

## IMPORTANT NOTICE

### **NOT FOR DISTRIBUTION TO ANY U.S. PERSON OR TO ANY PERSON OR ADDRESS IN THE U.S.**

**IMPORTANT: You must read the following before continuing.** The following applies to the offering circular attached to this electronic transmission and you are therefore advised to read this carefully before reading, accessing or making any other use of the preliminary offering circular. In assessing the offering circular, you agree to be bound by the following terms and conditions, including any modifications to them any time you receive any information from us as a result of such access.

NOTHING IN THIS ELECTRONIC TRANSMISSION CONSTITUTES AN OFFER TO SELL OR THE SOLICITATION OF AN OFFER TO BUY THE SECURITIES OF THE ISSUER. THE FOLLOWING OFFERING CIRCULAR MAY NOT BE FORWARDED OR DISTRIBUTED TO ANY OTHER PERSON AND MAY NOT BE REPRODUCED IN ANY MANNER WHATSOEVER, AND IN PARTICULAR, MAY NOT BE FORWARDED TO ANY U.S. PERSON OR TO ANY U.S. ADDRESS. ANY FORWARDING, DISTRIBUTION OR REPRODUCTION OF THIS DOCUMENT IN WHOLE OR IN PART IS UNAUTHORISED. FAILURE TO COMPLY WITH THIS DIRECTIVE MAY RESULT IN A VIOLATION OF THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE SECURITIES ACT) OR THE APPLICABLE LAWS OF OTHER JURISDICTIONS.

This offering circular has been delivered to you on the basis that you are a person into whose possession this offering circular may be lawfully delivered in accordance with the laws of the jurisdiction in which you are located. By accessing the offering circular, you shall be deemed to have confirmed and represented to us that (a) you have understood and agree to the terms set out herein, (b) you consent to delivery of the offering circular by electronic transmission, (c) you are not a U.S. person (within the meaning of Regulation S under the Securities Act) or acting for the account or benefit of a U.S. person and the electronic mail address that you have given to us and to which this e-mail has been delivered is not located in the United States, its territories and possessions (including Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, Wake Island and the Northern Mariana Islands) or the District of Columbia and (d) if you are a person in the United Kingdom, then you are a person who (i) has professional experience in matters relating to investments or (ii) is a high net worth entity falling within Article 49(2)(a) to (d) of the Financial Services and Markets Act (Financial Promotion) Order 2001.

This offering circular has been sent to you in an electronic form. You are reminded that documents transmitted via this medium may be altered or changed during the process of electronic transmission and consequently none of Opera Finance (Fosse Park) plc, Eurohypo AG, London Branch or Dresdner Bank AG London Branch (nor any person who controls it nor any director, officer, employee nor agent of it or affiliate of any such person) accepts any liability or responsibility whatsoever in respect of any difference between the offering circular distributed to you in electronic format and the hard copy version available to you on request from Dresdner Bank AG London Branch.



# Opera Finance (Fosse Park) plc

(Incorporated with limited liability in England and Wales with registration number 5403206)

## £235,000,000 Commercial Mortgage Backed Floating Rate Notes Due April 2014

Opera Finance (Fosse Park) plc (the **Issuer**) will issue the £164,000,000 Class A Commercial Mortgage Backed Floating Rate Notes due April 2014 (the **Class A Notes**), the £23,880,000 Class B Commercial Mortgage Backed Floating Rate Notes due April 2014 (the **Class B Notes**), the £21,560,000 Class C Commercial Mortgage Backed Floating Rate Notes due April 2014 (the **Class C Notes**) and the £25,560,000 Class D Commercial Mortgage Backed Floating Rate Notes due April 2014 (the **Class D Notes** and, together with the Class A Notes, the Class B Notes and the Class C Notes, the **Notes**) on 20 April 2005 (or such later date as the Issuer may agree with the Note Arranger and the Sole Bookrunner (each as defined below)) (the **Closing Date**).

The Issuer has applied to the Irish Stock Exchange Limited (the **Irish Stock Exchange**) for the Notes to be admitted to the Official List of the Irish Stock Exchange. A copy of this Offering Circular, which comprises approved listing particulars with regard to the Issuer and the Notes in accordance with requirements of the European Communities (Stock Exchange) Regulations, 1984 (as amended) of Ireland (the **Regulations**), has been delivered to the Registrar of Companies in Ireland in accordance with the Regulations.

The Class A Notes, the Class B Notes, the Class C Notes and the Class D Notes are expected, on issue, to be assigned the relevant ratings set out opposite the relevant class in the table below by Fitch Ratings Ltd. (**Fitch**) and Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc. (**S&P** and, together with Fitch, the **Rating Agencies**). **A security rating is not a recommendation to buy, sell or hold securities and may be subject to revision, suspension or withdrawal at any time by one or more of the assigning rating organisations.** The ratings from the Rating Agencies only address the likelihood of timely receipt by any Noteholder of interest on the Notes and the likelihood of receipt by any Noteholder of principal of the Notes by the Final Maturity Date (as defined below).

Class	Initial Principal Amount	Margin (per cent.)	Anticipated Ratings	
			Fitch	S&P
Class A	£164,000,000	0.18	AAA	AAA
Class B	£23,880,000	0.26	AA	AA
Class C	£21,560,000	0.45	A	A
Class D	£25,560,000	0.78	BBB	BBB

Interest on the Notes will be payable quarterly in arrear in pounds sterling on the first Business Day following each Loan Interest Payment Date (being 20 January, 20 April, 20 July and 20 October in each year (unless the same is not a London Business Day, in which case, the following London Business Day)) (each, an **Interest Payment Date**). The first Interest Payment Date will be the Interest Payment Date falling in July 2005. The interest rate applicable to each class of Notes from time to time will be determined by reference to the London interbank offered rate for three month sterling deposits (or, in the case of the last Interest Period, the linear interpolation of three month and four month sterling deposits) (**LIBOR**, as determined in accordance with **Condition 5.3**) plus the relevant Margin. Each Margin will be as set out in the table above.

**If any withholding or deduction for or on account of tax is applicable to the Notes, payment of interest on, and principal in respect of, the Notes will be made subject to such withholding or deduction. In such circumstances, neither the Issuer nor any other party will be obliged to pay any additional amounts as a consequence.**

All Notes will be secured by the same security, subject to the priorities described in this Offering Circular. Notes of each class will rank *pari passu* with other Notes of the same class. Unless previously redeemed in full, the Notes of each class will mature on the Interest Payment Date falling in April 2014 (the **Final Maturity Date**). The Notes will be subject to mandatory redemption before such date in the specific circumstances and subject to the conditions more fully set out under "Transaction Summary – Principal features of the Notes".

The Notes have not been, and will not be, registered under the United States Securities Act of 1933, as amended (the **Securities Act**), and are subject to U.S. tax law requirements. The Notes are being offered by the Issuer only to persons who are not U.S. Persons (as defined in Regulation S under the Securities Act (**Regulation S**)) in offshore transactions in reliance on Regulation S (or otherwise pursuant to transactions exempt from the registration requirements of the Securities Act) and in accordance with applicable laws.

The Notes of each class will each initially be represented on issue by a temporary global note in bearer form (each, a **Temporary Global Note**), without interest coupons attached, which will be deposited on or about the Closing Date with a common depositary for Euroclear Bank S.A./N.V., as operator of the Euroclear System (**Euroclear**), and Clearstream Banking, société anonyme (**Clearstream, Luxembourg**). Each Temporary Global Note will be exchangeable for interests in a permanent global note (each, a **Permanent Global Note**), without interest coupons attached, not earlier than 40 days after the Closing Date (provided that certification of non-U.S. beneficial ownership has been received). Ownership interests in the Temporary Global Notes and the Permanent Global Notes (together, the **Global Notes**) will be shown on, and transfers thereof will only be effected through, records maintained by Euroclear and Clearstream, Luxembourg and their respective participants. Interests in the Permanent Global Notes will be exchangeable for definitive Notes in bearer form only in certain limited circumstances as set forth therein.

See "Risk Factors" for a discussion of certain factors which should be considered by prospective investors in connection with an investment in any of the Notes.

Note Arranger

**EUROHYPO**

Sole Bookrunner

**DRESDNER KLEINWORT WASSERSTEIN**

The date of this Offering Circular is 20 April 2005

THE NOTES AND INTEREST THEREON WILL BE OBLIGATIONS OF THE ISSUER ONLY. THE NOTES WILL NOT BE OBLIGATIONS OR RESPONSIBILITIES OF, NOR WILL THEY BE GUARANTEED BY, EUROHYPO AKTIENGESELLSCHAFT (**EUROHYPO**) (IN ANY CAPACITY), BY THE SOLE BOOKRUNNER, THE SERVICER, THE SPECIAL SERVICER, THE TRUSTEE, THE CORPORATE SERVICES PROVIDER, THE SHARE TRUSTEE, THE PAYING AGENTS, THE AGENT BANK, THE LIQUIDITY BANK, THE SENIOR HEDGE COUNTERPARTIES OR THE ACCOUNT BANK OR ANY COMPANY IN THE SAME GROUP OF COMPANIES AS ANY OF THEM.

The Issuer accepts responsibility for the information contained in this Offering Circular. To the best of the knowledge and belief of the Issuer 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.

No person is or has been authorised to give any information or to make any representation in connection with the issue and sale of the Notes other than those 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, Eurohypo (in any capacity), the Sole Bookrunner, the Servicer, the Special Servicer, the Trustee, the Corporate Services Provider, the Share Trustee, the Paying Agents, the Agent Bank, the Liquidity Bank, the Senior Hedge Counterparties or the Account Bank or any of their respective affiliates or advisors. Neither the delivery of this Offering Circular nor any sale, allotment or solicitation made in connection with the offering of the Notes shall, under any circumstances, create any implication or constitute a representation that there has been no change in the affairs of the Issuer or in any of the information contained herein since the date of this document or that the information contained in this document is correct as of any time subsequent to its date. Save for obligations of Eurohypo in its capacity as Servicer, Eurohypo expressly does not undertake to review the Loans or the Property during the life of the Notes or to advise any investor in the Notes of any information coming to its attention.

Neither this Offering Circular nor any other information supplied in connection with the Notes should be considered as a recommendation by Eurohypo or the Sole Bookrunner that any recipient of this Offering Circular should purchase any Notes. Each investor contemplating purchasing any Notes should make its own independent investigation and appraisal of the creditworthiness of the Issuer.

Other than the approval by the Irish Stock Exchange of this Offering Circular as listing particulars in accordance with the requirements of the Regulations and the delivery of a copy of this Offering Circular to the Registrar of Companies in Ireland for registration in accordance with the Regulations, 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. 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 Sole Bookrunner to inform themselves about and to observe any such restrictions. For a further description of certain restrictions on offers and sales of the Notes and distribution of this Offering Circular, see "*Subscription and Sale*" below.

This Offering Circular does not constitute an offer of, or an invitation by or on behalf of, the Issuer or the Sole Bookrunner or any of them to subscribe for or purchase any of the Notes.

All references in this document to **sterling, pounds** or **pounds sterling** or **£** are to the lawful currency for the time being of the United Kingdom of Great Britain and Northern Ireland.

**In connection with this issue, Dresdner Bank AG London Branch (trading as Dresdner Kleinwort Wasserstein) (in this capacity, the *Stabilisation Manager*) or any person acting for it may over-allot or effect transactions with a view to supporting the market price of the Notes at a level higher than that which might otherwise prevail for a limited period after the issue date. However, there is no obligation on the *Stabilisation Manager* or any of its agents to do this. Such stabilising, if commenced, may be discontinued at any time, and must be brought to an end after a limited period.**

## TABLE OF CONTENTS

	<b>Page</b>
Transaction Summary .....	4
Risk Factors .....	21
The Issuer .....	36
The Borrower .....	39
Description of the Property .....	40
Valuation Report .....	50
Credit Structure .....	55
Servicing .....	78
Account Bank .....	86
Liquidity Bank .....	87
Estimated Average Lives of the Notes and Assumptions .....	88
Use of Proceeds .....	89
Terms and Conditions of the Notes .....	90
United Kingdom Taxation .....	113
Subscription and Sale .....	115
General Information .....	118
Index of Defined Terms .....	120

## TRANSACTION SUMMARY

*The information in this section does not purport to be complete and is qualified in its entirety by reference to the detailed information appearing elsewhere in this Offering Circular. Prospective Noteholders are advised to read carefully, and to rely solely on, the detailed information appearing elsewhere in this Offering Circular in making any decision whether or not to invest in any Notes.*

*Capitalised terms used, but not defined, in this section can be found elsewhere in this Offering Circular, unless otherwise stated. An index of defined terms is set out at the end of this Offering Circular.*

### Executive Summary

On or before the Closing Date, the Issuer (as **Initial Senior Lender** and, together with any other lenders under the Senior Credit Agreement from time to time, the **Senior Lenders**) and Eurohypo (as, *inter alia*, Senior Facility Agent, Loan Security Agent, Senior Hedge Counterparty and Loan Arranger) will enter into a credit agreement (the **Senior Credit Agreement**) with FP North Limited (the **Borrower**).

Pursuant to the terms of the Senior Credit Agreement, the Issuer will make available to the Borrower a secured term loan facility in a principal amount of £235,000,000 (the **Senior Loan Facility**). The principal amount outstanding from time to time under the Senior Credit Agreement (including any additional advances made in accordance with the terms of the Senior Credit Agreement) is referred to as the **Senior Loan**. The Issuer will fund the Senior Loan Facility by utilising the proceeds of the issue of the Notes. The Borrower will use the proceeds of the Senior Loan Facility (together with the proceeds of the Junior Loan) to fund the acquisition from FP South Limited of the Property (being Fosse Shopping Park, Leicester) on the Closing Date. Rental income generated by occupational leases in respect of the Property will be used by the Borrower to service the payments under the Senior Loan (and the Junior Loan). The Issuer will use receipts of principal and interest in respect of the Senior Loan, together with certain other funds available to it (as described elsewhere in this Offering Circular), to make payments of, among other things, principal and interest due in respect of the Notes.

Pursuant to the terms of a further credit agreement to be entered into on or before the Closing Date (the **Junior Credit Agreement** and any lenders thereunder, the **Junior Lenders**), the Junior Lenders will make available to the Borrower a separate secured term loan facility in a principal amount of £53,000,000. The principal amount outstanding from time to time under the Junior Credit Agreement (including any additional advances made in accordance with the terms of the Junior Credit Agreement) is referred to as the **Junior Loan** and, together with the Senior Loan, the **Loans**. The Senior Credit Agreement and the Junior Credit Agreement are together referred to as the **Credit Agreements**.

The Borrower will grant a first priority mortgage over the Property and certain other security interests (including security over the leases and the rental cashflows together with a floating charge) to Eurohypo (in this capacity, the **Loan Security Agent**) in order to secure its obligations to the Senior Lenders (including the Issuer (as Initial Senior Lender)) and the Junior Lenders with effect from the Closing Date. These security interests are, together with the Related Security, referred to as the **Loan Security**. Eurohypo (in its capacity as Loan Security Agent) will hold the Loan Security on trust for the Senior Lenders (including the Issuer), the Junior Lenders (together with the Senior Lenders, the **Lenders**) and the other Loan Secured Creditors (as defined below). Under the terms of the respective Credit Agreements and an intercreditor agreement to be dated on or before the Closing Date (the **Intercreditor Agreement**), the claims of the Junior Lenders will be subordinated to, among others, those of the Senior Lenders.

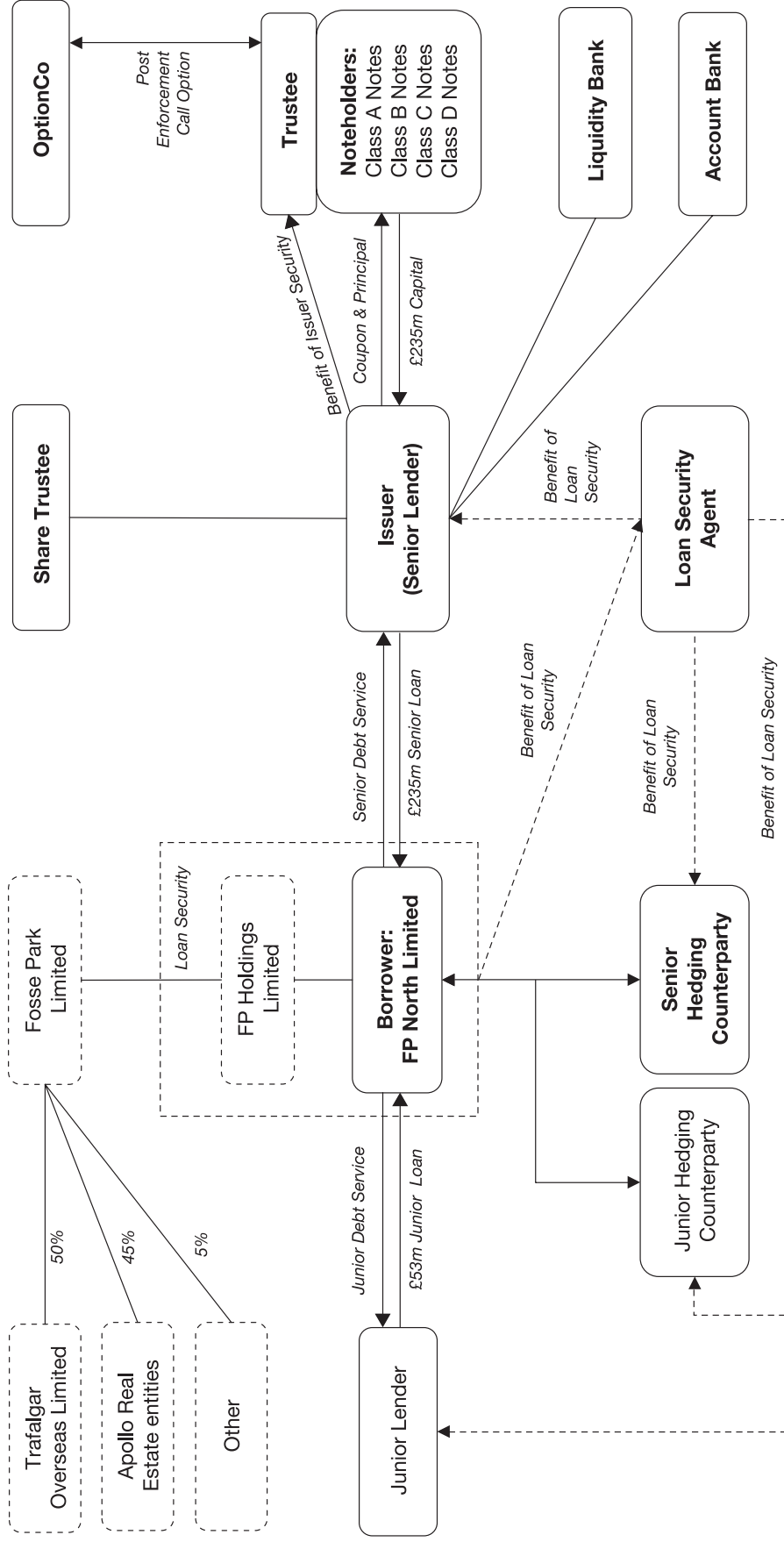
The Borrower is a special purpose company, whose activities will be limited to ownership and management of the Property and related activities, as further described under “*Credit Structure – 3. Senior Credit Agreement – Undertakings*” below.

Interest will be payable under the Senior Loan at a floating rate, fixed on each Loan Interest Payment Date, calculated with reference to LIBOR for three month sterling deposits plus a margin. The Borrower has entered into and will be required, under the terms of the Senior Credit Agreement, to maintain (subject to certain limits) hedging arrangements (the **Senior Hedging Arrangements**) with a view to ensuring that it will be able to continue to make payments of interest under the Senior Loan notwithstanding variations in the floating rate of interest payable by it. See further “*Credit Structure – 3. Senior Credit Agreement – Hedging obligations*” below.

As security for its obligations under (amongst other things) the Notes, the Issuer will grant fixed and floating security interests over all its assets and undertaking (which comprises, primarily, its rights in

respect of the Senior Loan and the Loan Security) in favour of the Trustee under the Deed of Charge. The Trustee will hold the benefit of this security on trust for itself, the Noteholders and the Other Issuer Secured Creditors. The Deed of Charge will determine the priority of the claims of the Issuer Secured Creditors. See further “*Credit Structure – 9. Cashflows*” below.

## STRUCTURE DIAGRAM





## KEY TRANSACTION PARTIES

- Issuer:** Opera Finance (Fosse Park) plc (the **Issuer**) is a public company incorporated in England and Wales with limited liability. The Issuer's company registration number is 5403206. The entire issued share capital of the Issuer is held by or on behalf of the Share Trustee.
- The Issuer will also act as initial lender (the **Initial Senior Lender**) pursuant to the terms of the Senior Credit Agreement.
- OptionCo:** Opera Finance (Options) Limited (**OptionCo**) will be granted a post-enforcement call option under the Post-Enforcement Call Option Agreement. OptionCo is a private company incorporated in England and Wales with limited liability and with registration number 5403223.
- Borrower:** FP North Limited (the **Borrower**) is a private company incorporated in Gibraltar with limited liability. The Borrower's company registration number is 94061.
- FP Holdings Limited:** The entire issued share capital of the Borrower is held by FP Holdings Limited. FP Holdings Limited is in turn 100 per cent. owned by Fosse Park Limited.
- FP Holdings Limited will grant a first fixed equitable charge over all of the Borrower's share capital in favour of the Loan Security Agent pursuant to the Mortgage of Shares.
- Property Manager:** REIT Asset Management, a partnership created under the laws of England and Wales, will be appointed by the Borrower to discharge certain property management functions in relation to the Property.
- Managing Agent:** Savills Commercial Limited (the **Managing Agent**) will provide certain property management services (to the extent not otherwise discharged by the Property Manager) to the Borrower in connection with the Property.
- Eurohypo:** Eurohypo Aktiengesellschaft, London Branch, whose principal office is at 4th Floor, 90 Long Acre, London WC2E 9RA (**Eurohypo**) will act in various capacities in respect of the Loans. These are:
- (a) as facility agent (the **Senior Facility Agent**) under the Senior Credit Agreement;
  - (b) as arranger under the Senior Credit Agreement (the **Loan Arranger**);
  - (c) as Loan Security Agent under the Borrower Security Agreement;
  - (d) as servicer (the **Servicer**) and, if required, special servicer (the **Special Servicer**), on behalf of the Issuer, of the Senior Loan pursuant to the terms of the Servicing Agreement;
  - (e) as counterparty to the Senior Hedging Arrangements; and
  - (f) as arranger in respect of the issue of the Notes (the **Note Arranger**).
- Eurohypo will also act in various capacities in relation to the Junior Loan including as initial Junior Lender, loan facility agent (the **Junior Facility Agent**), Junior Hedge Counterparty (as defined below) and Loan Security Agent for the Junior Secured Creditors (as defined below).



<b>Trustee:</b>	The Bank of New York, acting through its office at One Canada Square, London E14 5AL (in this capacity, the <b>Trustee</b> ), will act under the Trust Deed as trustee for the holders of the Notes and under the Deed of Charge as security trustee for the Noteholders and the other Issuer Secured Creditors.
<b>Principal Paying Agent and Agent Bank:</b>	The Bank of New York, acting through its office at One Canada Square, London E14 5AL, will be principal paying agent and agent bank under the Agency Agreement (in these capacities, the <b>Principal Paying Agent</b> and the <b>Agent Bank</b> ).
<b>Irish Paying Agent:</b>	AIB/BNY Fund Management (Ireland) Limited, acting through its office at Guild House, Guild Street, Dublin 1, Republic of Ireland, will act as paying agent in Ireland under the Agency Agreement (the <b>Irish Paying Agent</b> ). The Irish Paying Agent, the Principal Paying Agent and any other paying agent(s) which may be appointed pursuant to the Agency Agreement are together referred to as the <b>Paying Agents</b> .
<b>Account Bank:</b>	The Bank of New York, acting through its office at One Canada Square, London E14 5AL, will act as account bank for the Issuer under the Bank Agreement (in this capacity, the <b>Account Bank</b> ).
<b>Liquidity Bank:</b>	Lloyds TSB Bank plc, acting through its office at Faryner's House, 25 Monument Street, London EC3R 8BQ, will provide the Liquidity Facility to the Issuer under the Liquidity Facility Agreement (the <b>Liquidity Bank</b> ).
<b>Corporate Services Provider:</b>	Structured Finance Management Limited (the <b>Corporate Services Provider</b> ) will provide certain corporate administration and secretarial services to the Issuer under the Corporate Services Agreement.
<b>Share Trustee:</b>	SFM Corporate Services Limited (the <b>Share Trustee</b> ) will hold its interest in the shares of the Issuer on trust for charitable purposes under the terms of a trust deed dated 13 April 2005 (the <b>Share Trust Deed</b> ).
<b>Senior Hedge Counterparties:</b>	Eurohypo (in this capacity, the <b>Senior Hedge Counterparty</b> ) has entered into an interest rate swap agreement with the Borrower in respect of the Borrower's obligations under the Senior Loan. In this document, the term <b>Senior Hedge Counterparties</b> includes any other party appointed from time to time pursuant to the Senior Credit Agreement to act as a counterparty under the Senior Hedging Arrangements in respect of the Senior Loan. The Borrower has also entered into certain hedging arrangements in relation to the Junior Loan. These are referred to as the <b>Junior Hedging Arrangements</b> and the counterparties thereto, the <b>Junior Hedge Counterparties</b> . The Senior Hedging Arrangements and the Junior Hedging Arrangements are together referred to as the <b>Hedging Arrangements</b> .

## KEY CHARACTERISTICS OF THE SENIOR LOAN

<b>General:</b>	The Senior Loan will constitute full recourse obligations of the Borrower and will be secured by, among other things, a first legal mortgage over the Property and first fixed security over the Borrower's interests in any occupational leases, insurance policies, Senior Hedging Arrangements, bank accounts and rental cashflows in respect of the Property, together with a floating charge over all its remaining assets.
<b>Purpose of the Senior Loan:</b>	The proceeds of the Senior Loan will be applied on the Closing Date (together with the proceeds of the Junior Loan) towards financing the cost of the acquisition of the Property from FP South Limited (also a wholly owned subsidiary of FP Holdings Limited) together with all associated costs, fees and expenses (including any value added tax on such costs, fees and expenses).
<b>Interest rate:</b>	The Senior Loan will bear interest calculated as the sum of LIBOR (as defined under the Senior Credit Agreement) plus a margin.
<b>Interest payments:</b>	Interest under the Senior Loan will be paid quarterly in arrear on 20 January, 20 April, 20 July and 20 October in each year (unless the same is not a London Business Day, in which case, the following London Business Day) (each, a <b>Loan Interest Payment Date</b> ) in respect of successive interest periods (each, a <b>Loan Interest Period</b> ). <b>London Business Day</b> means a day (other than a Saturday or a Sunday) on which banks are open for general business in London.
<b>Facility fees:</b>	The Borrower will pay to the Senior Facility Agent an annual facility agent fee of £75,000 in respect of the Senior Loan which will be payable quarterly in arrear.
<b>Repayment of the Loan:</b>	<p>Unless the Borrower has previously prepaid the Senior Loan in full (and save as set out below), it will be required to repay it in full on the Loan Interest Payment Date falling in April 2010.</p> <p>If, however, the Senior Facility Agent is satisfied that certain financial conditions set out in the Senior Credit Agreement are met, the Borrower will not be required to repay the Senior Loan until the Loan Interest Payment Date falling in April 2012. The date on which the Borrower is required to repay the Senior Loan in accordance with the terms of the Senior Credit Agreement is referred to as the <b>Loan Maturity Date</b>.</p>
<b>Optional prepayment:</b>	<p>The Borrower will be entitled to prepay the Senior Loan on any Loan Interest Payment Date, in whole or in part (subject to a minimum of £500,000), upon giving not less than 28 days' prior written notice to the Senior Facility Agent.</p> <p>The Borrower may not prepay the Senior Loan in full unless it has first prepaid the Junior Loan in full. If, however, the Borrower prepays part of the Senior Loan using the proceeds of a partial disposal of the Property, the net disposal proceeds will be used to partially prepay both the Senior Loan and the Junior Loan as set out further under <i>Credit Structure – 3. Senior Credit Agreement</i> below.</p> <p>Optional prepayment by the Borrower of the Senior Loan will be subject to payment by the Borrower of prepayment fees (<b>Borrower Prepayment Fees</b>) in certain circumstances. Any such Borrower Prepayment Fees will be for the account of the Loan Arranger and will not form part of the amounts due to the Senior Lenders (including the Issuer) under the Senior Credit Agreement.</p>

**Representations and warranties:**

The representations and warranties to be given by the Borrower under the Senior Credit Agreement, as of the date of the Senior Credit Agreement, the date of drawdown and (subject to certain exceptions) each Loan Interest Payment Date, will include, among other things, warranties as follows:

- (a) due incorporation and authorisation;
- (b) no default under the Senior Credit Agreement (a **Loan Event of Default**) is outstanding or will likely result from the making of the Senior Loan;
- (c) legality, validity and enforceability of, among other things, the Senior Credit Agreement and the Borrower Security Agreement;
- (d) ownership and title to the Property, in each case free from any security interests (other than those set out in the Borrower Security Agreement);
- (e) first priority of the Loan Security;
- (f) the absence of material litigation, arbitration or administrative proceedings;
- (g) the truthfulness, accuracy and completeness of all information supplied by the Borrower to the Loan Arranger, the Initial Senior Lender and the Senior Facility Agent, among others, in connection with the Senior Credit Agreement and related finance documents (the **Senior Finance Documents**) and all information supplied by the Borrower to the Valuer for the purposes of the Valuation; and
- (h) recent historical activities.

**Loan Security:**

The Borrower will enter into a security agreement with Eurohypo (as Loan Security Agent) dated on or before the Closing Date (the **Borrower Security Agreement**) under which it will grant security over all of its assets in favour of the Loan Security Agent as security for, *inter alia*, the Borrower's obligations under the Senior Loan and other liabilities owing from time to time to the Senior Lenders, the Senior Hedge Counterparties, the Loan Arranger, the Senior Facility Agent and the Loan Security Agent (together, the **Senior Secured Creditors**). The Loan Security will also secure the Borrower's obligations under the Junior Credit Agreement and other liabilities owing from time to time to the Junior Lenders, the Junior Hedge Counterparties and the Junior Facility Agent (together, the **Junior Secured Creditors**) but the rights of the Junior Secured Creditors will be subject to the terms of the Intercreditor Agreement which will provide that their claims are subordinated to those of the Senior Secured Creditors (including the Issuer). The Senior Secured Creditors and the Junior Secured Creditors are together referred to as the **Loan Secured Creditors**.

The Loans and all other obligations to the Loan Secured Creditors will be secured by a first legal mortgage over the Property and certain other security interests, including fixed security over the Borrower's interests in any occupational leases, insurance policies, Hedging Arrangements, bank accounts and rental cashflows in respect of the Property, together with a floating charge over all of its assets.

The security and covenant package for the Loans will also include the benefit of:

- (a) a subordination deed dated on or before the Closing Date (the **Subordination Deed**) under which all debt of the Borrower to

- FP Holdings Limited (the **Subordinated Creditor**) will be subordinated to the Issuer and the other Lenders;
- (b) a duty of care agreement entered into by the Managing Agent with the Loan Security Agent in relation to the management (including the collection of rental income) of the Property (the **Duty of Care Agreement**); and
  - (c) a mortgage of shares dated on or before the Closing Date (the **Mortgage of Shares**) from FP Holdings Limited granting a first fixed equitable charge over all of the Borrower's share capital in favour of the Loan Security Agent.

The Subordination Deed, the Duty of Care Agreement, the Mortgage of Shares and/or any other security which is to be acquired on the Closing Date by the Issuer are referred to in this document as the **Related Security** and will form part of the Loan Security.

**Further advances:**

Although the Issuer will be the lender for the maximum commitment amount under the Senior Loan Facility as at the Closing Date, the Borrower will be entitled, from time to time, to request that the Issuer or any other Senior Lender who accedes to the Senior Credit Agreement after the Closing Date increase its term commitment in a minimum amount of £5,000,000 and integral multiples thereafter of £1,000,000 by written request to the Senior Facility Agent. However, the Senior Credit Agreement will place no obligation on the Issuer or any other Senior Lender to make any further advance to the Borrower.

Any additional lending under the Senior Loan Facility may be undertaken by the Issuer (in connection with the issue of Further Notes and/or New Notes) and by another Senior Lender.

The claims of that other Senior Lender may rank *pari passu* with the claims of the Issuer. The ranking of any additional lending undertaken by the Issuer and funded by the issue of Further Notes and/or New Notes will be decided at the time of issue of such Further Notes and New Notes.

No such additional lending under the Senior Loan Facility will be permitted unless all the Senior Lenders (and, pursuant to the terms of the Intercreditor Agreement, the Junior Lenders) consent to such additional lending and the Rating Agencies confirm that the then current ratings of each class of Notes will not be adversely affected.

**Insurance:**

The Borrower will undertake, pursuant to the Senior Credit Agreement, to maintain insurance on the Property on a full reinstatement value basis together with a further amount equal to not less than 12.5 per cent. of the full reinstatement cost (on terms acceptable to the Senior Facility Agent) and not less than three years' loss of rent on all occupational leases together with third party liability insurance and insurance against acts of terrorism. The Borrower will also undertake to procure that the Loan Security Agent is insured for its insurable interest on all relevant insurance policies.

All insurances required under the Senior Credit Agreement must be with an insurance company or underwriter that:

- (a) has a long term credit rating or a financial strength rating of "BBB" (or better) by Fitch and "BBB" (or better) by S&P; or
- (b) is otherwise acceptable to the Loan Security Agent (acting reasonably).

## KEY CHARACTERISTICS OF THE PROPERTY

### Property:

The Loan will be secured on the land and buildings of Fosse Shopping Park, located in Leicester, England (the **Property** or **Fosse Park**). Fosse Park is one of the most successful shopping parks in the United Kingdom. The Property provides 410,380 sq ft of retail space in two adjoining sites: Fosse Park North, a premier out of town fashion park comprising 13 retail units and providing 274,989 sq ft (25,547 sq m) of retail space and Fosse Park South, a large retail warehouse park comprising 7 units and encompassing 135,391 sq ft (12,578 sq m) of retail space.

Fosse Park North, which is held under a freehold interest, was constructed in 1989 by London Edinburgh Trust and consists of two terraces of retail warehouse units arranged in an L-shaped configuration with extensive surface car parking to the front of the “L” and service yards to the rear. A food court, constructed in 2000, is located at the apex of the two terraces forming Fosse Park North. Fosse Park South, which is held on two long leaseholds and at a peppercorn rent with a remaining life of 128 years, is a high quality retail warehouse park built on two terraces separated by a large car park. The development, undertaken by Castlemore Securities and sold by way of a forward commitment purchase to Pillar, was completed in early 1997.

Fosse Park is situated 4.8km (3 miles) southwest of Leicester city centre and approximately 0.8 km (0.5 miles) from Junction 21 of the M1 Motorway, which is also the terminus of the M69 motorway. Leicester is one of the principal regional centres of the Midlands with a population of approximately 320,000. The Property is located some 160 km (100 miles) north of London, 69 km (43 miles) east of Birmingham and 50 km (30 miles) south of Nottingham. Fosse Park forms the core of what is known as the Motorway Retailing Area, a conglomeration of out-of-town retailing which also includes an Asda food store, a Borders Books & Music and a Sainsbury’s supermarket.

Fosse park benefits from a wide catchment area, extending to the north along the M1 corridor beyond Nottingham, to the east as far as Corby, to the south along the M1 beyond Northampton and to the west beyond the M42 as far as Tamworth. The locational attributes mean that a high proportion of the catchment population, relative to other shopping parks, come from within the secondary and tertiary catchment areas.

Fosse Park is fully let subject to 37 leases spread across a well diversified tenant base. The largest tenant group is DSG Retail (trading through Currys, PC World and The Link) with 12 per cent. of passing rent, while the remaining largest 18 retailers account for between 2 per cent. and 10 per cent. of passing rent each. Marks & Spencer is the principal anchor of Fosse Park North while Bhs occupies the second largest unit and acts as a second anchor for the southern terrace. Fosse Park North focuses on fashion retail and hosts tenants such as GAP, Next, JJB Sports, New Look, Boots and WH Smith. Fosse Park South focuses on the sale of bulky goods and hosts tenants such as Currys, Argos, PC World, DFS and Furnitureland.

As per the valuation carried out by FPD Savills (see below) the gross rent in respect of Fosse Park (inclusive of reversionary income from outstanding rent reviews and commercialisation income) is £18,464,217. The majority of units are let at market rents, but the

leases in place for the tenants of the food court and for WH Smith include a turnover top-up element. None of the tenants on turnover leases are currently paying turnover top-up.

The gross estimated rental value (**ERV**) of Fosse Park as per the valuation is £19,710,447 per annum. This can be split into estimated rental values of £13,376,191 for Fosse park North, £5,576,055 for Fosse Park South and £758,201 for the food court. The uplift in gross rental income attributable to the outstanding rent reviews is estimated at £558,761.

**Valuation:**

The Valuer has determined the market value of the leasehold interest in the Property, subject to the existing tenancies, to be, as at 24 March 2005 (the **Valuation Date**) £320,000,000. Since the Valuation Date, there has been no diminution in the value of the Property as at the date of this Offering Circular. On the basis of the Valuation, the loan to value ratio of the Senior Loan (assuming the Senior Loan has already been made) on the date of this document (expressed as a percentage) is 73.4 per cent.

Under the terms of the Senior Credit Agreement, the Senior Facility Agent will have the right to call for a valuation of the Property at any time at the cost of the Senior Lenders or, if a Loan Event of Default is outstanding or likely to result from such valuation, at the cost of the Borrower.

See "*Valuation Report*" below.



## PRINCIPAL FEATURES OF THE NOTES

### Notes:

The Notes will comprise:

- (a) £164,000,000 Class A Commercial Mortgage Backed Floating Rate Notes due April 2014;
- (b) £23,880,000 Class B Commercial Mortgage Backed Floating Rate Notes due April 2014;
- (c) £21,560,000 Class C Commercial Mortgage Backed Floating Rate Notes due April 2014; and
- (d) £25,560,000 Class D Commercial Mortgage Backed Floating Rate Notes due April 2014.

The Notes will be constituted by a trust deed made between the Issuer and the Trustee dated on or before the Closing Date (the **Trust Deed**). The Notes of each class will rank *pari passu* and rateably and without any preference among themselves.

### Status and priority:

Payments of interest in respect of the Class A Notes will rank ahead of payments of interest in respect of the Class B Notes, the Class C Notes and the Class D Notes. Payments of interest in respect of the Class B Notes will rank ahead of payments of interest in respect of the Class C Notes and the Class D Notes. Payments of interest in respect of the Class C Notes will rank ahead of payments of interest in respect of the Class D Notes.

Other than in respect of certain payments as set out in **Condition 6.3(a)**, repayments of principal in respect of the Class A Notes will rank ahead of repayments of principal in respect of the Class B Notes, the Class C Notes and the Class D Notes. Repayments of principal in respect of the Class B Notes will rank ahead of repayments of principal in respect of the Class C Notes and the Class D Notes. Repayments of principal in respect of the Class C Notes will rank ahead of repayments of principal in respect of the Class D Notes.

Prior to the service by the Trustee of an Acceleration Notice pursuant to **Condition 10(a)**, payments of interest in respect of each class of Notes will rank ahead of all payments of principal in respect of each class of Notes.

See “*Credit Structure – 9. Cashflows*” below.

### Form of the Notes:

Each Class of Notes will be in bearer form. The Temporary Global Notes and the Permanent Global Notes of each class will be held by a common depositary for Euroclear and Clearstream, Luxembourg. The Notes will be in denominations of £20,000.

### Ratings:

It is expected that the Notes will, on issue, be assigned the following ratings:

<b>Class</b>	<b>Fitch</b>	<b>S&amp;P</b>
Class A Notes	AAA	AAA
Class B Notes	AA	AA
Class C Notes	A	A
Class D Notes	BBB	BBB

A security rating is not a recommendation to buy, sell or hold securities and may be subject to revision, suspension or withdrawal at any time by one or more of the assigning rating organisations.



**Listing:** Application has been made to the Irish Stock Exchange for the Notes to be admitted to the Official List of the Irish Stock Exchange.

**Final redemption:** Unless previously redeemed in full, the Notes will mature on the Final Maturity Date.

**Mandatory redemption in whole for taxation or other reasons:** If, having failed to procure a substitution if required in accordance with **Condition 6.2(a)**, the Issuer satisfies the Trustee that either (i) on the occasion of the next Interest Payment Date the Issuer would become subject to tax on its income in more than one jurisdiction or the Issuer would be required to make any withholding or deduction from any payment of principal or interest in respect of any of the Notes, or the Issuer would suffer any withholding or deduction from any payment in respect of the Senior Loan, in each case for or on account of any present or future tax, duty or charge of whatsoever nature incurred or levied by or on behalf of the United Kingdom or Gibraltar or any authority thereof or therein or (ii) by reason of a change of law which change becomes effective on or after the Closing Date it has or will become unlawful for the Issuer to make, lend or allow to remain outstanding all or any advances made or to be made by it under the Senior Credit Agreement, then the Issuer shall (in accordance with **Condition 6.2(a)**), upon giving not more than 60 and not less than 20 days' notice to the Noteholders and provided that it has satisfied the Trustee that it has sufficient funds available to it, redeem all, but not some only, of the Notes at their then Principal Amount Outstanding together with accrued interest thereon.

**Principal Amount Outstanding** means in respect of any Note at any time the principal amount thereof as at the Closing Date as reduced by any payment of principal to the holder of the Note up to (and including) that time.

**Mandatory redemption in whole or in part:** If the Issuer receives a notice that the Borrower intends to prepay part of the Senior Loan (using funds other than the proceeds of a Relevant Disposal) on or before the next Loan Interest Payment Date pursuant to the terms of the Senior Credit Agreement, the Issuer will, in accordance with **Condition 6.3(a)** but subject to **Condition 6.3(c)**, redeem the Notes *pro rata* in an amount equal to the principal amount of the Senior Loan being prepaid at their respective Principal Amount Outstanding together with accrued interest as follows:

- (a) **first**, to redeem the Class D Notes until the Class D Notes have been redeemed in full;
- (b) **second**, to redeem the Class C Notes until the Class C Notes have been redeemed in full;
- (c) **third**, to redeem the Class B Notes until the Class B Notes have been redeemed in full; and
- (d) **fourth**, to redeem the Class A Notes until the Class A Notes have been redeemed in full.

If the Issuer receives a notice that the Borrower intends to prepay part of the Senior Loan (using the proceeds of a Relevant Disposal) on or before the next Loan Interest Payment Date pursuant to the terms of the Senior Credit Agreement, the Issuer will, in accordance with **Condition 6.3(b)** but subject to **Condition 6.3(c)**, apply an amount equal to 110 per cent. of the relevant Senior Allocated Loan Amount (the **Prepayment Amount**) received from the Borrower under the terms of the Senior Credit Agreement as follows:

- (a) **first**, in an amount equal to 10/110 of the Prepayment Amount, in redemption *pro rata* of the Class A Notes; and
- (b) **second**, as to the remainder of the Prepayment Amount, in redemption, *pro rata* and *pari passu*, of the Class A Notes, the Class B Notes, the Class C Notes and the Class D Notes until all of the Notes have been redeemed in full.

Under the terms of the Senior Credit Agreement, Senior Allocated Loan Amount means:

- (a) for a disposal of Fosse Park South, £66,644,531.25; and
- (b) for a disposal of Fosse Park North, £168,355,468.75.

If, on any Interest Payment Date following enforcement of the Issuer Security, the Trustee or its appointee is required to apply principal amounts (if any) received in respect of the Senior Loan in accordance with the Post-Enforcement Pre-Acceleration Priority of Payments, then any amounts of principal so received will be applied, in accordance with **Condition 6.3(c)**, to redeem the Notes *pro rata* in an aggregate amount equal to the principal amount received in respect of the Senior Loan at their respective Principal Amount Outstanding together with accrued interest as follows:

- (a) **first**, to redeem the Class A Notes until the Class A Notes have been redeemed in full;
- (b) **second**, to redeem the Class B Notes until the Class B Notes have been redeemed in full;
- (c) **third**, to redeem the Class C Notes until the Class C Notes have been redeemed in full; and
- (d) **fourth**, to redeem the Class D Notes until the Class D Notes have been redeemed in full.

If:

- (a) the Issuer receives a notice that the Borrower intends to prepay all of the Senior Loan pursuant to the terms of the Senior Credit Agreement; or
- (b) the Junior Lenders elect to purchase the Senior Loan pursuant to the terms of the Intercreditor Agreement or
- (c) the Senior Loan is otherwise sold or transferred pursuant to the terms of the Senior Credit Agreement,

the Issuer will, in accordance with **Condition 6.3(d)**, redeem all (but not some only) of the Notes at their respective Principal Amount Outstanding together with accrued interest on the next Interest Payment Date.

If any amount of principal in respect of the Senior Loan is received or recovered by or on behalf of the Issuer as a result of enforcement procedures or other actions taken in respect of the Senior Loan, the Issuer will, in accordance with **Condition 6.3(g)**, redeem the Notes *pro rata* in an aggregate principal amount equal to the amount of principal so received or recovered at their Principal Amount Outstanding together with accrued interest on the next Interest Payment Date, as follows:

- (a) **first**, to redeem the Class A Notes until the Class A Notes have been redeemed in full;

- (b) **second**, to redeem the Class B Notes until the Class B Notes have been redeemed in full;
- (c) **third**, to redeem the Class C Notes until the Class C Notes have been redeemed in full; and
- (d) **fourth**, to redeem the Class D Notes until the Class D Notes have been redeemed in full.

