

# Security Trust Deed

**Argosy Property Limited**

Borrower

**and**

**Argosy Property No.1 Limited, Argosy Property No.3 Limited and  
Argosy Property Management Limited**

Existing Guarantors

**and**

**NZGT Security Trustee Limited**

Security Trustee

**and**

**ANZ Bank New Zealand Limited**

Facility Agent

**and**

**ANZ Bank New Zealand Limited, Bank of New Zealand and The  
Hongkong and Shanghai Banking Corporation Limited**

Existing Lenders

**Dated 17 May 2010 as amended and restated on 18 October 2018**

**BELL GULLY**

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This **Security Trust Deed** is made on 17 May 2010 as amended and restated on 18 October 2018

- between** (1) **Argosy Property Limited** (the **Borrower**)
- and** (2) **Argosy Property No.1 Limited, Argosy Property No.3 Limited and Argosy Property Management Limited** (the **Existing Guarantors**)
- and** (3) **NZGT Security Trustee Limited** (the **Security Trustee**)
- and** (4) **ANZ Bank New Zealand Limited** (the **Facility Agent**)
- and** (5) **ANZ Bank New Zealand Limited, Bank of New Zealand and The Hongkong and Shanghai Banking Corporation Limited** (the **Existing Lenders**)

## Introduction

- A The Beneficiaries have provided, or agreed to provide and may in the future provide, financial accommodation to the Obligors.
- B The Obligors have granted certain security interests in favour of the Security Trustee (and the Obligors may in the future grant or agree to grant additional security interests to the Security Trustee) to secure their indebtedness to the Beneficiaries.
- C The Obligors and the Beneficiaries have agreed that the Security Documents shall be held by the Security Trustee for the benefit of the Beneficiaries.
- D The parties have agreed to enter into this Deed to record arrangements agreed by them.

## It is agreed

### 1. Definitions and construction

#### 1.1 Defined Terms

In this Deed, unless the context requires otherwise:

**Accession Deed** means an accession deed substantially in the form set out in Schedule 2;

**AML/CFT Law** means:

- (a) the Financial Transactions Reporting Act 1996, the Terrorism Suppression Act 2002, the Anti-Money Laundering and Countering Financing of Terrorism Act 2009;
- (b) any other anti-money laundering, counter-terrorism financing, economic or trade sanctions laws or regulations including without limitation, any laws or regulations imposing "know your customer" or other identification checks or procedures, that apply in any jurisdiction; and

- (c) any economic or trade sanctions or restrictive measures enacted, administered, imposed or enforced by the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC), the U.S. Department of State, the United Nations Security Council, the Hong Kong Monetary Authority and/or the European Union and/or the French Republic, and/or Her Majesty's Treasury or other relevant sanctions authority;

**Ancillary Liabilities** means, on any date in relation to any Lender or Lender Affiliate, the net amount (if any) payable on that date by an Obligor to that Lender or Lender Affiliate to close out all Risk Management Products then outstanding between that Obligor and that Lender or Lender Affiliate;

**Ancillary Transactions** means all transactions under Risk Management Products entered into by an Obligor with any Lender or Lender Affiliate and any other transactions under Risk Management Products entered into by an Obligor and approved from time to time under clause 6 and **Ancillary Transaction** shall have a corresponding meaning;

**Approved Facilities** means each Approved Loan and Ancillary Transaction and, when referring to the "Approved Facilities" of a particular Beneficiary, means the Approved Loans and Ancillary Transactions of that Beneficiary, and **Approved Facility** shall have a corresponding meaning;

**Approved Loans** means without limitation, all loans (including by subscription for a debt security) provided by a Beneficiary under or pursuant to the Senior Facility Agreement, the USPP Documents, the Bond Documents and any other loan, other debt security issuance or other financial accommodation (not being an Ancillary Transaction) entered into by an Obligor and designated from time to time under clause 6, and **Approved Loan** shall have a corresponding meaning;

