request for such consent (the Second Request) within five Business Days (or such longer time period as the Majority Senior Lenders may agree in relation to any request) of such request being made.

*Valuation*

The rights of the Mezzanine Creditor under the "Amendments and Waivers" section will cease at any time and only as long as the market value of the Property by reference to the most recent valuation is less than 117.5% of the outstanding Senior Loan at the time.

### *Mezzanine Creditors*

Except with the prior consent of the Senior Agent (acting on the instructions of the Majority Senior Lenders), the Mezzanine Creditors are not permitted to amend, consent to or waive certain specific terms of the Mezzanine Finance Documents. Such restrictions relate to amendments, consents or waivers that would:

- (a) increase the margin payable under the Mezzanine Note Issuance Agreement or provide for an additional margin, coupon or rate to be payable or a change in interest provisions from pay if you can to cash pay (except to the extent that such increase or addition or change is contemplated by the Mezzanine Finance Documents);
- (b) change the basis on which interest, fees or commission accrue or are calculated under the Mezzanine Note Issuance Agreement, unless the relevant change (i) is contemplated by the Mezzanine Finance Documents (ii) is solely to convert cash pay interest to capitalised interest, (iii) is minor or administrative and not prejudicial to the Senior Lenders, (iv) does not increase the overall cost to the Mezzanine Note Obligors of the Mezzanine Liabilities, or (v) relates to reasonable fees or charges charged in connection with amendment, waiver or consent requests;
- (c) increase the overall cost to the Mezzanine Note Obligors of the Mezzanine Liabilities other than reasonable fees or changes in respect of the request for amendments, waivers and consents;
- (d) makes any principal or interest under the Mezzanine Finance Documents payable at an earlier date;
- (e) change the currency of any amount payable under the Mezzanine Finance Documents;
- (f) result in a shortening of the term of the Mezzanine Notes or any Mezzanine Cure Loan;
- (g) increase the principal amount outstanding under the Mezzanine Note Issuance Agreement other than: (i) the capitalisation of interest contemplated by the Mezzanine Note Issuance Agreement; (ii) the making of a Cure Payment; and (iii) an application in or towards the payment or discharge of costs, fees or expenses incurred as a result of a Mezzanine Enforcement Action in relation to any Mezzanine Note Obligor or under the Mezzanine Finance Documents;
- (h) cause any financial covenants, contained in the Mezzanine Note Issuance Agreement to be more onerous on the Mezzanine Note Obligors or introduce additional financial covenants to the Mezzanine Note Issuance Agreement;
- (i) change or granting consent in relation to (i) the definition of "Majority Mezzanine Noteholders", "Mezzanine Note Interest Period", "Valuer" or "Valuation" or the definition in respect of excluded recovery proceeds in the Mezzanine Note Issuance Agreement or the debt purchase and disenfranchisement provisions of the Mezzanine Note Issuance Agreement; (ii) the valuation provisions of the Mezzanine Note Issuance Agreement; (iii) the definition of "Mezzanine Note Event of Default" and " Mezzanine Note Default" under the Mezzanine Finance Documents that makes the Mezzanine Finance Document more onerous or the inclusion of addition events of default; and (iv) the no debt purchase by obligors or disenfranchisement on debt purchase transactions entered into by sponsor affiliates provisions of the Mezzanine Note Issuance Agreement.
- (j) make the provisions governing insurance in the Mezzanine Note Issuance Agreement less onerous for the Mezzanine Note Obligors;
- (k) change the Interest Reserve Account, cure and negative pledge provisions and the provisions restricting the payments of dividends or other distributions contained in the Mezzanine Note Issuance Agreement;
- (l) cause the terms and conditions of the insurance to be less onerous for the Mezzanine Note Obligors; and
- (m) change the interest reserve account or cure provisions of the Mezzanine Note Issuance Agreement.

### *Deemed consent*

Such consent will be deemed to have been given by a Senior Lender or the Senior Agent if they fail to respond to both: (i) a request for consent within ten Business Days (or such longer period as the Majority Senior Mezzanine Noteholders may agree) of such request being made (the "**First Request**"); and (ii) a second request for consent within five Business Days (or such longer period as the Majority Mezzanine Noteholders may agree) of such request being made (the "**Second Request**").

### *Mezzanine Issuer and Intra Group Liabilities*

Prior to the Final Discharge Date, no member of the Group, the Mezzanine Issuer nor the Senior Parent may amend, waive or agree the terms of any of the documents or instruments pursuant to which the Intra-Group Liabilities or Mezzanine Issuer Liabilities respectively are constituted unless:

- (a) the amendment or waiver is not prejudicial to any liability, any Primary Creditor, any Common Transaction Security, any Mezzanine Security or the subordination achieved or intended to be achieved by the Intercreditor Agreement;
- (b) (in the case of the Mezzanine Issuer and Senior Parent only) the amendment or agreement of new terms is to increase the principal amount of the Mezzanine Issuer Liabilities to fund any Cure Payment;
- (c) prior to the Senior Discharge Date, the prior consent of the Majority Senior Lenders and the Majority Senior Mezzanine Noteholders is obtained; or
- (d) on or after the Senior Discharge Date, the prior consent of the Majority Mezzanine Noteholders is obtained,

### *Subordinated Lender*

Prior to the Castle 46 Novation Date and the Final Discharge Date neither the Subordinated Lender nor a Senior Loan Obligor may amend, waive or agree the terms of any of the documents or instruments pursuant to which the Existing Facility Liabilities are constituted unless:

- (a) such amendment or waiver is not prejudicial to any Liability, any Primary Creditor, any Common Transaction, any Mezzanine Security or the subordination achieved by the Intercreditor Agreement;
- (b) prior to the Senior Discharge Date, the prior consent of the Majority Senior Lenders and the Majority Mezzanine Noteholders is obtained; or
- (c) on or after the Senior Discharge Date, but prior to the Mezzanine Discharge Date, the prior consent of the Majority Mezzanine Noteholders is obtained.

Subject to the above, the Subordinated Lender may transfer its rights and interests in the Existing Finance Documents to the Senior Parent.

### **Permitted Payments**

#### *Mezzanine Liabilities*

Mezzanine Permitted Payments: Prior to the Senior Discharge Date, the Mezzanine Holdco, the Mezzanine Issuer and the Debtors may pursuant to the Intercreditor Agreement only make a Payment of the Mezzanine Liabilities then due:

- (a) if that Payment is made using the proceeds of a Permitted Payment that is allowed to be made under the rent account and general account provisions in the Senior Facility Agreement;
- (b) from proceeds originating from a person other than a member of the Group or a Report Provider or are derived from the Interest Reserve Account and are applied to discharge the Mezzanine Margin; or

- (c) if no Payment Stop Notice is outstanding from proceeds of that Payment originating from a person other than a member of the Group or a Report Provider.

Mezzanine Issuer Payment Stop Notice: Following a Payment Stop Event, the Senior Agent may issue a notice (a "**Payment Stop Notice**") to the Mezzanine Note Agent (with a copy to the Mezzanine Issuer and the Senior Parent) advising that a Payment Stop Event has occurred and notifying them that no payment of the Mezzanine Issuer Liabilities is permitted until the first to occur of:

- (a) the date on which the relevant Payment Stop Event is no longer continuing;
- (b) the date on which the Senior Agent (acting on the instructions of the Senior Lenders) cancels the Payment Stop Notice by notice to the Mezzanine Note Agent; and
- (c) the Senior Discharge Date.

The Senior Agent may not issue a Payment Stop Notice: (a) in reliance on a particular Payment Stop Event, more than six months after that Payment Stop Event, or (b) more than once with respect to the same Payment Stop Event.

Effect of Payment Stop Notice: Any failure to make a payment under the Mezzanine Finance Documents as a result of a Payment Stop Notice shall not prevent:

- (a) the occurrence of an event of default under the Mezzanine Note Issuance Agreement as a consequence of failure to make a payment in relation to the Mezzanine Note Issuance Agreement;
- (b) the delivery of a Mezzanine Cure Notification as described in "*Mezzanine Cure Payments – Cure Payments*" below); or
- (c) the issue of a Senior Purchase Notice on behalf of the Mezzanine Creditors (as described in "*Senior Purchase Option*" below).

Obligations continue: Neither the Mezzanine Issuer, the Mezzanine Holdco nor any Debtor shall be released from the liability to make any payment under any Mezzanine Finance Document by virtue of the restrictions discussed above. The accrual and/or capitalisation of interest in accordance with the Mezzanine Note Issuance Agreement shall continue notwithstanding the occurrence of a Payment Stop Event or the service of a Payment Stop Notice.

#### *Intra-Group Liabilities*

- (a) Intra-Group Permitted Payments: Prior to the Final Discharge Date, the Debtors may only and shall ensure that any other member of the Group may only make payments in respect of the Intra-Group Liabilities if those payments are permitted under the Senior Facility Agreement.
- (b) Obligations continue: No Debtor shall be released from the liability to make any payment under any Debt Document by virtue of the restrictions discussed in "*Restrictions on payment*" above or "*Intra-Group Permitted Payments*" above.

#### *Mezzanine Issuer Liabilities*

Mezzanine Issuer Permitted Payments: Prior to the Final Discharge Date, the Senior Parent may only make payments in respect of the Mezzanine Issuer Liabilities then due if that payment is permitted to be made in accordance with the rent account and general account payment provisions of the Senior Facility Agreement and:

- (a) no Payment Stop Notice is outstanding; or
- (b) the payment by the Senior Parent to the Mezzanine Issuer is to fund Mezzanine Corporate Costs (subject to a £100,000 plus VAT cap per Year or Mezzanine Agency Costs (subject to a £26,000 plus VAT cap per Year),

subject to certain conditions.

Obligations continue: The Senior Parent will not be released from the liability to make any Payment under any Mezzanine Issuer Intercompany Loan Agreement by virtue of the restrictions or permitted payments discussed above.

#### *Existing Facility Liabilities*

Existing Facility Permitted Payments: The Senior Borrower may only make payments in respect of the Existing Facility Liabilities then due if that payment is being made on the first Utilisation Date out of the proceeds of the Senior Loans; or is of a type permitted to be made under the Senior Facility Agreement in accordance with the general account provisions.

Obligations continue: No Senior Loan Obligor shall be released from the liability to make any payment under any Existing Finance Document by virtue of the restrictions or permitted payments discussed above.

### **Enforcement Action**

#### *Enforcement of Common Transaction Security*

Enforcement of Common Transaction Security: The Instructing Group (acting through the relevant facility agent) may pursuant to the Intercreditor Agreement give the Common Security Agent instructions as it sees fit with respect to enforcement of the Common Transaction Security upon the Common Transaction Security becoming enforceable. The Common Security Agent may refrain from enforcing the Common Transaction Security until it receives such instructions. Following any instructions from the Instructing Group to enforce the Common Transaction Security, the Common Security Agent shall serve upon the Senior Parent a notice (prior to the Senior Discharge Date, a "**Senior Enforcement Notice**") on behalf of all Debtors declaring its intention to take enforcement action unless the Instructing Group has instructed the Common Security Agent to take Protective Enforcement Action in which case the notice to the Senior Parent will only be served after the Protective Enforcement Action has taken place. Prior to the Senior Discharge Date, the Common Security Agent shall, except in relation to Protective Enforcement Action or where a delay in enforcement would materially prejudice the Senior Creditors, consult with the Mezzanine Creditors through the Mezzanine Note Agent for a period of not longer than ten Business Days prior to taking any such enforcement action.

Manner of enforcement: If a Senior Loan Event of Default has occurred and is continuing, the Common Security Agent may, prior to issuing a Senior Enforcement Notice, unless it has been instructed to take Protective Enforcement Action where it shall be after the issuance of a Senior Enforcement Notice, serve a notice on the Mezzanine Note Agent and Mezzanine Security Agent requesting that the Mezzanine Noteholders declare if they wish to exercise their rights to make a mezzanine cure payment or a purchase of the Senior Lender Liabilities a "**Mezzanine Intention Notice**") and/or to take any Mezzanine Enforcement Action (in each case, a Mezzanine Intention Notice).

The Common Security Agent shall enforce the Common Transaction Security as the Instructing Group shall instruct.

#### *Senior Creditor Enforcement Action*

Restriction: No Senior Creditor may take any Enforcement Action against any Debtor in relation to any of the Senior Liabilities or in respect of the Common Transaction Security as a result of a Senior Loan Event of Default which is continuing:

- (a) if that Senior Loan Event of Default is a Curable Default, from the date of the occurrence until the earliest of:
  - (i) the expiry of the applicable Election Period, if no Mezzanine Cure Notification is delivered within that Election Period;
  - (ii) the expiry of the applicable Grace Period relating to the Curable Default, if a Mezzanine Cure Notification is delivered within the applicable Election Period; and

- (iii) the date on which the Mezzanine Note Agent notifies the Senior Agent that the Mezzanine Noteholders do not intend to exercise their rights by making a cure payment in respect of that Senior Loan Event of Default;
- (b) from the date of any Senior Purchase Notice sent by the Mezzanine Note Agent to the Senior Agent in respect of the relevant Material Senior Loan Event of Default, until the earliest of:
  - (i) the relevant Senior Purchase Completion Date,;
  - (ii) the expiry of the Senior Purchase Notice; or
  - (iii) the date on which the Senior Agent reasonably determines that the Mezzanine Noteholders do not intend to complete the acquisition of the Senior Lender Liabilities by the date specified in the Senior Purchase Notice.
- (c) if the Mezzanine Security Agent within 15 days of delivery of a Mezzanine Intention Notice, commenced, or notified the Senior Agent of its intention to commence, Mezzanine Enforcement Action and:
  - (i) certain conditions contained in the Intercreditor Agreement regarding permitted change of control are satisfied or capable of being satisfied before completion of the relevant Acquisition (including conditions regarding, amongst others, ownership of the issued share capital of the Mezzanine Issuer, identity of the Asset Manager, compliance with know your customer requirements, and remediation of any relevant Curable Default or Senior Loan Event of Default);
  - (ii) that Senior Loan Event of Default is capable of remedy; and
  - (iii) the Acquisition completes by the longstop date set for the Acquisition under the Intercreditor Agreement.

*Mezzanine Enforcement Action*

Subject to the paragraph below, prior to the Senior Discharge Date, the Mezzanine Creditors may not take any enforcement action with respect to any member of the Group or instruct the Common Security Agent to enforce the Common Transaction Security.

The Mezzanine Creditors may at any time when a Mezzanine Event of Default is continuing commence Mezzanine Enforcement Action with respect to the Mezzanine Liabilities (other than any Guarantee Liabilities of any member of the Group), including enforcing the Mezzanine Only Security Documents in accordance with the Mezzanine Finance Documents. At any time after the Senior Creditor makes any demand against a member of the Group in relation to any Guarantee Liabilities, a Mezzanine Creditor may make a demand against such member in relation to any such Guaranteed Liabilities owed to it. Upon commencement of any Mezzanine Enforcement Action, the relevant Mezzanine Creditor shall notify the Common Security Agent of any material related notices. Any Mezzanine Enforcement Action shall not prevent or inhibit the Senior Creditors in taking any enforcement action with respect to the Common Transaction Security.

The Mezzanine Note Agent or the Mezzanine Security Agent must notify the Senior Creditors of any decision to cease any Mezzanine Enforcement Action.

*Enforcement of Mezzanine Only Security/Change of Control*

Each Senior Lender waives its rights pursuant to the Senior Facility Agreement in respect of any change of control which arises as a result of an Acquisition that occurs on the commencement of any Mezzanine Enforcement Action for the Change of Control Waiver Period if:

- (a) on completion of the Acquisition and during the Change of Control Waiver Period: more than 66 $\frac{2}{3}$  per cent. of the issued share capital of the Mezzanine Issuer (if the Acquisition is in respect of the Mezzanine Issuer) or the Senior Parent (if the Acquisition is in respect of the Senior Parent) is owned; and the Mezzanine Issuer (if the Acquisition is in respect of the Mezzanine Issuer) or the Senior Parent



(if the Acquisition is in respect of the Mezzanine Issuer) is otherwise controlled, by an Approved Person (the "**Change of Control Waiver Period Conditions**");

- (b) prior to completion of the Acquisition, the Asset Manager is replaced with an Approved Asset Manager in compliance with the requirements on the Senior Facility Agreement;
- (c) all know your customer requirements of the Senior Creditors have been complied with;
- (d) the Mezzanine Noteholders comply with the change of Senior Lender or Mezzanine Noteholder provisions of the Intercreditor Agreement.
- (e) any Curable Default is remedied on the completion of the Acquisition;
- (f) any other Senior Loan Event of Default is remedied on or before the date falling 30 days after the completion of the Acquisition; and
- (g) prior to the completion of the Acquisition: (A) in the case of enforcement of the Mezzanine Security over the shares in the Mezzanine Issuer, each relevant party accedes to the Intercreditor Agreement as Mezzanine Holdco; and (B) in the case of enforcement of the Mezzanine Security over the shares in the Senior Parent, each relevant party accedes to the Intercreditor Agreement as the Mezzanine Issuer for purposes of being a Subordinated Creditor under the Intercreditor Agreement.

a change of control occurs if:

- (a) Brookfield Asset Management Inc. ceases to control (directly or indirectly) the Sponsor GP;
- (b) the Sponsor GP ceases to be the sole general partner of the Sponsor; or
- (c) the Sponsor ceases to control (directly or indirectly) the Mezzanine Issuer.

**"Change of Control Waiver Period"** means, in respect of an Acquisition, the period starting on the date of completion of that Acquisition and ending on the earlier of:

- (a) the date on which the Senior Agent (acting on the instructions of the Majority Senior Lenders) notifies the Mezzanine Note Agent that any of the Change of Control Waiver Period Conditions are not satisfied; and
- (b) the date falling six months thereafter.

**"control"** means:

- (a) the ability (whether by way of ownership of units, shares, proxy, contract, agency or otherwise):
  - (i) to cast, or control the casting of more than  $66\frac{2}{3}$  per cent. of the maximum number of votes that might be cast at a general meeting of a person; and
  - (ii) to give directions with respect of the operating and financial policies of a person with which the directors or other equivalent officers of a person are obliged to comply; and
- (b) the holding beneficially of more than  $66\frac{2}{3}$  per cent. of the issued share capital of a person (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital),

and **"controlled"** shall be construed accordingly.

Following an Acquisition, the Mezzanine Noteholders will lose their rights as Mezzanine Noteholders with respect to certain provisions in the Intercreditor Agreement which deal with: amendments and waivers of the Senior Creditors, designation of Senior Finance Documents, enforcement action the Mezzanine Creditors, enforcement of mezzanine only security, default cure payments, enforcement instructions, manner of

enforcement, restriction of enforcement with regards to Senior Creditors, fair value/price and any other provision of the Intercreditor Agreement (except in relation to the senior purchase option) which confers rights on a Mezzanine Noteholder. The Mezzanine Noteholders will be deemed to have given any consent that may be required by any Senior Creditor to enable such Senior Creditor to take action under such provision.

The Senior Creditors shall comply with any know your customer requirements in relation to any Mezzanine Enforcement Action.

#### *Intra-Group Lender Enforcement Action*

After the occurrence of a Common Insolvency Event, no Intra-Group Lender may take or exercise any right against the Senior Loan Obligor, except with the prior written consent of the Common Security Agent, to accelerate that Senior Loan Obligor's Intra-Group Liabilities, make a demand under any guarantee, indemnity or other assurance against loss, exercise any right of set-off or take or receive any payment or claim and prove in the liquidation of that Senior Loan Obligor for the Intra-Group Liabilities owing to it.

#### *Mezzanine Issuer Enforcement Action*

After the Common Insolvency Event the Mezzanine Issuer may not exercise any right it may have against the Group in respect of any of the Mezzanine Issuer Liabilities except with the prior written consent of the Common Security Agent, where the Mezzanine Issuer may accelerate, make a demand under any guarantee, indemnity or other assurance against loss, exercise any right of set-off or take or receive any payment or claim and prove in the liquidation of a member of the Group with respect to the Group member's Mezzanine Issuer Liabilities owing to it.

#### *Subordinated Lender Enforcement Action*

After the Common Insolvency Event in relation to the Senior Borrower, the Subordinated Lender may not take any enforcement action in respect of any of the Existing Facility Liabilities except with the prior written consent of the Common Security Agent, where the Subordinated Lender may accelerate any Existing Facility Liabilities, make a demand under any guarantee, indemnity or other assurance against loss, exercise any right of set-off or take, receive any payment, or claim in the liquidation of a member of the Group with respect to the Group member's Existing Facility Liabilities owing to it.

### **Disposals and recoveries**

- (a) Non-Distressed Disposals: With respect to any disposal to a person outside of the Larger Group of an:
- (i) asset by a Debtor; or
  - (ii) an asset which is subject to the Common Transaction Security,

which is not a Distressed Disposal (a "**Non-Distressed Disposal**") and which is permitted under the Senior Finance Documents and the Mezzanine Finance Documents,

the Common Security Agent is irrevocably authorised to and shall (i) release the Common Transaction Security and any other claim (relating to a Debt Document) over that asset including a release of the Common Transaction Security over that member of the Group's Assets where that asset consists of shares in the capital of a member of the Group or units in a unit trust, (ii) issue certificates of non-crystallisation of any floating charge as considered necessary or desirable and (iii) register a financing charge statement in accordance with Article 74 of the Security Interests (Jersey) Law 2012 to effect the discharge of any registration of any financing statement in respect of security interests relating to Jersey law governed Common Security Document. The net proceeds of such Non-Distressed Disposal shall be applied to prepay the Senior Liabilities or the Mezzanine Liabilities if so required.

- (b) Distressed Disposals: With respect to a Distressed Disposal or an Appropriation, the Common Security Agent is irrevocably authorised pursuant to the Intercreditor Agreement to:

- (i) make any releases of the Common Transaction Security and issue letters of non-crystallisation of any floating charge as thought necessary or desirable in the opinion of the Instructing Group and:
- (ii) if the asset which is subject to the Distressed Disposal or Appropriation consists of shares or units in the capital of a Senior Loan Obligor, the Common Security Agent may release that Senior Loan Obligor and its Subsidiaries from (i) all of their liabilities, (ii) any Common Transaction Security granted by that Senior Loan Obligor or its Subsidiaries, and (iii) any other claim of any other Subordinated Lender or another Debtor over that Debtor or its Subsidiaries' assets;
- (iii) if the asset which is subject to the Distressed Disposal consists of shares or units in the capital of a Holding Company of a member of the Group (other than the Senior Parent), the Common Security Agent may release that Holding Company and its Subsidiaries from (i) all of its liabilities, (ii) any Common Transaction Security granted by that Holding Company and its Subsidiaries and (iii) any other claim of a Subordinated Lender or another Debtor over that Holding Company or its Subsidiaries' assets;
- (iv) if the asset which is subject to the Distressed Disposal consists of shares or units in the capital of a member of the Group or the Holding Company of a member of the Group (other than the Senior Parent) and the Common Security Agent disposes of any liabilities owed by that Debtor or its Holding Company or any of their Subsidiaries, the Common Security Agent may execute any document, to treat, or not, the transferee of the Liabilities as a Primary Creditor or a Common Secured Party and to execute any agreement to dispose of all (but not any part only) of the Liabilities owed to the Primary Creditors and all or part of any other Liabilities and the Debtor Liabilities; and
- (v) if the asset which is subject to the Distressed Disposal consists of shares or units in the capital of a member of the Group (other than the Senior Parent) or in such members' Holding Company (other than the Senior Parent) and the Common Security Agent transfers to any member of the Group any obligations in respect of liabilities of that member or its holding company or any of its Subsidiaries, the Common Security Agent may execute any document to transfer such obligations to the receiving member of the Group.

The net proceeds of such Distressed Disposal and each Debt Disposal, shall be applied in accordance with the priority of payments as described in "*Application of proceeds*" below and shall be subject to all applicable laws, and a Competitive Sales Process.

- (c) The Common Security Agent may only take such actions as described in paragraph (b) above in the context of a Competitive Sales Process if:
  - (i) the Common Security Agent has notified the Mezzanine Security Agent and provides the Mezzanine Security Agent with certain details including (A) the identity of the asset being disposed of and of any relevant sales agent, (B) a copy of any relevant information memorandum, and (C) reasonable details of any offer for the asset;
  - (ii) the asset has been marketed through a sales agent or sold in a manner with a view to obtaining the best market price reasonably obtainable following consultation with the Mezzanine Note Agent for a period between five to seven Business Days; and
  - (iii) the net disposal proceeds are applied as described in "*Application of proceeds*" below.

In the case of a Distressed Disposal or a Liabilities Sale, the Common Security Agent shall take the steps in paragraph (c)(ii) above with a view to obtaining the best market price reasonably obtainable.

- (d) Compensation Prepayment Proceeds, Insurance Prepayment Proceeds, Recovery Prepayment Proceeds: If any Claim is to be made by a Debtor before a Distress Event and that Claim, or the proceeds therefrom, is subject to the Common Transaction Security, the Common Security Agent is irrevocably authorised to give any consent under or release the Common Transaction Security, or other claim necessary to allow the Debtor to pursue such Claim. If a Distress Event has occurred, any proceeds

obtained from such Claim are required to be so applied in prepayment of the Senior Liabilities or the Mezzanine Liabilities then they should be so applied.

### **Common Insolvency Event**

After the occurrence of a Common Insolvency Event in relation to any member of the Group, any party entitled to receive a distribution of the assets of that member of the Group in respect of liabilities owed to that party shall instead instruct they are paid to the Common Security Agent for distribution as described in accordance with the Intercreditor Agreement (see the section below entitled "*Application of proceeds*"), until all liabilities owing to the Common Secured Parties have been paid in full. Each Creditor authorises the Common Security Agent to take any Enforcement Action and demand payment of the amounts owing to that Creditor, collect and receive all distributions and/or file a claim. When acting on that authority, the Common Security Agent shall act on the instructions of the Instructing Group (acting through its Agent, where relevant).

### **Mezzanine Cure Payments**

#### *Cure Payments*

If a Curable Default has occurred and is continuing, the Mezzanine Note Agent shall (if instructed by any of the Mezzanine Noteholders) within the Election Period with respect to such Curable Default notify the Senior Parent and the Senior Agent (a "**Mezzanine Cure Notification**") that the Mezzanine Noteholders (or any one of them) wish to make a Cure Payment with respect to that Curable Default.

#### *Mezzanine Cure Notification*

If a Mezzanine Cure Notification is given then the relevant Mezzanine Noteholders must procure that within the Grace Period for the relevant Curable Default:

- (a) in respect of a Senior Payment Default, an amount equal to the relevant Payment Default Cure Payment is paid into an account specified by the Senior Agent (or into the Rent Account if no account is nominated);
- (b) in respect of a Senior Financial Covenant Default, an amount equal to the Covenant Breach Cure Payment in respect of the relevant Senior Financial Covenant Default is deposited into the Cure Account or is paid directly to the Senior Agent to be applied in voluntary prepayment of the Senior Loans in accordance with the Senior Facility Agreement.

#### *Number of Cure Payments*

- (a) The payment of any Covenant Breach Cure Payment by the Mezzanine Noteholders may:
  - (i) not be made in more than two successive Interest Periods.
  - (ii) only be made a maximum of four times during the term of the Senior Facility Agreement; and
- (b) Any cure by:
  - (i) the Senior Loan Obligors of a Senior Financial Covenant Default will reduce the number of Covenant Breach Cure Payments which may subsequently be made by the Mezzanine Noteholders in relation to the relevant Senior Financial Covenant; and
  - (ii) the Mezzanine Noteholders of a Senior Financial Covenant Default will reduce the number of Covenant Breach Cure Payments which may subsequently be made by the Senior Loan Obligors in relation to the relevant Senior Financial Covenant,

provided that, in the case of paragraph (b)(i) above the Mezzanine Noteholders will retain the right to make one further Covenant Breach Cure Payment, in circumstances where the effect of paragraph (b)(i) above would otherwise be to leave the Mezzanine Noteholders with no right to cure provided that the Mezzanine Noteholders have not previously made a Cure Payment.

### *Miscellaneous*

- (a) Any Cure Payment will be treated as forming part of the relevant Mezzanine Liabilities by way of the issue of new Mezzanine Notes or by way of a Mezzanine Cure Loan and the total amount in aggregate owed by the Mezzanine Issuer to the Mezzanine Noteholders and the Total Mezzanine Commitments will be increased by an amount equivalent to such Cure Payment.
- (b) The payment of a Cure Payment shall not be treated as remedying any Mezzanine Event of Default outstanding under the Mezzanine Note Issuance Agreement.

### **Additional security**

- (a) *Senior Facility Security*: The Senior Creditors may receive the benefit of any Security in respect of the Senior Liabilities in addition to the Common Transaction Security if (to the extent legally possible) it is also offered at the same time to either: (i) the Common Security Agent as security agent or trustee for the other Common Secured Parties in respect of their liabilities, or (ii) where due to jurisdictional restrictions to: the other Common Secured Parties or to the Common Security Agent under a parallel debt structure and provided it ranks in the same order of priority as set out in the Intercreditor Agreement.
- (b) *Mezzanine Facility Security*: Prior to the Senior Discharge Date, the Mezzanine Creditors may not, without the prior consent of the Majority Senior Lenders, receive from any member of the Group the benefit of any Security in respect of the Mezzanine Liabilities other than:
  - (i) the Common Transaction Security;
  - (ii) the Mezzanine Security; or
  - (iii) any guarantee, indemnity or other assurance contained in the Mezzanine Note Issuance Agreement, the Intercreditor Agreement or any Common Assurance.
- (c) *Intra-Group Security*: Prior to the Final Discharge Date, the Intra-Group Lenders may not receive the benefit of any Security, guarantee, indemnity or other assurance with respect to the Intra-Group Liabilities unless:
  - (i) such security is expressly permitted by the Senior Facility Agreement and the Mezzanine Note Issuance Agreement;
  - (ii) prior to the Senior Discharge Date the prior consent of the Majority Senior Lenders and the Majority Mezzanine Noteholders is obtained; or
  - (iii) on or after the Senior Discharge Date and prior to the Mezzanine Discharge Date, the prior consent of the Majority Senior Lenders and the Majority Mezzanine Noteholders is obtained.
- (d) *Mezzanine Issuer*: Prior to the Final Discharge Date, the Mezzanine Issuer, may not receive the benefit of any Security, guarantee, indemnity or assurance from any member of the Group in respect of any of the Mezzanine Issuer Liabilities.
- (e) *Subordinated Lender Security*: Prior to the Final Discharge Date, the Subordinated Lender may not receive the benefit of any Security, guarantee, indemnity or other assurance against loss from any member of the Larger Group in respect of any of the Existing Facility Liabilities.

### **Senior Purchase Option**

- (a) Any Purchasing Party may, following the occurrence of a Material Senior Loan Event of Default, elect to purchase all of the Senior Lender Liabilities by serving an irrevocable notice (a "**Senior Purchase Notice**") on the Senior Agent no later than 10 Business Days after the Mezzanine Note Agent has received a notice of the relevant Material Senior Loan Event of Default. The Senior Purchase Notice must identify any Purchasing Party nominate a date (the "**Senior Purchase Completion Date**") falling

not more than 10 Business Days after the date of the Senior Purchase Notice and specify the Senior Purchase Amount and acquire all Senior Lender Liabilities.

- (b) Following issuance of a Senior Purchase Notice: (i) the Senior Finance Parties may not commence or continue any enforcement action pursuant to the Intercreditor Agreement unless the relevant Purchasing Parties fail to pay the Senior Purchase Amount in full on the Senior Purchase Completion Date; and (ii) each Senior Lender must provide the Senior Agent with a duly executed transfer certificate or assignment agreement in the form set out in the Senior Facility Agreement.

#### **Purchase of the Mezzanine Issuer Liabilities**

Prior to the Final Discharge Date, the Mezzanine Issuer shall not, and the Senior Parent shall procure that no member of the Group will:

- (a) enter into any Liabilities Acquisition; or
- (b) beneficially own all or any part of the share capital of a company that is party to a Liabilities Acquisition,

in respect of any Mezzanine Issuer Liabilities unless:

- (i) permitted or contemplated under the Intercreditor Agreement; or
- (ii) prior to the Senior Discharge Date, the prior consent of the Majority Senior Lenders and the Majority Mezzanine Noteholders is obtained or on or after the Senior Discharge Date but prior to the Mezzanine Discharge Date, the prior consent of the Majority Mezzanine Noteholders is obtained.

#### **Application of proceeds**

Any monies received under or recovered by the Common Security Agent pursuant to the terms of any Debt Document or from the realisation of any of the Common Transaction Security shall be held on trust by the Common Security Agent and be applied in the following order of priority at any time as the Instructing Group (acting through its Agent) may direct:

- (a) in payment of all costs and expenses incurred by the Common Security Agent in connection with any realisation or enforcement of the Common Transaction Security and payment of any other sums owing to the Common Security Agent, any Receiver or any Delegate;
- (b) in payment of all costs and expenses incurred by any Common Secured Party in connection with any realisation or enforcement of the Common Transaction Security;
- (c) in payment or distribution to the Senior Agent in connection with the Senior Liabilities.
- (d) in payment or distribution to the Mezzanine Note Agent in connection with the Mezzanine Liabilities;
- (e) if none of the Debtors is under any further actual or contingent liability under any Senior Finance Document or Mezzanine Finance Document, in payment to any person to whom the Common Security Agent is obliged to pay in priority to any Debtor; and
- (f) the balance, if any, in payment to the relevant Debtor.

All amounts recovered by the Mezzanine Security Agent pursuant to the terms of any Debt Documents or in connection with the realisation or enforcement of all or any part of the Mezzanine Security shall be applied in accordance with the Mezzanine Finance Documents.

#### **Power of Attorney**

Each Subordinated Creditor and Debtor irrevocably and unconditionally appoints:

- (a) prior to the Senior Discharge Date, the Common Senior Agent; and
- (b) on or after the Senior Discharge Date, but prior to the Mezzanine Discharge Date, the Mezzanine Security Agent;

as its attorney to, inter alia, do all acts it has been instructed to do by the Common Senior Agent or the Mezzanine Note Agent under the Intercreditor Agreement or is required to do pursuant to the Intercreditor Agreement but has failed to do.

### **Valuations**

If the Senior Agent does not instruct a Valuer before the end of the 11<sup>th</sup> month after the first date in any Valuation Period, the Mezzanine Note Agent may appoint a Valuer.