In the case of any redemption of the Notes as outlined above, prior to giving any such notice of redemption, the Issuer shall have satisfied the Trustee that it has or will have the funds, not subject to the interest of any other person, required to fulfil its obligations in respect of the Notes and any amounts required under the Servicing Agreement and/or the Deed of Charge then to be paid *pari passu* with, or in priority to, the Notes and shall have delivered to the Trustee a certificate signed by two directors of the Issuer stating that the Issuer will have such funds and the Trustee shall (in the absence of manifest error) accept the certificate as sufficient evidence of satisfaction of such condition precedent and it shall be conclusive and binding on the Noteholders.

**Post-Enforcement Call Option:**

The Issuer will enter into a post-enforcement call option agreement with Opera Finance (Options) Limited (as **OptionCo**) and the Trustee dated on or before the Closing Date (the **Post-Enforcement Call Option Agreement**) under the terms of which, upon exercise of the Post-Enforcement Call Option by OptionCo, following the enforcement of the Issuer Security, the Class B Noteholders, the Class C Noteholders and the Class D Noteholders will be required to transfer to OptionCo all of the Class B Notes, the Class C Notes and the Class D Notes. The Class B Noteholders, the Class C Noteholders and the Class D Noteholders will be bound by the terms of the Notes to transfer their Note holdings to OptionCo. The Class B Noteholders, the Class C Noteholders and the Class D Noteholders will be paid a nominal amount only for the transfer.

**No purchase of Notes by the Issuer:**

The Issuer will not be permitted to purchase Notes.

**Further Notes, New Notes and Replacement Notes:**

The Issuer will be entitled, without the consent of the Noteholders of any class, to issue further debt securities, as follows:

- (a) notes which are consolidated, and form a single series, with an existing class of Notes (including any New Notes or Replacement Notes then in issue) (**Further Notes**);
- (b) notes which rank *pari passu* with the Class A Notes, or behind the Class A Notes but ahead of the Class B Notes, or *pari passu* with the Class B Notes, or behind the Class B Notes but ahead of the Class C Notes, or *pari passu* with the Class C Notes, or behind the Class C Notes but ahead of the Class D Notes, or *pari passu* with the Class D Notes or behind the Class D Notes (**New Notes**); and
- (c) notes of any class to replace an existing class of Notes, but with a lower interest rate (or, if fixed rate Notes are to be issued in replacement for floating rate Notes or *vice versa*, a swap rate which (taking into account the relevant margin) is lower than the existing class of Notes being replaced) (**Replacement Notes**).

Any issue of Further Notes, New Notes or Replacement Notes will be subject to the satisfaction of certain conditions precedent. These will include a condition that the Rating Agencies confirm that the then current ratings of each class of Notes already in issue will

not be adversely affected. See further **Condition 16** under “*Terms and Conditions of the Notes*” below.

**Interest rates:**

Each class of Notes will initially bear interest calculated as the sum of LIBOR (as determined in accordance with **Condition 5.3**) plus the relevant Margin.

The interest rate margin applicable to each class of Notes will be as follows (each, a **Margin**):

<b>Class</b>	<b>Margin (per cent.)</b>
Class A Notes	0.18
Class B Notes	0.26
Class C Notes	0.45
Class D Notes	0.78

**Interest payments:**

Interest in respect of the Notes will be determined on each Loan Interest Payment Date (being 20 January, 20 April, 20 July and 20 October of each year unless the same is not a London Business Day, in which case the following London Business Day) (each, an **Interest Determination Date**). The final Interest Determination Date will be the London Business Day immediately preceding the penultimate Interest Payment Date in respect of the Notes.

Interest will be payable on the Notes quarterly in arrear on the first Business Day following each Interest Determination Date (each, an **Interest Payment Date**). **Business Day** means a day (other than Saturday or Sunday or a public holiday) on which commercial banks and foreign exchange markets settle payments and are open for general business (including dealings in foreign exchange and foreign currency deposits) in London and Dublin.

**Interest Periods:**

Each of the following is an **Interest Period** for the purposes of the Notes:

- (i) the period from (and including) an Interest Determination Date to (but excluding) the next Interest Determination Date;
- (ii) the period from (and including) the Closing Date to (but excluding) the Interest Determination Date in July 2005; and
- (iii) the period from (and including) the last Interest Determination Date to (but excluding) the last Interest Payment Date.

The Noteholders will be entitled to receive a payment of interest only in so far as payment is in accordance with the Priorities of Payments (as described in “*Credit Structure – 9. Cashflows*” below). Any interest not paid on the Notes when due will accrue interest and will be paid only to the extent that there are funds available on a subsequent Interest Payment Date in accordance with the Priorities of Payments (as described in “*Credit Structure – 9. Cashflows*” below).

**Issue prices:**

The Class A Notes will be issued at 100 per cent. of their aggregate initial Principal Amount Outstanding;

The Class B Notes will be issued at 100 per cent. of their aggregate initial Principal Amount Outstanding;

The Class C Notes will be issued at 100 per cent. of their aggregate initial Principal Amount Outstanding; and

The Class D Notes will be issued at 100 per cent. of their aggregate initial Principal Amount Outstanding.

**Withholding tax:**

If any withholding or deduction for or on account of any tax is imposed in respect of payments under the Notes, the Issuer will make payments subject to such withholding or deduction and neither the Issuer nor any other entity will be required to gross-up or otherwise pay additional amounts in respect thereof. See “*United Kingdom Taxation*” below.

**Security for the Notes:**

The Notes will be secured pursuant to a deed of charge and assignment made between the Issuer, the Trustee and the Other Issuer Secured Creditors and dated on or before the Closing Date (the **Deed of Charge**).

The Trustee will hold the security granted under the Deed of Charge on trust for itself, any receiver and any other appointee of the Trustee, the Noteholders, the Couponholders, the Paying Agents, the Agent Bank, the Corporate Services Provider, the Servicer, the Special Servicer, the Liquidity Bank, the Note Arranger and the Account Bank (together, the **Issuer Secured Creditors**).

The Issuer will grant the following security interests under or pursuant to the Deed of Charge (the **Issuer Security**):

- (a) a first ranking assignment of its rights in respect of the Senior Loan;
- (b) a first ranking assignment of its interest in the Loan Security;
- (c) a first ranking assignment of its rights under the other Transaction Documents to which it is a party;
- (d) a first fixed charge of its rights to all moneys standing to the credit of the Issuer Accounts;
- (e) a first fixed charge of its interest in any Eligible Investments made by it or on its behalf; and
- (f) a first floating charge over the whole of its undertaking and of its property and assets not already subject to fixed security.

The security interests referred to in **paragraphs (a) to (e)** above may take effect as floating security and thus rank behind claims of certain preferential and other creditors. Prior to enforcement of the Issuer Security, payments in respect of each class of Notes will rank in accordance with the Pre-Enforcement Priority of Payments (as described in “*Credit Structure – 9. Cashflows*”) below. Upon enforcement of the Issuer Security, payments in respect of each class of Notes will rank in accordance with the Post-Enforcement Pre-Acceleration Priority of Payments (as described in “*Credit Structure – 9. Cashflows*” below). Upon acceleration of the Notes, payments in respect of each class of Notes will rank in accordance with the Post-Acceleration Priority of Payments (as described in “*Credit Structure – 9. Cashflows*” below).

**Transfer restrictions:**

There will be no transfer restrictions in respect of the Notes, subject to applicable laws and regulations.

**Governing law:**

The Notes and the other Transaction Documents to which the Issuer will be a party will be governed by English law.

## RISK FACTORS

*Set out in this section is a summary of certain issues of which prospective Noteholders should be aware before making a decision whether or not to invest in Notes of any class. This summary is not intended to be exhaustive. Therefore, prospective Noteholders should read also the detailed information set out elsewhere in this Offering Circular and form their own views before making any investment decision.*

### **(A) Considerations relating to the Notes**

#### **Liability under the Notes**

The Issuer is the only entity which has obligations to pay principal and interest in respect of the Notes. The Notes will not be obligations or responsibilities of, or guaranteed by, any other entity, including (but not limited to) Eurohypo (in any capacity), the Sole Bookrunner, the Trustee, the Share Trustee, the Liquidity Bank, the Servicer, the Special Servicer, the Paying Agents, the Agent Bank, the Corporate Services Provider and the Account Bank, or by any entity affiliated to any of the foregoing.

#### **Limited resources of the Issuer**

The Notes will be full recourse obligations of the Issuer. However, the assets of the Issuer will themselves be limited. The ability of the Issuer to meet its obligations under the Notes will be dependent primarily upon the receipt by it of principal and interest from the Borrower under the Senior Loan (see further “*Considerations relating to the Senior Loan and the Property*” below) and the receipt of funds (if available to be drawn) under the Liquidity Facility Agreement. Other than the foregoing, and any interest earned by the Issuer in respect of its bank accounts, the Issuer is not expected to have any other funds available to it to meet its obligations under the Notes.

Upon enforcement of the security for the Notes, the Trustee or any receiver will, in practice, have recourse only to the Senior Loan and the Issuer’s interest in the Loan Security, and to any other assets of the Issuer then in existence as described in this document. It should be noted that, in certain limited circumstances, the Issuer will not be able to make any further drawings under the Liquidity Facility Agreement.

#### **Ratings of the Notes**

The ratings assigned to each class of the Notes by the Rating Agencies are based on the terms of the Senior Loan, the Loan Security, the Intercreditor Agreement, the Property and other relevant structural features of the transaction, including, among other things, the short term unsecured, unguaranteed and unsubordinated debt ratings of the Liquidity Bank and the Senior Hedge Counterparties. These ratings reflect only the views of the Rating Agencies.

The ratings address the likelihood of full and timely receipt by any of the Noteholders of interest on the Notes and the likelihood of receipt by any Noteholder of principal of the Notes by the Final Maturity Date. There can be no assurance that any such ratings will continue for any period of time or that they will not be reviewed, revised, suspended or withdrawn entirely by any of the Rating Agencies as a result of changes in or unavailability of information or if, in the judgment of the Rating Agencies, circumstances so warrant. A qualification, downgrade or withdrawal of any of the ratings mentioned above may impact upon the market value and/or liquidity of the Notes of any class.

Credit rating agencies other than Fitch and S&P could seek to rate the Notes (or any class of them) without having been requested to do so by the Issuer, and if such unsolicited ratings are lower than the comparable ratings assigned to the Notes by Fitch and S&P, those unsolicited ratings could have an adverse effect on the market value and/or liquidity of the Notes of any class. All references to ratings in this Offering Circular are to ratings assigned by the Rating Agencies (namely Fitch and S&P).

#### **Ratings confirmations**

Under the Transaction Documents, the Trustee may determine whether or not any event, matter or thing is, in its opinion, materially prejudicial to the interests of any class of Noteholders, or, as the case may be, all the Noteholders, and if the Trustee shall certify that any such event, matter or thing is, in its opinion, materially prejudicial, such certificate shall be conclusive and binding upon the Issuer and the Noteholders. In making such a determination, the Trustee shall be entitled to take into account, among other things, any confirmation by the Rating Agencies (if available) that the then current rating of the Notes of the relevant class would or, as the case may be, would not, be adversely affected by such event, matter or thing.



However, it should be noted that the decision as to whether or not to reconfirm any particular rating may be made on the basis of a variety of factors and no assurance can be given that any such reconfirmation will not be given in circumstances where the relevant proposed matter would materially adversely affect the interests of Noteholders of a particular class. The Rating Agencies, in assigning credit ratings, do not comment upon the interests of holders of securities (such as the Notes). In addition, no assurance can be given that the Rating Agencies will provide any such reconfirmation.

#### **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 of the Irish Stock Exchange. There is not, at present, a secondary market for the Notes. 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. In addition, the market value of certain of the Notes may fluctuate with changes in prevailing rates of interest and/or credit spreads. 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.

#### **Availability of Liquidity Facility**

Under the Liquidity Facility Agreement, the Liquidity Bank will make available to the Issuer a £16 million facility (the **Liquidity Facility**) to enable the Issuer to make payments of, among other things, interest in respect of the Notes. The Liquidity Facility will not be available to the Issuer to enable it to make any payment of principal payable in respect of the Notes of any class. If the Issuer makes a drawing under the Liquidity Facility in order to fund a Hedging Loan to the Borrower (as discussed further under “*Credit Structure – 3. Senior Credit Agreement – Hedging Loans*” below), the amount of funds available to meet a shortfall of interest on the Notes (if any) on the following Interest Payment Date will be reduced by a corresponding amount.

The initial Liquidity Facility Agreement will expire 364 days after the Closing Date, although it is extendable. The Liquidity Bank is not obliged to extend or renew the Liquidity Facility at its expiry, but if it does not renew or extend the Liquidity Facility on request then the Issuer may, subject to certain terms, be required to make a Liquidity Stand-by Drawing and place the proceeds of that drawing on deposit in the Liquidity Stand-by Account. See further “*Credit Structure – 8. Liquidity Facility*”, below.

#### **Subordination of Class B Notes, Class C Notes and Class D Notes**

If, on any Interest Payment Date when there are Class A Notes outstanding, the Issuer has insufficient funds to make payment in full of interest due on the Class B Notes and/or the Class C Notes and/or Class D Notes, then the Issuer will be entitled (under **Condition 5.8**) to defer payment of that amount until the following Interest Payment Date. In these circumstances there will be no Note Event of Default. If there are no Class A Notes then outstanding, the Issuer will be entitled to defer payments of interest in respect of the Class C Notes and the Class D Notes only. If there are no Class B Notes outstanding the Issuer will be entitled to defer interest on the Class D Notes only.

The terms on which the Issuer Security will be held will provide that, upon enforcement, certain payments (including all amounts payable to any receiver and the Trustee, all amounts due to the Servicer, the Special Servicer, the Corporate Services Provider, the Account Bank, the Paying Agents, the Agent Bank and all payments due to the Liquidity Bank under the Liquidity Facility Agreement (other than in respect of amounts specified at **paragraph (k)** of “*Credit Structure – 9. Cashflows – Payments Paid out of the Issuer Transaction Account Post-Enforcement of the Issuer Security but Pre-Acceleration of the Notes*” and **paragraph (n)** of “*9. Cashflows – Payments Paid out of the Issuer Transaction Account Post-Acceleration of the Notes*” below)) will be made in priority to payments in respect of interest and principal on the Class A Notes. Upon acceleration of the Notes, all amounts owing to the Class A Noteholders will rank higher in priority to all amounts owing to the Class B Noteholders, all amounts owing to the Class B Noteholders will rank higher in priority to all amounts owing to the Class C Noteholders and all amounts owing to the Class C Noteholders will rank higher in priority to all amounts owing to the Class D Noteholders.

#### **Conflict of interests between classes of Noteholders**

The Trustee will be required, in performing its duties as trustee under the Trust Deed and the Deed of Charge, to have regard to the interests of all the Noteholders together. However, if (in the sole opinion of the Trustee) there is conflict between the interests of the holders of one or more classes of Notes and the interests of the holders of one or more other classes of Notes, then the Trustee will be required in

certain circumstances to have regard only to the interests of the holders of the most senior class of Notes then outstanding. For these purposes, the interests of individual Noteholders will be disregarded and the Trustee will determine interests viewing the holders of any particular class of Notes as a whole.

#### **Withholding or deduction under the Notes**

In the event that a withholding or deduction for or on account of any taxes is imposed by law, or otherwise applicable, in respect of amounts payable under the Notes, neither the Issuer nor any Paying Agent or any other entity is obliged to gross up or otherwise compensate Noteholders for the lesser amounts which the Noteholders will receive as a result of the imposition of such withholding or deduction. The imposition of such withholding or deduction would oblige the Issuer to redeem the Notes at their then Principal Amount Outstanding (plus accrued interest) thereby shortening the average lives of the Notes.

#### **Yield and prepayment considerations**

The yield to maturity of the Notes of each class will depend on, among other things, the amount and timing of receipt by the Issuer of amounts of principal in respect of the Senior Loan (and payment thereof to Noteholders) and the purchase price paid by the holders of the Notes. Such yield may be adversely affected by one or more prepayments in respect of the Senior Loan (and payment thereof to Noteholders).

#### **Post-Enforcement Call Option**

Pursuant to the Post-Enforcement Call Option Agreement the Trustee will, on the Closing Date, grant to OptionCo an option (the **Post-Enforcement Call Option**) to acquire all (but not some only) of the Class B Notes, the Class C Notes and the Class D Notes (plus accrued interest thereon) for a consideration of one penny per Note outstanding following any enforcement of the Issuer Security and after (i) the date on which the Trustee determines that the proceeds of such enforcement are insufficient to pay any further amounts due in respect of the Class B Notes, the Class C Notes and the Class D Notes, (ii) payment of all other claims ranking higher in priority to the Class B Notes, the C Notes and the Class D Notes and *pro rata* payment of all claims ranking in equal priority to the Class B Notes, the Class C Notes and the Class D Notes and (iii) the application of any such proceeds to the Class B Notes, the Class C Notes and the Class D Notes. The Class B Noteholders, the Class C Noteholders and the Class D Noteholders will be bound by the terms of the Post-Enforcement Call Option granted to OptionCo pursuant to the Post-Enforcement Call Option Agreement, the Trust Deed and **Condition 6.7** and the Trustee will be irrevocably authorised to enter into the Post-Enforcement Call Option Agreement with the Issuer and OptionCo on behalf of the Class B Noteholders, the Class C Noteholders and the Class D Noteholders on the Closing Date.

### **(B) Considerations relating to the Senior Loan and the Property**

#### **Concentration of risk generally**

The entire amount of the Note issue proceeds will be on-lent to the Borrower. The Borrower's only material asset is the Property itself and it will therefore have access to no funds other than those generated through its ownership of the Property and its letting of the Property to occupational tenants and any amounts that may be payable under the Senior Hedging Arrangements. If the Borrower were to be unable to make payment in full of the amounts due under the Senior Loan, this would adversely affect the ability of the Issuer to make payments due in respect of the Notes in full.

Real property investments are subject to varying degrees of risk. Rental revenues and property values are affected by changes in the general economic climate and local conditions such as an oversupply of space, a reduction in demand for retail real estate in an area, competition from other available space or increased operating costs. Rental revenues and property values are also affected by such factors as political developments, government regulations and changes in planning laws or policies and changes in tax laws, interest rate levels, inflation, the availability of financing and yields of alternative investments. Retail rentals and values are sensitive to such factors, which can sometimes result in rapid, substantial increases and decreases in rental and valuation levels.

#### **Borrower's dependence on occupational tenants**

The Borrower's ability to meet its obligations in respect of the Senior Credit Agreement will depend upon its continuing to receive a significant level of aggregate rent from the occupational tenants under the occupational leases. The Borrower's ability to make payments in respect of the Senior Credit

Agreement could be adversely affected if occupancy levels at the Property were to fall or if a significant number of occupational tenants were unable to meet their obligations under their occupational leases. See also “*Active Management of the Property*” below.

During the term of the Senior Loan, some of the existing occupational leases which are in place as at the Closing Date will come to the end of their respective contractual terms. This is likely to be the case also for some of the new occupational leases granted by the Borrower after the Closing Date. There can be no assurance that occupational tenants will renew their respective occupational leases or, if they do not, that new occupational tenants will be found to take up replacement occupational leases. Furthermore, even if such renewals are effected or replacement occupational leases are granted, there can be no assurance that such renewals or replacement occupational leases will be on terms (including rental levels) as favourable to the Borrower as those which exist now or before such termination, nor that the covenant strength of either occupational tenants who renew their occupational leases or new occupational tenants who replace them will be the same as or equivalent to, those now existing or existing before such termination.

In addition, the success of a shopping centre depends on achieving the correct mix of tenants so that an attractive range of retail outlets is available to potential customers. If, for whatever reason, several of the current tenants were to cease paying rent or to occupy their respective parts of the Property, the ability of the Borrower to make payments under the Senior Credit Agreement could be significantly impaired. There can be no assurance that the Borrower will, on termination of the occupational leases currently in place, be able to attract the types of tenant needed in the future to maintain the current range of retail outlets at the Property.

The ability to attract the appropriate types and number of tenants paying rent levels sufficient to allow the Borrower to make payments due under the Senior Credit Agreement will depend on, among other things, the performance generally of the retail property market. Continued global instability (resulting from economic and/or political factors, including the threat of global terrorism) may adversely affect the United Kingdom economy. In addition, changes in the structure of the retail sector in the United Kingdom, such as the continuing development of online shopping, may have a negative impact on the demand for regional shopping centres and hence the desirability of rental units at the Property.

Rental levels, the quality of the building, the amenities and facilities offered, the convenience and location of the Property, the amount of space available, the transport infrastructure and the age of the building in comparison to the alternatives are all factors which influence tenant demand. There is no guarantee that changes to the infrastructure, demographics, planning regulations and economic circumstances relating to the surrounding areas on which the Property depends for its consumer base will not adversely affect the demand for units in the Property.

### **Active management of the Property**

The Property has been, and will remain, under active property management. The Borrower has appointed the Property Manager and the Managing Agent to provide certain services in connection with the management of the Property. These are undertaken, principally, in order to try to achieve the correct mix of tenants so that an attractive range of retail outlets is available to customers. This may result in the release of occupational tenants from occupational leases at a time when no replacement occupant has yet signed up to a lease.

Equally, some occupational tenants may wish to reduce the size of their premises or to move premises within the Property. In addition, occupational tenants may decide that they wish to take more or less space or space in a different part of the Property.

If an occupational tenant gets into financial difficulties, the Borrower may find it necessary to grant rental concessions to that occupational tenant or to accept a surrender of the relevant occupational lease. Market conditions may be such at the time that the new occupational lease may provide for payments at a lower rental. In these circumstances, the Borrower may need to agree to such terms, keeping in mind not only the requirement to maximise income but also the impact upon neighbouring shops if the relevant unit were to be closed down for a period.

### **Privity of contract**

The Landlord and Tenant (Covenants) Act 1995 (the **Covenants Act**) provides that, in relation to leases of property in England and Wales granted after 1 January 1996 (other than leases granted after that date pursuant to agreements for lease entered into before that date), if an original tenant under such a

lease assigns that lease (having obtained all necessary consents (including consent of the landlord if required by the lease)), that original tenant's liability to the landlord, under the terms of the lease, ceases. The Covenants Act provides that arrangements can be entered into by which on assignment of a lease of commercial property, the original tenant can be required to enter into an "authorised guarantee" of the assignee's obligations to the landlord. Such an authorised guarantee relates only to the obligations under the lease of the original assignee of the outgoing tenant providing that guarantee and not any subsequent assignees of that original assignee. The same principles apply to an original assignee if it assigns the lease.

To the extent any occupational leases in respect of the Property as at the Closing Date were entered into before 1 January 1996 or pursuant to agreements for lease in existence before 1 January 1996, because the Covenants Act has no retrospective effect, the original tenant under an occupational lease of part of the Property will remain liable under these leases notwithstanding any subsequent assignments, subject to any express releases of the tenant's covenant on assignment. In such circumstances the first and every subsequent assignee would normally covenant with his predecessor to pay the rent and observe the covenants in the lease and would give an appropriate indemnity in respect of those liabilities to his predecessor in title, and thus create a "chain of indemnity".

The majority of occupational leases entered into on or after 1 January 1996 in respect of the Property contain provisions giving the Borrower qualified control over any assignment, and most leases also set out specific criteria which any assignee must meet prior to being able to take over the lease.

There can, however, be no assurance that any assignee of a lease of premises within the Property will be of a similar credit quality to the original tenant, or that any subsequent assignees (who in the context of a new tenancy will not be covered by the original tenant's authorised guarantee) will be of a similar credit quality.

Except as disclosed in the Certificate of Title, each existing occupational lease (other than short term at will or licence arrangements) prohibits the relevant tenant from assigning without the landlord's previous consent, which is not to be unreasonably withheld or delayed. However, whilst it will be reasonable to refuse consent to assign where the new tenant clearly cannot afford to pay the rent or perform the covenants, there can be no assurance that any assignee of an occupational lease (or any part thereof), nor any subsequent assignees covered by an authorised guarantee, will be of a similar credit quality to the existing tenants. Moreover, although the interpretation of the Covenants Act on this point is unclear, it is arguable that the guarantor of a tenant under a new tenancy cannot be required, at the time when it enters into that guarantee, to guarantee or to commit to guarantee the obligations of that tenant under an authorised guarantee when that tenant itself assigns. Therefore, there can be no assurance, in the absence of clarifying court decisions, that any guarantor of an existing tenant can be required to guarantee an authorised guarantee given by the existing tenant on assignment. In addition, not all existing occupational leases require assigning tenants to enter into authorised guarantee agreements.

## **Competition**

Retailing in the UK is highly competitive, with shopping parks representing only a small proportion of the overall retail market and competing against other sectors such as town centres, retail parks and superstores.

The Property's competitors are the shopping centres in Leicester City Centre and the out-of-town retail parks in the vicinity.

The principal factors affecting the Property's ability to attract and retain tenants include the quality of the building, the amenities and facilities offered, the convenience and location of the Property, the amount of space available to be let, the identity and nature of its tenants and the transport infrastructure (including availability and cost of parking) in comparison to competing areas. In addition, the Property may in the future be affected by internet shopping, although it is expected that the range of leisure and food related activities offered by the Property will ensure that customer numbers at the Property should not be materially adversely affected by an increase in internet shopping. See also "*Borrower's dependence on occupational tenants*" above. There are limits on direct competition owing to government planning restrictions on further out-of-town developments.

## **Development of the Property**

The Borrower will have certain discretions as to matters including the design and configuration of the Property and developments within and outside the Property. The Borrower will be required under the terms of the Borrower Security Agreement to obtain the consent of the Loan Security Agent to any development on the Property and any application for planning permission in respect of any part of the Property. Notwithstanding this, there can be no assurance that decisions taken by or on behalf of the Borrower in the future will not adversely affect the value of or cashflows from the Property.

## **Statutory rights of tenants**

In certain circumstances, occupational tenants of the Property may have legal rights to require the Borrower as landlord of that property to grant them tenancies, for example pursuant to the Landlord and Tenant Act 1954 or the Covenants Act. Should such a right arise, the landlord may not have its normal freedom to negotiate the terms of the new tenancy with the tenant, such terms being imposed by the court or being the same as those under the previous tenancy of the relevant premises. Accordingly, while it is the general practice of the courts in renewals under the Landlord and Tenant Act 1954 to grant a new tenancy on similar terms to the expiring tenancy, the basic annual rent will be adjusted in line with the then market rent at the relevant time but there can be no guarantee as to the terms on which any such new tenancy will be granted.

## **Turnover rents**

Eight of the 37 current occupational leases and licences in respect of the Property make provision for a turnover rent to be paid in addition to the market rent. The level of the percentage of turnover to be paid varies from 8 to 22 per cent. according to the terms of each lease. However, because this element of rental income is dependent upon the trading performance of the relevant occupational tenants, there can be no assurance that the turnover element will become payable. Accordingly, there can be no assurance that the Borrower's rental receipts from such occupational tenants will remain at previous levels and be of a sufficient amount on an ongoing basis to enable the Borrower to meet its obligations under the Senior Credit Agreement. According to the Valuation, no tenant is currently paying a turnover element but only base rent. See further "*Description of the Property – Leases*".

## **Administration risk in respect of certain tenants**

If an occupational tenant which is a company were to enter into administration, the Borrower would be prohibited under the Insolvency Act 1986 (as amended, the **Insolvency Act**) from taking any action against the occupational tenant for recovery of sums due or re-entry to the relevant premises. The statutory moratorium on the enforcement of all legal proceedings against a tenant company in administration is effective from the time an administration application is filed at court or, where an administrator is to be appointed to a tenant company out of court, from the time a notice of intention to appoint an administrator is filed at court in accordance with the Insolvency Act.

If the tenant is still trading at the premises or has plans to recommence trading with a view to the survival of the company as a going concern, it is possible that the court would refuse to grant such leave to re-enter to the landlord on the grounds that to do so would frustrate the purpose of the administration and, furthermore, that the court would do so notwithstanding that the administrator was only paying a reduced or even no rent under the terms of the relevant lease. This change in legislative approach could impact on the management of the Property and could result in an increase in the number of units in the Property which are currently producing no or reduced income from time to time. However, there is no certainty at this time as to how the court will apply these new provisions.

## **Leasing parameters**

The level of service charges payable by occupational tenants under the occupational leases may differ, but the overall level of service charges payable by all occupational tenants is normally set at a level which is intended to ensure that the landlord recovers from the occupational tenants (taken as a whole) substantially all of the service costs associated with the management and operation of the Property to the extent that the Borrower itself does not itself make a contribution to those costs. However, there are some items of expenditure which the landlord is not entitled to recover from the occupational tenants, for example, the cost of repairing any defects which were inherent in the Property at the start of any occupational lease, the cost of any rebuilding (as opposed to repair) work at the Property and the costs associated with any major improvements or refurbishments of the Property. Also, the extent



that there is any empty space in the Property, the Borrower will generally experience a shortfall depending on the portion that is empty.

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

There is a risk that rental payments due under the occupational leases on or before the relevant Loan Interest Payment Date will not be paid on the due date or not paid at all. If any payment of rent is not received on or prior to the immediately following Loan Interest Payment Date and any resultant shortfall is not otherwise compensated for from other resources, there may be insufficient cash available to the Borrower to make payments to the Issuer under the Senior Credit Agreement in full or at all. Such a default by the Borrower may not itself result in a Note Event of Default since the Issuer will have access to other resources as mentioned above (specifically, funds made available under the Liquidity Facility to make certain payments under the Notes). However, no assurance can be given that such resources will, in all cases and in all circumstances, be sufficient to cover any such shortfall and that a Note Event of Default will not occur as a result of the late payment of rent.

#### **Refinancing risk**

Unless repaid previously, the Borrower will be required to repay the Senior Loan on the Loan Maturity Date. The ability of the Borrower to repay the Senior Loan in its entirety on the Loan Maturity Date will depend upon, among other things, its ability to find a lender willing to lend to the Borrower (secured against the Property) sufficient funds to enable repayment of the Senior Loan. If the Borrower cannot find such a lender then the Borrower might be forced into selling the Property in circumstances which may not be advantageous in order to repay the Senior Loan. If the Property could not be sold for a sufficient amount to enable repayment of the Senior Loan then the Servicer or the Special Servicer (as appropriate) may decide that enforcement of the Loan Security and trading out of the Property (via administrative receivership) would be more likely to result in sufficient funds being obtained to enable repayment of the Senior Loan. Were trading out of the Property to continue and/or the Property to be retained beyond the Final Maturity Date then the Issuer could be unable to meet its obligations to repay the Notes in full on that date. See also "*Reliance on Valuation Report*" below.

#### **Reliance on Valuation Report**

The valuation report (the **Valuation Report**) which is reproduced in the section headed "*Valuation Report*" below is addressed to, among others, each of the Borrower, the Issuer, Eurohypo, the Trustee and the Sole Bookrunner but may be relied on by each of them only as more fully set out therein.

The Valuer has valued the Property, as at 24 March 2005, at £320,000,000. However, there can be no assurance that the market value of the Property will continue to be equal to or exceed such valuation. As the market value of the Property fluctuates, there is no assurance that this market value will be equal to or greater than the unpaid principal and accrued interest and any other amounts due under the Senior Loan and therefore such amounts due under the Notes. If the Property is sold following a Loan 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 Senior Loan and therefore such amounts due under the Notes. In particular, it should be noted that the Property, being a large retail centre with leisure facilities, is a specialised property asset for which, in such circumstances, no ready market may exist.

#### **Security over bank accounts**

The Borrower will, in accordance with the terms of the Senior Credit Agreement, establish a number of bank accounts into which, among other things, rental income and disposal proceeds (if any) in respect of the Property must be paid (see further "*Credit Structure – Borrower's Accounts*" below). The Borrower will, pursuant to the terms of Borrower Security Agreement, purport to grant fixed security over all of its interests in the relevant bank accounts. Under the terms of the Bank Agreement, the Issuer will maintain the Issuer Transaction Account in respect of which it will purport to grant fixed security under the Deed of Charge.

Although the various bank accounts are stated to be subject to varying degrees of control (for example, the Senior Credit Agreement will provide that the Loan Security Agent is to have sole signing rights over the Rent Account, the Reserve Account and the Default Reserve Account and proceeds from the Issuer Transaction Account may only be applied in accordance with the relevant Priorities of Payments), there is a risk that, if the Loan Security Agent or the Trustee (as appropriate) do not exercise the requisite degree of control over the relevant bank accounts in practice, a court could determine that the security interests granted in respect of those accounts take effect as floating security interests only

notwithstanding that the security interests are expressed to be fixed. In such circumstances, monies paid into accounts could be diverted to pay preferential creditors or to satisfy the claims of unsecured debtors (up to a maximum of £600,000 as described further under “*Enterprise Act 2002*” below) were a receiver, liquidator or administrator to be appointed in respect of the relevant entity in whose name the account is held.

### **Assignment of rents**

The Borrower Security Agreement will contain a provision whereby the rent receivable in respect of occupational leases is assigned by way of security to the Loan Security Agent. Typically, and so long as no receiver has been appointed and/or the mortgagee is not in possession, no notice of the assignment is normally given to the occupational tenants. Accordingly, these assignments will take effect as equitable assignments only. As such, these assignments will be subject to any equities or claims, such as rights of setoff between the landlord and the relevant occupational tenant. The Borrower will covenant in the Senior Credit Agreement not to dispose of assets (such as the rents) to any other party, although if it did assign the rents in breach of that provision and subsequently gave notice of the assignment to the relevant occupational tenant(s) then the relevant assignee’s claims would have priority over the rents in question. However, this would constitute a Loan Event of Default entitling the Senior Lender (subject to the provisions of the Intercreditor Agreement) to accelerate the Senior Loan and enforce the Loan Security.

### **Insurance**

The Senior Credit Agreement will provide that both the Borrower and the Loan Security Agent are to be insured for their respective insurable interests in the Property pursuant to the terms of the insurance policies to be maintained by the Borrower in respect of the Property (the **Insurance Policies**).

If a claim under an Insurance Policy is made, but the relevant insurer under that policy fails to make payment in respect of that claim, this could prejudice the ability of the Borrower to make payments in respect of the Senior Loan, which would in turn prejudice the ability of the Issuer to make payments in respect of the Notes. Under the terms of the Senior Credit Agreement, the Borrower will be required to maintain the Insurance Policies with an insurance company or underwriter that has a long term credit rating or financial strength rating of “BBB” (or better) by Fitch and “BBB” (or better) by S&P or is otherwise acceptable to the Loan Security Agent (acting reasonably).

Under the terms of the Senior Credit Agreement, the Borrower must apply all moneys received under any Insurance Policy (other than loss of rent or third party liability insurance) towards replacing, restoring or reinstating the Property. In addition, except where restricted by the terms of the relevant insurance policy or occupational lease, the proceeds of any Insurance Policy (other than loss of rent or third party liability insurance) may be used, at the option of the Loan Security Agent, to repay the Senior Loan.

### **Uninsured losses**

The Senior Credit Agreement will also contain provisions requiring the Borrower to carry or procure the carrying of insurance with respect to the Property in accordance with specified terms (as to which, see further “*Credit Structure – 3. Credit Agreement – Undertakings*” below). There are, however, certain types of losses (such as losses resulting from war, terrorism (which, within certain limits, is currently covered by the existing insurances), nuclear radiation, radioactive contamination and heave or settling of structures which may be or become either uninsurable or not insurable at economically viable rates or which for other reasons are not covered, or required to be covered, by the required Insurance Policies. The Borrower’s ability to repay the Senior Loan (and, consequently, the Issuer’s ability to make payments on the Notes) might be affected adversely if such an uninsured or uninsurable loss were to occur, to the extent that such loss is not the responsibility of the occupational tenants pursuant to the terms of their occupational leases.

### **Hedging risks**

The Senior Loan bears interest at a floating rate. The income of the Borrower (comprising, primarily, rental income in respect of the Property) does not vary according to prevailing interest rates. Therefore, in order to protect the Borrower (and, indeed, the Issuer) against the risk that the interest rates payable under the Senior Loan may increase to levels which would be too high, bearing in mind the Borrower’s income, the Borrower has entered into and, under the terms of the Senior Credit Agreement, will be



required to maintain certain hedging arrangements to hedge against this risk. See further “*Credit Structure – 3. Senior Credit Agreement – Hedging obligations*” below.

If the Borrower were to default in this obligation, or if a Senior Hedge Counterparty were to default in its obligations to the Borrower, then the Borrower may have insufficient funds to make payments due at that time in respect of the Senior Loan. In these circumstances the Issuer may not have sufficient funds to make payments in full on the Notes and Noteholders could, accordingly, suffer a loss.

### **Planning matters**

The Borrower has confirmed for the purposes of the Certificate of Title that the Property has been constructed in accordance with all relevant planning legislation and, as far as the Borrower is aware, there are no material breaches of planning control existing on the Property, although the Certificate of Title details some minor discrepancies concerning construction of storage units which ideally should be resolved with the planning authority. In this regard, it should be noted that where occupational tenants are in breach of planning obligations or conditions, they would be required under the terms of their occupational lease to take responsibility for such breach. Failure to comply with planning obligations or conditions could give rise to planning enforcement or other compliance action by the local planning authority. Breaches of highways agreements could result in enforcement action by the Highways Authority including the stopping up of access to the Property.

There will be a number of ongoing planning obligations or restrictions relating to certain elements of the Property. Outstanding sums due under planning obligations represent a charge on the land which may rank in priority to a first legal mortgage.

### **Environmental matters**

Certain existing environmental legislation imposes liability for clean-up costs on the owner or occupier of land where the person who caused or knowingly permitted the pollution cannot be found. The term “owner” would include anyone with a proprietary interest in a property. Even if more than one person may have been responsible for the contamination, each person covered by the relevant environmental laws may be held responsible for all the clean up costs incurred.

If any environmental liability were to exist in respect of the Property, neither the Issuer nor the Loan Security Agent should incur responsibility for such liability prior to enforcement of the Loan Security, unless it could be established that the relevant party had entered into possession of the Property or could be said to be in control of the Property. After enforcement, the Loan Security Agent, if deemed to be a mortgagee in possession, or a receiver appointed on behalf of the Loan Security Agent, could become responsible for environmental liabilities in respect of the Property. The Loan Security Agent will be indemnified against any such liability under the terms of the Senior Credit Agreement, and amounts due in respect of any such indemnity will be payable in priority to payments to the relevant Senior Lenders (including the Issuer).

If an environmental liability arises in relation to the Property and is not remedied, or is not capable of being remedied, this 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 loss. 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 that site, and the presence of substances on the Property could result in personal injury or similar claims by private claimants.

It should be noted that RPS Health & Safety Environmental carried out an environmental appraisal in May 2004 and considered the site to represent a low level of environmental risk.

### **Compulsory purchase**

Any property in England and Wales (such as the Property) may at any time be compulsorily acquired by, among others, a local or public authority or a governmental department, generally in connection with proposed redevelopment or infrastructure projects. No such compulsory purchase proposals have been revealed in the Certificate of Title issued in relation to the Property.

However, if a compulsory purchase order is made in respect of the Property (or part of the Property), compensation would be payable on the basis of the open market value of all of the Borrower’s and the tenants’ proprietary interests in the Property (or part thereof) at the time of the purchase. Following such a purchase the tenants would of course cease to be obliged to make any further rental payments to the Borrower under the relevant occupational lease (or rental payments would be reduced to reflect

the compulsory purchase of a part of the Property if applicable). Such a purchase might also constitute a Loan Event of Default and lead to an acceleration of the Senior Loan. The risk to Noteholders is that the amount received from the proceeds of purchase of the freehold or leasehold estate of the Property may be less than the original value ascribed to such Property.

It should be noted that there is often a delay between the compulsory purchase of a property and the payment of compensation (although interest may be payable from the date upon which the acquiring authority takes possession of the property), which will largely depend upon the ability of the property owner and the entity acquiring the property to agree on the open market value of the property. Such a delay may, unless the Borrower has other funds available to it, give rise to a Loan Event of Default.

### **Frustration**

In exceptional circumstances, a tenancy could be frustrated under English law, with the result that the parties need not perform any obligation arising under the relevant agreement after the frustration has taken place. Frustration may occur where superseding events radically alter the continuance of the arrangement under the agreement for a party to the agreement, so that it would be inequitable for such an agreement or agreements to continue. If a tenancy granted in respect of the Property were to be frustrated then this could operate to have an adverse effect on the income derived from, or able to be generated by, the Property. This in turn could cause the Borrower to have insufficient funds to make payments in full in respect of the Senior Credit Agreement, which could lead to a default thereunder.

### **Mortgagee in possession liability**

The Issuer or the Loan Security Agent may be deemed to be a mortgagee in possession if there is physical possession of the Property or an act of control or influence which may amount to possession, such as submitting a demand or notice direct to tenants requiring them to pay rents to the Loan Security Agent or the Issuer (as the case may be). In a case where it is necessary to initiate enforcement procedures against the Borrower, the Loan Security Agent is likely to appoint a receiver to collect the rental income on behalf of itself or the Issuer (as the case may be) which should have the effect of reducing the risk that the Loan Security Agent or the Issuer is deemed to be a mortgagee in possession.

A mortgagee in possession has an obligation to account for the income obtained from the relevant property and in the case of tenanted property will be liable to a tenant for any mismanagement of the relevant property. A mortgagee in possession may also incur liabilities to third parties in nuisance and negligence and, under certain statutes (including environmental legislation), can incur the liabilities of a property owner.

### **Risks relating to conflicts of interest**

Conflicts of interest may arise between the Issuer and Eurohypo, firstly, because Eurohypo will be the initial lender under the Junior Credit Agreement and, secondly, because Eurohypo intends to continue actively to finance real estate-related assets in the ordinary course of its business. During the course of its business activities, Eurohypo may operate, service, acquire or sell properties, or finance loans secured by properties, which are in the same markets as the Property. In such cases, the interests of Eurohypo may differ from, and compete with, the interests of the Issuer, and decisions made with respect to those assets may adversely affect the value of the Property and therefore the ability to make payments under the Notes.

There will be no restrictions on either the Servicer or the Special Servicer preventing them from acquiring Notes or servicing loans for third parties, including loans similar to the Senior Loan. The properties securing any such loans may be in the same market as the Property. Consequently, personnel of the Servicer or the Special Servicer, as the case may be, may perform services on behalf of the Issuer with respect to the Senior Loan at the same time as they are performing services on behalf of other persons with respect to similar loans. Despite the requirement on each of the Servicer and the Special Servicer to perform their respective servicing obligations in accordance with the terms of the Servicing Agreement (including the Servicing Standard), such other servicing obligations may pose inherent conflicts for the Servicer or the Special Servicer.

The Servicing Agreement will require the Servicer and the Special Servicer to service the Senior Loan in accordance with the Servicing Standard. Certain discretions are given to the Servicer and the Special Servicer in determining how and in what manner to proceed in relation to the Senior Loan. Further, as the Servicer and the Special Servicer may each acquire Notes, either of them could, at any time, hold

any or all of the most junior class of Notes outstanding from time to time, and the holder of that class may have interests which conflict with the interests of the holder of the Notes, or more senior classes of Notes. However, the Servicer and the Special Servicer will be required under the Servicing Agreement to act in the best interests of all of the Noteholders.

#### **Appointment of substitute Servicer**

Prior to or contemporaneously with any termination of the appointment of the Servicer, it would first be necessary for the Issuer to appoint a substitute Servicer approved by the Trustee. The ability of any substitute Servicer to administer the Senior Loan successfully would depend on the information and records then available to it. There is no guarantee that a substitute Servicer could be found who would be willing to administer the Senior Loan at a commercially reasonable fee, or at all, on the terms of the Servicing Agreement (even though the Servicing Agreement will provide for the fees payable to a substitute Servicer to be consistent with those payable generally at that time for the provision of commercial mortgage administration services). The fees and expenses of a substitute Servicer would be payable in priority to payments due under the Notes.

#### **Receivership of the Borrower**

Pursuant to the Servicing Agreement, the Servicer and the Special Servicer will be required, in accordance with the Servicing Standard, to maximise the recovery of amounts due from the Borrower and to comply with their respective procedures for enforcement of the Senior Loan and Loan Security current from time to time (as to which, see further “*Servicing*” below). The principal remedies available following a Loan Event of Default will be the appointment of a receiver over the Property and/or other assets of the Borrower and/or entering into possession of the Property. Any such receiver would usually require an indemnity to meet his costs and expenses (which would rank ahead of payments on the Notes) as a condition of his appointment.

Any such receiver is deemed under English law to be the agent of the person or company providing security until the appointment of a trustee in bankruptcy or liquidator and, for so long as the receiver acts within his powers, he will only incur liability on behalf of the person or company providing the security. However, if the Loan Security Agent, the Servicer or the Special Servicer unduly directs, interferes with or influences the receiver’s actions, the Loan Security Agent, the Servicer or the Special Servicer may be held to be responsible for the receiver’s acts.

## **(C) General considerations**

### **Reliance on warranties**

Neither the Issuer nor the Trustee has independently undertaken any investigations as to the accuracy of the various representations given by the Borrower in respect of the Senior Loan, the Loan Security and related matters. Instead, they will rely on the representations and warranties to be given by the Borrower under the Senior Credit Agreement, the Certificate of Title, the building condition survey report on the Property prepared by Powell Williams Partnership, the environmental report on the Property prepared by RPS Health & Safety Environment and the Valuation Report.