**Beneficiary** means:

- (a) the Security Trustee (on its own account and as security trustee under this Deed);
- (b) any predecessor Security Trustee (in relation to its continuing rights of indemnity);
- (c) the Facility Agent;
- (d) each Lender;
- (e) each Lender Affiliate (but only in relation to any Ancillary Transaction entered into at a time its "Lender" was a "Lender" as defined in the Senior Facility Agreement);
- (f) each Bond Supervisor;
- (g) each Bondholder; and
- (h) each USPP Noteholder (if any),

and **Beneficiaries** means any one or more of them, as the context requires;

**Beneficiary Representative** means:

- (a) the Facility Agent (as facility agent of the Lenders party to the Senior Facility Agreement in that capacity);
- (b) each Bond Supervisor (as bond supervisor for the relevant Bondholders); and
- (c) any other person acting as trustee, agent or manager on behalf of any syndicate or group of other Beneficiaries and which has acceded to this Deed as a Beneficiary

Representative by executing and delivering to the Security Trustee an Accession Deed;

**Bond Default Event** means any Event of Default as defined under the relevant Bond Documents;

**Bond Documents** means any wholesale and/or retail bond issuance documents which the Borrower notifies the Security Trustee in writing as having been designated as such by the Borrower in writing in accordance with the terms of this Deed;

**Bondholder** means each holder of one or more Bonds from time to time;

**Bonds** mean bonds issued by an Obligor under or pursuant to any Bond Document;

**Bond Supervisor** means any person which has acceded to this Deed as a Bond Supervisor by executing and delivering to the Security Trustee an Accession Deed and includes any person acting in its capacity as supervisor or trustee under the relevant Bond Documents or any successor or replacement supervisor appointed in accordance with the relevant Bond Documents;

**Business Day** means a day (other than a Saturday or Sunday) on which registered banks are generally open for business in Auckland;

**Commitment** means, in relation to a Beneficiary on any date, the NZD Equivalent of the amount which as at that date that Beneficiary has agreed to make available under its Approved Facilities to the extent that amount has not been cancelled or otherwise reduced (except where such cancellation or reduction has occurred following a Default Event in which case the Commitment of the relevant Beneficiary shall be the aggregate of its Outstandings);

**Credit Participation** means, on any date:

- (a) in relation to a Beneficiary Representative or Unrepresented Beneficiary, the NZD Equivalent of the aggregate principal amount of its Outstandings (or, in the case of a Beneficiary Representative, the Outstandings of the Beneficiaries that it represents) on that date; or
- (b) where the Beneficiary Representative or Unrepresented Beneficiary is a "Lender" or a Lender Affiliate (or, in the case of a Beneficiary Representative, represents a "Lender") and the relevant decision relates to a waiver or consent request only and no Default Event is subsisting, the NZD Equivalent of the aggregate amount of its Commitments (or, in the case of a Beneficiary Representative, the Commitments of the "Lenders") on that date,

in each case, as certified by the relevant Beneficiary Representative or Unrepresented Beneficiary in a written statement provided to the Security Trustee (any such certificate to be conclusive for the purposes of this Deed in the absence of manifest error and the Security Trustee shall be entitled to rely on any such certificate, and shall not be liable or responsible to the Beneficiaries or any other person for so relying).

For the purposes of this definition, the Outstandings of:

- (c) a Lender or Lender Affiliate pertaining to Ancillary Liabilities, shall only be counted for the purposes of decisions as to matters relating to the exercise (including, without limitation, whether or not to exercise and the method of exercise) of any Security Rights and shall be as certified by the relevant Beneficiary Representative or Unrepresented Beneficiary to the Security Trustee in accordance with its usual procedures and criteria for determining the maximum amount of the assessed exposure for credit purposes in relation to the Ancillary Liabilities represented thereby,

provided that if the Ancillary Liabilities are negative, they shall be deemed to be zero;  
or

- (d) a Bondholder pertaining to a Bond, shall be the outstanding principal amount of the Bond.