### **Definitions**

For the purposes of this section of the Offering Circular entitled "*DESCRIPTION OF THE INTERCREDITOR AGREEMENT*", the following definitions apply:

**"Acquisition"** means:

- (a) upon the taking of Mezzanine Enforcement Action by a Mezzanine Creditor under the relevant Mezzanine Security granted by the Mezzanine Issuer, the acquisition by an Approved Person or Approved Persons acting together of all (and not some) of:
  - (i) the issued shares in the Senior Parent; and
  - (ii) the Mezzanine Issuer's rights and interests in and under any Mezzanine Issuer Intercompany Loan Agreement; or
- (b) upon the taking of Mezzanine Enforcement Action by a Mezzanine Creditor under the relevant Mezzanine Security granted by the Mezzanine Holdco, the acquisition by an Approved Person or Approved Persons acting together of all (and not some) of:
  - (i) the issued shares in the Mezzanine Issuer; and
  - (ii) the Mezzanine Holdco's rights and interests in and under any Mezzanine Holdco Intercompany Loan Agreement.

**"Additional Financial Covenant Cure Election Period"** has the meaning given to that term in paragraph (c)(i) of the definition of Grace Period.

**"Affiliate"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT*".

**"Agent"** means each of the Senior Agent and the Mezzanine Note Agent.

**"Appropriation"** means the appropriation (or similar process) of the units or shares in the capital of a member of the Group (other than the Senior Parent) by the Common Security Agent (or any Receiver or Delegate) which is effected (to the extent permitted under the relevant Common Security Document and applicable law) by enforcement of the Common Transaction Security.

**"Approved Asset Manager"** means any person on the Approved Asset Manager List.

**"Approved Asset Manager List"** means a list of persons agreed in writing between all the Senior Lenders and all the Mezzanine Noteholders on or before the Senior Loan Utilisation Date.

**"Approved Person"** means:

- (a) an Original Mezzanine Noteholder or any wholly-owned Affiliate of an Original Mezzanine Noteholder;
- (b) any Related Fund of an Original Mezzanine Noteholder, provided that the relevant Related Fund has been notified in writing to the Senior Agent prior to the date of the relevant Acquisition; or
- (c) any other person on the Approved Person List.
- (d) an Original Mezzanine Noteholder or any wholly-owned Affiliate of an Original Mezzanine Noteholder;
- (e) any Related Fund of an Original Mezzanine Noteholder, provided that the relevant Related Fund has been notified in writing to the Senior Agent prior to the date of the relevant Acquisition; or
- (f) any other person on the Approved Person List.

**"Approved Person List"** means a list of persons agreed in writing between all the Senior Lenders and all the Mezzanine Noteholders on or before the Senior Loan Utilisation Date.

**"Asset"** of a member of the Larger Group or of a Debtor means:

- (a) any asset of that member of the Larger Group or of that Debtor;
- (b) any Subsidiary of that member of the Larger Group or of that Debtor; and
- (c) any asset of any such Subsidiary.

**"Asset Manager"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE SENIOR FACILITY AGREEMENT*".

**"Borrowing Liabilities"** means, in relation to a member of the Larger Group, the liabilities and obligations (not being Guarantee Liabilities) it may have as a principal debtor to a Creditor or Debtor in respect of Financial Indebtedness arising under the Debt Documents (whether incurred solely or jointly and including, without limitation, liabilities and obligations as a Senior Borrower and liabilities and obligations as a Mezzanine Issuer).

**"Break Costs"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE SENIOR FACILITY AGREEMENT*".

**"Business Day"** means a day (other than a Saturday or Sunday) on which banks are open for general business in London, New York, Jersey, the jurisdiction of incorporation of any Securitisation Issuer and in any other jurisdiction agreed by the Senior Parent and the Senior Agent (acting on behalf of the Senior Lenders) in writing and notified to the Parties.

**"Cash Trap Event"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE SENIOR FACILITY AGREEMENT*".

**"Castle 46 Novation Date"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE SENIOR FACILITY AGREEMENT*".

**"Change of Control Waiver Period"** means, in respect of an Acquisition, the period starting on the date of completion of that Acquisition and ending on the earlier of:

- (a) the date on which the Senior Agent (acting on the instructions of the Majority Senior Lenders) notifies the Mezzanine Note Agent that any condition referred to in paragraph (b) below is not satisfied; and
- (b) the date falling six months thereafter.



**"Change of Control Waiver Period Conditions"** has the meaning given to that term in the section entitled *"DESCRIPTION OF THE INTERCREDITOR AGREEMENT – Enforcement of Mezzanine Only Security/Change of Control"*.

**"Claim"** means any of Compensation Prepayment Proceeds, Insurance Prepayment Proceeds or Recovery Prepayment Proceeds (each, a **"Claim"**).

**"Common Assurance"** means any guarantee, indemnity or other assurance against loss in respect of any of the Liabilities, the benefit of which (however conferred) is, to the extent legally possible, given to all the Common Secured Parties in respect of their Liabilities.

**"Common Insolvency Event"** means in relation to any member of the Group:

- (a) any resolution is passed or order made for the winding up, dissolution, administration or reorganisation of that member of the Group, a moratorium is declared in relation to any indebtedness of that member of the Group or an administrator is appointed to that member of the Group;
- (b) any composition, compromise, assignment or arrangement is made with any of its creditors;
- (c) the appointment of any liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of that member of the Group or any of its assets; or
- (d) any analogous procedure or step is taken in any jurisdiction.

**"Common Secured Debt Document"** means the Senior Finance Documents and the Mezzanine Finance Documents.

**"Common Secured Party"** means each of the Common Security Agent, any Receiver or Delegate and each of the Primary Creditors from time to time but, in the case of each Primary Creditor, only if it is a party to the Intercreditor Agreement or has acceded to the Intercreditor Agreement, in the appropriate capacity, pursuant to the "Creditor/Agent Accession Undertaking" provisions in the Intercreditor Agreement.

**"Common Security Agent"** means Mount Street Mortgage Servicing Limited.

**"Common Security Document"** has the meaning given to that term in the section entitled *"DESCRIPTION OF THE SENIOR FACILITY AGREEMENT"*.

**"Common Security Property"** means:

- (a) the Common Transaction Security expressed to be granted in favour of the Common Security Agent as security agent or as trustee for the Common Secured Parties and all proceeds of that Common Transaction Security;
- (b) all obligations expressed to be undertaken by a Debtor to pay amounts in respect of the Liabilities to the Common Security Agent as security agent or as trustee for the Common Secured Parties and secured by the Common Transaction Security together with all representations and warranties expressed to be given by a Debtor in favour of the Common Security Agent as trustee for the Common Secured Parties;
- (c) the Common Security Agent's interest in any trust fund created pursuant to the provisions on turnover receipts in the Intercreditor Agreement; and
- (d) any other amounts or property, whether rights, entitlements, choses in action or otherwise, actual or contingent, which the Common Security Agent is required by the terms of the Common Secured Debt Documents to hold as security agent or as trustee on trust for the Common Secured Parties.

**"Common Transaction Security"** means any Security created or expressed to be created pursuant to any Common Security Document which to the extent legally possible:

- (a) is created in favour of the Common Security Agent as security agent or trustee (as applicable) for the other Common Secured Parties in respect of their Liabilities; or
- (b) in the case of any jurisdiction in which effective Security cannot be granted in favour of the Common Security Agent as trustee for the Common Secured Parties is created in favour of:
  - (i) all the Common Secured Parties in respect of their Liabilities; or
  - (ii) the Common Security Agent under a parallel debt structure for the benefit of all the Common Secured Parties,

and which ranks in the order of priority contemplated in the provision relating to Common Transaction Security in the Intercreditor Agreement.

**"Compensation Prepayment Proceeds"** has the meaning given to it in the section entitled "*DESCRIPTION OF THE SENIOR FACILITY AGREEMENT*".

**"Competitive Sales Process"** means:

- (a) any auction or other competitive sales process the procedures for which do not expressly exclude the Mezzanine Creditors from participating as prospective buyers, other than where any Sales Adviser demonstrates to the satisfaction of the Common Security Agent that such participation could prejudice that auction or competitive sales process; or
- (b) any enforcement of the Common Transaction Security carried out by way of auction or other competitive sales process pursuant to requirements of applicable law.

**"Covenant Breach Cure Payment"** means, in respect of a Senior Financial Covenant Default, any payment of a Cure Payment Amount by one or more Mezzanine Noteholders directly into the Cure Account or directly to the Senior Agent for application in prepayment of the Senior Loans in accordance with the "voluntary prepayment of loan" provisions in the Senior Facility Agreement, which payment shall take effect under the Mezzanine Note Issuance Agreement as a subscription by one or more of the Mezzanine Noteholders for additional Mezzanine Notes issued by the Mezzanine Issuer or by way of Mezzanine Cure Loan the proceeds of which are advanced by the Mezzanine Issuer to the Senior Borrower via the Senior Parent in the manner permitted under the Senior Finance Documents and the Mezzanine Finance Documents.

**"Credit Agreement"** means the Senior Facility Agreement or the Mezzanine Note Issuance Agreement.

**"Creditor"** means a Primary Creditor or a Subordinated Creditor (in the case of each Subordinated Creditor, in its capacity as the lender in respect of any Subordinated Liability).

**"Creditor/Agent Accession Undertaking"** means:

- (a) an undertaking substantially in the form set out in the Intercreditor Agreement.; or
- (b) a Transfer Certificate or Assignment Agreement (each as defined in the relevant Credit Agreement) (provided that it contains an accession to the Intercreditor Agreement which is substantially in the form set out in the Intercreditor Agreement).

**"Curable Default"** means a Senior Payment Default or a Senior Financial Covenant Default.

**"Cure Account"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE SENIOR FACILITY AGREEMENT*".

**"Cure Payment"** means a Payment Default Cure Payment or a Covenant Breach Cure Payment.

**"Cure Payment Amount"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE SENIOR FACILITY AGREEMENT*".

**"Debt Disposal"** means any disposal of any Liabilities or Debtors Liabilities pursuant to the provision relating to Distressed Disposals and Appropriations in the Intercreditor Agreement.

**"Debt Document"** means each of the Intercreditor Agreement, the Senior Finance Documents, the Mezzanine Finance Documents, the Security Documents, the Existing Finance Documents, any other agreement evidencing the terms of any Subordinated Liabilities and any other document designated as such by the Common Security Agent, the Senior Parent, the Mezzanine Security Agent and the Mezzanine Issuer.

**"Debtor"** means the Mezzanine Holdco, the Mezzanine Issuer, the Senior Parent, any person which becomes a Party as a Debtor including, from the date of their accession in the provision relating to new Debtors and Intra-Group Lenders in the Intercreditor Agreement, each Target or any other person which becomes a Party as the new Mezzanine Issuer or the new Mezzanine Holdco pursuant to the provision relating to new Mezzanine Issuer/new Mezzanine Holdco in the Intercreditor Agreement.

**"Debtor Liabilities"** means, in relation to a member of the Larger Group, any liabilities owed to any Debtor (whether actual or contingent and whether incurred solely or jointly) by that member of the Larger Group.

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

**"Deposit Account"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE SENIOR FACILITY AGREEMENT*".

**"Distress Event"** means any of:

- (a) a Senior Acceleration Event; or
- (b) the enforcement of any Common Transaction Security.

**"Distressed Disposal"** means a disposal of an asset of a member of the Group which is:

- (a) being effected at the request of an Instructing Group in circumstances where the Common Transaction Security has become enforceable;
- (b) being effected by enforcement of the Common Transaction Security (including the disposal of any assets of a member of the Group, the shares or units in which have been subject to an Appropriation); or
- (c) being effected, after the occurrence of a Distress Event, by a Debtor to a person or persons which is not or are not a member or members of the Larger Group.

**"Election Period"** means, in respect of a Senior Payment Default, a Payment Cure Election Period or, in respect of a Senior Financial Covenant Default, a Financial Covenant Cure Election Period or an Additional Financial Covenant Cure Election Period (as applicable).

**"Enforcement Action"** means:

- (a) in relation to any Liabilities:
  - (i) the acceleration of any Liabilities or the making of any declaration that any Liabilities are prematurely due and payable (other than as a result of it becoming unlawful for a Senior Creditor or a Mezzanine Creditor to perform its obligations under, or of any voluntary or mandatory prepayment arising under, the Common Secured Debt Documents);
  - (ii) the making of any declaration that any Liabilities are payable on demand;

- (iii) the making of a demand in relation to a Liability that is payable on demand (other than a demand made by a Subordinated Creditor in relation to any Liabilities which are on-demand Liabilities to the extent (A) that the demand is made in the ordinary course of dealings between the relevant Debtor and Subordinated Creditor, and (B) that any resulting Payment would be a Permitted Payment);
  - (iv) the making of any demand against any member of the Larger Group in relation to any Guarantee Liabilities of that member of the Larger Group;
  - (v) the exercise of any right to require any member of the Larger Group to acquire any Liability (including exercising any put or call option against any member of the Larger Group for the redemption or purchase of any Liability); and
  - (vi) the suing for, commencing or joining of any legal or arbitration proceedings against any member of the Larger Group to recover any Liabilities;
- (b) the taking of any steps to enforce or require the enforcement of any Common Transaction Security (including the crystallisation of any floating charge forming part of the Common Transaction Security);
- (c) the exercise of any right of set-off, account combination or payment netting against any member of the Larger Group in respect of any Liabilities other than pursuant to any netting or set-off of Subordinated Liabilities provided that:
- (i) the netting and set-off is made in the ordinary course of dealings between the relevant Debtor and Subordinated Creditor;
  - (ii) at the time of the exercise of that right no Payment Stop Notice is outstanding; and
  - (iii) such netting or set-off does not breach the terms of the Senior Finance Documents or the Mezzanine Finance Documents;
- (d) the entering into of any composition, compromise, assignment or arrangement with any member of the Larger Group which owes any Liabilities, or has given any Security, guarantee or indemnity or other assurance against loss in respect of the Liabilities; or
- (e) the petitioning, applying or voting for, or the taking of any steps (including the appointment of any liquidator, receiver, administrator or similar officer) in relation to, the winding up, dissolution, administration or reorganisation of any member of the Larger Group which owes any Liabilities, or has given any Security, guarantee, indemnity or other assurance against loss in respect of any of the Liabilities, or any of such member of the Larger Group's assets or any suspension of payments or moratorium of any indebtedness of any such member of the Larger Group, or any analogous procedure or step in any jurisdiction,

except that the following shall not constitute Enforcement Action:

- (i) the taking of any action falling within paragraphs (a)(vi) or (e) above which is necessary (but only to the extent necessary) to preserve the validity, existence or priority of claims in respect of Liabilities, including the registration of such claims before any court or governmental authority and the bringing, supporting or joining of proceedings to prevent any loss of the right to bring, support or join proceedings by reason of applicable limitation periods; or
- (ii) a Mezzanine Creditor bringing legal proceedings against any person solely for the purpose of:
  - (A) obtaining injunctive relief (or any analogous remedy outside England and Wales) to restrain any actual or putative breach of any Debt Document to which it is party;
  - (B) obtaining specific performance (other than specific performance of an obligation to make a payment) with no claim for damages; or

- (C) requesting judicial interpretation of any provision of any Debt Document to which it is party with no claim for damages.

**"Excluded Recovery Proceeds"** means any proceeds of a Recovery Claim which the Senior Loan Obligors' Agent notifies the Senior Agent are, or are to be, applied:

- (a) to satisfy (or reimburse a Senior Loan Obligor which has been discharged) any liability, charge or claim upon a Senior Loan Obligor by a person which is not a Senior Loan Obligor, an Affiliate of a Senior Loan Obligor, the Sponsor or an Affiliate of a Sponsor; or
- (b) in the replacement, reinstatement and/or repair of assets of a Senior Loan 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 180 days, or such longer period as the Majority Senior Lenders may agree) after receipt.

**"Existing Facility Agreement"** means the credit agreement originally dated 10 May 2007 as amended and as amended and restated from time to time between, among others, the Subordinated Lender as Senior B Lender and Junior Lender (in each case under and as defined in that agreement) and the Senior Borrower as borrower.

**"Existing Facility Liabilities"** means all Liabilities owed by the Senior Borrower to the Subordinated Lender under or in connection with the Existing Finance Documents.

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

**"Final Discharge Date"** means the latest to occur of the Senior Discharge Date and the Mezzanine Discharge Date.

**"Financial Covenant Cure Election Period"** has the meaning given to that term in paragraph (b)(i) of the definition of Grace Period.

**"Financial Indebtedness"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT*".

**"First Request"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE INTERCREDITOR AGREEMENT – Deemed Consent*".

**"GAAP"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT*".

**"Grace Period"** means:

- (a) in the case of a Senior Payment Default:
- (i) in respect of the period in which the Mezzanine Note Agent can make an election on behalf of any Mezzanine Noteholder to cure a Senior Payment Default (and referred to in the provision relating to the right to make Cure Payments (such period being the **"Payment Cure Election Period"**), in the Intercreditor Agreement the period commencing on the date the relevant Senior Payment Default has occurred to (and including) the date falling five Business Days after the Mezzanine Note Agent has received notification from the Senior Agent that a Senior Payment Default has occurred; and
- (ii) in respect of the period for payment of the relevant Cure Payment following the receipt of a Mezzanine Cure Notification in respect of a Senior Payment Default (and referred to in the provision relating to the right to make Cure Payments in the Intercreditor Agreement), the period ending on the day falling 10 Business Days after the delivery of that Mezzanine Cure Notification;

- (b) in the case of a Senior Financial Covenant Default (other than a Senior Financial Covenant Default in respect of which a Mezzanine Noteholder is entitled to exercise its additional right to cure in accordance with the provision relating to the limitation on the number of Cure Payments within the Intercreditor Agreement):
  - (i) in respect of the period in which the Mezzanine Note Agent can make an election on behalf of any Mezzanine Noteholder to cure a Senior Financial Covenant Default (and referred to the provision relating to the right to make Cure Payments in the Intercreditor Agreement) (such period being the "**Financial Covenant Cure Election Period**"), the period commencing on the date the relevant Senior Financial Covenant Default has occurred to (and including) the date falling five Business Days after the Mezzanine Note Agent has received a Mezzanine Intention Notice in relation to that Senior Financial Covenant Default; and
  - (ii) in respect of the period for payment of the relevant Cure Payment following the receipt of a Mezzanine Cure Notification in respect of a Senior Financial Covenant Default (and referred to in the provision relating to the right to make Cure Payments in the Intercreditor Agreement), the period ending on the day falling 15 Business Days after the delivery of that Mezzanine Cure Notification; or
- (c) in the case of a Senior Financial Covenant Default (other than a Senior Financial Covenant in respect of which a Mezzanine Noteholder is entitled to exercise its additional right to cure in accordance with the provisions relating to the limitation of the number of Cure Payments in the Intercreditor Agreement):
  - (i) in respect of the period in which a Mezzanine Note Agent can make an election on behalf of any Mezzanine Noteholder to cure that Senior Financial Covenant Default (and referred to in the provision relating to the right to make Cure Payments) (such period being the "**Additional Financial Covenant Cure Election Period**"), the period commencing on the date the relevant Senior Financial Covenant Default has occurred to (and including) the date falling five Business Days after the Mezzanine Note Agent has received a Mezzanine Intention Notice in relation to that Senior Financial Covenant Default; and
  - (ii) in respect of the period for payment of the relevant Cure Payment following the receipt of a Mezzanine Cure Notification in respect of that Senior Financial Covenant Default (and referred to the provision relating to the right to make Cure Payments in the Intercreditor Agreement), the period ending on the day falling 15 Business Days after the date the relevant Senior Financial Covenant Default has occurred.

"**Group**" means the Senior Parent and its Subsidiaries for the time being.

"**Guarantee Liabilities**" means, in relation to a member of the Larger Group, the liabilities and obligations under the Debt Documents (present or future, actual or contingent and whether incurred solely or jointly) it may have to a Creditor or Debtor as or as a result of its being a guarantor or surety (including, without limitation, liabilities and obligations arising by way of guarantee, indemnity, contribution or subrogation and in particular any guarantee or indemnity arising under or in respect of the Senior Finance Documents and the Mezzanine Finance Documents).

"**Holding Company**" has the meaning given to that term in the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT*".

"**Instructing Group**" means at any time:

- (a) prior to the Senior Discharge Date, the Majority Senior Lenders; and
- (b) on or after the Senior Discharge Date and prior to the Mezzanine Discharge Date, the Majority Mezzanine Noteholders.

"**Insurances**" has the meaning given to that term in the section entitled "*DESCRIPTION OF THE SENIOR FACILITY AGREEMENT*".

**"Insurance Prepayment Proceeds"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE SENIOR FACILITY AGREEMENT*".

**"Intercreditor Agreement"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT*".

**"Intercreditor Report"** means any form of due diligence report relating to the acquisition or refinancing or development of the Property (as defined in the Senior Facility Agreement), any Valuation (as defined in a Credit Agreement) or any other report provided as a condition precedent to the making of each Senior Loan or Mezzanine Note.

**"Interest Period"** has the meaning given to the term "Senior Loan Interest Period" in the section entitled "*DESCRIPTION OF THE SENIOR FACILITY AGREEMENT*".

**"Interest Period Account"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT*".

**"Interest Reserve Account"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT*".

**"Instructing Group"** means at any time:

- (a) prior to the Senior Discharge Date, the Majority Senior Lenders; and
- (b) on or after the Senior Discharge Date and prior to the Mezzanine Discharge Date, the Majority Mezzanine Noteholders.

**"Intra-Group Lenders"** means each Senior Loan Obligor which has made a loan available to, granted credit to or made any other financial arrangement having similar effect with another Senior Loan Obligor.

**"Intra-Group Liabilities"** means the Liabilities owed by any Senior Loan Obligor to any of the Intra-Group Lenders.

**"Jersey"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT*".

**"Larger Group"** means the Mezzanine Holdco and its Subsidiaries for the time being.

**"Liabilities"** means all present and future liabilities and obligations at any time of any Debtor to any Creditor under the Debt Documents, both actual and contingent and whether incurred solely or jointly or as principal or surety or in any other capacity together with any of the following matters relating to or arising in respect of those liabilities and obligations:

- (a) any refinancing, novation, deferral or extension;
- (b) any claim for breach of representation, warranty or undertaking or on an event of default or under any indemnity given under or in connection with any document or agreement evidencing or constituting any other liability or obligation falling within this definition;
- (c) any claim for damages or restitution; and
- (d) any claim as a result of any recovery by any Debtor of a Payment on the grounds of preference or otherwise,

and any amounts which would be included in any of the above but for any discharge, non-provability, unenforceability or non-allowance of those amounts in any insolvency or other proceedings.

**"Liabilities Acquisition"** means, in relation to a person and to any Liabilities, a transaction where that 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,

the rights and benefits in respect of those Liabilities.

**"Liabilities Sale"** means a Debt Disposal pursuant to the provision relating to Distressed Disposals and Appropriations in the Intercreditor Agreement.

**"Majority Mezzanine Noteholders"** has the meaning given to it in the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT*".

**"Majority Senior Lenders"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE SENIOR FACILITY AGREEMENT*".

**"Margin"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE SENIOR FACILITY AGREEMENT*".

**"Material Senior Loan Event of Default"** means:

- (a) a Senior Payment Default;
- (b) a Senior Financial Covenant Default;
- (c) a Senior Insolvency Event of Default; or
- (d) the commencement of Enforcement Action by any Senior Creditor in accordance with the Intercreditor Agreement.

**"Mezzanine Agency Costs"** means any fees of the Mezzanine Note Agent and the Mezzanine Security Agent payable by the Mezzanine Issuer under the agency fee provisions of the Mezzanine Note Issuance Agreement.

**"Mezzanine Corporate Costs"** means all corporate, filing, audit, rating agency, trustee, cash manager, stock exchange and other company costs and expenses of the Mezzanine Issuer and any Securitisation Issuer in connection with a Mezzanine Securitisation but excluding any Mezzanine Agency Costs.

**"Mezzanine Creditor"** means the Mezzanine Note Agent, the Mezzanine Security Agent or a Mezzanine Noteholder.

**"Mezzanine Cure Loan"** means any loan advanced by a Mezzanine Noteholder under the Mezzanine Note Issuance Agreement for the purposes of funding a Cure Payment as contemplated the provisions relating to default cure payments in the Intercreditor Agreement.

**"Mezzanine Cure Notification"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE INTERCREDITOR AGREEMENT – Cure Payments*".

**"Mezzanine Discharge Date"** means the first date on which all Mezzanine Liabilities have been fully and finally discharged, whether or not as a result of an enforcement, and the Mezzanine Creditors are under no further obligation to provide financial accommodation to the Mezzanine Note Obligors under the Mezzanine Finance Documents.

**"Mezzanine Enforcement Action"** means:

- (a) in relation to any Mezzanine Liabilities:



- (i) the acceleration of any Mezzanine Liabilities or the making of any declaration that any Mezzanine Liabilities are prematurely due and payable;
  - (ii) the making of any declaration that any Mezzanine Liabilities are payable on demand;
  - (iii) the making of a demand in relation to a Mezzanine Liability that is payable on demand;
  - (iv) the making of any demand against any Mezzanine Note Obligor;
  - (v) the exercise of any right to require any Mezzanine Note Obligor to acquire any Mezzanine Liability; and
  - (vi) the suing for, commencing or joining of any legal or arbitration proceedings against any Mezzanine Note Obligor to recover any Mezzanine Liabilities;
- (b) the taking of any steps to enforce or require the enforcement of any Mezzanine Security (including the crystallisation of any floating charge forming part of the Mezzanine Security);
  - (c) the exercise of any right of set-off, account combination or payment netting against any Mezzanine Note Obligor in respect of any Mezzanine Liabilities;
  - (d) the entering into of any composition, compromise, assignment or arrangement with any Mezzanine Note Obligor which owes any Mezzanine Liabilities, or has given any Security, guarantee or indemnity or other assurance against loss in respect of the Mezzanine Liabilities; or
  - (e) the petitioning, applying or voting for, or the taking of any steps (including the appointment of any liquidator, receiver, administrator or similar officer) in relation to, the winding up, dissolution, administration or reorganisation of any Mezzanine Note Obligor which owes any Mezzanine Liabilities, or has given any Security, guarantee, indemnity or other assurance against loss in respect of any of the Mezzanine Liabilities, or any of such Mezzanine Note Obligor's assets or any suspension of payments or moratorium of any indebtedness of any such Mezzanine Note Obligor, or any analogous procedure or step in any jurisdiction.

**"Mezzanine Finance Documents"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT*".

**"Mezzanine Holdco"** means the Original Mezzanine Holdco or any person that becomes the Mezzanine Holdco pursuant to the provision relating to the new Mezzanine Issuer/new Mezzanine Holdco in the Intercreditor Agreement.

**"Mezzanine Holdco Intercompany Loan Agreement"** means any intercompany loan or other indebtedness agreement or instrument between the Mezzanine Issuer as borrower and Mezzanine Holdco as lender.

**"Mezzanine Intention Notice"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE INTERCREDITOR AGREEMENT – Enforcement of Common Transaction Security*".

**"Mezzanine Interest Reserve Account"** has the meaning given to the term "Interest Reserve Account" in the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT*".

**"Mezzanine Issuer"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT*".

**"Mezzanine Issuer Intercompany Loan"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT*".

**"Mezzanine Issuer Intercompany Loan Agreement"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT*".

**"Mezzanine Issuer Liabilities"** means all Liabilities owed by the Senior Parent to the Mezzanine Issuer under any Mezzanine Issuer Intercompany Loan.

**"Mezzanine Liabilities"** means the Liabilities owed by the Debtors to the Mezzanine Creditors under or in connection with the Mezzanine Finance Documents.

**"Mezzanine Margin"** has the meaning given to the term "Coupon" in the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT*".

**"Mezzanine Note Agent"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT*".

**"Mezzanine Note Event of Default"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT*".

**"Mezzanine Note Interest Period"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT*".

**"Mezzanine Note Issuance Agreement"** means the Mezzanine Note Issuance Agreement dated 15 December 2016 made between (among others) the Mezzanine Issuer and the Mezzanine Note Agent.

**"Mezzanine Note Obligor"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT*".

**"Mezzanine Noteholder"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT*".

**"Mezzanine Notes"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT*".

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

- (a) a Jersey law governed security interest agreement between the Mezzanine Holdco as grantor and the Mezzanine Security Agent in relation to all the shares in the Mezzanine Issuer and contract rights in or pursuant to any Mezzanine Holdco Intercompany Loan Agreement;
- (b) a Jersey law governed security interest agreement between the Mezzanine Issuer as grantor and the Mezzanine Security Agent in relation to shares in the Senior Parent and contract rights in or pursuant to any Mezzanine Issuer Intercompany Loan Agreement; and
- (c) a Jersey law governed security interest agreement between the Mezzanine Issuer as grantor and the Mezzanine Security Agent in relation to certain Accounts (as defined in the Mezzanine Note Issuance Agreement) held by it and located in Jersey.

**"Mezzanine Securitisation"** means any securitisation, repackaging or transaction of broadly equivalent economic effect relating to, or using as a reference, the whole or part of the Mezzanine Notes (whether alone or in conjunction with other loans or notes) through the issue of notes on the capital markets.

**"Mezzanine Security"** means the Security created or expressed to be created under or pursuant to the Mezzanine Only Security Documents.

**"Mezzanine Security Agent"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT*".

**"Non-Cash Consideration"** means consideration in a form other than cash.

**"Non-Distressed Disposal"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE INTERCREDITOR AGREEMENT – Disposals and recoveries*".

**"Original Mezzanine Holdco"** means BSREP CityPoint Investments Limited.

**"Original Mezzanine Noteholder"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT*".

**"Other Liabilities"** means, in relation to a member of the Larger Group, any trading and other liabilities and obligations (not being Borrowing Liabilities or Guarantee Liabilities) it may have to a Creditor under the Debt Documents, or to a Debtor.

**"Party"** means a party to the Intercreditor Agreement.

**"Payment"** means, in respect of any Liabilities (or any other liabilities or obligations), a payment, prepayment, repayment, redemption, defeasance or discharge of those Liabilities (or other liabilities or obligations).

**"Payment Cure Election Period"** has the meaning given to that term in paragraph (a)(i) of the definition of Grace Period.

**"Payment Default Cure Payment"** means a payment by the applicable Mezzanine Noteholders in an amount equal to such amount as then remains due and payable but unpaid to any Senior Creditor by the Debtors to the account specified in the provision relating to the right to make Cure Payments in the Intercreditor Agreement, which payment shall take effect under the Mezzanine Note Issuance Agreement by way of a subscription by one or more of the Mezzanine Noteholders for new Mezzanine Notes issued by the Mezzanine Issuer or a Mezzanine Cure Loan the proceeds of which are advanced by the Mezzanine Issuer to the Senior Borrower (via the Senior Parent) in a manner permitted under the Senior Finance Documents and the Mezzanine Finance Documents.

**"Payment Stop Event"** means the occurrence of a Cash Trap Event.

**"Payment Stop Notice"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE INTERCREDITOR AGREEMENT – Mezzanine Liabilities*".

**"Permitted Existing Facility Payment"** means any Payment permitted in the Permitted Payments: Existing Facility Liabilities provisions in the Intercreditor Agreement.

**"Permitted Intra-Group Payment"** means any Payment permitted under the Intercreditor Agreement in respect of the Intra-Group Liabilities.

**"Permitted Mezzanine Issuer Payment"** means any Payment permitted under the Intercreditor Agreement in respect of the Mezzanine Issuer Liabilities.

**"Permitted Mezzanine Payment"** means any Payment permitted under the Intercreditor Agreement in respect of the Mezzanine Liabilities.

**"Permitted Payment"** means a Permitted Intra-Group Payment, a Permitted Mezzanine Payment, a Permitted Mezzanine Issuer Payment, a Permitted Senior Payment or a Permitted Existing Facility Payment.

**"Permitted Senior Payment"** means any Payment permitted under the Intercreditor Agreement in respect of the Senior Liabilities.

**"Primary Creditors"** means the Senior Creditors and the Mezzanine Creditors.

**"Property"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE PROPERTY*".

**"Protective Enforcement Action"** means the taking of any Enforcement Action:

- (a) to crystallise any floating charge forming part of any Security; and/or
- (b) to the extent that any Common Insolvency Event in respect of any member of the Group is continuing, to exercise any right a Senior Creditor may otherwise have in respect of that member of the Group to:

- (i) accelerate any of the Senior Liabilities or declare them prematurely due and payable on demand;
- (ii) make a demand under any guarantee, indemnity or other assurance against loss given by that member of the Group or in respect of any Senior Liabilities;
- (iii) exercise any right of set off in respect of any Senior Liabilities of that member of the Group; or
- (iv) claim and prove in the liquidation of that member of the Group for the Senior Liabilities owing to it.

**"Purchasing Party"** means a Mezzanine Noteholder or an Affiliate of a Mezzanine Noteholder.

**"Receiver"** means a receiver, manager or receiver and manager or administrative receiver of the whole or any part of the Common Security Property.

**"Recovery Claim"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE SENIOR FACILITY AGREEMENT*".

**"Recovery Prepayment Proceeds"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE SENIOR FACILITY AGREEMENT*".

**"Related Fund"** means:

- (a) for the purposes of the Approved Person definition, a fund which is under common or affiliated management or subject to common advisory arrangements as an Original Mezzanine Noteholder; and
- (b) for all other purposes, in relation to a fund (the first fund), a fund which is under common or affiliated management or subject to common advisory arrangements as the first fund.

**"Relevant Principal Increase"** has the meaning given to that term in the definition of "Senior Headroom".

**"Rent Account"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE SENIOR FACILITY AGREEMENT*".

**"Report"** means any form of due diligence report relating to the acquisition or refinancing or development of the Property, any Valuation (as defined in a Credit Agreement) or any other report provided as a condition precedent to the making of each Senior Loan or Mezzanine Note.

**"Report Provider"** means any professional adviser, valuer or other person who has provided a Report.

**"Sales Adviser"** has the meaning given to that term according to the provisions on fair value/price in the Intercreditor Agreement.

**"Second Request"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE INTERCREDITOR AGREEMENT – Deemed Consent*".

**"Securitisation"** means a Senior Securitisation or a Mezzanine Securitisation.

**"Securitisation Issuer"** means any special purpose vehicle which is an assignee or transferee of all or part of the Senior Loans or the Mezzanine Notes in connection with a Securitisation.

**"Security"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT*".

**"Security Document"** means a Common Security Document or a Mezzanine Only Security Document.

**"Senior Acceleration Event"** means the Senior Agent exercising any of its rights under the provision relating to acceleration in the Senior Facility Agreement.

**"Senior Agent"** means Mount Street Mortgaging Servicing Limited.

**"Senior Assignment Agreement"** means an agreement in the term set out in the Senior Facility Agreement or any other term agreed between the relevant assignor and assignee.

**"Senior Borrower"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT*".

**"Senior Creditor"** means the Senior Agent, the Common Security Agent, the senior arranger or a Senior Lender.

**"Senior Discharge Date"** means the first date on which all Senior Liabilities have been fully and finally discharged, whether or not as the result of an enforcement, and the Senior Creditors are under no further obligation to provide financial accommodation to any of the Debtors under the Debt Documents.