### **European Monetary Union**

It is possible that, prior to the maturity of the Notes, the United Kingdom may become a participating Member State in Economic and Monetary Union and that therefore the euro may become the lawful currency of the United Kingdom. If so, (a) all amounts payable in respect of the Notes may become payable in euro, (b) the introduction of the euro as the lawful currency of the United Kingdom may result in the disappearance of published or displayed rates for deposits in sterling used to determine the rates of interest on the Notes or changes in the way those rates are calculated, quoted and published or displayed and (c) applicable provisions of law may allow the Issuer to redenominate the Notes into euro and take additional measures in respect of the Notes.

If the euro becomes the lawful currency of the United Kingdom and the Notes are outstanding at the time, the Issuer intends to make payments on the Notes in accordance with the then market practice of payments on such debts. It cannot be said with certainty what effect, if any, the adoption of the euro by the United Kingdom may have on investors in the Notes. The introduction of the euro could also be accompanied by a volatile interest rate environment which could adversely affect the Borrower's ability to repay the Senior Loan, although the Borrower is required to maintain certain hedging cover in respect of its obligations under the Senior Loan.

### **European Union Directive on the Taxation of Savings Income**

On 3 June 2003, the European Council of Economic and Finance Ministers adopted a Directive on the taxation of savings income. Under the Directive Member States will (if equivalent measures have been introduced by certain non-EU countries) be required, from 1 July 2005, to provide to the tax authorities of another Member State details of payments of interest (or similar income) paid by a person within its jurisdiction to an individual resident in that other Member State. However, for a transitional period, Belgium, Luxembourg and Austria will instead be required (unless during that period they elect otherwise) to operate a withholding system in relation to such payments (the ending of such transitional period being dependent upon the conclusion of certain other agreements relating to information exchange with certain other countries).

### **Implementation of Basel II risk-weighted asset framework**

The Basel Committee on Banking Supervision published the text of the new capital accord on 26 June 2004 under the title *Basel II: International Convergence of Capital Management and Capital Standards: a Revised Framework* (the **Framework**). This Framework will serve as the basis for national rule-making and approval processes to continue and for banking organisations to complete their preparations for implementation of the new Framework. The committee confirmed that it is currently intended that the various approaches under the Framework will be implemented in stages, some from year-end 2006; the most advanced at year-end 2007. If implemented in accordance with its current form, the Framework could affect risk weighting of the Notes in respect of certain investors if those investors are subject to the new Framework (or any legislative implementation thereof) following its implementation. Consequently, investors should consult their own advisers as to the consequences to and effect on them of the proposed implementation of the new Framework. No predictions can be made as to the precise effects of potential changes which might result if the Framework were adopted in its current form.

### **Enterprise Act 2002**

The corporate insolvency provisions of the Enterprise Act 2002, which amend certain provisions of the Insolvency Act, introduced significant reforms to corporate insolvency law. In particular, the reforms restrict the right of the holder of a floating charge to appoint an administrative receiver (unless an exception applies) and instead give primacy to collective insolvency procedures (in particular, administration). Previously, the holder of a floating charge over the whole or substantially the whole of

the assets of a company had the ability to block the appointment of an administrator by appointing an administrative receiver, who would act primarily in the interests of the floating charge holder.

However, section 72B of the Insolvency Act contains provisions which continue to allow for the appointment of an administrative receiver in relation to certain transactions in the capital markets. The relevant exception provides that the right to appoint an administrative receiver is retained for certain types of security (such as the floating charge granted by the Issuer pursuant to the Deed of Charge), which form part of a capital market arrangement (as defined in the Insolvency Act) and which involves both indebtedness of at least £50,000,000 (or, when the relevant security document (being in respect of the transactions described in this Offering Circular, the Deed of Charge and the Borrower Security Agreement) was entered into, a party to the relevant transaction (such as the Issuer) was expected to incur a debt of at least £50,000,000) and also the issue of a capital market investment (also defined but generally a rated, listed or traded bond).

The Issuer is of the view that the floating charge granted by it will fall within the 'capital market exception' under section 72B of the Insolvency Act. As for whether the floating charge granted by the Borrower (as a company registered and incorporated in Gibraltar) would fall within the capital market exception, we refer to the discussion under "*Insolvency proceedings in respect of the Borrower*" below. It should, however, be noted that the Secretary of State may, by secondary legislation, modify the capital market exception and/or provide that the exception shall cease to have effect. No assurance can be given that any such modification or provision in respect of the capital market exception, or its ceasing to be applicable to the transactions described in this document, will not be detrimental to the interests of the Noteholders.

The Insolvency Act also contains a new out-of-court route into administration for a qualifying floating charge-holder, the directors or the relevant company itself. The relevant provisions provide for a notice period during which the holder of the floating charge can either agree to the appointment of the administrator proposed by the directors or the company or appoint an alternative administrator, although a moratorium on enforcement of the relevant security will take effect immediately after notice is given. If the qualifying floating charge-holder does not respond to the directors' or company's notice of intention to appoint, the directors' or, as the case may be, the company's appointee will automatically take office after the notice period has elapsed. Where the holder of a qualifying floating charge within the context of a capital market transaction retains the power to appoint an administrative receiver, such holder may prevent the appointment of an administrator (either by the new out-of-court route or by the court based procedure) by appointing an administrative receiver prior to the appointment of the administrator being completed.

The new provisions of the Insolvency Act give primary emphasis to the rescue of a company as a going concern and achieving a better result for the creditors as a whole. The purpose of realising property to make a distribution to secured creditors is secondary. No assurance can be given that the primary purposes of the new provisions will not conflict with the interests of Noteholders were the Issuer ever subject to administration.

In addition to the introduction of a prohibition on the appointment of an administrative receiver as set out above, section 176A of the Insolvency Act provides that any receiver (including an administrative receiver), liquidator or administrator of a company is required to make a "prescribed part" of the company's "net property" available for the satisfaction of unsecured debts in priority to the claims of the floating charge holder. The company's "net property" is defined as the amount of the company's property which would be available for satisfaction of debts due to the holder(s) of any debentures secured by a floating charge and so refers to any floating charge realisations less any amounts payable to the preferential creditors or in respect of the expenses of the liquidation or administration. The "prescribed part" is defined in the Insolvency Act 1986 (Prescribed Part) Order 2003 (SI 2003/2097) to be an amount equal to 50 per cent. of the first £10,000 of floating charge realisations plus 20 per cent. of the floating charge realisations thereafter, up to a maximum of £600,000.

This obligation does not apply if the net property is less than a prescribed minimum and the relevant officeholder is of the view that the cost of making a distribution to unsecured creditors would be disproportionate to the benefits. The relevant officeholder may also apply to court for an order that the provisions of section 176A should not apply on the basis that the cost of making a distribution would be disproportionate to the benefits. Floating charge realisations upon the enforcement of the Issuer Security and (subject to the comments under "*Insolvency proceedings in respect of the Borrower*" below as to the application of English insolvency law) the Loan Security may be reduced by the operation of these "ring fencing" provisions.



## **Insolvency Act 2000**

Under the Insolvency Act 2000, certain companies (**small companies**) are entitled to seek protection from their creditors for a period of 28 days for the purposes of putting together a company voluntary arrangement with the option for creditors to extend the moratorium for a further two months. A small company is defined as one which satisfies two or more of the following criteria:

- (a) its turnover is not more than £5.6 million;
- (b) its balance sheet total is not more than £2.8 million; and
- (c) the number of employees is not more than 50.

The position as to whether or not a company is a small company may change from time to time and consequently no assurance can be given that the Issuer will not, at any given time, be determined to be a small company. Furthermore, although the Borrower is a foreign company, it is possible that an English court could allow an optional moratorium in respect of the Borrower if it would otherwise constitute a small company (see “*Insolvency proceedings in respect of the Borrower*” below regarding the possible application of English insolvency law). The Secretary of State for Trade and Industry may by regulation modify the eligibility requirements for small companies and can make different provisions for different cases. No assurance can be given that any such modification or different provisions will not be detrimental to the interests of Noteholders.

However, secondary legislation has been enacted which excludes certain special purpose companies in relation to capital market transactions from the optional moratorium provisions. Such exceptions include (i) a company which is a party to an agreement which is or forms part of a capital market arrangement (as defined in that secondary legislation) under which a party has incurred or when the agreement was entered into was expected to incur a debt of at least £10 million and which involves the issue of a capital market investment (also defined, but generally a rated, listed or traded bond) and (ii) a company which has incurred a liability (including a present, future or contingent liability) of at least £10 million. While the Issuer is of the view that the Issuer and the Borrower should fall within the exceptions, there is no guidance as to how the legislation will be interpreted and the Secretary of State for Trade and Industry may by regulation modify the exceptions. No assurance can be given that any modification of the eligibility requirements for these exceptions will not be detrimental to the interests of Noteholders.

If the Issuer and/or the Borrower is determined to be a “small” company and determined not to fall within one of the exceptions (by reason of modification of the exceptions or otherwise), then the enforcement of the security for the Notes by the Trustee may, for a period, be prohibited by the imposition of a moratorium.

## **Insolvency proceedings in respect of the Borrower**

The Borrower is a company incorporated under Gibraltar law. As such, it may be possible for insolvency proceedings to be brought against the Borrower in a court in Gibraltar. In such event, any liquidator appointed by a Gibraltar court may be recognised by an English court and an English court may give effect to applicable Gibraltar insolvency law rather than English insolvency law if a request for assistance is made to the English court under section 426 of the English Insolvency Act. While it is possible for a company to be placed into liquidation in Gibraltar (including voluntary winding up under the supervision of the court), Gibraltar law makes no provision for corporate voluntary arrangements (including any small company moratorium such as exists under the English insolvency legislation) or administration in respect of general corporates (such as the Borrower) and there is no statutory moratorium on the enforcement of security under Gibraltar insolvency law (such as exists under the English insolvency legislation in the case of an administration). Therefore it will not be possible for the Borrower to be placed into administration in Gibraltar under current Gibraltar law.

In addition to (or instead of) any insolvency proceedings that may be commenced in respect of the Borrower in Gibraltar, it is possible that an application may be made to the English court to commence winding up proceedings or administration proceedings in respect of the Borrower in England or that documents could be filed with the English court for an optional moratorium in respect of the Borrower if it were a small company (as to which see “*Insolvency Act 2000*” above). The English court would have jurisdiction to commence such proceedings (on the basis of assets in England in the case of a winding up or under section 426 of the English Insolvency Act following a request for assistance from the Gibraltar court in the case of an administration or optional moratorium). However, the English court would have a discretion as to whether an administrator should be appointed in respect of the Borrower,

or whether the Borrower should be subject to the optional moratorium under the Insolvency Act 2000. The Issuer is of the view that, as a receiver can be appointed over all or substantially all of the assets of the Borrower and all the requirements of the capital markets exception to the prohibition on appointing an administrative receiver are met, an English court is unlikely to make an administration order in respect of the Borrower. In addition, the Issuer is of the view that the English court would not exercise its discretion to apply the provisions of the optional moratorium under the Insolvency Act 2000 to the Borrower in circumstances where the Borrower would fall within the exceptions for special purpose companies referred to in the section on the “*Insolvency Act 2000*” above.

### **Risks relating to the Introduction of International Financial Reporting Standards**

The UK corporation tax position of the Issuer depends to a significant extent on the accounting treatment applicable to it. From 1 January 2005, the accounts of the Issuer are required to comply with either International Financial Reporting Standards (**IFRS**) or with new UK Financial Reporting Standards reflecting IFRS (**new UK GAAP**). There is a concern that companies such as the Issuer might under either IFRS or new UK GAAP, suffer timing differences that could result in profits or losses for accounting purposes, and accordingly for tax purposes, which bear little or no relationship to the company’s cash position.

The stated policy of the Inland Revenue is that the tax neutrality of securitisation special purpose companies in general should not be disrupted as a result of the transition to IFRS or new UK GAAP and that they are working with participants in the securitisation industry to identify appropriate means of preventing any such disruption. As a first step, as part of the Chancellor’s Pre-Budget Report dated 2 December 2004, draft legislation was published to be included in the Finance Act 2005, creating a special interim corporation tax regime for “securitisation companies”. That draft legislation was amended and incorporated in the Finance Act 2005. The Finance Act 2005 contains legislation which allows “securitisation companies” to prepare tax computations for accounting periods ending before 1 January 2007 on the basis of UK GAAP as applicable up to 31 December 2004 (the **moratorium period**), notwithstanding any requirement to prepare statutory accounts under IFRS or new UK GAAP. The Issuer is likely to be a “securitisation company” for these purposes. The Finance Act 2005 also provides for the power on the part of the Treasury to introduce regulations to establish a permanent tax regime that will apply for securitisation companies.

Unless further extensions to the moratorium period or other measures are not introduced by the Inland Revenue to deal with accounting periods beginning on or after 1 January 2007, then profits or losses could arise in the Issuer as a result of the application of IFRS or new UK GAAP which could have tax effects not contemplated in the cashflows for the transaction and as such adversely affect the Issuer and consequently may affect the Noteholders.

### **Change of law**

The structure of the issue of the Notes, the ratings which are to be assigned to them and the related transactions described in this Offering Circular are based on English, Gibraltar and European laws and administrative practice in effect as at the date of this Offering Circular. No assurance can be given as to the impact of any possible change to English, Gibraltar or European law or administrative practice after the date of this document, 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.

*The Issuer believes that the risks described above are the principal risks inherent in the transaction for the 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. The Issuer does not represent that the above statements regarding the risks of holding the Notes are exhaustive. Although the Issuer believes that the various structural elements described in this Offering Circular may mitigate some of these risks for Noteholders, there can be no assurance that these elements 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.*



## THE ISSUER

The Issuer, Opera Finance (Fosse Park) plc, was incorporated in England and Wales on 24 March 2005 (registered number 5403206), as a public company with limited liability under the Companies Act 1985. The registered office of the Issuer is at 35 Great St. Helen's, London EC3A 6AP. The Issuer has no subsidiaries.

### 1. Principal Activities

The principal objects of the Issuer are set out in clause 4 of its memorandum of association and are, among other things, to lend money and give credit, secured and unsecured, to borrow or raise money and secure the payment of money, and to grant security over its property for the performance of its obligations or the payment of money. The Issuer was established for the limited purposes of the issue of the Notes, the making of the Loans and certain related transactions described elsewhere in this document.

The Issuer has not commenced operations and has not engaged, since its incorporation, in any activities other than those incidental to its incorporation and registration as a public limited company under the Companies Act 1985, the authorisation of the issue of the Notes and of the other documents and matters referred to or contemplated in this Offering Circular and matters which are incidental or ancillary to the foregoing.

The activities of the Issuer will be restricted by the Conditions and will be limited to the issue of the Notes, the making of the Senior Loan, the exercise of related rights and powers and the other activities described in this document. See further **Condition 4.1**.

### 2. Directors and Secretary

The directors of the Issuer and their respective business addresses and other principal activities are:

<b>Name</b>	<b>Business Address</b>	<b>Principal Activities</b>
SFM Directors Limited	35 Great St. Helen's, London EC3A 6AP	Directors of special purpose companies
SFM Directors (No.2) Limited	35 Great St. Helen's, London EC3A 6AP	Directors of special purpose companies

The company secretary of the Issuer is SFM Corporate Services Limited, a company incorporated in England and Wales (registered number 3920255), whose business address is 35 Great St. Helen's, London EC3A 6AP. The directors of SFM Directors Limited (registered number 3920254) and SFM Directors (No.2) Limited (registered number 4017430) are Jonathan Eden Keighley, James Garner Smith Macdonald and Robert William Berry (together with their alternate directors Annika Goodwille, Helena Whitaker, Claudia Wallace and Petra Lohmeier) and the directors of SFM Corporate Services Limited are Jonathan Eden Keighley, James Garner Smith Macdonald and Robert William Berry (together with their alternate directors Annika Goodwille, Helena Whitaker, Claudia Wallace and Petra Lohmeier), whose business addresses are 35 Great St. Helen's, London EC3A 6AP and who perform no other principal activities outside the Issuer which are significant with respect to the Issuer.

### 3. Capitalisation and Indebtedness

The capitalisation and indebtedness of the Issuer as at the date of this Offering Circular, adjusted to take account of the issue of the Notes, is as follows:

#### Share Capital

Authorised Share Capital (£)	Issued Share Capital (£)	Value of each Share (£)	Shares Fully Paid Up	Paid Up Share Capital
50,000	50,000	1	50,000	50,000

49,999 of the issued shares in the Issuer are held by the Share Trustee. The remaining one share in the Issuer, is held by SFM Nominees Limited (registered number 04115230) under the terms of a trust as nominee for the Share Trustee. The Share Trustee will hold its interest in the shares of the Issuer on trust for charitable purposes under the terms of the Share Trust Deed.

#### Loan Capital

Class A Commercial Mortgage Backed Floating Rate Notes due April 2014 .....	£164,000,000
Class B Commercial Mortgage Backed Floating Rate Notes due April 2014 .....	£23,880,000
Class C Commercial Mortgage Backed Floating Rate Notes due April 2014 .....	£21,560,000
Class D Commercial Mortgage Backed Floating Rate Notes due April 2014 .....	£25,560,000
<b>Total Loan Capital .....</b>	<b>£235,000,000</b>

Except as set out above, the Issuer has no outstanding loan capital, borrowings, indebtedness or contingent liabilities and the Issuer has not created any mortgages or charges nor has it given any guarantees as at the date of this Offering Circular.

### 4. Accountants' Report

The following is the text of a report, extracted without material adjustment, received by the Issuer from KPMG Audit Plc (**KPMG**) who have been appointed as auditors and reporting accountants to the Issuer. KPMG is a chartered accountancy practice and the registered auditor of the Issuer. The balance sheet contained in the report does not comprise the Issuer's statutory accounts. No statutory accounts have been prepared or delivered to the Registrar of Companies in England and Wales since the Issuer's incorporation. The Issuer's accounting reference date is 31 December and the first statutory accounts will be drawn up to 31 December 2005.

"KPMG Audit Plc  
Opera Finance (Fosse Park) plc  
35 Great St. Helen's,  
London EC3A 6AP  
20 April 2005

Dear Sirs

**Opera Finance (Fosse Park) plc (the Company): £164,000,000 Class A Commercial Mortgage Backed Floating Rate Notes due April 2014, £23,880,000 Class B Commercial Mortgage Backed Floating Rate Notes due April 2014, £21,560,000 Class C Commercial Mortgage Backed Floating Rate Notes due April 2014 and £25,560,000 Class D Commercial Mortgage Backed Floating Rate Notes due April 2014 (together, the Notes).**

We report on the financial information set out in **paragraphs 1 and 2** below. This financial information has been prepared for inclusion in the offering circular dated 20 April 2005 (the **Offering Circular**) of the Company.

#### Basis of Preparation

The financial information set out below is based on the financial statements of the Company from incorporation to 20 April 2005 prepared on the basis described in note 2.1.

## Responsibility

Such financial statements are the responsibility of the Company.

The Company is responsible for the contents of the Offering Circular in which this report is included.

It is our responsibility to form an opinion on the financial information and to report our opinion to you.

## Basis of Opinion

We conducted our work in accordance with the Statements of Investment Circular Reporting Standards issued by the Auditing Practices Board of the United Kingdom. Our work included an assessment of evidence relevant to the amounts and disclosures in the financial information. It also included an assessment of significant estimates and judgments made by those responsible for the preparation of the financial statements underlying the financial information and whether the accounting policies are appropriate to the Company's circumstances, consistently applied and adequately disclosed.

We planned and performed our work so as to obtain all the information and explanations which we considered necessary in order to provide us with sufficient evidence to give reasonable assurance that the financial information is free from material misstatement whether caused by fraud or other irregularity or error.

## Opinion

In our opinion the financial information gives, for the purposes of the Offering Circular, a true and fair view of the state of affairs of the Company at 20 April 2005.

Yours faithfully

KPMG Audit Plc"

## 1. Balance Sheet as at 20 April 2005

	<u>£</u>
<i>Current assets</i>	
Cash at bank and in hand.....	50,000
<i>Capital and reserves</i>	
Called up equity share capital 50,000 fully paid .....	50,000

## 2. Notes

### 2.1 Accounting Policies

The financial information has been prepared under the historical cost convention and in accordance with accounting standards currently applicable in the United Kingdom.

### 2.2 Trading Activity

The Company was incorporated and registered as a public limited company in England and Wales on 24 March 2005 with the name of Opera Finance (Fosse Park) plc.

The Company has not yet commenced business, no audited financial statements have been made up and no dividends have been declared or paid since the date of incorporation.

### 2.3 Share Capital

On incorporation, the authorised share capital of the Company was divided into 50,000 ordinary shares of £1 each.

On incorporation one subscriber share was taken by each of SFM Corporate Services Limited and SFM Nominees Limited. Both subscriber shares were fully paid up and issued on 13 April 2005.

On 13 April 2005, 49,998 ordinary shares were issued by the Company to SFM Corporate Services Limited for a total cash consideration of £49,998.

### 2.4 Auditors

KPMG Audit Plc was appointed as auditor on 13 April 2005.

## THE BORROWER

The Borrower, FP North Limited, was incorporated in Gibraltar on 3 February 2005 (registered number 94061), as a company with limited liability under Gibraltar law. The registered office of the Borrower is at 57/63 Line Wall Road, Gibraltar. The Borrower is a wholly owned subsidiary of FP Holdings Limited and has no subsidiaries of its own.

### 1. Principal Activities

The principal objects of the Borrower are set out in clause 3 of its memorandum of association and are, among other things, to carry on all or any of the businesses of a property holding company and to carry on any other business or activity in connection or conjunction with such business.

### 2. Directors and Secretary

The secretary and directors of the Borrower and their respective business addresses and other principal activities are:

<b>Name</b>	<b>Business Address</b>	<b>Principal Activities</b>
Line Secretaries Limited	56/63 Line Wall Road, Gibraltar	Secretary
Maurice Moses Benady	57/63 Line Wall Road, Gibraltar	Director
Christopher George White	57/63 Line Wall Road, Gibraltar	Director
Moshe Jaacov Anahory	57/63 Line Wall Road, Gibraltar	Director

## DESCRIPTION OF THE PROPERTY

### Introduction

The Property on which the Loans will be secured comprise the land and buildings of Fosse Shopping Park, located in Leicester, England (**Fosse Park**).

Fosse Park is one of the most successful shopping parks in the United Kingdom. The Property itself is an amalgamation of two sites, Fosse Park North encompassing 274,989 sq ft (25,547 sq m) and Fosse Park South encompassing 135,391 sq ft (12,578 sq m). These areas exclude a further 90,940 sq ft (8,449 sq m) of mezzanine floors that have been added as tenant improvements. Fosse Park North is a premier out of town fashion park comprising 13 retail units, a food court and petrol filling station, while Fosse Park South is a large adjacent retail warehouse park comprising 7 units.

The Property includes:

- Two anchor tenants: Marks & Spencer and Bhs anchoring the northern and southern terraces respectively of Fosse Park North;
- A tenant base comprising national multiples such as DSG Retail (trading through Currys, PC World and The Link), Boots, Comet, Next, New Look, WH Smith, Argos, TUI UK and JJB Sports;
- A total of 2,488 parking spaces; and
- A food court and standalone McDonald's restaurant.

Actual current secured gross rent is £17,905,456 per annum. There are seven rent reviews outstanding from 2004/2005.

As per the Valuation, gross rent (inclusive of reversionary income from outstanding rent reviews and commercialisation income) in respect of Fosse Park was £18,464,217 per annum and net rent was £18,404,217.

The gross estimated rental value (**ERV**) of Fosse Park as at the Valuation Date was £19,710,447 per annum.

The Valuer has valued the Property at £320,000,000 as at the Valuation Date.

### Location

Fosse Park is located just outside of Leicester, one of the principal regional centres of the Midlands with a population of approximately 320,000. It is located some 160 km (100 miles) north of London, 69 km (43 miles) east of Birmingham and 50 km (30 miles) south of Nottingham. Situated at the centre of the UK's national motorway network, Leicester has consistently ranked as one of the best performing retail locations in the country.

Fosse Park is situated approximately 4.8 km (3 miles) southwest of Leicester city centre and approximately 0.8 km (0.5 miles) from Junction 21 of the M1 Motorway, which is also the terminus of the M69 motorway. Fosse Park forms the core of what is known as the Motorway Retailing Area, a conglomeration of out-of-town retailing which also includes an Asda food store, a Borders Books & Music and a Sainsbury's supermarket. Fosse Park benefits from prominent frontages to Fosse Park Avenue, Narborough Road South and the main roundabout at their intersection. Fosse Park South borders on Soar Valley Way (A563), which forms Leicester's outer ring road.

### Access

The principal vehicular access to Fosse Park North is from the roundabout at the junction of Narborough Road South and Fosse Park Avenue. The secondary customer access is off Narborough Road South via Everard Way. The principal customer egress routes are directly out onto Fosse Park Avenue adjacent to the Asda petrol filling station and also out onto Everard Way via the roundabout in the southeastern corner of the site.

### Surrounding Area

Immediately to the east of the Property is a 24-hour trading Asda food store. To the north is a J Sainsbury food store and a small four-unit retail park known as Grove Triangle Retail Park. Two of these units are currently vacant, the other two are occupied by Tiles R Us and Home Electrical. There is also a stand-alone unit of 31,000 sq ft (2,880 sq m) at the entrance to the park occupied by Borders

Books & Music. In aggregate, retailing in the immediate vicinity is known as the Motorway Retailing Area and equates to nearly a third of the total out-of-town retail stock in the Leicester conurbation.

Around the perimeter of the park are extensive areas of soft landscaping with a mix of mature shrubs and trees. The maintenance of these areas is covered by service charges levied on the tenants.

**Catchment Population**

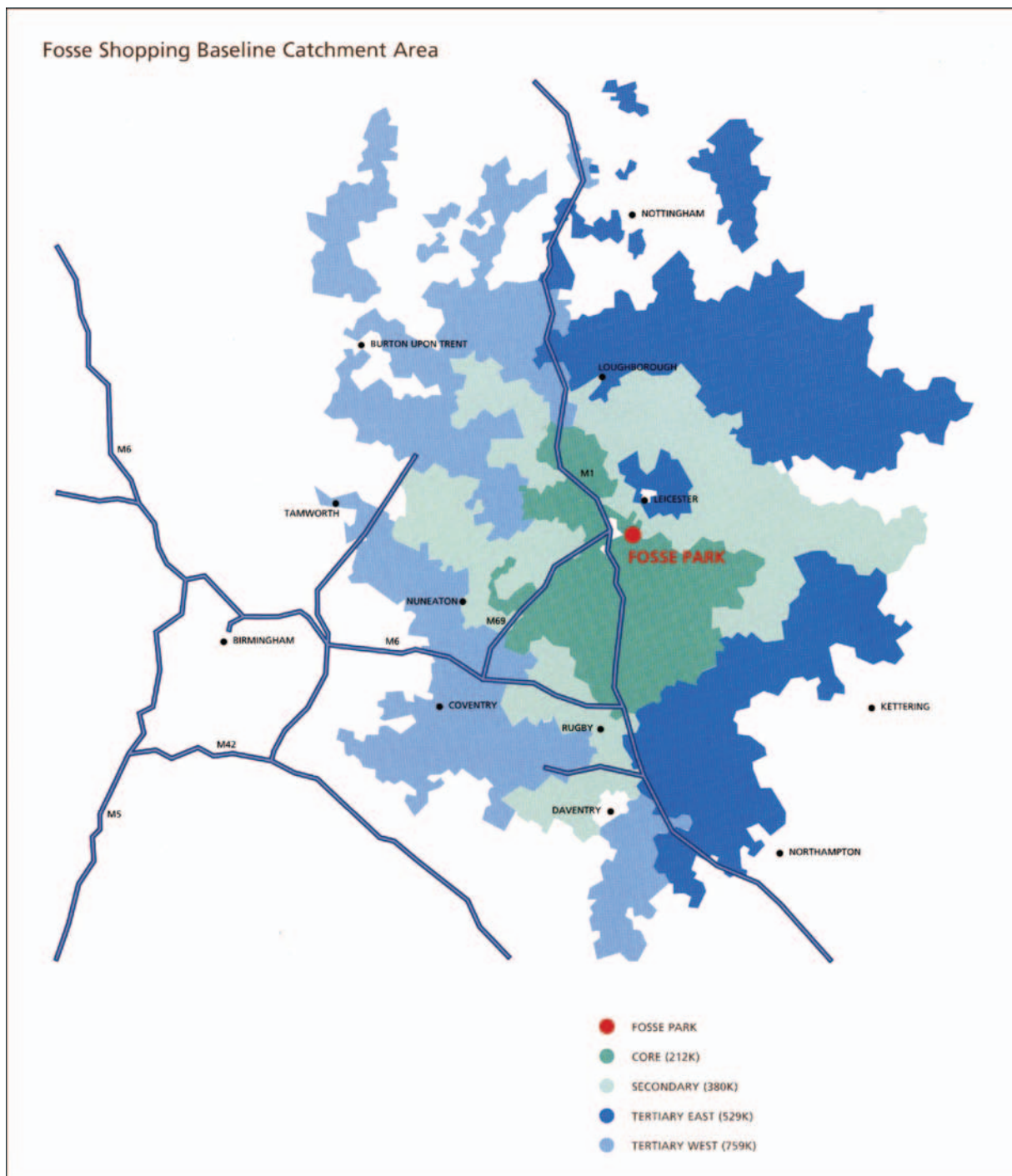
Leicester is the second largest commercial real estate centre in the East Midlands (after Nottingham) and has an urban population of approximately 320,000. Research undertaken by RCT Analytics Research and Consultancy put the population of Fosse Park’s catchment area at 1.88 million, with a total growth of 3.5 per cent. forecast for the next seven years. Although Fosse Park’s catchment area is only 61 per cent. of the size of Leicester City Centre (catchment area of 3.1 million), it does so with a footprint representing only 20 per cent. of the retail accommodation in Leicester City Centre.

Fosse Park benefits from a wide catchment area, extending to the north along the M1 corridor beyond Nottingham, to the east as far as Corby, to the south along the M1 beyond Northampton and to the west beyond the M42 as far as Tamworth. The locational attributes mean that a high proportion of the catchment population, relative to other shopping parks, come from within the secondary and tertiary catchment areas.

In the figure and adjoining chart below, Fosse Park’s catchment area has been segmented into core, secondary and tertiary catchments. The core catchment area is defined as the area from which Fosse Park attracts 50 per cent. of its regular shopping population. The secondary area contributes an additional 30 per cent. and the remaining 20 per cent. comes from the tertiary catchment. Due to Fosse Park’s strategic location on the M1, a significant proportion of Leicester’s conurbation falls into Fosse Park’s tertiary catchment area.

**Catchment Area**

	<b>Potential Market</b>	<b>Catchment Population</b>	<b>% of Fosse Park Consumers</b>
Core.....	211,800	11%	50%
Secondary .....	379,800	20%	30%
Tertiary West (of M1).....	758,700	40%	} 20%
Tertiary East (of M1) .....	529,200	28%	
<b>Total Catchment .....</b>	<b>1,879,500</b>	<b>100%</b>	<b>100%</b>



Source: RCT Analytics Research and Consultancy, May 2004.

## Competition

Fosse Park competes with Leicester city centre in fashion retail and with out-of-town retail warehousing schemes in bulky goods retailing.

### *City Centre Retailing*

Leicester city centre has two covered shopping centres, The Shires and The Haymarket Centre. The Shires was built in the early 1990s and offers 550,000 sq ft (51,096 sq m) of retailing. The centre is anchored by Debenhams and Rackhams department stores and hosts a number of well-known multiples such as Next, Gap, Mothercare, Boots, WH Smith, Waterstones and a Virgin Megastore. The Haymarket Centre, developed in 1973, comprises some 214,000 sq ft (19,881 sq m). It is largely mass market and hosts tenants such as Somerfield and Littlewoods.



Outside the prime area a third scheme, known as Haymarket Towers was developed in the late 1990s. It consists of six large units totalling 130,000 sq ft (12,077 sq m), of which Marks & Spencer has leased a third.

In April 2001, the Leicester Regeneration Company was set up in order to regenerate an area of around 1,000 acres over a fifteen year period. As part of the city's master plan, a new development adjoining The Shires shopping centre is being planned. The planned scheme, known as Shires West, is to provide 505,000 sq ft (46,916 sq m) of additional retail floorspace, including a 220,000 sq ft (20,438 sq m) department store and 42,000 sq ft (3,901 sq m) of bars and restaurants. The anticipated completion date of this scheme is 2007/2008.

Fosse Park has traded successfully alongside Leicester city centre retail since its opening. According to an RCT Analytics Research and Consultancy report, Leicester falls within the Property's territory catchment area with Fosse Park drawing shoppers mainly from smaller cities in the general area and cities located along the M1 corridor.

#### *Out-of-Town Retailing*

There is over 1,250,000 sq ft (116,128 sq m) of retail warehouse provision within the Leicester area, of which some 52 per cent. is in retail parks. Of the five retail parks in the Leicester area, two, St. George's Retail Park and Abbey Retail Park, are within Leicester itself and both are limited to the sale of bulky goods. St George's Retail Park provides 133,000 sq ft (12,356 sq m) of retail warehousing space and Abbey Retail Park provides 54,000 sq ft (5,017 sq m) of retail warehousing space.

Over a third of the out-of-town retail floorspace in the Leicester area is situated around the junction of the M1 and M69 Motorways, the Motorway Retailing Area.

### **Tenure**

#### *Fosse Park North*

The interest in Fosse Park North is freehold. Fosse Park North is subject to some title restrictions, the most material of which are as follows:

- A number of restrictive covenants are in place which effectively prohibit the sale of alcohol on the premises.
- The neighbouring Asda store has the benefit of a covenant which restricts the aggregate floor space used for the retail sale of food to 20,000 sq ft (1,858 sq m). The Marks & Spencer food hall takes up the majority of this allocation, and together with the units in the food court, the space used for the retail of food at Fosse Park North surpasses 20,000 sq ft. Asda has not raised any concerns about space use.
- Under the terms of the groundlease, Marks & Spencer could separate its demised car parking spaces from the overall car park. However, Marks & Spencer has currently agreed that all spaces be managed by the property manager.

#### *Fosse Park South*

Fosse Park South is held long leasehold under the terms of two ground leases, both from Everards Brewery Limited and both for terms of 150 years from 6 April 1983. The leases therefore have a remaining life of 128 years. Both leases are for a peppercorn rent.

Restrictions on the scale and use of the site pursuant to the various planning permissions are as follows:

- The sale of food, clothing, shoes, toys or fashion accessories is prohibited. A broadening of this use restriction has been achieved in relation to unit B on Fosse Park South to allow Argos to retail a full range of products.
- No unit should be less than 10,000 sq ft (929 sq m). Currently, the smallest unit measures 10,073 sq ft.
- A restriction on mezzanines except to facilitate the provision of ancillary office, WCs, staff or plant accommodation, other than in respect of unit F (currently occupied by Furnitureland), which has consent for a 6,456 sq ft (600 sq m) retail mezzanine.

Pursuant to the terms of the lease, the site cannot be used as a betting shop, public house, hotel, inn, restaurant or for the sale or storage of alcohol on or off the premises.

The Lease contains a further provision preventing alterations to the premises without first obtaining the landlord's consent to any application for planning permission and producing to the landlord a copy of the relevant planning permission. No consent is required if such application is made prior to 6 April 2012 where the application is not to erect a new building or to extend a building or for a change of use.

#### *Option Agreement over adjoining Brewery Site*

As well as the interest in Fosse Park North and Fosse Park South, the Borrower will also be acquiring the benefit of an option agreement (the **Option Agreement**) over the adjacent 13.3 acre (53,823 sq m) Everards Brewery site. This site could accommodate up to 260,000 sq ft (24,155 sq m) of additional retail space. In the event that the option is exercised by the Borrower, the purchase price for the adjacent site would be the higher of £40 million (increased annually in line with the Retail Price Index from January 2000), and the market value of the site with the benefit of planning permission (less any option payments (see below)).

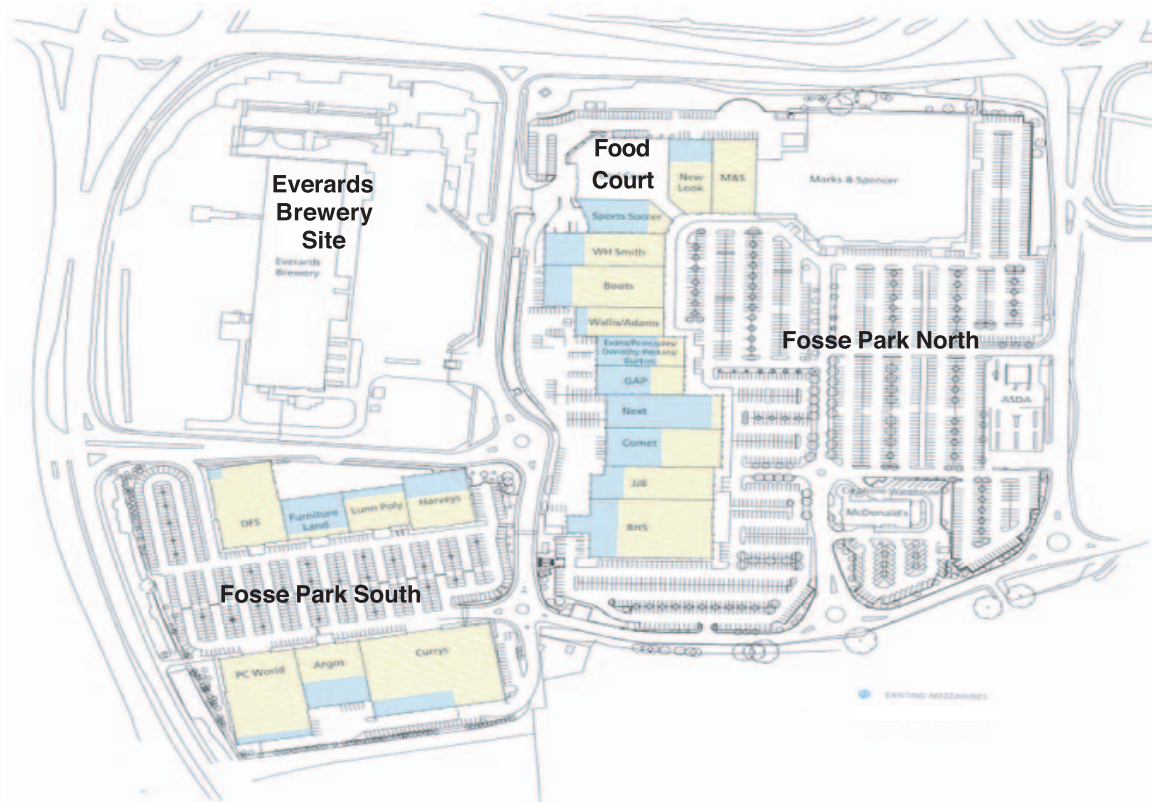
The option is subject to an annual payment by the Borrower of £50,000 and lapses if planning permission is not granted within the option's 10 year life, which runs from January 2000. The agreement stipulates a planning period of one year, which may be extended on a rolling annual basis subject to an additional payment of £50,000. The current planning period is due to expire in January 2006. The option period can also be extended beyond 10 years if there is an undetermined planning application or an application for a judicial review.

In the event of the option being exercised by the Borrower, the interest to be granted will be in the form of a long-leasehold. The rent would be a peppercorn and the lease expiry would coincide with that of the long-leasehold on Fosse Park South.

The Borrower will require the Senior Lenders' consent to exercise the option.

## Property Description

The property plan below lays out the interests being acquired by the Borrower:



### *Fosse Park North*

Fosse Park is bounded by Fosse Park Avenue to the north and east, Everard Way to the south and Narborough Road South to the west.

Fosse Park North was constructed in 1989 by London Edinburgh Trust and consists of two terraces of retail warehouse units arranged in an L-shaped configuration with extensive surface car parking to the front of the “L” and service yards to the rear. Within the surface car parking is a standalone McDonald’s fast food unit, partially sub-let to Carphone Warehouse, and an Asda petrol filling station.

The park is anchored at its northern end by a Marks & Spencer store. In 1998, Marks & Spencer expanded into the adjoining unit formerly occupied by JJB and the combined units are now one of the leading full formal stores in the UK providing over 105,000 sq ft (9,755 sq m) of retail floorspace. The other occupier within this terrace is New Look. The other terrace, which is anchored by a Bhs store at its southern end, comprises ten retail units. Other occupiers within this terrace include WH Smith, Boots, GAP and Next.

At the apex of the two terraces is the food court. Developed in 2000, it replaced a Mothercare unit and a garden centre. It comprises some 13 small food and retail units arranged around a large double-height enclosed area which offers seating for the customers. There is an open sided staircase leading up to the first floor balcony level, which provides a smoking area for customers. The management suite and remote storage areas for the food court units are also located at the balcony level. In 2003, the food court was rebranded as Fosse Food. Refurbishment works were undertaken to enhance the rebranding, including upgraded signage, improved seating and the creation of a new unit for KFC.

There are currently 1,619 surface customer car parking spaces. Of these, 840 spaces fall within the demise of the Marks & Spencer groundlease and these are subject to a mutual right between the tenant and the landlord.

### *Fosse Park South*

Fosse Park South is bounded by Fosse Park Avenue to the north, Grove Way to the west and Soar Valley Way to the south. There is agricultural land to the east.

Fosse Park South is a high quality retail warehouse park comprising seven units. The development, undertaken by Castlemore Securities and sold by way of a forward commitment purchase to Pillar, was completed in early 1997.

The retail warehouse units are arranged in two opposing terraces with extensive brick and tarmacaded surface car parking between.

The park is let to DSG Retail (trading through Currys and PC World), Argos, DFS, Harveys Furnishing Limited, Furnitureland and TUI UK (trading as Lunn Poly).

To the front of each terrace is a paved walkway, partially covered by a canopy running between the glazed entrance panels.

There are two service yards, one to the rear of each terrace of units, with ample space in each for vehicle turning. Access to the service yards is via Grove Way (Units D to G) and Fosse Park Avenue (Units A to C). All units have roller shutter doors opening onto the service yards.

#### *Mezzanine floors*

A number of tenants have installed mezzanine floors. These are tenant improvements and therefore excluded from rent calculations at rent reviews. The unit sizes on Fosse Park North range between 9,793 and 93,000 sq ft (909 and 8,640 sq m), excluding the mezzanine areas. The ability to install mezzanines, however, gives the individual retailers greater flexibility, enabling them to maximise their trading format and increase overall trading area. This helps the park attract a range of retailer requirements.

#### **Capital Expenditures**

Due to the long-term nature of the leases, most capital expenditure attributable to maintenance are recoverable from the tenants. Two capital expenditure projects of note were undertaken in 2000, the development of the food court and the upgrading of the front elevations of the units in Fosse Park North. With the exception of the Bhs and JJB units, both of which retained their brick elevations, all Fosse Park North units now feature continuous window displays.

#### **Accommodation and Tenants**

Fosse Park is currently subject to 37 leases spread across a well-diversified tenant base. The largest tenant group is DSG Retail (trading through Currys, PC World and The Link) with 12 per cent. of passing rent, while the remaining 18 large retailers account for between 2 per cent. and 10 per cent. of passing rent each.

Thirty of these leases are on units in Fosse Park North, thirteen of which relate to the main retail stores and the remainder falling within the food court or as separate units located in the car park (McDonalds and the Asda petrol station). Marks & Spencer is the principal anchor of Fosse Park North while Bhs occupies the second largest unit and acts as a second anchor for the southern terrace. The remaining 10 retail units (excluding the food court) range in size between 9,800 sq ft (910 sq m) and 25,000 sq ft (2,322 sq m) and include national retail multiples such as New Look, JJB Sports, WH Smith, Boots and GAP.

The food court offers an opportunity for active management, with the majority of tenants having break options and turnover components in their leases. Within the food court there are 14 leases that together produce a gross rental income including advertising and commercialisation income of £843,201 per annum

There are seven leases on premises in Fosse Park South. The tenants focus on the sale of bulky goods.

The tenant mix by industry is presented in the table below:

	<b>Rent Payable*</b>	<b>Share (per cent.)</b>	<b>Net Lettable Area</b>	<b>Share (per cent.)</b>
Variety Stores .....	4,797,991	27.0%	177,878	43.3%
Mixed Fashion .....	4,505,865	25.3%	57,692	14.1%
Electrical .....	3,593,369	20.2%	84,690	20.6%
Sports .....	1,641,303	9.2%	19,838	4.8%
Furniture .....	1,640,322	9.2%	43,436	10.6%
Books .....	710,850	4.0%	9,992	2.4%
Catering & Pubs .....	375,000	2.1%	5,053	1.2%
Service Operators.....	352,555	2.0%	10,073	2.5%
Food Stores.....	85,000	0.5%	986	0.2%
Cards & Stationery .....	60,000	0.3%	468	0.1%
Chemists, Health & Beauty, Personal Care.....	30,000	0.2%	274	0.1%
Financial Services.....	10,000	0.1%	–	0.0%
Petrol Station.....	0	0.0%	–	0.0%
	<u>17,802,255*</u>	<u>100%</u>	<u>410,380</u>	<u>100%</u>

\* Rent passing: excludes outstanding rent reviews of £558,761 and commercialisation income of £103,201.

### Rental Income and Net Property Income

As per the Valuation, gross rent in respect of Fosse Park (inclusive of reversionary income from outstanding rent reviews and commercialisation income) was £18,464,217. The only current service charge shortfall is £10,000 per annum. This relates to the Orange Retail Ltd lease in the food court. Although turnover leases are in place for the tenants of the food court and for WH Smith, none of them is currently paying turnover top-up.