For the avoidance of doubt, in the case of any Beneficiary Representative and its Represented Beneficiaries, the Outstandings or Commitments (as the case may be) of the relevant Represented Beneficiaries shall be included in the calculation of Credit Participation irrespective of whether a threshold amount outstanding or commitment is specified in the relevant underlying Financing Document(s) as being required prior to any binding decision or direction being able to be made or given under that Financing Document;

**Default Event** means a Senior Facility Default Event, a Bond Default Event, a USPP Default Event or a default event (howsoever described) under any other Approved Facility;

**Designation Notice** means a notice substantially in the form set out in Schedule 1 issued by the Borrower to the Security Trustee pursuant to clause 6.1;

**Distribution Date** means each day on which moneys available for distribution under clause 4.1 are to be applied in terms of that clause;

**Enforcement** means the exercise by the Security Trustee or any Beneficiary of any Security Right or the exercise of any set-off rights or combination of accounts, or the taking of any other action contemplated under paragraphs (a) through (c) of clause 4.5 by any Beneficiary or the Security Trustee, in each case on or after the date that any notice of a Default Event is provided to the Security Trustee pursuant to clause 5.1;

**Enforcement Date** means the first date on which Enforcement action is taken by the Security Trustee or any Beneficiary under this Deed or any other Financing Document;

**Existing Lenders** means, as at the date of this Deed, each Lender under the Senior Facility Agreement being ANZ Bank New Zealand Limited, Bank of New Zealand and The Hongkong and Shanghai Banking Corporation Limited, incorporated in Hong Kong SAR, acting through its New Zealand branch (each, for the avoidance of doubt, in its capacity as a Lender under the Senior Facility Agreement and as the counterparty under a Hedge Agreement (as defined in the Senior Facility Agreement) entered into with the Borrower);

**Existing Mortgages** means the existing mortgages granted in favour of the Security Trustee as at the date of this Deed over the Properties, as amended or varied or substituted from time to time;

**Facility Agent** means ANZ Bank New Zealand Limited acting in its capacity as facility agent under the Senior Facility Agreement or any successor or replacement facility agent appointed in accordance with the Senior Facility Agreement;

**Financing Documents** means:

- (a) the Senior Facility Financing Documents;
- (b) the Bond Documents;
- (c) the USPP Documents;
- (d) each other document evidencing an Approved Facility;
- (e) the Security Documents; and

- (f) any other document which the Borrower notifies the Security Trustee in writing as having been designated as such by each Beneficiary Representative, each Unrepresented Beneficiary and the Borrower in writing;

**General Security Deed** means the general security deeds:

- (a) dated 3 December 2003 from Argosy Property No.1 Limited;
- (b) dated 23 December 2010 from Argosy Property No.3 Limited;
- (c) dated 30 August 2011 from Argosy Property Management Limited; and
- (d) dated 29 February 2012 from Argosy Property Limited,

each as amended, restated and consolidated into one composite general security deed on or about 1 September 2014 (as further amended or restated from time to time);

**Guarantee** means the cross guarantee and indemnity set out in clause 4 (Cross guarantee) of the General Security Deed granted in favour of the Security Trustee in respect of the obligations of the Obligors to the Beneficiaries;

**Guarantor** means each Debtor as defined in the Guarantee;

**Instructing Majority** has the meaning given to it in clause 5.4 (Direction to Enforce);

**Lenders** means the Existing Lenders, any other bank or financial institution which becomes a party to the Senior Facility Agreement as a Lender in accordance with the Senior Facility Agreement and each New Lender or, should the context require, any one or more of them but excludes any Lender which has ceased to be a party to the Senior Facility Agreement or such other document evidencing an Approved Facility which has been entered into by that Lender (as applicable);

**Lender Affiliate** means, in relation to any Lender, a subsidiary of that Lender or a holding company of that Lender or any subsidiary of that holding company or any person controlled by or under the control of that person;