**"Senior Enforcement Notice"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE INTERCREDITOR AGREEMENT – Enforcement of Common Transaction Security*".

**"Senior Facility"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE SENIOR FACILITY AGREEMENT*".

**"Senior Facility Agreement"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT*".

**"Senior Finance Documents"** has the meaning given it in the section entitled "*DESCRIPTION OF THE SENIOR FACILITY AGREEMENT*".

**"Senior Financial Covenant"** means each of the financial covenants set out in the Senior Facility Agreement.

**"Senior Financial Covenant Default"** means a Senior Loan Event of Default in respect of a breach of a Senior Financial Covenant.

**"Senior Headroom"** means at any time and in relation to a Senior Principal Increase (the "**Relevant Senior Principal Increase**"), an amount equal to £10,000,000, less the aggregate amount of any Senior Principal Increases advanced to the Group under the Senior Finance Documents other than the Relevant Senior Principal Increase.

**"Senior Insolvency Event of Default"** means a Senior Loan Event of Default pursuant to insolvency or insolvency proceedings related Senior Loan Event of Defaults in the Senior Facility Agreement.

**"Senior Lender"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE SENIOR FACILITY AGREEMENT*".

**"Senior Lender Liabilities"** means the Senior Liabilities owed by the Debtors to the Senior Lenders under the Senior Finance Documents.

**"Senior Lender Liabilities Transfer"** means a transfer of the Senior Lender Liabilities to the relevant Purchasing Parties pursuant provision relating to the senior purchase option in the Intercreditor Agreement.

**"Senior Liabilities"** means the Liabilities owed by the Debtors to the Senior Creditors under the Senior Finance Documents.

**"Senior Loan"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE SENIOR FACILITY AGREEMENT*".

**"Senior Loan Default"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE SENIOR FACILITY AGREEMENT*".

**"Senior Loan Event of Default"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE SENIOR FACILITY AGREEMENT*".

**"Senior Loan Obligor"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE SENIOR FACILITY AGREEMENT*".

**"Senior Loan Termination Date"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE SENIOR FACILITY AGREEMENT*".

**"Senior Loan Utilisation Date"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE SENIOR FACILITY AGREEMENT*".

**"Senior Parent"** means BSREP CityPoint Bidco Limited.

**"Senior Payment Default"** means a Senior Loan Event of Default the provision relating to non payment in the Senior Facility Agreement including for the avoidance of doubt a Senior Payment Default in respect of a failure to pay the outstanding principal amount of the Senior Loans on the Senior Loan Termination Date (to the extent not repaid or prepaid prior to such date).

**"Senior Principal Increase"** means any increase in the principal amount of the Senior Facility permitted under the Intercreditor Agreement.

**"Senior Purchase Amount"** means, at the time of calculation, the aggregate of:

- (a) the principal amount of the Senior Loans then outstanding;
- (b) accrued unpaid interest and default interest on the Senior Loans which would be due from the Debtors under the Senior Facility Agreement in accordance with the provision relating to the calculation of interest in the Senior Facility Agreement and, if applicable the provision relating to the default interest in the Senior Facility Agreement if the Senior Loans were prepaid in full on the Senior Purchase Completion Date but excluding, subject to paragraph (c) below, any yield maintenance or make whole premiums, prepayment fees or premiums, penalty or late payment charges, exit fees or work out or liquidation fees;
- (c) any Break Costs (as defined in the section entitled "*Senior Purchase Option*") which would have been due from the Debtors under the Senior Facility Agreement if the Senior Loans were prepaid in full on the Senior Purchase Completion Date; and
- (d) any properly incurred fees, costs and expenses incurred by the Senior Creditors in connection with the Senior Lender Liabilities Transfer.

**"Senior Purchase Amount Statement"** has the meaning given to that term in the provision relating to the Senior Purchase Amount in the Intercreditor Agreement.

**"Senior Purchase Completion Date"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE INTERCREDITOR AGREEMENT – Senior Purchase Option*".

**"Senior Purchase Notice"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE INTERCREDITOR AGREEMENT – Senior Purchase Option*".

**"Senior Securitisation"** means any securitisation, repackaging or transaction of broadly equivalent economic effect relating to, or using as a reference, the whole or part of the Senior Loans (whether alone or in conjunction with other loans) through the issue of notes on the capital markets.

**"Sponsor"** means the Sponsor, each of its Affiliates, any trust of which the Sponsor or any of its Affiliates is a trustee, any partnership of which the Sponsor 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 the Sponsor or any of its Affiliates.

**"Sponsor Affiliate"** means the Sponsor, each of its Affiliates, any trust of which the Sponsor or any of its Affiliates is a trustee, any partnership of which the Sponsor 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 the Sponsor or any of its Affiliates.

**"Sponsor GP"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT*".

**"Subordinated Creditor"** means the Subordinated Lender, each Intra-Group Lender and the Mezzanine Issuer (in its capacity as lender under any Mezzanine Issuer Intercompany Loan).

**"Subordinated Lender"** means CASTLE 46 S.À R.L.

**"Subordinated Liabilities"** means the Existing Facility Liabilities, the Intra-Group Liabilities and the Mezzanine Issuer Liabilities.

**"Subsidiary"** means:

- (a) an entity of which a person has direct or indirect control or owns directly or indirectly more than 50% 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; or
- (b) an entity within the meaning of Articles 2 and 2A of the Companies (Jersey) Law 1991.

**"Target"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE SENIOR FACILITY AGREEMENT*".

**"Target Intercreditor Accession Deed"** means a deed substantially in the form relating to the Target Accession Deed in the Intercreditor Agreement.

**"Total Mezzanine Commitments"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT*".

**"Valuation"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE SENIOR FACILITY AGREEMENT*".

**"Valuation Period"** means any 12 Month period during which the Senior Agent may instruct a Valuer pursuant to the provision relating to Valuations in the Senior Facility Agreement.

**"Valuer"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE SENIOR FACILITY AGREEMENT*".

## KEY CHARACTERISTICS OF THE MEZZANINE NOTE SECURITY

The obligations of the Mezzanine Note Obligors under the Mezzanine Finance Documents will be secured by the following security interests created under the Security Documents:

(a) *English law common security*

The following English law security agreements were entered into on 15 December 2016:

- (i) the BidCo English common security agreement;
- (ii) the Target English common security agreement,

together, the "**English Common Security Agreements**").

Under the English Common Security Agreements, BidCo and Target granted the following security (to the exclusion of any present and future assets in respect of which security was granted under any Jersey Mezzanine Security Agreements in favour of the Common Security Agent who holds such security on trust for the Common Secured Parties):

- (i) a first legal mortgage or first fixed charge, as applicable, over all its estates or interests in any freehold or leasehold property and any unregistered land that subsequently becomes registered owned by it in England and Wales as at the date of the English Common Security Agreement, being 15 December 2016, or subsequently owned by it;
- (ii) a first fixed charge over its interests in all shares, stocks, debentures, bonds or other securities or investments owned by it or held by any nominee on its behalf;
- (iii) a first fixed charge over all plant and machinery owned by it and its interest in any plant or machinery in its possession;
- (iv) a first fixed charge over all of its rights in respect of any account (including any account contemplated by the Senior Facility Agreement or the English Common Security Agreements) it has with any person, any amount standing to the credit of that account and the debt represented by it;
- (v) a first fixed charge over all of its book and other debts, all other monies due and owing to it and the benefit of all rights, securities or guarantees of any nature enjoyed or held by it in relation to any of the above;
- (vi) an assignment by way of security, subject to a proviso for re-assignment on redemption, of all of its rights under any contract or policy of insurance taken out by it or on its behalf or in which it has an interest and all monies payable and all monies paid to it under or in respect of all such contracts or policies of insurance;
- (vii) an assignment by way of security, subject to a proviso for re-assignment on redemption, of all its rights under any Hedging Agreement;
- (viii) an assignment by way of security, subject to a proviso for re-assignment on redemption, of all its rights under each Lease Document, in respect of all Rental Income, under any guarantee of Rental Income contained in or relating to any Lease Document, under each Managing Agent Agreement, under each Asset Management Agreement, under each Acquisition Document, and under any other agreement, instrument or other document to which it is a party which is capable of assignment by way of security except to the extent that it is subject to any fixed security created under any other term of the English Common Security Agreements;
- (ix) a first fixed charge over the Warranty and Indemnity Insurance, any beneficial interest, claim or entitlement it has in any pension fund, its goodwill, the benefit of any Authorisation (statutory or otherwise) held in connection with its use of any Security Asset, any right under



any contract which is not effectively assigned under the other provisions of the English Common Security Agreements, the right to recover and receive compensation which may be payable to it in respect of any such Authorisation and its uncalled capital; and

- (x) a first floating charge over all its assets not otherwise effectively mortgaged, charged or assigned by way of fixed mortgage, charge or assignment under the English Common Security Agreements, except for any assets which are the subject of any security interest created by, or under or pursuant to any other Common Security Document.

(b) *Jersey law mezzanine security*

The following Jersey law governed security interest agreements were entered into on 15 December 2016:

- (i) a security interest agreement between the Mezzanine Issuer and the Mezzanine Security Agent in relation to collateral comprising the entire issued share capital of BidCo and other collateral (the "**Mezzanine Issuer Jersey Share and Receivables Security Interest Agreement**");
- (ii) a security interest agreement between the Mezzanine Issuer and the Mezzanine Security Agent in relation to collateral comprising certain Jersey bank accounts (opened pursuant to the Mezzanine Finance Documents) and all and any monies from time to time standing to the credit of such accounts and any proceeds of such accounts (and all the Mezzanine Issuer's security, right, title and interest therein and thereto)(the "**Mezzanine Issuer Jersey Bank Account Security Interest Agreement**"); and
- (iii) a security interest agreement between the Mezzanine Holdco and the Mezzanine Security Agent in relation to collateral comprising the entire issued share capital of the Mezzanine Issuer and other collateral (the "**Mezzanine Holdco Jersey Share and Receivables Security Interest Agreement**", together with the Mezzanine Issuer Jersey Share and Receivables Security Interest Agreement and the Mezzanine Issuer Jersey Bank Account Security Interest Agreement, the "**Jersey Mezzanine Security Agreements**").

Under the Jersey Mezzanine Security Agreements, the Mezzanine Issuer and the Mezzanine Holdco granted continuing first priority security in the respective collateral as security for the Mezzanine Secured Obligations (to the exclusion of any present and future assets in respect of which security was granted under any English Common Security Agreements) in favour of the Mezzanine Security Agent who holds such security on trust for the Mezzanine Secured Parties).

## Definitions

For the purposes of this section of the Offering Circular entitled "*KEY CHARACTERISTICS OF THE MEZZANINE NOTE SECURITY*", the following definitions apply:

**"Acquisition Document"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE SENIOR FACILITY AGREEMENT*".

**"Asset Management Agreement"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE SENIOR FACILITY AGREEMENT*".

**"Authorisation"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT*".

**"Bidco"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT*".

**"BidCo English Common Security Agreement"** means a security agreement dated 15 December 2016 between Bidco and the Common Security Agent.

**"Common Security Agent"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE INTERCREDITOR AGREEMENT*".

**"Common Security Document"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE SENIOR FACILITY AGREEMENT*".

**"Hedging Agreement"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT*".

**"Jersey"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT*".

**"Lease Document"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE SENIOR FACILITY AGREEMENT*".

**"Managing Agent Agreement"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE SENIOR FACILITY AGREEMENT*".

**"Mezzanine Finance Documents"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT*".

**"Mezzanine Holdco"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT*".

**"Mezzanine Issuer"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT*".

**"Mezzanine Note Obligor"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT*".

**"Mezzanine Secured Parties"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT*".

**"Mezzanine Security Agent"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT*".

**"Rental Income"** means the aggregate of all amounts paid or payable to or for the account of any Senior Loan Obligor in connection with the letting, licence or grant of other rights of use or occupation of any part of the Property, including each of the following amounts:

- (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 (excluding any sum which is payable to that tenant);
- (c) a sum equal to any apportionment of rent allowed in favour of any Senior Loan 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;
- (f) any sum paid or payable, or the value of any consideration given, for the grant, surrender, amendment, supplement, waiver, extension or release of any Lease Document;
- (g) any sum paid or payable in respect of a breach of covenant or dilapidations under any Senior 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 Senior Loan Obligor.

**"Security Asset"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT*".

**"Senior Facility Agreement"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT*".

**"Target"** has the meaning given to that term in the section entitled "*DESCRIPTION OF THE MEZZANINE NOTE ISSUANCE AGREEMENT*".

**"Target English Common Security Agreement"** means a security agreement dated 15 December 2016 between Target and the Common Security Agent.

**"Warranty and Indemnity Insurance"** has the meaning given to that term on the Senior Facility Agreement.

## DESCRIPTION OF THE NOTES

The Issuer accepts responsibility for the accurate reproduction of the information contained in this section which, insofar as it relates to the rules and procedures governing the operations of the Clearing Systems, has been sourced from the Clearing Systems. As far as the Issuer is aware and is able to ascertain from information published by the Clearing Systems, no facts have been omitted which would render the reproduced information inaccurate or misleading. However, prospective Noteholders are advised to make their own enquiries as to such procedures. In particular, such information is subject to any change in or reinterpretation of the rules, regulations and procedures of the Clearing Systems currently in effect, and investors wishing to use the facilities of any of the Clearing Systems are therefore advised to confirm the continued applicability of the rules, regulations and procedures of the relevant Clearing System. None of the Issuer, the Registrar, the Note Trustee, the Issuer Security Trustee, the Mezzanine Note Sellers, any Agent party to the Agency Agreement or the Arranger or the Lead Manager (or any affiliate of any of the above, or any person by whom any of the above is controlled for the purposes of the Securities Act) will have any responsibility for the performance by the Clearing Systems or their respective direct or indirect participants or account holders of their respective obligations under the rules and procedures governing their operations or for the sufficiency for any purpose of the arrangements described below.

### General

The £101,620,000 Commercial Mortgage Backed Fixed Rate Notes due 2026 (the "**Notes**") are constituted by a trust deed (the "**Trust Deed**") dated on or about the Closing Date between the Issuer and U.S. Bank Trustees Limited (the "**Note Trustee**"), which expression includes the trustee or trustees for the time being under the Trust Deed, as trustee for the Noteholders.

The holders of the Notes (the "**Noteholders**" and each a "**Noteholder**") are entitled to the benefit of the Trust Deed and are bound by, and are deemed to have notice of, the provisions of the Trust Deed, the Paying Agency Agreement and the Deed of Charge and Assignment.

The Notes shall be represented by a Global Note in registered form, without coupons or talons in the principal amount of £101,620,000. The Global Note will be deposited on or around the Closing Date with and registered in the name of a nominee for the Common Depositary.

Upon confirmation by the Common Depositary that it has custody of the Global Note, Euroclear or Clearstream, Luxembourg, as the case may be, will credit each subscriber of the Notes with the principal amount of Notes equal to the aggregate principal amount thereof for which it had subscribed and paid ("**Book-Entry Interest**").

Title to the Global Note will pass upon registration of transfers in the Register. The Global Note will only be exchangeable for Definitive Notes (without coupons and talons) in certain limited circumstances described in the section entitled "*Issuance of Definitive Notes*" below.

### Holding of Beneficial Interests in Global Note

Ownership of beneficial interests in respect of the Global Note will be limited to persons that have accounts with Euroclear or Clearstream, Luxembourg ("**direct participants**") or persons that hold beneficial interests or Book-Entry Interests in the Global Note through direct participants ("**Indirect Participants**" and, together with direct participants, "**participants**"), including, as applicable, banks, brokers, dealers and trust companies that clear through or maintain a custodial relationship with Euroclear or Clearstream, Luxembourg either directly or indirectly. Indirect participants will also include persons that hold beneficial interests through such participants. Beneficial interests or Book-Entry Interests in the Global Note will not be held in definitive form. Instead, Euroclear and Clearstream, Luxembourg, as applicable, will credit the participants' accounts with the respective interests beneficially owned by such participants on each of their respective book-entry registration and transfer systems. The laws of some jurisdictions or other applicable rules may require that certain purchasers of securities take physical delivery of such securities in definitive form. The foregoing limitations may therefore impair the ability of persons within such jurisdictions or otherwise subject to the laws thereof to own, transfer or pledge beneficial interests or Book-Entry Interests in the Global Note.

Except as set forth below under "*Issuance of Definitive Notes*" at page 207, participants will not be entitled to have Notes registered in their names, will not receive or be entitled to receive physical delivery of Notes in definitive registered form and will not be considered the holders thereof under the Note Trust Deed.

Accordingly, each person holding a beneficial interest or Book-Entry Interest in the Global Note must rely on the rules and procedures of Euroclear or Clearstream, Luxembourg, as the case may be, and indirect participants must rely on the procedures of the direct participant or indirect participants through which such person owns its beneficial interest or Book-Entry Interest in the Global Note to exercise any rights and obligations of a holder of Notes under the Note Trust Deed.

Unlike legal owners or holders of the Notes, holders of beneficial interests or Book-Entry Interests in the Global Note will not have the right under the Note Trust Deed to act upon solicitations by the Issuer of consents or requests by the Issuer for waivers or other actions from Noteholders. Instead, a holder of a beneficial interest or Book-Entry Interest in the Global Note will be permitted to act only to the extent it has received appropriate proxies to do so from Euroclear or Clearstream, Luxembourg (as the case may be) and, if applicable, their participants. There can be no assurance that procedures implemented for the granting of such proxies will be sufficient to enable holders of beneficial interests in the Global Note to vote on any requested actions on a timely basis. Similarly, upon the occurrence of a Note Event of Default under the Notes, holders of beneficial interests or Book-Entry Interests in the Global Note will be restricted to acting through Euroclear and Clearstream, Luxembourg unless and until Definitive Notes are issued in accordance with the Conditions. There can be no assurance that the procedures to be implemented by Euroclear, and Clearstream, Luxembourg under such circumstances will be adequate to ensure the timely exercise of remedies under the Note Trust Deed.

Unless and until Book-Entry Interests are exchanged for Definitive Notes, the Notes held by the Common Depository may not be transferred except as a whole by that Common Depository to a successor of the Common Depository.

Purchasers of Book-Entry Interests in the Notes will hold Book-Entry Interests in the Global Note relating thereto. Investors may hold their Book-Entry Interests in respect of the Global Note directly through Euroclear or Clearstream, Luxembourg (in accordance with the provisions set forth in the section entitled "*Transfers*" below), if they are account holders in such systems, or indirectly through organisations which are account holders in such systems. Euroclear and Clearstream, Luxembourg will hold Book-Entry Interests in the Note on behalf of their account holders through securities accounts in the respective account holders' names on Euroclear's and Clearstream, Luxembourg's respective book-entry registration and transfer systems.

Although Euroclear and Clearstream, Luxembourg have agreed to certain procedures to facilitate transfer of beneficial interests or Book-Entry Interests in the Global Note among account holders of Euroclear and Clearstream, Luxembourg, they are under no obligation to perform or continue to perform such procedures, and such procedures may be discontinued at any time. None of the Issuer, the Note Trustee, the Issuer Security Trustee, the Registrar, the Agents or any of their respective agents will have any responsibility for the performance by Euroclear or Clearstream, Luxembourg or their respective participants or account holders of their respective obligations under the rules and procedures governing their operations.

### **Payments on the Global Note**

Each payment of interest on and repayment of principal of the Notes shall be made in accordance with the Agency Agreement (as defined below).

Payments of any amounts owing in respect of the Global Note will be made by or on behalf of the Issuer following receipt of any principal or interest on the Global Note, in sterling as follows: payments of such amounts in respect of the Global Note to be made to the Common Depository for Euroclear or Clearstream, Luxembourg, or its nominee which will distribute such payments to participants who hold beneficial interests or Book-Entry Interests in the Global Note in accordance with the procedures of Euroclear or Clearstream, Luxembourg.

Under the terms of the Note Trust Deed, the Issuer and the Note Trustee will treat the registered holders of the Global Note as the owners thereof for the purposes of receiving payments and for all other purposes. Consequently, none of the Issuer, the Issuer Security Trustee or the Note Trustee or any agent of the Issuer, the Issuer Security Trustee or the Note Trustee has or will have any responsibility or liability for:

- (a) any aspect of the records of Euroclear or Clearstream, Luxembourg or any participant or indirect participant relating to or payments made on account of a beneficial interest or Book-Entry Interest in the Global Note or for maintaining, supervising or reviewing any of the records of Euroclear or

Clearstream, Luxembourg or any participant or indirect participant relating to or payments made on account of a beneficial interest or Book-Entry Interest in the Global Note; or

(b) Euroclear or Clearstream, Luxembourg or any participant or indirect participant.

The Note Trustee is entitled to rely on any certificate or other document issued by Euroclear, Clearstream or Luxembourg for determining the identity of the several persons who are for the time being the beneficial holders of any beneficial interest or Book-Entry Interest in the Global Note.

All such payments will be distributed without deduction or withholding for any taxes, duties, assessments or other governmental charges of whatever nature except as may be required by law. If any such deduction or withholding is required to be made, then neither the Issuer nor any other person will be obliged to pay additional amounts in respect thereof.

In accordance with the rules and procedures for the time being of Euroclear or, as the case may be, Clearstream, Luxembourg, after receipt of any payment by the Common Depository or its nominee, the respective systems will promptly credit their participants' accounts with payments in amounts proportionate to their respective ownership of beneficial interests or Book-Entry Interests in the Global Note as shown in the records of Euroclear or of Clearstream, Luxembourg. The Issuer expects that payments by participants to owners of beneficial interests or Book-Entry Interests in the Global Note held through such participants will be governed by standing customer instructions and customary practices, as is now the case with the securities held for the accounts of customers in bearer form or registered in "street name" or in the names of nominees for such customers. Such payments will be the responsibility of such participants. None of the Issuer, the Note Trustee, the Issuer Security Trustee, the Registrar, the Agents or any other agent of the Issuer, the Note Trustee, the Issuer Security Trustee or the Registrar will have any responsibility or liability for any aspect of the records of Euroclear or Clearstream, Luxembourg relating to or payments made by Euroclear or Clearstream, Luxembourg on account of a participant's ownership of beneficial interests or Book-Entry Interests in the Global Note or for maintaining, supervising or reviewing any records relating to a participant's ownership of beneficial interests or Book-Entry Interests in the Global Note.

### **Book-Entry Ownership**

The Global Note will have an ISIN and a Common Code and will be deposited with, and registered in the name of a nominee for the Common Depository for Euroclear and Clearstream, Luxembourg.

#### Information Regarding Euroclear and Clearstream, Luxembourg

Euroclear and Clearstream, Luxembourg have informed the Issuer as follows:

Custodial and depository links have been established between Euroclear and Clearstream, Luxembourg to facilitate the initial issue of the Global Note and secondary market trading of beneficial interests in the Global Note.

Clearstream, Luxembourg and Euroclear each hold securities for their customers and facilitate the clearance and settlement of securities transactions by electronic book-entry transfer between their respective account holders. Clearstream, Luxembourg and Euroclear provide various services including safekeeping, administration, clearance and settlement of internationally traded securities and securities lending and borrowing. Clearstream, Luxembourg and Euroclear also deal with domestic securities markets in several countries through established depository and custodial relationships. Clearstream, Luxembourg and Euroclear have established an electronic bridge between their two systems across which their respective participants may settle trades with each other.

Clearstream, Luxembourg and Euroclear customers are world-wide financial institutions, including underwriters, securities brokers and dealers, banks, trust companies and clearing corporations. Indirect access to Clearstream, Luxembourg and Euroclear is available to other institutions that clear through or maintain a custodial relationship with an account holder of either system.

As Euroclear and Clearstream, Luxembourg act on behalf of their respective account holders only, who in turn may act on behalf of their respective clients, the ability of beneficial owners who are not account holders with Euroclear or Clearstream, Luxembourg to pledge interests in the Global Note to persons or entities that are not

account holders with Euroclear or Clearstream, Luxembourg, or otherwise take action in respect of interests in the Global Note, may be limited.

The Issuer understands that, under existing industry practices, if either the Issuer or the Note Trustee requests any action of owners of beneficial interests in the Global Note or if an owner of a beneficial interest in the Global Note desires to give instructions or take any action that a holder is entitled to give or take under the Note Trust Deed, Euroclear or Clearstream, Luxembourg, as the case may be, would authorise the direct participants owning the relevant beneficial interests to give instructions or take such action, and such direct participants would authorise indirect participants to give or take such action or would otherwise act upon the instructions of such indirect participants.

## **Redemption**

For any redemptions of the Global Note in part, selection of the book-entry interests relating thereto to be redeemed will be made by Euroclear or Clearstream, Luxembourg, as the case may be, on a *pro rata* basis (or on such other basis as Euroclear or Clearstream, Luxembourg deems fair and appropriate) provided that only Book-Entry Interests in the original principal amount of £1,000,000 (and integral multiples of £1,000 in excess thereof) or integral multiples of such original principal amount will be redeemed. Upon any redemption in part, the Paying Agent will mark down or cause to be marked down the schedule to the Global Note by the principal amount so redeemed.

## **Transfers**

All transfers of beneficial interests in the Global Note will be recorded in accordance with the book-entry systems maintained by Euroclear or Clearstream, Luxembourg, as applicable, pursuant to customary procedures established by each respective system and its participants.

Each original purchaser of an interest in the Notes and any subsequent purchaser of the Notes (whether directly from the Issuer or from the Lead Manager as part of its distribution) will be required to complete and deliver to the Issuer and the Lead Manager an investor representation letter in relation to its purchase of an interest in the Notes. The Notes have not been and will not be registered under the U.S. Securities Act or any state securities laws. The Notes may not be offered, sold or delivered, directly or indirectly, whether as part of the initial distribution thereof or in any subsequent transfer, within the United States or to, or for the account or benefit of, any U.S. Persons (as defined in Regulation S under the Securities Act).

## **Issuance of Definitive Notes**

Holders of beneficial interests in the Global Note will be entitled to receive Definitive Notes representing Notes in registered form in exchange for their respective holdings of beneficial interests only if:

- (a) either Euroclear or Clearstream, Luxembourg is closed for business for a continuous period of 14 days (other than by reason of holiday, statutory or otherwise) or announces an intention permanently to cease business or does in fact do so and no alternative clearing system satisfactory to the Note Trustee is available; or
- (b) as a result of any amendment to, or change in, the laws or regulations of the United Kingdom or any other jurisdiction (or of any political sub-division thereof or of any authority therein or thereof having power to tax) or in the interpretation or administration of such laws or regulations which becomes effective on or after the Closing Date, the Issuer or any Paying Agent is or will be required to make any deduction or withholding from any payment in respect of the Notes which would not be required if the Notes were in definitive registered form.

Definitive Notes will be issued in definitive form in minimum denominations of £1,000,000 and in integral multiples of £1,000 thereafter and will be serially numbered and will be issued (without coupons and talons). Title to the Definitive Notes shall pass upon registration of transfers in the Register.

The "**holder**" of any Note shall (to the fullest extent permitted by applicable laws) be deemed and treated at all times, by all persons and for all purposes (including the making of any payments), as the absolute owner of such Note, as the case may be, regardless of any notice of ownership, theft or loss, of any trust or other interest therein or of any writing thereon and no person shall be liable for so treating such holder.

Any Definitive Notes issued in exchange for beneficial interests or Book-Entry Interests in the Global Note will be registered by the Registrar in such name or names as instructed by Euroclear or Clearstream, Luxembourg. It is expected that such instructions will be based upon directions received by Euroclear or Clearstream, Luxembourg from their participants with respect to ownership of the relevant beneficial interests or Book-Entry Interests.

#### **Action in Respect of the Global Note and the Book-Entry Interests**

Not later than 10 days after receipt by the Issuer of any notice in respect of the Notes or any notice of solicitation of consents or requests for a waiver or other action by the holder of the Notes, the Issuer will deliver to Euroclear and Clearstream, Luxembourg a notice containing (a) such information as is contained in such notice, (b) a statement that at the close of business on a specified record date Euroclear and Clearstream, Luxembourg will be entitled to instruct the Issuer as to the consent, waiver or other action, if any, pertaining to the Book-Entry Interests or the Notes and (c) a statement as to the manner in which such instructions may be given. Upon the written request of Euroclear or Clearstream, Luxembourg, as applicable, the Issuer shall endeavour insofar as practicable to take such action regarding the requested consent, waiver or other action in respect of the Book-Entry Interests or the Notes in accordance with any instructions set forth in such request. Euroclear or Clearstream, Luxembourg are expected to follow the procedures described above, with respect to soliciting instructions from their respective Participants.



## TERMS AND CONDITIONS OF THE NOTES

The following are the terms and conditions of the Notes in the form in which they will be set out in the Note Trust Deed.

The £101,620,000 Commercial Mortgage Backed Fixed Rate Notes due 2026 (the "**Notes**") of Cleveland Row Finance No.1 Designated Activity Company (the "**Issuer**") are constituted by a trust deed dated on or about the Closing Date (the "**Note Trust Deed**", which expression includes such trust deed as from time to time modified in accordance with the provisions therein contained and any deed or other document expressed to be supplemental thereto as from time to time so modified) and made between the Issuer and U.S. Bank Trustees Limited (the "**Note Trustee**", which expression includes its successors or any further or other trustee under the Note Trust Deed) as trustee for the holders for the time being of the Notes.

In these Conditions (as defined below) the holders of the Notes are each referred to as a "**Noteholder**" and, collectively, the "**Noteholders**".

The Issuer may issue Further Notes in accordance with Condition 20 (*Further Issuance of Notes*) which shall upon issue and subscription be consolidated and fully fungible with, and will rank *pari passu*, and will have the same terms as the Notes then Outstanding in all respects (or in all material respects except for the issue date and their first Interest Period).

The security for the Notes is constituted by, and on terms set out in, an English law governed deed of charge and assignment dated on or about the Closing Date (the "**Deed of Charge and Assignment**", which expression includes such deed of charge and assignment as from time to time modified in accordance with the provisions therein contained and any deed or other document expressed to be supplemental thereto as from time to time so modified, the "**Issuer Security Documents**") and made in each case between, among others, the Issuer and U.S. Bank Trustees Limited (the "**Issuer Security Trustee**", which expression includes its successors or any further or other trustee under the Note Trust Deed). By an agency agreement dated on or about the Closing Date (the "**Agency Agreement**", which expression includes such agency agreement as from time to time modified in accordance with the provisions therein contained and any agreement, deed or other document expressed to be supplemental thereto as from time to time so modified) and made between, among others, the Issuer, the Note Trustee, Elavon Financial Services DAC, UK Branch in its separate capacities under the same agreement as principal paying agent (the "**Principal Paying Agent**", which expression includes its successor or any other principal paying agent appointed in respect of the Notes) and the agent bank (the "**Agent Bank**", which expression includes its successor or any other agent bank appointed in respect of the Notes) (the Principal Paying Agent being, together with any further or other paying agents for the time being appointed in respect of the Notes, the "**Paying Agents**") and Elavon Financial Services DAC as registrar (the "**Registrar**" (which expression includes any other registrar appointed in respect of the Notes) and, together with the Agent Bank, the Registrar and the Paying Agents, the "**Agents**"), provision is made for, among other things, the repayment of principal of and payment of interest on the Notes. By a settlement agency agreement dated on or about the Closing Date (the "**Settlement Agency Agreement**"), which expression includes such settlement agency agreement as from time to time modified in accordance with the provisions therein contained and any agreement, deed or other document expressed to be supplemental thereto as from time to time so modified and made between the Issuer and Elavon Financial Services DAC, UK Branch (the "**Settlement Agent**") pursuant to which the Settlement Agent will temporarily hold in safe custody the Global Note on behalf of the Issuer prior to the subsequent transfer of interests in the Global Note to the initial subscribers on the Closing Date.

The provisions of these terms and conditions (the "**Conditions**" and any reference to a "**Condition**" shall be construed accordingly) include summaries of, and are subject to, the detailed provisions of the Note Trust Deed, the Agency Agreement, the Issuer Security Documents, the Cash Management Agreement, the Issuer Corporate Services Agreement, the Note Sale Agreement, the Share Declaration of Trust and the Master Definitions and Construction Schedule (as defined below). Copies of the Note Trust Deed, the Agency Agreement, the Issuer Security Documents, the Cash Management Agreement, the Issuer Corporate Services Agreement, the Note Sale Agreement and the Master Definitions and Construction Schedule (as defined below) are available for inspection during normal business hours and upon request at the specified office of each of the Paying Agents. The Noteholders are entitled to the benefit of, are bound by, and are deemed to have notice of, all the provisions of and definitions contained in the Note Trust Deed, the Agency Agreement, the Issuer Security Documents, the Cash Management Agreement, the Issuer Corporate Services Agreement, the Note Sale Agreement, the Share Declaration of Trust, and a master definitions and construction schedule dated the Closing Date and signed for identification purposes only by each of the Issuer, the Mezzanine Note Sellers, the Cash Manager, the Operating

Bank, the Agent Bank, the Principal Paying Agent, the Note Trustee, the Issuer Security Trustee and the Issuer Corporate Services Provider (the "**Master Definitions and Construction Schedule**", which expression includes such master definitions and construction schedule as from time to time modified in accordance with the provisions therein contained and any agreement, deed or other document expressed to be supplemental thereto as from time to time so modified).

The issue of the Notes was authorised by resolution of the board of directors of the Issuer passed on 16 February 2017.

### **Certain Defined Terms**

Capitalised terms used and not otherwise defined in these Conditions shall bear the meanings given to them in the Master Definitions and Construction Schedule.

**"Appointee"** means the Note Trustee and the Issuer Security Trustee (and, in each case, including any attorney, agent, manager, delegate, nominee or other person appointed by the Note Trustee under the Note Trust Deed or any receiver, agent, delegate, nominee, custodian or other person appointed by the Issuer Security Trustee under the Deed of Charge and Assignment).

**"Break Costs"** means the breakage costs payable to the Issuer corresponding to the Issuer's interest in the Mezzanine Notes repaid or prepaid on an Intra-Mezzanine Note Interest Payment Date provided that that the Noteholder Representative has provided a break cost determination to the Mezzanine Note Agent in accordance with the provisions relating to break costs set out in the Mezzanine Note Issuance Agreement.

**"Business Day"** means a day (other than a Saturday or Sunday) on which banks are open for general business in London, New York, the Cayman Islands and Jersey.

**"Capitalised Fixed Interest Rate"** means 4.00 per cent. per annum.

**"Capitalised Interest"** means an amount equal to the interest accrued on the Notes at the Capitalised Fixed Interest Rate.

**"Cash Management Agreement"** means the cash management agreement dated on or about the Closing Date between the Cash Manager, the Operating Bank, the Issuer Security Trustee, the Note Trustee and the Issuer.