### Fosse Park Income Summary

Fosse Park Income Summary	
Contracted rent .....	17,802,255
Advertising and other commercialisation income .....	103,201
Adjustment for outstanding rent reviews .....	558,761
Turnover rent .....	0
Gross Rent .....	<u>18,464,217</u>
<b>Less Irrecoverable Expenditure</b>	
Service charge shortfall on Orange Retail.....	(10,000)
Marketing contribution .....	(50,000)
<b>Total Costs .....</b>	<b><u>(60,000)</u></b>
<b>Total Net Rent.....</b>	<b><u>18,404,217</u></b>

Source: Valuation

There are a number of important rent reviews currently outstanding.

## Outstanding Rent Reviews

Unit	Rent Review
Unit 11, JJB Sports	The review has been agreed but has not yet been documented
Unit 4, Redcastle	Notice has been served but has not yet been agreed
Unit 3, AG Clothing	As Unit 4
Unit 6, Next	As Unit 4
Unit 2, Boots	As Unit 4
Unit E, TUI UK	As Unit 4
Unit 7, Comet	The review has not yet been activated

Source: Valuation

## Vacancy

The property is fully let.

## Leases

Three long leasehold interests have been granted to tenants:

Tenant	Lease Terms	Rent
Marks & Spencer plc	125 years from 11/12/1998	Peppercorn
McDonalds Property Company	125 years from 31/03/1989	Peppercorn
Asda Stores Ltd (petrol filling station)	125 years from 31/03/1989	Peppercorn until 29/06/2014, then 20% of market value, reviewed every 25 years

**Rack Rental Leases** – The majority of the units is let on traditional rack rental leases, which are arranged on modern institutionally acceptable terms. Rent reviews are five yearly and upwards only to the higher of the passing rent or market rent.

**Turnover Leases** – There are turnover leases in place for WH Smith and the restaurant units within the food court. These leases have been drawn on an upward only basis but the market rent is geared to take into account the turnover rent provisions. In the case of the WH Smith unit, rent is geared to 86 per cent. of the market rent, and the additional turnover is for nine per cent. of turnover, to the extent only that such amount exceeds the basic rent. According to the Valuation, no tenant is currently paying turnover top-up.

## Lease Expiry Profile

Over 50% of leases, weighted by rent, are not subject to breaks or expiration during the next 10 years. In Fosse Park North there is one break in 2008. Thereafter, income is not exposed to voids until 2014, when there are a number of important lease expiries. Fosse Park South is subject to one lease expiry in 2018 and one break in 2010, all other leases expiring in 2022. In the food court, a high level of income is exposed in 2010 when the majority of the leases are subject to break options. In addition, Orange Retail, occupying a unit in the food court, has a break in July 2005. The table below provides a break down of lease expiries and breaks weighted by both rent and area.

## Lease Expiry Profile

Years:	0-5	6-10	11-15	16-25	25+	Total
<b>Tenant Break not exercised</b>						
Weighted by rent (£).....	13,369	6,302,695	1,862,955	9,623,236	0	17,802,255
per cent. of total rent .....	0.1%	35.4%	10.5%	54.1%	0.0%	100.0%
weighted by space (ft 2).....	–	88,517	32,283	196,580	93,000	410,380
per cent. of total space.....	0.0%	21.6%	7.9%	47.9%	22.7%	100.0%
<b>Tenant Break exercised</b>						
Weighted by rent (£).....	864,219	7,055,250	662,105	9,220,681	0	17,802,255
per cent. of total rent .....	4.9%	39.6%	3.7%	51.8%	0.0%	100.0%
weighted by space (ft 2).....	10,835	104,156	16,577	185,812	93,000	410,380
per cent. of total space.....	2.6%	25.4%	4.0%	45.3%	22.7%	100.0%



## Concentration of Lease Size

<b>Square feet:</b>	<b>Vacant (per cent.)</b>	<b>0-5,000 (per cent.)</b>	<b>5,000- 10,000 (per cent.)</b>	<b>10,000- 50,000 (per cent.)</b>	<b>50,000- 100,000 (per cent.)</b>	<b>Total (per cent.)</b>
Weighted by rent (£) .....	0.0%	4.2%	8.6%	87.3%	0.0%	100.0%
Weighted by space (ft 2) .....	0.0%	1.9%	4.8%	70.6%	22.7%	100.0%

## Estimated Rental Value

Fosse Park has experienced very strong rental growth since opening in 1989. The first units were leased at between £8-£10 per sq ft, while the most recently achieved lease was £81 per sq ft and prime ERV is now estimated at £90 per sq ft.

The Valuer estimates the gross ERV for Fosse Park at £19,710,447 per annum. This can be split into estimated rental values of £13,376,191 for Fosse Park North (assumes benchmark rent of £85 per sq ft), £5,576,055 for Fosse Park South (assumes benchmark rent of £45 per sq ft) and £758,201 for the food court.

The Valuer has put the uplift in gross rental income attributable to the outstanding rent reviews equal to £558,761. This assumes that rent review settlements will be based on the current agreed levels at £84 per sq ft, and adjusted for size, location, etc.

## Market Value

The Valuer has determined the market value of the freehold interest in Fosse Park North and the leasehold interest in Fosse Park South, subject to existing tenancies, to be £320,000,000 as at the Valuation Date. The valuation has been notionally apportioned between the Fosse Park North and Fosse Park South as follows: £229,250,000 for Fosse Park North and the food court, and £90,750,000 for Fosse Park South. The £320,000,000 market value relates to the asset as a single entity rather than the sum of the parts.

The Valuer has determined the vacant possession value to be £275,000,000 and estimates the exit value in April 2012 at £370,000,000.

## Property management

The Managing Agent will undertake (pursuant to the terms of the Duty of Care Agreement) to collect the rental income from the Property and hold such income in a separate account on trust for the Borrower until transferred to the Borrower's possession.

The Borrower has also appointed the Property Manager to carry out various functions on its behalf in connection with the Property.

## VALUATION REPORT

Eurohypo AG London Branch as Loan Arranger,  
Note Arranger, Loan Security Agent, Senior Facility Agent,  
Servicer and Special Servicer  
90 Long Acre  
Covent Garden  
London WC2E 9RA

Opera Finance (Fosse Park) plc  
as Issuer and Initial Senior Lender  
35 Great St. Helen's  
London EC3A 6AP

Dresdner Bank AG London Branch  
as Sole Bookrunner  
Riverbank House  
2 Swan Lane  
London EC4R 5AL

The Bank of New York as Trustee  
One Canada Square  
London E14 5AL

Dated 20 April 2005

Dear Sirs,

### MARKET VALUATION OF FOSSE SHOPPING PARK AS AT 24 MARCH 2005

#### 1. Instructions

- 1.1 In accordance with instructions received from Eurohypo AG on 24 February 2004, we have inspected the property referred to below (the **Property**) and made all relevant enquiries in order to provide our opinion of Market Value as at 24 March 2005 of the freehold and long leasehold interests, subject to and with the benefit of the occupational leases set out below (the **Leases**).
- 1.2 We understand that our valuation is required in connection with the listing particulars to be published in accordance with the Listing Rules made under the European Communities (Stock Exchange) Regulations of Ireland for listing of debt Securities on the Irish Stock Exchange. This report has been prepared for the purpose of inclusion in a circular to investors (the **Offering Circular**).

#### 2. The Property

- 2.1 The Property we have valued is Fosse Shopping Park, Leicester, Leicestershire, details of which are briefly described in the Schedule (the **Schedule**) attached to this report.

#### 3. Basis of Valuation

- 3.1 Our valuation has been carried out in accordance with the Practice Statements of the Fifth Edition of the Royal Institution of Chartered Surveyors' (RICS) Appraisal and Valuation Standards ("the Red Book") published in February 2003.
- 3.2 UK Practice Statement 3 relates to Valuations for Loan Facilities and in accordance therewith, you have instructed us to value the property on the basis of Market Value, the definition of which is set out at Practice Statement PS 3.2 and is defined as follows:

*"The estimated amount for which a property should exchange on the date of valuation between a willing buyer and a willing seller in an arm's length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion".*

#### **4. Valuation**

- 4.1 On the basis outlined in this Valuation Report, we are of the opinion that the Market Value of the freehold and long leasehold interests in the Property, subject to and with the benefit of the various occupational leases, as summarised in the Schedule, as at 24 March 2005, was **£320,000,000 (Three Hundred and Twenty Million Pounds)**.
- 4.2 Our valuation is exclusive of any VAT.

#### **5. Realisation Costs**

- 5.1 No allowances have been made for any expenses of realisation nor for taxation which might arise in the event of a disposal of the Property. Our valuation is, however, net of acquisition costs.

#### **6. Estimated Net Annual Rents Receivable**

- 6.1 In the Schedule, we set out the Estimated Net Annual Rents Receivable from the Property. In providing this estimate, we define "Net Annual Rent" as "the current income or income estimated by the valuer:
- (i) ignoring any special receipts or deductions arising from the property;
  - (ii) excluding VAT and before taxation (including tax on profits and any allowances for interest on capital or loans); and
  - (iii) after making deductions for superior rents (but not for amortisation), and any disbursements including, if appropriate, expenses of managing the property and allowances to maintain it in a condition to command its rent."
- 6.2 As the Property is let on effective full repairing and insuring leases, the Net Annual Rents receivable stated in the Schedule are the presently contracted rents payable under those leases without any deduction for the cost of management or any other expenses.

#### **7. Estimated Net Annual Rent**

- 7.1 The Schedule sets out our opinion of the current Estimated Net Annual Rent, which is our opinion of the best rent at which a letting of an interest in property would have been completed at the date of valuation assuming:
- (a) a willing landlord;
  - (b) that, prior to the date of valuation, there had been a reasonable period (having regard to the nature of the property and the state of the market) for the proper marketing of the interest, for the agreement of the rent and other letting terms and for the completion of the letting;
  - (c) that the state of the market, levels of values and other circumstances were, on any earlier assumed date of entering into an agreement for lease, the same as on the date of valuation;
  - (d) that no account is taken of any additional bid by a prospective tenant with a special interest;
  - (e) that the length of term and principal conditions assumed to apply to the letting and the other terms are not exceptionally onerous or beneficial for a letting of the type and class of the subject property; and
  - (f) that both parties to the transaction had acted knowledgeably, prudently and without compulsion.

#### **8. Assumptions and Sources of Information**

##### **Floor Areas**

- 8.1 We have relied upon agreed floor areas from previous rent reviews. Where these are not available we have undertaken a measured survey. All mezzanine areas have been excluded from the valuation on the basis that they are tenant's improvements and therefore cannot be rentalised.
- 8.2 We nevertheless assume that all the floor areas are complete and correct, and calculated in accordance with the Fifth Edition of the RICS Code of Measuring Practice.

### **Plant and Machinery**

- 8.3 Landlords' plant and machinery, such as lifts, escalators, air conditioning and other normal service installations, have been treated as an integral part of the Property and are included within our valuation. Process plant and machinery, tenants' fixtures and specialist trade fittings have been excluded from our valuation.
- 8.4 No specialist tests have been carried out on any of the service systems and, for the purpose of our valuation, we have assumed that all are in good working order and in compliance with any relevant statute, by-law or regulation.

### **Environmental Investigations, Ground Conditions and High Voltage Apparatus**

- 8.5 We have not ourselves undertaken any environmental investigations for contamination or otherwise, but we have had sight of an Environmental Appraisal Report dated May 2004, prepared by RPS Health & Safety Environment. Our valuations have been made in full knowledge of the contents thereof.
- 8.6 We have assumed that, except to the extent (if any) disclosed to us in the Environmental Appraisal Report, there are no abnormal ground conditions, nor archaeological remains present which might adversely affect the present or future occupation, development or value of the Property. The Environmental Appraisal Report prepared by RPS Health & Safety Environment considers the site to represent a low level of environmental risk.
- 8.7 We are informed that high voltage supply apparatus exists within close proximity to the Property. If required, technical information can be obtained from the National Radiological Protection Board. Public perception that higher than normal electromagnetic fields may affect health could adversely affect future marketability and value. We do not believe the market would make a discount to reflect these matters, and therefore in our valuation we have made no allowance for them.

### **Inspections**

- 8.8 We inspected the property internally and externally on 25 January 2005. We have assumed that there have been no material changes to the Property since our inspection.

### **Building Structure**

- 8.9 We were not instructed to carry out a structural survey for the purpose of the Valuation Certificate and have assumed there are no structural or latent defects within the Property. We have been provided with a Condition Survey Report dated 11 February 2005, prepared by Powell Williams Partnership. The Report concludes that subject to ongoing pro-active management the condition of the Property can be maintained to a good standard of repair. We have had regard to this in our valuation. From our inspection the Property appeared to be well maintained and in good condition. We have assumed that no known deleterious or hazardous materials have been utilised in the construction of the Property. In view of the age of the Property, we consider this assumption is reasonable.
- 8.10 No allowance has been made in our valuation in respect of rights, obligations or liabilities arising under the Defective Premises Act 1972.

### **Town Planning and Statutory Enquiries**

- 8.11 We have made verbal town planning enquiries only. In the course of our enquiries, we were advised by the local planning authority that there are no adverse town planning, highway or other schemes or proposals that may affect the Property. Information supplied to us by planning officers is, however, given without liability on their part, and we cannot therefore accept responsibility for incorrect information or for material omissions in the information supplied.
- 8.12 We have assumed that, save as may be disclosed by the Certificate of Title referred to below, all relevant planning consents exist for the Property and its respective present uses.
- 8.13 We have assumed that the buildings comply with all statutory and local authority requirements including building, fire, and health and safety regulations.

### **Tenure and Tenancies**

8.14 We have inspected the certificates of title dated 24 March 2005, prepared by Kanter Jules (the **Certificates of Title**) and the Overview Report dated 24 March 2005 prepared by Allen & Overy LLP, and confirm as follows:

- (a) where we have relied upon information provided, such information is not inconsistent with the Certificates of Title;
- (b) we have assumed that, save as may be disclosed by the Certificates of Title, the Property possesses good marketable title free from any unusual encumbrances, restrictions or obligations; and
- (c) we have assumed that, save as may be disclosed by the Certificates of Title, nothing would be revealed by any local search or replies to usual enquiries of the seller which would materially adversely affect the value of the Property.

8.15 No account has been taken of any mortgages, debentures or other security which may now or in the future exist over the Property.

### **Tenants' Covenants**

8.16 Other than obtaining a Dun & Bradstreet Report for each of the tenants, we have not conducted credit enquiries into the financial status of the tenants. In arriving at our valuation, we have regard to the investment market's perception of the covenant strength of the tenants and guarantors.

## **9. Independence**

The total fees, including the fee for this assignment, earned by Savills Commercial Limited (or other companies forming part of the same group of companies within the UK) from Trafalgar Overseas Limited and Apollo Real Estate Entities or other companies forming part of the same group of companies) is less than 5.0% our UK revenues.

## **10. Director's Dealings**

We are not aware of any Director's dealings or potential dealings in the Property.

## **11. Responsibility**

11.1 This Valuation Certificate is for the use only of the addressees of this Valuation Certificate. It may be relied upon by each of them in connection with the proposed transactions described in the Offering Circular, and for no other purpose.

11.2 Neither the whole nor any part of this Valuation Certificate, nor any reference thereto, may be included in any other published document, circular or statement, nor published in any way without our written approval of the form and context in which it is to appear.

Yours faithfully

For and on behalf of Savills Commercial Limited

### **DUNCAN HALL MRICS**

Director

Savills  
20 Grosvenor Hill  
London  
W1K 3HQ

## SCHEDULE 1

### PROPERTY HELD AS AN INVESTMENT

No	Property	Description, Age and Tenure	Terms of the Tenancies	Estimated Net Annual Rents Receivable £ p.a.	Estimated Net Annual Rent £ p.a.	Market Value £
1	Fosse Shopping Park, Leicester, Leicestershire	<p>Fosse Park is a shopping park providing over 500,000 sq ft (46,451 sq m) of retail accommodation on a footprint of approximately 410,380 sq ft (38,125 sq m).</p> <p>Fosse Park was developed in two phases. The first phase, Fosse Park North, was completed in 1989 and comprises two terraces of units in an L shape design. This phase has an open A1 planning consent and is primarily let to fashion retailers. It is anchored at one end by one of the best performing Marks &amp; Spencer stores in the UK and at the other end by BHS. No other shopping park in the UK has two variety stores. At the apex of the two terraces a food court compliments the retail offer, promoting greater dwell time.</p> <p>Fosse Park South was completed in 1997 and consists of seven retail units arranged in two opposing terraces. This part of the park has use restrictions and the retail offer is focussed on bulky goods destination retailers.</p> <p>Fosse Park North is held freehold. Under this three long leasehold interests have been granted to Marks &amp; Spencer Plc, McDonalds Property Company Ltd and Asda Stores Ltd.</p> <p>Fosse Park South is held long leasehold under the terms of two ground leases, both from Everards Brewery Limited and both for terms of 150 years from 6 April 1983 at peppercorn rents. The leases therefore have approximately 128 years unexpired.</p>	<p>The property is fully let on over 30 leases and licences. Lease terms are typical for the nature of this investment and would be considered as institutionally acceptable. The average weighted unexpired term is over 13 years. Tenants include WH Smith Plc, Marks &amp; Spencer Plc, Redcastle Limited, Boots the Chemist, Argos Limited and DFS Furniture Company Plc.</p> <p>The leases are drawn on effective FRI terms.</p>	£17,905,456	£19,710,447	£320,000,000



## CREDIT STRUCTURE

### 1. Origination Process

In connection with the origination of the Senior Loan, Eurohypo (as Loan Arranger) ensured that certain due diligence procedures were undertaken such as would customarily be undertaken by a prudent lender making loans secured on commercial properties of this type, so as to evaluate the Borrower's ability to service its loan obligations and so as to analyse the quality of the Property. In order to do this, an analysis of the contractual cashflows, occupational tenant covenants and lease terms and the overall quality of the real estate was undertaken by or on behalf of Eurohypo (as Loan Arranger). Risk was assessed by stressing the cashflows derived from underlying tenants and the risks associated with refinancing the amount due upon the maturity of the Senior Loan. The property investment experience and expertise of the Borrower's sponsors were also factors taken into consideration in the lending analysis.

The Borrower will be obliged under a costs indemnity dated on or before the Closing Date to repay certain costs to the Loan Arranger in connection with the origination of the Senior Loan.

### 2. Legal Due Diligence

Eurohypo (as Loan Arranger) also instructed English solicitors to carry out a review of the certificate of title prepared by English solicitors acting for the Borrower.

Eurohypo's solicitors and Eurohypo obtained general information relating to the proposed Senior Loan including details of the Borrower's shareholders; the accounts to be operated in connection with the proposed facility; arrangements for the collection of rents and/or management of the Property including details of managing agents; and insurance of the Property.

#### (a) *Title and Other Investigation*

The certificates of title (the **Certificate of Title**) being substantially in the City of London Law Society's standard form will be issued on or before the Closing Date by the Borrower's solicitors, for the benefit of, among others, Eurohypo and the Issuer.

The investigation required to provide the Certificate of Title includes the usual review of title documentation and Land Registry entries (including any lease under which the Property is held) together with all usual Land Registry, Local Authority and other appropriate searches. In addition, all leases and tenancies affecting the Property will have been reviewed subject to certain limited exceptions and the basic terms (including, among other things, details of rent reviews and tenant's determination rights) included in the Certificate of Title.

Eurohypo's solicitors have also reviewed a draft of the Certificate of Title (and will review the final form Certificate of Title) and confirmed the adequacy of the form and content of the Certificate of Title and highlighted any matters that they considered should be drawn to the attention of Eurohypo and the Valuer.

Eurohypo's solicitors have obtained written confirmation from the Valuer that the terms of the Certificate of Title were taken into account in the valuation.

#### (b) *Capacity of Borrower*

Eurohypo's solicitors have satisfied themselves that the Borrower is validly incorporated, has sufficient power and capacity to enter into the proposed transaction, whether it is the subject of any insolvency proceedings, and generally that the Borrower has complied with any necessary formalities.

#### (c) *Registration of Security*

Following drawdown of the Senior Loan, the solicitors acting for Eurohypo (as Loan Arranger) will ensure that all necessary registrations in connection with taking security are attended to within all applicable time periods and appropriate notices served (where required by the terms of the Senior Credit Agreement and Related Security). The title deeds in relation to the Property will be held by Eurohypo's solicitors to the order of the Loan Security Agent. The Borrowers' solicitors will retain certain commercial leases for management purposes but will do so on the basis that they are held to the order of Eurohypo's solicitors.

(d) *Environmental and Structural Reports*

RPS Health & Safety Environmental carried out an environmental appraisal in respect of the Property in May 2004 and considered the site to represent a low level of environmental risk. Powell Williams Partnership carried out a condition survey and issued a Condition Survey Report dated 11 February 2005 which concludes that, subject to on-going pro-active management of the estate, the condition of the site can be maintained to a good standard of repair.

### 3. Senior Credit Agreement

The principal documentation which will be entered into by the Borrower and the Issuer in relation to the Senior Loan comprises the Senior Credit Agreement, the Intercreditor Agreement, the Borrower Security Agreement and the Senior Hedging Arrangements.

The Senior Credit Agreement will be governed by English law. The Senior Credit Agreement will contain the types of representations and warranties and undertakings on the part of the Borrower that a reasonably prudent lender making loans secured on commercial properties of this type would customarily require. A summary of the principal terms of the Senior Credit Agreement is set out below.

(a) *Loan amount, drawdown and further advances*

The outstanding principal balance of the Senior Loan as at the close of business on the Closing Date will be £235,000,000.

The Borrower may, from time to time, request that the Issuer (as Initial Senior Lender) or any other Senior Lender increase its term commitment in a minimum amount of £5,000,000 and integral multiples thereafter of £1,000,000 by written notice to the Senior Facility Agent. However, the Senior Credit Agreement will place no obligation on the Issuer or any other Senior Lender to make any further advance to the Borrower and the Servicer will not be permitted under the Servicing Agreement to agree to an amendment of the terms of the Senior Credit Agreement on behalf of the Issuer or any other Senior Lender that would require the Issuer to make any further advances to the Borrower.

No such additional lending under the Senior Credit Agreement will be permitted unless all of the Senior Lenders and, pursuant to the terms of the Intercreditor Agreement, the Junior Lenders, consent to such additional lending and the Rating Agencies confirm that the then current ratings of each class of Notes will not be adversely affected.

(b) *Conditions precedent*

The Issuer's obligation to make the Senior Loan under the Senior Credit Agreement will be subject to the Senior Facility Agent first having received, in the usual manner, certain documents as conditions precedent to funding in form and substance satisfactory to it. The documentation required will include, among other things: constitutional documents and board minutes for the Borrower, FP Holdings Limited as shareholder (the **Shareholder**) and FP Holdings Limited as subordinated creditor (the **Subordinated Creditor**), a valuation in respect of the Property, evidence of insurance cover in respect of the Property and the Senior Facility Agent being insured for its insurable interest on any Insurance Policies, all title documents relating to the Borrower's interest in the Property, copies of all occupational leases and title searches related to the Property, security documents (and releases of existing security), the Intercreditor Agreement, a copy of the Borrower's VAT registration certificate and evidence that the Borrower has elected to waive exemption in relation to the Property and all relevant legal opinions and notices in connection with the assignment of rental income, charging of bank accounts and assignment of the Senior Hedging Arrangements.

(c) *Interest and amortisation payments/repayments*

Interest under the Senior Loan will be paid quarterly in arrear on 20 January, 20 April, 20 July and 20 October (unless the same is not a London Business Day, in which case, the following London Business Day) in each year in respect of successive Loan Interest Periods.

Unless previously prepaid, the Senior Loan will be repayable in full either on 20 April 2010 or, if certain financial conditions set out in the Senior Credit Agreement are fulfilled to the satisfaction of the Senior Facility Agent, 20 April 2012.

The Senior Credit Agreement will permit the Borrower to prepay the Senior Loan on any Loan Interest Payment Date in whole or in part (subject to a minimum of £500,000) by giving not less than 28 days' prior written notice to the Senior Facility Agent and subject to payment of certain prepayment fees (**Borrower Prepayment Fees**). Any such Borrower Prepayment Fees will not be paid to the Issuer (or any other Senior Lender) but will be for the account of the Loan Arranger in accordance with the terms of the Senior Credit Agreement.

In connection with prepayments by the Borrower, where the notional amount of the Senior Hedging Arrangements exceeds the aggregate amount of the Senior Loan currently outstanding following prepayments by the Borrower, the Borrower must, at the request of the Senior Facility Agent, reduce the notional amount of the Senior Hedging Arrangements by an amount and in a manner satisfactory to the Senior Facility Agent (acting reasonably) to reflect the aggregate amount of the Senior Loan then outstanding (as described further in Hedging obligations below).

On each Loan Interest Payment Date, moneys will be debited from the Rent Account (as defined below) to discharge any interest, principal payments and/or other sums due under the Senior Credit Agreement and the Senior Hedging Arrangements and thereafter (provided the Interest Cover Percentage (as defined below) is 130 per cent. or greater) under the Junior Credit Agreement and the Junior Hedging Arrangements. Any surplus monies will be credited to the General Account (as defined below) and, subject to there being no Loan Event of Default outstanding and any restriction in the Subordination Deed and certain other obligations may be withdrawn by the Borrower.

(d) *Hedging obligations*

Under the terms of the Senior Credit Agreement, the Borrower will be required to maintain (subject to the limits described below) interest rate hedging arrangements to protect against the risk that the interest rate payable by the Borrower under the Senior Loan may increase to levels which would be too high, bearing in mind the Borrower's income (which comprises, primarily, rental income in respect of the Property and which does not vary according to prevailing interest rates).

Pursuant to the terms of the Senior Credit Agreement, the Borrower will enter into hedging arrangements in respect of the Senior Loan (the **Senior Hedging Arrangements**) with the Senior Hedge Counterparties. Each Senior Hedge Counterparty is required under the terms of Senior Credit Agreement to have a requisite rating of "F1" (or better) by Fitch and "A-1" (or better) by S&P for its short-term unsecured debt obligations and "A" (or better) by Fitch for its long-term unsecured debt obligations.

In addition, under the terms of the Senior Credit Agreement, the Senior Hedging Arrangements must be for an aggregate notional amount not less than the aggregate amount of the Senior Loan then outstanding, such that at all times the Borrower's obligations under the Senior Loan will be fully hedged against adverse movements in prevailing interest rates.

If at any time the notional amount of the Senior Hedging Arrangements exceeds the aggregate amount of the Senior Loan at that time, the Borrower must, at the request of the Senior Facility Agent, reduce the notional amount of the Senior Hedging Arrangements by an amount and in a manner satisfactory to the Senior Facility Agent so that it no longer exceeds the aggregate amount of the Senior Loan then outstanding.

Neither the Borrower nor a Senior Hedge Counterparty will be entitled to amend or waive the terms of any Senior Hedging Arrangements without the consent of the Senior Facility Agent.

Except as set forth above, neither the Borrower nor a Senior Hedge Counterparty in respect of any Senior Hedging Arrangements will be permitted to terminate or close out any Senior Hedging Arrangements (in whole or in part) except:

- (i) in case of illegality;
- (ii) where all outstanding amounts under the Senior Finance Documents (other than the Senior Hedging Arrangements) have been paid in full;
- (iii) as permitted by the terms of the Senior Hedging Arrangements or with the consent of the other party to such Senior Hedging Arrangements (whether a Senior Hedge Counterparty or

the Borrower, as the case may be), in each case together with the consent of the Senior Facility Agent; or

- (iv) in the case of the Borrower only, upon the request of the Senior Facility Agent as a result of a counterparty to the Senior Hedging Arrangements failing to comply with the provisions of the relevant Senior Hedging Arrangements regarding a Rating Event (as defined below).

If at any time any Senior Hedge Counterparty ceases to have the requisite rating specified above and/or following such a cessation experiences a further ratings downgrade specifically described in the Senior Hedging Arrangements (a **Rating Event**), it will be required to take certain measures specified by the relevant Rating Agencies to address any impact of any such Rating Event on the Notes. The required measures will vary depending upon the nature of the Rating Event and will include the relevant Senior Hedge Counterparty:

- (i) putting in place an appropriate mark-to-market collateral agreement in support of the Senior Hedge Counterparty's obligations under the Senior Hedging Arrangements and transferring collateral to the Borrower;
- (ii) transferring all of its rights and obligations with respect to the relevant Hedging Arrangements to a replacement third party; and/or
- (iii) procuring a third party to become a co-obligor or guarantor in respect of its obligations under the relevant Senior Hedging Arrangements,

in each case in a manner satisfactory to the relevant Rating Agencies and as described in more detail in the relevant Senior Hedging Arrangements.

(e) *Hedging Loans*

If the Borrower fails to pay an amount due and payable under any Senior Hedging Arrangements and such failure constitutes a Loan Event of Default, the Issuer (or the Servicer on its behalf) may, pursuant to the terms of the Senior Credit Agreement and in accordance with the Servicing Agreement, make a loan to the Borrower to enable it to pay that amount (a **Hedging Loan**). The Issuer will fund any such Hedging Loan by making an Income Deficiency Drawing (as defined below) under the Liquidity Facility Agreement. A Hedging Loan will be repayable on demand on any Loan Interest Payment Date or on or after the date the Senior Facility Agent by notice to the Borrower cancels any outstanding commitments under the Senior Credit Agreement and/or demands that all or part of the Senior Loan together with accrued interest and all other amounts accrued under the Senior Finance Documents become immediately due and payable and/or demands that all or part of the Senior Loan become payable on demand. A Hedging Loan will bear interest at the default rate for overdue payments under the Senior Credit Agreement and will be repaid from monies standing to the credit of the Rent Account or from the proceeds of a loan from the Subordinated Creditor to the Borrower or otherwise in accordance with the Senior Credit Agreement.

(f) *Representations and warranties*

The representations and warranties to be given by the Borrower under the Senior Credit Agreement, as of the date of the Senior Credit Agreement, the date of drawdown and (subject to certain exceptions) each Loan Interest Payment Date, will include, among other things, the following statements:

- (i) the Borrower is duly incorporated as a limited liability company under the laws of Gibraltar and has the power to own its assets and carry on its business and to enter into, perform and deliver the Senior Finance Documents and such entry into and performance of the Senior Finance Documents will constitute a legal, valid, binding and enforceable obligation of the Borrower (subject to certain qualifications) and not conflict in any material respect with any applicable law or regulation or in any material respect with any document binding on it or the constitutional documents of the Borrower;
- (ii) no Loan Event of Default is outstanding or will result from the making of the Senior Loan;
- (iii) subject to due registration of the relevant loan security documents, all authorisations required in connection with entry into, performance, validity and enforceability of the Senior Finance Documents have been obtained or effected and are in full force and effect;

- (iv) the Borrower is, subject to due registration, the legal and beneficial owner of the Property and has good and marketable title to the Property, in each case free from any security interests (other than those set out in the Borrower Security Agreement, the Certificate on Title and the Related Security);
- (v) the security conferred by the Borrower Security Agreement and the Related Security constitutes a first priority security interest over the assets referred to in each agreement and the assets are not subject to any prior or *pari passu* security interests;
- (vi) no litigation, arbitration or administrative proceedings are current or, to the knowledge of the Borrower pending or threatened which, if adversely determined, are reasonably likely to have a material adverse effect;
- (vii) the information provided by the solicitors preparing the Certificate on Title was believed to be true and accurate in all respects as at the date given and did not omit any information which, if disclosed, would make that information untrue or misleading in any material respect;
- (viii) except as disclosed in the Certificate on Title, no breach of any law or resolution is outstanding which may adversely affect the value of the Property;
- (ix) all written information supplied by the Borrower to the Loan Arranger, the Senior Lenders and the Senior Facility Agent, among others, in connection with the Senior Finance Documents was true, accurate and complete in all material respects as at its date and did not omit at its date any information which made the information supplied misleading in any material respect;
- (x) all information supplied by the Borrower to the Valuer for the purposes of the Valuation was true, complete and accurate in all material respects as at its date and did not omit as at its date any information which might adversely affect the Valuation in any material respect;
- (xi) the financial statements of the Borrower most recently delivered to the Senior Facility Agent have been prepared in accordance with accounting principles and practices generally accepted in the United Kingdom and fairly represent the financial condition of the Borrower as at the date to which they were drawn up, and there has been no material adverse change in the financial condition of the Borrower since the date of the accounts;
- (xii) the Borrower has neither carried on any business since the date of its incorporation except for the ownership and management of its interests in the Property nor as at the date of the Senior Credit Agreement, entered into any material agreements (other than the Senior Finance Documents, the Junior Finance Documents, the documents relating to the acquisition of the Property by the Borrower, the Option Agreement, any lease or licence or other right of occupation or right to receive rent to which the Property may be subject (an **Occupational Lease**) and any agreement to grant an Occupational Lease (together the **Relevant Documents**));
- (xiii) the Borrower has no subsidiary;
- (xiv) as at the Closing Date, to the best of its knowledge and belief:
  - (A) the relevant sections of this Offering Circular contain all material information with respect to the Borrower, and the Property which is material in the context of the Notes;
  - (B) the statements contained in the relevant sections of this Offering Circular relating to the Borrower and the Property, are, in every material respect, true and accurate and not misleading;
  - (C) there were and are no other facts, omission of which would make any statement in the relevant sections of this Offering Circular relating to itself and the Property misleading in any material respect; and
  - (D) all reasonable enquiries were made to ascertain all facts and to verify the accuracy of all statements contained in the relevant sections of the Offering Circular relating to the Borrower and the Property;
- (xv) it is not a member of a value added tax group;



- (xvi) as at the date of the Senior Credit Agreement, all amounts payable by the Borrower under the Senior Finance Documents may be made without any tax deduction;
- (xvii) no rental income payable to the Borrower is subject to a requirement to make a tax deduction;
- (xviii) as at the date of the Senior Credit Agreement, except for certain registration fees, no stamp or registration duty or similar tax or charge is payable in Gibraltar in respect of any Senior Finance Document;
- (xix) (A) at least 90 per cent. of the entire issued share capital of Fosse Park Limited is ultimately owned and controlled by Trafalgar Overseas Limited, Apollo European Real Estate Fund II, L.P. and Apollo European Real Estate Fund (EURO), L.P.;
- (B) the entire issued share capital of FP Holdings Limited is ultimately owned and controlled by Fosse Park Limited;
- (C) the Borrower's entire issued share capital is legally and beneficially owned and controlled by the FP Holdings Limited; and
- (D) the shares in the capital of the Borrower are fully paid.

(g) *Undertakings*

The Borrower will give various undertakings under the Senior Credit Agreement which will take effect so long as any amount is outstanding under the Senior Credit Agreement or any commitment is in place. These undertakings will include, among other things, the following:

- (i) to provide the Senior Facility Agent with financial information on an ongoing basis, including audited accounts, as soon as they are available at the end of each financial year;
- (ii) to supply the details of any shareholder or creditor documentation;
- (iii) to supply details of any litigation, arbitration or administrative proceedings which are current or to its knowledge threatened and which are reasonably likely to, if adversely determined, have a material adverse effect;
- (iv) to notify the Senior Facility Agent promptly of any Loan Event of Default;
- (v) to procure that the Borrower's obligations under the Senior Finance Documents rank at least *pari passu* with all other present and future unsecured obligations (other than obligations mandatorily preferred by law) and not to create or permit any security interest to arise over any of its assets (other than any security interest created under the Loan Security and any lien arising by operation of law and in the ordinary course of trading) and not to sell, transfer, lease or otherwise dispose of all or any part of its assets;
- (vi) not to enter into any amalgamation, demerger, merger or reconstruction or acquire any assets or business or make any investments other than its interests in the Property or the construction, acquisition, ownership and management of the Property or its interests in the Option Agreement;
- (vii) not to exercise any of its rights under the Option Agreement without the prior consent of the Senior Lenders;
- (viii) not to make any loans or provide any other form of credit or to give any guarantee or indemnity to any person (other than certain customary exceptions);
- (ix) not to incur any unsubordinated financial indebtedness (other than indebtedness incurred under the Senior Finance Documents or any loan from the Subordinated Creditor);
- (x) not to enter into any contracts other than the Relevant Documents;
- (xi) not to declare or pay any dividend or make any distribution in respect of its shares, unless it is out of moneys paid into the General Account in accordance with paragraph (xv) of the Loan Waterfall or in accordance with the disposals covenant in the Senior Credit Agreement (as described in more detail in paragraph (xiv) below) and provided no Loan Event of Default is outstanding or would result from the payment;



- (xii) not to carry on any business other than the ownership and management of its interests in the Property and any activities carried on in accordance with good management of the Property or to have any subsidiaries;
- (xiii) to comply with certain customary undertakings regarding the administration of occupational leases and the appointment of managing agents in respect of the Property;
- (xiv) not to dispose of all or any part of its assets unless:
  - (A) the disposal is made with the consent of the Senior Majority Lenders;
  - (B) of cash by way of a payment out of a Borrower Account; or
  - (C) of all or part of the Property (the **Relevant Disposal**) provided:
    - I. no Loan Event of Default would result from the Relevant Disposal;
    - II. the Interest Cover Percentage will be at least 125 per cent. immediately after the date of the Relevant Disposal;
    - III. the Loan to Value Ratio will not exceed 77.5 per cent. immediately after the date of the Relevant Disposal;
    - IV. in the case of a sale of part of the Property, that part of the Property has its own separate, divisible registered title and was individually valued in the initial Valuation;
    - V. the Senior Lenders (acting reasonably) are satisfied that the Property or part of the Property is being disposed of on arm's lengths terms at open market value;
    - VI. the net disposal proceeds are no less than the initial Valuation attributed to the Property or that part of the Property; and
    - VII. the Senior Loan and the Junior Loan are prepaid as summarised below.

If the Relevant Disposal is of all the Property, the Borrower must apply the Net Disposal Proceeds:

- (A) *first*, in prepayment of the Senior Loan and all other amounts outstanding under the Senior Finance Documents; and
- (B) *second*, in prepayment of the Junior Loan and all other amounts outstanding under the Junior Finance Documents.

If the Relevant Disposal is of part of the Property and the aggregate amount outstanding of the Junior Loan and the Senior Loan as a percentage of the value of the Property (the **Junior Loan to Value**) immediately before the Relevant Disposal is equal to or greater than 85 per cent. (determined in accordance with the Initial Valuation), then the Borrower must apply:

- (A) an amount of the Net Disposal Proceeds equal to 110 per cent. of the Senior Allocated Loan Amount (as defined below) for the Relevant Disposal (together with any amounts payable to a Senior Secured Creditor as a result of a prepayment under this subparagraph) in prepayment of the Senior Loan and such amounts; and
- (B) the remainder of the Net Disposal Proceeds following a prepayment of the Senior Loan in accordance with paragraph (a) above (together with any amounts payable to a Junior Secured Creditor as a result of a prepayment under this subparagraph) in prepayment of the Junior Loan and such amounts,

on the Interest Payment Date immediately succeeding the date of the Relevant Disposal.

If the Relevant Disposal is of part of the Property and the Junior Loan to Value immediately before the Relevant Disposal is less than 85 per cent. (determined in accordance with the Initial Valuation) then:

- (A) 50 per cent. of the amount by which the Net Disposal Proceeds exceed the value attributed to that part of the Property in the initial Valuation will be paid into the General Account;
- (B) subject to a payment under paragraph (a) above, the Borrower must apply an amount of the Net Disposal Proceeds equal to 110 per cent. of the Senior Allocated Loan

Amount for the Relevant Disposal (together with any amounts payable to a Senior Secured Creditor as a result of a prepayment under this paragraph) in prepayment of the Senior Loan and such amounts on the Loan Interest Payment Date immediately succeeding the date of the Relevant Disposal; and

- (C) the remainder of the Net Disposal Proceeds following a payment under paragraph (a) above and a prepayment of the Senior Loan in accordance with paragraph (b) above (together with any amounts payable to a Junior Finance Party as a result of a prepayment under this paragraph in prepayment of the Junior Loan and such amounts on the Loan Interest Payment Date immediately succeeding the date of the Relevant Disposal

If the Relevant Disposal is not on a Loan Interest Payment Date, the Net Disposal Proceeds which are to be used to prepay the Senior Loan and the Junior Loan above will be paid into the Default Reserve Account pending the next Loan Interest Payment Date.

For these purposes:

**Junior Majority Lenders** means, at any time, Junior Lenders:

- (a) whose participations in the Junior Loan then outstanding aggregate  $66\frac{2}{3}$  per cent. or more of the Junior Loan then outstanding; or
- (b) if there is no Junior Loan then outstanding, whose commitments to lend then aggregate  $66\frac{2}{3}$  per cent. or more of the total commitments; or
- (c) if there is no Junior Loan then outstanding and the total commitments have been reduced to nil, whose commitments aggregate  $66\frac{2}{3}$  per cent. or more of the total commitments immediately before the reduction;

**Senior Majority Lenders** means, at any time, Senior Lenders:

- (a) whose participations in the Senior Loan then outstanding aggregate  $66\frac{2}{3}$  per cent. or more of the Senior Loan then outstanding; or
- (b) if there is no Senior Loan then outstanding, whose commitments to lend then aggregate  $66\frac{2}{3}$  per cent. or more of the total commitments; or
- (c) if there is no Senior Loan then outstanding and the total commitments have been reduced to nil, whose commitments aggregate  $66\frac{2}{3}$  per cent. or more of the total commitments immediately before the reduction.

**Net Disposal Proceeds** means the gross proceeds of any disposal permitted under the terms of the Senior Credit Agreement less the reasonable costs and expenses incurred in connection with that disposal; and taxes paid or reasonably estimated by the Borrower to be payable (and certified by the Borrower to the Senior Facility Agent as a result of that disposal);

**part of the Property** means:

- (i) all that freehold land known as Fosse Retail Park, Narborough Road South Enderley LE19 1HX registered at H.M. Land Registry with title number LT212370 (FP South); or
- (ii) all that Leasehold land known as land lying to the east of Narborough Road South, Narborough registered at H.M. Land Registry under title number LT254101 (FP North),

each individually valued in the initial Valuation; and

**Senior Allocated Loan Amount** means:

- (i) for a disposal of Fosse Park South, £66,644,531.25; and
- (ii) for a disposal of Fosse Park North, £168,355,468.75;
- (xv) to maintain insurance on the Property (on terms acceptable to the Senior Facility Agent) on a full reinstatement value basis together with a further amount equal to 12.5 per cent. of the full reinstatement cost and not less than three years' loss of rent on all occupational leases together with third party liability insurance and insurance against acts of terrorism and to procure that the Loan Security Agent is insured for its insurable interest on all relevant insurance policies;

- (xvi) all insurances required under the Senior Credit Agreement must be with an insurance company or underwriter that:
  - (A) has a long term credit rating or a financial strength rating of “BBB” (or better) by Fitch and “BBB” (or better) by S&P; or
  - (B) is otherwise acceptable to the Senior Facility Agent (acting reasonably);
- (xvii) to comply with all applicable environmental laws where failure to do so would have a material adverse effect on the ability of the Borrower to perform its obligations under the Senior Finance Documents;
- (xviii) to maintain projected annual net rental income as a percentage of projected annual finance costs under the Senior Finance Documents, each as estimated from time to time by the Senior Facility Agent, (the **Interest Cover Percentage**) of at least 125 per cent (the **Interest Cover Ratio**);
 

In the case of breach of this paragraph (xviii), the Borrower will be entitled to prepay the Senior Loan to ensure compliance with the specified Interest Cover Percentage (**Interest Cure 1**) or to deposit an amount into the Default Reserve Account so that if the interest which will accrue on that amount during the relevant twelve month period was treated as net rental income the Borrower would be in compliance with the specified Interest Cover Percentage (**Interest Cure 2**) or, if the Interest Cover Percentage at that time is greater than 120 per cent., deposit an amount equal to twice the rental income shortfall into the Default Reserve Account (**Interest Cure 3**);
- (xix) to ensure that the aggregate amount outstanding of all Senior Loan under the Senior Credit Agreement as a percentage of the open market value of the Property determined in accordance with the most recent valuation of the Property by the Valuer (the **Loan to Value**) does not exceed 77.5 per cent. (the **Loan to Value Ratio**);
 

In the case of breach of this paragraph (xix), the Borrower will be entitled to deposit an amount into the Default Reserve Account so that after calculating the aggregate amount outstanding of the Senior Loan as reduced by that amount, the Loan to Value Ratio does not exceed 77.5 per cent. (**Loan to Value Cure 1**) or to prepay the Senior Loan to ensure compliance with the specified Loan to Value (**Loan to Value Cure 2**);
- (xx) to ensure that the Borrower is not a member of a value added tax group; and
- (xxi) to take all such actions as are required under the Companies (Taxation and Concessions) Ordinance of Gibraltar to ensure that it retains its tax exempt status under the Companies (Taxation and Concessions) Ordinance of Gibraltar until 31 December 2007 and shall not act in any way which will affect or would be reasonably likely to affect that status and to immediately notify the Senior Facility Agent if at any time it ceases to be a tax exempt company under the Companies (Taxation and Concessions) Ordinance of Gibraltar.