**Major Retail Bond Default Event** means a Bond Default Event which is any of the following:

- (a) default is made by an issuer under any Bond Document (an **Issuer**) in the payment when due of:
  - (i) the principal amount of any Bonds on the maturity date or other scheduled date for repayment thereof and the default continues for a period of 10 Business Days after the date when due; or
  - (ii) any interest payable in respect of any Bonds on the relevant interest payment date and the default continues for a period of 3 Business Days after the date when due; or
- (b) any borrowed money indebtedness of an Obligor (other than in respect of any Bonds) in aggregate in excess of \$2,000,000 (or its equivalent in other currencies) is required to be repaid prior to its stated maturity by reason of a default (however described) by that Obligor (as the case may be); or
- (c) due to non-remedy within the prescribed period of the loan to value ratio covenant set out in a Bond Document,

and/or any other Bond Default Event which the Borrower notifies the Security Trustee in writing as having been designated as such by the relevant Bond Supervisor, the Obligor issuing the Bonds (as the parties to the relevant Bond Documents) and the Facility Agent;

**Majority Beneficiaries** means:

- (a) at any time (other than where subparagraph (b) applies), Beneficiary Representatives and Unrepresented Beneficiaries whose Credit Participations at that time aggregate to more than 66 $\frac{2}{3}$ % of the total Credit Participations at that time; or
- (b) at any time where subparagraph (a) does not result in there being Majority Beneficiaries for the purposes of a decision under clauses 5.4(g), 8.5(b) and 14.2, Beneficiary Representatives and Unrepresented Beneficiaries whose Credit Participations at that time aggregate to more than 50.1% of the total Credit Participations at that time;

**Mortgages** means the Existing Mortgages and the New Mortgages, but excludes any such mortgages which have been released;

**New Lender** means a new financier which provides or agrees to finance or provide an Approved Loan or an Ancillary Transaction;

**New Mortgages** means any mortgage executed at any time after the date of this Deed by an Obligor in favour of the Security Trustee over the Properties or any of them, but excludes any such mortgages that have been released;

**NZD Equivalent** means, in relation to an amount denominated in a currency other than NZ\$, the amount of NZ\$ calculated by reference to Reuters page RBNZB1 at or about 10am on the relevant date or, if no rate is published, the rate reasonably determined by the relevant Beneficiary or the Security Trustee;

**Obligor** means the Borrower and each Guarantor;

**Outstandings** means, in relation to each Beneficiary, all indebtedness actually or contingently owing or payable by the Obligors to that Beneficiary from time to time (whether principal, interest, premium, make-whole amount, a close-out amount or otherwise) under a Financing Document;

**Properties** mean all the land and improvements thereon legally and/or beneficially owned by an Obligor;

**Represented Beneficiary** means a Beneficiary that is represented by a Beneficiary Representative as that Beneficiary's agent, trustee or manager;

**Retentions Account** has the meaning given to that term in the General Security Deed;

**Risk Management Product** means any foreign exchange contract, currency swap, currency option, currency futures contract, interest rate swap, interest rate option, forward rate agreement or any other similar instrument;

**Secured Property** means the Properties and other assets of the Obligors which are subject to security interests created under the Security Documents;

**Security Documents** means this Deed, the General Security Deed (including the Guarantee), the Mortgages and any additional security interests granted from time to time by an Obligor to the Security Trustee;



**Security Proceeds** means all amounts received, realised or recovered by or on behalf of a Beneficiary or the Security Trustee under any Security Document or pursuant to the exercise of any Security Right or, as the context may require, the balance of those amounts remaining undisbursed under clause 4.1 and includes moneys applied by a Beneficiary in reduction of the Outstandings to that Beneficiary in the circumstances contemplated by clause 4.5;