**"Cash Manager"** means Elavon Financial Services DAC, UK Branch, whose address is at 125 Old Broad Street, London EC2N 1AR, United Kingdom.

**"Cash Trap Event"** has the meaning given to it in the Senior Facility Agreement.

**"Closing Date"** means the date on or around 23 February 2017.

**"Common Security Agent"** means Mount Street Mortgage Servicing Limited.

**"Constitution"** means the constitution of the Issuer, being a designated activity company, as provided for in the Companies Act 2014, which at the date hereof consists of its memorandum of association and articles of association;

**"CREFC European Investor Reporting Package"** means

- (a) a report setting out certain Mezzanine Note information, including the mortgage rate, maturity date and general payment information, as well as financial data (as set out in the "**CREFC E-IRP Loan Set up File**");
- (b) a report setting out quarterly remittances on the Mezzanine Note, as well as the tracking of both scheduled and unscheduled payments in respect thereof (as set out in the "**CREFC E-IRP Loan Periodic Update File**");

- (c) a report setting out information regarding the Property including, property name, address and identification number (as set out in the "**CREFC E-IRP Property File**"); and
- (d) a report setting out, among other things, details of any event that would cause the Mezzanine Note to be included on the servicer watchlist (as set out in the "**CREFC E-IRP Servicer Watchlist Criteria and Servicer Watchlist File**").

**"Curable Default"** means the defaults more particularly described in the Intercreditor Agreement in respect of an event of default relating to (i) a non-payment event of default relating to the Senior Loan or (ii) a breach of the financial covenants under Senior Facility Agreement by the Senior Loan Obligors that can be cured by the Mezzanine Noteholders in accordance with the Intercreditor Agreement.

**"Cure Payment"** means a payment made as a consequence of the exercise of the Cure Rights by the Issuer pursuant to an instruction of the Note Representative in accordance with Condition 16 (*Noteholder Representative*).

**"Cure Rights"** means the rights specified under the Intercreditor Agreement pursuant to which the Issuer as a Mezzanine Noteholder is entitled to make payments to cure a Curable Default.

**"Default Interest"** means, with respect to any amount which a Mezzanine Note Obligor fails to pay under the Mezzanine Note Issuance Agreement or any other related mezzanine finance document on its due date, the interest accrued and payable by a Mezzanine Note Obligor to the Mezzanine Note Agent on any such overdue amount as calculated in accordance with the default interest provisions of the Mezzanine Note Issuance Agreement.

**"Distribution Date"** has the meaning given to it in Condition 5(b) (*Distribution Dates and Interest Periods*).

**"Expected Maturity Date"** means the Distribution Date falling on 15 December 2021.

**"Extraordinary Resolution"** in respect of the Noteholders means:

- (a) a resolution passed at a duly convened meeting of the Noteholders and held in accordance with the provisions of the Note Trust Deed by holders consisting of not less than 75 per cent. of the persons voting thereat upon a show of hands, or if a poll is demanded, by holders consisting of not less than 75 per cent. of the votes cast on such poll; or
- (b) a resolution in writing signed by or on behalf of the holders of not less than 75 per cent. in aggregate Principal Amount Outstanding of the Notes which resolution may be contained in one document or in several documents in like form each signed by or on behalf of one or more of such holders,

and (in the circumstances set out in Condition 12 (*Meetings of Noteholders, Modification and Waiver, Substitution and Termination of Issuer Related Parties*) of the Notes in relation to the Negative Consent process) an Extraordinary Resolution (other than in respect of a Basic Terms Modification, the waiver of any Note Event of Default, the acceleration of the Notes or the enforcement of the Issuer Security) will be deemed to have been passed unless holders of 25 per cent. or more in aggregate Principal Amount Outstanding of the Notes have informed the Note Trustee in the prescribed manner of their objection to such Extraordinary Resolution within 15 days after the date on which a notice containing the text of such Extraordinary Resolution which acts as an invitation to Noteholders to object to that Extraordinary Resolution and details the manner in which such objections should be made has been given to the Noteholders in accordance with the provisions of Condition 15 (*Notice to and Communication between Noteholders*) provided that any such notice shall in all cases also be delivered through the systems of Bloomberg L.P. (or such other medium as may be approved in writing by the Note Trustee) by the Issuer, the Note Trustee or the Cash Manager and for so long as the Notes are listed in the Irish Stock Exchange, by making it available to any Regulatory Information Service maintained by the Irish Stock Exchange.

**"Final Maturity Date"** means the Distribution Date falling on 15 December 2026.

**"Fixed Rate of Interest"** means the Whole Fixed Rate of Interest or the Reduced Fixed Rate of Interest, as applicable.

**"Full Mezzanine Note Interest Amount"** means the accrued interest amount payable on the Mezzanine Notes calculated at a rate equal to 8.25 per cent. per annum.

**"Interest Reserve Account Withdrawal"** means a withdrawal made from the Interest Reserve Account in accordance with the Mezzanine Note Issuance Agreement to pay the Full Mezzanine Note Interest Amount on any Mezzanine Note Interest payment Date on which such interest is not or cannot be paid.

**"Irish Excluded Assets"** means the Issuer Corporate Services Agreement and the Issuer Profit Account.

**"Issuer Assets"** means the Mezzanine Notes and the Issuer's interest in the Related Security and all monies derived therefrom from time to time, all of which will be sold and transferred to the Issuer on the Closing Date pursuant to the Note Sale Agreement.

**"Issuer Corporate Services Agreement"** means the issuer corporate services agreement dated on or about the Closing Date between the Issuer and the Issuer Corporate Services Provider.

**"Issuer Corporate Services Provider"** means Intertrust Finance Management (Ireland) Limited, whose address is at 1<sup>st</sup> Floor, 1-2 Victoria Buildings, Haddington Road, Dublin 4, Ireland.

**"Issuer Profit Account"** means the bank account of the Issuer in which the Issuer's share capital, the Tax Amount and any profit paid to the Issuer are deposited which at the Closing Date will be held in the United Kingdom with the Operating Bank or any other bank account specified as such or opened by or on behalf of the Issuer in the future in addition to or in substitute for such Issuer Profit Account in accordance with the Deed of Charge and Assignment and the Note Trust Deed.

**"Issuer Profit Amount"** means the payment on each Distribution Date of £250, subject always to an aggregate maximum amount of £1,000 per annum to the Issuer, as profit amount and corporate benefit for entering into the transaction, to be credited to the Issuer Profit Account in accordance with the Pre-Enforcement Revenue Priority of Payments and which shall not form part of the Issuer Assets or be applied for the payment of any Tax Amounts.

**"Issuer Related Parties"** means each of the Note Trustee, the Issuer Security Trustee, any Appointee, the Cash Manager, the Operating Bank, the Agent Bank, the Principal Paying Agent, the Registrar, the Issuer Corporate Services Provider and any other Paying Agent.

**"Issuer Transaction Account"** means the account opened and maintained by the Operating Bank.

**"Issuer Transaction Documents"** means the following documents and any amendments, novations and supplements thereto from time to time:

- (a) the Note Trust Deed;
- (b) the Note Sale Agreement;
- (c) the Deed of Charge and Assignment;
- (d) the Cash Management Agreement;
- (e) the Issuer Corporate Services Agreement;
- (f) the Agency Agreement;
- (g) the Mezzanine Note Agent Letter Agreement;
- (h) the Master Definitions and Construction Schedule;
- (i) the Settlement Agency Agreement; and

- (j) any other agreement, instrument or deed designated as such by the Issuer, the Note Trustee and the Issuer Security Trustee.

**"Mezzanine Commitment"** means any commitment of a Mezzanine Noteholder to subscribe to the Mezzanine Note, to the extent not cancelled, reduced or transferred by it in the Mezzanine Note Issuance Agreement.

**"Mezzanine Issuer"** means BSREP CityPoint Mezz Limited a private limited company incorporated in Jersey with registered number 122625 and having its registered office at 47 Esplanade, St Helier, Jersey JE1 0BD.

**"Mezzanine Note Agent"** means Mount Street Mortgage Servicing Limited.

**"Mezzanine Note Agent Letter Agreement"** means the letter agreement dated on or about the Closing Date between, among others, the Mezzanine Note Agent, the Issuer and the Note Trustee.

**"Mezzanine Note Interest Payment Date"** means, in relation to the Mezzanine Notes, 20 January, 20 April, 20 July and 20 October in each year and the Redemption Date, with the first Mezzanine Note Interest Payment Date being 20 April 2017. If, however, any such day is not a Business Day, the Mezzanine Note 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).

**"Mezzanine Note Interest Period"** means in relation to (i) the first Mezzanine Note Interest Period, the period starting on 15 December 2016 and ending on the next Mezzanine Note Interest Payment Date, and subsequently, each Mezzanine Note Interest Period, starting on the last day of its preceding Mezzanine Note Interest Period and ending on the next Mezzanine Note Interest Payment; and (ii) Mezzanine Note Unpaid Sum, the interest period determined by the Mezzanine Note Agent in accordance with the default interest provision of the Mezzanine Note Issuance Agreement.

**"Mezzanine Note Level Information"** means, each of the following items of information:

- (a) a compliance certificate delivered by the Mezzanine Issuer to the Mezzanine Note Agent setting out computations as to compliance by the Mezzanine Issuer with the financial covenants in the Mezzanine Note Issuance Agreement;
- (b) the Mezzanine Note Quarterly Property Report;
- (c) the Servicer Quarterly Report; and
- (d) to the extent deliverable by the Mezzanine Issuer on or prior to a particular Mezzanine Note Interest Payment Date, all other information provided by the Mezzanine Issuer pursuant to the information covenants contained in the Mezzanine Note Issuance Agreement.

**"Mezzanine Note Level Matters"** means one or more of the following (and each a **"Mezzanine Note Level Matter"**):

- (a) the exercise of any rights, powers and discretions of the Issuer in relation to the Mezzanine Notes and the Related Security that can only be exercised by a holder of the Mezzanine Notes or a beneficial owner of the Related Security; or
- (b) any rights of consultation relating to the administration of the Mezzanine Notes (to the extent that the Issuer as a noteholder has a corresponding consultation right under the Mezzanine Finance Documents or the Intercreditor Agreement).

**"Mezzanine Note Obligors"** means each of the Mezzanine Issuer and the other obligors under the Mezzanine Note Issuance Agreement.

**"Mezzanine Note Quarterly Property Report"** means a quarterly management report in respect of the Property and the business of the Mezzanine Note Obligors which is to be supplied to the Mezzanine Note Agent by the Senior Borrower pursuant to the Mezzanine Note Issuance Agreement.

**"Mezzanine Note Sellers"** means Cheyne Real Estate Debt Fund, Cheyne Real Estate Holdings Fund III and Real Estate Credit Investments Limited.

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

**"Mezzanine Notes"** means the £101,620,000 principal amount of notes issued by the Mezzanine Issuer on 15 December 2016 pursuant to the Mezzanine Note Issuance Agreement.

**"Note Sale Agreement"** means the note sale agreement dated on or about the Closing Date between, the Issuer, the Issuer Security Trustee, the Mezzanine Note Agent, the Cash Manager, the Agent Bank and the Mezzanine Note Sellers on the Closing Date.

**"Noteholder Curable Default Payment"** means an amount equal to a Cure Payment made by a Cure Paying Noteholder in accordance with the Condition 16 (*Noteholder Representative*).

**"Noteholder Representative"** means the representative appointed by the Noteholders acting by a Written Ordinary Resolution pursuant to Condition 16 (*Noteholder Representative*).

**"Operating Bank"** means Elavon Financial Services DAC, UK Branch, whose address is at 125 Old Broad Street, London EC2N 1AR, United Kingdom.

**"Ordinary Resolution"** in respect of the Noteholders means:

- (a) a resolution passed at a duly convened meeting of the Noteholders and held in accordance with the provisions of the Note Trust Deed by holders consisting of not less than 50.1 per cent. of the persons voting thereat upon a show of hands, or if a poll is demanded, by a holders consisting of not less than 50.1 per cent. of the votes cast on such poll; or
- (b) a resolution in writing signed by or on behalf of the holders of not less than 50.1 per cent. in aggregate Principal Amount Outstanding of the Notes, which resolution may be contained in one document or in several documents in like form each signed by or on behalf of one or more of such holders,

and (in the circumstances set out in Condition 12 (*Meetings of Noteholders, Modification and Waiver, Substitution and Termination of Issuer Related Parties*) of the Notes in relation to the Negative Consent process) an Ordinary Resolution will be deemed to have been passed unless holders of 50 per cent. or more in aggregate Principal Amount Outstanding of the Notes have informed the Note Trustee in the prescribed manner of their objection to such Ordinary Resolution within 15 days after the date on which a notice containing the text of such Ordinary Resolution which acts as an invitation to Noteholders to object to that Ordinary Resolution and details the manner in which such objections should be made has been given to such Noteholders in accordance with the provisions of Condition 15 (*Notice to and Communication between Noteholders*) provided that any such notice shall in all cases also be delivered through the systems of Bloomberg L.P. (or such other medium as may be approved in writing by the Note Trustee) by the Issuer, the Note Trustee or the Cash Manager and for so long as the Notes are listed in the Irish Stock Exchange, by making it available to any Regulatory Information Service maintained by the Irish Stock Exchange.

**"Principal Receipts"** means: the Issuer's principal receipts comprising on any day, all payments and repayments of principal received or recovered by or on behalf of the Issuer in connection with the Mezzanine Notes, and standing to the credit of the Issuer Transaction Account, including, without limitation all amounts received or recovered by or on behalf of the Issuer in respect of:

- (a) amounts recovered which are applied towards the reduction of outstanding principal as a result of actions taken in accordance with the enforcement procedures in respect of the Mezzanine Notes and/or the Related Security;
- (b) any mandatory prepayment amounts of a principal nature under and in accordance with the Mezzanine Note Issuance Agreement;

- (c) payments received by or on behalf of the Issuer as a result of an indemnity payment from or the repurchase of the Mezzanine Notes by a Mezzanine Note Seller pursuant to the Note Sale Agreement which, in each case, do not constitute Revenue Receipts;
- (d) voluntary repayments or prepayments in respect of the principal outstanding under the Mezzanine Notes made on notice in accordance with the Mezzanine Note Issuance Agreement; and
- (e) any repayments or prepayments made by or on behalf of the Mezzanine Issuer in connection with a restructuring of the Mezzanine Note Issuance Agreement or as a condition to any waiver of a Mezzanine Note Event of Default under the Mezzanine Note Issuance Agreement,

provided that all amounts recorded in the Issuer Profit Account shall not form part of the Principal Receipts, or be applied in accordance with the applicable Issuer Priority of Payments.

**"Reduced Fixed Rate of Interest"** means, after a Cash Trap Event occurs and while it is continuing, 4.25 per cent. per annum unless an Interest Reserve Account Withdrawal (for the avoidance of any doubt, for the Full Mezzanine Note Interest Amount) is received or expected to be received by the Issuer.

**"Related Security"** means all right, title and interest of the Mezzanine Note Sellers or all rights, title and interest of the Issuer following the execution of the Note Sale Agreement in each case, present and future, in, and under the Security Documents and any other security agreements as they relate to the Mezzanine Notes.

**"Senior Agent"** means Mount Street Mortgage Servicing Limited.

**"Senior Creditor"** means the Senior Agent, the Common Security Agent, the senior arranger or a Senior Lender.

**"Senior Facility Agreement"** means the senior facility agreement dated 15 December 2016 between, among others, BSREP CityPoint Bidco Limited, Mount Street Mortgage Servicing Limited as agent and security agent pursuant to which the Lenders (as defined therein) make available to the Senior Borrower a £334,380,000 term loan facility on the terms stated therein.

**"Senior Loan"** means the sterling term loan made to the Senior Borrower under the Senior Facility Agreement.

**"Senior Loan Obligor"** means the obligors under the Senior Facility Agreement.

**"Servicer Quarterly Report"** means, in respect of each Mezzanine Note Interest Period, the CREFC European Investor Reporting Package and a report containing the following information regarding the Mezzanine Notes and the Property in relation to the immediately preceding Mezzanine Note Interest Period:

- (a) a report setting out the information provided by the Mezzanine Note Obligors pursuant to the information covenants contained in the Mezzanine Finance Documents and information about compliance with the financial covenants contained in the Mezzanine Note Issuance Agreement;
- (b) a report setting out, among other things, general information in relation to the Mezzanine Notes (including where applicable, the mortgage rate, maturity date and general payment information, as well as financial data); and
- (c) a report setting out, among other things, information regarding the Mezzanine Notes or the Property.

**"Sponsor"** means BSREP International II(A) Holdings L.P. (acting by its general partner, Sponsor GP), an exempted limited partnership registered under the laws of the Cayman Islands whose registered office is at PO Box 309, Uglund House, Grand Cayman, KY1-1104, Cayman Islands.

**"Sponsor Affiliate"** means the Sponsor each of its Affiliates, any trust of which the Sponsor or any of its Affiliates is a trustee, any partnership of which the Sponsor 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 the Sponsor or any of its Affiliates.

**"Sponsor GP"** means as at the date of the Mezzanine Note Issuance Agreement, being 15 December 2016, BSREP GP Bermuda Limited, an exempted company incorporated under the laws of Bermuda (registered number 46626) or any other general partner or partners of the Sponsor from time to time.

**"Whole Fixed Rate of Interest"** means provided:

- (a) that no Cash Trap Event occurs and is continuing; or
- (b) if an Interest Reserve Account Withdrawal (for the avoidance of any doubt, for the Full Mezzanine Note Interest Amount) is received or expected to be received by the Issuer,

8.25 per cent. per annum.

**"Written Ordinary Resolution"** means a resolution in writing signed by Noteholders holding in aggregate not less than 50.1 per cent. of the Principal Amount Outstanding of the Notes which resolution may be constrained in one document or in several documents in like form each signed by or on behalf of one or more of such holders.

## 1. **Global Note**

### (a) *Form*

The Notes will be represented by a Global Note in registered form without coupons or talons attached and which will represent the aggregate principal amount outstanding of the Notes. On the Closing Date, the Global Note will be deposited on behalf of the subscribers of the Notes with and registered in the name of a nominee for the Common Depositary. Upon deposit of the Global Note, Euroclear or Clearstream, Luxembourg, as applicable, will credit the account of the holders of Book-Entry Interests with the principal amount of Notes for which it has subscribed and paid.

For so long as the Notes are represented by the Global Note, interests in the Notes will be transferable in accordance with the rules and procedures for the time being of Euroclear or Clearstream, Luxembourg, as appropriate.

The Global Note shall be tradable only in minimum denominations of £1,000,000 and integral multiples of £1,000 thereafter.

### (b) *Title to the Global Note*

Ownership of beneficial interests or Book-Entry Interests in the Global Note will be shown on, and transfers of beneficial interests therein will be effected only through, records maintained by Euroclear or Clearstream, Luxembourg (with respect to the interests of their participants) and on the records of participants (with respect to the interests of their participants).

Title to the Notes will pass upon registration of transfers in the register (the "**Register**") which the Issuer will cause to be kept by the Registrar at its specified office outside of the United Kingdom. The person in whose name a Note is registered at that time in the Register will, to the fullest extent permitted by applicable law, be deemed and be treated as the absolute owner of such Note by all persons and for all purposes regardless of any notice to the contrary, any notice of ownership, theft or loss, or of any trust or other interest in that Note or of any writing on that Note (other than the endorsed form of transfer).

No transfer of a Note will be valid unless and until entered on the Register. Transfers and exchanges of beneficial interests in the Global Note and entries on the Register relating to the Notes will be made subject to any restrictions on transfers set forth on such Notes and the detailed regulations concerning transfers of such Notes contained in the Agency Agreement, the Note Trust Deed and the relevant legends appearing on the face of the Notes (such regulations and legends being the "**Transfer Regulations**"). Each transfer or purported transfer of a beneficial interest in the Global Note or a Definitive Note made in violation of



the Transfer Regulations shall be void ab initio and will not be honoured by the Issuer or the Note Trustee. The Transfer Regulations may be changed by the Issuer with the prior written approval of the Note Trustee, acting in accordance with the provisions of Condition 12(d)(i) (*Note Trustee Determinations*). A copy of the current Transfer Regulations will be sent by the Registrar to any holder of a Note who so requests and by the Principal Paying Agent to any holder of a Note who so requests, at the cost of the relevant Noteholder making such request.

Ownership of interests in respect of the Global Note (the "**Book-Entry Interests**") will be limited to persons who have accounts with Euroclear and/or Clearstream, Luxembourg or persons who hold interests through such participants. Book-Entry Interests will be shown on, and transfers thereof will be effected only through, records maintained in book-entry form by Euroclear Bank S.A./N.V. ("**Euroclear**", which term shall include any successor operator of the Euroclear System) and Clearstream Banking, société anonyme ("**Clearstream, Luxembourg**", which term shall include any successor thereto) and their participants. Beneficial interests in the Global Note may not be held by a U.S. Person (as defined in Regulation S under the Securities Act) at any time.

## 2. **Definitive Notes**

### (a) *Issue of Definitive Notes*

The Global Note will be exchanged for definitive Notes in registered form ("**Definitive Notes**") in an aggregate principal amount equal to the Principal Amount Outstanding (as defined in Condition 6(d) (*Principal Amount Outstanding*)) of the Global Note only if, 40 days or more after the Closing Date, any of the following circumstances apply:

- (i) in the case of the Global Note held by the Common Depositary (or its nominee) for their account, either Euroclear or Clearstream, Luxembourg is closed for business for a continuous period of 14 days (other than by reason of holiday, statutory or otherwise) or announces an intention permanently to cease business or does in fact do so and no alternative clearing system acceptable to the Note Trustee is in existence; or
- (ii) as a result of any amendment to, or change in, the laws or regulations of the United Kingdom or any other jurisdiction or any political sub-division thereof or of any authority therein or thereof having the power to tax, or in the interpretation or administration of such laws or regulations, which becomes effective on or after the Closing Date, the Issuer or any Paying Agent is or will be required to make any deduction or withholding from any payment in respect of the Notes which would not be required if the Notes were in definitive registered form.

If Definitive Notes are issued in accordance with the Note Trust Deed, the Book-Entry Interests represented by the Global Note shall be exchanged by the Issuer for Definitive Notes. The Definitive Notes will be issued in registered form only.

Definitive Notes, if issued, will be available at the offices of any Paying Agent.

If the Issuer fails to meet obligations to issue Notes in definitive form in exchange for the Global Note, then the Global Note shall remain in full force and effect.

### (b) *Title to and Transfer of Definitive Notes*

Title to a Definitive Note will pass upon registration in the Register. Each Definitive Note will have a minimum denomination of £1,000,000 and will be serially numbered. A Definitive Note may be transferred in whole or in part provided that any partial transfer relates to a minimum denomination of at least £1,000,000 and integral multiples in excess thereof of £1,000 upon surrender of such Definitive Note, at the specified office of the Registrar. In the case of a transfer of part only of a Definitive Note, a new Definitive Note in respect of the balance not transferred will be issued to the transferor. All transfers of Definitive Notes are

subject to any restrictions on transfer set forth in such Definitive Notes and the Transfer Regulations.

Each new Definitive Note to be issued upon the transfer, in whole or in part, of a Definitive Note will, within five Business Days (as defined in Condition 5(c) (*Rate of Interest*)) of receipt of the Definitive Note to be transferred, in whole or in part, (duly endorsed for transfer) at the specified office of the Registrar, be available for delivery at the specified office of the Registrar or be posted at the risk of the holder entitled to such new Definitive Note to such address as may be specified in the form of transfer.

Registration of a Definitive Note on transfer will be effected without charge by or on behalf of the Issuer or the Registrar, but upon payment of (or the giving of such indemnity as the Registrar may require in respect of) any tax or other government charges which may be imposed in relation to it and, only if the relevant Definitive Note is presented or surrendered for transfer and endorsed or accompanied by a written instrument of transfer in form satisfactory to the Registrar duly executed by the transferor Noteholder (or his attorney duly authorised in writing) and upon receipt of such certificates and other documents as shall be necessary to evidence compliance with the restrictions on transfer contained in the relevant Definitive Note, the Note Trust Deed and the Agency Agreement.

No transfer of a Definitive Note will be registered in the period beginning 15 Business Days before, or ending on the fifth Business Day after, each Distribution Date.

For the purposes of these Conditions:

- (i) the "**holder**" of a Note or "**Noteholder**" means the several persons who are for the time being holders of the Notes (being the several persons whose names are entered in the register of holders of the Notes as holders thereof) save that, for so long as the Notes or any part thereof are represented by the Global Note deposited with a common depositary for Euroclear and Clearstream, Luxembourg or, in respect of Notes in definitive form held in an account with Euroclear or Clearstream, Luxembourg, each person who is for the time being shown in the records of Euroclear or Clearstream, Luxembourg (other than Clearstream, Luxembourg, if Clearstream, Luxembourg shall be an accountholder of Euroclear, and Euroclear, if Euroclear shall be an accountholder of Clearstream, Luxembourg) as the holder of a particular nominal amount of the Notes shall be deemed to be the holder of such nominal amount of such Notes (and the holder of the Global Note shall be deemed not to be the holder) for all purposes of the Note Trust Deed and the Agency Agreement other than with respect to the payment of principal or interest on such nominal amount of such Notes, the rights to which shall be vested, as against the Issuer and the Note Trustee, solely in such common depositary and for which purpose such common depositary shall be deemed to be the holder of such nominal amount of such Notes in accordance with and subject to its terms and the provisions of the Note Trust Deed and the Agency Agreement, and the words "holder" and "holders" and related expressions shall (where appropriate) be construed accordingly; and
- (ii) references herein to "**Notes**" shall include the Global Note and the Definitive Notes.

### 3. **Status, Security and Priority**

- (a) *Status and Relationship among the Notes*
  - (i) The Notes constitute direct, limited recourse and secured obligations of the Issuer and are secured by the Issuer Security (as more particularly described in Condition 3(b) below). The Notes rank *pari passu* and without preference or priority among themselves as to payments on interest, principal and other amounts at all times.
  - (ii) The Note Trust Deed contains provisions requiring the Note Trustee to have regard to the interests of the Noteholders but not to the interests of any other Issuer Secured

Creditor for as long as the Notes are outstanding as regards all rights, powers, trusts, authorities, duties and discretions of the Note Trustee. Accordingly, if, in the opinion of the Note Trustee, there is a conflict between the interests of the Noteholders on the one hand and the interests of the other Issuer Secured Creditors on the other hand, the Note Trustee shall have regard only to the interests of the Noteholders.

- (iii) Nothing in the Note Trust Deed or the Notes shall be construed as giving rise to any relationship of agency or partnership between the Noteholders and any other person and each Noteholder shall be acting entirely for its own account in exercising its rights under the Note Trust Deed or the Notes.

(b) *Security and Priority of Payments*

The security interests granted in respect of the Notes are set out in the Deed of Charge and Assignment governed by English law and Jersey law which will be entered into on the Closing Date.

Pursuant to the Issuer Security Documents, the Issuer will grant the Issuer Security in favour of the Issuer Security Trustee for itself and on trust for the Noteholders and the Issuer Related Parties (the Issuer Security Trustee and all of the Issuer Related Parties and, including the Noteholders, being collectively, the "**Issuer Secured Creditors**").

Pursuant to the Deed of Charge and Assignment, the Issuer with full title guarantee has created the following security in favour of the Issuer Security Trustee for itself and on trust for the other Issuer Secured Creditors under English law:

- (i) a first fixed charge over the Issuer's rights, title, interest and benefit, present and future in, to and under the Mezzanine Notes and the Related Security;
- (ii) an assignment by way of first-ranking security of the Issuer's rights, title, interest and benefit, present and future, in, to and under, among other things, the Issuer Transaction Documents (other than the Issuer Corporate Services Agreement), all other contracts, agreements, deeds and documents present and future, to which the Issuer is or may become a party or have the benefit, including all reports, valuations and opinions (other than any Issuer Security Document);
- (iii) a first fixed charge over the Issuer's rights, title, interest and benefit, present and future, in, to and under the Issuer Transaction Account and any other bank account in England and Wales and in which the Issuer may at any time acquire any right, title, interest or benefit or otherwise place and hold its cash, and in the funds from time to time standing to the credit of such accounts and in the debts represented thereby (excluding the amounts recorded in the Issuer Profit Account); and
- (iv) a first-ranking floating charge governed by English law over the whole of the undertaking and assets of the Issuer, present and future (other than the fixed charges and assignments set out in paragraphs (i) to (iii) above and excluding the Irish Excluded Assets) (such floating charge collectively with (i), (ii), and (iii) above, the "**Issuer Security**").

Pursuant to the Deed of Charge and Assignment, the Issuer and the Issuer Security Trustee agree that the Issuer Security Trustee shall have continuing first priority security interests in the Jersey Collateral as security for the Issuer Secured Liabilities in accordance with the Security Interests Law and that such security is thereby created (the "**Jersey Security Interests**").

The Deed of Charge and Assignment contains provisions regulating the priority of application of the Issuer Security (and the proceeds thereof) by the Cash Manager among the persons entitled thereto prior to the service of a Note Acceleration Notice or the Issuer Security otherwise becoming enforceable. The Deed of Charge and Assignment contains provisions

regulating such application by the Issuer Security Trustee after the service of a Note Acceleration Notice or the Issuer Security becoming otherwise enforceable.

If the Issuer Security has become enforceable otherwise than by reason of a default in payment of any amount due on the Notes, the Issuer Security Trustee will not be entitled to dispose of the undertaking, property or assets secured under the Issuer Security or any part thereof or otherwise realise the Issuer Security unless (i) a sufficient amount would be realised to allow discharge in full of all amounts owing to the Noteholders and any amounts required under the Deed of Charge and Assignment to be paid *pari passu* with, or in priority to, the Notes or (ii) the Issuer Security Trustee is of the opinion, which shall be binding on the Noteholders and the Issuer Related Parties, reached after considering at any time and from time to time the advice of such professional advisors as are selected by the Issuer Security Trustee (at the cost of the Issuer), upon which the Issuer Security Trustee shall be entitled to rely absolutely and without liability, that the cash flows prospectively receivable by the Issuer will not (or that there is a significant risk that it will not) be sufficient, having regard to any other actual, contingent or prospective liabilities of the Issuer, to discharge in full in due course all amounts owing to the Noteholders and any amounts required under the Deed of Charge and Assignment to be paid *pari passu* with, or in priority to, the Notes, or (iii) the Issuer Security Trustee considers, in its sole discretion, that not to effect such disposal or realisation would place the Issuer Security in jeopardy, and, in any event, the Issuer Security Trustee has been indemnified and/or secured and/or pre-funded to its satisfaction, provided that this restriction will not affect the ability of the Issuer Security Trustee to enforce the security in respect of the Issuer, by appointing an administrative receiver, if it has actual notice of either: (i) an application for the appointment of an administrator; or (ii) the giving of a notice of intention to appoint an administrator, in respect of the Issuer, such appointment of an administrative receiver to take effect upon the final day by which the appointment of an administrative receiver must be made in order to prevent an administration proceeding or (where the Issuer or the directors of the Issuer have initiated the administration) not later than that final day, as required pursuant to, but subject to the provisions of Condition 11 (*Enforcement*).

If the net proceeds of realisation of, or enforcement with respect to, the Issuer Security are not sufficient to make all payments due in respect of the Notes, the other assets of the Issuer (including its share capital and the amounts standing to the credit of the Issuer Profit Account in accordance with the Issuer Transaction Documents) will not be available for payment of any shortfall arising therefrom, and any such shortfall will be borne among the Issuer Secured Creditors and amongst the Noteholders as provided in these Conditions and the Deed of Charge and Assignment. All claims in respect of such shortfall, after realisation of or enforcement with respect to all of the Issuer Security, will be extinguished and the Issuer Security Trustee, the Note Trustee, the Noteholders and the other Issuer Secured Creditors will have no further claim against the Issuer in respect of such unpaid amounts.

Each Noteholder, by subscribing for or purchasing Notes, is deemed to accept and acknowledge that it is fully aware that:

- (i) in the event of realisation or enforcement of the Issuer Security, its right to obtain payment of interest and repayment of principal on the Notes in full is limited to recourse against the undertaking, property and assets of the Issuer comprised in the Issuer Security;
- (ii) the Issuer will have duly and entirely fulfilled its payment obligations by making available to such Noteholder its proportion of the proceeds of realisation or enforcement of the Issuer Security in accordance with the payment priorities of the Deed of Charge and Assignment and all claims in respect of any shortfall will be extinguished and discharged; and
- (iii) in the event that a shortfall in the amount available to pay principal of the Notes exists on the Distribution Date falling on the Final Maturity Date or on any earlier date for redemption in full of the Notes, after payment on the Final Maturity Date or such date of earlier redemption in full of all other claims ranking higher in priority to

or *pari passu* with the Notes, and the Issuer Security has not become enforceable as at the Final Maturity Date or such date of earlier redemption, the liability of the Issuer to make any payment in respect of such shortfall will cease and all claims in respect of such shortfall will be extinguished.