(h) *Loan Events of Default*

The Senior Credit Agreement will contain usual events of default (each, a **Loan Event of Default**) entitling the Issuer and any other Senior Lenders (subject in certain cases, to customary grace periods and materiality thresholds) to accelerate the Senior Loan and/or enforce the Loan Security, including, among other things:

- (i) failure to pay on the due date any amount due under the Senior Finance Documents;
- (ii) breach of other specified obligations under the Senior Finance Documents;
- (iii) any representation or warranty was incorrect in any material respect at the date it was given;
- (iv) subject to the provision that there will be no Loan Event of Default by reason of any Cure Loan, the financial indebtedness of the Borrower is not paid when due or within any applicable grace period or is accelerated or placed on demand or the security interests securing such indebtedness become enforceable;
- (v) the Borrower is unable to pay its debts or is deemed to be insolvent or other insolvency acts or events occur (including, among other things, the commencement of insolvency

- proceedings, the appointment of any liquidator or administrative receiver or the attachment or sequestration of any asset);
- (vi) the Borrower ceases, or threatens to cease, to carry on all or a substantial part of its business;
  - (vii) it is or becomes unlawful for the Borrower, the Shareholder or the Subordinated Creditor to perform any of its obligations under any Senior Finance Documents;
  - (viii) any Senior Finance Document is not effective in accordance with its terms or is alleged by the Borrower, the Shareholder or the Subordinated Creditor to be ineffective in accordance with its terms for any reason;
  - (ix) the compulsory purchase of all or part of the Property by local authorities and in the reasonable opinion of the Senior Majority Lenders the compulsory purchase has or will have a material adverse effect on the Borrower's ability to comply with any of the Senior Finance Documents;
  - (x) any part of the Property is damaged or destroyed by an uninsured risk and in the reasonable opinion of the Senior Majority Lenders the destruction or damage will have a material adverse effect (taking into account the expected proceeds of the Insurance Policies) on the Borrower's ability to comply with any of the Senior Finance Documents; and
  - (xi) an event occurs which, in the senior of the Senior Majority Lenders, has a material adverse effect on the Borrower's ability to comply with any of the Senior Finance Documents.

In relation to non-payment or breaches of other obligations, the Senior Credit Agreement will include customary grace periods, but (save for breaches of the Loan to Value Ratio when the grace period shall be ten business days calculated in accordance with the Senior Credit Agreement) these grace periods will not be for periods longer than two business days calculated in accordance with the Senior Credit Agreement or five days, respectively.

Upon the occurrence of a Loan Event of Default which has not been remedied within the applicable grace period, the Senior Facility Agent may by notice to the Borrower cancel any outstanding commitments under the Senior Credit Agreement, demand that all or part of the Senior Loan together with accrued interest and all other amounts accrued under the Senior Finance Documents become immediately due and payable, demand that all or part of the Senior Loan become payable on demand and/or apply monies standing to the credit of the Borrower's Accounts towards repayment of any amount due to any party under the Senior Finance Documents.

#### **4. Loan Security**

The Borrower Security Agreement will secure, among other things, all the obligations of the Borrower to the Issuer pursuant to the Senior Credit Agreement and will be drafted on a security trust basis, so that the Loan Security Agent will hold the security created pursuant to the Borrower Security Agreement on trust for the Loan Secured Creditors.

##### *(a) Creation of security*

The Borrower Security Agreement will grant in favour of the Loan Security Agent a first ranking charge by way of legal mortgage over the Property and any other properties belonging to the Borrower and a first fixed charge over, among other things, any plant and machinery belonging to the Borrower, the benefit of any insurance policy relating to the Property, book and other debts of the Borrower, the Borrower's rights under the Senior Hedging Arrangements, under each occupational lease in respect of the Property and any account held by the Borrower (including the General Account, the Rent Account, the Default Reserve Account and the Reserve Account to the extent that such security is not classified as floating).

In addition, the Borrower will assign absolutely to the Loan Security Agent by way of security its interests in all rental income, any guarantee of rental income contained in or relating to any occupational lease in respect of the Property and the Senior Hedging Arrangements.

The Borrower will also grant a first floating charge in favour of the Loan Security Agent over all of its assets not otherwise mortgaged, charged or assigned by way of fixed mortgage or charge or assignment under the Borrower Security Agreement.

(b) *Representations and warranties*

The representations and warranties to be given by the Borrower under the Borrower Security Agreement, as of the date of the Borrower Security Agreement, the date of drawdown and (subject to certain exceptions) on each Loan Interest Payment Date, will include statements to the effect that, among other things, the Borrower Security Agreement creates those security interests it purports to create and is not liable to be avoided or otherwise set aside on the liquidation or administration of the Borrower.

(c) *Undertakings*

The Borrower will undertake under the Borrower Security Agreement, among other things, not to create or permit any security interest over its assets charged as security (other than any security interest created pursuant to the Borrower Security Agreement or permitted under the Senior Credit Agreement) or sell, transfer, lease or otherwise dispose of any asset charged as security (save for assets charged by way of floating security only and disposed of in the ordinary course of business or as permitted under the Senior Credit Agreement), to comply with the terms of the Borrower Security Agreement, to give notice of the security interests granted under the Borrower Security Agreement to the Account Bank, the Hedge Counterparties and each occupational tenant of the Property and to procure and keep the Property in good and substantial repair.

(d) *Enforceability*

The security to be created by the Borrower Security Agreement will only be enforceable once a Loan Event of Default has occurred. The charge will confer upon the Loan Security Agent and any receiver appointed by it a wide range of powers in connection with the sale or disposal of the Property and its management, and each of them will be granted a power of attorney on behalf of the Borrower in connection with the enforcement of its security.

(e) *Related security*

In addition to the Borrower Security Agreement, the Senior Loan will be secured by various further related security.

The Mortgage of Shares will create a first fixed equitable charge over all shares in the Borrower and all associated rights. Under the Mortgage of Shares, FP Holdings Limited will give the usual representations as to, among other things, its incorporation and due authority and also undertake in the usual manner, among other things, not to further charge, sell, transfer or otherwise dispose of the Borrower's shares. If, following enforcement of the security granted under the Mortgage of Shares, the Loan Security Agent wanted to sell the shares in the Borrower, it would have to obtain the prior approval of the Gibraltar Finance Centre Licensing Unit or the sale of the shares may be null and void.

The obligations of the Borrower to the Subordinated Creditor will be fully subordinated pursuant to the terms of the Subordination Deed to all amounts due to the Senior Secured Creditors under the Senior Credit Agreement. Under the Subordination Deed, the Borrower will undertake, among other things, not to secure any part of the subordinated liabilities and not to repay all or any part of the subordinated liabilities. The Subordinated Creditor will give the usual undertakings, including, in particular, that it will not take any steps leading to the administration, winding up or dissolution of the Borrower.

FPD Savills will be appointed as managing agent (the **Managing Agent**) of the Property and will undertake pursuant to the Duty of Care Agreement to ensure that all rental income from the Property is paid into either (i) the Rent Account or (ii) into a separate account on trust for the Borrower for which the net amount (after deductions of service charge amounts and value added tax) must be transferred into the Rent Account (without set-off or counterclaim).

## 5. **Borrower's Accounts**

The Borrower will maintain a rent account to which the Loan Security Agent will have sole signing right (the **Rent Account**), a current account to which the Borrower (unless a Loan Event of Default is outstanding) will have sole signing right (the **General Account**), a reserve account to which the Loan Security Agent will have sole signing right (the **Reserve Account**) and a default reserve account to which the Loan Security Agent will have sole signing right (the **Default Reserve Account** and together with the Rent Account, the General Account and the Reserve Account, the **Borrower Accounts**) and the Borrower must not without the prior consent of the Senior Facility Agent maintain any other bank account.



The Borrower Accounts are each described in more detail below.

(a) *Rent Account*

All income and receivables in respect of the Property (the **Rental Income**) will be collected by the Managing Agent. Any rental income received by the Managing Agent will be held in a separate account on trust for the Borrower under the Duty of Care Agreement. The Managing Agent will ensure that all Rental Income less service charges and value added tax (the **Net Rental Income**) will be paid into the Rent Account. The Borrower will ensure that any amounts payable to it under the Hedging Arrangements will also be paid into the Rent Account. Except to the extent that the Loan Security Agent receives a payment which is insufficient to discharge all amounts then payable by the Borrower under the Senior Finance Documents and the Junior Finance Documents (in which case the monies standing to the credit of the Rent Account will then be distributed in accordance with the Default Waterfall (described further under “*Credit Structure - 6. Intercreditor Agreement*” below) and provided that on each Loan Interest Payment Date no Loan Event of Default is outstanding and the representations in the Senior Credit Agreement are correct, monies standing to the Rent Account will then be distributed on each Loan Interest Payment Date in the following order (the **Loan Waterfall**):

- (i) **first**, in or towards payment *pro rata* of any unpaid fees, costs and expenses of the administrative parties under the Senior Finance Documents;
- (ii) **second**, in or towards prepayment *pro rata* of the outstanding amount of any Hedging Loan;
- (iii) **third**, in or towards payment *pro rata* of any periodical payments (not being payments as a result of termination or closing out) due but unpaid to the Senior Hedge Counterparties under the Senior Hedging Arrangements;
- (iv) **fourth**, in or towards payment *pro rata* of any accrued interest due but unpaid under the Senior Credit Agreement;
- (v) **fifth**, in or towards payment *pro rata* of any payments (not being payments referred to in subparagraph (vi) below) as a result of termination or closing out due but unpaid to the Senior Hedge Counterparties under the Senior Hedging Arrangements;
- (vi) **sixth**, in or towards payments due as a result of termination or closing out arising from:
  - (A) it becoming illegal for one or more Senior Hedge Counterparties to comply with their obligations under the Senior Hedging Arrangements;
  - (B) an event of default relating to one or more Senior Hedge Counterparties; or
  - (C) any occurrence of an additional termination event (as provided in the relevant Senior Hedging Arrangement) following failure by a Senior Hedge Counterparty to take any of the required measures specified in the relevant Senior Hedging Arrangement in relation to a relevant rating event (a **Rating Event Termination Event**) affecting one or more of the Senior Hedge Counterparties,but unpaid to those Senior Hedge Counterparties under the Senior Hedging Arrangements;
- (vii) **seventh**, in or towards payment *pro rata* of any other sum due but unpaid under the Senior Finance Documents;
- (viii) **eighth**, if the Interest Cover Percentage is less than 130 per cent., payment of any surplus to the Reserve Account;
- (ix) **ninth**, in or towards payment *pro rata* of any unpaid fees, costs and expenses of the administrative parties under the Junior Finance Documents;
- (x) **tenth**, in or towards payment *pro rata* of:
  - (A) any periodical payments (not being payments as a result of termination or closing out) due but unpaid to the Junior Hedge Counterparties under the Junior Hedging Arrangements; and
  - (B) any accrued interest due but unpaid to the relevant Junior Secured Creditors under the Junior Credit Agreement;



- (xi) **eleventh**, in or towards payment *pro rata* of:
  - (A) any payments (not being payments referred to in subparagraph (xii) below) as a result of termination or closing out due but unpaid to the Junior Hedge Counterparties under the Junior Hedging Arrangements; and
  - (B) any principal amount due but unpaid under the Junior Credit Agreement;
- (xii) **twelfth**, in or towards payments due as a result of termination or closing out arising from:
  - (A) it becoming illegal for one or more Junior Hedge Counterparties to comply with their obligations under the Junior Hedging Arrangements;
  - (B) an event of default relating to one or more Junior Hedge Counterparties, due but unpaid to those Junior Hedge Counterparties under the Junior Hedging Arrangements;
- (xiii) **thirteenth**, in or towards payment *pro rata* of any other sum due but unpaid under the Junior Finance Documents;
- (xiv) **fourteenth**, payment to the General Account of any permitted operating costs in relation to the Property with respect to the Loan Interest Period (up to a maximum of £12,500 for any Loan Interest Period) commencing on that Loan Interest Payment Date;
- (xv) **fifteenth**, if:
  - (A) the projected annual rental (determined in accordance with the terms of the Senior Credit Agreement) is greater than £20,000,000; and
  - (B) projected annual net rental as a percentage of projected annual finance costs under the Senior Finance Documents and the Junior Finance Documents (the **Junior Interest Coverage Percentage**), each as estimated by the Junior Facility Agent from time to time is greater than 115 per cent.,

then payment to the General Account of 8.25 per cent. of the difference between the projected annual rental (determined in accordance with the terms of the Senior Credit Agreement) and £19,600,000;
- (xvi) **sixteenth**, in or towards *pro rata* prepayment of the Junior Loan in accordance with the terms of the Junior Credit Agreement; and
- (xvii) **seventeenth**, payment of any surplus into the General Account.

The Loan Security Agent will only be obliged to make a withdrawal from the Rent Account, or to withdraw an amount from the Rent Account that should have been paid into another Borrower Account and pay that amount to that other Borrower Account if no Loan Event of Default is outstanding.

The Loan Security Agent may authorise withdrawals at any time from, and apply amounts standing to the credit of, the Rent Account in or towards payment of any amount due but unpaid under the Senior Finance Documents.

On any day on which an amount is due under a lease under which the Borrower holds title to part of the Property, the Loan Security Agent must, at the request in writing of the Borrower (which may not be given earlier than ten nor later than five business days under the Senior Credit Agreement prior to the date that the relevant payment is to be made and must provide details of the recipient and the bank account to which the payment is to be made) withdraw from the Rent Account an amount necessary to meet that due amount.

(b) *General Account*

The Borrower must ensure that any amount received by it, other than any amount specifically required under the Senior Credit Agreement to be paid into another Borrower Account, is paid into the General Account. Prior to a Loan Event of Default, the Borrower will be permitted to withdraw any amount from the General Account. Following a Loan Event of Default, the Loan Security Agent will be permitted to apply amounts standing to the credit of the General Account to meet the Borrower's obligations under the Senior Finance Documents.

(c) *Reserve Account*

Amounts must be transferred into the Reserve Account in accordance with paragraph (viii) of the Loan Waterfall. The Loan Security Agent may authorise withdrawals at any time from the Reserve Account to pay any amount due but unpaid under the Finance Documents. The Loan Security Agent must withdraw all amounts standing to the credit of the Reserve Account at that time and pay them to the Junior Facility Agent for distribution *pro rata* to the Junior Lenders if:

- (i) no Loan Event of Default is outstanding or would occur as a result of the withdrawal from the Reserve Account;
- (ii) the representations in the Senior Credit Agreement are correct and will be correct immediately after the withdrawal; and
- (iii) the Interest Cover Percentage has exceeded 130 per cent. for three successive Interest Periods.

(d) *Default Reserve Account*

The Borrower may pay into the Default Reserve Account any amount in accordance with the disposals covenant in the Senior Credit Agreement, to cure a breach of the Interest Cover Ratio or to cure a breach of the Loan to Value Ratio. The Loan Security Agent may authorise withdrawals at any time from the Default Reserve Account to pay any amount due but unpaid under the Senior Finance Documents.

If no Loan Event of Default is outstanding or would occur as a result of the withdrawal from the Default Reserve Account, the Loan Security Agent must, on the Loan Interest Payment Date succeeding the Relevant Disposal (as defined above) from which that amount derived, apply any amount from the Default Reserve Account paid into the Default Reserve Account in accordance with the disposals covenant in the Senior Credit Agreement in prepayment of the Senior Loan and the Junior Loan.

If no Loan Event of Default is outstanding or would occur as a result of the withdrawal from the Default Reserve Account, the Loan Security Agent must, at the request of the Borrower:

- (i) in relation to an Interest Cure 1 or a Loan to Value Cure 2, withdraw any amount from the Default Reserve Account for the application in voluntary prepayment of the Senior Loan in accordance with the terms of the Senior Credit Agreement;
- (ii) in relation to an Interest Cure 2 (but only the amount deposited not interest accrued on the deposit) or an Interest Cure 3, if the Interest Cover Ratio is satisfied for two consecutive Loan Interest Payment Dates without taking into account that amount, apply any of the amount not required to satisfy the test:
  - (A) first, in repayment *pro rata* of any outstanding Cure Loan made in relation to Interest Cure 2 or Interest Cure 3;
  - (B) second, in repayment *pro rata* of any other outstanding Cure Loans; and
  - (C) third, by way of transfer to the General Account; and
- (iii) in relation to a Loan to Value Cure 1, if the Senior Facility Agent receives a Valuation demonstrating that the Loan to Value Ratio is satisfied without taking into account that amount, apply that amount as follows:
  - (A) first, in repayment *pro rata* of any outstanding Cure Loan made in relation to Loan Cure 1;
  - (B) second, in repayment *pro rata* of any other outstanding Cure Loans; and
  - (C) third, by way of transfer to the General Account.

(e) *Changes of Account*

Under the Senior Credit Agreement, each Borrower Account must be maintained with a bank that has a rating of “F-1” (or better) by Fitch and “A-1+” (or better) by S&P for its short-term unsecured debt obligations and “A” (or better) by Fitch and an “A+” (or better) by S&P for its long-term unsecured debt obligations (these ratings together the **Bank Account Rating**). If a bank at which a Borrower Account is held ceases to have a Bank Account Rating, the Loan

Security Agent may require that the relevant Borrower Account is moved to another bank of its choice which does have a Bank Account Rating.

## 6. Intercreditor Agreement

In this section:

**Excess Senior Debt** means any Senior Debt which exceeds the amounts capable of being advanced by the Loan Secured Creditors under the original terms of the Senior Finance Documents (excluding the Senior Lenders' ability to increase the total commitments with the consent of all Senior Lenders and, pursuant to the terms of the Intercreditor Agreement, the Junior Lenders) less the amount of any permanent repayment or prepayment of that Senior Debt.

**Grace Period** means the period of five (or, in the case of a breach of the Loan to Value Ratio, ten) business days under the Senior Credit Agreement after delivery of a notification from the Senior Facility Agent or the Loan Security Agent to the Junior Facility Agent of the occurrence of a Remediable Default or, if by the expiry of that five (or ten, as the case may be) business day period, the Junior Facility Agent has served a Remedy Notice on the Senior Facility Agent or the Loan Security Agent with respect to that Remediable Default, five business days under the Senior Credit Agreement after the date of service of that Remedy Notice.

**Junior Debt** all liabilities payable or owing by any Obligor to a Junior Secured Creditor under or in connection with the Junior Finance Documents.

**Material Loan Event of Default** means:

- (a) a failure to pay on the due date any amounts due to a Loan Secured Creditor under the Senior Credit Agreement; or
- (b) a breach of the Borrower's undertakings in relation to the Interest Cover Ratio or the Loan to Value Ratio,

but excludes such a default insofar as it is the subject of a Cure Loan in an amount necessary to fund the relevant prepayment or deposit.

**Obligor** means the Borrower or the Shareholder.

**Remediable Default** means the occurrence of any event of default under a Credit Agreement (except an event of default arising because of the insolvency of the Borrower) for so long as it is continuing:

- (a) which is capable of remedy within the Grace Period; and
- (b) in respect of which the Junior Facility Agent has served a Remedy Notice on the Senior Facility Agent or the Loan Security Agent within five business days (calculated in accordance with the relevant Credit Agreement) after having been notified by the Senior Facility Agent or the Loan Security Agent of the occurrence of that event of default.

**Remedy Notice** means a notice stating that a Junior Secured Creditor wishes to remedy a Remediable Default.

**Senior Debt** means all liabilities payable or owing by any Obligor to a Loan Secured Creditor under or in connection with the Senior Finance Documents.

Pursuant to the terms of the Intercreditor Agreement, the Loan Secured Creditors have established the priorities of payment and subordination in relation to their rights under the Finance Documents.

For so long as no Material Loan Event of Default is outstanding, on each Loan Interest Payment Date, all amounts standing to the credit of the Rent Account will be applied in accordance with the Loan Waterfall.

If a Material Loan Event of Default has occurred and remains outstanding the Loan Security Agent will prior to the enforcement of the Loan Security, on each Loan Interest Payment Date or promptly on receipt if any of the Senior Debt is due and payable, apply all amounts received in respect of the Finance Documents including, subject to the rights of any creditor with prior security or any preferential claim, the proceeds of any enforcement of the Loan Security in the following order:

- (a) **first**, in or towards payment of any unpaid fees, costs and expenses of the Loan Security Agent and any receiver, attorney or agent appointed in connection with the Loan Security;

- (b) **secondly**, in or towards payment of any fees, costs and expenses of any Senior Secured Creditor and (to the extent incurred in taking action requested by the Loan Security Agent) any Junior Secured Creditor in each case in connection with any enforcement;
- (c) **thirdly**, in or towards payment to the Loan Security Agent for application against the Senior Debt and the Junior Debt in accordance with the partial payments provisions of Credit Agreements (as summarised below under the heading *Default Waterfall*);
- (d) **fourthly**, in or towards payment to the Loan Security Agent for application against the Excess Senior Debt; and
- (e) **fifthly**, the payment of the surplus (if any) to the relevant Obligor or other person entitled to it.

Under the terms of the Intercreditor Agreement, no party will be permitted, without the consent of all Lenders (and except in cases of routine administrative or procedural changes), to amend or waive any term of, or give any consent under, the Finance Documents in a manner that would, among other things, result in: (a) an increase in the amount of any payment under the Finance Documents not contemplated by the original terms of the Finance Documents; (b) any payment being required to be paid earlier or more frequently than originally provided; (c) any delay or reduction in payment to a Junior Secured Creditor; (d) any change in the calculation of payments under the Finance Documents; (e) an Obligor becoming liable to make any additional payments; (f) any change to the clauses of the Credit Agreements which relate to the interest cover and loan to value financial covenants; (g) a material amendment or waiver to the Borrower Security Agreement or the Mortgage of Shares; or (h) any change to the ranking or subordination achieved by the Intercreditor Agreement.

Notwithstanding provisions in the Senior Credit Agreement, a Loan Secured Creditor may only amend or waive a term of a Finance Document to which it is a party, or give its consent or approval under a term of any Finance Document providing for that consent or approval, if the amendment or waiver is made or the consent or approval is given, in accordance with that Finance Document and:

- (a) the Senior Majority Lenders and the Junior Majority Lenders agree;
- (b) it is a procedural, administrative or other change arising in the ordinary course of administration of the relevant facility and is not material; or
- (c) in the case of a consent or approval, the Loan Secured Creditor concerned considers that it would be in breach of the terms of the relevant Finance Document if it failed to give its consent or approval,

provided always that as between the Loan Secured Creditors and the Obligors, the Obligors are entitled to rely on any amendment, waiver or approval given to them or either of them in accordance with each Credit Agreement or other relevant Finance Document pursuant to which it is given. Any waiver or consent granted by or on behalf of the Senior Majority Lenders in respect of any Finance Document will also be deemed to have been given by the Junior Majority Lenders if: (a) any transaction or circumstances would, in the absence of that waiver or consent, conflict with any term of, or constitute a default under, any Finance Document; and (b) the matter being waived or consented to has not had and is not reasonably likely to have a material adverse effect and either relates solely to formal, minor or technical matters in the day to day operation of the relevant facility or is to correct a manifest error.

After the occurrence of a Remediable Default, the Junior Secured Creditors shall have the right, but not the obligation, to cure that Remediable Default within the applicable Grace Period. When, as a consequence of the occurrence of a Remediable Default, one or more Senior Secured Creditors have the right, pursuant to the terms of the Finance Documents, to take, or to require the Senior Facility Agent or the Loan Security Agent to take, enforcement action, those Loan Secured Creditors must delay taking such action or requiring that agent to take such action during the Grace Period. During any Grace Period in respect of a Remediable Default and any period after a Grace Period in respect of a Remediable Default but before the taking of any enforcement action in respect of that Remediable Default, a Junior Secured Creditor may take whatever action it considers desirable so as to remedy or cure the relevant Remediable Default including making a loan (a **Cure Loan**) to the Borrower in accordance with the terms of the Credit Agreements to cure a payment default, to remedy a default of the Loan Interest Cover Ratio or to remedy a default of the Loan to Value Ratio. A **Subsidy Loan** is a Cure Loan made to the Borrower to allow an Interest Cure 3. There will be no limit on the Junior Lenders' right to remedy a Remediable Default, other than remedy by means of a Subsidy Loan, which

remedy will be limited to no more than six times during the life of the Senior Loan and no more than two consecutive times within any twelve month period.

Furthermore, the Junior Lenders will have the right, upon a failure to pay any amounts due under the Senior Credit Agreement, a breach of the Borrower's undertakings under the Senior Credit Agreement with respect to the Interest Cover Ratio or the Loan to Value Ratio, an insolvency related default or an event of default under the Junior Credit Agreement (a **Junior Loan Event of Default**) in respect of which the standstill period (as described below) has passed, to purchase or arrange for another party to purchase the Senior Loan by means of transfer under the Senior Credit Agreement by notice to the Loan Security Agent. There will be no limit on the Junior Lenders' right to purchase the Senior Loan pursuant to the terms of the Intercreditor Agreement. Any transfer will only take effect against payment in full of an amount determined by the Loan Security Agent (acting reasonably) to be equal to the Senior Debt outstanding as at the date the amount is received, together with any amount certified by a Loan Secured Creditor as necessary to compensate it for any breakage or funding costs incurred by it as a result of the transfer.

Under the terms of the Intercreditor Agreement, the Junior Lenders will be prevented from taking enforcement action unless (a) the relevant Junior Loan Event of Default is still outstanding at the end of its specified standstill period (as described below) or the Senior Debt has been accelerated and (b) the market value of the Property is greater than 120 per cent. of the then outstanding Senior Debt as determined in accordance with the Valuation or any subsequent valuation requested by the Lenders. The Intercreditor Agreement will provide for standstill periods of 90 days for any Junior Loan Event of Default that is a payment default in respect of the Junior Debt, 120 days for any which is a failure of the Borrower to comply with the Borrower's undertakings in relation to Junior Loan to Value and Junior Interest Cover Percentage financial covenants and 150 days for any other Junior Loan Event of Default, in each case from the date the Loan Security Agent receives notice of such default from the Junior Lenders.

The Loan Security Agent will also be prevented, without the consent of the Junior Majority Lenders, to take any enforcement action (a) with respect to a payment default relating solely to the Junior Loan; (b) with respect to a failure of the Borrower to comply with its financial covenants in relation to Junior Loan to Value and Junior Interest Cover Percentage under the Junior Credit Agreement where there is no breach of the Interest Cover Ratio or the Loan to Value Ratio under the Senior Credit Agreement; or (c) where a Cure Loan has been made with respect to the Loan Event of Default.

No Loan Secured Creditor may assign or transfer any of its debt or any of its rights and obligations under any Finance Document unless the assignment or transfer is allowed under the terms of the relevant Credit Agreement and the transfer or assignment is effected in accordance with the terms of that Credit Agreement and that person agrees to be bound by the terms of the Intercreditor Agreement as a Senior Creditor or Junior Creditor (as applicable) by delivering to the Loan Security Agent an accession agreement and certain conditions precedent. Whilst a Junior Loan Event of Default is outstanding, a Junior Secured Creditor will disclose to the Junior Facility Agent (who will then disclose to the other Junior Secured Creditors) the identity of any person who has taken a credit risk whether (by way of sub participation or otherwise) in relation to that Junior Secured Creditor's participation in the Junior Debt.

### **Default Waterfall**

If the Loan Security Agent receives a payment insufficient to discharge all the amounts then due and payable by the Borrower under the Finance Documents, the Loan Security Agent must apply that payment towards the obligations of the Borrower under the Finance Documents in the following order (the **Default Waterfall**):

- (a) **first**, in or towards payment *pro rata* of any unpaid fees, costs and expenses of the administrative parties under the Senior Finance Documents;
- (b) **second**, in or towards prepayment *pro rata* of the outstanding amount of any Hedging Loan;
- (c) **third**, in or towards payment *pro rata* of any periodical payments (not being payments as a result of termination or closing out) due but unpaid to the Senior Hedge Counterparties under the Senior Hedging Arrangements;
- (d) **fourth**, in or towards payment *pro rata* of any accrued interest due but unpaid under the Senior Credit Agreement;



- (e) **fifth**, in or towards payment *pro rata* of:
  - (i) any payments (not being payments referred to in subparagraph (f) below) as a result of termination or closing out due but unpaid to the Senior Hedge Counterparties under the Senior Hedging Arrangements; and
  - (ii) any principal amount due but unpaid under the Senior Credit Agreement;
- (f) **sixth**, in or towards payments due as a result of termination or closing out arising from:
  - (i) it becoming illegal for one or more Senior Hedge Counterparties to comply with their obligations under the Senior Hedging Arrangements;
  - (ii) an event of default relating to one or more Senior Hedge Counterparties; or
  - (iii) any Rating Event Termination Event affecting one or more Senior Hedge Counterparties, but unpaid to those Senior Hedge Counterparties under the Senior Hedging Arrangements;
- (g) **seventh**, in or towards payment *pro rata* of any other sum due but unpaid under the Senior Finance Documents;
- (h) **eighth**, if:
  - (i) the Interest Cover Percentage is less than 130 per cent.; and
  - (ii) the Senior Loan and all other amounts owing under the Senior Finance Documents to a Senior Finance Party have not been repaid or prepaid in full,
 

payment of any surplus to the Reserve Account;
- (i) **ninth**, where a Cure loan has been agreed on or made by all the Junior Lenders, in or towards payment of each such Cure Loan;
- (j) **tenth**, in or towards payment *pro rata* of any unpaid fees, costs and expenses of the administrative parties under the Junior Finance Documents;
- (k) **eleventh**, in or towards payment *pro rata* of:
  - (i) any periodical payments (not being payments as a result of termination or closing out) due but unpaid to the Junior Hedge Counterparties under the Junior Hedging Arrangements; and
  - (ii) any accrued interest due but unpaid to the relevant Junior Finance Parties under the Junior Credit Agreement;
- (l) **twelfth**, in or towards payment *pro rata* of:
  - (i) any payments (not being payments referred to in subparagraph (m) below) as a result of termination or closing out due but unpaid to the Junior Hedge Counterparties under the Junior Hedging Arrangements; and
  - (ii) any principal amount due but unpaid under the Junior Credit Agreement;
- (m) **thirteenth**, in or towards payments due as a result of termination or closing out arising from:
  - (i) it becoming illegal for one or more Junior Hedge Counterparties to comply with their obligations under the Junior Hedging Arrangements; or
  - (ii) an event of default relating to one or more Junior Hedge Counterparties, but unpaid to those Junior Hedge Counterparties under the Junior Hedging Arrangements;
- (n) **fourteenth**, in or towards payment *pro rata* of any other sum due but unpaid under the Junior Finance Documents;
- (o) **fifteenth**, in or towards *pro rata* prepayment of the Junior Loan in accordance with prepayment provisions of the Junior Credit Agreement; and
- (p) **sixteenth**, where a Cure Loan has been agreed on or made by some but not all the Junior Lenders, in or towards payment of each such Cure Loan.

Under the Credit Agreements, the Security Agent must, if so directed by:



- (a) the Majority Senior Lenders and the Senior Hedge Counterparties, vary the order set out in (a) to (h) in the Default Waterfall;
- (b) the Majority Junior Lenders and the Junior Hedge Counterparties, vary the order set out in (i) to (p) in the Default Waterfall;
- (c) the Majority Senior Lenders, the Majority Junior Lenders, the Senior Hedge Counterparties and the Junior Hedge Counterparties, vary the order set out in subparagraphs (a) to (p) in the Default Waterfall.

## 7. Issuer Accounts

### *Issuer Transaction Account*

Pursuant to a bank account agreement dated on or before the Closing Date (the **Bank Agreement**), the Account Bank will open and maintain an account in the name of the Issuer (the **Issuer Transaction Account**) into which the Servicer will instruct the Senior Facility Agent to transfer all amounts of principal and interest and other amounts paid by the Borrower in respect of the Senior Loan and in accordance with the provisions of the Intercreditor Agreement. The Servicer will make all other payments required to be made on behalf of the Issuer from the Issuer Transaction Account in accordance with the Servicing Agreement.

### *Liquidity Stand-by Account*

Any Liquidity Stand-by Drawing which the Issuer makes from the Liquidity Bank (see “*Liquidity Facility*” below) will be credited to an account (which will be established only if required) in the name of the Issuer (the **Liquidity Stand-by Account** and, together with the Issuer Transaction Account, the **Issuer’s Accounts**) with the Liquidity Bank or, if the Liquidity Bank ceases to have at least an “F1” rating by Fitch and at least an “A-1+” rating by S&P for its short-term, unguaranteed, unsecured and unsubordinated debt obligations (the **Requisite Rating**), any bank which has the Requisite Rating.

## 8. Liquidity Facility

In order (i) to provide that the Issuer has sufficient funds to make any Hedging Loans in accordance with the terms of the Senior Credit Agreement and (ii) to mitigate the risk that Available Issuer Income (as defined below) will be insufficient to cover certain payments due under the relevant Priority of Payments, the Issuer will enter into a liquidity facility agreement dated on or before the Closing Date (the **Liquidity Facility Agreement**) with the Liquidity Bank and the Trustee. Under this agreement, the Liquidity Bank will provide a 364-day committed liquidity facility to the Issuer which will be renewable with the agreement of the Liquidity Bank until the Final Maturity Date. Investors should note that the purpose of the Liquidity Facility Agreement will be to provide liquidity, not credit support, and that the Liquidity Bank will be entitled to receive interest and repayments of principal on drawings made under the Liquidity Facility Agreement in priority to payments to be made to Noteholders (which would ultimately reduce the amount available for distribution to Noteholders).

**Available Issuer Income** will comprise:

- (a) all monies (other than principal (if any)) to be paid to the Issuer under or in respect of the Senior Loan less the amount of any expected shortfall as notified by the Servicer; and
- (b) any interest accrued upon the Issuer’s Accounts and paid into the Issuer Transaction Account together with the yield element of the proceeds of any Eligible Investments made by or on behalf of the Issuer out of amounts standing to the credit of the Issuer Accounts and paid into the Issuer Transaction Account.

On each **Calculation Date** (being the second Business Day prior to the relevant Interest Payment Date), the Servicer will determine (i) whether the Issuer has agreed to advance any Hedging Loan on the next Loan Interest Payment Date and (ii) whether Available Issuer Income will be sufficient to make the payments set out under **paragraphs (a) to (j)** of the Pre-Enforcement Priority of Payments or **paragraphs (a) to (i)** of the Post-Enforcement Pre-Acceleration Priority of Payments (as applicable) on the next Interest Payment Date. If the Issuer has so agreed to advance a Hedging Loan or the amount of Available Issuer Income is insufficient to make such payments, the Servicer will make a drawing (an **Income Deficiency Drawing**) under the Liquidity Facility Agreement in an amount equal to the principal amount of any such Hedging Loan and/or the amount of the deficiency of Available Issuer Income (an **Income Deficiency**). The proceeds of any Income Deficiency Drawing will be credited to

the Issuer Transaction Account and will be applied by the Issuer in advancing the Hedging Loan to the Borrower on the next following Loan Interest Payment Date or making payments under the relevant Priority of Payments on the next following Interest Payment Date. The Issuer may make an Income Deficiency Drawing for the purposes of funding a Hedging Loan only if the Servicer determines that, on the immediately following Interest Payment Date, Available Issuer Income will be sufficient to make the payments set out under **paragraphs (a) to (d)** of the Pre-Enforcement Priority of Payments or the Post-Enforcement Pre-Acceleration Priority of Payments (as applicable).

The Liquidity Facility Agreement will initially permit drawings to be made by the Issuer of up to an aggregate amount of £16 million (the **Liquidity Facility Commitment**). The Liquidity Facility Commitment will automatically reduce following:

- (a) partial redemption of the Notes in accordance with **Condition 6.3**;
- (b) the occurrence of an Appraisal Reduction (as defined below), in an amount proportionate to the Appraisal Reduction; or
- (c) the receipt of confirmation from the Rating Agencies that the proposed reduction in the amount of the Liquidity Facility Commitment will not adversely affect the then current ratings of the Notes.

All payments due to the Liquidity Bank under the Liquidity Facility Agreement (other than in respect of the payment described in **paragraph (l)** under “9. Cashflows – Payments Paid out of the Issuer Transaction Account Pre-Enforcement of the Issuer Security” and paragraph (k) under 9. Cashflows – Payments Paid out of the Issuer Transaction Account Post-Enforcement of the Issuer Security but Pre-Acceleration of the Notes” and **paragraph (n)** under “9. Cashflows – Payments Paid out of the Issuer Transaction Account Post-Acceleration of the Notes” below) will rank in priority to payments of interest and principal on the Notes.

#### *Appraisal Reductions*

Not later than the earliest to occur of:

- (a) the date 120 days after the occurrence of any Loan Event of Default as a result of nonpayment; and
- (b) the date 90 days after the occurrence of a Loan Event of Default as a result of the occurrence of any prescribed insolvency event of the Borrower,

and, in each case, provided that such Loan Event of Default is continuing, the Servicer is required, under the terms of the Servicing Agreement, to obtain a valuation in respect of the Property (unless, at the Servicer’s discretion, a valuation has been obtained during the immediately preceding 12 months and the Servicer has confirmed that, in its view, neither the Property nor the relevant property markets have experienced any material change since the date of such previous valuation).

If the principal amount of the Senior Loan then outstanding (together with any unpaid interest) exceeds the sum of 90 per cent. of the appraisal value of the Property as determined by the relevant valuation, an **Appraisal Reduction Event** will be deemed to have occurred and the amount of Liquidity Facility Commitment will reduce proportionately by reference to any diminution in value of the Property since the date of the Valuation Report in accordance with the terms of the Servicing Agreement.

#### *Liquidity Stand-by Drawings*

The Liquidity Facility Agreement will provide that if at any time:

- (a) the rating of the short-term unsecured, unsubordinated and unguaranteed debt obligations of the Liquidity Bank falls below the Requisite Rating; or
- (b) the Liquidity Bank refuses to renew the liquidity facility,

then the Issuer will require the Liquidity Bank to pay an amount equal to its undrawn commitment under the Liquidity Facility Agreement (a **Liquidity Stand-by Drawing**) into the Liquidity Stand-by Account maintained with the Liquidity Bank or, if the Liquidity Bank ceases to have the Requisite Rating, any bank which has the Requisite Rating. In the event that the Servicer makes a Liquidity Stand-by Drawing, the Servicer will be required, prior to the expenditure of the proceeds of such drawing as described above, to invest such funds in Eligible Investments. Amounts standing to the credit of the Liquidity Stand-by Account will be available to the Issuer for the purposes of making deemed Income

Deficiency Drawings as described above, and otherwise in the circumstances provided in the Liquidity Facility Agreement.

#### *Repayment of drawings*

The Issuer will pay interest on Income Deficiency Drawings at a rate equal to three month LIBOR plus a specified margin. However, Liquidity Stand-by Drawings will bear interest at a separate rate which will be calculated by reference to the liquidity facility commitment fee and interest earned on the Liquidity Stand-by Account. In addition, if the Issuer makes a deemed Income Deficiency Drawing by withdrawing funds from the Liquidity Stand-by Account, then this drawing will bear interest at three month LIBOR plus a specified margin as with ordinary Income Deficiency Drawings.

All payments due to the Liquidity Bank under the Liquidity Facility Agreement (other than in respect of any Liquidity Subordinated Amounts) will rank in priority to payments of interest and principal on the Notes. **Liquidity Subordinated Amounts** are any amounts in respect of increased costs, mandatory costs and tax gross up amounts payable to the Liquidity Bank to the extent that such amounts exceed 0.125 per cent. per annum of the commitment provided under the Liquidity Facility Agreement and/or in or towards payment or discharge of increases in the Liquidity Facility Commitment Fee directly attributable to the implementation of the Framework to the extent that such amounts exceed 0.125 per cent. per annum of the commitment provided under the Liquidity Facility Agreement.

**Eligible Investments** means (a) sterling denominated government securities or (b) sterling demand or time deposits, certificates of deposit, money market funds and short-term debt obligations (including commercial paper); provided that in all cases such investments will mature at least one Business Day prior to the next Interest Payment Date and the short-term unsecured, unguaranteed and unsubordinated debt obligations of the issuing or guaranteeing entity or the entity with which the demand or time deposits are made (being a bank or licensed EU credit institution) are rated at least "F1" by Fitch and at least "A-1+" by S&P or are otherwise acceptable to the Rating Agencies.

## **9. Cashflows**

#### *Payments paid out of the Issuer Transaction Account – Priority Amounts and Hedging Loans*

The Servicer will, prior to the enforcement of the Issuer Security, out of funds standing to the credit of the Issuer Transaction Account, pay sums due to third parties (other than the Servicer, the Liquidity Bank, the Special Servicer, the Corporate Services Provider, the Trustee, the Paying Agents, the Agent Bank or the Account Bank), including the Issuer's liability, if any, to taxation (the **Priority Amounts**), on a date other than an Interest Payment Date under obligations incurred, without breach of the Transaction Documents, in the course of the Issuer's business. The Servicer may also apply from the Issuer Transaction Account, on a Loan Interest Payment Date, the relevant portion of any Income Deficiency Drawing towards the making of any Hedging Loan to the Borrower.

#### *Payments paid out of the Issuer Transaction Account Pre-Enforcement of the Issuer Security*

Prior to the enforcement of the Issuer Security, the Servicer will, on each Interest Payment Date, apply Available Issuer Income together with the relevant portion of any Income Deficiency Drawing and receipts of principal (if any) in respect of the Senior Loan from the Issuer Transaction Account in the following order of priority (the **Pre-Enforcement Priority of Payments**) (in each case only if and to the extent that the payments and provisions of a higher priority have been made in full), all as more fully set out in the Servicing Agreement:

- (a) in or towards satisfaction of any costs, expenses, fees, remuneration and indemnity payments (if any) and any other amounts payable by the Issuer to, *pari passu* and *pro rata*, the Trustee and any other person appointed by it under the Trust Deed, the Deed of Charge and/or any Transaction Document to which the Trustee is a party;
- (b) in or towards satisfaction of any amounts due and payable by the Issuer on such Interest Payment Date to, *pari passu* and *pro rata*, the Paying Agents and the Agent Bank under the Agency Agreement;
- (c) in or towards satisfaction of any amounts due and payable by the Issuer on such Interest Payment Date to, *pari passu* and *pro rata*, the Servicer in respect of the Servicing Fee and any other amounts due to the Servicer pursuant to the Servicing Agreement (including any substitute servicer appointed in accordance therewith) and the Special Servicer in respect of the Special Servicing Fee and any other amounts due to the Special Servicer pursuant to the Servicing

- Agreement (including any substitute special servicer appointed in accordance therewith) (other than any amounts described in **paragraph (m)** below);
- (d) in or towards satisfaction, *pro rata* according to amounts then due, of any amounts due and payable by the Issuer on such Interest Payment Date to:
    - (i) the Corporate Services Provider under the Corporate Services Agreement; and
    - (ii) the Account Bank under the Bank Agreement;
  - (e) in or towards satisfaction of any amounts due and payable by the Issuer on such Interest Payment Date to the Liquidity Bank under and in accordance with the Liquidity Facility Agreement (other than any Liquidity Subordinated Amounts);
  - (f) in or towards payment or discharge of sums due to third parties (other than Priority Amounts and Hedging Loans) under obligations incurred in the course of the Issuer's business;
  - (g) in or towards payment of interest due and interest overdue (and all interest due on such overdue interest) on the Class A Notes;
  - (h) in or towards payment of interest due and interest overdue (and all interest due on such overdue interest) on the Class B Notes;
  - (i) in or towards payment of interest due and interest overdue (and all interest due on such overdue interest) on the Class C Notes;
  - (j) in or towards payment of interest due and interest overdue (and all interest due on such overdue interest) on the Class D Notes;
  - (k) in or towards payment of all amounts of principal (if any) due or overdue on the Class A Notes, the Class B Notes, the Class C Notes and/or the Class D Notes in the relevant order of priority set out in **Condition 6.3**;
  - (l) in or towards payments of any Liquidity Subordinated Amounts payable to the Liquidity Bank;
  - (m) in or towards payment of any amounts payable by the Issuer on such Interest Payment Date to the Special Servicer in respect of the Liquidation Fee or the Workout Fee;
  - (n) in or towards payment of any Arrangement Fee payable to Eurohypo as the Note Arranger; and
  - (o) any surplus to the Issuer.

*Payments paid out of the Issuer Transaction Account Post-Enforcement of the Issuer Security but Pre-Acceleration of the Notes*

The Issuer Security will become enforceable upon a Note Event of Default. Following enforcement of the Issuer Security, the Trustee or its appointee will be required to apply all funds received or recovered by it in accordance with the Pre-Enforcement Priority of Payments save that **paragraph (a)** of the Pre-Enforcement Priority of Payment will be amended to provide for the payment of fees to the Trustee and any receiver or other person appointed by it under the Trust Deed, the Deed of Charge and/or any Transaction Document to which the Trustee is a party, **paragraph (f)** will be deleted (and the remaining paragraphs will be renumbered accordingly) and any surplus payable to the Issuer under **paragraph (o)** (above) will be retained by the Trustee, or any receiver or appointee (as applicable) (the **Post-Enforcement Pre-Acceleration Priority of Payments**).