**Security Rights** means all powers, rights, actions, remedies or procedures available to a Beneficiary or the Security Trustee by way of enforcement or realisation of any Security Document (including, without limitation, the right to appoint a receiver and the right to apply moneys in reduction of the Outstandings to that Beneficiary in the circumstances contemplated by clause 4.5) but excludes any right of acceleration or set-off prior to the Enforcement Date available to a Beneficiary, or the application of close-out netting in respect of any Ancillary Liabilities, and **Security Right** shall have a corresponding meaning;

**Senior Facility Agreement** means the facility agreement originally dated 17 May 2010 between (among others) the Borrower, the Facility Agent and the Existing Lenders (as amended or restated from time to time);

**Senior Facility Default Event** means an Event of Default as defined in the Senior Facility Agreement;

**Senior Facility Financing Documents** means the Senior Facility Agreement, each "Relevant Document" as defined in the Senior Facility Agreement, and any other document which the Borrower notifies the Security Trustee in writing as having been designated as such by the Facility Agent and the Borrower in writing;

**Total Outstandings** means the aggregate of each Beneficiary's Outstandings;

**Unrepresented Beneficiary** means:

- (a) each USPP Noteholder;
- (b) (with respect to Ancillary Transactions and Ancillary Liabilities only) each Lender and Lender Affiliate party thereto; and
- (c) any other Beneficiary that is not represented by a Beneficiary Representative as the Beneficiary's agent, trustee or manager and which has acceded to this Deed as an Unrepresented Beneficiary by executing and delivering to the Security Trustee an Accession Deed;

**USPP Default Event** means any event of default as defined under a USPP Note Purchase Agreement);

**USPP Documents** means each USPP Note Purchase Agreement, the associated USPP Notes and the Security Documents and any other document which the Borrower notifies the Security Trustee in writing as having been designated as such by all USPP Noteholders and the Borrower in writing;

**USPP Note Purchase Agreement** means a note purchase agreement entered into by the Borrower with one or more USPP Noteholders, pursuant to which the Borrower issues USPP Notes, as the same may be modified, novated, supplemented, varied or replaced from time to time;

**USPP Noteholder** means any holder of a USPP Note from time to time which has acceded to this Deed as a Beneficiary by executing and delivering to the Security Trustee an Accession Deed, but only for so long as it holds that USPP Note;

**USPP Notes** means the notes issued under a USPP Note Purchase Agreement from time to time;

**USPP Required Holders** means, at any time and in respect of any USPP Transaction, USPP Noteholders under that USPP Transaction whose Credit Participations at that time aggregate to more than 50% of the total Credit Participations of all USPP Noteholders under that USPP Transaction (exclusive of any USPP Notes then held by the Borrower or any of its affiliates);

**USPP Transaction** means a USPP transaction entered into by the Borrower pursuant to the USPP Documents relating to that transaction and, when referring to the USPP Transaction of a particular USPP Noteholder, means the transaction documented under the associated USPP Documents;

**Wholesale Bond Required Holders** means, at any time and in respect of any Wholesale Bond Transaction, Bondholders under that Wholesale Bond Transaction whose Credit Participations at that time aggregate to more than 50% of the total Credit Participations of all Bondholders under that Wholesale Bond Transaction; and

**Wholesale Bond Transaction** means a wholesale bond transaction entered into by the Borrower pursuant to the Bond Documents relating to that transaction and, when referring to the Wholesale Bond Transaction of a particular Bondholder, means the transaction documented under the associated Bond Documents.

## 1.2 References

Except to the extent that the context otherwise requires, any reference in this Deed to:

**indebtedness** includes:

- (a) any obligation (whether present or future, actual or contingent, secured or unsecured, as principal or surety or otherwise) relating to the payment or repayment of borrowed money and associated obligations and includes all moneys in the nature of principal, interest, costs, fees, premium, make-whole amount, close-out amount, charges and expenses; and
- (b) the net amount (if any) payable on the relevant date by an Obligor to a Lender or Lender Affiliate in respect of closed out Risk Management Products provided by that Lender or Lender Affiliate to the Obligor; and
- (c) the maximum amount (if any) payable by an Obligor to any Lender in respect of any bond, guarantee, letter of credit, bill of exchange or similar instrument issued at the request of an Obligor by that Lender;

a **person** includes an individual, a body corporate, an association of persons (whether corporate or not), a trust, a state, an agency of a state and any other entity (in each case, whether or not having separate legal personality);

a **receiver** includes a receiver and manager;

a **subsidiary** of a person includes:

- (a) a subsidiary as defined in section 5 of the Companies Act 1993 (as if the term "company" in those sections includes entities incorporated in a jurisdiction other than New Zealand); and
- (b) a subsidiary in terms of any financial reporting standard issued from time to time by the Chartered Accountants Australia and New Zealand; and
- (c) a person controlled (whether directly or indirectly and whether by ownership of share capital, possession of voting power, contract or otherwise) by that person; and

**tax(es)** includes any tax, levy, impost, stamp or other duty and any other charge, deduction or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay, or any delay in paying, any of the same).

### 1.3 **Miscellaneous**

- (a) References to a person shall be deemed to include references to their respective successors and permitted assigns (or, in respect of the Facility Agent, the Bond Supervisor or the Security Trustee, any predecessor in title).
- (b) The headings in this Deed are inserted for convenience only and shall be ignored in construing this Deed.
- (c) Unless otherwise specified references to a part, clause, sub-clause, paragraph or schedule are to a part, clause sub-clause, paragraph or schedule of this Deed.
- (d) Unless the context otherwise requires, words (including defined words) denoting the singular include the plural and vice versa.
- (e) References to any document (however described) shall include references to that document as modified, novated, supplemented, varied or replaced from time to time.
- (f) References to a law includes present or future common or customary law and any statute, statutory instrument, subordinate legislation, regulation, by-law, order or other legislative measure or any judgment or judicial or administrative order or determination or decision, in any jurisdiction.

### 1.4 **Rights and obligations of Beneficiaries**

#### (a) **Several obligations**

The obligations of each Beneficiary Representative and Beneficiary under this Deed are several. The failure of a Beneficiary Representative or Beneficiary to perform its obligations under this Deed will not relieve any other Beneficiary Representative or Beneficiary of its obligations under this Deed. No Beneficiary Representative or Beneficiary will be responsible for the obligations of any other Beneficiary Representative or Beneficiary under this Deed except as expressly provided in this Deed.

#### (b) **Enforcement by Security Trustee**

No Beneficiary is entitled to enforce any Security Document (other than this Deed) other than through the Security Trustee.

#### (c) **Enforcement by Beneficiary Representative**

No Beneficiary who is represented by a Beneficiary Representative is entitled to enforce this Deed other than through its Beneficiary Representative.

### 1.5 **Security Trustee as trustee**

In this Deed, unless otherwise provided to the contrary:

- (a) a reference to the Security Trustee is a reference to the Security Trustee in its capacity as trustee of the trust constituted under clause 2 only, and in no other capacity; and

- (b) a reference to the property of the Security Trustee is a reference to the property of the Security Trustee only in the capacity described in paragraph (a) above.

## 1.6 Provision relating to future Beneficiary Representatives

Any provisions in this Deed requiring any party to enter into discussions or consultation with, give or receive notices to or from, or otherwise deal with a Beneficiary Representative (other than the Facility Agent) shall not take effect until the date that Beneficiary Representative has acceded to this Deed as a Beneficiary Representative by executing and delivering to the Security Trustee an Accession Deed and the Security Trustee countersigning that Accession Deed.

## 1.7 Future Obligors

If, at any time, a new subsidiary of an Obligor is formed or acquired, the relevant Obligor will, if required by the terms of a Financing Document, procure such subsidiary becomes an Obligor under this Deed (in this clause, the **New Obligor**) by:

- (a) becoming a party to the General Security Deed in accordance with the requirements set out in clause 5 (New Obligors) of the General Security Deed; and
- (b) becoming a party to this Deed by delivering a duly executed Accession Deed.