#### 4. Covenants

##### (a) *Restrictions*

Save with the prior written consent of the Note Trustee or unless otherwise provided in or envisaged by these Conditions or the Issuer Transaction Documents, the Issuer shall, so long as any Note remains outstanding:

##### (i) *Negative Pledge*

not create or permit to subsist any mortgage, sub-mortgage, standard security, assignment, assignation, charge, sub-charge, pledge, lien (unless arising by operation of law), hypothecation, assignment by way of security or any other security interest whatsoever over any of its assets, present or future, (including any uncalled capital);

##### (ii) *Restrictions on Activities*

(A) not engage in any business other than the holding, managing or both the holding and managing, in each case in Ireland, of "qualifying assets" within the meaning of Section 110 of the Taxes Consolidation Act 1997 of Ireland ("TCA") and activities ancillary thereto and in connection therewith the Issuer shall not engage in any activity whatsoever which is not incidental to or necessary in connection with any of the activities which the Transaction Documents provide or envisage that the Issuer will engage in;

(B) not amend, supplement or otherwise modify its Constitution or other constitutive documents other than may be required by operation of law to ensure ongoing compliance with Irish company law;

(C) not engage, or permit any of its affiliates to engage, in any activities in the United States (directly or through agents), derive, or permit any of its affiliates to derive, any income from sources within the United States as determined under United States federal income tax principles, and hold, or permit any of its affiliates to hold, the Property that would cause it or any of its affiliates to be engaged or deemed to be engaged in a trade or business within the United States as determined under United States federal income tax principles;

(D) not enter into any transaction or arrangement otherwise than by way of bargain made at arm's length and at market rates and any consideration given by the Issuer for the use of principal shall not exceed more than a reasonable commercial return for the use of that principal;

(E) not have any subsidiaries (as defined in the Companies Act 2014), any subsidiary undertakings (as defined in the Companies Act 2014) or any employees or own, rent, lease or be in possession of any buildings or equipment;

(F) not amend, supplement or otherwise modify its Constitution or other constitutional documents; or

(G) not engage in the carrying on of a "specified property business" within the meaning of section 110(5)(A) of the TCA;

(iii) *VAT*

not apply to become part of any group for the purposes of section 15 of the Value-Added Tax Consolidation Act 2010 of Ireland with any other company or group of companies;

(iv) *Disposal of Assets*

not transfer, sell, lend, part with or otherwise dispose of, or deal with, or grant any option or present or future right to acquire any of its assets or undertaking or any interest, estate, right, title or benefit therein other than as expressly contemplated by the Issuer Transaction Documents, provided that the Issuer shall have the right to sell or agree to the sale of the Issuer Assets if:

- (A) such sale, realisation or disposal is made with the prior written consent of the Issuer Security Trustee;
- (B) in the case of a sale, realisation or disposal of part only of the Issuer Assets, such sale, realisation or disposal is being made only for the purposes of, and in connection with, a redemption of the Notes pursuant to Condition 6 (*Redemption and Cancellation*);
- (C) such sale, realisation or disposal is made for an amount which is not less than the aggregate outstanding principal amount of the Issuer Assets disposed of; and
- (D) the amount which would be payable to the Issuer from such sale, realisation or disposal would be sufficient, after deducting any costs and expenses incurred by the Issuer or the Issuer Security Trustee in connection with such sale, realisation or disposal, to enable the Issuer to pay or discharge all of its secured obligations in full;

(v) *Dividends or Distributions*

not pay any dividend or make any other distribution to its shareholders or issue any further shares;

(vi) *Borrowings*

not incur or permit to subsist any indebtedness in respect of borrowed money whatsoever, except in respect of the Notes or give any guarantee or indemnity in respect of any indebtedness or of any obligation of any person;

(vii) *Merger*

not consolidate or merge with any other person or convey or transfer all or substantially all of its property or assets to any other person;

(viii) *Variation*

not permit any of the Issuer Transaction Documents to become invalid or ineffective, or the priority of the security interests created or evidenced thereby to be reduced, amended, terminated, postponed or discharged, or consent to any variation of, or exercise any powers of consent or waiver pursuant to the terms of the Note Trust Deed, these Conditions, the Issuer Security Documents or any of the other Issuer Transaction Documents, or permit any party to any of the Issuer Transaction Documents or the Issuer Security or any other person whose obligations form part of the Issuer Security to be released from such obligations or dispose of all or any part of the Issuer Security;

(ix) *Bank Accounts*

not have an interest in any bank account other than the Issuer Transaction Account and the Issuer Profit Account, unless such account or interest therein is charged or security is otherwise provided to the Issuer Security Trustee on terms acceptable to it;

(x) *Section 110 – Qualifying Assets*

(A) ensure that the first assets to be acquired, or in respect of which legally enforceable arrangements are to be entered into, by the Issuer are "qualifying assets" as defined by Section 110 of the TCA and that they have a market value of at least €10,000,000 on the day that they are first acquired, or on the date on which such legally enforceable arrangements are entered into;

(B) ensure that prior to the earlier to occur of the acquisition of the assets described in (A) above or the entry into the legally enforceable arrangements described in (A) above, the Issuer has not transacted any business;

(C) not own assets other than those representing its share capital, the proceeds of the Issuer Profit Amount and any interest thereon, the funds arising from the issue of the Notes, the property, rights and assets secured by the Issuer Security and associated and ancillary rights and interests thereto, the benefit of the Transaction Documents and any investments and other rights or interests created or acquired thereunder, as all of the same may vary from time to time.

(xi) *Equitable Interest*

not permit any person other than the Issuer Security Trustee to have any equitable or beneficial interest in any of its assets or undertakings or any interest, estate, right, title or benefit therein except as otherwise provided for in the Issuer Transaction Documents;

(xii) *U.S. Activities*

not engage, or permit any of its affiliates, to engage, in any activities in the United States (directly or through agents), derive, or permit any of its affiliates to derive, any income from sources within the United States as determined under United States federal income tax principles, and hold, or permit any of its affiliates to hold, the Property that would cause it or any of its affiliates to be engaged or deemed to be engaged in a trade or business within the United States as determined under United States federal income tax principles;

(xiii) *Purchase of Notes*

not purchase any of the Notes;

(xiv) *Residence*

(A) maintain its central management and control and its place of effective management only in Ireland and in particular shall not be treated under any of the double taxation treaties entered into by Ireland as resident in any other jurisdiction nor shall the Issuer have a permanent establishment or a branch or agency in any jurisdiction other than Ireland under the laws or guidelines of any jurisdiction other than Ireland;

(B) conduct its affairs in accordance with its Constitution from within Ireland, all the directors of the Issuer are and shall remain Irish tax resident, all the

directors of the Issuer shall exercise their control over the business of the Issuer independently and all meetings of the directors shall be held in Ireland and all the directors of the Issuer (acting independently) shall exercise their authority only from and within Ireland by taking all key decisions relating to the Issuer in Ireland;

(xv) *Centre of Main Interests*

not knowingly take any action (save to the extent necessary for the Issuer to comply with its obligations under the Issuer Transaction Documents) which will cause its "centre of main interests" (within the meaning of European Council Regulation No. 1346/2000 on Insolvency Proceedings (the "**Insolvency Regulations**")) to be located in any jurisdiction other than Ireland and it will not establish any offices, branches or other establishments (as defined in the Insolvency Regulations) or register as a company in any jurisdiction other than Ireland;

(xvi) *Qualifying Company*

not prejudice its status as a qualifying company within the meaning of Section 110 of the TCA or make an election pursuant to Sub-Section 6(b) of that Section;

(xvii) *Independent Directors*

ensure that at all times all of its directors are independent of the Mezzanine Note Sellers, the Mezzanine Note Obligors and the Senior Loan Obligors, any of their direct or indirect shareholders or creditors or their respective affiliates;

(xviii) *Separate Accounts*

maintain its records, books of account and bank accounts separate and apart from those of any of its direct or indirect shareholders or creditors or their respective affiliates or any other person or entity and maintain such books and records in the ordinary course of its business;

(xix) *Separate Identity*

(A) correct any known misunderstandings regarding its separate identity from any of its members or any other person;

(B) not fail to hold itself out to the public as a legal entity separate and distinct from any other person, fail to conduct its business solely in its own name, mislead others as to the identity with which such other party is transacting business; become responsible for, guarantee, or become obliged to pay the debts of any third party (including any of its members) or hold out credit as available to satisfy the obligations of others; fail to pay its own liabilities out of its funds;

(C) not share any common logo with or hold itself out as or be considered as a department or division of (i) its shareholder(s), (ii) any of its general partners, principals, members or affiliates thereof, or (iii) any other person and maintain (if applicable) an arm's length relationship with its affiliates;

(D) not have its assets listed on the accounts or financial statement of any other entity; or commingle its assets with those of any other person or entity;

(E) use separate stationery, invoices, and cheques bearing its own name; and

(F) not acquire obligations or securities of its own direct or indirect shareholders.



In giving any consent to the foregoing, the Note Trustee may require the Issuer to make such modifications or additions to the provisions of any of the Transaction Documents or may impose such other conditions or requirements as the Note Trustee may deem expedient (in its absolute discretion) in the interests of the Noteholders.

(b) *Paying Agent*

The Issuer will provide the Paying Agents with copies of the Note Trust Deed, the Agency Agreement, the Issuer Security Documents and the other Issuer Transaction Documents, which will be available for inspection during normal business hours at the specified office for the time being of the Paying Agents.

(c) *Cash Manager*

So long as any of the Notes remains outstanding, the Issuer will procure that there will at all times be a cash manager in respect of the monies from time to time standing to the credit of the Issuer Transaction Account and any other account of the Issuer from time to time. The Cash Manager will not be permitted to terminate its appointment unless a replacement cash manager has been appointed in accordance with the Cash Management Agreement.

5. **Interest**

(a) *Period of Accrual*

The Notes bear interest on their Principal Amount Outstanding from (and including) the Closing Date. The Notes (or, in the case of the redemption of part only of the Notes, that part only of the Notes) shall cease to bear interest from their due date for redemption unless, in the case of the Global Note, upon due presentation, or otherwise in the case of a Definitive Note, payment of the relevant amount of principal or any part thereof is improperly withheld or refused on the Global Note or any Definitive Note, as applicable.

Whenever it is necessary to compute an amount of interest for any period (including any Interest Period (as defined below)), such interest shall be calculated on the basis of a fraction where the actual number of days elapsed in the relevant Interest Period is the numerator and a 365 day year is the denominator (the "**Day Count Fraction**").

(b) *Distribution Dates and Interest Periods*

Interest on the Notes is payable (i) quarterly in arrear on 20 January, 20 April, 20 July and 20 October in each year (ii) on the Redemption Date and (iii) the Final Maturity Date (or in each case, if, any such day is not a Business Day, the next following Business Day unless such Business Day falls in the next following calendar month in which case the immediately preceding Business Day) (each, a "**Distribution Date**") in respect of the Interest Period ending immediately prior thereto. The first Distribution Date in respect of the Notes will be the Distribution Date falling in April 2017 in respect of the period from (and including) the Closing Date and ending on that Distribution Date.

In these Conditions, "**Interest Period**" shall mean, in respect of the payment of the first Interest Amount (as defined in Condition 5(e) (*Calculation of Interest Amounts for Notes*) below) on the Distribution Date falling in April 2017, the period commencing on (and including) the Closing Date and ending on the next Distribution Date, and subsequently, each Interest Period, shall commence on the last day of its preceding Interest Period and end on the next Distribution Date except that, where 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).

In these Conditions, "**Redemption Date**" means the date falling on:

- (i) 15 December 2019;

- (ii) if the first extension option under the Mezzanine Note Issuance Agreement is exercised by the Mezzanine Issuer, 15 December 2020; and
- (iii) if the second extension option under the Mezzanine Note Issuance Agreement is exercised by the Mezzanine Issuer, 15 December 2021.

(c) *Rate of Interest*

The rate of interest applicable to the Notes shall be the Fixed Rate of Interest.

In the event that the Fixed Rate is the Reduced Fixed Rate then interest shall accrue on the Notes at the Reduced Fixed Rate and the Capitalised Fixed Interest Rate.

The Issuer shall pay the interest amount accrued on the Notes calculated at the Reduced Fixed Rate in accordance with the Pre-Enforcement Revenue Priority of Payments or the Post-Enforcement Priority of Payments, as applicable.

The interest accrued on the Notes at the Capitalised Fixed Interest Rate representing Capitalised Interest will be added by the Cash Manager to the Principal Amount Outstanding of the Notes and paid by the Issuer in accordance with the Pre-Enforcement Principal Priority of Payments or the Post-Enforcement Priority of Payments, as applicable.

The Principal Paying Agent shall notify the Clearing Systems of the Capitalised Interest payable on the Notes.

(d) *Default Interest*

Upon receipt of any Default Interest by the Issuer (the date on which the Default Interest is paid by the Obligors is referred to as the "**Default Interest Payment Date**"), the amount of Default Interest shall, on the Distribution Date on which the Default Interest Payment Date falls or if the Default Interest Payment Date does not fall on a Distribution Date, the Distribution Date immediately following the Default Interest Payment Date, be paid pursuant to this Condition 5(d) to the Notes in accordance with the applicable Issuer Priority of Payments.

(e) *Calculation of Interest Amounts for Notes*

The Agent Bank shall, on or as soon as practicable after the first day of an Interest Period, but in no event later than one Business Day prior to a Distribution Date, notify the Issuer, the Note Trustee, the Cash Manager, the Paying Agents and each of the Clearing Systems in writing of the amount of interest (the "**Interest Amount**") and the applicable Fixed Rate of Interest payable in respect of the Notes on the immediately following Distribution Date, subject to Condition 5(b) above, in respect of such Interest Period in respect of the Notes. Each Interest Amount in respect of the Notes shall be calculated by applying the Fixed Rate of Interest to the Principal Amount Outstanding of the Notes and multiplying such sum by the Day Count Fraction and rounding the resultant figure downward to the nearest pence.

(f) *Prepayment Fees*

If the Issuer receives any prepayment fees due to it under the Mezzanine Note Issuance Agreement, an amount equal to such prepayment fees (the "**Note Prepayment Fees**") will be payable on the Notes. The aggregate of the Note Prepayment Fees will be apportioned between the Notes on a *pro rata* and *pari passu* basis.

(g) *Adjusted Interest on account of Mezzanine Note payments*

If the Issuer receives payments under the Mezzanine Note Issuance Agreement on account of a redemption of all or part of the Mezzanine Note (a "**Prepaid Amount**") on any date other than a Mezzanine Note Interest Payment Date (excluding any payments received on the Expected Maturity Date and the Final Maturity Date) (such date referred to as an "**Intra-**

**Mezzanine Note Interest Payment Date'**) the Interest Amount payable on the Notes on the immediately following Distribution Date shall be calculated by the Agent Bank as follows:

$(A + B) - C$

(the "**Adjusted Interest Amount**")

Where:

A = the Interest Amount as calculated in accordance with Condition 5(e) above.

B = Break Costs (if any).

C = interest on the Prepaid Amount which would have accrued, for the period from the Intra-Loan Payment Date to the last date of current Interest Period but for the repayment or prepayment referred to in this Condition 5(g).

The positive difference between the Interest Amount that would be payable on the Notes on the immediately following Distribution Date but for the repayment or prepayment referred to in this Condition 5(g) and the Adjusted Interest Amount shall not be due and payable to the Noteholders on the Distribution Date immediately following the Intra-Mezzanine Note Interest Payment Date and none of the Noteholders shall have any claim against the Issuer in respect of such amount.

(h) *Publication of Rates of Interest, Interest Amounts and other Notices*

As soon as practicable after receiving notification thereof but in no event later than one Business Day prior to a Distribution Date, the Agent Bank on behalf of the Issuer will cause the applicable Fixed Rate of Interest and the Interest Amount applicable to the Notes for each Interest Period and the Distribution Date to be published on [www.usbank.com/abs](http://www.usbank.com/abs). The Interest Amounts, Distribution Date and other determinations so notified may subsequently be amended (or appropriate alternative arrangements made by way of adjustment) without notice in the event of any extension or shortening of the Interest Period for the Notes.

(i) *Calculation by the Note Trustee*

If the Agent Bank does not at any time for any reason calculate the Interest Amount for any of the Notes, the Note Trustee shall calculate the Interest Amount for the Notes in the manner specified in Condition 5(e) above and any such calculation shall be deemed to have been made by the Agent Bank and the Note Trustee shall have no liability in respect thereof.

(j) *Notifications to be Final*

All notifications, opinions, determinations, certificates, calculations, quotations and decisions given, expressed, made or obtained for the purposes of this Condition, whether by the Agent Bank or the Note Trustee shall (in the absence of wilful default, fraud or manifest error) be binding on the Issuer, the Agent Bank, the Note Trustee, the Cash Manager, the Paying Agents and all Noteholders and (in the absence of wilful default or fraud) no liability to the Noteholders shall attach to the Issuer, the Agent Bank or the Note Trustee in connection with the exercise or non-exercise by them or any of them of their powers, duties and discretions hereunder.

6. **Redemption and Cancellation**

(a) *Final Redemption*

The Notes are expected to be redeemed in full and cancelled on the Expected Maturity Date (falling on 15 December 2021) but only to the extent that all amounts outstanding under the Mezzanine Notes are paid in full to the Issuer.

Unless previously redeemed in full and cancelled as provided in this Condition 6, the Issuer shall redeem the Notes at their Principal Amount Outstanding together with accrued interest on the Final Maturity Date (falling on 15 December 2026).

The Issuer may not redeem Notes in whole or in part prior to the Final Maturity Date except as provided in this Condition but without prejudice to Condition 10 (*Note Events of Default*).

(b) *Mandatory Redemption from Principal Receipts*

- (i) Unless the Notes are previously redeemed in full and cancelled as provided in this Condition 6(b), the Notes are subject to mandatory early redemption in full or, as the case may be, in part on each Distribution Date in an amount not exceeding the Principal Receipts received and allocated to the Notes in accordance with the provisions of the Cash Management Agreement subject to the Issuer Priority of Payments.
- (ii) If the Mezzanine Issuer repays the whole or part of the Mezzanine Notes on an Intra-Mezzanine Note Interest Payment Date an amount equal to the Principal Receipts received by or on behalf of the Issuer attributable to such repayment shall be applied to redeem the Notes on the date that falls one Business Day following an Intra-Mezzanine Note Interest Payment Date in accordance with the applicable Issuer Priority of Payments, as if such date on which the Notes are to be redeemed is a Distribution Date.

(c) *Optional Redemption for Tax or Other Reasons*

If the Issuer at any time satisfies the Note Trustee (who will be so satisfied if it receives a legal opinion to its satisfaction confirming such matters) immediately prior to giving the notice referred to below that either:

- (i) by virtue of a change in the tax law of the Ireland or United Kingdom or any other jurisdiction (or the application or official interpretation thereof) from that in effect on the Closing Date, on the next Distribution Date the Issuer or any Paying Agent on its behalf would be required to deduct or withhold from any payment of principal or interest in respect of the Notes (other than where the relevant holder or beneficial owner has some connection with the relevant jurisdiction other than the holding of Notes and other than in respect of default interest), any amount for or on account of any present or future taxes, duties, assessments or governmental charges of whatever nature imposed, levied, collected, withheld or assessed by the relevant jurisdiction (or any political sub-division thereof or authority thereof or therein having power to tax) and such requirement cannot be avoided by the Issuer taking reasonable measures available to it; or
- (ii) if any amount payable by the Mezzanine Issuer in respect of the Issuer Assets is reduced or ceases to be receivable (whether or not actually received) by the Issuer during the Interest Period preceding the next Distribution Date,

and in any such case, the Issuer has, prior to giving the notice referred to below, certified to the Note Trustee that it will have the necessary funds on such Distribution Date to discharge all of its liabilities in respect of the Notes to be redeemed under this Condition 6(c) and any amounts required under the Cash Management Agreement, the Note Trust Deed and the Deed of Charge and Assignment to be paid in priority to, or *pari passu* with, the Notes to be so redeemed, which certificate shall be conclusive and binding, and provided that on the Distribution Date on which such notice expires, no Note Acceleration Notice has been served, then the Issuer may, but shall not be obliged to, on any Distribution Date on which the relevant event described above is continuing, having given not more than 60 nor less than 30 days' written notice ending on such Distribution Date to the Note Trustee, the Paying Agents and to the Noteholders in accordance with Condition 15 (*Notice to and Communication between Noteholders*), redeem the Notes in an amount equal to the then aggregate Principal Amount Outstanding of the Notes plus interest accrued and unpaid thereon.

(d) *Principal Amount Outstanding*

On each Determination Date, the Cash Manager shall determine (i) the Principal Amount Outstanding of the Notes on the next following Distribution Date (after deducting any principal payment to be paid on such Notes on that Distribution Date) and (ii) the Pool Factor.

The "**Pool Factor**" means a fraction:

- (a) the numerator of which is equal to the aggregate Principal Amount Outstanding of all Notes (including for the avoidance of any doubt any Further Notes); and
- (b) the denominator is the Principal Amount Outstanding of the Notes as at the Closing Date.

Each determination by the Cash Manager of the Principal Amount Outstanding of the Notes shall (in the absence of wilful default or manifest error) be final and binding on all persons.

The "**Principal Amount Outstanding**" of the Notes on any date will be their face amount plus the aggregate amount of any Capitalised Interest less the aggregate amount of principal repayments made in respect of the Notes since the Closing Date.

The Issuer (or the Cash Manager on its behalf) will cause each determination of a Principal Amount Outstanding and the Pool Factor to be notified in writing forthwith to the Note Trustee, the Paying Agents, the Agent Bank and (for so long as the Notes are listed on the Irish Stock Exchange) the Irish Stock Exchange and will cause notice of each determination of a Principal Amount Outstanding to be given to the Noteholders in accordance with Condition 15 (*Notice to and Communication between Noteholders*) no later than one Business Day prior to a Distribution Date.

If the Issuer (or the Cash Manager on its behalf) does not at any time for any reason determine a Principal Amount Outstanding or the Pool Factor in accordance with the preceding provisions of this Condition 6(d), such Principal Amount Outstanding or the Pool Factor may be determined by the Note Trustee, in accordance with this Condition 6(d), and each such determination or calculation shall be conclusive and shall be deemed to have been made by the Issuer or the Cash Manager, as the case may be and the Note Trustee shall have no liability in respect thereof.

(e) *Notice of Redemption*

Any such notice as is referred to in Condition 6(c) above shall be irrevocable and, upon the expiration of such notice, the Issuer shall be bound to redeem the Notes in the amounts specified in this Condition. As soon as reasonably practicable after becoming aware that the same will occur, the Issuer will cause notice of the proposed redemption of the Notes to be given to the Irish Stock Exchange (for so long as the Notes are listed on the Irish Stock Exchange). Any certificate or legal opinion given by or on behalf of the Issuer pursuant to Condition 6(c) above may be relied on by the Note Trustee without further investigation and shall be conclusive and binding on the Noteholders.

(f) *Cancellation*

All Notes redeemed in full pursuant to the foregoing provisions will be cancelled forthwith by the Issuer or on its behalf in accordance with the Issuer Transaction Documents and may not be resold or re-issued.

(g) *No Purchase by Issuer*

The Issuer will not purchase any of the Notes.

## 7. Payments

### (a) *Global Note*

Payments of principal and interest in respect of the Global Note will be made by transfer to the registered account of the Noteholder.

Subject to Condition 7(b) below, interest will be paid to the holder (or the first named if joint holders) shown on the Register at the close of business on the Business Day before the due date for payment thereof.

Payments in respect of the Global Note will be made in sterling to holders of interests in the Notes (such holders being, the "**Euroclear/Clearstream Holders**").

A Euroclear/Clearstream Holder may receive payments in respect of its interest in the Global Note in dollars in accordance with Euroclear's and Clearstream, Luxembourg's customary procedures. All costs of conversion from any such election will be borne by such Euroclear/Clearstream Holder.

### (b) *Definitive Notes*

Payments of principal and interest (except where, after such payment, the unpaid principal amount of the Note would be reduced to zero (including as a result of any other payment of principal due in respect of the Note), in which case the relevant payment of principal and interest, as the case may be, will be made against surrender of such Note) in respect of Definitive Notes, will be made to the holder of a Definitive Note upon presentation of the relevant Definitive Note(s) at the specified office of the Registrar not later than the Definitive Note Record Date (as defined below) for payment in respect of such Definitive Note or by transfer to a sterling denominated account nominated in writing by the payee to the Registrar and maintained with a branch of a bank in London not later than the due date for such payment. Any such application for transfer to such account shall be deemed to relate to all future payments in respect of such Definitive Note until such time as the Registrar is notified in writing to the contrary by the holder thereof.

If any payment due in respect of any Definitive Note is not paid in full, the Registrar will annotate the Register with a record of the amount, if any, so paid. For the purposes of this Condition 7(b), the holder of a Definitive Note will be deemed to be the person shown as the holder (or the first-named of joint holders) on the Register on the fifteenth day before the due date for such payment (in relation to the Definitive Notes, the "**Definitive Note Record Date**").

### (c) *Laws and Regulations*

Payments of principal, and interest in respect of the Notes are subject in all cases to any fiscal or other laws and regulations applicable thereto.

### (d) *Overdue Principal Payments*

If repayment of principal is improperly withheld or refused on or in respect of the Notes or part thereof, the interest which continues to accrue in respect of the Notes or part thereof in accordance with Condition 5(a) (*Period of Accrual*) will be paid against presentation of the Notes at the specified office of any Paying Agent, and in the case of any Definitive Note, will be paid in accordance with Condition 7(b) above.

### (e) *Change of Agents*

The Principal Paying Agent is Elavon Financial Services DAC, UK Branch. The Issuer reserves the right, subject to the prior written approval of the Note Trustee, at any time to vary or terminate the appointment of the Principal Paying Agent, any other Paying Agent, the Registrar and the Agent Bank and to appoint additional or other Agents. The Issuer will cause

at least 30 days' notice of any change in or addition to the Paying Agents or the Registrar or their specified offices to be given to the Noteholders in accordance with Condition 15 (*Notice to and Communication between Noteholders*).

(f) *Presentation on Non-Business Days*

If the Notes are presented (if required) for payment on a day which is not a business day in the place where it is so presented, payment shall be made on the next succeeding day that is a business day (unless such business day falls in the next succeeding calendar month in which event the immediately preceding business day) and no further payments of additional amounts by way of interest, principal or otherwise shall be due in respect of the Notes. For the purposes of Condition 6 (*Redemption and Cancellation*) and this Condition 7, "**business day**" shall mean, in relation to any place, a day on which commercial banks and foreign exchange markets settle payments in that place.

(g) *Accrual of Interest on Late Payments*

If any payment of interest, principal or any other amount is not paid in respect of the Notes on the date when due and payable (other than because the due date is not a business day (as defined in Condition 7(f) above) or by reason of non-compliance with Condition 7(a) or Condition 7(b) above), then such unpaid amount shall itself bear interest at the applicable Rate of Interest until such interest and interest thereon is available for payment and notice thereof has been duly given to the Noteholders in accordance with Condition 15 (*Notice to and Communication between Noteholders*), provided that such interest and interest thereon are, in fact, paid.

(h) *Incorrect Payments*

The Cash Manager will, from time to time, notify Noteholders in accordance with the terms of Condition 15 (*Notice to and Communication between Noteholders*) of any over-payment or under-payment of which it has actual notice made on any Distribution Date to any party entitled to such payment pursuant to the Pre-Enforcement Priority of Payments. Following the giving of such a notice, the Cash Manager shall rectify such over-payment or under-payment by increasing or, as the case may be decreasing payments to the relevant parties on any subsequent Distribution Date. Any notice of over-payment or under-payment pursuant to this Condition 7 shall contain reasonable details of the relevant amount, the relevant parties and the adjustments to be made to future payments to rectify the over-payment or under-payment, as applicable. Neither the Issuer nor the Cash Manager shall have any liability to any person for making any such correction.

8. **Taxation**

All payments in respect of the Notes will be made without withholding or deduction for or on account of any present or future taxes, duties or charges of whatsoever nature unless the Issuer or any relevant Paying Agent is required by applicable law in any jurisdiction to make any payment in respect of the Notes subject to any such withholding or deduction. In that event, the Issuer or such Paying Agent (as the case may be) shall make such payment after such withholding or deduction has been made and shall account to the relevant authorities for the amount so required to be withheld or deducted. Neither the Issuer nor any Paying Agent nor any other person will be obliged to make any additional payments to holders of Notes in respect of such withholding or deduction.

9. **Prescription**

Claims for principal in respect of the Global Note shall become void unless the Global Note is presented for payment within ten years of the appropriate relevant date. Claims for interest in respect of the Global Note shall become void unless the Global Note is presented for payment within five years of the appropriate relevant date.

Claims for principal and interest in respect of Definitive Notes shall become void unless made within ten years, in the case of principal, and five years, in the case of interest, of the appropriate relevant date.

In this Condition 9, the "**relevant date**" means the date on which a payment first becomes due, but if the full amount of the moneys payable has not been received by the relevant Paying Agent or the Note Trustee on or prior to such date, it means the date on which the full amount of such moneys shall have been so received, and notice to that effect shall have been duly given to the Noteholders in accordance with Condition 15 (*Notice to and Communication between Noteholders*).

#### 10. **Note Events of Default**

(a) *Note Event of Default*

If any of the events mentioned in sub-paragraphs (i) to (v) inclusive below shall occur (each such event being, a "**Note Event of Default**"), the Note Trustee at its absolute discretion may, and if so requested in writing by the "**Eligible Noteholders**", being the holders of not less than 25 per cent. in aggregate of the Principal Amount Outstanding of the Notes or if so directed by or pursuant to an Extraordinary Resolution of the Noteholders shall, and in any case aforesaid, subject to the Note Trustee being indemnified and/or secured and/or pre-funded to its satisfaction, give notice (a "**Note Acceleration Notice**") to the Issuer and the Issuer Security Trustee declaring all the Notes to be immediately due and repayable and the Issuer Security enforceable:

- (i) either, in respect of the Notes, the Issuer defaults:
  - (A) for a period of three Business Days in the payment of the principal when and as it becomes due and payable in accordance with these Conditions; or
  - (B) for a period of twelve Business Days in the payment of any interest (including any Note Prepayment Fees or Default Interest) when due on a Distribution Date or any date on which the Notes are required to be redeemed in accordance with these Conditions; or
- (ii) the Issuer defaults in the performance or observance of any other obligation binding upon it under the Notes, the Note Trust Deed, the Issuer Security Documents or the other Issuer Transaction Documents to which it is party and, in any such case (except where the Note Trustee certifies that, in its opinion, such default is incapable of remedy when no notice will be required), such default continues for a period of 14 days (or such longer period as the Note Trustee may permit) following the service by the Note Trustee on the Issuer of notice requiring the same to be remedied; or
- (iii) the Issuer, otherwise than for the purposes of such amalgamation or reconstruction as is referred to in Condition 10(a)(iv) below, ceases or, consequent upon a resolution of the board of directors of the Issuer, threatens to cease to carry on business or (in the opinion of the Note Trustee based upon any financial advice which the Note Trustee may require) a substantial part of its business or the Issuer is or is deemed unable to pay its debts as and when they fall due; or
- (iv) an order is made or an effective resolution is passed for the winding-up of the Issuer except a winding-up for the purposes of or pursuant to an amalgamation or reconstruction the terms of which have previously been approved by an Extraordinary Resolution of the Noteholders; or
- (v) proceedings shall be initiated against the Issuer under any applicable liquidation, insolvency, examinership, composition, reorganisation or other similar laws (including, but not limited to, presentation of a petition for an administration order, the filing of documents with the court for the appointment of an administrator or the service of a notice to appoint an administrator) and such proceedings are not being disputed in good faith with a reasonable prospect of success, or an administration order shall be granted or the appointment of an administrator takes effect or an administrative receiver or other receiver, liquidator, examiner or other similar official shall be appointed (or formal notice is given of an intention of appoint an administrator) in relation to the Issuer or any part of its undertaking, property or



assets, or an encumbrancer shall take possession of all or any part of the undertaking, property or assets of the Issuer, or a distress, execution, diligence or other process shall be levied or enforced upon or sued against all or any part of the undertaking, property or assets of the Issuer and such appointment, possession or process is not discharged or does not otherwise cease to apply within 15 days, or the Issuer (or the shareholders of the Issuer) initiates or consents to judicial proceedings relating to itself under applicable liquidation, insolvency, examinership, composition, reorganisation or other similar laws or makes a conveyance or assignment for the benefit of or a composition or similar arrangement with its creditors generally or takes steps with a view to obtaining a moratorium in respect of any of the indebtedness of the Issuer,

provided that in the case of each of the events described in Condition 10(a)(ii) above, the Note Trustee shall have certified to the Issuer that such event is, in its opinion, materially prejudicial to the interests of the Noteholders then outstanding.

(b) **Effect of Declaration by Note Trustee**

Upon any declaration being made by the Note Trustee in accordance with Condition 10(a) above, all the Notes then outstanding shall immediately become due and repayable at their Principal Amount Outstanding together with accrued interest as provided in the Note Trust Deed and the Issuer Security shall become enforceable.

11. **Enforcement**

The Note Trustee may, at its discretion and without notice, take such proceedings and/or other action or steps against or in relation to the Issuer or any other person as it may think fit, subject always to the provisions of Condition 17 (*Limited Recourse and Non-Petition*) to enforce the provisions of the Notes, the Note Trust Deed, these Conditions and the other Issuer Transaction Documents to which it is a party and the Note Trustee may direct the Issuer Security Trustee at any time after the Issuer Security has become enforceable, at its discretion and without notice, to take such steps as it may think fit to enforce the Issuer Security, but neither the Note Trustee nor the Issuer Security Trustee shall be bound to take any such proceedings, actions or steps, unless:

- (a) it shall have been requested in writing by the Eligible Noteholders or if directed by or pursuant to an Extraordinary Resolution of the Noteholders; and
- (b) it shall have been indemnified and/or secured and/or prefunded to its satisfaction against all actions, proceedings, claims and demands to which it may thereby render itself liable and any loss, damage, cost, charge, claim, demand, expense, judgment, action, proceeding or other liability whatsoever (including without limitations in respect of taxes, duties, levies, imposts and other charges) and including any value added tax or similar tax charged or chargeable in respect thereof as legal fees and expenses on a full indemnity basis which it may incur by so doing.

No Noteholder shall be entitled to proceed directly against the Issuer or any other party to the Issuer Transaction Documents or to enforce the Issuer Security unless the Note Trustee or, as the case may be, the Issuer Security Trustee, having become bound to do so, fails to do so within a reasonable period and such failure shall be continuing provided that no Noteholder shall be entitled to take proceedings for the winding up, examination or administration of the Issuer. The Issuer Security Trustee cannot, while any of the Notes are outstanding, be required to enforce the Issuer Security at the request of any other Issuer Secured Creditor under the Issuer Security Documents, as applicable.

The Deed of Charge and Assignment will provide that the Issuer Security Trustee shall enforce the security in respect of the Issuer, by appointing an administrative receiver (where possible), if it has actual notice of either: (i) an application for the appointment of an administrator; or (ii) the giving of a notice of intention to appoint an administrator, in respect of the Issuer, such appointment to take effect upon the final day by which the appointment must be made in order to prevent an administration proceeding or (where the Issuer or the directors of the Issuer have initiated the administration) not later than that final day.

In addition, the Issuer Security Trustee may (subject to the matters described in paragraphs below), following the service of a Note Acceleration Notice, enforce the security in respect of the Issuer by the appointment of an administrative receiver (where possible) (if the Issuer Security Trustee has not already done so pursuant to the foregoing) subject to being indemnified and/or secured and/or prefunded to its satisfaction.

The Issuer Security Trustee shall not be liable for any failure to appoint an administrative receiver, save in the case of its own gross negligence, wilful default or fraud.

The Issuer Security Trustee will not be obliged to appoint an administrative receiver unless it is indemnified and/or secured and/or pre-funded to its satisfaction. However, the Deed of Charge and Assignment will provide that if the Issuer Security Trustee is required to enforce the security by appointing an administrative receiver following receipt of actual notice of an application for the appointment of an administrator or actual notice of the giving of a notice of intention to appoint an administrator, the Issuer Security Trustee will agree that it is adequately indemnified and secured in respect of such appointment by virtue of its rights against the Issuer under the Deed of Charge and Assignment and the security which it has in respect of such rights. The Issuer will covenant in the Deed of Charge and Assignment that, if the Issuer Security Trustee appoints an administrative receiver by reason of having actual notice of an application for the appointment of an administrator or actual notice of the giving of a notice of intention to appoint an administrator, it waives any claim against the Issuer Security Trustee in respect of such appointment.