*Payments paid out of the Issuer Transaction Account Post-Acceleration of the Notes*

Following acceleration of the Notes, the Trustee will be required to apply all funds received or recovered by it in accordance with the following order of priority (the **Post-Acceleration Priority of Payments** and, together with the Post-Enforcement Pre-Acceleration Priority of Payments and the Pre-Enforcement Priority of Payments, the **Priorities of Payment** and each, a **Priority of Payments**) (in each case, only if and to the extent that the payments and provisions of a higher priority have been made in full), all as more fully set out in the Deed of Charge:

- (a) in or towards satisfaction of any costs, expenses, fees, remuneration and indemnity payments (if any) and any other amounts payable by the Issuer to, *pari passu* and *pro rata*, the Trustee and any receiver or other person appointed by it under the Trust Deed, the Deed of Charge and/or any Transaction Document to which the Trustee is a party;

- (b) in or towards satisfaction of any amounts due and payable by the Issuer to, *pari passu* and *pro rata*, the Paying Agents and the Agent Bank in respect of amounts properly paid by such persons to the Noteholders and not paid by the Issuer under the Agency Agreement together with any other amounts due to the Paying Agents or the Agent Bank pursuant to the Agency Agreement;
- (c) in or towards satisfaction of any amounts due and payable by the Issuer to, *pari passu* and *pro rata*, the Servicer in respect of the Servicing Fee and any other amounts due to the Servicer pursuant to the Servicing Agreement (including any substitute servicer appointed in accordance therewith) and the Special Servicer in respect of the Special Servicing Fee and any other amounts due to the Special Servicer pursuant to the Servicing Agreement (including any substitute special servicer appointed in accordance therewith) (other than any amounts described in **paragraph (o)** below);
- (d) in or towards satisfaction, *pro rata* according to the amounts then due, of any amounts due and payable by the Issuer to:
  - (i) the Corporate Services Provider under the Corporate Services Agreement; and
  - (ii) the Account Bank under the Bank Agreement;
- (e) in or towards satisfaction of any amounts due and payable by the Issuer to the Liquidity Bank under and in accordance with the Liquidity Facility Agreement (other than any Liquidity Subordinated Amounts);
- (f) in or towards payment of interest due and interest overdue (and all interest due on such overdue interest) on the Class A Notes;
- (g) in or towards payment of all amounts of principal due or overdue on the Class A Notes and all other amounts (excluding interest) due in respect of the Class A Notes;
- (h) in or towards payment of interest due and interest overdue (and all interest due on such overdue interest) on the Class B Notes;
- (i) in or towards payment of all amounts of principal due or overdue on the Class B Notes and all other amounts (excluding interest) due in respect of the Class B Notes;
- (j) in or towards payment of interest due and interest overdue (and all interest due on such overdue interest) on the Class C Notes;
- (k) in or towards payment of all amounts of principal due or overdue on the Class C Notes and all other amounts (excluding interest) due in respect of the Class C Notes;
- (l) in or towards payment of interest due and interest overdue (and all interest due on such overdue interest) on the Class D Notes;
- (m) in or towards payment of all amounts of principal due or overdue on the Class D Notes and all other amounts (excluding interest) due in respect of the Class D Notes;
- (n) in or towards payment of any Liquidity Subordinated Amounts;
- (o) in or towards payment of any amounts payable by the Issuer to the Special Servicer in respect of the Liquidation Fee or the Workout Fee;
- (p) in or towards payment of any Arrangement Fee payable to Eurohypo as the Note Arranger; and
- (q) any surplus to the Issuer or other persons entitled thereto.

Upon enforcement of the Issuer Security, the Trustee will have recourse only to the rights of the Issuer in respect of the Loans and the Loan Security and all other assets constituting the Issuer Security. Other than in relation to the Servicing Agreement and the Subscription Agreement for breach of the obligations of Eurohypo set out therein, the Issuer and/or the Trustee will have no recourse to Eurohypo.



## SERVICING

### The Servicer

Each of the Issuer and the Trustee will appoint Eurohypo under the terms of a servicing agreement to be dated on or before the Closing Date (the **Servicing Agreement**) as the initial servicer of the Senior Loan and to have responsibility for, among other things, the investment and application of moneys in accordance with the relevant priority of payments under the Deed of Charge. The Servicer will perform the day-to-day servicing of the Senior Loan and will continue to service other commercial mortgage loans in addition to the Senior Loan.

Each of the Issuer and the Trustee will appoint the Servicer to be its agent to provide certain cash management services in relation to the Issuer's Accounts as more particularly described below.

### Servicing of the Senior Loan

Servicing procedures will include monitoring compliance with and administering the options available to the Borrower under the terms and conditions of the Senior Credit Agreement. The Servicer and (where applicable) the Special Servicer will agree to service the Senior Loan in the best interests of and for the benefit of all of the Noteholders (as determined by the Servicer or the Special Servicer, as the case may be, in its good faith and reasonable judgment) and in accordance with applicable law and regulatory requirements and shall take all measures it deems necessary or appropriate in its due professional discretion to administer and collect the Senior Loan (i) provided that the Servicer or the Special Servicer, as the case may be, is Eurohypo, in accordance with Eurohypo's usual administrative policies and procedures from time to time and in the same manner as Eurohypo services commercial mortgage loans which remain on the books of and beneficially owned by Eurohypo; and in so doing shall exercise the standard of care of a reasonably prudent commercial mortgage lender or (ii) to the extent that the Servicer or the Special Servicer, as the case may be, is not Eurohypo, in accordance with the standard of care as is normal and usual in general commercial mortgage servicing activities with respect to comparable mortgage loans for other third-party lenders or for its own account, whichever is higher, and, in either case, in particular, and, on the occurrence of a Loan Event of Default in respect of the Senior Loan, the administration of enforcement procedures with a view to the maximisation of recoveries available to the Noteholders (taking into account the likelihood of recovery of amounts due from the Borrower, the timing of any such recovery and the costs of recovery) as determined by the Servicer or Special Servicer, as the case may be, in its reasonable judgment (the **Servicing Standard**).

Each of the Servicer and the Special Servicer may become the owner or otherwise hold an interest in the Notes with the same rights as each would have if it were not the Servicer or Special Servicer, as the case may be. Any such interest of the Servicer or the Special Servicer in the Notes will not be taken into account by any person when evaluating whether actions of the Servicer or the Special Servicer were consistent with the Servicing Standard.

### Consultation with, and appointment of, the Special Servicer

The Servicer will give notice to the Special Servicer and the Trustee and will consult with the Special Servicer in relation to the future servicing or exercise of rights in respect of the Senior Loan and/or the Loan Security promptly upon the occurrence of any of the following events:

- (a) a payment default with regards to any payment due on the maturity of the Senior Loan (not taking into account any extensions to its maturity permitted under the Servicing Agreement); or
- (b) other than any payment default specified in paragraph (a) above, any scheduled payment due and payable in respect of the Senior Loan being delinquent for up to 45 days past its due date; or
- (c) the Borrower being in breach of any covenant (other than a material covenant) under the Senior Credit Agreement (a covenant being a **material covenant** if a breach of it materially impairs or could materially impair the use or the marketability of the Property or the value thereof as security for the Senior Loan).

The Servicer or the Special Servicer, as applicable, will promptly give notice to the Issuer, the Trustee, the Rating Agencies and the Special Servicer (where applicable) of the occurrence of any Special Servicing Event in respect of the Senior Loan. Upon the delivery of such notice, the Special Servicer will automatically assume all of its duties, obligations and powers under the Servicing Agreement and the Senior Loan will become **specialy serviced**.



**Special Servicing Event** means each of the following events:

- (a) a payment default occurring with regards to any payment due on the maturity of the Senior Loan (taking into account any extensions to its maturity permitted under the Servicing Agreement);
- (b) other than any payment default specified in paragraph (a) above, a scheduled payment due and payable in respect of the Senior Loan being delinquent for more than 45 days past its due date;
- (c) the Issuer, the Trustee, the Servicer or the Special Servicer receiving notice of the enforcement of any Loan Security;
- (d) insolvency or bankruptcy proceedings being commenced in respect of the Borrower;
- (e) in the Servicer's opinion a breach of a material covenant under the Senior Credit Agreement occurring or, to the knowledge of the Servicer, being likely to occur, and in the Servicer's opinion such breach is not likely to be cured within 30 days of its occurrence;
- (f) the Borrower notifying the Senior Facility Agent, the Issuer or the Trustee in writing of its inability to pay its debts generally as they become due, its entering into an assignment for the benefit of its creditors or its voluntary suspension of payment of its obligations; or
- (g) any other Loan Event of Default occurring that, in the good faith and reasonable judgment of the Servicer, materially impairs or could materially impair the use or the marketability of the Property or the value thereof as security for the Senior Loan.

On the appointment of the Special Servicer in respect of the Senior Loan, the Servicer shall cease to be subject to the obligations as Servicer in respect of the Senior Loan under the Servicing Agreement except where otherwise provided.

#### **Arrears and default procedures**

The Servicer will collect or the Servicer or the Special Servicer, as applicable, will instruct the Senior Facility Agent to collect all payments due under or in connection with the Senior Loan.

The Servicer will initially be responsible for the supervision and monitoring of payments falling due in respect of the Senior Loan. The Servicer and, as applicable, the Special Servicer will be required to use all reasonable endeavours to recover amounts due from the Borrower should it default. Each of the Servicer and the Special Servicer will agree, in relation to any default under or in connection with the Senior Loan and the Loan Security, to comply with the procedures for enforcement of the Senior Loan and the Loan Security of the Servicer or the Special Servicer, as the case may be, current from time to time. In the event of a default in respect of the Senior Loan, the Servicer or the Special Servicer, as applicable, will consider based on (amongst others) the nature of the default, the status of the Borrower and the nature and value of the Property, what internal reviews and reporting requirements are needed in respect of the Senior Loan, and which enforcement procedures are appropriate. Such procedures for enforcement include the giving of instructions to the Loan Security Agent as to how to enforce the security held by the Loan Facility Agent pursuant to the Loan Security.

#### **Amendments to the terms and conditions of the Finance Documents**

The Servicer or the Special Servicer, as applicable, on behalf of the Issuer and the Trustee may (but will not be obliged to) in accordance with the Servicing Standard agree to any request by the Senior Facility Agent or the Borrower, as applicable, to vary or amend the terms and conditions of the Finance Documents provided that:

- (a) the variation or amendment consists of one or more of the following:
  - (i) any release of the Borrower, provided that there is always at least one person who is the Borrower under the Senior Loan (which may be a person to whom the Borrower requests its obligation to be novated);
  - (ii) the release of the Loan Security or any part thereof which may, at the option of the Servicer or the Special Servicer, as applicable, be on the basis that alternative security is provided by the Borrower which is acceptable to the Servicer or the Special Servicer acting in accordance with the Servicing Standard; or
  - (iii) any other variation or amendment which would be acceptable to a reasonably prudent commercial mortgage lender acting in accordance with the Servicing Standard;

- (b) no Acceleration Notice has been given by the Trustee which remains in effect at the date on which the relevant variation or amendment is agreed;
- (c) the Issuer will not be required to make a further advance including, without limitation, any deferral of interest because of the relevant variation or amendment;
- (d) the effect of such variation or amendment would not be to extend the final maturity date of the Senior Loan beyond 20 April 2012 unless the Servicer or the Special Servicer, as applicable, shall have first received written confirmation from each of the Rating Agencies that the then current ratings of the Notes will not be adversely affected by such extension;
- (e) the Loan Security will continue to include a first ranking legal and beneficial mortgage on the interests in the Property;
- (f) notice of any such amendment or variation is given to the Rating Agencies and prior written confirmation shall have been received by the Servicer or the Special Servicer, as applicable, from each of the Rating Agencies that any variation or amendment to any of the terms and conditions of the Finance Documents that is likely, in the reasonable determination of the Servicer or the Special Servicer, as the case may be, to have a material adverse effect on the Noteholders (it being agreed that a reduction in the interest rate or principal balance of the Loans or any waiver or postponement of the same is likely to have such effect) will not result in the then current ratings of any of the Notes being adversely affected; and
- (g) if Eurohypo is not the Special Servicer, notice of any such amendment or variation is given to the Special Servicer.

With the prior written consent of the Trustee (acting in accordance with the Trust Deed and having regard to the interests of the Noteholders), the Servicer or the Special Servicer, as applicable, may (but will not be obliged to) agree, subject to the terms of the Intercreditor Agreement, to any request by the Senior Facility Agent or the Borrower to vary or amend the terms and conditions of the Finance Documents where any of the above conditions (other than the conditions specified in paragraphs (d), (f) and (g) above) are not satisfied in respect of the relevant variation or amendment.

The Servicing Agreement will give no authority to the Servicer or the Special Servicer to agree any variation or amendment to any of the terms of the Finance Documents if the proposed variation or amendment is not made in accordance with the terms of the Intercreditor Agreement. See further, "*Credit Structure – 6. Intercreditor Agreement*".

#### **Ability to purchase the Senior Loan and the Loan Security**

The Issuer and the Trustee will, pursuant to the Servicing Agreement, grant the option on any Interest Payment Date (a) to the Servicer to purchase the Senior Loan (as long as they are not specially serviced) and (b) to the Special Servicer to purchase the Senior Loan (so long as they are specially serviced) and also, in each case, the Loan Security; provided that on the Interest Payment Date on which the Servicer or the Special Servicer, as the case may be, intends to purchase the Senior Loan and the Loan Security the then principal balance of the Senior Loan would be less than 10 per cent. of the principal balance as at the Closing Date, and provided further that the purchase price to be paid will be sufficient to pay all amounts due in respect of the Notes after payment has been made to all creditors who rank in priority to Noteholders.

The Servicer or the Special Servicer, as the case may be, must give the Issuer, the Senior Facility Agent, the Trustee and (in the case of notice given by the Special Servicer only) the Servicer not more than 65 nor less than 30 days' written notice of its intention to purchase the Senior Loan and the Loan Security. No such notice of the Special Servicer's intention to purchase the Senior Loan shall be valid if the Servicer gives the Issuer, the Senior Facility Agent and the Trustee written notice of its intention to purchase the Senior Loan provided that such notice from the Servicer is delivered within 10 days of the date on which the Special Servicer's notice was delivered.

#### **Calculation of amounts and payments**

On each Calculation Date, the Servicer will be required to determine the various amounts required to pay interest and principal due on the Notes on the forthcoming Interest Payment Date and all other amounts then payable by the Issuer, and the amounts expected to be available to make such payments. In addition, the Servicer will calculate the Principal Amount Outstanding for each class of Notes for the Interest Period commencing on such forthcoming Interest Payment Date, request the

making of any Income Deficiency Drawings (including Income Deficiency Drawings to fund Hedging Loans (if appropriate)) on behalf of the Issuer.

On each Interest Payment Date, the Servicer will determine and pay on behalf of the Issuer out of Available Issuer Income and receipts of principal (if any) in respect of the Senior Loan determined by the Servicer to be available for such purposes as described above, each of the payments required to be paid pursuant to and in the priority set forth in the Servicing Agreement. In addition, the Servicer will, from time to time, pay on behalf of the Issuer all Priority Amounts required to be paid by the Issuer, as determined by the Servicer.

Subject to receipt of funds from the Borrower, the Servicer will make all payments required to carry out a redemption of Notes pursuant to **Condition 6.2(b)** or **Condition 6.3**, in each case according to the provisions of the relevant Condition. See further “*Terms and Conditions of the Notes*”.

If the Servicer, acting on the basis of information provided to it determines, on any Calculation Date, that the Issuer will make a Hedging Loan to the Borrower on the next Loan Interest Payment Date or the amount of Available Issuer Income, less any Priority Amounts paid since the immediately preceding Interest Payment Date or due to be paid by the Issuer prior to the next Interest Payment Date, will be insufficient to make payments set out under **paragraphs (a) to (j)** of the Pre-Enforcement Priority of Payments or **paragraphs (a) to (i)** of the Post-Enforcement Pre-Acceleration Priority of Payment (as applicable), the Servicer will make an Income Deficiency Drawing under the Liquidity Facility. See “*Credit Structure – 8. Liquidity Facility*” above. Any notice of drawdown in respect of the Liquidity Facility must be delivered at least one Business Day prior to the date on which the drawing is required.

### **Servicer quarterly report**

Pursuant to the Servicing Agreement, the Servicer will agree to deliver to the Issuer, the Trustee, the Special Servicer and the Rating Agencies a report in respect of each Calculation Date in which it will notify the recipients of, among other things, all amounts received in the Issuer’s Accounts and payments made with respect thereto. The report will contain the monthly arrears report and will also include qualitative and quantitative information on the Senior Loan, including details of any material changes that may affect credit quality and the details of any delegation of any of the Servicer’s and/or Special Servicer’s obligations or duties.

### **Insurance**

The Servicer will procure that the Senior Facility Agent monitors the arrangements for insurance which relate to the Senior Loan and the Loan Security and establishes and maintains procedures to ensure that all buildings insurance policies in respect of the Property are renewed on a timely basis.

To the extent that the Issuer and/or the Trustee has power to do so under a policy of buildings insurance, the Servicer will, as soon as practicable after becoming aware of any occurrence of any event giving rise to a claim under such policy, procure that the Senior Facility Agent prepares and submits such claim on behalf of the Issuer and/or the Trustee in accordance with the terms and conditions of such policy and complies with any requirements of the relevant insurer.

The Servicer will use reasonable endeavours to procure that the Borrower complies with the obligations in respect of insurance in accordance with the terms of the Senior Credit Agreement. If the Servicer becomes aware that the Borrower has failed to pay premiums due under any policy of buildings insurance the Servicer will instruct the Senior Facility Agent to take such action as the Issuer and/or the Trustee shall reasonably direct and in the absence of such direction will, on behalf of the Issuer or the Trustee, instruct the Senior Facility Agent to pay premiums due and payable under any policy of buildings insurance in order that the cover provided by such policy does not lapse.

Upon receipt of notice that any policy of buildings insurance has lapsed or that the Property is otherwise not insured against fire and other perils (including subsidence other than as set out in the Credit Agreement) under a comprehensive buildings insurance policy or similar policy in accordance with the terms of the Senior Credit Agreement, the Servicer will instruct the Senior Facility Agent, at the cost of the Issuer, to arrange such insurance in accordance with the terms of the Senior Credit Agreement. Under the terms of the Senior Credit Agreement, the Borrower will be required to reimburse the Issuer, as applicable, for such costs of insurance. See also “*Risk Factors – Insurance*”.

## Fees

The Servicer will be entitled to receive a fee for servicing the Senior Loan. On each Interest Payment Date the Issuer will pay to the Servicer a servicing fee (the **Servicing Fee**) (inclusive of value added tax) equal to 0.035 per cent. per annum of the aggregate Principal Amount Outstanding of the Notes on that date but only to the extent that the Issuer has sufficient funds to pay such amount as provided in “*Credit Structure – 9. Cashflows*”. The unpaid balance (if any) will be carried forward until the next succeeding Interest Payment Date and, if not paid before such time, will be payable on the final Interest Payment Date of the latest maturing class of Notes or on the earlier redemption in full of the Notes by the Issuer. The Servicing Agreement will also provide for the Servicer to be reimbursed for all reasonable out-of-pocket expenses and charges properly incurred by the Servicer in the performance of its services under the Servicing Agreement.

Pursuant to the Servicing Agreement, if the Senior Loan are designated to be specially serviced, the Issuer will be required to pay to the Special Servicer a fee (the **Special Servicing Fee**) (exclusive of value added tax) equal to 0.25 per cent. per annum of the principal balance of the Senior Loan then outstanding but only to the extent that the Issuer has sufficient funds to pay such amount as provided in “*Credit Structure – 9. Cashflows*” for a period commencing on the date the Senior Loan are designated to be specially serviced and ending on the date the Property is sold on enforcement or the date on which the Senior Loan is designated to be corrected.

The Senior Loan will be designated to be **corrected** if any of the following occurs with respect to the circumstances identified as having caused the Senior Loan to be designated specially serviced and the Senior Loan has been transferred back to the control of the Servicer (and provided that no other Special Servicing Event then exists with respect to the Senior Loan):

- (a) with respect to the circumstances described in paragraphs (b) and (h) in the definition of Special Servicing Event the Borrower has made two consecutive timely quarterly payments in full;
- (b) with respect to the circumstances described in paragraphs (c) and (d) in the definition of Special Servicing Event such proceedings are terminated;
- (c) with respect to the circumstances described in paragraph (e) in the definition of Special Servicing Event such circumstances cease to exist in the good faith and reasonable judgment of the Special Servicer;
- (d) with respect to the circumstances described in paragraph (f) in the definition of Special Servicing Event the Borrower ceases to claim an inability to pay its debts or suspend the payment of obligations or the termination of any assignment for the benefit of its creditors; or
- (e) with respect to the circumstances described in paragraph (g) in the definition of Special Servicing Event such default is cured.

The Special Servicing Fee will accrue on a daily basis over such period and will be payable on each Interest Payment Date commencing with the Interest Payment Date following the date on which such period begins and ending on the Interest Payment Date following the end of such period.

In addition to the Special Servicing Fee, the Special Servicer will be entitled to a fee (the **Liquidation Fee**) (exclusive of value added tax) in respect of the Loans equal to an amount of 1.0 per cent. of the proceeds (net of all costs and expenses incurred as a result of the default of the Senior Loan, enforcement and sale), if any, arising on the sale of the Property or on or out of the application of any other enforcement procedures or other actions taken by the Special Servicer in respect of the Senior Loan.

In addition to the Special Servicing Fee and the Liquidation Fee (if any) in respect of the Senior Loan, the Special Servicer will be entitled to receive a fee (the **Workout Fee**) in consideration of providing services in relation to the Senior Loan when it is designated to be corrected. When the Senior Loan is designated to be corrected, the VAT-exclusive amount of Workout Fee shall be equal to 1.0 per cent. of each collection of principal and interest received on the Senior Loan (but only, in relation to collections of principal, if and to the extent that such principal received reduces the amount of principal outstanding under the Senior Loan to below the amount of principal outstanding under the Senior Loan at the date it was first designated to be corrected) for so long as it continues to be designated corrected. The Workout Fee with respect to the Senior Loan will cease to be payable if the Senior Loan is no longer designated to be corrected, but the Workout Fee will become payable if and when the Senior Loan is again designated to be corrected.

The Liquidation Fee and the Workout Fee will only be payable to the extent that the Issuer has sufficient funds to pay such amount as provided in “*Credit Structure – 9. Cashflows*”.

### **Removal or resignation of the Servicer or the Special Servicer**

The appointment of the Servicer or the Special Servicer, as applicable, may be terminated by the Trustee and/or by the Issuer (with the consent of the Trustee) upon written notice to the Servicer or the Special Servicer, as the case may be, on the occurrence of certain events (each a **Servicing Termination Event**), including if:

- (a) the Servicer or the Special Servicer, as applicable, fails to pay or to procure the payment of any amount required to be paid under the Transaction Documents to which the Servicer or the Special Servicer is party (as the case may be) on its due date by it and either (i) such payment is not made within five Business Days of such time or (ii) if the Servicer’s or the Special Servicer’s failure to make such payment was due to inadvertent error, such failure is not remedied for a period of 10 Business Days after the Servicer or the Special Servicer becomes aware of such error;
- (b) subject as provided further in the Transaction Documents, the Servicer or the Special Servicer, as applicable, fails to comply with any of its covenants and obligations under the Servicing Agreement which in the opinion of the Trustee is materially prejudicial to the interests of the holders of the Notes and such failure either is not remediable or is not remedied for a period of 30 Business Days after the earlier of the Servicer or the Special Servicer, as the case may be, becoming aware of such default and delivery of a written notice of such default being served on the Servicer or the Special Servicer, as applicable, by the Issuer or the Trustee;
- (c) at any time the Servicer or the Special Servicer, as applicable, fails to obtain or maintain the necessary licences or regulatory approvals enabling it to continue servicing the Senior Loan; or
- (d) the occurrence of an insolvency event in relation to the Servicer or the Special Servicer.

In addition, if the Senior Loan has been designated to be specially serviced and the Issuer is so instructed by the Controlling Party, the Issuer will terminate the appointment of the person then acting as Special Servicer and, subject to certain conditions, appoint a qualified successor thereto (such successor to pay any costs incurred by the Issuer in relation to the replacement of the Special Servicer).

**Controlling Party** means, at any time:

- (a) the holders of the most junior Class of Notes then having a Principal Amount Outstanding (as defined below) greater than 25 per cent. of its original aggregate Principal Amount Outstanding on the Closing Date; or
- (b) if no Class of Notes then has a Principal Amount Outstanding greater than 25 per cent. of its original aggregate Principal Amount Outstanding on the Closing Date, the holders of the then most junior Class of Notes,

excluding, in each case, any Class of Notes, the entire Principal Amount Outstanding of which is held by, or for the benefit of or on behalf of the Borrower and/or or any one or more of its Affiliates (the **Excluded Class**).

In the event that the Excluded Class would be (but for the preceding paragraph) determined to be the Controlling Party, the Class of Notes ranking immediately in priority in point of security to the Excluded Class and satisfying the test above will be the Controlling Party.

Prior to or contemporaneously with any termination of the appointment of the Servicer or the Special Servicer, it would first be necessary for the Issuer to appoint a substitute servicer or special servicer approved by the Trustee.

In addition, subject to the fulfilment of certain conditions including, without limitation, that a substitute servicer or special servicer has been appointed, the Servicer or Special Servicer may voluntarily resign by giving not less than three months’ notice of termination to the Issuer, the Senior Facility Agent and the Trustee.

Any such substitute servicer or special servicer (whether appointed upon a termination of the appointment of, or the resignation of, the Servicer or Special Servicer, as the case may be) will be required to, if possible, have experience servicing loans secured on commercial mortgage properties in England and Wales and will enter into an agreement on substantially the same terms in all material



aspects as the Servicing Agreement, taking into account also what is standard for such agreements in similar transactions at the time. Under the terms of the Servicing Agreement, the appointment of a substitute servicer or special servicer will be subject to the Rating Agencies confirming that the appointment will not adversely affect the then current ratings (if any) of any class of the Notes unless otherwise agreed by Extraordinary Resolutions of each class of Noteholders. Any costs incurred by the Issuer as a result of appointing any such substitute servicer or special servicer shall, save as specified above, be paid by the Servicer or Special Servicer (as the case may be) whose appointment is being terminated. The fee payable to any such substitute servicer or special servicer should not, without the prior written consent of the Trustee, exceed the amount payable to the Servicer or Special Servicer pursuant to the Servicing Agreement and in any event should not exceed the rate then customarily payable to providers of commercial mortgage loan servicing services.

Forthwith upon termination of the appointment of, or the resignation of, the Servicer or Special Servicer, the Servicer or Special Servicer (as the case may be) must deliver any documents and all books of account and other records maintained by the Servicer or Special Servicer relating to the Loans and/or the Loan Security to, or at the direction of, the substitute servicer or special servicer and shall take such further action as the substitute servicer or substitute special servicer, as the case may be, shall reasonably request to enable the substitute servicer or the substitute special servicer, as the case may be, to perform the services due to be performed by the Servicer or the Special Servicer under the Servicing Agreement.

### **Appointment of the Operating Adviser**

The Controlling Party may elect to appoint an operating adviser (the **Operating Adviser**) to represent its interests and to advise the Special Servicer about the following matters in relation to the Senior Loan:

- (a) appointment of a receiver or similar actions to be taken in relation to the Senior Loan;
- (b) the amendment, waiver or modification of any term of the Finance Documents which affects the amount payable by the Borrower or the time at which any amounts are payable, or any other material term of the Finance Documents; and
- (c) the release of any part of the Loan Security, or the acceptance of substitute or additional Loan Security other than in accordance with the terms of the Senior Credit Agreement.

Before taking any action in connection with the matters referred to in paragraphs (a) to (c) above, the Special Servicer must notify the Operating Adviser of its intentions and must take due account of the advice and representations of the Operating Adviser, although if the Special Servicer determines that immediate action is necessary to protect the interests of the Noteholders, the Special Servicer may take whatever action it considers necessary without waiting for the Operating Adviser's response. If the Special Servicer does take such action and the Operating Adviser objects in writing to the actions so taken within 10 Business Days after being notified of the action and provided with all reasonably requested information, the Special Servicer must take due account of the advice and representations of the Operating Adviser regarding any further steps the Operating Adviser considers should be taken in the interests of the Controlling Party. The Operating Adviser will be considered to have approved any action taken by the Special Servicer without the prior approval of the Operating Adviser if it does not object within 10 Business Days. Furthermore, the Special Servicer will not be obliged to obtain the approval of the Operating Adviser for any actions to be taken with respect to the Senior Loan if the Special Servicer has notified the Operating Adviser in writing of the actions that the Special Servicer proposes to take with respect to the Senior Loan and, for 60 days following the first such notice, the Operating Adviser has objected to all of those proposed actions and has failed to suggest any alternative actions that the Special Servicer considers to be in accordance with the Servicing Agreement.

### **Delegation by the Servicer and Special Servicer**

The Servicer or the Special Servicer, as applicable, may, in some circumstances including with the prior written consent of the Trustee and, in the case of the Servicer, with the prior written consent of the Special Servicer (where the Special Servicer is not Eurohypo), and after giving written notice to the Trustee and the Rating Agencies, delegate or subcontract the performance of any of its obligations or duties under the Servicing Agreement. This shall not prevent the engagement on a case by case basis by the Servicer or Special Servicer, as applicable, of any solicitor, valuer, surveyor, estate agent, property management agent or other professional adviser in respect of services normally provided by



such persons in connection with the performance by the Servicer or the Special Servicer, as applicable, of any of its respective functions or exercise of its power under the Servicing Agreement. Upon the appointment of any such delegate or subcontractor the Servicer or the Special Servicer, as the case may be, will nevertheless remain responsible for the performance of those duties to the Issuer and the Trustee.

**Governing law**

The Servicing Agreement will be governed by English law.

## ACCOUNT BANK

### **The Account Bank**

The Bank of New York will be appointed Account Bank to the Issuer pursuant to the terms of the Bank Agreement. The Bank of New York is the principal subsidiary of the Bank of New York Company, Inc. (NYSE: BK) which is represented in more than 100 markets worldwide.

The Bank of New York, founded in 1784, is the oldest bank in the United States and serves its clients around the world through its five primary businesses: Securities Servicing and Global Payment Services, Private Client Services and Asset Management, Corporate Banking, Global Market Services, and Retail Banking.

The Bank of New York is regulated by the Financial Services Authority for the conduct of UK business. The long term unsecured, unsubordinated debt obligations of The Bank of New York are rated “AA-” by S&P, “AA-” by Fitch and “Aa2” by Moody’s Investors Service Limited (**Moody’s**) and the short term, unsecured, unsubordinated debt obligations of The Bank of New York are rated “A-1+” by S&P, “F1+” by Fitch and “P-1” by Moody’s.

### **The Issuer Transaction Account**

Pursuant to the Bank Agreement, the Account Bank will open and maintain the Issuer Transaction Account in the name of the Issuer. The Account Bank will agree to comply with any direction of the Servicer or the Issuer (prior to enforcement of the Issuer Security) or the Servicer or Trustee (after enforcement of the Issuer Security) to effect payments from the Issuer Transaction Account if such direction is made in accordance with the mandate governing the account.

### **Termination of appointment of the Account Bank**

The Bank Agreement will require that the Account Bank be, except in certain limited circumstances, a bank which is an Authorised Entity. If it ceases to be an Authorised Entity, the Account Bank will be required to give written notice of such event to the Issuer, the Servicer and the Trustee and will, within a reasonable time after having obtained the prior written consent of the Issuer, the Servicer and the Trustee and subject to establishing substantially similar arrangements to those contained in the Bank Agreement, procure the transfer of the Issuer Transaction Account and each other account of the Issuer held with the Account Bank to another bank which is an Authorised Entity. The Account Bank will be required to use all reasonable efforts to ensure that such a transfer will take place within 30 days of its ceasing to be an Authorised Entity. If, however, at the time when a transfer of such account or accounts would otherwise have to be made, there is no other bank which is an Authorised Entity or if no Authorised Entity agrees to such a transfer, the accounts will not be required to be transferred until such time as there is a bank which is an Authorised Entity or an Authorised Entity which so agrees, as the case may be.

An **Authorised Entity** is an entity the short-term unsecured, unguaranteed and unsubordinated debt obligations of which are rated at least “A-1+” (or its equivalent) by S&P and “F1” (or its equivalent) by Fitch and whose long-term unsecured, unguaranteed and unsubordinated debt obligations are rated at least “A+” (or its equivalent) by S&P or, if at the relevant time there is no such entity, any entity approved in writing by the Trustee.

If, other than in the circumstances specified above, the Servicer wishes the bank or branch at which any account of the Issuer is maintained to be changed, the Servicer will be required to obtain the prior written consent of the Issuer and the Trustee, in the case of the Issuer such consent not to be unreasonably withheld, and the transfer of such account will be subject to the same directions and arrangements as are provided for above.

## **LIQUIDITY BANK**

Lloyds TSB Bank plc acting through its corporate office located at Faryner's House, 25 Monument Street, London EC3R 8BQ, will act as the Liquidity Bank under the Liquidity Facility Agreement. Lloyds TSB Bank plc is regulated by the Financial Services Authority. The long term, unsecured, unsubordinated debt obligations of Lloyds TSB Bank plc are rated "AA" by S&P, "AA+" by Fitch and "Aaa" by Moody's and the short term, unsecured, unsubordinated debt obligations of Lloyds TSB Bank plc are rated "A-1+" by S&P, "F1+" by Fitch and "P-1" by Moody's.

## ESTIMATED AVERAGE LIVES OF THE NOTES AND ASSUMPTIONS

The average lives of the Notes cannot be predicted because the Senior Loan will be prepayable and a number of other relevant factors are unknown.

Calculations of possible average lives of the Notes can be made based on certain assumptions. For example, based on the assumptions that:

- (a) the Senior Loan is not sold by the Issuer;
- (b) the Senior Loan does not default, is not prepaid (in whole or in part), is not enforced and no loss arises; and
- (c) the Closing Date is 20 April 2005,

then the approximate percentage of the initial principal amount outstanding of the Notes on each Interest Payment Date and the approximate average lives of the Notes would be as follows:

- (i) in respect of the Class A Notes, 7 years;
- (ii) in respect of the Class B Notes, 7 years;
- (iii) in respect of the Class C Notes, 7 years; and
- (iv) in respect of the Class D Notes, 7 years.

Assumptions (a) and (b) above relate to circumstances which are not predictable.

The average lives of the Notes will be subject to factors outside the control of the Issuer and consequently no assurance can be given that the estimates above will in fact be realised and they must therefore be viewed with considerable caution.

## **USE OF PROCEEDS**

The net and gross proceeds from the issue of the Notes will be approximately £235,000,000, and this sum will be applied by the Issuer towards the making of the Senior Loan to the Borrower on the Closing Date pursuant to the Senior Credit Agreement. Fees, commissions and expenses incurred by the Issuer in connection with the issue of the Notes will be met by the Issuer and/or the Note Arranger.

## TERMS AND CONDITIONS OF THE NOTES

*The following is the text of the Terms and Conditions of the Notes in the form (subject to modification) in which they will be set out in the Trust Deed and, subject to any contrary provisions thereof, such Terms and Conditions will apply to the Notes in global and in definitive form (if issued):*

The issue of the £164,000,000 Class A Commercial Mortgage Backed Floating Rate Notes due April 2014 (the **Class A Notes**), the £23,880,000 Class B Commercial Mortgage Backed Floating Rate Notes due April 2014 (the **Class B Notes**), the £21,560,000 Class C Commercial Mortgage Backed Floating Rate Notes due April 2014 (the **Class C Notes**) and the £25,560,000 Class D Commercial Mortgage Backed Floating Rate Notes due April 2014 (the **Class D Notes** and, together with the Class A Notes, the Class B Notes and the Class C Notes, the ) by Opera Finance (Fosse Park) plc (the **Issuer**) was authorised by a resolution of the Board of Directors of the Issuer passed on 18 April 2005.

The Notes are constituted by a trust deed (such trust deed as modified and/or supplemented and/or restated from time to time, the **Trust Deed**) dated on or before 20 April 2005 (the **Closing Date**) made between the Issuer and The Bank of New York (the **Trust**, which expression includes its successors as trustee or any further or other trustee(s) under the Trust Deed) as trustee for the holders of the Notes (the **Noteholders**).

The proceeds of the issue of the Notes will be applied in or towards the making of the Senior Loan to FP North Limited (the **Borrower**).

References herein to the Notes include references to:

- (a) whilst the Notes are represented by a Global Note (as defined in **Condition 1.2(b)**) units of £20,000 (as reduced by any redemption in part of a Note pursuant to **Condition 6**);
- (b) any Global Note; and
- (c) any Definitive Notes (as defined in **Condition 2.1(a)**) issued in exchange for a Global Note.

References herein to interest include references to Deferred Interest (as defined in **Condition 5.8 below**) and interest thereon, unless the context otherwise requires.

The Noteholders and the holders of the Coupons (as defined below) (the **Couponholders**) are subject to and have the benefit of an agency agreement (as amended and/or supplemented from time to time, the **Agency Agreement**) dated the Closing Date between the Issuer, The Bank of New York as principal paying agent (in such capacity, the **Principal Paying Agent**, which expression includes any successor principal paying agent appointed from time to time in respect of the Notes) and as agent bank (in such capacity, the **Agent Bank**, which expression includes any successor agent bank appointed from time to time in connection with the Notes, AIB/BNY Fund Management (Ireland) Limited as Irish paying agent (the **Irish Paying Agent**, which expression includes any successor Irish paying agent appointed from time to time in connection with the Notes and together with the Principal Paying Agent and any other paying agent appointed from time to time in connection with the Notes, the **Paying Agents**) and the Trustee.

The security for the Notes is granted or created pursuant to a deed of charge under English law (the **Deed of Charge**, which expression includes such deed of charge 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) dated the Closing Date and made between, among others, the Issuer and the Trustee.

The Noteholders and the Couponholders are entitled to the benefit of, are bound by, and are deemed to have notice of, all the provisions of the Trust Deed, the Agency Agreement and the Deed of Charge applicable to them and all the provisions of the other Transaction Documents (including the Bank Agreement, the Servicing Agreement, the Liquidity Facility Agreement, the Senior Credit Agreement, the Corporate Services Agreement, the Borrower Security Agreement, the Post-Enforcement Call Option Agreement and the Master Definitions Schedule (each as defined in the master definitions schedule signed for identification by, among others, the Issuer and the Trustee on or about the Closing Date (the **Master Definitions Schedule**)) applicable to them.

The statements in these Conditions include summaries of, and are subject to, the detailed provisions of the Trust Deed, the Agency Agreement, the Deed of Charge and the other Transaction Documents.



Capitalised terms used in these Conditions but not otherwise defined shall have the meanings set out in the Master Definitions Schedule.

As used in these Conditions:

- (a) a reference to a **Class** of Notes or the respective holders thereof, as applicable, shall be a reference to the Class A Notes, the Class B Notes, the Class C Notes or the Class D Notes (and, unless the context otherwise requires, shall include in each case any Coupons appertaining thereto) or the respective Noteholders and Couponholders and Classes, in a similar context, shall be construed accordingly;
- (b) a reference to **Notes of any Class** shall in these Conditions, unless the context otherwise requires, include any Further Notes (as defined below in **Condition 16.1**) issued pursuant to **Condition 16** and forming a single series with the relevant Class of Notes;
- (c) **Most Senior Class of Notes** means at any time:
  - (i) the Class A Notes; or
  - (ii) if no Class A Notes are then outstanding (as defined in the Trust Deed), the Class B Notes (if at that time any Class B Notes are then outstanding); or
  - (iii) if no Class A Notes or Class B Notes are then outstanding, the Class C Notes (if at that time any Class C Notes are then outstanding); or
  - (iv) if no Class A Notes, Class B Notes or Class C Notes are then outstanding, the Class D Notes (if at that time any Class D Notes are outstanding); and
- (d) **Principal Amount Outstanding** means, in respect of any Note at any time, the principal amount thereof as at the Closing Date as reduced by any payment of principal to the holder of the Note up to (and including) that time.

Copies of the Transaction Documents are available to Noteholders for inspection at the specified office of each of the Principal Paying Agent and Irish Paying Agent.

## 1. GLOBAL NOTES

### 1.1 Temporary Global Notes

- (a) The Notes of each Class will initially be represented by a temporary global Note of the relevant Class (each, a **Temporary Global Note**).
- (b) The Temporary Global Notes will be deposited on behalf of the subscribers of the Notes with a common depository (the **Common Depository**) for Euroclear Bank S.A./N.V. as operator of the Euroclear System (**Euroclear**) and Clearstream Banking, société anonyme (**Clearstream, Luxembourg**) on the Closing Date. Upon deposit of the Temporary Global Notes, Euroclear or Clearstream, Luxembourg will credit the account of each Accountholder (as defined below) with the principal amount of Notes for which it has subscribed and paid.

### 1.2 Permanent Global Notes

- (a) Interests in each Temporary Global Note will be exchangeable 40 days after the Closing Date (the **Exchange Date**), provided certification of non-U.S. beneficial ownership (**Certification**) by the relevant Noteholders has been received, for interests in a permanent global Note of the relevant Class (each, a **Permanent Global Note**) which will also be deposited with the Common Depository unless the interests in the relevant Permanent Global Note have already been exchanged for Notes in definitive form in which event the interests in such Temporary Global Note may only be exchanged (subject to Certification) for Notes of the relevant Class in definitive form.
- (b) The expression **Global Note** shall be read and construed to mean a Temporary Global Note or a Permanent Global Note as the context may require. On the exchange of each Temporary Global Note for the relevant Permanent Global Note such Permanent Global Note will remain deposited with the Common Depository.

### 1.3 Form and Title

- (a) Each Global Note shall be issued in bearer form without Coupons or Talons (as defined below).

- (b) Title to the Global Notes will pass by delivery. Notes represented by a Global Note will be transferable only in accordance with the rules and procedures for the time being of Euroclear or Clearstream, Luxembourg, as appropriate.
- (c) For so long as the Notes of a Class are represented by one or both Global Notes in respect of that Class, the Issuer, the Trustee and all other parties shall (to the fullest extent permitted by applicable laws) deem and treat each person who is for the time being shown in the records of Euroclear or Clearstream, Luxembourg as the holder of a particular principal amount of such Notes (an **Accountholder**) as the holder of such principal amount of such Notes, in which regard any certificate or other document issued by Euroclear or Clearstream, Luxembourg as to the principal amount of such Notes or interest in such Notes standing to the account of any person shall be conclusive and binding for all purposes save in the case of manifest error (including for the purposes of any quorum requirements of, or the right to demand a poll at, meetings of the Noteholders), other than for the purposes of payment of principal and interest on such Global Notes, the right to which shall be vested, as against the Issuer, the Paying Agents and the Trustee, solely in the bearer of the relevant Global Note in accordance with and subject to the terms of the Trust Deed. The expressions **Noteholders** and **holder of Notes** and related expressions shall be construed accordingly.
- (d) Subject to **Conditions 1.3(c)**, in determining whether a particular person is entitled to a particular principal amount of Notes as aforesaid, the Trustee may rely on such evidence and/or information and/or certification as it shall, in its absolute discretion, think fit and, if it does so rely, such evidence and/or information and/or certification shall, in the absence of manifest error, be conclusive and binding on all concerned.

## 2. DEFINITIVE NOTES

### 2.1 *Issue of Definitive Notes*

- (a) A Permanent Global Note will be exchanged free of charge (in whole but not in part) for Notes in definitive bearer form (**Definitive Notes**) only if at any time after the Exchange Date any of the following applies:
  - (i) both Euroclear and Clearstream, Luxembourg are closed for business for a continuous period of 14 days (other than by reason of holiday, statutory or otherwise) or announce an intention permanently to cease business or do in fact do so and no alternative clearing system satisfactory to the Trustee is available; or
  - (ii) as a result of any amendment to, or change in, the laws or regulations of the United Kingdom or any applicable jurisdiction (or of any political subdivision thereof) or of any authority therein or thereof having power to tax or in the interpretation by a revenue authority or a court of administration of such laws or regulations which becomes effective on or after the Closing Date, the Issuer or any Paying Agent is or will become required to make any deduction or withholding from any payment in respect of the Notes which would not be required were the Notes in definitive form.
- (b) Thereupon, the whole of such Permanent Global Note will be exchanged for Definitive Notes (in the form provided in **Condition 2.2** below) and Coupons in respect of interest which has not already been paid on such Permanent Global Note as provided in such Permanent Global Note.

### 2.2 *Title to and Transfer of Definitive Notes*

- (a) Each Definitive Note shall be issued in bearer form, serially numbered, in the denomination of £20,000 with (at the date of issue) interest coupons (**Coupons**, which expression includes talons for further Coupons (**Talons**), except where the context otherwise requires) attached.
- (b) Title to the Definitive Notes and Coupons will pass by delivery.
- (c) The Issuer, the Paying Agents and the Trustee may (to the fullest extent permitted by applicable laws) deem and treat the holder of any Definitive Note and the holder of any Coupon as the absolute owner for all purposes (whether or not the Definitive Note or the Coupon shall be overdue and notwithstanding any notice of ownership, theft or loss, of any trust or other interest therein or of any writing on the Definitive Note or Coupon) and the Issuer, the Trustee and the Paying Agents shall not be required to obtain any proof thereof or as to the identity of such holder.