The Security Trustee shall provide a copy of each supplemental or accession deed referred to in this clause to the Beneficiaries (or, where represented by a Beneficiary Representative, that person) promptly on receipt.

## 1.8 General Security Deed

For the avoidance of doubt, where the General Security Deed permits an action if permitted by the Financing Documents, that action must not be expressly prohibited by any Financing Document.

## 2. Declaration of trust

The Security Trustee shall hold the benefit of the Security Documents and the Security Rights in trust for the benefit of the Beneficiaries on the terms and conditions contained in this Deed.

## 3. Payments before Enforcement

### 3.1 Payments prior to Enforcement

Prior to the Enforcement Date, all moneys received by and all payments made to a Beneficiary Representative or by or on behalf of a Beneficiary in payment or reduction of the Outstandings shall, except for the circumstances contemplated by clause 15.2, be and be deemed to have been received or paid absolutely to or on behalf of that Beneficiary Representative or Beneficiary and shall not be subject to the provisions of this Deed preserving rights to *pari passu* distribution following the Enforcement Date.

### 3.2 Application of receipts

Prior to the Enforcement Date, moneys received by a Beneficiary Representative or by or on behalf of a Beneficiary in payment of Outstandings to a Beneficiary under any Financing

Document must be applied towards the Outstandings to the relevant Beneficiary in the manner (if any) required under or pursuant to the relevant Financing Document.

## 4. Payments after Enforcement

### 4.1 Distribution of Security Proceeds

On and after the Enforcement Date, the Security Proceeds received by the Security Trustee shall be applied by the Security Trustee as follows:

- (a) first, in or towards satisfaction of the annual fees or other remuneration and indemnity payments (if any) and all other amounts payable to the Security Trustee and its predecessors in its capacity as Security Trustee and any costs, charges, liabilities and expenses so incurred by the Security Trustee in its capacity as Security Trustee (or its predecessor) under the provisions of the Financing Documents to which it is a party, together with interest and any goods and services tax payable thereon (if applicable) as provided for therein;
- (b) second, in or towards the payment of any costs, charges, losses, liabilities and expenses of and incidental to the appointment of any receiver and the exercise of the receiver's rights including his remuneration and all outgoings paid by the receiver together with any goods and services tax payable on those amounts (if applicable);
- (c) third, in or towards payment pro rata of any Outstandings payable to the Beneficiaries (including, in the case of a Lender or Lender Affiliate, any Ancillary Liabilities). All payments in respect of Outstandings payable to a Represented Beneficiary shall be made to its Beneficiary Representative for distribution in accordance with the relevant Financing Documents; and
- (d) fourth, if any surplus remains, to the Borrower or to such other persons entitled to it.

All payments to be paid by the Security Trustee pursuant to this clause shall be made at such times as the Security Trustee in its absolute discretion determines to be as soon as reasonably practical, having regard to the particular circumstances.

### 4.2 Pari Passu Ranking

The provisions of clause 4.1 shall apply notwithstanding:

- (a) the dates moneys are advanced or re-advanced by the Beneficiaries under the Financing Documents; or
- (b) the respective dates of execution or order of registration of any Financing Document; or
- (c) the partial repayment of the Outstandings to a Beneficiary; or
- (d) anything contained in any Financing Document; or
- (e) any rule of law or equity, or any other matter or thing whatsoever,

and on the basis that, as between the Beneficiaries, the Outstandings to each Beneficiary and the Security Documents shall be deemed to rank on a pari passu basis in point of priority as running and continuing securities for all Outstandings to each Beneficiary.

### 4.3 Trust

If, on or after the Enforcement Date, a Beneficiary Representative or a Beneficiary receives Security Proceeds (other than pursuant to clause 4.1) or any other payment from an Obligor, the Beneficiary so receiving such moneys shall:

- (a) pending distribution, hold such moneys for and on behalf of the other Beneficiaries for their respective entitlements under clause 4.1 (and to the extent such moneys are payable to the other Beneficiary/ies, in trust for the other Beneficiary/ies); and
- (b) pay such moneys to the Security Trustee as soon as reasonably practicable for distribution to the appropriate Beneficiary/ies.