12. **Meetings of Noteholders, Modification and Waiver, Substitution and Termination of Issuer Related Parties**

(a) *Convening Meetings*

- (i) The Note Trust Deed contains provisions for convening meetings of the Noteholders, to consider any matter affecting their interests including the sanctioning by Extraordinary Resolution or Ordinary Resolution, as appropriate, of, among other things, the removal of the Note Trustee, the Issuer Security Trustee, the Cash Manager, the Operating Bank, the Agent Bank, the Principal Paying Agent, the Registrar or the Issuer Corporate Services Provider, a modification of the Notes or the Note Trust Deed (including these Conditions) or the provisions of any of the other Issuer Transaction Documents.
- (ii) These provisions allow the Issuer, the Note Trustee or the Cash Manager to convene Noteholder meetings for any purpose including consideration of Extraordinary Resolutions or Ordinary Resolutions and provided that at least 10 days' (or, in the case of an adjourned meeting at least 5 days') notice of such meeting be given to Noteholders in accordance with Condition 15 (*Notice to and Communication between Noteholders*). The Issuer shall be obliged to convene a meeting of Noteholders if requested to do so in writing by not less than ten per cent. of the holders of the Notes.
- (iii) Notwithstanding Condition 12(a)(i) above, the Note Trustee may agree without the consent of any Noteholder to (A) the addition of another bank who can make Single Euro Payments Area direct debit payments to the Irish Revenue Commissioners in compliance with the Requirement of Law or any other applicable notice or guideline published by the Irish Revenue Commissioners; (B) the entry into any bank mandate or other documentation for the purpose of appointing any such bank to maintain an additional "Issuer Profit Account" solely for the purposes of making payments of any Tax Amounts.

(b) *Quorum*

- (i) Subject as provided below, the quorum at any meeting of the Noteholders or persons present holding voting certificates or being proxies or at any adjourned meeting, for passing an Extraordinary Resolution or an Ordinary Resolution shall be one or more persons holding or representing not less than 50.1 per cent. in Principal Amount Outstanding of the Notes.

- (ii) The quorum at any meeting of the Noteholders for passing an Extraordinary Resolution that would have the effect of:
  - (A) modifying the date of maturity of the Notes;
  - (B) modifying any day for the payment of interest on the Notes;
  - (C) reducing the amount of principal or the rate of interest payable in respect of the Notes;
  - (D) modifying the method of calculating the amount payable or the date of payment in respect of any interest or principal in respect of the Notes;
  - (E) modifying the definition of "Basic Terms Modification";
  - (F) altering the currency of payment of the Notes referable thereto; or
  - (G) releasing any of the Issuer Security (or any part thereof) other than in accordance with the Issuer Transaction Documents (and without prejudice to the Note Trustee's and the Issuer Security Trustee's ability to exercise their respective powers and discretions under the Issuer Transaction Documents)

(each, a "**Basic Terms Modification**"), shall be one or more persons holding Notes or voting certificates in respect thereof or proxies representing not less than 75 per cent. of the Principal Amount Outstanding of the Notes for the time being outstanding, (including) at any adjourned meeting. A Basic Terms Modification may only be effected by an Extraordinary Resolution.

- (iii) An Extraordinary Resolution or an Ordinary Resolution passed at any meeting or a Written Resolution shall be binding on all Noteholders whether or not they were present at such meeting or signed the Written Resolution.
- (iv) The Issuer, the Note Trustee or the Cash Manager may propose an Extraordinary Resolution or an Ordinary Resolution, other than an Extraordinary Resolution relating to a Basic Terms Modification, the waiver of any Note Event of Default, the acceleration of the Notes or the enforcement of the Issuer Security, of the Noteholders relating to any matter for consideration and approval by Negative Consent by the Noteholders.
- (v) "**Negative Consent**" means, in relation to an Extraordinary Resolution (other than an Extraordinary Resolution relating to a Basic Terms Modification, the waiver of any Note Event of Default, the acceleration of the Notes or the enforcement of the Issuer Security), or an Ordinary Resolution, the process whereby such Extraordinary Resolution or Ordinary Resolution shall be deemed to be duly passed and shall be binding on all of the Noteholders in accordance with its terms where:
  - (A) notice of such Extraordinary Resolution or Ordinary Resolution, as applicable, (including the full text of the same) has been given by the Issuer, the Note Trustee or the Cash Manager to the Noteholders in accordance with the provisions of Condition 15 (*Notice to and Communication between Noteholders*);
  - (B) such notice contains a statement requiring such Noteholders to inform the Note Trustee in writing (or otherwise in accordance with the then current practice of any applicable clearing system through which such Notes may be held) if they object to such Extraordinary Resolution or Ordinary Resolution, stating that unless holders of (i) in the case of an Extraordinary Resolution, 25 per cent. or more in aggregate Principal Amount Outstanding of the Notes; or (ii) in the case of an Ordinary Resolution, 50 per cent. or more in aggregate Principal Amount Outstanding of the Notes, make such

objection, the Extraordinary Resolution or Ordinary Resolution will be deemed to be passed by the Noteholders and specifying the requirements for the making of such objections (including addresses, email addresses and deadlines) further as set out in the following paragraph; and

(C) holders of (i) in the case of an Extraordinary Resolution, 25 per cent. or more in aggregate Principal Amount Outstanding of the Notes or (ii) in the case of an Ordinary Resolution, 50 per cent. or more in aggregate Principal Amount Outstanding of the Notes, have not informed the Note Trustee in writing of their objection to such Extraordinary Resolution or Ordinary Resolution within 15 days of the date of the relevant notice.

(vi) Any Mezzanine Note Level Matters may not be determined by way of Negative Consent.

(c) *Modifications and Waivers without Noteholders Consent*

(i) The Note Trustee may agree or may direct the Issuer Security Trustee to agree, without the consent of the Noteholders (i) to any modification (except a Basic Terms Modification) of, or to any waiver or authorisation of any breach or proposed breach of, the Notes, the Note Trust Deed (including these Conditions) or any of the other Issuer Transaction Documents which, in the opinion of the Note Trustee, is not materially prejudicial to the interests of the Noteholders; (ii) to any modification of the Notes, the Note Trust Deed (including these Conditions) or any of the other Issuer Transaction Documents (including a determination that a Note Event of Default shall not be treated as such) which, in the opinion of the Note Trustee, is to correct a manifest error or a proven (to the satisfaction of the Note Trustee) error or is to conform the Issuer Transaction Documents to be consistent with the disclosure in this Offering Circular dated 22 February 2017 relating to the issuance of the Notes (as certified to the Note Trustee by the Issuer and upon which the Note Trustee may rely absolutely) or to comply with mandatory provisions of law (as confirmed by a legal opinion provided to the Note Trustee upon which the Note Trustee may rely absolutely) or is (in the opinion of the Note Trustee) of a formal, minor or technical nature; provided always that the Note Trustee shall not exercise such powers of modification, waiver, authorisation or determination in contravention of any express written direction given by the Eligible Noteholders or by an Extraordinary Resolution of the Noteholders then outstanding (provided that no such direction or restriction shall affect any authorisation, modification, waiver or determination previously made or given). Any such modification, waiver, authorisation or determination shall be binding on the Noteholders and, unless the Note Trustee agrees otherwise, any such modification shall be notified by the Issuer to the Noteholders as soon as practicable thereafter in accordance with Condition 15 (*Notice to and Communication between Noteholders*).

(ii) Notwithstanding Condition 12(c)(i) above, the Issuer is restricted from agreeing to any amendment or modification or entering into any agreement or arrangement with any party which would have the effect of (i) reducing or cancelling the amount of Deferred Consideration due and payable to the Mezzanine Note Sellers; (ii) modifying the method of calculating the Deferred Consideration; (iii) postponing any date on which the payment of the Deferred Consideration are to be made, or (iv) adversely affecting the right of the Mezzanine Note Sellers to receive payment of the Deferred Consideration under the Note Sale Agreement, in each case, without the Seller's prior written consent (in the Seller's absolute discretion).

(d) *Note Trustee Determinations*

(i) Where the Note Trustee is required, in connection with the exercise of its powers, trusts, authorities, duties and discretions, to have regard to the interests of the Noteholders it shall have regard to the interests of such Noteholders as a class and, in particular, but without prejudice to the generality of the foregoing, the Note Trustee

shall not have regard to, or be in any way liable for, the consequences of such exercise for individual Noteholders resulting from their being for any purpose domiciled or resident in, or otherwise connected with, or subject to the jurisdiction of, any particular territory and the Note Trustee shall not be entitled to require, nor shall any Noteholder be entitled to claim, from the Issuer or the Note Trustee or any other person, any indemnification or payment in respect of any tax consequence of any such exercise upon individual Noteholders.

- (ii) The Note Trustee shall be entitled to determine, in its own opinion, for the purposes of exercising any power, trust, authority, duty or discretion under or in relation to the Notes, the Conditions or any of the Issuer Transaction Documents, that such exercise will not be materially prejudicial to the interests of the Noteholders.
- (iii) The Note Trustee may (subject to such amendments of these Conditions and of any of the Issuer Transaction Documents, and to such other Conditions as the Note Trustee may require), without the consent of the Noteholders or any other Issuer Secured Creditor agree with the Issuer to the substitution in place of the Issuer (or of any previous substitute under this condition) as the principal debtor in respect of the Notes and the Note Trust Deed of another body corporate (being a single purpose vehicle) provided that such substitution would not in the opinion of the Note Trustee be materially prejudicial to the interests of the Noteholders and subject to certain conditions set out in the Note Trust Deed being complied with (or suitable arrangements in place to ensure compliance with such conditions). In the case of substitution of the Issuer, the Irish Stock Exchange shall be notified by the Issuer of such substitution, a supplemental offering circular will be prepared by the new principal debtor and filed with the Irish Stock Exchange and notice of the substitution will be given to the Noteholders by the Issuer in accordance with Condition 15 (*Notice to and Communication between Noteholders*).
- (iv) Where for the purposes of these Conditions the Note Trustee or any other party to the Issuer Transaction Documents requires a Noteholder holding Notes through Euroclear or Clearstream, Luxembourg to establish its holding of the Notes to the satisfaction of such party (including, without limitation, for the purposes of Condition 16 (*Noteholder Representative*)), such holding shall be considered to be established if such Noteholder provides to the requesting party:
  - (A) a Euclid Statement or a screenshot of the Euclid screen (in the case of Euroclear) or a Creation Online Statement or a screenshot of the Creation screen (in the case of Clearstream, Luxembourg) providing confirmation at the time of issue of the same of such person's holding in the Notes;
  - (B) if the relevant Notes are held through one or more custodians, a signed letter from each such custodian confirming on whose behalf it is holding such Notes such that the Note Trustee is able to verify to its satisfaction the chain of ownership to the beneficial owner; and
  - (C) any other evidence of holding of such interest in the relevant Notes in a form acceptable to the Note Trustee.

If in connection with verifying its holding the Note Trustee requires a Noteholder to temporarily block its Notes in Euroclear or Clearstream, Luxembourg, such Noteholder will be required to instruct Euroclear or Clearstream, Luxembourg (via its custodian, if applicable) to do so.

(e) *Disenfranchised Holders*

- (i) For the purposes of determining:
- (A) the quorum at any meeting of Noteholders considering an Extraordinary Resolution or an Ordinary Resolution or the majority of votes cast at such meeting;
  - (B) the holders of Notes for the purposes of giving any direction to the Note Trustee (or any other party);
  - (C) the majorities required for any written resolutions, including the majority required for passing a Written Ordinary Resolution for the purpose of appointing a Noteholder Representative;
  - (D) any discretion, power or authority (whether contained in any of the Issuer Transaction Documents or conferred on it by operation of law) which the Note Trustee is required, expressly or impliedly, to exercise in or by reference to the interests of the Noteholders;
  - (E) the determination by the Note Trustee whether any event or potential event is or would be materially prejudicial to the interests of the Noteholders;
  - (F) the objection by Noteholders for the purpose of Negative Consent; or
  - (G) the determination of how many and which Notes are for the time being outstanding in accordance with the Note Trust Deed.

any Notes held beneficially by or for the account of (whether directly or indirectly or in relation to which the exercise of the right to vote is directed or otherwise controlled by):

- (1) a Sponsor Affiliate;
- (2) a Senior Creditor; or
- (3) the Issuer,

in each case, shall have no voting rights or any right to pass an Extraordinary Resolution or an Ordinary Resolution and shall be treated as if such Notes were not outstanding and the holder of any of those Notes will not be entitled to attend or exercise or count in or towards any required quorum or majority with respect to such Notes for so long as those Notes are so held or remain uncanceled.

- (ii) The Note Trust Deed contains provisions requiring any Noteholder wishing to vote to confirm to the Principal Paying Agent that such Noteholder is not disenfranchised from voting pursuant to this Condition 12(e).

**13. Indemnification and Exoneration of the Note Trustee and Issuer Security Trustee**

The Note Trust Deed, the Issuer Security Documents and certain of the other Issuer Transaction Documents contain provisions governing the responsibility (and relief from responsibility) of each of the Note Trustee and the Issuer Security Trustee and for indemnification in certain circumstances, including provisions relieving them from taking enforcement proceedings or, in the case of the Issuer Security Trustee, enforcing the Issuer Security unless indemnified and/or secured and/or pre-funded to its satisfaction. Neither the Note Trustee nor the Issuer Security Trustee will be responsible for any loss, expense or liability which may be suffered as a result of any assets comprised in the Issuer Security, or any deeds or documents of title thereto, being uninsured or inadequately insured or being held by or to the order of other parties to the Issuer Transaction Documents, clearing organisations or

their operators or by intermediaries such as banks, brokers, depositories, warehousemen or other similar persons whether or not on behalf of the Note Trustee or the Issuer Security Trustee.

The Note Trust Deed and the Deed of Charge and Assignment contain provisions pursuant to which each of the Note Trustee and the Issuer Security Trustee or any of its related companies is entitled, among other things, (a) to enter into business transactions with the Issuer and/or any other person who is a party to the Issuer Transaction Documents or whose obligations are comprised in the Issuer Security and/or any of their subsidiary or associated companies and to act as trustee for the holders of any other securities issued by or relating to the Issuer and/or any other person who is a party to the Issuer Transaction Documents or whose obligations are comprised in the Issuer Security and/or any of their subsidiaries or associated companies, (b) to exercise and enforce its rights, comply with its obligations and perform its duties under or in relation to any such transactions or, as the case may be, any such trusteeship without regard to the interests of the Noteholders or any other Issuer Secured Creditor, and (c) to retain and not be liable to account for any profit made or any other amount or benefit received thereby or in connection therewith.

The Deed of Charge and Assignment provides that the Issuer Security Trustee shall accept without investigation, requisition or objection such right and title as the Issuer may have to the Issuer's property secured pursuant to the Issuer Security Documents and shall not be bound or concerned to examine such right and title, and the Issuer Security Trustee shall not be liable for any defect or failure in the right or title of the Issuer to the property secured pursuant to the Issuer Security Documents whether such defect or failure was known to the Issuer Security Trustee or might have been discovered upon examination or enquiry and whether capable of remedy or not. Neither the Note Trustee nor the Issuer Security Trustee has any responsibility in relation to the validity, sufficiency and enforceability of the Issuer Security. Neither the Note Trustee nor the Issuer Security Trustee will be obliged to take any action which might result in its incurring personal liabilities unless indemnified and/or secured and/or pre-funded to its satisfaction or to supervise the performance by the Cash Manager or any other person of their obligations under the Issuer Transaction Documents and each of the Note Trustee and the Issuer Security Trustee shall assume, until it has actual knowledge or express notice to the contrary, that all such persons are properly performing their duties, notwithstanding that the Issuer Security (or any part thereof) may, as a consequence, be treated as floating rather than fixed security.

#### **14. Replacement of the Global Note and Definitive Notes**

If the Global Note or Definitive Note is mutilated, defaced, lost, stolen or destroyed, it may be replaced at the specified office of any Paying Agent or the Registrar upon payment by the claimant of the expenses incurred in connection with such replacement and on such terms as to evidence and indemnity as the Issuer, the Registrar, the Paying Agent or the Note Trustee may reasonably require. The mutilated or defaced Global Note or Definitive Notes must be surrendered before replacements will be issued.

#### **15. Notice to and Communication between Noteholders**

- (a) All notices, other than notices given in accordance with any one or more of the following paragraphs of this Condition 15, to Noteholders shall be deemed to have been validly given if:
  - (i) for so long as the Notes are represented by a Global Note and listed on the Irish Stock Exchange or another stock exchange and the rules of such stock exchange so allow:
    - (A) subject to the requirements of the Market Abuse Regulations, at the option of the Issuer, if delivered through the announcements section of the relevant stock exchange and a regulated information service maintained or recognised by such stock exchange; and
    - (B) if delivered to Euroclear and/or Clearstream, Luxembourg for communication by them to their participants and for communication by such participants to entitled account holders; and

- (C) if delivered to the electronic communications systems maintained by Bloomberg L.P. for publication on the relevant page for the Notes or such other medium for the electronic display of data as may be previously approved in writing by the Note Trustee; or
- (ii) for so long as the Notes are in definitive form and listed on the Irish Stock Exchange or another stock exchange and the rules of such stock exchange so allow, subject to the requirements of the Market Abuse Regulations, at the option of the Issuer, if delivered through the announcements section of the relevant stock exchange and a regulated information service maintained or recognised by such stock exchange.
- (iii) Any such notice shall be deemed to have been given on:
  - (A) in the case of a notice delivered to the regulated information service of a stock exchange, the day on which it is delivered to such stock exchange;
  - (B) in the case of a notice delivered to Euroclear and/or Clearstream, Luxembourg, the day on which it is delivered to Euroclear and/or Clearstream, Luxembourg; and
  - (C) in the case of a notice delivered to Bloomberg L.P., the day on which it is delivered to Bloomberg L.P..
- (b) If it is impossible or impractical to give notice in accordance with Condition 15(a)(i)(A), Condition 15(a)(i)(B) or Condition 15(a)(i)(C) above then notice of the relevant matters shall be given in accordance with Condition 15(a)(ii) above.
- (c) The Note Trustee shall be at liberty to sanction some other method of giving notice to the Noteholders if, in its opinion, such other method is reasonable having regard to market practice then prevailing and to the requirements of the stock exchange on which the Notes are then listed and provided that notice of such other method is given to the Noteholders in such manner as the Note Trustee shall require. The Note Trustee shall give notice to the Noteholders in accordance with this Condition 15 of any additions to, deletions from or alterations to such methods from time to time.
- (d) Any Verified Noteholder shall be entitled from time to time to request the Cash Manager to post a notice on its investor reporting website requesting other Verified Noteholders to contact it subject to and in accordance with the following provisions.

For these purposes "**Verified Noteholder**" means a Noteholder which has satisfied the Cash Manager that it is a Noteholder in accordance with Condition 12(d)(iv) (*Note Trustee Determinations*) and Condition 12(e) (*Disenfranchised Holders*).

- (e) Following receipt of a request for the publication of a notice from a Verified Noteholder, the Cash Manager shall publish such notice on its investor reporting website as an addendum to any report to Noteholders due for publication within two Business Days of receipt of the same (or, if there is no such report, through a special notice for such purpose as soon as is reasonably practical after receipt of the same) provided that such notice contains no more than:
  - (i) an invitation to other Noteholders to contact the Verified Noteholder;
  - (ii) the name of the Verified Noteholder and the address, phone number, website or email address at which the Verified Noteholder can be contacted; and
  - (iii) the date(s) from, on or between which the Verified Noteholder may be so contacted; and
  - (iv) a request that a Noteholder wishing to be in contact with the Verified Noteholder confirm its holding in accordance with Condition 12(d)(iv) (*Note Trustee*



*Determinations*) and confirm that it has not been disenfranchised pursuant to Condition 12(e) (*Disenfranchised Holders*).

The Cash Manager shall have no responsibility or liability for the contents, completeness or accuracy of any such published information and shall have no responsibility (beyond publication of the same in the manner described above) for ensuring Noteholders receive the same.

16. **Noteholder Representative**

(a) *Appointment of the Noteholder Representative and general voting provisions in relation to Mezzanine Note Level Matters*

The Noteholders may, acting by Written Ordinary Resolution, elect by notice in writing to the Mezzanine Note Agent, the Issuer Security Trustee, the Note Trustee and the Issuer with a copy to the Cash Manager (attaching a copy of the relevant Written Ordinary Resolution) (subject to each of the relevant Noteholders establishing its holding in such Notes to the satisfaction of the Note Trustee in accordance with the provisions of Condition 12 (*Meetings of Noteholders, Modification and Waiver, Substitution and Termination of Issuer Related Parties*)), appoint not more than one person to be the Noteholder Representative for the purposes of either directing:

- (i) the Note Trustee to on-direct the Issuer (prior to the delivery of a Note Acceleration Notice); or
- (ii) the Note Trustee itself (following the delivery of a Note Acceleration Notice),

in each case, to exercise the Issuer's voting or other rights under the Mezzanine Finance Documents or the Intercreditor Agreement in respect of Mezzanine Note Level Matters.

Subject to the restrictions set out below in Condition 16(c) below, the Noteholder Representative need not itself be a Noteholder.

The Noteholder Representative will be deemed to hold and to have voting rights in respect of 100 per cent. of the aggregate voting rights held and that are exercisable by the Issuer as a noteholder under the Mezzanine Note Issuance Agreement and the other Finance Documents corresponding to the Issuer's participation in the Mezzanine Notes. The Noteholder Representative shall be entitled in its sole discretion to exercise all of the rights conferred on it under these Conditions to either direct:

- (i) the Note Trustee to on-direct the Issuer (prior to the delivery of a Note Acceleration Notice); or
- (ii) the Note Trustee itself (following the delivery of a Note Acceleration Notice),

in each case, to act in relation to any consent, waiver, amendment or other vote in relation to any Mezzanine Note Level Matter to the extent exercisable by the Issuer under the Finance Document or the Intercreditor Agreement.

When directed to act in relation to a Mezzanine Note Level Matter, the Issuer (prior to the delivery of a Note Acceleration Notice) or the Note Trustee (following the delivery of a Note Acceleration Notice) shall for any of those purposes independently exercise all of the voting rights conferred on the Issuer as a lender under the Mezzanine Note Issuance Agreement and the Finance Documents in accordance with, in the case of the Note Trustee, the instructions received by it from the Noteholder Representative and, in the case of the Issuer, in accordance with the on-direction delivered to it from the Note Trustee.

Neither the Issuer Security Trustee nor the Note Trustee shall have any obligation to identify the Noteholders from time to time, to inform them of their rights as such or to assist them in the appointment of a Noteholder Representative.

The Noteholder Representative shall not have any liability to the Issuer, any Noteholder, the Note Trustee, the Issuer Security Trustee or any other party for any action taken or for refraining from taking any action in good faith or for any errors of judgment.

The appointment of the Noteholder Representative shall not take effect until each of the Issuer Security Trustee, the Note Trustee, the Mezzanine Note Agent (with a copy to the Cash Manager) and the Issuer have been notified by the Noteholder Representative in writing of its appointment.

The Noteholders may acting by Written Ordinary Resolution, elect by notice in writing to the Issuer Security Trustee, the Note Trustee, the Mezzanine Note Agent and the Issuer (with a copy to the Cash Manager) (attaching a copy of the relevant Written Ordinary Resolution) to terminate the appointment of the Noteholder Representative. The Noteholder Representative may retire by giving not less than 21 days' notice in writing to: (a) the Noteholders (in accordance with the terms of Condition 15 (*Notice to and Communication between Noteholders*)), the Issuer, the Note Trustee, the Issuer Security Trustee, the Mezzanine Note Agent (with a copy to the Cash Manager).

If at any time the Noteholders fail to appoint a Noteholder Representative (or the Noteholder Representative resigns or whose appointment is terminated and is not subsequently replaced), the Noteholders will be deemed to have waived their rights under these Conditions, including any rights to authorise the Note Trustee to on-direct the Issuer or to direct the Note Trustee itself to vote with respect to any Mezzanine Note Level Matters in accordance with these Conditions and the Issuer Transaction Documents. The Note Trustee shall not be required to (i) exercise any Mezzanine Note Level Matters directly under the Mezzanine Note Issuance Agreement or (ii) exercise any of the functions of a Noteholder Representative, in each case, in the absence of the appointment of a Noteholder Representative.

If the Noteholders do not appoint a Noteholder Representative to direct the Issuer (prior to the delivery of a Note Acceleration Notice) or the Note Trustee (following the delivery of a Note Acceleration Notice), this will result in an abstention by the Issuer or the Note Trustee, as the case may be, in relation to a Mezzanine Note Level Matter.

Following the results of a vote with respect to any Mezzanine Note Level Matter, the Noteholder Representative will, to the extent that it has been appointed, determine whether any amendment to these Conditions and/or the Issuer Transaction Documents is required and may request the Issuer to convene a meeting of the Noteholders in connection with such amendment.

The Noteholders shall only be entitled to receive Mezzanine Note Level Information or any information or communication in relation to a Mezzanine Note Level Matter in accordance with the provisions of these Conditions and the Issuer Transaction Documents. For the avoidance of doubt no Mezzanine Note Level Information or information in relation to a Mezzanine Note Level Matter shall be made available or notified to the Noteholders pursuant to the Condition 15 (*Notice to and Communication between Noteholders*), subject to compliance with any applicable law or regulation.

The Note Trustee shall be entitled to request clarification of any direction from a Noteholder Representative as to whether and in what manner it should exercise any voting rights and the Note Trustee may refrain from acting unless and until it receives that clarification. The Note Trustee shall not be obliged to follow any direction of a Noteholder Representative which, in the sole opinion of the Note Trustee, would have the effect of (a) exposing the Note Trustee to any liability against which it has not been indemnified and/or secured and/or pre-funded to its satisfaction or (b) otherwise prejudicing the interests of the Note Trustee.

The Mezzanine Note Agent shall:

- (a) promptly inform the Noteholder Representative if the Issuer's right to cure a Curable Default becomes exercisable under the Intercreditor Agreement;

- (b) provide the Noteholder Representative with details of the election period within which the Issuer's rights to a cure a Curable Default can be exercised; and
- (c) give the Noteholder Representative any other information that it may reasonably require for the purpose of delivering an instruction in accordance with this Condition 16 to cure the Curable Default.

The Noteholder Representative may elect to exercise the Cure Rights by giving a direction in accordance with this Condition 16 provided that any such rights are exercisable by the Issuer pursuant to and in accordance with the provisions of the Intercreditor Agreement.

In the event that the Noteholder Representative is notified that a Curable Default has arisen it shall liaise with the Noteholders that are known to it or have been identified to the Noteholder Representative in order to determine whether such Noteholders want to fund, in whole or in part, a Cure Payment.

In order to identify any Noteholders which are not known to the Noteholders Representative it may instruct (a) the Cash Manager to publish a notice on behalf of the Issuer to the other Noteholders (if any) in accordance with Condition 15 (*Notice to and Communication between Noteholders*) and/or (b) the Noteholders that have appointed the Noteholders Representative to contact the other Noteholders (if any) through the procedure available to a Verified Noteholder for contacting Noteholders.

A Noteholder shall, in its discretion, be entitled to fund, in whole or in part, a Cure Payment by notifying the Noteholder Representative, the Note Trustee, the Cash Manager, the Registrar and the Principal Paying Agent (each such Noteholder shall be a "**Cure Paying Noteholder**").

Subject to the terms of the Intercreditor Agreement, the Noteholder Representative shall ensure that any Cure Payment made by a Cure Paying Noteholder shall have the effect under the Mezzanine Note Issuance as an increase in the Mezzanine Notes subscribed to by the Issuer.

A Cure Paying Noteholder shall fund a Curable Default by subscribing to Further Notes issued by the Issuer in accordance with Condition 20 (*Further Issuance of Notes*).

- (b) *Note Trustee bound to act in accordance with a direction given by the Noteholder Representative*

At any time after the delivery of a Note Acceleration Notice, the Note Trustee shall be bound to vote in relation to Mezzanine Note Level Matters if directed by the Noteholder Representative provided always that no direction shall be effective if it relates to a matter in respect of a Basic Terms Modification which at all times shall only be passed in accordance with Condition 12(b) (*Quorum*).

The Note Trustee shall assume that any Noteholder Representative has not ceased to be Noteholder Representative unless and until notified in writing to the contrary and the Note Trustee shall have no liability to the Noteholders, Issuer or any other person for acting on the instructions of the Noteholder Representative.

- (c) *Disenfranchisement of Restricted Lenders*

The right of a Noteholder to appoint, acting alone or with one or more Noteholders, a Noteholder Representative for the purpose of directing the Note Trustee to either on-direct the Issuer to exercise or to exercise directly, as the case may be, the Issuer's votes under the Finance Documents in respect of Mezzanine Note Level Matters pursuant to these Conditions shall not extend to or be exercisable by any Sponsor Affiliate or Senior Creditor which:

- (i) beneficially owns a participation in the Mezzanine Notes or any Mezzanine Commitment; or

- (ii) has entered into a sub-participation agreement relating to a Mezzanine Commitment or other agreement or arrangement having a substantially similar economic effect and such agreement or arrangement has not been terminated.

The Noteholder Representative must not at any time be a Sponsor Affiliate or a Senior Creditor.

#### 17. **Limited Recourse and Non-Petition**

Notwithstanding any other provision of these Conditions or the Note Trust Deed, any other Issuer Transaction Document or otherwise, the obligations of the Issuer to make any payment under the Notes will be equal to the nominal amount of such payment or, if less, the actual amount received or recovered from time to time by or on behalf of the Issuer which consists of funds which are required to be applied by the Issuer in making such payment in accordance with the Pre-Enforcement Priority of Payments or Post-Enforcement Priority of Payments, as applicable, upon enforcement of the Issuer Security constituted by the Deed of Charge and Assignment. The obligations of the Issuer under these Conditions and Note Trust Deed in respect of the Notes will be limited to such amounts from time to time and none of the Noteholders, Note Trustee or the Issuer Security Trustee will have any further recourse to the Issuer in respect of such obligations.

On enforcement of the Issuer Security and distribution of the proceeds thereof in accordance with the Deed of Charge and Assignment, none of the Noteholders, the Note Trustee or the Issuer Security Trustee or the other parties to the Issuer Transaction Documents may take any further steps against the Issuer in respect of any amounts payable on the Notes or any other amounts and all claims against the Issuer in respect of those payments shall be extinguished and discharged.

None of the Note Trustee, the Issuer Security Trustee, the Noteholders or the other parties to the Issuer Transaction Documents will be entitled to petition or take any action or other steps or legal proceedings for the winding-up, dissolution, court protection, examinership, reorganisation, liquidation, bankruptcy or insolvency of the Issuer or for the appointment of an administrator, manager, administrative receiver, trustee, liquidator, examiner, sequestrator or similar officer in respect of the Issuer or any of its revenues or assets provided that the Note Trustee or the Issuer Security Trustee may prove or lodge a claim in the liquidation of the Issuer initiated by another party and provided further that the Note Trustee or the Issuer Security Trustee may take proceedings to obtain a declaration or similar judgment or order as to the obligations and liabilities of the Issuer under the Deed of Charge and Assignment.

None of the Noteholders or any of the other parties to the Issuer Transaction Documents will have any recourse against any director, shareholder, or officer of the Issuer in respect of any obligations, covenant or agreement entered into or made by the Issuer pursuant to the terms of the Notes, the Deed of Charge and Assignment, or any other Issuer Transaction Document to which it is a party or any notice or documents which it is requested to deliver hereunder or thereunder.

Nothing in this Condition shall affect a payment under the Notes from falling due for the purposes of Condition 10 (*Note Events of Default*).

The provisions of this Condition 17 shall survive the redemption in full of the Notes.

#### 18. **Noteholder Reporting Obligations**

Each purchaser, beneficial owner and subsequent transferee of Notes or interest therein, by acceptance of such Notes or such an interest in such Notes, agrees or is deemed to agree (A) that it will (1) be required to agree to provide the Issuer and Note Trustee and their agents and delegates (i) any information as is necessary (in the sole determination of the Issuer or its agents and delegates, as applicable) for the Issuer or its agents and delegates to determine whether such purchaser, beneficial owner or transferee is (x) either a specified United States person as defined in Section 1473(3) of the Code ("**specified United States person**"), (y) a United States owned foreign entity as defined in Section 1471(d)(3) of the Code or a non-US entity with one or more controlling persons, as that term is defined in the intergovernmental agreement between Ireland and the United States signed on January 23, 2013 (the "**US-Irish IGA**"), that is a specified United States person ("**United States owned foreign entity**") and (ii) any additional information that the Issuer or its agent requests in connection

with FATCA and (2) if it is a specified United States person or a United States owned foreign entity that is a holder or beneficial owner of Notes or an interest therein, be required to (x) provide the Issuer and Note Trustee and their agents and delegates its name, address, U.S. taxpayer identification number and, if it is a United States owned foreign entity, the name, address and taxpayer identification number of each of its substantial United States owners as defined in Section 1473(2) of the Code ("**substantial United States owner**") or controlling persons that are specified United States persons as that term is defined in the US-Irish IGA ("**controlling United States persons**") and any other information requested by the Issuer or its agent upon request and (y) update any such information provided in clause (x) promptly upon learning that any such information previously provided has become obsolete or incorrect or is otherwise required (the foregoing agreements, the "**Noteholder Reporting Obligations**"), (B) that each purchaser and subsequent transferee of Notes will be required or deemed to acknowledge that the Issuer and/or the Trustee may (1) provide such information and any other information concerning its investment in the Notes to the U.S. Internal Revenue Service and any other relevant tax authority, and (2) take such other steps as they deem necessary or helpful to achieve compliance with FATCA, including withholding on "passthru payments" (as defined in the Code).

"**FATCA**" means (a) sections 1471 to 1474 of the United States Internal Revenue Code of 1986, as amended (the "**Code**") or any associated regulations or other official guidance; (b) any treaty, law, regulation or other official guidance enacted in any other jurisdiction, or relating to an intergovernmental agreement between the US and any other jurisdiction, including the US-Irish IGA, which (in either case) facilitates the implementation of any law or regulation referred to in paragraph (a) above; or (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.

Each purchaser, beneficial owner and subsequent transferee of Notes or interest therein, by acceptance of such Notes or such an interest in such Notes, agrees or is deemed to agree (A) that it will (1) be required to agree to provide the Issuer and Note Trustee and their agents and delegates (i) any information as is necessary (in the sole determination of the Issuer or its agents and delegates, as applicable) for the Issuer or its agents and delegates to comply with its obligations under Irish legislation implemented to give effect to the provisions of Council Directive 2011/16/EU on Administrative Cooperation in the field of Taxation (as amended by Council Directive 2014/107/EU ("**DAC2**")) and the Common Reporting Standard ("**CRS**").