### 3. STATUS, SECURITY AND PRIORITY OF PAYMENTS

#### 3.1 Status and relationship between Classes of Notes

- (a) The Class A Notes, the Class B Notes, the Class C Notes and the Class D Notes constitute direct, secured and unconditional obligations of the Issuer and are secured by assignments, charges and other fixed and floating security interests over all of the assets of the Issuer (as more particularly described in the Deed of Charge) (the **Issuer Charged Property**) (such assignments, charges and fixed and floating security interests together, the **Issuer Security**). Notes of the same Class rank *pari passu* and rateably without any preference or priority amongst themselves.
- (b) In accordance with the provisions of this **Condition 3**, the Trust Deed and the Deed of Charge, the Class A Notes will rank in priority to all other Classes of Notes in point of security and as to the payment of interest, the Class B Notes will be subordinated in point of security and as to payment of interest in respect of the Class A Notes but will rank in priority to the Class C Notes and the Class D Notes in point of security and as to the payment of interest. The Class C Notes will be subordinated in point of security and as to payment of interest in respect of the Class A Notes and the Class B Notes but will rank in priority to the Class D Notes in point of security and as to payment of interest. The Class D Notes will be subordinated in point of security and as to payment of interest in respect of the Class A Notes, the Class B Notes and the Class C Notes.
- (c) In accordance with the provisions of this **Condition 3**, the Trust Deed and the Deed of Charge but subject to **Conditions 6.3(a)** and **(b)**, the Class A Notes will rank in priority to all other Classes of Notes as to the payment of principal, the Class B Notes will be subordinated as to payment of principal in respect of the Class A Notes but will rank in priority to the Class C Notes and the Class D Notes as to payment of principal. The Class C Notes will be subordinated as to payment of principal in respect of the Class A Notes and the Class B Notes but will rank in priority to the Class D Notes as to payment of principal. The Class D Notes will be subordinated as to payment of principal in respect of the Class A Notes, the Class B Notes and the Class C Notes. Prior to the service by the Trustee of an Acceleration Notice pursuant to **Condition 10(a)**, payments of interest in respect of each Class of Notes will rank ahead of payments of principal in respect of each Class of Notes.
- (d) In connection with the exercise of the powers, trusts, authorities, duties and discretions vested in it by the Trust Deed and the other Transaction Documents the Trustee shall:
- (i) except where expressly provided otherwise, have regard to the interests of the Class A Noteholders, the Class B Noteholders, the Class C Noteholders and the Class D Noteholders equally PROVIDED THAT if in the opinion of the Trustee (1) (for so long as there are any Class A Notes outstanding) there is a conflict between the interests of the Class A Noteholders on the one hand and the interests of the Class B Noteholders and/or the Class C Noteholders and/or the Class D Noteholders on the other hand, it shall have regard only to the interests of the Class A Noteholders, (2) (for so long as there are any Class B Notes outstanding) there is a conflict between the interests of the Class B Noteholders on the one hand and the interests of the Class C Noteholders and/or the Class D Noteholders on the other hand, it shall, subject to (1) above, have regard only to the interests of the Class B Noteholders and (3) (for so long as there are any Class C Notes outstanding) there is a conflict between the interests of the Class C Noteholders on the one hand and the interests of the Class D Noteholders on the other hand, it shall subject to (1) and (2) above, have regard only to the interests of the Class C Noteholders, but so that this proviso shall not apply in the case of powers, trusts, authorities, duties and discretions:
- (A) in relation to which it is expressly stated that they may be exercised by the Trustee only if in its opinion the interests of all the Noteholders would not be materially prejudiced thereby; or
- (B) the exercise of which by the Trustee relates to any Basic Terms Modification (as defined in **Condition 12(j)(ii)**), in which event the Trustee may exercise such powers, trusts, authorities, duties and discretions only if it is satisfied that to do so will not be materially prejudicial to the interests of the Noteholders of any Class that will be affected thereby;
- (ii) where it is required to have regard to the interests of the Noteholders (or any Class thereof), it shall have regard to the interests of such Noteholders (or such Class) as a class and in particular, but without prejudice to the generality of the foregoing, shall not be obliged to

have regard to the consequences thereof 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 Trustee shall not be entitled to require, nor shall any Noteholders be entitled to claim, from the Issuer, the Trustee or any other person any indemnification or payment in respect of any tax consequence of any such exercise upon individual Noteholders; and

- (iii) except where expressly provided otherwise, have regard only to the interests of the Noteholders and shall not be required to have regard to the interests of any Other Issuer Secured Creditor or any other person or to act upon or comply with any direction or request of any Other Issuer Secured Creditor or any other person (in the case of any Other Issuer Secured Creditor) whilst any amount remains owing to any Noteholder and (in the case of any other person) at any time.
- (e) In the event of an issue of Replacement Notes (as defined in **Condition 16.2**) or New Notes (as defined in **Condition 16.3**), the provisions of the Trust Deed, these Conditions, the Agency Agreement and the Deed of Charge, including those concerning:
- (i) the basis on which the Trustee will be required to exercise its rights, powers, trusts, authorities, duties and discretions;
  - (ii) the circumstances in which the Trustee will become bound to take action, as referred to in **Condition 10** or **11**;
  - (iii) meetings of Noteholders and the passing of effective Extraordinary Resolutions; and
  - (iv) the order of priority of payments both prior to, and upon, enforcement of the Issuer Security, will be modified in such manner as the Trustee considers necessary to reflect the issue of such Replacement Notes or, as the case may be, New Notes and the ranking thereof in relation to the Notes. If any New Notes are issued and the Notes are then listed on the Irish Stock Exchange, the Issuer will immediately advise the Irish Stock Exchange accordingly, procure the publication of a notice of the issue in a leading newspaper having general circulation in Dublin, file a new offering circular in respect of the issue of the New Notes with the Irish Stock Exchange and make such offering circular and any related agreements available in Dublin at the specified office of the Irish Paying Agent.

As used in these Conditions:

**Other Issuer Secured Creditors** means the Trustee, any appointee of the Trustee, the Servicer, the Special Servicer, the Corporate Services Provider, the Liquidity Bank, the Account Bank, the Note Arranger, the Principal Paying Agent, the Agent Bank and any other Paying Agent; and

**Issuer Secured Creditors** means the Noteholders, the Couponholders, the Other Issuer Secured Creditors and any other party so designated by the Issuer and the Trustee.

### 3.2 Issuer Security and Priority of Payments

The Issuer Security in respect of the Notes and Coupons and the payment obligations of the Issuer under the Transaction Documents is set out in the Deed of Charge. The Servicing Agreement contains provisions regulating the priority of application of the Issuer Charged Property by the Servicer (and proceeds thereof) among the persons entitled thereto prior to the Issuer Security becoming enforceable and the Deed of Charge contains provisions regulating such application by the Trustee after the Issuer Security has become enforceable.

The Issuer Security will become enforceable upon the occurrence of a Note Event of Default in accordance with **Condition 10**. If the Issuer Security has become enforceable otherwise than by reason of a default in payment of any amount due on the Notes, the Trustee will not be entitled to dispose of the assets comprising the Issuer Charged Property or any part thereof 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 Servicing Agreement or, as the case may be, the Deed of Charge to be paid *pari passu* with, or in priority to, the Notes, or (ii) the Trustee is of the opinion, which will be binding on the Noteholders, reached after considering at any time and from time to time the advice, upon which the Trustee will be entitled to rely, of such professional advisers as may be selected by the Trustee, that the cashflow 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 to be paid *pari passu* with, or in priority to, the Notes, or (iii) the Trustee determines that not to effect such disposal would place the Issuer Security in jeopardy, and, in any event, the Trustee has been secured and/or indemnified to its satisfaction.

## 4. COVENANTS

### 4.1 Restrictions

Save with the prior written consent of the Trustee pursuant to **Condition 12(k)** or as provided in these Conditions or as permitted by the Transaction Documents the Issuer shall not so long as any of the Notes remains outstanding:

(a) *Negative Pledge*

(save for the Issuer Security) create or permit to subsist any mortgage, sub-mortgage, charge, sub-charge, assignment, pledge, lien, hypothecation or other security interest whatsoever, however created or arising (unless arising by operation of law) over any of its property, assets or undertakings (including the Issuer Charged Property) or any interest, estate, right, title or benefit therein or use, invest or dispose of, including by way of sale or the grant of any security interest of whatsoever nature or otherwise deal with, or agree or attempt or purport to sell or otherwise dispose of (in each case whether by one transaction or a series of transactions) or grant any option or right to acquire any such property, assets or undertaking present or future;

(b) *Restrictions on Activities*

- (i) engage in any activity whatsoever which is not, or is not reasonably incidental to, any of the activities in which the Transaction Documents provide or envisage the Issuer will engage in;
- (ii) open or have an interest in any account whatsoever with any bank or other financial institution, save where such account or the Issuer's interest therein is immediately charged in favour of the Trustee so as to form part of the Issuer Security;
- (iii) have any subsidiaries;
- (iv) own or lease any premises or have any employees;
- (v) amend, supplement or otherwise modify its memorandum and articles of association; or
- (vi) issue any further shares;

(c) *Borrowings*

incur or permit to subsist any other 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 other obligation of any person;

(d) *Merger*

consolidate or merge with any other person or convey or transfer its properties or assets substantially as an entirety to any other person unless:

- (i) the person (if other than the Issuer) which is formed pursuant to or survives such consolidation or merger or which acquires by conveyance or transfer the properties and assets of the Issuer substantially as an entirety shall be a person incorporated and existing under the laws of England and Wales, the objects of which include the funding, purchase and administration of mortgages and mortgage loans, and who shall expressly assume, by an instrument supplemental to each of the Transaction Documents, in form and substance satisfactory to the Trustee, the obligation to make due and punctual payment of all moneys owing by the Issuer, including principal and interest on the Notes, and the performance and observance of every covenant in each of the Transaction Documents to be performed or observed on the part of the Issuer;
- (ii) immediately after giving effect to such transaction, no Note Event of Default (as defined in **Condition 10**) shall have occurred and be continuing;



- (iii) such consolidation, merger, conveyance or transfer has been approved by Extraordinary Resolution of each Class of the Noteholders;
  - (iv) all persons required by the Trustee shall have executed and delivered such documentation as the Trustee may require;
  - (v) the Issuer shall have delivered to the Trustee a legal opinion of English lawyers acceptable to the Trustee in a form acceptable to the Trustee to the effect that such consolidation, merger, conveyance or transfer and such supplemental instruments and other documents comply with paragraphs (i), (ii), (iii) and (iv) above and are binding on the Issuer (or any successor thereto); and
  - (vi) the then current ratings of the Notes are unaffected by such consolidation, merger, conveyance or transfer;
- (e) *Disposal of Assets*  
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;
- (f) *Assets*  
own assets other than those representing its share capital, 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;
- (g) *Dividends or Distributions*  
pay any dividend or make any other distribution to its shareholders or issue any further shares, other than in accordance with the Deed of Charge;
- (h) *VAT*  
apply to become part of any group for the purposes of (i) sections 43 to 43D of the Value Added Tax Act 1994 and (ii) the Value Added Tax (Groups: Eligibility) Order 2004 with any other company or group of companies, or any such act, regulation, order, statutory instrument or directive which may from time to time re-enact, replace, amend, vary, codify, consolidate or repeal the Value Added Tax Act 1994; or
- (i) *Other*  
cause or permit the validity or effectiveness of any of the Transaction Documents, or the priority of the security interests created thereby, to be amended, terminated, postponed or discharged, or consent to any variation of, or exercise any powers of consent or waiver pursuant to the Trust Deed, the Deed of Charge or any of the other Transaction Documents, or dispose of any part of the Issuer Charged Property.

In giving any consent to the foregoing, the 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 Trustee may deem expedient (in its absolute discretion) in the interests of the Noteholders, provided that each of the Rating Agencies has provided written confirmation to the Trustee that the then applicable ratings of each class of Notes then rated thereby will not be adversely affected as a result thereof.

#### 4.2 *Servicer*

- (a) So long as any of the Notes remains outstanding, the Issuer will procure that there will at all times be a Servicer for the servicing of the Senior Loan (as defined in the Master Definitions Schedule) and the performance of the other administrative duties set out in the Servicing Agreement.
- (b) The Servicing Agreement will provide that (i) the Servicer will not be permitted to terminate its appointment unless a replacement servicer acceptable to the Issuer and the Trustee has been appointed and (ii) the appointment of the Servicer may be terminated by the Trustee if, among other things, the Servicer defaults in any material respect in the observance and performance of any obligation imposed on it under the Servicing Agreement, which default is not remedied within



thirty Business Days after written notice of such default shall have been served on the Servicer by the Issuer or the Trustee.

#### 4.3 *Special Servicer*

If the Senior Loan has become specially serviced in accordance with the Servicing Agreement, then the Issuer, upon being so instructed by an Extraordinary Resolution (as defined below) of the Class of Noteholders then acting as Controlling Party, will exercise its rights under the Servicing Agreement to appoint a substitute or successor special servicer in respect of the Senior Loan subject to the conditions of the Servicing Agreement.

**Controlling Party** means, at any time:

- (a) the holders of the most junior Class of Notes then having a Principal Amount Outstanding (as defined below) greater than 25 per cent. of its original aggregate Principal Amount Outstanding on the Closing Date; or
- (b) if no Class of Notes then has a Principal Amount Outstanding greater than 25 per cent. of its original aggregate Principal Amount Outstanding on the Closing Date, the holders of the then most junior Class of Notes,

excluding, in each case, any Class of Notes the entire Principal Amount Outstanding of which is held by, or for the benefit of or on behalf of the Borrower and/or any one or more of its Affiliates (the **Excluded Class**).

In the event that the Excluded Class would be (but for the preceding paragraph) determined to be the Controlling Party, the Class of Notes ranking immediately in priority in point of security to the Excluded Class and satisfying the test above will be the Controlling Party.

#### 4.4 *Operating Adviser*

The Class of Noteholders then acting as Controlling Party may, by an Extraordinary Resolution passed by that class, appoint an adviser (the **Operating Adviser**) with whom the Servicer or Special Servicer, as the case may be, will be required to liaise in accordance with the Servicing Agreement.

### 5. **INTEREST**

#### 5.1 *Period of Accrual*

The Notes will bear interest from (and including) the Closing Date. Interest shall cease to accrue on any part of the Principal Amount Outstanding of any Note from the due date for redemption unless, upon due presentation, payment of principal or any part thereof due is improperly withheld or refused or any other default is made in respect thereof. In such event, interest will continue to accrue as provided in the Trust Deed.

#### 5.2 *Interest Payment Dates and Interest Periods*

- (a) Interest on the Notes is, subject as provided below, payable quarterly in arrear on the first Business Day after each Loan Interest Payment Date (each, an **Interest Payment Date**). The first such payment is due on the Interest Payment Date falling in July 2005 in respect of the period from (and including) the Closing Date to (but excluding) the Interest Determination Date falling in July 2005. The last such payment is due on the Interest Payment Date after the Loan Interest Payment Date on which the Senior Loan is repaid in full in respect of the period from (and including) the final Interest Determination Date to (but excluding) the final Interest Payment Date.
- (b) For the purposes of these Conditions, each of the following is an **Interest Period**:
  - (i) the period from (and including) an Interest Determination Date to (but excluding) the next Interest Determination Date;
  - (ii) the period from (and including) the Closing Date to (but excluding) the Interest Determination Date in July 2005; and
  - (iii) the period from (and including) the last Interest Determination Date to (but excluding) the last Interest Payment Date.

### 5.3 Rates of Interest

The rate of interest payable from time to time (the **Rate of Interest**) and the Interest Payment (as defined below) in respect of each Class of Notes will be determined by the Agent Bank on the basis of the following provisions:

- (a) The Agent Bank will, at or as soon as practicable after 11.00 a.m. (London time) on 20 January, 20 April, 20 July and 20 October of each year (or, if any such day is not a London Business Day, the next following London Business Day) (each, an **Interest Determination Date**), determine the Rate of Interest applicable to, and calculate the amount of interest payable on each of the Notes (each payment so calculated, an **Interest Payment**), for the next Interest Period. The Rate of Interest applicable to the Notes of each Class for any Interest Period will be equal to:
  - (i) in the case of the Class A Notes, LIBOR (as determined in accordance with **Condition 5.3(b)**) plus a margin of 0.18 per cent. per annum;
  - (ii) in the case of the Class B Notes, LIBOR (as so determined) plus a margin of 0.26 per cent. per annum;
  - (iii) in the case of the Class C Notes, LIBOR (as so determined) plus a margin of 0.45 per cent. per annum; and
  - (iv) in the case of the Class D Notes, LIBOR (as so determined) plus a margin of 0.78 per cent. per annum.

The Interest Payment in relation to a Note of a particular Class shall be calculated by applying the Rate of Interest applicable to the Notes of that Class to the Principal Amount Outstanding of such Note of that Class, multiplying the product of such calculation by the actual number of days in the relevant Interest Period divided by 365 and rounding the resultant figure to the nearest penny (fractions of half a penny being rounded upwards).

For the purposes of these Conditions:

**Business Day** means a day (other than Saturday or Sunday or a public holiday) on which commercial banks and foreign exchange markets settle payments and are open for general business (including dealings in foreign exchange and foreign currency deposits) in London and Dublin.

**London Business Day** means a day (other than Saturday or Sunday or a public holiday) on which commercial banks and foreign exchange markets settle payments and are open for general business (including dealings in foreign exchange and foreign currency deposits) in London.

- (b) For the purposes of determining the Rate of Interest in respect of each Class of Notes under **Condition 5.3(a)**, LIBOR will be determined by the Agent Bank on the basis of the following provisions:
  - (i) on each Interest Determination Date, the Agent Bank will determine the interest rate for three month sterling deposits (or, in respect of the last Interest Period, a linear interpolation of the rate for three month and four month sterling deposits) in the London inter-bank market which appears on LIBOR 01 Reuters (or (x) such other page as may replace LIBOR 01 Reuters on that service for the purpose of displaying such information or (y) if that service ceases to display such information, Moneyline Telerate Screen No. 3750) (the **LIBOR Screen Rate**) at or about 11.00 a.m. (London time) on such date; or
  - (ii) if the LIBOR Screen Rate is not then available, the arithmetic mean (rounded to five decimal places, 0.00005 rounded upwards) of the rates notified to the Agent Bank at its request by each of four reference banks duly appointed by it for such purpose (the **Reference Banks** provided that, once a Reference Bank has been appointed by the Agent Bank that Reference Bank shall not be changed unless and until it ceases to be capable of acting as such) as the rate at which three month deposits in sterling are offered for the same period as that Interest Period by those Reference Banks to prime banks in the London inter-bank market at or about 11.00 a.m. (London time) on that date (or, in respect of the last Interest Period, the arithmetic mean of a linear interpolation of the rates for three and four month sterling deposits notified by the Reference Banks). If, on any Interest Determination Date, at least two of the Reference Banks provide such offered quotations to the Agent Bank the relevant rate shall be determined, as aforesaid, on the basis of the offered quotations of those Reference Banks providing such quotations. If, on any Interest Determination Date,

only one of the Reference Banks provides the Agent Bank with such an offered quotation, the Agent Bank shall forthwith consult with the Trustee and the Issuer for the purposes of agreeing one additional bank to provide such a quotation to the Agent Bank (which bank is in the sole opinion of the Trustee suitable for such purpose) and the rate for the Interest Period in question shall be determined, as aforesaid, on the basis of the offered quotations of the Reference Bank and such bank as so agreed. If no such bank is so agreed or such bank as so agreed does not provide such a quotation or, if on any Interest Determination Date, no Reference Bank provides the Agent Bank with such an offered quotation, then the rate for the relevant Interest Period shall be the arithmetic mean (rounded to five decimal places, 0.000005 being rounded upwards) of the rates quoted by major banks in London, selected by the Agent Bank, at approximately 11.00 a.m. (London time) on the Closing Date or the relevant Interest Determination Date, as the case may be, for loans in sterling to leading European banks for a period of three months or, in the case of the last Interest Period, the same as the relevant Interest Period.

- (iii) There will be no minimum or maximum Rate of Interest.

#### *5.4 Publication of Rates of Interest and Interest Payments*

The Agent Bank will cause the Rate of Interest and the Interest Payment relating to each Class of Notes for each Interest Period and the Interest Payment Date to be forthwith notified to the Issuer, the Trustee, the Servicer, the Paying Agents, the Noteholders in accordance with **Condition 15** and, for so long as the Notes are listed on the Irish Stock Exchange Limited (the **Stock Exchange**), the Stock Exchange within two Business Days of the relevant Interest Determination Date. The Interest Payments and Interest Payment Date so notified may subsequently be amended (or appropriate alternative arrangements made by way of adjustment) without notice in the event of a lengthening or shortening of such Interest Period.

#### *5.5 Determination or Calculation by Trustee*

If the Agent Bank at any time for any reason does not determine the Rates of Interest or calculate an Interest Payment in accordance with paragraph 5.3 above, the Trustee shall procure the determination of the Rates of Interest at such rates as, in its absolute discretion (having such regard as it shall think fit to the procedure described in paragraph 5.3 above), it shall deem fair and reasonable in all the circumstances or, as the case may be, the Trustee shall calculate the Interest Payment in accordance with paragraph 5.3 above, and each such determination or calculation shall be deemed to have been made by the Agent Bank.

#### *5.6 Notification 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 Reference Banks (or any of them) or the Agent Bank or the Trustee, shall (in the absence of wilful default, bad faith or manifest error) be binding on the Issuer, the Reference Banks, the Agent Bank, the Paying Agents, the Trustee and all Noteholders and (in the absence as aforesaid) no liability to the Noteholders shall attach to the Issuer, the Reference Banks, the Agent Bank, the Paying Agents or the Trustee in connection with the exercise by them of any of their powers, duties and discretions under this Condition.

#### *5.7 Agent Bank*

The Issuer will procure that, so long as any of the Notes remain outstanding, there will at all times be an Agent Bank. The Issuer reserves the right at any time with the prior written consent of the Trustee to terminate the appointment of the Agent Bank. Notice of any such termination will be given to the Noteholders in accordance with **Condition 15**. If any person shall be unable or unwilling to continue to act as the Agent Bank, or if the appointment of the Agent Bank shall be terminated, the Issuer will, with the written approval of the Trustee, appoint a successor Agent Bank to act as such in its place, provided that neither the resignation nor the removal of the Agent Bank shall take effect until a successor approved by the Trustee has been appointed.

#### *5.8 Deferral of Payment*

- (a) Interest on the Notes is payable subject to, and in accordance with, the order of priorities set out in the Pre-Enforcement Priority of Payments or the Post-Enforcement Pre-Acceleration Priority of Payments. If, on any Interest Payment Date, the Issuer has insufficient funds to make payment in

full of all amounts of interest (including any Deferred Interest (as defined below) and accrued interest thereon) payable in respect of the Class B Notes and/or the Class C Notes and/or the Class D Notes after having paid or provided for items of higher priority, then:

- (i) the Issuer shall be entitled (unless there are then no Class A Notes outstanding) to defer, to the next Interest Payment Date, the payment of interest in respect of the Class B Notes:
    - (A) if it then defers all payments of interest then due (but for the provisions of this paragraph (A)) in respect of the Class C Notes and the Class D Notes; and
    - (B) to the extent only of any insufficiency of funds after having paid or provided for all amounts specified as having a higher priority than interest payable in respect of the Class B Notes; and
  - (ii) the Issuer shall be entitled (unless there are then no Class A Notes and/or Class B Notes outstanding) to defer, to the next Interest Payment Date, the payment of interest in respect of the Class C Notes:
    - (A) if it then defers all payments of interest then due (but for the provisions of this paragraph (A)) in respect of the Class D Notes; and
    - (B) to the extent only of any insufficiency of funds after having paid or provided for all amounts specified as having a higher priority than interest payable in respect of the Class C Notes; and
  - (iii) the Issuer shall be entitled (unless there are then no Class A Notes and/or Class B Notes and/or Class C Notes outstanding) to defer, to the next Interest Payment Date, the payment of interest in respect of the Class D Notes to the extent only of any insufficiency of funds after having paid or provided for all amounts specified as having a higher priority than interest payable in respect of the Class D Notes.
- (b) Any amount of interest (including any Deferred Interest arising on any preceding Interest Payment Date and accrued interest thereon) on the Class B Notes and/or the Class C Notes and/or the Class D Notes which is not due and payable on an Interest Payment Date as a result of the provisions of this paragraph 5.8 is the **Class B Deferred Interest**, the **Class C Deferred Interest** and the **Class D Deferred Interest** respectively and, together, the **Deferred Interest** arising on any such Interest Payment Date. Interest will accrue on the amount of any such Deferred Interest at the rate from time to time applicable to the Class B Notes or the Class C Notes or the Class D Notes (as the case may be) and on the same basis as interest on the Class B Notes or the Class C Notes or the Class D Notes (as the case may be) then applicable. Any Deferred Interest and accrued interest thereon is payable on the next Interest Payment Date unless and to the extent that this paragraph 5.8 applies.
- (c) As soon as practicable after becoming aware that any part of a payment of interest on the Class B Notes or the Class C Notes or the Class D Notes will be deferred or that a payment previously deferred will be made in accordance with this paragraph 5.8 the Issuer will give notice thereof to the Class B Noteholders or the Class C Noteholders or the Class D Noteholders (as the case may be) in accordance with **Condition 15**. Any deferral of interest in accordance with this paragraph 5.8 will not constitute a Note Event of Default. The provisions of this paragraph 5.8 shall cease to apply on the Final Maturity Date, or any earlier date on which the Notes shall become due and repayable in full, at which time all Deferred Interest and accrued interest thereon shall become due and payable.

## 6. REDEMPTION AND POST ENFORCEMENT CALL OPTION

### 6.1 Final redemption

Save to the extent otherwise redeemed and cancelled in accordance with this **Condition 6**, the Issuer shall redeem the Notes of each Class at their respective Principal Amounts Outstanding plus interest accrued and unpaid on the Interest Payment Date in April 2014 (the **Final Maturity Date**).

Without prejudice to **Condition 10**, the Issuer shall not redeem Notes in whole or in part prior to the Final Maturity Date except as provided in **Condition 6.2** or **6.3**.

## 6.2 Redemption for Taxation or Other Reasons

- (a) If the Issuer at any time satisfies the Trustee immediately prior to the giving of the notice referred to below that on the occasion of the next Interest Payment Date the Issuer would either (i) become subject to tax on its income in more than one jurisdiction or the Issuer would be required to make any withholding or deduction from any payment of principal or interest in respect of any of the Notes, or the Issuer would suffer any withholding or deduction from any payment in respect of the Senior Loan, in each case for or on account of any present or future tax, duty or charge of whatsoever nature incurred or levied by or on behalf of the United Kingdom or Gibraltar or any authority thereof or therein or (ii) by reason of a change of law which change becomes effective on or after the Closing Date, it has or will become unlawful for the Issuer to make, lend or allow to remain outstanding all or any advances made or to be made by it under the Senior Credit Agreement, then the Issuer shall, in order to avoid the event described, appoint a Paying Agent in another jurisdiction or use its reasonable endeavours to arrange the substitution of a company incorporated in another jurisdiction approved in writing by the Trustee as principal debtor under the Notes and as Senior Lender under the Senior Credit Agreement in accordance with **Condition 12(l)**.
- (b) If the Issuer is unable to arrange such a substitution which would have the result of avoiding the event described above, then the Issuer shall, having given not more than 60 nor less than 20 days' notice (or (in the case of paragraph (ii) above) such shorter notice period expiring on or before the latest date permitted by relevant law) to the Noteholders in accordance with **Condition 15**, redeem all (but not some only) of the Notes at their respective Principal Amounts Outstanding together with accrued interest on the next Interest Payment Date, provided that, prior to giving any such notice, the Issuer shall have satisfied the Trustee that it will have the funds, not subject to the interest of any other person, required to fulfil its obligations hereunder in respect of the Notes and any amounts required under the Servicing Agreement and/or the Deed of Charge to be paid *pari passu* with, or in priority to, the Notes and shall have delivered to the Trustee a certificate signed by two directors of the Issuer stating that the event described above has occurred or will apply (as the case may be) on the occasion of the next Interest Payment Date and cannot be avoided by the Issuer using reasonable endeavours to arrange a substitution as aforesaid and that the Issuer will have the funds referred to above; and the Trustee shall (in the absence of manifest error) accept the certificate as sufficient evidence of the satisfaction of the conditions precedent set out above and it shall be conclusive and binding on the Noteholders.

## 6.3 Mandatory Redemption in Whole or in Part

- (a) If the Issuer receives a notice from the Borrower pursuant to the terms of the Senior Credit Agreement that the Borrower intends to prepay part of the Senior Loan (using funds other than the proceeds of a Relevant Disposal) on or before the next Loan Interest Payment Date, the Issuer will, subject to **Condition 6.3(c)** below, having given not more than 60 nor less than 20 days' notice to the Noteholders in accordance with **Condition 15**, redeem the Notes *pro rata* in an amount equal to the principal amount of the Senior Loan being prepaid at their respective Principal Amount Outstanding together with accrued interest as follows:
- (i) **first**, to redeem the Class D Notes until the Class D Notes have been redeemed in full;
  - (ii) **second**, to redeem the Class C Notes until the Class C Notes have been redeemed in full;
  - (iii) **third**, to redeem the Class B Notes until the Class B Notes have been redeemed in full; and
  - (iv) **fourth**, to redeem the Class A Notes until the Class A Notes have been redeemed in full,
- provided that, prior to giving any such notice, the Issuer shall have satisfied the Trustee that it has or will have the funds, not subject to the interest of any other person, required to fulfil its obligations hereunder in respect of the Notes and any amounts required under the Servicing Agreement and/or the Deed of Charge then to be paid *pari passu* with, or in priority to, the Notes and shall have delivered to the Trustee a certificate signed by two directors of the Issuer stating that the Issuer will have such funds; and the Trustee shall (in the absence of manifest error) accept the certificate as sufficient evidence of the satisfaction of such condition precedent and it shall be conclusive and binding on the Noteholders.
- (b) If the Issuer receives a notice from the Borrower pursuant to the terms of the Senior Credit Agreement that the Borrower intends to prepay part of the Senior Loan (using the proceeds of a Relevant Disposal) on or before the next Loan Interest Payment Date, the Issuer will, subject to



**Condition 6.3(c)** below, having given not more than 60 nor less than 20 days' notice to the Noteholders in accordance with **Condition 15**, redeem Notes in an amount equal to the Prepayment Amount at their respective Principal Amount Outstanding together with accrued interest as follows:

- (i) **first**, in an amount equal to 10/110 of the Prepayment Amount, in redemption *pro rata* of the Class A Notes, and
- (ii) **second**, in an amount equal to the remainder of the Prepayment Amount, in redemption *pro rata* and *pari passu* of the Class A Notes, the Class B Notes, the Class C Notes and the Class D Notes until all of the Notes have been redeemed in full,

provided that, prior to giving any such notice, the Issuer shall have satisfied the Trustee that it has or will have the funds, not subject to the interest of any other person, required to fulfil its obligations hereunder in respect of the Notes and any amounts required under the Servicing Agreement and/or the Deed of Charge then to be paid *pari passu* with, or in priority to, the Notes and shall have delivered to the Trustee a certificate signed by two directors of the Issuer stating that the Issuer will have such funds; and the Trustee shall (in the absence of manifest error) accept the certificate as sufficient evidence of the satisfaction of such condition precedent and it shall be conclusive and binding on the Noteholders. As used in these Conditions, **Prepayment Amount** means an amount equal to 110 per cent. of the relevant Senior Allocated Loan Amount and received from the Borrower in connection with a Relevant Disposal made in accordance with the terms of the Senior Credit Agreement.

- (c) If, on any Interest Payment Date following enforcement of the Issuer Security, the Trustee or its appointee is required to apply principal amounts (if any) received in respect of Senior Loan in accordance with the Post-Enforcement Pre-Acceleration Priority of Payments, then any amounts of principal so received will be applied to redeem the Notes *pro rata* in an aggregate amount equal to the principal amount received in respect of the Senior Loan at their respective Principal Amount Outstanding together with accrued interest as follows:

- (i) **first**, to redeem the Class A Notes until the Class A Notes have been redeemed in full;
- (ii) **second**, to redeem the Class B Notes until the Class B Notes have been redeemed in full;
- (iii) **third**, to redeem the Class C Notes until the Class C Notes have been redeemed in full; and
- (iv) **fourth**, to redeem the Class D Notes until the Class D Notes have been redeemed in full,

provided that, prior to giving any such notice, the Issuer shall have satisfied the Trustee that it has or will have the funds, not subject to the interest of any other person, required to fulfil its obligations hereunder in respect of the Notes and any amounts required under the Deed of Charge then to be paid *pari passu* with, or in priority to, the Notes and shall have delivered to the Trustee a certificate signed by two directors of the Issuer stating that the Issuer will have such funds; and the Trustee shall (in the absence of manifest error) accept the certificate as sufficient evidence of the satisfaction of such condition precedent and it shall be conclusive and binding on the Noteholders.

- (d) If (i) the Issuer receives a notice from the Borrower pursuant to the terms of the Senior Credit Agreement that the Borrower intends to prepay all of the Senior Loan, or (ii) the Junior Lenders elect to purchase the Senior Loan pursuant to the terms of the Intercreditor Agreement or (iii) the Senior Loan is otherwise sold or transferred pursuant to the terms of the Senior Credit Agreement, the Issuer will, having given not more than 60 nor less than 20 days' notice to the Trustee and the Noteholders in accordance with **Condition 15**, redeem all (but not some only) of the Notes at their respective Principal Amount Outstanding together with accrued interest on the next Interest Payment Date provided that, prior to giving any such notice, the Issuer shall have satisfied the Trustee that it has or will have the funds, not subject to the interest of any other person, required to fulfil its obligations hereunder in respect of the Notes and any amounts required under the Servicing Agreement and/or the Deed of Charge then to be paid *pari passu* with, or in priority to, the Notes and shall have delivered to the Trustee a certificate signed by two directors of the Issuer stating that the Issuer will have such funds; and the Trustee shall (in the absence of manifest error) accept the certificate as sufficient evidence of satisfaction of such condition precedent and it shall be conclusive and binding on the Noteholders.



- (e) If Replacement Notes (as defined in **Condition 16.2**) are to be issued, the Issuer may, having given not more than 60 nor less than 20 days' notice to the Noteholders in accordance with **Condition 15**, on any Interest Payment Date redeem only the relevant Class or Classes of Notes to be replaced at their respective Principal Amount Outstanding together with accrued interest provided that, prior to giving any such notice, the Issuer shall have satisfied the Trustee that it will have the funds, not subject to the interest of any other persons, required to fulfil its obligations hereunder in respect of the Notes and any amounts required under the Servicing Agreement and/or the Deed of Charge then to be paid *pari passu* with, or in priority to, the Notes and shall have delivered to the Trustee a certificate signed by two directors of the Issuer stating that the Issuer will have such funds; and the Trustee shall (in the absence of manifest error) accept the certificate as sufficient evidence of the satisfaction of such condition precedent and it shall be conclusive and binding on the Noteholders.
- (f) The Issuer will give not more than 60 nor less than 20 days' notice to the Trustee and Noteholders in accordance with **Condition 15** that it will redeem all (but not some only) of the Notes at their respective Principal Amount Outstanding together with accrued interest on the Interest Payment Date falling in April 2010 (or, if the Loan Maturity Date has been extended in accordance with the terms of the Senior Credit Agreement, April 2012), provided that, prior to giving any such notice, the Issuer shall have satisfied the Trustee that it has or will have the funds, not subject to the interest of any other persons, required to fulfil its obligations hereunder in respect of the Notes and any amounts required under the Servicing Agreement and/or the Deed of Charge then to be paid *pari passu* with, or in priority to, the Notes and shall have delivered to the Trustee a certificate signed by two directors of the Issuer stating that the Issuer will have such funds; and the Trustee shall (in the absence of manifest error) accept the certificate as sufficient evidence of satisfaction of such condition precedent and it shall be conclusive and binding on the Noteholders.
- (g) Upon receipt by the Issuer of any amount of principal payments received or recovered by or on behalf of the Issuer in respect of the Senior Loan as a result of enforcement procedures or other actions taken in respect of the Senior Loan, the Issuer will, having given not more than 60 nor less than 20 days' notice to the Trustee and Noteholders in accordance with **Condition 15**, redeem the Notes *pro rata* in an aggregate principal amount equal to the amount of principal so received or recovered at their Principal Amount Outstanding together with accrued interest on the next Interest Payment Date as follows:
- (i) **first**, to redeem the Class A Notes until the Class A Notes have been redeemed in full;
  - (ii) **second**, to redeem the Class B Notes until the Class B Notes have been redeemed in full;
  - (iii) **third**, to redeem the Class C Notes until the Class C Notes have been redeemed in full; and
  - (iv) **fourth**, to redeem the Class D Notes until the Class D Notes have been redeemed in full,
- provided that, prior to giving any such notice, the Issuer shall have satisfied the Trustee that it has or will have the funds, not subject to the interest of any other person, required to fulfil its obligations hereunder in respect of the Notes and any amounts required under the Servicing Agreement and/or the Deed of Charge then to be paid *pari passu* with, or in priority to, the Notes and shall have delivered to the Trustee a certificate signed by two directors of the Issuer stating that the Issuer will have such funds; and the Trustee shall (in the absence of manifest error) accept the certificate as sufficient evidence of satisfaction of such condition precedent and it shall be conclusive and binding on the Noteholders.

#### 6.4 Notice of Redemption

Any such notice as is referred to in **Condition 6.2** or **6.3** above shall be irrevocable and, upon the expiration of such notice, the Issuer shall be bound to redeem the Notes of the relevant class in the amounts specified in these Conditions.

#### 6.5 Purchase

The Issuer shall not purchase Notes.

#### 6.6 Cancellation

All Notes redeemed in full will be cancelled forthwith and may not be reissued.

## 6.7 Post Enforcement Call Option

All of the Noteholders will, at the request of Opera Finance (Options) Limited, sell all (but not some only) of their holdings of the Class B Notes, the Class C Notes and the Class D Notes to Opera Finance (Options) Limited, pursuant to the option granted to it by the Trustee (as agent for the Class B Noteholders, the Class C Noteholders and the Class D Noteholders) to acquire all (but not some only) of the Class B Notes, Class C Notes and Class D Notes (plus accrued interest thereon), for the consideration of one penny per Note outstanding in the event that the Issuer Security is enforced, at any time after the date on which the Trustee determines that the proceeds of such enforcement are insufficient, after payment of all other claims ranking higher in priority to the Class B Notes, the Class C Notes and the Class D Notes and *pro rata* payment of all claims ranking in equal priority to the Class B Notes, the Class C Notes and the Class D Notes and after the application of any such proceeds to the Class B Notes, the Class C Notes and the Class D Notes under the Deed of Charge, to pay any further principal and interest and any other amounts whatsoever due in respect of the Class B Notes, the Class C Notes and the Class D Notes.

Furthermore, each of the Class B Noteholders, the Class C Noteholders and the Class D Noteholders acknowledges that the Trustee has the authority and the power to bind the Class B Noteholders, the Class C Noteholders and the Class D Noteholders in accordance with the terms and conditions set out in the Post Enforcement Call Option Agreement and each Class B Noteholder, Class C Noteholder and Class D Noteholder, by subscribing for or purchasing the relevant Class B Notes, Class C Notes and Class D Notes, agrees to be so bound.

Notice of such determination will be given by the Trustee to the Class B Noteholders, the Class C Noteholders and the Class D Noteholders in accordance with **Condition 15**. The consideration will be paid in the same manner as payment of principal under these Conditions.

## 7. PAYMENTS

- (a) Payments of principal and interest in respect of the Notes will be made in sterling against presentation of the relevant Global Notes or Definitive Notes and/or Coupons (as the case may be) at the specified office of the Principal Paying Agent or, at the option of the holder of the relevant Global Notes or Definitive Notes (as the case may be), at the specified office of any other Paying Agent outside the United States of America. Payments of principal and interest will in each case be made by sterling cheque drawn on a bank in London or, at the option of the holder, by transfer to a sterling denominated account maintained by the payee with a branch of a bank in London. A record of each payment made, distinguishing between any payment of principal and any payment of interest, will be made on the relevant Global Note by the Paying Agent to which such Global Note was presented for the purpose of making such payment, and such record shall be *prima facie* evidence that the payment in question has been made. Payments of principal and interest in respect of the Notes will be subject in all cases to any fiscal or other laws and regulations applicable thereto and to normal banking practice. Upon the date on which any Definitive Note becomes due and repayable in full, all unmatured Coupons appertaining to such Definitive Note (whether or not attached) shall become void and no payment shall be made in respect of such Coupons.
- (b) None of the persons appearing from time to time in the records of Euroclear or Clearstream, Luxembourg as the holder of a Note of the relevant Class or as being entitled to a particular principal amount of Notes shall have any claim directly against the Issuer or the Trustee in respect of payments due on such Note or principal amount whilst such Note is represented by a Global Note and the Issuer or the Trustee, as the case may be, shall be discharged by payment of the relevant amount to the bearer of the relevant Global Note.
- (c) If payment of principal is improperly withheld or refused on or in respect of any Note or part thereof, the interest which continues to accrue in respect of such Note in accordance with **Condition 5** and the provisions of the Trust Deed will be paid against presentation of such Note at the specified office of any Paying Agent.
- (d) If the date for payment of any amount in respect of any Note or Coupon is not a Payment Day, the holder thereof shall not be entitled to payment until the next following Payment Day and shall not be entitled to further payments of additional amounts by way of interest, principal or otherwise. In this **Condition 7(d)** the expression Payment Day means a day on which commercial banks and foreign exchange markets settle payments and are open for general business (including dealing in

foreign exchange and foreign currency deposits) in the place of presentation and which is a Business Day.

- (e) If a Paying Agent makes a partial payment in respect of any Note presented to it for payment, such Paying Agent will endorse on the relevant Note a statement indicating the amount and date of such payment.
- (f) The initial Principal Paying Agent and the initial Irish Paying Agent and their initial specified offices are listed at the end of these Conditions. The Issuer reserves the right, subject to the prior written approval of the Trustee, at any time to vary or terminate the appointment of the Principal Paying Agent or the Irish Paying Agent and to appoint additional or other Paying Agents. The Issuer will at all times maintain a Principal Paying Agent and also a Paying Agent with a specified office in Dublin. The Issuer undertakes that it will ensure that it maintains a Paying Agent in a Member State of the European Union that is not obliged to withhold or deduct tax pursuant to European Council Directive 2003/48/EC or any other Directive implementing the conclusions of the ECOFIN Council meeting of 26 to 27 November, 2000 or any law implementing or complying with, or introduced in order to conform to, such Directive. The Issuer will cause at least 30 days' notice of any change in or addition to the Paying Agents or their specified offices to be given in accordance with **Condition 15**.

## 8. PRESCRIPTION

Claims in respect of Notes and Coupons shall become void unless made within 10 years, in the case of principal, and five years, in the case of interest, of the appropriate relevant date. In this Condition, the **relevant date** means the date on which a payment first becomes due or (if the full amount of the moneys payable has not been duly received by the Paying Agents or the Trustee on or prior to such date) the date on which notice that the full amount of such moneys has been received is duly given to the Noteholders in accordance with **Condition 15**.

## 9. 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 Paying Agent) is required by applicable law to make any payment in respect of the Notes subject to any withholding or deduction for, or on account of, any such taxes, duties or charges. 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 such Paying Agent will be obliged to make any additional payments to Noteholders in respect of any such withholding or deduction.

## 10. EVENTS OF DEFAULT

- (a) The Trustee at its absolute discretion may, and if so requested in writing by the holders of not less than 25 per cent. in aggregate Principal Amount Outstanding of the Most Senior Class of Notes then outstanding or if so directed by an Extraordinary Resolution (as defined below) of the holders of the Most Senior Class of Notes then outstanding shall (subject in each case to its being secured and/or indemnified to its satisfaction) give notice in writing (an **Acceleration Notice**) to the Issuer declaring the Notes to be due and repayable (and they shall forthwith become due and repayable) at any time after the happening of any of the following events (each, a **Note Event of Default**):
  - (i) default being made for a period of three days in the payment of any principal of, or default is made for a period of five days in the payment of any interest on, any Note when and as the same ought to be paid in accordance with these Conditions provided that a deferral of interest in accordance with **Condition 5.8** shall not constitute a default in the payment of such interest and/or principal for the purposes of this **Condition 10(a)(i)**; or
  - (ii) breach by the Issuer of any representation or warranty made by it in these Conditions, the Trust Deed or any of the other Transaction Documents to which it is a party and in any such case (except where the Trustee certifies that, in its opinion, such breach is incapable of remedy, when no notice will be required), such breach continuing for a period of 30 days following the service by the Trustee on the Issuer of notice in writing requiring the same to be remedied; or

- (iii) the Issuer failing duly to perform or observe any other obligation, condition or provision binding upon it under these Conditions, the Trust Deed or any of the other Transaction Documents to which it is a party and in any such case (except where the Trustee certifies that, in its opinion, such failure is incapable of remedy, when no notice will be required), such failure continuing for a period of 30 days following the service by the Trustee on the Issuer of notice in writing requiring the same to be remedied; or
- (iv) the Issuer, otherwise than for the purposes of such a pre-approved amalgamation or reconstruction as is referred to in subparagraph (v) below, ceasing or, through an official action of the board of directors of the Issuer, threatening to cease to carry on business (or a substantial part thereof) or the Issuer being (or being deemed to be) unable to pay its debts as and when they fall due; or
- (v) an order being made or an effective resolution being 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 in writing by the Trustee or by an Extraordinary Resolution of the holders of the Most Senior Class of Notes then outstanding; or
- (vi) proceedings being initiated against the Issuer under any applicable liquidation, insolvency, composition, reorganisation or other similar laws (including, but not limited to, application to the Court for an administration order, the filing of documents with the court for the appointment of an administrator, or the service of a notice of intention to appoint an administrator), or an administration order being granted or the appointment of an administrator taking effect or an administrative receiver or other receiver, liquidator or other similar official being appointed in relation to the Issuer or in relation to the whole or any substantial part of the undertaking or assets of the Issuer or an encumbrancer taking possession of the whole or any substantial part of the undertaking or assets of the Issuer, or a distress or execution or other process being levied or enforced upon or sued out against the whole or any substantial part of the undertaking or assets of the Issuer, and such proceedings, distress, execution or process (as the case may be) (unless initiated by the Issuer) not being discharged or not otherwise ceasing to apply within 15 days, or the Issuer initiating or consenting to judicial proceedings relating to itself under any applicable liquidation, insolvency, composition, reorganisation or other similar laws or making a conveyance or assignment for the benefit of its creditors generally,

provided that in the case of each of the events described in subparagraphs (ii), (iii) and (iv) of this paragraph (a), the Trustee shall have certified to the Issuer that such event is, in its opinion, materially prejudicial to the interests of the holders of the Most Senior Class of Notes outstanding.

- (b) Upon any declaration being made by the Trustee in accordance with paragraph 10(a) above that the Notes are due and repayable each Note shall thereby immediately become due and repayable at its Principal Amount Outstanding together with accrued interest as provided in the Trust Deed and the Deed of Charge subject to the Post-Acceleration Priority of Payments.