#### 19. **Privity of Contract**

The Notes do not confer any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Notes, but this does not affect any right or remedy of a third party which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999.

#### 20. **Further Issuance of Notes**

The Issuer may from time to time without the consent of the Noteholders, but subject to the satisfaction of the conditions referred to below, create and issue further securities (the "**Further Notes**") having the same terms and conditions as the Notes then Outstanding, in all respects (or in all material respects except for the issue date and the first Interest Period), which shall be consolidated and form a single series with, and rank *pari passu* with the Notes then Outstanding, provided that the following conditions are met:

- (a) the Further Notes will rank *pari passu* and *pro rata* with the Notes already issued and the Further Notes will have the same terms as the Notes then Outstanding in all respects (or in all material respects except for the issue date and the first Interest Period);
- (b) the net proceeds of the issuance of the Further Notes are applied by the Issuer or on its behalf to make a Cure Payment that is successfully applied to cure a Curable Default;
- (c) that the Cure Payment referred to above in paragraph (b), has the effect under the Mezzanine Note Issuance Agreement of increasing the Mezzanine Notes subscribed to by the Issuer;

- (d) application will be made, in respect of the Further Notes, for such notes to be admitted to trading on the Irish Stock Exchange's regulated Main Market and listed on the Official List;
- (e) any such Further Note shall be constituted by a further deed or deed supplemental to the Note Trust Deed and shall be secured by the same security as any Notes pursuant to the Deed of Charge and Assignment as supplemented;
- (f) such additional issuance of Further Notes is in accordance with all applicable securities laws and regulations;
- (g) the Issuer procures the publication of a notice of the issue of the Further Notes in accordance with Condition 15 (*Notice to and Communication between Noteholders*); and
- (h) in the event that a rating of the Notes is obtained by the Issuer or by any other person on its behalf after the Closing Date written confirmation has been received from each of the relevant rating agencies that their ratings of the Notes at that time Outstanding will not be downgraded, withdrawn or qualified as a result of such issue of Further Notes.

Any such Further Notes will be constituted by a further deed or deeds supplemental to the Trust Deed and have the benefit of the security constituted by the Deed of Charge of Assignment, as may be supplemented. Any of the Issuer Transaction Documents may be amended, and further Issuer Transaction Documents, including without limitation, an additional Settlement Agency Agreement, may be entered into, in connection with the issue of such Further Notes, provided, in each case, that the conditions set out in this Condition 20 are satisfied. All amended and/or further Issuer Transaction Documents entered into by the Issuer in connection with an issuance of Further Notes shall be made available by the Principal Paying Agent at its specified office and also at the registered office of the Issuer.

The Principal Paying Agent shall cooperate with and provide any information or explanations, in its possession or control, which the Clearing Systems may require in order to update their records to take into account the issuance of the Further Notes.

## 21. **Governing Law and Jurisdiction**

### (a) *Governing Law*

The Note Trust Deed, the Deed of Charge and Assignment, the Agency Agreement, the other Issuer Transaction Documents (other than the Issuer Corporate Services Agreement) and the Notes and any non-contractual obligation arising from or in connection with them, will be governed by, and shall be construed in accordance with, English law.

### (b) *Jurisdiction*

The courts of England are to have exclusive jurisdiction to settle any dispute that may arise out of or in connection with the Note Trust Deed, the Deed of Charge and Assignment, the Agency Agreement, the other Issuer Transaction Documents (other than the Issuer Corporate Services Agreement) and the Notes and any non-contractual obligation arising from or in connection with them. The Issuer has in each of the Issuer Transaction Documents to which it is a party (other than the Issuer Corporate Services Agreement) irrevocably submitted to the jurisdiction of the English courts.

## **CERTAIN MATTERS OF JERSEY LAW**

The following is a summary of certain aspects of Jersey law relating to the creation and enforcement of the security governed by Jersey law, the enforcement of English judgments in Jersey and the institution of insolvency proceedings in relation to companies incorporated under the Companies (Jersey) Law 1991, as amended. This is not a complete summary of currently applicable Jersey law and prospective Noteholders who are in any doubt as to any matter described in this Offering Circular should consult their own professional advisors.

### **Security over intangible movable property under Jersey law**

For the purposes of the Security Interests (Jersey) Law 2012, as amended (the "**Jersey Security Law**"), a "security interest" is defined as an interest in intangible movable property being an interest that, under a security agreement, secures payment or secures the performance of an obligation.

The Jersey Security Law applies to security interests in intangible movable property including shares, bank accounts and contract rights.

### **Attachment**

To be enforceable against the grantor of security, a security interest must attach to the collateral that is intended to be secured.

A security interest attaches to collateral under a security agreement at the time when the following three conditions are all satisfied:

- (a) value has been given in respect of the security agreement;
- (b) the grantor has rights in the collateral or the power to grant rights in the collateral to a secured party; and
- (c) one or both of the following requirements are satisfied (i) there is possession or control of the collateral by the secured party (or on the secured party's behalf by a person other than the grantor or obligor) and (ii) the security agreement is in writing signed by or on behalf of the grantor and contains a description of the collateral that is sufficient to enable the collateral to be identified,

or instead at a later time that the parties to the security agreement have determined by that or another agreement.

A security agreement may provide for a security interest in after-acquired property. Subject to any agreement to the contrary between the parties to a security agreement, the relevant security interest attaches to after-acquired property on the acquisition by the grantor of rights in the property and without the need for specific appropriation of the property by the grantor.

### **Perfection**

The two key objectives of perfection are:

- (a) priority against subsequent security interests and a purchaser of the collateral; and
- (b) to ensure that the security is effective on the bankruptcy of the grantor and therefore is enforceable against the Viscount and a liquidator, subject to the usual set aside considerations set out below.

A security interest is perfected when two conditions are satisfied. The first condition is that the security interest has attached. The second condition is that any further steps required under the Jersey Security Law for perfection have been completed.

The "further steps" depend on the nature of the collateral. For example:

- (a) a security interest in shares, bank accounts and contract rights can be perfected by the registration of a financing statement;
- (b) a security interest in shares or in a bank account may also be perfected by control.

Where a secured party is taking security over shares in a Jersey company (being shares represented by a certificate and not bearer shares), the secured party will have control if it becomes the registered shareholder or it has possession of the share certificates.

Possession of share certificates would not perfect a security interest in dividends or further shares and registration of a financing statement (and/or, in the case of further shares, possession of the share certificates for such further shares) would be required to perfect security in relation to such collateral.

Where a secured party is taking security over a bank account held with a third party bank, the secured party will have control if (a) the bank account is transferred into the name of the secured party with the written agreement of the grantor and the third party bank; (b) the grantor, secured party and the third party bank have agreed in writing that the third party bank will comply with instructions from the secured party directing the disposition of funds in the bank account; or (c) the bank account is assigned (by way of security) to the secured party by instrument in writing signed by or on behalf of the grantor and written notice of the assignment is given to the third party bank.

### **Power of Enforcement**

The power of enforcement in respect of a security interest shall become exercisable when (a) an event of default has occurred in relation to the security agreement that created or made provision for the security interest; and (b) the secured party has served on the grantor written notice specifying the event of default.

### **Enforcement options**

A secured party may exercise the power of enforcement in respect of a security interest by doing any of the following in relation to the collateral that is subject to such security interest or in relation to any proceeds of that collateral:

- (a) appropriating the collateral or proceeds;
- (b) selling the collateral or proceeds;
- (c) taking any of the following ancillary actions:
  - (i) taking control or possession of the collateral or proceeds;
  - (ii) exercising any rights of the grantor in relation to the collateral or proceeds; or
  - (iii) instructing any person who has an obligation in relation to the collateral or proceeds to carry out the obligation for the benefit of the secured party; or
- (d) applying any remedy that the security agreement provides for as a remedy that is exercisable pursuant to the power of enforcement, to the extent that the remedy is not in conflict with the Jersey Security Law.

The enforcement options may be exercised cumulatively to the extent that they are not in conflict. A secured party who appropriates collateral must, not less than 14 days before appropriating the collateral, give written notice to (a) the grantor, (b) any person who, 21 days before the appropriation, has a registered security interest in the collateral and (c) any person other than the grantor who has an interest in the collateral and has, not less than 21 days before the appropriation, given the secured party notice of that interest. There is no guidance in the Jersey Security Law as to what the nature of any such interest may be. However, it would be prudent to view such as a proprietary interest.



There are specific carve-outs from the obligation to give notice of sale including:

- (a) where the secured party believes on reasonable grounds that the collateral will decline substantially in value if it is not disposed of within 14 days after the relevant event of default; and
- (b) for any other reason, the Royal Court orders, on an *ex parte* application, that notice need not be given.

The secured party and another person may agree in writing in one or both of the following terms: (a) that notice of sale and/or appropriation need not be given to the other person; (b) for notice of sale and/or appropriation to be given to the other person within a period different from that specified above.

The Jersey Security Agreements contain a provision that the secured party is not obliged to give any notice of sale or appropriation to the grantor.

As regards those who have an interest in the collateral, there should be no such interests where security has been taken from the sole absolute and beneficial owner of the collateral.

### **Sale of collateral**

A secured party may effect a sale of the collateral by auction, public tender, private sale or another method. A secured party is not prevented from buying any collateral that the secured party sells.

### **Duty to obtain fair valuation or fair price**

A secured party who appropriates or sells collateral owes a duty to those who have a proprietary interest in the collateral the grantor and any other person to whom it was required to give notice of appropriation or sale (whether or not they have agreed in writing to waive the notice requirements) to (a) to take all commercially reasonable steps to determine, or in the case of a sale, obtain the fair market value of the collateral as at the time of the appropriation or sale; and (b) to act in other respects in a commercially reasonable manner in relation to the appropriation or sale; and (c) (in the case of a sale only) enter any agreement for or in relation to the sale only on commercially reasonable terms.

### **Insolvency**

There are two principal regimes for corporate insolvency in Jersey: *désastre* and winding-up. The principal type of insolvency procedure available to creditors under Jersey law is the application for an Act of the Royal Court of Jersey under the Bankruptcy (*Désastre*) (Jersey) Law 1990, as amended (the "**Jersey Bankruptcy Law**") declaring the property of a debtor to be "*en désastre*" (a "**Jersey declaration**"). On a Jersey declaration of *désastre*, title and possession of the property of the debtor vest automatically in the Viscount, an official of the Royal Court (the "**Viscount**"). With effect from the date of a Jersey declaration, a creditor has no other remedy against the property or person of the debtor, and may not commence or, except with the consent of the Viscount or the Royal Court, continue any legal proceedings to recover the debt. With effect from the date of a Jersey declaration, a secured party may, however, without the consent of the Viscount and without an order of the Royal court, exercise any power of enforcement it may have under Part 7 (Enforcement of Security Interests) of the Jersey Security Law. To the extent that the proceeds of such enforcement are insufficient to discharge liabilities owed, that secured party has no other remedy against the property or person of the debtor, and may not commence any legal proceedings or, except with the consent of the Viscount or the Royal Court, continue any legal proceedings to recover the balance of the debt.

Additionally, the shareholders of a Jersey company (but not its creditors) can instigate a winding up of an insolvent company, which is known as a "creditors' winding up" pursuant to Chapter 4 of Part 21 of the Companies (Jersey) Law 1991, as amended (the "**Jersey Companies Law**"). On a creditors' winding up, a liquidator is nominated by the shareholders. The creditors may approve such liquidator or apply to appoint a different liquidator. The liquidator will stand in the shoes of the directors and administer the winding up, gather assets, make appropriate disposals of assets, settle claims and distribute assets as appropriate. After the commencement of the winding up, no action can be taken or continued against the company except with the leave of court. The shareholders must give creditors 14 days' notice of the meeting to commence the creditors' winding up. After the commencement of the creditors' winding up, a secured party may, however, without the sanction of a liquidator and without an order of the court, exercise any power of enforcement it may have under Part 7 (*Enforcement of Security Interests*) of the Jersey Security Law. To the extent that the proceeds of such

enforcement are insufficient to discharge liabilities owed, the secured party has no other remedy against the company without leave of the court. The corporate state and capacity of the company continues until the end of the winding up procedure, when the company is dissolved. The Jersey Companies Law requires a creditor of a company (subject to appeal) to be bound by an arrangement entered into by the company and its creditors immediately before or in the course of its winding up if (*inter alia*) three-quarters in number and value of the creditors acceded to the arrangement.

Please see the section below entitled "*Recognition of security in Jersey in an insolvency*" for further detail in relation to the rights of a secured party on an insolvency.

### **Transactions at an Undervalue**

Under Article 17 of the Jersey Bankruptcy Law and Article 176 of the Jersey Companies Law, the court may, on the application of the Viscount (in the case of a company whose property has been declared "*en désastre*") or liquidator (in the case of a creditors' winding up – a procedure which is instigated by shareholders not creditors), set aside a transaction (including any security interest) entered into by a company with any person (the "**other party**") at an undervalue. There is a five-year look-back period from the date of commencement of the winding up or Jersey declaration of "*désastre*" during which transactions are susceptible to examination pursuant to this rule (the "**relevant time**"). The Jersey Bankruptcy Law and Jersey Companies Law contain detailed provisions, including (without limitation) those that define what constitutes a transaction at an undervalue, the operation of the relevant time and the effect of entering into such a transaction with a person connected with the company or with an associate of the company.

### **Preference**

Under Article 17A of the Jersey Bankruptcy Law and Article 176A of the Jersey Companies Law, the court may, on the application of the Viscount (in the case of a company whose property has been declared "*en désastre*") or liquidator (in the case of a creditors' winding up), set aside a preference (including any security interest) given by the company to any person (the "**other party**"). There is a 12-month look-back period from the date of commencement of the winding up or Jersey declaration of "*désastre*" during which transactions are susceptible to examination pursuant to this rule (the "**relevant time**"). The Jersey Bankruptcy Law and Jersey Companies Law contain detailed provisions, including (without limitation) those that define what constitutes a preference, the operation of the relevant time and the effect of entering into a preference with a person connected with the company or with an associate of the company.

### **Extortionate Credit Transactions**

Under Article 17C of the Jersey Bankruptcy Law and Article 179 of the Jersey Companies Law, the court may, on the application of the Viscount (in the case of a company whose property has been declared "*en désastre*") or liquidator (in the case of a creditors' winding up), set aside a transaction providing credit to the debtor company which is or was extortionate. There is a three-year look-back period from the date of commencement of the winding up or Jersey declaration of "*désastre*" during which transactions are susceptible to examination pursuant to this rule (the "**relevant time**"). The Jersey Bankruptcy Law and Jersey Companies Law contain detailed provisions, including (without limitation) those that define what constitutes a transaction which is extortionate.

### **Disclaimer of Onerous Property**

Under Article 15 of the Jersey Bankruptcy Law, the Viscount may within six months following the date of the Jersey declaration of *désastre* and under Article 171 of the Jersey Companies Law, a liquidator may within six months following the commencement of a creditors' winding up, disclaim any onerous property of the company. "Onerous property" is defined to include any moveable property, a contract lease or other immoveable property if it is situated outside of Jersey that is unsalable or not readily saleable or is such that it might give rise to a liability to pay money or perform any other onerous act, and includes an unprofitable contract.

A disclaimer operates to determine, as of the date it is made, the "rights, interests and liabilities of the [company/debtor] in or in respect of the property disclaimed" and "discharge[s] the [company/Viscount] from all liability in respect of [the] property as [of the date of the commencement of the creditors' winding up/from the date of the declaration]" but "shall not, except so far as is necessary for the purpose of releasing the [company/debtor] from liability, affect the rights or liabilities of any other person." A person sustaining loss or

damage as a result of a disclaimer is deemed to be a creditor of the company to the extent of the loss or damage and shall have standing as a creditor in the *désastre* or creditors' winding up. The Jersey Bankruptcy Law and Jersey Companies Law contain detailed provisions, including (without limitation) in relation to the power to disclaim onerous property.

### **Fraudulent Dispositions**

In addition to the Jersey statutory provisions referred to above, there are certain principles of Jersey customary law (for example, a Pauline action) under which dispositions of assets with the intention of defeating creditors' claims may be set aside.

### **Recognition of security in Jersey in an insolvency**

The Jersey Bankruptcy Law establishes a general moratorium which applies on a *désastre*. However, notwithstanding that title and possession of the property of a debtor vest automatically in the Viscount on a Jersey declaration of *désastre*, the moratorium does not prevent a secured party from exercising, without the consent of the Viscount and without an order of the Royal Court, any power of enforcement it may have under Part 7 (Enforcement of Security Interests) of the Jersey Security Law.

Further, the Jersey Security Law provides that if the grantor of a security interest becomes bankrupt or the grantor or the grantor's property is subjected, whether in Jersey or elsewhere, to any other judicial arrangement or proceeding consequent upon insolvency, that shall not affect the power of a secured party to appropriate or sell collateral or otherwise act in relation to collateral under Part 7 (*Enforcement of Security Interests*) of the Jersey Security Law.

The situation where the secured party does not enforce security is not addressed in the Jersey Security Law. In addition, the Jersey Security Law is silent as to the situation where there may be a conflict between the secured party and the Viscount concerning a sale of the collateral (i.e. the secured party has no right under the Jersey Security Law to block or veto a sale by the Viscount).

The Jersey Bankruptcy Law applies in relation to money received by the Viscount in relation to the realisation of property of a debtor.

Where the Viscount is required to be involved in the sale of the secured assets, he has in certain circumstances and subject to a number of exceptions, as a matter of practice, sought to claim his fees (which are currently approximately 10 per cent. of the value of realised assets plus 2.5 per cent. of distributed assets) from such proceeds of sale over and above the costs and expenses of such sale.

Further, whilst there is no statutory recognition of foreign law governed security interests in the event of a *désastre* or creditors' winding up of a Jersey company, from our understanding of the current practice of insolvency officers in Jersey, (and we also note in this regard the provisions of Article 13(2) of the Jersey Security Law which gives statutory recognition to the capacity of a Jersey company to grant security governed by foreign law over property situated outside Jersey) subject to certain exceptions, foreign law governed security interests would (other than in respect of property or assets situated or deemed to be situated in Jersey) be recognised by the Viscount (in the case of a *désastre*) and a liquidator (in the case of a creditors' winding up) to the extent they constitute valid, binding and enforceable security interests in accordance with their governing law.

### **Floating Charges and other security interests governed by foreign law**

Under the laws of Jersey, a person incorporated, resident or domiciled in Jersey is deemed to have capacity to grant security governed by foreign law over property situated outside Jersey, but to the extent that any floating charge or other security interest governed by foreign law is expressed to apply to any asset, property and undertaking of a person incorporated, resident or domiciled in Jersey such floating charge or other security interest governed by foreign law is not likely to be held valid and enforceable by the courts of Jersey in respect of Jersey situs assets.

## **Administrators, Receivers and Statutory and Non-statutory Requests for Assistance**

The Insolvency Act 1986 (either as originally enacted or as amended, including by the provisions of the Enterprise Act 2002) does not apply in Jersey and receivers, administrative receivers and administrators are not part of the laws of Jersey. Accordingly, the courts of Jersey may not recognise the powers of an administrator, administrative receiver or other receiver appointed in respect of Jersey situs assets.

The Royal Court (in its inherent jurisdiction) may, however, under Article 49(1) of the Jersey Bankruptcy Law, assist the courts of prescribed countries and territories, and applying general principles of comity, assist the courts in other jurisdictions, in all matters relating to the insolvency of any person to the extent that the Royal Court thinks fit. These prescribed jurisdictions include the United Kingdom. Further, in doing so, the Royal Court may have regard to the UNCITRAL model law, even though the model law has not been (and is unlikely to be) implemented as a separate law in Jersey.

If insolvency proceedings have been commenced in another jurisdiction in relation to the company, the nature and extent of the cooperation from Jersey is likely to depend on the nature of the requesting country's insolvency regime.

In the case of both statutory and non-statutory requests for assistance, it should not be assumed that the UNCITRAL provisions will automatically be followed as this is a matter for the discretion of the Royal Court. The court's position may also not be in accordance with EU Insolvency Regulation. Jersey does not form part of the European Community for the purposes of implementation of its directions. Accordingly, the EU Insolvency Regulation does not apply as a matter of Jersey domestic law and the automatic test of centre of main interests does not apply.

## **Enforcement of judgments of the High Court of Justice, the Court of Appeal or the Supreme Court in Jersey**

Subject to the provisions of the JRL, a final and conclusive judgment under which a sum of money is payable (not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or penalty) obtained in the High Court of Justice, the Court of Appeal or the Supreme Court in England against a Jersey company, would, on application to the Royal Court, be registered without reconsidering its merits and would thereafter be enforceable. The JRL contains provisions enabling an application to be made to the Royal Court to set aside a judgment registered under the JRL on the following grounds:

- (a) the judgment is not a judgment to which the JRL applies or was registered in contravention of relevant provisions of the JRL; or
- (b) the courts of England had no jurisdiction in the circumstance of the case; or
- (c) the judgment debtor, being the defendant in the proceedings in the original court, did not (notwithstanding that process may have been duly served on the judgment debtor in accordance with English law) receive notice of those proceedings in sufficient time to enable the judgment debtor to defend those proceedings and did not appear; or
- (d) the judgment was obtained by fraud; or
- (e) the enforcement of the judgment would be contrary to public policy in Jersey; or
- (f) the rights under the judgment are not vested in the person by whom the application for registration was made; or
- (g) that matter in dispute in the proceedings in the High Court of Justice in England had previously to the date of the judgment in the High Court of Justice in England been the subject of a final and conclusive judgment by a court having jurisdiction in the matter.

## CERTAIN MATTERS OF ENGLISH LAW

The following is an outline of certain aspects of English law and practice relevant to lending on a secured basis over English real property. It does not constitute a complete summary of currently applicable English law or practice, and should not be treated as a substitute for professional advice. Prospective Noteholders who are in any doubt as to any matter described herein should consult their own professional advisors.

### Types of Security

In England, security may be fixed or floating. A floating charge is a charge over a generic class of assets that are changing from time to time and with which the company has the right to deal. By way of contrast, fixed charges are taken over non-dealing assets.

#### (a) *Mortgage*

English law security over real property typically takes the form of fixed legal charges (i.e. charges by way of legal mortgage). Title to most English property is registered at the Land Registry, but if title to a particular property is unregistered, the granting of a first ranking charge will oblige the property owner to register its title at the Land Registry within strict time limits. Charges over real property in England and Wales must be registered at the Land Registry. Additionally, if the charge is created by a company incorporated in England and Wales it must also be registered within strict time limits at Companies House (i.e., with the Registrar of Companies). In the case of registered land, failure to register the charge at the Land Registry will result in the charge being a mere equitable charge over which subsequent legal charges will take priority. If the charge triggers first registration of title of unregistered land, failure to register within the prescribed time limits will result in the charge creating only a contract to grant a mortgage. Failure to register at Companies House will result in the charge being unenforceable against a liquidator, administrator or any creditor of the mortgagor.

#### (b) *Security over shares*

Loans in respect of commercial property in the United Kingdom are often also secured by a mortgage over the shares in the company that owns the property. Security over registered shares issued by a private company, for example the shares in a wholly-owned subsidiary, is usually "perfected" by the creditor taking possession of the share certificates together with an executed blank transfer form (which would allow the relevant party to complete the formalities of transferring ownership of the shares without any further involvement from the mortgagor for the purpose of causing a sale at a later date to a third party using the proceeds to satisfy the debt). If the registered shares or securities are listed and traded, the creditor is likely to insist on a legal mortgage and on "perfecting" its security by requiring the debtor to transfer title to it or its nominee.

#### (c) *Security over insurances, leases and rent*

Typical security for a mortgage loan will include security assignments of the insurance policies covering the properties. The lender will usually require that the interests of the security trustee be noted on the insurance policies, although on some loans the security trustee is made a co-insured party or more rarely sole loss payee.

Similarly, security assignments of any leases of the property and all rents payable thereunder will also usually be obtained.

#### (d) *Security over bank accounts*

English law allows a special form of security known as a floating charge to be taken over particular types of short-term business assets which are acquired and disposed of on a continuous basis in the course of a business. One of the principal features of the floating charge is that the chargor is free to use and dispose of the charged assets during the course of its business without the need to obtain the consent of or otherwise involve the chargee.

Floating charges are subject to certain limitations from a lender's perspective which are described in more detail below. Lenders have sought to overcome these limitations by seeking to take fixed charges

over such assets. In a series of cases the English courts have laid down the principle that where the chargor of assets is entitled to dispose of them free of the chargee's security without the consent of the chargee, the security in question will be a floating charge regardless of how the charge is described in the charging document.

While initially the abovementioned principles were designed in the context of assets such as the stock-in-trade of manufacturing companies, over time they were expanded to cover fluctuating credit balances in bank accounts as these were seen to have similar features from the point of view of taking security.

In order to establish a fixed charge under English law over a bank account, the security trustee creditor must not only have the right under the terms of the charge to control withdrawals from the account but must also actually exercise this control in practice on an ongoing basis.

Enforcement of a charge over a bank account would usually occur through the appointment of a receiver to realise the asset, collect funds from the account, and use them to repay the debt.

(e) *Floating charge*

A lender will typically seek floating security with respect to a loan. Floating charges can cover all the existing and future property of the borrower, so there is no need to identify and secure each asset when it comes into existence. The distinguishing feature of a floating charge is that the company is free to deal with the charged assets in the ordinary course of business until the floating charge crystallises. This is an objective test as the parties cannot characterise a charge as fixed if in fact the company has the right to deal. To have a fixed charge, the creditor must exercise some degree of control over the asset. Typical floating charge assets are inventory and receivables, as the company must be able to use its inventory and sell its goods free of the security interest, and it must be able to collect receivables in its bank account and use the proceeds to pay its expenses. If the company defaults or the floating charge assets are threatened by execution, the company's right to deal with the floating charge assets is withdrawn and the charge crystallises.

In the context of commercial property lending, mortgages and fixed charges are taken over virtually all of the significant assets of the borrower (other than those assets secured by way of a method referred to above). As such, the purpose of the floating charge is to "sweep up" any residual assets and assets acquired in the future, and to protect against any of the fixed charges which have been taken that prove ineffective.

Floating charges are subject to a number of limitations. Firstly, if the chargor creates a subsequent fixed charge, then the fixed charge will rank ahead of the earlier floating charge, even if the subsequent fixed chargee had notice of the prior floating charge. The company also has apparent authority to create a prior fixed charge over a part of its assets. Secondly, a floating charge has lower priority than a fixed charge and the following are paid out of the assets subject to a floating charge: (i) the expenses of an administration or liquidation; (ii) certain employee wages, benefits and pensions, within limits; and (iii) a fund for unsecured creditors, which is subject to a maximum of £600,000. Thirdly, a floating charge granted within 12 months before the onset of insolvency is invalid except to the extent of new money (or other value) given to the chargor at the same time as (or after) the charge was created. Fourthly, floating charges are often afforded less recognition abroad as a result of local formalities or registration requirements not being complied with or because local creditors have not been given notice of the charge where required by applicable foreign law. Finally, the nature of the charge allows the borrower to dispose of the charged assets free of the lender's interest. As such there is a real possibility that there may be few or no assets subject to the charge at the time of enforcement.

## **Perfection**

(a) *Registration*

A fixed charge created by a company which has been registered at Companies House and, if it relates to land, at the Land Registry, within 21 days of execution of such charge will take priority over subsequent fixed charges, any floating charges and all unsecured creditors, including preferred creditors and, in the event of a liquidation, will also take priority over the liquidator's costs. The holder

of a floating charge will take priority over unsecured creditors, but will rank behind all prior and subsequent fixed charges, the preferential creditors and the unsecured creditors' fund. In addition, a floating charge which has been registered at Companies House within 21 days of execution of such charge will take priority over subsequent floating charges and all unsecured creditors (other than preferential creditors and the unsecured creditors' fund).

Given that English company law allows 21 days from the date of creation of a charge for it to be registered at Companies House, there always remains a possibility that at the time of creation of a charge by a company, a prior charge may be in existence which has not been registered. If such a prior unregistered charge is registered at Companies House within its 21- day period it will take priority over the subsequent charge even if the subsequent charge has been registered first.

Failure to comply will make the charge invalid against a liquidator, administrator and any creditor of the company and the underlying debt automatically becomes due. There are limited exemptions to the obligation to file.

(b) *Notice*

In relation to security over receivables, notice to the third party obligor to the contract is not essential for the effectiveness of the security on the insolvency of the assignor or against its attaching creditors. However, notice is desirable: to ensure that the obligor pays the secured creditor; to fix priorities (which may rank according to the first to give notice); to limit further set-offs by the obligor; and to limit variations of the contract between the obligor and assignor.

(c) *Set-off*

In addition to the above, charges over rights against obligors are subject to rights of set-off between the obligor and the chargor. Although the giving of notice of the charge to the obligor stops most new rights of set-off from accruing, rights of set-off which came into existence prior to the giving of notice will take effective priority over the interests of the chargee. In addition certain rights of set-off which are fundamental to the contract between the obligor and the chargor will continue to accrue even after the giving of notice.

## **Enforcement of Security**

### *Enforcement of Security Prior to Administration or Insolvency of Charging Entity*

There are three principal methods of enforcing English law non-possessory security: foreclosure; orders of sale; and receivership.

(a) *Foreclosure*

Under English law only mortgages allow foreclosure as a method of enforcement. In the context of real property finance, these arise in relation to mortgages of the land itself and mortgages of the shares of the property-owning company. Enforcement is available to a lender through an application to the court for an order which vests the property in the lender. Such an order will have the effect of "foreclosing" any interest that the related mortgagor may have in the related properties. However, in the event that a lender forecloses on a mortgagor's interest in a property it may be liable in respect of claims that are typically made against the owner of such property.

Therefore, the foregoing enforcement procedure is generally avoided in relation to land.

(b) *Orders for sale*

A lender secured by a charge (including a floating charge) or a mortgage over any asset has the right to apply to court for an order for the sale of the charged or mortgaged asset. The proceeds of sale would be applied in satisfaction of the related chargor's or mortgagor's obligations under the related loan agreement.

## *Receivership*

Following a default under a loan or under the security granted in relation to a loan, a lender may be able to appoint a receiver, which can be an appointment over the relevant property or over all of the assets of a corporate borrower. The principal role of a receiver, once appointed, is to obtain satisfaction of the debt due to the appointing creditor.

### *Enforcement of Security Upon the Administration or Insolvency of Charging Entity*

#### (a) *Enforcement during English administration proceedings of entity*

The effect of the statutory moratorium in an English administration proceeding of a company from the lender's perspective is that he is unable to enforce the security granted by such entity for the duration of the administration without the leave of the court or the consent of the administrator. This might compromise the interests of the secured creditor. For example, an administrator may decide that it is in the best interests of the creditors of the borrower to delay the sale of the secured assets. Also, the administrator will have the ability to sell property subject to security in favour of the creditors, but must account to the creditor for the proceeds.

#### (b) *Enforcement of security during English liquidation of entity*

When a winding up order has been made by the court in respect of an English company or a provisional liquidator has been appointed, no action or proceeding will be proceeded with or commenced against the company or its property, except with leave of the court and subject to such terms as the court may impose. Specific court orders can be obtained to stay any actions or proceedings brought against the English company and its property. However, the rights of secured creditors are unaffected and they may still enforce their security rights, for example by the appointment of a receiver over specific property or assets of the company.

#### (c) *Enforcement of security in England upon foreign insolvency*

The English courts are required, subject to limited exceptions, to recognise and give effect to the opening, conduct and closure of "main" insolvency proceedings taking place in accordance with the EU Insolvency Regulation in another Member State, as well as judgments handed down in direct connection with such proceedings. Subject to important exceptions, including those specified below: (i) the law of the Member State in which insolvency proceedings are opened pursuant to the EU Insolvency Regulation is to be applied to those proceedings and is to determine their effect; and (ii) a "liquidator" (as that term is used in the EU Insolvency Regulation) appointed in main proceedings conducted in another Member State is empowered to remove any assets of the debtor company located in England and Wales.

It is the apparent intention of the EU Insolvency Regulation that the application of these rules be circumscribed with respect to security interests, including fixed and floating charge security interests, over assets or rights located in England and Wales. In particular, the EU Insolvency Regulation provides that the opening of insolvency proceedings will not affect the "rights in rem" of creditors or third parties in respect of tangible or intangible, or moveable or immoveable, assets (both specific assets and collections of indefinite assets as a whole which change from time to time) belonging to the debtor which are situated within the territory of another Member State at the time of the opening of the proceedings.



## **USE OF PROCEEDS**

The net proceeds from the issue of the Notes will be approximately £101,620,000 and this sum will be applied by the Issuer to pay the Initial Purchase Price to the Mezzanine Note Sellers for the purchase of the Mezzanine Notes and the interest in the Related Security on the Closing Date pursuant to the Note Sale Agreement.

## **FEES AND EXPENSES**

Fees and expenses relating to the application for admission of the Notes to trading on the regulated market of the Irish Stock Exchange are expected to be approximately €6,641.20.

## UNITED KINGDOM TAXATION

*The following is a general description of certain Irish, United Kingdom and United States tax considerations relating to the Notes based on the Issuer's understanding of current law and practice in Ireland, the United Kingdom and the United States respectively. It does not purport to be a comprehensive description of all Irish, United Kingdom or United States tax considerations which may be relevant to a decision to purchase, own or dispose of the Notes. It applies only to persons who are the absolute beneficial owners of Notes and relates only to the position of persons who hold their notes as investments.*

*Each prospective investor should consult a professional tax adviser with respect to the tax consequences of an investment in, or the acquisition, holding, settlement, redemption and disposal of, the Notes.*

### **Interest on the Notes**

Payments of interest arising in the United Kingdom are generally subject to withholding on account of income tax at the basic rate (currently 20%), subject to any applicable exemption. A number of factors are relevant to a determination that interest arises in the United Kingdom, including without limitation the location of any security and the source of funds for payment of interest.

It is likely that interest on the Notes will be regarded as arising in the United Kingdom. However, the Notes will constitute "quoted Eurobonds" within the meaning of section 987 of the Income Tax Act 2007 (the Act) as long as they are and continue to be listed on a "recognised stock exchange" within the meaning of section 1005 of the Act. In the case of Notes to be traded on the Irish Stock Exchange, which is a recognised stock exchange for these purposes, this condition will be satisfied if the Notes are admitted to listing on the main market of the Irish Stock Exchange and to trading on the Irish Stock Exchange. Accordingly, payments of interest on the Notes may be made without withholding on account of UK income tax provided the Notes remain so listed at the time of payment.

Payments of interest on the Notes may also be made without deduction or withholding on account of income tax if another relief applies under domestic law or such payments are the subject of a direction by HM Revenue & Customs under an applicable double taxation treaty. The withholding obligation is also disapplied in respect of payments to Noteholders who the Issuer reasonably believes are at the time that the relevant payment is made either a UK resident company or a non-UK resident company carrying on a trade in the UK through a permanent establishment and which is within the charge to corporation tax, or fall within various categories enjoying a special tax status (including charities and pension funds), or are partnerships consisting of such persons (unless HM Revenue & Customs direct otherwise, having reasonable grounds for believing the conditions for this exception will not be met at the time the payment is made).

On the basis that interest on the Notes is likely to constitute UK source income for tax purposes it may be subject to income tax by direct assessment even where paid without withholding. However, interest with a UK source received without deduction or withholding on account of UK tax will not be chargeable to UK tax in the hands of a Noteholder who is not resident for tax purposes in the UK unless that Noteholder carries on a trade, profession or vocation in the UK through a UK branch or agency or for holders who are companies through a UK permanent establishment, in connection with which the interest is received or to which the Notes are attributable. There are exemptions for interest received by certain categories of agent (such as some brokers and investment managers).

### **Information Reporting**

HM Revenue & Customs have powers to obtain information and documents relating to the Notes, including in relation to issues of and other transactions in the Notes, interest, payments treated as interest and other payments derived from the Notes. This may include details of the beneficial owners of the Notes, of the persons for whom the Notes are held and of the persons to whom payments derived from the Notes are or may be paid. Information may be obtained from a range of persons including persons who effect or are a party to such transactions on behalf of others, registrars and administrators of such transactions, persons who make, receive or are entitled to receive payments derived from the Notes and persons by or through whom interest and payments treated as interest are paid or credited. Information obtained by HM Revenue & Customs may be provided to tax authorities in other countries.

## **United Kingdom Stamp Duty and Stamp Duty Reserve Tax (SDRT)**

No stamp duty or stamp duty reserve tax is payable on issue or transfer of the Notes.

### **EU Savings Directive**

Under Council Directive 2003/48/EC on the taxation of savings income (the "**EU Savings Directive**"), certain Member States are required to provide to the tax authorities of other Member States details of certain payments of interest or other similar income paid or secured by a person established in a Member State to or for the benefit of an individual resident in another Member State or certain limited types of entities established in another Member State.

On 24 March 2014, the Council of the European Union adopted a Council Directive amending and broadening the scope of the requirements described above (the "**Amending Directive**"). Member States are required to apply these new requirements from 1 January 2017. The changes will expand the range of payments covered by the EU Savings Directive, in particular to include additional types of income payable on securities. The EU Savings Directive will also apply a "look through approach" to payments made via certain persons, entities or legal arrangements (including trusts and partnerships), where certain conditions are satisfied, where an individual resident in a Member State is regarded as the beneficial owner of the payment for the purposes of the EU Savings Directive. This approach may in some cases apply where the person, entity or arrangement is established or effectively managed outside of the European Union.

For a transitional period, Austria is instead required (unless during such period it elects otherwise) to operate a withholding tax in relation to such payments. Luxembourg, which before 1 January 2015 also operated a withholding tax under the transitional rules, has now replaced such withholding tax with the information reporting regime described above. The transitional period will end after agreement on exchange of information is reached between the EU and certain non-EU states. A number of non-EU countries and territories (including Switzerland) have adopted equivalent measures (a withholding system in the case of Switzerland).

However, the European Commission has proposed the repeal of the EU Savings Directive from 1 January 2017 in the case of Austria and from 1 January 2016 in the case of all other Member States (subject to on-going requirements to fulfil administrative obligations such as the reporting and exchange of information relating to, and accounting for withholding taxes on, payments made before those dates). This is to prevent overlap between the EU Savings Directive and a new automatic exchange of information regime to be implemented under Council Directive 2011/16/EU on Administrative Cooperation in the field of Taxation (as amended by Council Directive 2014/107/EU). The proposal also provides that, if it proceeds, Member States will not be required to apply the new requirements of the Amending Directive.

Investors who are in any doubt as to their position should consult their professional advisors.

### **The proposed financial transaction tax (FTT)**

The European Commission has published a proposal (the Commission's Proposal) for a Directive for a common FTT in Belgium, Germany, Estonia, Greece, Spain, France, Italy, Austria, Portugal, Slovenia and Slovakia (the participating Member States).

The Commission's Proposal has very broad scope and could, if introduced, apply to certain dealings in the Notes (including secondary market transactions) in certain circumstances.

Under the Commission's Proposal, the FTT could apply, in certain circumstances, to persons both within and outside of the participating Member States. Generally, it would apply to certain dealings in the Notes where at least one party is a financial institution, and at least one party is established in a participating Member State. A financial institution may be, or be deemed to be, "established" in a participating Member State in a broad range of circumstances, including (a) by transacting with a person established in a participating Member State or (b) where the financial instrument which is subject to the dealings is issued in a participating Member State.

Joint statements issued by participating Member States indicated an intention to implement the FTT by 1 January 2016.

However, the FTT proposal remains subject to negotiation between the participating Member States, and the scope of any such tax is uncertain. Additional EU Member States may decide to participate.

Prospective holders of the Notes are strongly advised to seek their own professional advice in relation to the FTT.

## IRISH TAXATION

The following is a summary of the principal Irish tax consequences for individuals and companies of ownership of the Notes based on the laws and practice of the Irish Revenue Commissioners currently in force in Ireland and may be subject to change. It deals with Noteholders who beneficially own their Notes as an investment. Particular rules not discussed below may apply to certain classes of taxpayers holding Notes, such as dealers in securities, trusts etc. The summary does not constitute tax or legal advice and the comments below are of a general nature only. Prospective Noteholders should consult their professional advisers on the tax implications of the purchase, holding, redemption or sale of the Notes and the receipt of interest thereon under the laws of their country of residence, citizenship or domicile.

### Taxation of Noteholders

#### *Withholding Tax*

In general, tax at the standard rate of income tax (currently 20 per cent.) is required to be withheld from payments of Irish source interest which should include interest payable on the Notes. The Issuer will not be obliged to make a withholding or deduction for or on account of Irish income tax from a payment of interest on a Note so long as the interest paid on the relevant Note falls within one of the following categories and meets the relevant conditions:

#### 1. **Interest paid on a quoted Eurobond**

The Notes are quoted Eurobonds i.e. securities which are issued by a company (such as the Issuer), listed on a recognised stock exchange (such as the Irish Stock Exchange) and which carry a right to interest. Provided that the Notes issued carry an amount in respect of interest and are listed on the Irish Stock Exchange (or any other recognised stock exchange), interest paid on them can be paid free of withholding tax where:

- (a) the person by or through whom the payment is made is not in Ireland, or if such person is in Ireland, either:
  - (i) the Notes are held in a clearing system recognised by the Irish Revenue Commissioners (Euroclear and Clearstream, Luxembourg are, among others, so recognised); or
  - (ii) the person who is the beneficial owner of the Notes and who is beneficially entitled to the interest is not resident in Ireland and has made a declaration to a relevant person (such as a paying agent located in Ireland) in the prescribed form; and
- (b) to the extent that the interest is dependent on the results of the Issuer's business or represents more than a reasonable commercial return for use of that principal, one of the following conditions is satisfied:
  - (i) the Noteholder is resident for tax purposes in Ireland or, if not so resident, is otherwise within the charge to corporation tax in Ireland in respect of the interest or other distribution; or
  - (ii) the interest is, under the laws of a relevant territory, subject, without any reduction computed by reference to the amount of such interest or other distribution, to a tax in a relevant territory which corresponds to income tax or corporation tax in Ireland and which generally applies to profits, income or gains received in that territory, by persons, from sources outside that territory; or
  - (iii) the Noteholder is not a company which, directly or indirectly, controls the Issuer, is controlled by the Issuer, or is controlled by a company which also directly or indirectly controls the Issuer, and neither the Noteholder, nor any person connected with the Noteholder, is a person or persons:
    - (A) from whom the Issuer has acquired assets;

- (B) to whom the Issuer has made loans or advances; or
- (C) with whom the Issuer has entered into a specified agreement,

where the aggregate value of such assets, loans, advances or specified agreements represents not less than 75 per cent. of the aggregate value of the assets of the Issuer; or

- (iv) at the time of issue of the Notes, the Issuer was not in possession, or aware, of any information which could reasonably be taken to indicate whether or not the interest or other distribution would be subject, without any reduction computed by reference to the amount of such interest or other distribution, to tax in a relevant territory which generally applies to profits, income or gains received in that territory by persons from sources outside that territory,

where the term:

**"relevant territory"** means a Member State of the European Union (other than Ireland) or a country with which Ireland has signed a Double Tax Treaty ("**Relevant Territory**"); and

**"specified agreement"** means any agreement, arrangement or understanding that:

- (A) provides for the exchange, on a fixed or contingent basis, of one or more payments based on the value, rate or amount of one or more interest or other rates, currencies, commodities, securities, instruments of indebtedness, indices, quantitative measures, or other financial or economic interests or property of any kind, or any interest therein or based on the value thereof, and
- (B) transfers to a person who is a party to the agreement, arrangement or understanding or to a person connected with that person, in whole or in part, the financial risk associated with a future change in any such value, rate or amount without also conveying a current or future direct or indirect ownership interest in an asset (including any enterprise or investment pool) or liability that incorporates the financial risk so transferred.

Thus, so long as the Notes continue to be quoted on the Irish Stock Exchange, are held in Euroclear and/or Clearstream, Luxembourg, and, where relevant, one of the conditions set out in paragraph 1(b) above is met, interest on the Notes can be paid by any paying agent acting on behalf of the Issuer without any withholding or deduction for or on account of Irish income tax. If the Notes continue to be quoted but cease to be held in a recognised clearing system, interest on the Notes may be paid without any withholding or deduction for or on account of Irish income tax provided such payment is made through a paying agent outside Ireland and one of the conditions set out in paragraph 1(b) above is met.

## 2. **Interest paid by a qualifying company in the ordinary course of business to certain non-residents**

If, for any reason, the quoted Eurobond exemption referred to above ceases to apply, interest payments may still be made free of withholding tax provided that:

- (a) either:
  - (i) the Issuer remains a "qualifying company" as defined in Section 110 of the TCA and the Noteholder is a person which is resident in a Relevant Territory, and where the recipient is a company, the interest is not paid to it in connection with a trade or business carried on by it in Ireland through a branch or agency; or

- (ii) the interest is paid in the ordinary course of the Issuer's business and the Noteholder is:
  - (A) a body corporate which (1) by virtue of the law of a Relevant Territory, is resident in the Relevant Territory for the purposes of tax, and that Relevant Territory imposes a tax which generally applies to interest receivable in that Relevant Territory by bodies corporate from sources outside that Relevant Territory, and (2) does not receive the interest payment in connection with a trade or business which is carried on in Ireland by it through a branch or agency; or
  - (B) a body corporate where (1) the interest payable to it is exempted from the charge to income tax under a double taxation treaty in force between Ireland and another territory, or would be exempted from the charge to income tax if a double taxation treaty made between Ireland and another territory on or before the date of payment, but not yet in force, had the force of law when the interest was paid, and (2) it does not receive the interest payment in connection with a trade or business which is carried on in Ireland by it through a branch or agency; and
- (b) to the extent that the interest is dependent on the results of the Issuer's business or represents more than a reasonable commercial return for use of that principal, one of the following conditions is satisfied:
  - (i) the Noteholder is a pension fund, government body or other person (which satisfies paragraph 1(b)(iii) above), who is resident in a Relevant Territory and who, under the laws of that territory, is exempted from tax which corresponds to income tax or corporation tax in Ireland and which generally applies to profits, income or gains in that territory; or
  - (ii) the interest or other distribution is subject, without any reduction computed by reference to the amount of such interest or other distribution, to a tax in a Relevant Territory which generally applies to profits, income or gains received in that territory, by persons, from sources outside that territory.

The Issuer must be satisfied that the respective terms of the exemptions are satisfied. The test of residence in each case is determined by reference to the law of the Relevant Territory in which the Noteholder claims to be resident.

For other holders of Notes, interest may be paid free of withholding tax if the Noteholder is resident in a Double Tax Treaty country and under the provisions of the relevant treaty with Ireland such Noteholder is exempt from Irish tax on the interest and clearance in the prescribed form has been received by the Issuer before the interest is paid.

#### *Encashment Tax*

In certain circumstances (eg quoted Eurobonds), Irish tax will be required to be withheld at the standard rate of income tax (currently 20 per cent.) from interest on any Note, where such interest is collected or realised by a bank or encashment agent in Ireland on behalf of any Noteholder. There is an exemption from encashment tax where the beneficial owner of the interest is not resident in Ireland and has made a declaration to this effect in the prescribed form to the encashment agent or bank.

#### *Income Tax, PRSI and Universal Social Charge*

Notwithstanding that a Noteholder may receive interest on the Notes free of withholding tax, the Noteholder may still be liable to pay Irish tax with respect to such interest. Noteholders resident or ordinarily resident in Ireland who are individuals may be liable to pay Irish income tax, pay-related social insurance (PRSI) contributions and the universal social charge in respect of interest they receive on the Notes.



Interest paid on the Notes may have an Irish source and therefore may be within the charge to Irish income tax, notwithstanding that the Noteholder is not resident in Ireland. In the case of Noteholders who are non-resident individuals such Noteholders may also be liable to pay the universal social charge in respect of interest they receive on the Notes.

Ireland operates a self-assessment system in respect of tax and any person, including a person who is neither resident nor ordinarily resident in Ireland, with Irish source income comes within its scope.

There are a number of exemptions from Irish income tax available to certain non-residents. Firstly, interest payments paid by the Issuer are exempt from income tax so long as the Issuer is a qualifying company for the purposes of Section 110 of the TCA, the recipient is not resident in Ireland and is resident in a Relevant Territory and, the interest is paid out of the assets of the Issuer. Secondly, interest payments made by the Issuer in the ordinary course of its trade or business to a company are exempt from income tax provided the recipient company is not resident in Ireland and is either resident for tax purposes in a Relevant Territory which imposes a tax that generally applies to interest receivable in that territory by companies from sources outside that territory or the interest is exempted from the charge to Irish income tax under the terms of a double tax agreement which is either in force or which will come in to force once all ratification procedures have been completed. Thirdly, interest paid by the Issuer free of withholding tax under the quoted Eurobond exemption is exempt from income tax where the recipient is a person not resident in Ireland and resident in a Relevant Territory or is a company not resident in Ireland which is under the control, whether directly or indirectly, of person(s) who by virtue of the law of a Relevant Territory is resident for the purposes of tax in a Relevant Territory and are not under the control of person(s) who are not so resident, or is a company not resident in Ireland where the principal class of shares of the company or its 75% parent is substantially and regularly traded on a recognised stock exchange. For the purposes of these exemptions and where not specified otherwise, residence is determined under the terms of the relevant double taxation agreement or in any other case, the law of the country in which the recipient claims to be resident. Interest falling within the above exemptions is also exempt from the universal social charge.

Notwithstanding these exemptions from income tax, a corporate recipient that carries on a trade in Ireland through a branch or agency in respect of which the Notes are held or attributed, may have a liability to Irish corporation tax on the interest.

Relief from Irish income tax may also be available under the specific provisions of a Double Tax Treaty between Ireland and the country of residence of the recipient.

Interest on the Notes which does not fall within the above exemptions is within the charge to income tax, and, in the case of Noteholders who are individuals, the charge to the universal social charge. In the past the Irish Revenue Commissioners have not pursued liability to income tax in respect of persons who are not regarded as being resident in Ireland except where such persons have a taxable presence of some sort in Ireland or seek to claim any relief or repayment in respect of Irish tax. However, there can be no assurance that the Irish Revenue Commissioners will apply this treatment in the case of any Noteholder.

#### *Capital Gains Tax*

A Noteholder will not be subject to Irish tax on capital gains on a disposal of Notes unless such Noteholder is either resident or ordinarily resident in Ireland or carries on a trade in Ireland through a branch or agency in respect of which the Notes were used or held.

#### *Capital Acquisitions Tax*

A gift or inheritance comprising of Notes will be within the charge to capital acquisitions tax (which subject to available exemptions and reliefs, is currently levied at 33 per cent.) if either (i) the disponer or the donee/successor in relation to the gift or inheritance is resident or ordinarily resident in Ireland (or, in certain circumstances, if the disponer is domiciled in Ireland irrespective of his residence or that of the donee/successor) on the relevant date or (ii) if the Notes are regarded as property situate in Ireland (i.e. if the Notes are physically located in Ireland or if the register of the Notes is maintained in Ireland).

### *Stamp Duty*

No stamp duty or similar tax is imposed in Ireland (on the basis of an exemption provided for in Section 85(2)(c) of the Stamp Duties Consolidation Act, 1999 so long as the Issuer is a qualifying company for the purposes of Section 110 of the TCA and the proceeds of the Notes are used in the course of the Issuer's business) on the issue, transfer or redemption of the Notes.

### *Automatic Exchange of Information for Tax Purposes*

Pursuant to EU Council Directive 2003/48/EC on the taxation of savings income (the "**Savings Tax Directive**"), EU Member States were required to provide to the tax authorities of another EU Member State details of payments of interest (or similar income which may include distributions by a company) paid by a person within its jurisdiction to an individual resident in that other EU Member State.

On 10 November 2015 the Council of the European Union adopted a Council Directive repealing the Savings Tax Directive from 1st January, 2017, in the case of Austria and from 1st January, 2016, in the case of all other EU Member States (subject to on-going requirements to fulfil administrative obligations such as the reporting and exchange of information relating to, and accounting for withholding taxes on, payments made before those dates).

This is to prevent overlap between the Savings Tax Directive and a new automatic exchange of information regime to be implemented under Council Directive 2011/16/EU on Administrative Cooperation in the field of Taxation (as amended by Council Directive 2014/107/EU ("**DAC2**"). DAC2 provides for the implementation among EU Member States (and certain third countries that have entered into information exchange agreements) of the automatic exchange of information in respect of various categories of income and capital and broadly encompasses the regime known as the Common Reporting Standard ("**CRS**") published by the OECD as a new global standard for the automatic exchange of information between tax authorities in participating jurisdictions. DAC2 is generally broader in scope than the Savings Tax Directive, although it does not impose withholding taxes.

Under the CRS, governments of participating jurisdictions (currently more than 100 jurisdictions) are required to collect detailed information to be shared with other jurisdictions annually. A group of over 40 countries, including Ireland, have committed to the early adoption of the CRS from 1 January 2016 with the first data exchanges taking place in September 2017. All EU Member States, except Austria introduced the CRS from 1 January 2016. Austria will introduce CRS from 1 January 2017.

CRS is implemented in Ireland pursuant to the Returns of Certain Information by Reporting Financial Institutions Regulations 2015, S.I. 583 of 2015, made under Section 891F of the Taxes Act.

DAC2 is implemented in Ireland pursuant to the Mandatory Automatic Exchange of Information in the Field of Taxation Regulations of 2015, S.I. No. 609 of 2015 made under Section 891G of the Taxes Act.

Pursuant to these regulations, the Issuer may be required to obtain and report to the Revenue Commissioners annually certain financial account and other information for all new and existing accountholders in respect of Notes issued by Issuer (and, in certain circumstances, their controlling persons). The first returns must be submitted on or before 30 June 2017 with respect to the year ended 31 December 2016. The information will include amongst other things, details of the name, address, taxpayer identification number ("**TIN**"), place of residence and, in the case of accountholders who are individuals, the date and place of birth, together with details relating to payments made to accountholders and their holdings. This information may be shared with tax authorities in other EU Member States (and in certain third countries subject to the terms of Information Exchange Agreements entered into with those countries) and jurisdictions which implement the CRS.

## FOREIGN ACCOUNT TAX COMPLIANCE ACT

FATCA imposes a new reporting regime and potentially a 30 per cent. withholding tax with respect to certain payments to (i) any non-U.S. financial institution (a "foreign financial institution", or "**FFI**" (as defined by FATCA)) that does not become a "**Participating FFI**" by entering into an agreement with the U.S. Internal Revenue Service (the "**IRS**") to provide the IRS with certain information in respect of its account holders and investors or is not otherwise exempt from or deemed to be in compliance with FATCA and (ii) any investor (unless otherwise exempt from FATCA) that does not provide information sufficient to determine whether the investor is a U.S. person or should otherwise be treated as holding a "United States account" of the Issuer (a "**Recalcitrant Holder**"). The Issuer may be classified as an FFI.

The new withholding regime is now in effect for payments from sources within the United States and will apply to "foreign passthru payments" (a term not yet defined) no earlier than 1 January 2017. This withholding would potentially apply to payments in respect of (i) any Notes characterised as debt (or which are not otherwise characterised as equity and have a fixed term) for U.S. federal tax purposes that are issued after the "**grandfathering date**", which is the date that is six months after the date on which final U.S. Treasury regulations defining the term foreign passthru payment are filed with the Federal Register, or which are materially modified after the grandfathering date and (ii) any Notes characterised as equity or which do not have a fixed term for U.S. federal tax purposes, whenever issued. Consequently, if the Notes are characterised as debt for U.S. federal tax purposes, withholding under FATCA would not apply to foreign passthru payments made in respect of the Notes absent a material modification or further issuance after the grandfathering date.

The United States and a number of other jurisdictions have announced their intention to negotiate intergovernmental agreements to facilitate the implementation of FATCA (each, an "**IGA**"). Pursuant to FATCA and the "Model 1" and "Model 2" IGAs released by the United States, an FFI in an IGA signatory country could be treated as a "Reporting FI" not subject to withholding under FATCA on any payments it receives. Further, an FFI in an IGA jurisdiction would generally not be required to withhold under FATCA or an IGA (or any law implementing an IGA) (any such withholding being "**FATCA Withholding**") from payments it makes. Under each Model IGA, a Reporting FI would still be required to report certain information in respect of its account holders and investors to its home government or to the IRS. The United States and Ireland have entered into an agreement (the "**U.S.-Ireland IGA**") based largely on the Model 1 IGA.

If the Issuer is treated as a Reporting FI pursuant to the U.S.-Ireland IGA, it does not anticipate that it will be obliged to deduct any FATCA Withholding on payments it makes. There can be no assurance, however, that the Issuer will be treated as a Reporting FI, or that it would in the future not be required to deduct FATCA Withholding from payments it makes. Accordingly, the Issuer and financial institutions through which payments on the Notes are made may be required to withhold FATCA Withholding if (i) any FFI through or to which payment on such Notes is made is not a Participating FFI, a Reporting FI, or otherwise exempt from or in deemed compliance with FATCA or (ii) an investor is a Recalcitrant Holder.

Whilst the Notes are in global form and held within the Clearing Systems, it is expected that FATCA will not affect the amount of any payments made under, or in respect of, the Notes by the Issuer, any Paying Agent or the common depository, given that each of the entities in the payment chain between the Issuer and the participants in the Clearing Systems is a major financial institution whose business is dependent on compliance with FATCA and that any alternative approach introduced under an IGA will be unlikely to affect the Notes. The documentation expressly contemplates the possibility that the Notes may go into definitive form and therefore that they may be taken out of the Clearing Systems. If this were to happen, then a non-FATCA – compliant holder could be subject to FATCA Withholding. However, definitive Notes will only be printed in remote circumstances.

## SUBSCRIPTION AND SALE

Cheyne Capital Management (UK) LLP (the "**Lead Manager**") has agreed, pursuant to a subscription agreement dated on or about the Closing Date (the "**Subscription Agreement**"), between the Lead Manager and the Issuer, subject to certain conditions, that the Lead Manager will procure subscriptions for the Notes at 100 per cent. of their principal amount.

The Subscription Agreement is subject to a number of conditions and may be terminated by the Lead Manager in certain circumstances prior to payment to the Issuer. The Issuer has agreed to indemnify the Lead Manager against certain liabilities in connection with the offer and sale of the Notes.

The following acknowledgments, agreements, undertakings and representations have been given by the Lead Manager on a several and not a joint basis.

### **Prohibition of Sales to EEA Retail Investors**

The Lead Manager has represented in the Subscription Agreement and agreed that it has not offered, sold or otherwise made available and will not offer, sell or otherwise make available any Notes to any retail investor in the European Economic Area. For the purposes of this provision, the expression "**retail investor**" means a person who is one (or more) of the following:

- (a) a retail client as defined in point (11) of Article 4(1) of Directive 2014/65/EU (as amended, "MiFID II"); or
- (b) a customer within the meaning of Directive 2002/92/EC (as amended, the "Insurance Mediation Directive"), where that customer would not qualify as a professional client as defined in point (10) of Article 4(1) of MiFID II.

### **United States of America**

The Lead Manager under the Subscription Agreement has acknowledged that the Notes have not been and will not be registered under the United States Securities Act of 1933, as amended (the "**Securities Act**") and may not be offered or sold within the United States or to, or for the account or benefit of, U.S. Persons. The Lead Manager under the Subscription Agreement represents, warrants and agrees that it has not offered or sold, and will not offer or sell, any Notes constituting part of its allotment within the United States or to, or for the account or benefit of, U.S. Persons. The Lead Manager also represents, warrants and agrees under the Subscription Agreement that it has offered and sold the Notes, and will offer and sell the Notes (i) as part of its distribution at any time and (ii) otherwise until 40 days after the later of the commencement of the offering of the Notes and the Closing Date (the "**distribution compliance period**") only in accordance with Rule 903 of Regulation S under the Securities Act. The Lead Manager agrees that, at or prior to confirmation of sale of the Notes, it will have sent to each distributor, dealer or person receiving a selling concession, fee or other remuneration that purchases Notes from it during the distribution compliance period a confirmation or notice to substantially the following effect:

"The Securities covered hereby have not been registered under the U.S. Securities Act of 1933, as amended (the Securities Act), and may not be offered and sold within the United States or to, or for the account or benefit of, U.S. Persons. Terms used above have the meaning given to them by Regulation S."

Defined terms used above have the meaning given to them by Regulation S.

The Lead Manager under the Subscription Agreement represents and agrees that neither it, its affiliates nor any persons acting on its or its affiliates' behalf have engaged or will engage in any directed selling efforts (as defined in Regulation S under the Securities Act) with respect to the Notes, and it and they have complied and will comply with the Offering Restrictions (as defined in Regulation S under the Securities Act).

The Lead Manager under the Subscription Agreement represents, warrants and agrees that it has and throughout the restricted period will have in effect procedures reasonably designed to ensure that its employees or agents who are directly engaged in selling the Notes are aware that the Notes may not be offered or sold to a person who is within the United States or their possessions or to a U.S. Person.

The Lead Manager, under the Subscription Agreement represents that it is acquiring Notes for purposes of resale in connection with their original issuance and that if it retains any Notes for its own account, it will only do so in accordance with the requirements of U.S. Treas. Reg. §1.163-5(c)(2)(i)(D)(6).

The Lead Manager under the Subscription Agreement agrees that, with respect to each affiliate that acquires from it Notes for the purpose of offering or selling such Notes during the restricted period, they either (i) repeat and confirm the representations and agreements contained in the preceding two paragraphs, on its behalf, or (ii) will obtain from such affiliate for the benefit of the Issuer the representations and agreements contained in the preceding two paragraphs.

### **United Kingdom**

The Lead Manager has represented and agreed that except as permitted by the Subscription Agreement:

- (a) it has only communicated or caused to be communicated and will only communicate or cause to be communicated any invitation or inducement to engage in investment activity (within the meaning of Section 21 of the Financial Services and Markets Act 2000, as amended ("**FSMA**")) received by them in connection with the issue or sale of the Notes in circumstances in which Section 21(1) of the FSMA does not apply to the Issuer; and
- (b) it has complied and will comply with all applicable provisions of the FSMA with respect to anything done by it in relation to the Notes in, from or otherwise involving the United Kingdom.

### **Ireland**

#### *Subscription and Sale: Ireland*

The Lead Manager has further represented and agreed that:

- (a) it will not underwrite the issue of, or place or otherwise act in respect of any Notes other than in compliance with the provisions of the Market Abuse (Directive 2003/6/EC) Regulations 2005 (as amended) (and Regulation (EU) No. 259/2014 of the European Parliament and of the Council of 16 April 2014 (the "**Market Abuse Regulation**")) and any rules issued under Section 1370 of the Companies Act 2014 by the Central Bank and will assist the Issuer in complying with its obligations thereunder;
- (b) it will not underwrite the issue of, or place the Notes, otherwise than in conformity than with the provisions of the European Communities (Markets in Financial Instruments) Regulations 2007 (Nos. 1 to 3), as amended, including, without limitation, Regulations 7 and 152 thereof and any codes of conduct used in connection therewith and the provisions of the Investor Compensation Act 1998 (as amended) of Ireland;
- (c) it will not underwrite the issue of, or place, the Notes, otherwise than in conformity with the provisions of the Companies Act 2014, the Central Bank Acts 1942-2015 (as amended), and any codes of conduct rules made under Section 117(1) of the Central Bank Act 1989; and
- (d) it will not underwrite the issue of, or place the Notes, otherwise than in conformity with the provisions of the Prospectus Directive (Directive 2003/71/EC) Regulations 2005 (as amended) and any Central Bank rules issued and/or in force pursuant to Section 1363 of the Companies Act 2014,

as each of the foregoing may be amended, restated, varied, supplemented and/or otherwise replaced from time to time.

#### *General*

Other than the approval by the Central Bank of this Offering Circular as a prospectus in accordance with the requirements of the Prospectus Directive and implementing measures in Ireland, application having been made for the Notes to be admitted to the Official List of the Irish Stock Exchange and to trading on its regulated market and the filing of this Offering Circular as a prospectus with the Companies Registration Office in Ireland, no action is being taken in any jurisdiction that would or is intended to permit a public offering of the

Notes, or the possession, circulation or distribution of this Offering Circular or any other material relating to the Issuer or the Notes in any jurisdiction where action for that purpose is required. This Offering Circular does not constitute, and may not be used for the purpose of, an offer or solicitation in or from any jurisdiction where such an offer or solicitation is not authorised. Accordingly, the Notes may not be offered or sold, directly or indirectly, and neither this Offering Circular nor any other offering material or advertisement in connection with the Notes may be distributed or published in or from any country or jurisdiction, except under circumstances that will result in compliance with any applicable rules and regulations of any such country or jurisdiction.

The Lead Manager has undertaken not to offer or sell any of the Notes, or to distribute this document or any other material relating to the Notes, in or from any jurisdiction except under circumstances that will result in compliance with applicable law and regulations.

## GENERAL INFORMATION

1. The issue of the Notes was authorised by resolution of the board of directors of the Issuer passed on 16 February 2017.
2. It is expected that admission of the Notes to the Official List of the Irish Stock Exchange and to trading on its regulated market will be granted on or about the Closing Date, subject only to the issue of the Global Note. The listing of the Notes will not occur if the Global Note is not issued. Transactions will normally be effected for sterling in sterling and for delivery on the third working day after the day of the transaction.
3. The Global Note has been accepted for clearance through Euroclear and Clearstream, Luxembourg as follows:

<b>Common Code</b>	<b>ISIN</b>
156488291	XS1564882915

4. No statutory or non-statutory accounts in respect of any financial year of the Issuer have been prepared. For so long as the Notes are admitted on the Official List of the Irish Stock Exchange and to trading on its regulated market, the most recently published audited annual accounts of the Issuer from time to time will be available at the specified office of the Paying Agent. The Issuer does not publish interim accounts.
5. The Issuer is not, and has not been, involved in any governmental, legal or arbitration proceedings (including any such proceedings which are pending or threatened of which the Issuer is aware) which may have, or have had, since the date of its incorporation, a significant effect on the Issuer's financial position or profitability.
6. Since the date of its incorporation, the Issuer has entered into the Subscription Agreement being a contract entered into other than in its ordinary course of business.
7. Copies of the following documents may be inspected by Noteholders in physical form during usual business hours on any week day (excluding Saturdays, Sundays, and public holidays) and upon request by Noteholders at the specified offices of the Principal Paying Agent and at the registered office of the Issuer for so long as any of the Notes are listed on the Irish Stock Exchange:
  - (a) the Constitution of the Issuer;
  - (b) the following documents and any amendments thereto from time to time:
    - (i) the Note Trust Deed;
    - (ii) the Deed of Charge and Assignment;
    - (iii) the Cash Management Agreement;
    - (iv) the Issuer Corporate Services Agreement;
    - (v) the Agency Agreement;
    - (vi) the Master Definitions and Construction Schedule;
    - (vii) the Mezzanine Note Agent Letter Agreement; and
    - (viii) the Settlement Agency Agreement;
  - (c) the Initial Valuation; and

(d) the Mezzanine Note Issuance Agreement (and any amendments thereto from time to time),

save that any such document will, only be available for inspection during the abovementioned hours at the specified offices of the Principal Paying Agent and at the registered office of the Issuer and in no circumstances will copies of the same be available physically, electronically or through any website.

For the purposes of this paragraph 7, only those Noteholders which have satisfied the Principal Paying Agent in accordance with Condition 12(d)(iv) (*Note Trustee Determinations*) and Condition 12(e) (*Disenfranchised Holders*) that they are a Noteholder will be entitled to inspect copies of the documents referred to above.

8. The Note Trust Deed and the Deed of Charge and Assignment will provide that the Note Trustee and the Issuer Security Trustee may rely on reports or other information from professional advisors or other experts (whether addressed to or obtained by the Issuer, the Note Trustee, the Issuer Security Trustee or any other person) in accordance with the provisions of the Note Trust Deed and the Deed of Charge and Assignment respectively, whether or not such report or other information or engagement letter or other document entered into by the Note Trustee or the Issuer Security Trustee (as the case may be) and the relevant person in connection thereto, contains any monetary or other unit as the liability of the relevant professional advisor or expert.
9. Except as is outlined in the sections of this Offering Circular entitled "*CASH MANAGEMENT*", the Issuer does not intend to provide any post-issuance information in relation to the Notes.
10. No website referred to in this Offering Circular forms part of this Offering Circular for the purposes of the listing of the Notes on the Irish Stock Exchange or for the purposes of the approval of this Offering Circular as a Prospectus.
11. Savills, the Valuer who carried out the Initial Valuation, is a member of the RICS. Its registered address is 33 Margaret Street, London W1G 0JD.
12. McCann Fitzgerald Listing Services Limited is acting solely in its capacity as listing agent for the Issuer in relation to the Notes and is not itself seeking admission of the Notes to the Official List of the Irish Stock Exchange or to trading on the regulated market of the Irish Stock Exchange for the purposes of the Prospectus Directive.



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**THE ISSUER**

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**THE OPERATING BANK, THE PRINCIPAL PAYING AGENT,  
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