## **11. ENFORCEMENT**

- (a) The Trustee may, at its discretion and without notice at any time and from time to time, take such proceedings or other action it may think fit to enforce the provisions of the Transaction Documents, the Notes and Coupons, provided that, subject to paragraph (c) below, enforcement of the Issuer Security shall be the only remedy available for the repayment of the Class A Notes, the Class B Notes, the Class C Notes and the Class D Notes and the payment of accrued interest (including any Deferred Interest and accrued interest thereon) and, at any time after the Issuer Security has become enforceable, take such steps as it may think fit to enforce the Issuer Security, but it shall not be bound to take any such proceedings, action or steps unless (i) it shall have been so directed by an Extraordinary Resolution of the holders of the Most Senior Class of Notes outstanding or so requested in writing by the holders of at least 25 per cent. in aggregate Principal Amount Outstanding for the time being of the Most Senior Class of Notes outstanding and (ii) it shall have been secured and/or indemnified to its satisfaction.
- (b) Subject to paragraph (c) below, no Noteholder shall be entitled to proceed directly against the Issuer or any other party to the Transaction Documents or to enforce the Issuer Security unless the Trustee, having become bound so to do, fails to do so within a reasonable period and such

failure shall be continuing. The Trustee cannot, while any of the Notes are outstanding, be required to enforce the Issuer Security at the request of any of the Other Issuer Secured Creditors under the Deed of Charge.

- (c) If the Trustee has taken enforcement action under the Deed of Charge and distributed all of the resulting proceeds (including the proceeds of realising the security thereunder), to the extent that any amount is still owing to any Noteholder (a **Shortfall**), any such Noteholder shall be entitled to proceed directly against the Issuer in order to claim such Shortfall and the Trustee shall not be responsible for any liability occasioned thereby, nor shall it vouch for the validity of such claim.

## **12. MEETINGS OF NOTEHOLDERS, MODIFICATION, WAIVER, SUBSTITUTION AND TRUSTEE'S DISCRETIONS**

- (a) The Trust Deed contains provisions for convening meetings of Noteholders of any Class to consider any matter affecting their interests, including the sanctioning by Extraordinary Resolution of a modification of these Conditions or the provisions of any of the Transaction Documents or any other documents the rights and benefits of the Issuer in respect of which are comprised in the Issuer Security.
- (b) The quorum at any meeting of the Noteholders of any Class for passing an Extraordinary Resolution shall be one or more persons holding or representing over 50 per cent. in aggregate Principal Amount Outstanding of the Notes of the relevant Class then outstanding or, at any adjourned meeting, one or more persons being or representing the Noteholders of the relevant Class whatever the aggregate Principal Amount Outstanding of the Notes of the relevant Class so held or represented except that, at any meeting the business of which includes the sanctioning of a Basic Terms Modification the necessary quorum for passing an Extraordinary Resolution shall be one or more persons holding or representing not less than 75 per cent. or at any adjourned such meeting, not less than 33 per cent. in aggregate Principal Amount Outstanding of the Notes of the relevant Class for the time being outstanding.
- (c) An Extraordinary Resolution passed at any meeting of the Class A Noteholders shall be binding on all the Class B Noteholders, the Class C Noteholders and the Class D Noteholders, irrespective of its effect upon them except an Extraordinary Resolution to sanction a Basic Terms Modification (as defined below), which shall not take effect unless it shall have been sanctioned by an Extraordinary Resolution of each of the Class B Noteholders, the Class C Noteholders and the Class D Noteholders or the Trustee is of the opinion that it would not be materially prejudicial to the respective interests of the Class B Noteholders, the Class C Noteholders and the Class D Noteholders.
- (d) An Extraordinary Resolution passed at any meeting of Class B Noteholders (other than a sanctioning Extraordinary Resolution referred to above) shall not be effective unless it shall have been sanctioned by an Extraordinary Resolution of the Class A Noteholders or the Trustee is of the opinion that it would not be materially prejudicial to the interests of the Class A Noteholders.
- (e) An Extraordinary Resolution passed at any meeting of Class B Noteholders, which is effective in accordance with paragraph (d), shall be binding on all Class A Noteholders, Class B Noteholders, Class C Noteholders and Class D Noteholders, irrespective of its effect upon them except an Extraordinary Resolution to sanction a Basic Terms Modification, which shall not take effect unless it shall have been sanctioned by an Extraordinary Resolution of each of the Class C Noteholders and the Class D Noteholders or the Trustee is of the opinion that it would not be materially prejudicial to the respective interests of the Class C Noteholders and the Class D Noteholders.
- (f) An Extraordinary Resolution passed at any meeting of Class C Noteholders (other than a sanctioning Extraordinary Resolution referred to above) shall not be effective unless it shall have been sanctioned by an Extraordinary Resolution of the Class A Noteholders and the Class B Noteholders or the Trustee is of the opinion that it would not be materially prejudicial to the respective interests of the Class A Noteholders and the Class B Noteholders.
- (g) An Extraordinary Resolution passed at any meeting of Class C Noteholders, which is effective in accordance with paragraph (f), shall be binding on all Class A Noteholders, Class B Noteholders, Class C Noteholders and Class D Noteholders irrespective of its effect upon them except an Extraordinary Resolution to sanction a Basic Terms Modification, which shall not take effect unless it shall have been sanctioned by an Extraordinary Resolution of the Class D Noteholders or



the Trustee is of the opinion that it would not be materially prejudicial to the interests of the Class D Noteholders.

- (h) An Extraordinary Resolution passed at any meeting of Class D Noteholders (other than a sanctioning Extraordinary Resolution referred to above) shall not be effective unless it shall have been sanctioned by an Extraordinary Resolution of the Class A Noteholders, the Class B Noteholders and the Class C Noteholders or the Trustee is of the opinion that it would not be materially prejudicial to the respective interests of the Class A Noteholders, the Class B Noteholders and the Class C Noteholders.
- (i) An Extraordinary Resolution passed at any meeting of Class D Noteholders, which is effective in accordance with paragraph (h), shall be binding on all Class A Noteholders, Class B Noteholders, Class C Noteholders and Class D Noteholders.
- (j) As used in these Conditions and the Trust Deed:

- (i) **Extraordinary Resolution** means (A) a resolution passed at a meeting of any Class of Noteholders duly convened and held in accordance with the Trust Deed by a majority consisting of not less than three-fourths of the persons voting thereat upon a show of hands or if a poll is duly demanded by a majority consisting of not less than three fourths of the votes cast on such poll or (B) a resolution in writing signed by or on behalf of not less than 90 per cent. in aggregate Principal Amount Outstanding of any Class of Noteholders, which resolution in writing may be contained in one document or in several documents in like form each signed by or on behalf of one or more of the Noteholders of that Class and shall be as valid, effective and binding as a resolution duly passed at such a meeting (and for the purposes of **Conditions 4.3** and **4.4**, any Notes held by, for the benefit of or on behalf of the Borrower and/or any one or more of its Affiliates will not be included in the quorum for voting purposes);

**Affiliate** means any company or other entity of which the Borrower is a Subsidiary, any other company or entity which is a Subsidiary of that company or entity and any Subsidiary of the Borrower;

**Subsidiary** means:

- (A) a Subsidiary within the meaning of Section 736 of the Companies Act 1985 (as amended); and
- (B) (unless the context otherwise requires) a subsidiary undertaking within the meaning of Section 258 of the Companies Act 1985 (as amended); and

- (ii) **Basic Terms Modification** means, in respect of a Class of Notes:

- (A) a change in the amount payable or, where applicable, modification of the method of calculating the amount payable or modification of the date of payment or, where applicable, of the method of calculating the date of payment in respect of any principal or interest in respect of such Notes;
- (B) alteration of the currency in which payments under such Notes and the Coupons appertaining thereto are to be made;
- (C) alteration of the quorum or majority required to pass an Extraordinary Resolution;
- (D) the sanctioning of any such scheme or proposal in respect of such Notes as is described in paragraph 18(i) of Schedule 3 to the Trust Deed (Provisions for Meeting of Noteholders);
- (E) alteration of this definition or the provisos to paragraphs 5 and/or 6 of Schedule 3 to the Trust Deed (Provisions for Meeting of Noteholders);
- (F) alteration of the Pre-Enforcement Priority of Payments, the Post-Enforcement Pre-Acceleration Priority of Payments or the Post-Acceleration Priority of Payments; and
- (G) alteration of the Issuer Charged Property or amendment to any of the documents relating to the Issuer Charged Property or any other provision of the Issuer Security (including in respect of any order of priority thereto) (other than in accordance with the terms of the Transaction Documents).



- (k) The Trustee may agree, without the consent of the Noteholders or the Couponholders, (A) to any modification of, or to the waiver or authorisation of any breach or proposed breach of, these Conditions, the Trust Deed or any of the other Transaction Documents, which is not, in the opinion of the Trustee, materially prejudicial to the interests of the Noteholders or (B) to any modification of these Conditions or any of the Transaction Documents, which, in the Trustee's opinion, is of a formal, minor or technical nature or to correct a manifest error or an error which is, in the opinion of the Trustee, proven. The Trustee may also, without the consent of the Noteholders or the Couponholders, determine that any Note Event of Default shall not, or shall not subject to specified conditions, be treated as such provided that doing so shall not, in the opinion of the Trustee, be materially prejudicial to the interests of the Noteholders. Any such modification, waiver, authorisation or determination shall be binding on the Noteholders and the Couponholders and, unless the Trustee agrees otherwise, any such modification shall be notified to the Noteholders in accordance with **Condition 15** as soon as practicable thereafter.
- (l) The Trustee may agree, without the consent of the Noteholders or the Couponholders, to the substitution of another body corporate in place of the Issuer as principal debtor under the Trust Deed and the Notes, subject to (i) the Notes being unconditionally and irrevocably guaranteed by the Issuer (unless all or substantially all of the assets of the Issuer are transferred to such body corporate), (ii) such body corporate being a single purpose vehicle and undertaking itself to be bound by provisions corresponding to those set out in these Conditions, (iii) the Trustee being satisfied that the interests of the Noteholders will not be materially prejudiced thereby and (iv) certain other conditions set out in the Trust Deed being complied with. Any such substitution shall be notified to the Noteholders in accordance with **Condition 15** and the Rating Agencies. In the case of a substitution pursuant to this paragraph (l), the Trustee may in its absolute discretion agree, without the consent of the Noteholders or the Couponholders, to a change of the laws governing the Notes and/or any of the Transaction Documents provided that such change would not, in the opinion of the Trustee, be materially prejudicial to the interests of the Noteholders. No such substitution shall take effect unless it applies to all the Notes then outstanding.

### **13. INDEMNIFICATION AND EXONERATION OF THE TRUSTEE**

- (a) The Trust Deed and certain of the Transaction Documents contain provisions governing the responsibility (and relief from responsibility) of the Trustee and providing for its indemnification in certain circumstances, including provisions relieving it from taking enforcement proceedings or enforcing the Issuer Security or taking any other action in relation to the Trust Deed or the other Transaction Documents unless secured and/or indemnified to its satisfaction. The Trustee will not be responsible for any loss, expense or liability which may be suffered as a result of any assets comprised in the Issuer Charged Property, or any deeds or documents of title thereto, being uninsured or inadequately insured or being held by or to the order of Eurohypo or any agent or related company of Eurohypo or by clearing organisations or their operators or by intermediaries such as banks, brokers, depositories, warehousemen or other persons whether or not on behalf of the Trustee.
- (b) The Trust Deed contains provisions pursuant to which the Trustee or any of its related companies is entitled, among other things, (i) to enter into business transactions with the Issuer and/or any other person who is a party to the Transaction Documents or whose obligations are comprised in the Issuer Charged Property 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 Transaction Documents or whose obligations are comprised in the Issuer Charged Property and/or any of their subsidiary or associated companies, (ii) 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 and (iii) to retain and not be liable to account for any profit made or any other amount or benefit received thereby or in connection therewith.
- (c) The Trust Deed also relieves the Trustee of liability for not having made or not having caused to be made on its behalf the searches, investigations and enquiries which a prudent chargee would normally have been likely to make in entering into the Deed of Charge and the Borrower Security Agreement. The Trustee has no responsibility in relation to the legality, validity, sufficiency, adequacy and enforceability of the Issuer Security or the Transaction Documents. The Trustee will not be obliged to take any action which might result in its incurring personal liabilities unless secured and/or indemnified to its satisfaction or to supervise the performance by the Servicer or

any other person of their obligations under the Transaction Documents and the Trustee shall assume, until it has notice in writing 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.

- (d) The Trust Deed and certain of the other Transaction Documents contain other provisions limiting the responsibility, duties and liability of the Trustee.
- (e) The Trust Deed contains provisions pursuant to which (i) the Trustee may retire at any time on giving not less than three months' prior written notice to the Issuer, and will be relieved of any liability incurred by reason of such retirement and (ii) the Noteholders may by Extraordinary Resolution of the holders of each Class of Notes remove the Trustee. The retirement or removal of the Trustee will not become effective until a successor trustee is appointed. The Trustee is entitled to appoint a successor trustee in the circumstances specified in the Trust Deed.

## 14. REPLACEMENT OF THE NOTES

### 14.1 Definitive Notes and Coupons

If a Definitive Note, Coupon or Talon is mutilated, defaced, lost, stolen or destroyed, it may be replaced at the specified office of any Paying Agent. Replacement thereof will only be made on payment of such costs as may be incurred in connection therewith and on such terms as to evidence and indemnity as the Issuer and the relevant Paying Agent may reasonably require. If mutilated or defaced, the Definitive Note, Coupon or Talon must be surrendered before a new one will be issued.

### 14.2 Global Notes

If a Global Note is lost, stolen, mutilated, defaced or destroyed, it shall, upon satisfactory evidence of such loss, theft, mutilation, defacement or destruction being given to the Issuer and the Trustee, become void and a duly executed and authenticated replacement Global Note will be delivered by the Issuer to the Common Depositary only upon surrender, in the case of mutilation or defacement, of the relevant Global Note. Replacement thereof will only be made upon payment of such costs as may be incurred in connection therewith and on such terms as to evidence and indemnity as the Issuer and the Principal Paying Agent may reasonably require.

## 15. NOTICE TO NOTEHOLDERS

- (a) Any notice to the Noteholders shall be validly given if published (a) in one leading London daily newspaper (which is expected to be the *Financial Times*) and (b) (for so long as the Notes are listed on the Irish Stock Exchange and the rules of that exchange so require) in a leading English language newspaper having general circulation in Dublin (which is expected to be *The Irish Times*) or, if either such newspaper shall cease to be published or timely publication therein shall not be practicable, in the opinion of the Trustee, in another appropriate newspaper or newspapers as the Trustee shall approve having a general circulation in London or Dublin (as appropriate) previously approved in writing by the Trustee. Any such notice published in a newspaper as aforesaid shall be deemed to have been given on the date of such publication or, if published more than once or on different dates, on the first date on which publication shall have been made in the newspaper or newspapers in which publication is required. If publication is not practicable in any such newspaper as is mentioned above, notice will be valid if given in such other manner, and shall be deemed to have been given on such date, as the Trustee shall determine.
- (b) Whilst the Notes are represented by Global Notes notices to Noteholders may be given by delivery of the relevant notice to Clearstream, Luxembourg and/or Euroclear for communication by them to Noteholders rather than by notification as required above provided that so long as the Notes are listed on the Irish Stock Exchange, the Irish Stock Exchange so agrees. Any notice delivered to Clearstream, Luxembourg and/or Euroclear as aforesaid shall be deemed to have been given on the day after the day of such delivery.
- (c) (A copy of each notice given in accordance with this **Condition 15** shall be provided to each of Fitch Ratings Ltd (**Fitch**) and Standard & Poor's Rating Services, a division of The McGraw-Hill Companies, Inc. (**S&P** and, together with Fitch, the **Rating Agencies**, which reference in these Conditions shall include any additional or replacement rating agency appointed by the Issuer to provide a credit rating in respect of the Notes or any Class thereof). For the avoidance of doubt, and unless the context otherwise requires, all references to rating and ratings in these Conditions shall be deemed to be references to the ratings assigned by the Rating Agencies.

- (d) The Trustee shall be at liberty to sanction some other method of giving notice to the Noteholders or to a Class or category of them 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 Trustee shall require.

## 16. FURTHER ISSUES, REPLACEMENT NOTES AND NEW NOTES

### 16.1 Further Issues

The Issuer is at liberty from time to time without the consent of the Noteholders or Couponholders, but subject always to the provisions of these Conditions and the Trust Deed to create and issue further Notes (the **Further Notes**) in bearer form carrying the same terms and conditions in all respects (except in relation to the issue date, the first Interest Period and the first Interest Payment Date) as, and so that the same shall be consolidated and form a single series and rank *pari passu* with, the relevant Class of Notes, provided that:

- (a) the aggregate principal amount of all Further Notes to be issued on such date is in a minimum amount of £5,000,000 and integral multiples thereafter of £1,000,000;
- (b) any Further Notes are assigned the same ratings by the Rating Agencies as are then applicable to the corresponding Class of Notes then outstanding;
- (c) the Rating Agencies confirm that the respective ratings of each Class of Notes at that time outstanding will not be adversely affected as a result of such issue of Further Notes;
- (d) an amount equal to the aggregate principal amount of such Further Notes will be on-lent by the Issuer pursuant to the provisions of the Senior Credit Agreement;
- (e) such encumbrances necessary to maintain the then current ratings referred to in (c) above or to obtain the necessary ratings for the Further Notes are given in favour of the Trustee, the Loan Facility Agent, and/or the Issuer by the Borrower at the date of issue of the Further Notes (if applicable);
- (f) no Loan Event of Default has occurred and is continuing or would occur as a result of such issue of Further Notes;
- (g) the Issuer's liabilities in respect of such Further Notes are hedged to the satisfaction of the Rating Agencies then rating the Notes;
- (h) no Note Event of Default has occurred and is continuing or would occur as a result of such issue of Further Notes; and
- (i) application will be made to list the Further Notes on the Irish Stock Exchange, or if the Notes then issued are no longer listed on the Irish Stock Exchange, on such exchange, if any, on which the Notes then issued are then listed.

### 16.2 Replacement Notes

The Issuer will also be entitled (but not obliged) at its option from time to time on any date, without the consent of the Noteholders or Couponholders, to issue notes (**Replacement Notes**), each class of which shall be required to have the same terms and conditions in all respects as the Class of Notes which it replaces except in relation to (aa) the first Interest Period and (bb) the rate of interest applicable to such Replacement Notes which must be a rate of interest equal to or lower than the rate of interest applicable to the Class of Notes being replaced, and shall on issue be in a principal amount which in aggregate does not exceed the aggregate Principal Amount Outstanding of the class of Notes which it replaces, provided that the Class or Classes of Notes to be replaced are redeemed in full in accordance with **Condition 6.3(e)** and the conditions to the issue of Further Notes as set out in **Condition 16.1(a), (b), (c) and (e) to (i)** are met, *mutatis mutandis*, in respect of such issue of Replacement Notes (as if references therein to Further Notes were to Replacement Notes) and provided further that, for the purposes of this **Condition 16.2 (i)** where interest in respect of the Replacement Notes or the Class of Notes being replaced is payable on a fixed rate basis, the rate of interest applicable to the Replacement Notes or, as the case may be, the Class of Notes being replaced shall be deemed to be the floating rate payable by the Issuer under any interest rate exchange agreement entered into by the Issuer in relation to the Replacement Notes or, as the case may be, the Class of Notes being replaced; and (ii) where the Replacement Notes or the Class of Notes being

replaced have the benefit of a financial guarantee or similar arrangement (a **Financial Guarantee**), the guarantee fee and any other amounts payable to the provider of the Financial Guarantee, other than any such amounts the payment of which is subordinated to payments in respect of all of the Notes, (expressed as a percentage rate per annum on the principal amount of the Replacement Notes or, as the case may be, the Class of Notes being replaced) shall be added to the rate of interest applicable to the Replacement Notes or, as the case may be, the Class of Notes being replaced.

#### *16.3 New Notes*

The Issuer shall be at liberty, without the consent of the Noteholders and the Couponholders (but subject always to the provisions of the Trust Deed), to raise further funds from time to time and on any date by the creation and issue of new notes (the **New Notes**) in bearer form which may rank *pari passu* with the Class A Notes or after the Class A Notes but ahead of or *pari passu* with the Class B Notes, after the Class B Notes but ahead of or *pari passu* with the Class C Notes or after the Class C Notes but ahead of or *pari passu* with the Class D Notes or after the Class D Notes and which do not form a single series with any Class of the Notes and which may have a Financial Guarantee provided that the conditions to the issue of Further Notes as set out in **Condition 16.1(a) and (c) to (i)** are met, *mutatis mutandis*, in respect of the issue of such New Notes as if reference therein to Further Notes were references to New Notes.

#### *16.4 Supplemental trust deeds and security*

Any such Further Notes, Replacement Notes and New Notes will be constituted by a further deed or deeds supplemental to the Trust Deed and have the benefit of the Issuer Security pursuant to the Deed of Charge as described in **Condition 3**.

### **17. RIGHTS OF THIRD PARTIES**

Neither this Note nor any Coupon confers any rights on any person under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Note or any such Coupon, but this does not affect any right or remedy of any person which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999.

### **18. GOVERNING LAW**

The Trust Deed, the Notes and the Coupons are governed by, and will be construed in accordance with, English law.

## UNITED KINGDOM TAXATION

The following, which applies only to persons who are the beneficial owners of the Notes, is a summary of the Issuer's understanding of current United Kingdom tax law and Inland Revenue practice as at the date of this Offering Circular relating to certain aspects of the United Kingdom taxation of the Notes. It is not a comprehensive analysis of the tax consequences arising in respect of Notes. Some aspects do not apply to certain classes of taxpayer (such as dealers and persons connected with the Issuer). Prospective Noteholders who are in any doubt about their tax position or who may be subject to tax in a jurisdiction other than the United Kingdom should seek their own professional advice.

### **(A) Interest on the Notes**

#### *1. Withholding tax on payments of interest on the Notes*

For so long as the Notes are and continue to be listed on a "recognised stock exchange" within the meaning of section 841 of the Income and Corporation Taxes Act 1988 (the **Act**) (the Irish Stock Exchange is such a "recognised stock exchange" for this purpose – under a United Kingdom Inland Revenue interpretation, the Notes will satisfy this requirement if they are listed by the competent authority in Ireland and are admitted to trading by the Irish Stock Exchange) interest payments on each of the Notes will be treated as a "payment of interest on a quoted Eurobond" within the meaning of section 349 of the Act. In these circumstances, payments of interest on the Notes may be made without withholding or deduction for or on account of United Kingdom income tax irrespective of whether the Notes are in global form or in definitive form.

Interest on the Notes may also be paid without withholding or deduction on account of United Kingdom tax where interest on the Notes is paid to a person who belongs in the United Kingdom for United Kingdom tax purposes and, at the time the payment is made, the Issuer reasonably believes (and any person by or through whom interest on the Notes is paid reasonably believes) that the beneficial owner is within the charge to United Kingdom corporation tax as regards the payment of interest, provided that the Inland Revenue has not given a direction (in circumstances where it has reasonable grounds to believe that it is likely that the above exemption is not available in respect of such payment of interest at the time the payment is made) that the interest should be paid under deduction of tax.

In other cases, an amount must generally be withheld from payments of interest on the Notes on account of United Kingdom income tax at the lower rate (currently 20 per cent.). However, where an applicable double tax treaty provides for a lower rate of withholding tax (or for no tax to be withheld) in relation to a Noteholder, or, where a Noteholder is associated with the Issuer, resident in a Member State of the EU and entitled in practice to the benefit of the European Council Directive 2003/49/EC, the Inland Revenue can issue a notice to the Issuer to pay interest to the Noteholder without deduction of tax (or for interest to be paid with tax deducted at the rate provided for in the relevant double tax treaty).

#### *2. Provision of Information*

Noteholders who are individuals may wish to note that the Inland Revenue has power to obtain information (including the name and address of the beneficial owner of the interest) from any person in the United Kingdom who either pays interest to or receives interest for the benefit of an individual. Information so obtained may, in certain circumstances, be exchanged by the Inland Revenue with the tax authorities of the jurisdiction in which the Noteholder is resident for tax purposes.

#### *3. Further United Kingdom tax issues for non-United Kingdom resident Noteholders*

Interest on the Notes will constitute United Kingdom source income and, as such, may be subject to income tax by direct assessment even where paid without withholding.

However, interest with a United Kingdom source received without deduction or withholding on account of United Kingdom tax will not be chargeable to United Kingdom tax in the hands of a Noteholder (other than certain trustees) who is not resident for tax purposes in the United Kingdom unless that Noteholder carries on a trade, profession or vocation through a United Kingdom branch or agency in connection with which the interest is received or to which the Notes are attributable (and where that Noteholder is a company, unless that Noteholder carries on a trade in the United Kingdom through a permanent establishment in connection with which 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). The provisions of an applicable double taxation treaty may be relevant for such Noteholders.

Where interest has been paid under deduction of United Kingdom income tax, Noteholders who are not resident in the United Kingdom may be able to recover all or part of the tax deducted if there is an appropriate provision under an applicable double taxation treaty.

**(B) United Kingdom corporation tax payers**

In general, Noteholders which are within the charge to United Kingdom corporation tax in respect of the Notes will be charged to tax and obtain relief as income on all returns, profits and gains on, and fluctuations in value of the Notes (whether attributable to currency fluctuation or otherwise) broadly in accordance with their statutory accounting treatment.

**(C) Other United Kingdom tax payers**

*1. Taxation of chargeable gains*

The Notes will constitute “qualifying corporate bonds” within the meaning of section 117 of the Taxation of Chargeable Gains Act 1992. Accordingly, a disposal by a Noteholder of a Note will not give rise to a chargeable gain or an allowable loss for the purposes of the UK taxation of chargeable gains.

*2. Accrued income scheme*

On a disposal of Notes by a Noteholder, any interest which has accrued between the last Interest Payment Date and the date of disposal may be chargeable to tax as income under the rules of the “*accrued income scheme*” as set out in Chapter II of Part XVII of the Act, if that Noteholder is resident or ordinarily resident in the United Kingdom or carries on a trade in the United Kingdom through a branch or agency to which the Notes are attributable.

**(D) Stamp Duty and Stamp Duty Reserve Tax (SDRT)**

No United Kingdom stamp duty or SDRT is payable on the issue or transfer by delivery of the Notes.

**(E) EU Directive on the Taxation of Savings Income**

On 3 June 2003, the European Council of Economic and Finance Ministers adopted a Directive on the taxation of savings income. Under the Directive Member States will (if equivalent measures have been introduced by certain non-EU countries) be required, from 1 July 2005, to provide to the tax authorities of another Member State details of payments of interest (or similar income) paid by a person within its jurisdiction to an individual resident in that other Member State. However, for a transitional period, Belgium, Luxembourg and Austria will instead be required (unless during that period they elect otherwise) to operate a withholding system in relation to such payments (the ending of such transitional period being dependant upon the conclusion of certain other agreements relating to information exchange with certain other countries).



## SUBSCRIPTION AND SALE

Dresdner Bank AG London Branch (the **Sole Bookrunner**), pursuant to a subscription agreement dated 20 April 2005 (the **Subscription Agreement**) between the Sole Bookrunner, the Issuer and Eurohypo, has agreed, subject to certain conditions, to subscribe and pay for the Class A Notes at 100 per cent. of the initial principal amount of such Notes, the Class B Notes at 100 per cent. of the initial principal amount of such Notes, the Class C Notes at 100 per cent. of the initial principal amount of such Notes and the Class D Notes at 100 per cent. of the initial principal amount of such Notes.

The Issuer has agreed to reimburse or procure the reimbursement of the Sole Bookrunner for certain of its expenses in connection with the issue of the Notes. The Subscription Agreement is subject to a number of conditions and may be terminated by the Sole Bookrunner in certain circumstances prior to payment to the Issuer. The Issuer has agreed to indemnify the Sole Bookrunner against certain liabilities in connection with the offer and sale of the Notes.

In addition, the Issuer will be obliged under an arrangement fee letter dated on or before the Closing Date to pay an arrangement fee (the **Arrangement Fee**) to the Note Arranger. On any Interest Payment Date, the Arrangement Fee will be equal to the balance (if any) remaining of Available Issuer Income and principal (if any) after the application of **paragraphs (a) to (m)** of the Pre-Enforcement Priority of Payments, **paragraphs (a) to (l)** of the Post-Enforcement Pre-Acceleration Priority of Payments or **paragraphs (a) to (o)** of the Post-Acceleration Priority of Payments, as appropriate, in each case less 0.01 per cent. of the total Available Issuer Income on that date.

### United States of America

The Sole Bookrunner has represented and agreed with the Issuer 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 except in certain transactions exempt from the registration requirements of the Securities Act. The Sole Bookrunner has agreed that, except as permitted by the Subscription Agreement, it will not offer, sell or deliver the Notes (a) as part of their distribution at any time or (b) otherwise until 40 days after the later of the commencement of the offering of the Notes and the Closing Date (for the purposes only of this section "*Subscription and Sale*", the **Distribution Compliance Period**) within the United States or to, or for the account or benefit of, U.S. Persons and that it will have sent to each distributor, dealer or other person to which it sells Notes during the Distribution Compliance Period a confirmation or other notice setting forth the restrictions on offers and sales of the Notes within the United States or to, or for the account or benefit of, U.S. Persons. Terms used in this paragraph have the meanings given to them by Regulation S of the Securities Act.

In addition, until 40 days after the commencement of the offering of the Notes, an offer or sale of the Notes within the United States by a dealer, whether or not participating in the offering, may violate the registration requirements of the Securities Act.

The Notes are in bearer form and are subject to U.S. tax law requirements and may not be offered, sold or delivered within the United States or its possessions or to a United States person, except in certain transactions permitted by U.S. tax regulations. Terms used in the preceding sentence have the meanings given to them by the U.S. Internal Revenue Code of 1986 and regulations thereunder.

### United Kingdom

The Sole Bookrunner has represented and agreed that:

- (a) it has not offered or sold and, prior to the expiry of the period of six months from the Closing Date will not offer or sell any Notes to persons in the United Kingdom except to persons whose ordinary activities involve them in acquiring, holding, managing or disposing of investments (as principal or agent) for the purposes of their business or otherwise in circumstances which have not resulted and will not result in an offer to the public in the United Kingdom within the meaning of the Public Offers of Securities Regulations 1995;
- (b) it has complied and will comply with all applicable provisions of the Financial Services and Markets Act 2000 (**FSMA**), with respect to anything done by it in relation to the Notes in, from or otherwise involving the United Kingdom; and

- (c) 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 FSMA) received by it in connection with the issue or sale of any Notes in circumstances in which section 21(1) of the FSMA does not apply to the Issuer.

## **Ireland**

The Sole Bookrunner has represented and agreed that:

- (a) other than in circumstances which do not constitute an offer or sale to the public in Ireland or elsewhere by means of a prospectus within the meaning of the Companies Acts, 1963 to 2001 of Ireland (i) prior to application for listing of the Notes being made and the Irish Stock Exchange having approved this Offering Circular in accordance with the Regulations, it has not offered or sold and will not offer or sell, in Ireland or elsewhere, by means of any document or other means of visual reproduction, including electronic means, any of the Notes, (ii) subsequent to application for listing of the Notes being made and the Irish Stock Exchange approving this Offering Circular in accordance with the Regulations, it has not offered or sold and will not offer or sell, in Ireland or elsewhere, any of the Notes by means of any document or other means of visual reproduction, including electronic means, other than this Offering Circular (or any document including electronic means of visual reproduction approved as aforesaid, which sets out listing particulars in relation to the Notes prepared in accordance with the Regulations) and only where this Offering Circular (or such other listing particulars as aforesaid) is accompanied by an application form or an application form is issued which indicates where this Offering Circular (or such other listing particulars as aforesaid) can be obtained or inspected and (iii) it has not issued and will not issue at any time, in Ireland or elsewhere, any application form for any of the Notes unless the application form is accompanied by this Offering Circular (or a document including electronic means of visual reproduction, which sets out listing particulars in relation to the Notes prepared in accordance with the Regulations and approved by the Irish Stock Exchange) or the application form indicates where this Offering Circular or such listing particulars can be obtained or inspected;
- (b) it has not made and will not make at any time any offer of any of the Notes in Ireland to which the European Communities (Transferable Securities and Stock Exchange) Regulations, 1992 of Ireland would apply;
- (c) it has complied and will comply with all applicable provisions of the Investment Intermediaries Acts, 1995 to 2000 of Ireland (as amended) with respect to anything done by it in relation to the Notes or operating in, or otherwise involving, Ireland and, if acting under and within the terms of an authorisation to do so for the purposes of EU Council Directive 93/22/EEC of 10 May 1993 (as amended or extended), it has complied with any codes of conduct made under the Investment Intermediaries Acts 1995 to 2000, of Ireland (as amended) and if, acting within the terms of an authorisation granted to it for the purposes of EU Council Directive 2000/12/EC of 20 March 2000 (as amended or extended), it has complied with any codes of conduct or practice made under section 117(1) of the Central Bank Act, 1989 of Ireland (as amended); and
- (d) in respect of an offer of the Notes to the public in Ireland or elsewhere within the meaning of the Companies Acts, 1963 to 2001 of Ireland, it will comply with the requirements of the section 56 and 57 of the Companies Act, 1963 of Ireland.

## **General**

Except for listing the Notes on the Official List of the Irish Stock Exchange and delivery of this document to the Registrar of Companies 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 Sole Bookrunner 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 18 April 2005.
2. It is expected that listing of the Notes on the Official List of the Irish Stock Exchange will be granted on or about 20 April 2005, subject only to the issue of the Global Notes. The listing of the Notes will be cancelled if the Global Notes are not issued. Transactions will normally be effected for settlement in sterling and for delivery on the third working day after the day of the transaction.
3. On 18 April 2005 the Issuer was granted a certificate under section 117 of the Companies Act 1985 entitling it to do business and to borrow.
4. The Notes have been accepted for clearance through Euroclear and Clearstream, Luxembourg as follows:

	Common Code	ISIN
Class A .....	021761281	XSO217612810
Class B .....	021761311	XSO217613115
Class C .....	021761354	XSO217613545
Class D .....	021761389	XSO217613891

5. No statutory or non-statutory accounts in respect of any financial year of the Issuer have been prepared. So long as the Notes are listed on the Official List of the Irish Stock Exchange, the most recently published audited annual accounts of the Issuer from time to time will be available at the specified offices of the Irish Paying Agent in Dublin. The Issuer does not publish interim accounts.
6. The Issuer is not, and has not been, involved in any 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.
7. 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.
8. KPMG Audit Plc, auditors of the Issuer, has given and not withdrawn its written consent to the inclusion of its report and references to its name in the form and context in which they are included and has authorised the contents of that part of this Offering Circular for the purposes of section 46 of the Irish Companies Act, 1963 (as amended).
9. FPD Savills (the **Valuer**) has given and not withdrawn its written consent to the inclusion of its report and references to its name in the form and context in which they are included and has authorised the contents of that part of this Offering Circular for the purposes of section 46 of the Irish Companies Act, 1963 (as amended).
10. Save as disclosed herein, since 24 March 2005 (being the date of incorporation of the Issuer), there has been (a) no material adverse change in the financial position or prospects of the Issuer and (b) no significant change in the trading or financial position of the Issuer.
11. The Deed of Charge, the Trust Deed and the Borrower Security Agreement will provide that the Trustee and the Senior Facility Agent (as applicable) may rely on reports or other information from professional advisors or other experts in accordance with the Deed of Charge, the Trust Deed and the Borrower Security Agreement (as applicable), whether or not such report or other information, engagement letter or other document entered into by the Trustee or the Senior Facility Agent (as applicable) and the relevant professional advisor or expert in connection therewith contains any limit on the liability of that relevant professional advisor or expert.
12. Copies of the following documents may be inspected during usual business hours on any week day (excluding Saturdays, Sundays, and public holidays) at the offices of the Issuer at 35 Great St. Helen's, London EC3A 6AP and at the specified offices of the Irish Paying Agent in Dublin during the period of 14 days from the date of this document:
  - (a) the Memorandum and Articles of Association of the Issuer;
  - (b) the balance sheet of the Issuer as at 20 April 2005 and the auditors report thereon;

- (c) the Subscription Agreement referred to in **paragraph 7** above; and
- (d) drafts (subject to modification) of the following documents (together with the Subscription Agreement, the **Transaction Documents**):
  - (i) the Senior Credit Agreement;
  - (ii) the Borrower Security Agreement;
  - (iii) the Duty of Care Agreement;
  - (iv) the Mortgage of Shares;
  - (v) the Subordination Agreement;
  - (vi) the Trust Deed;
  - (vii) the Intercreditor Agreement;
  - (viii) the Deed of Charge;
  - (ix) the Servicing Agreement;
  - (x) the Bank Agreement;
  - (xi) the Corporate Services Agreement;
  - (xii) the Liquidity Facility Agreement;
  - (xiii) the Agency Agreement;
  - (xiv) the Master Definitions Schedule; and
  - (xv) the Post-Enforcement Call Option Agreement.

## INDEX OF DEFINED TERMS

£ .....	2
<b>A</b>	
Acceleration Notice .....	105
Account Bank .....	8
Accountholder .....	92
Affiliate .....	108
Agency Agreement .....	90
Agent Bank .....	8, 90
Appraisal Reduction Event .....	74
Arrangement Fee .....	115
Authorised Entity .....	86
Available Issuer Income .....	73
<b>B</b>	
Bank Account Rating .....	68
Bank Agreement .....	73
Basic Terms Modification .....	108
Borrower .....	4, 7, 90
Borrower Accounts .....	65
Borrower Prepayment Fees .....	9, 57
Borrower Security Agreement .....	10
Business Day .....	18, 98
<b>C</b>	
Calculation Date .....	73
Certificate of Title .....	55
Certification .....	91
Class .....	91
Class A Notes .....	1, 90
Class B Deferred Interest .....	100
Class B Notes .....	1, 90
Class C Deferred Interest .....	100
Class C Notes .....	1, 90
Class D Deferred Interest .....	100
Class D Notes .....	1, 90
Clearstream, Luxembourg .....	1, 91
Closing Date .....	1, 90
Common Depository .....	91
Company .....	37
Controlling Party .....	83, 97
Corporate Services Provider .....	8
Couponholders .....	90
Coupons .....	92
Covenants Act .....	24
Credit Agreements .....	4
<b>D</b>	
Deed of Charge .....	19, 90
Default Reserve Account .....	65
Deferred Interest .....	100
Definitive Notes .....	92
Distribution Compliance Period .....	115
Duty of Care Agreement .....	11



E	
Eligible Investments .....	75
ERV .....	13, 40
Euroclear .....	1, 91
Eurohypo .....	2, 7
Exchange Date .....	91
Excluded Class .....	83, 97
Extraordinary Resolution .....	108
F	
Final Maturity Date .....	1, 100
Financial Guarantee .....	112
Fitch .....	1, 110
Fosse Park .....	40
Framework .....	32
FSMA .....	115
Further Notes .....	17, 111
G	
General Account .....	65
Global Note .....	91
Global Notes .....	1
H	
Hedging Arrangements .....	4, 8
Hedging Loan .....	58
holder of Notes .....	92
I	
IFRS .....	35
Income Deficiency .....	73
Income Deficiency Drawing .....	73
Initial Senior Lender .....	4, 7
Insolvency Act .....	26
Insurance Policies .....	28
Intercreditor Agreement .....	4
Interest Cover Percentage .....	63
Interest Cure 1 .....	63
Interest Cure 2 .....	63
Interest Cure 3 .....	63
Interest Determination Date .....	18, 98
Interest Payment .....	98
Interest Payment Date .....	1, 18, 97
Interest Period .....	18, 97
Irish Paying Agent .....	8, 90
Irish Stock Exchange .....	1
Issuer .....	1, 7, 90
Issuer Charged Property .....	93
Issuer Secured Creditors .....	19, 94
Issuer Security .....	19, 93
Issuer Transaction Account .....	73
Issuer's Accounts .....	73
J	
Junior Credit Agreement .....	4
Junior Facility Agent .....	7
Junior Hedge Counterparties .....	8
Junior Hedging Arrangements .....	8

Junior Interest Coverage Percentage .....	67
Junior Lenders .....	4
Junior Loan .....	4
Junior Loan to Value.....	61
Junior Majority Lenders .....	62, 70-71
Junior Secured Creditors.....	10
K	
KPMG .....	37
L	
Lenders.....	4
LIBOR Screen Rate .....	98
Liquidation Fee .....	82
Liquidity Bank .....	8
Liquidity Facility .....	22
Liquidity Facility Agreement.....	73
Liquidity Facility Commitment.....	74
Liquidity Stand-by Account .....	73
Liquidity Stand-by Drawing .....	74
Liquidity Subordinated Amounts.....	75
Loan Arranger .....	7
Loan Event of Default .....	10
Loan Interest Payment Date .....	9
Loan Interest Period .....	9
Loan Maturity Date .....	9
Loan Secured Creditors.....	10
Loan Security.....	4
Loan Security Agent .....	4
Loan to Value.....	63
Loan to Value Cure 1.....	63
Loan to Value Cure 2.....	63
Loan to Value Ratio .....	63
Loan Waterfall.....	66
Loans.....	4
London Business Day.....	9, 18, 98
M	
Managing Agent.....	7, 65
Margin.....	18
Master Definitions Schedule .....	90
Material Loan Event of Default .....	69
Moody's.....	86
moratorium period .....	35
Mortgage of Shares .....	11
Most Senior Class of Notes.....	91
N	
Net Rental Income .....	66
New Notes .....	17, 112
new UK GAAP .....	35
Note Arranger .....	7
Note Event of Default .....	105
Noteholders .....	90, 92
Notes .....	1, 37, 90
Notes of any Class .....	91

## O

Occupational Lease .....	59
Offering Circular .....	37
Operating Adviser .....	84, 97
Option Agreement.....	44
OptionCo .....	7, 17
Other Issuer Secured Creditors .....	94

## P

Paying Agents.....	8, 90
Payment Day .....	104
Permanent Global Note .....	1, 91
Post-Acceleration Priority of Payments .....	76
Post-Enforcement Call Option .....	23
Post-Enforcement Call Option Agreement.....	17
Post-Enforcement Pre-Acceleration Priority of Payments .....	76
pounds.....	2
pounds sterling .....	2
Pre-Enforcement Priority of Payments .....	75
Prepayment Amount .....	102
Principal Amount Outstanding .....	15, 91
Principal Paying Agent.....	8, 90
Priorities of Payment.....	76
Priority Amounts .....	75
Priority of Payments .....	76

## R

Rack Rental Leases .....	48
Rate of Interest .....	98
Rating Agencies.....	1, 110
Rating Event .....	58
Reference Banks .....	98
Regulation S .....	1
Regulations .....	1
Related Security .....	11
relevant date .....	105
Relevant Disposal .....	61
Relevant Documents.....	59
Rent Account.....	65
Rental Income.....	66
Replacement Notes .....	17, 111
Requisite Rating.....	73
Reserve Account .....	65

## S

S&P .....	1, 110
Securities Act.....	1, 115
Senior Credit Agreement .....	4
Senior Facility Agent.....	7
Senior Finance Documents.....	10
Senior Hedge Counterparties .....	8
Senior Hedging Arrangements.....	57
Senior Lenders.....	4
Senior Loan .....	4
Senior Loan Facility .....	4
Senior Majority Lenders.....	61-62, 64, 70
Senior Secured Creditors .....	10
Servicer.....	7
Servicing Agreement.....	78

Servicing Fee .....	82
Servicing Standard .....	78
Servicing Termination Event .....	83
Share Trust Deed.....	8
Share Trustee .....	8
Shareholder .....	56
Shortfall.....	107
small companies.....	34
Sole Bookrunner .....	115
Special Servicer.....	7
Special Servicing Event .....	79
Special Servicing Fee .....	82
specially serviced .....	78
Stabilisation Manager .....	2
sterling .....	2
Stock Exchange.....	99
Subordinated Creditor .....	56
Subordinated Creditors.....	11
Subordination Deed .....	10
Subscription Agreement .....	115
Subsidiary .....	108
Subsidy Loan.....	70
T	
Talons .....	92
Temporary Global Note .....	1, 91
Transaction Documents.....	119
Trust Deed .....	14, 90
Trustee.....	8, 90
Turnover Leases .....	48
V	
Valuation Date .....	13
Valuation Report .....	27
Valuer.....	118
W	
Workout Fee .....	82

**REGISTERED AND HEAD OFFICE OF THE ISSUER**

**Opera Finance (Fosse Park) plc**  
35 Great St. Helen's  
London EC3A 6AP

**SERVICER**

**Eurohypo Aktiengesellschaft**  
4th Floor  
90 Long Acre  
London WC2E 9RA

**SPECIAL SERVICER**

**Eurohypo Aktiengesellschaft**  
4th Floor  
90 Long Acre  
London WC2E 9RA

**TRUSTEE**

**The Bank of New York**  
One Canada Square  
London E14 5AL

**AUDITORS TO THE ISSUER**

**KPMG Audit Plc**  
1 Embankment  
Neville Street  
Leeds LS1 4DW

**LEGAL ADVISERS**

*To the Sole Bookrunner*

**Clifford Chance Limited Liability Partnership**  
10 Upper Bank Street  
London E14 5JJ

*To the Issuer, the Note Arranger and the Trustee*

**Allen & Overy LLP**  
One New Change  
London EC4M 9QQ

**PRINCIPAL PAYING AGENT AND  
AGENT BANK**

**The Bank of New York**  
One Canada Square  
London E14 5AL

**IRISH PAYING AGENT**

**AIB/BNY Fund Management (Ireland) Limited**  
Guild House  
Guild Street  
Dublin 1  
Ireland

**LISTING AGENT**

**J&E Davy**  
Davy House  
49 Dawson Street  
Dublin 2  
Ireland