Without prejudice to the obligations of the Beneficiary Representatives and the Beneficiaries pursuant to this clause 4, the trust created by this clause 4.3 shall have a perpetuity period of 80 years from the date of this Deed but shall cease to apply upon payment of all the Outstandings to the Beneficiaries (in respect of which a release and discharge signed pursuant to clause 15.1 shall be conclusive evidence).

### 4.4 Failure of Trust

If, and to the extent that, the trust created by clause 4.3 is for any reason not properly constituted or is otherwise not effective, each Beneficiary agrees (on an indemnity basis) forthwith upon demand to pay to the Security Trustee on behalf of the other Beneficiary/ies the money so received as described in clause 4.3.

### 4.5 Set-Off Rights

If on or after the Enforcement Date a Beneficiary has any rights under or pursuant to any Financing Document to apply:

- (a) credit balances on any account (other than the Retentions Account) of an Obligor with that Beneficiary; or
- (b) any term deposits of an Obligor with that Beneficiary (other than credit balances and term deposits held in the name of an Obligor in trust for any other person including, for the avoidance of doubt, the balance or deposit in the Retentions Account),

in each case against or in reduction of indebtedness to that Beneficiary, or:

- (c) otherwise has rights of set-off, combination of accounts, liens or other rights at law or in contract which have the same effect once exercised (not being rights arising out of close-out netting in respect of any Ancillary Liabilities),

and any such rights are exercised, and, as a result, that Beneficiary receives or recovers moneys or the relevant indebtedness to it is reduced (such moneys or reduction in indebtedness, **Recovered Moneys**) then:

- (d) that Beneficiary shall immediately advise the Security Trustee in writing of the receipt of the Recovered Moneys;
- (e) that Beneficiary shall pay an amount equivalent to the Recovered Moneys to the Security Trustee, such payment to be made within one Business Day of a request for payment being made by the Security Trustee;
- (f) the Security Trustee shall distribute the payment in respect of the Recovered Moneys in accordance with clause 4.1; and

- (g) the Recovered Moneys shall be treated as having been paid to the Beneficiaries pursuant to clause 4.1 rather than to the particular Beneficiary receiving the amount of or reduction in respect of Recovered Moneys in the first instance.

If any part of the Recovered Moneys has to be refunded by the Beneficiary first receiving the amount of or reduction in respect of Recovered Moneys (**Initial Recipient**) each Beneficiary which has first received a distribution pursuant to (f) above shall within one Business Day of request being made by the Initial Recipient pay to the Initial Recipient its proportionate share of the amount to be refunded together with any interest required to be paid by the Initial Recipient whether for all or part of the period from the date of distribution to the date of reimbursement to the Initial Recipient.

#### 4.6 **Payments Deemed to Include Deductions**

As between the Beneficiaries, a Beneficiary shall be deemed to have received from the Security Trustee any amount which the Security Trustee is at any time required by law to deduct or withhold on account of tax from any payment made by the Security Trustee to that Beneficiary under this Deed. However, this shall not prejudice any right which that Beneficiary may have against an Obligor or any other person other than the Security Trustee (whether under a grossing up clause or otherwise). If the Security Trustee is required to make any such deduction or withholding, the Security Trustee shall promptly deliver to the relevant Beneficiary Representative(s) or Unrepresented Beneficiary/ies evidence of that deduction or withholding and (where remittance is required) of the remittance thereof to the relevant taxing or other authority.

#### 4.7 **Certificate as to Outstandings**

- (a) The Security Trustee may from time to time request from a Beneficiary Representative or any Unrepresented Beneficiary (and that Beneficiary Representative or Unrepresented Beneficiary shall promptly deliver to the Security Trustee) a certificate of the amount, currency and nature of any amounts actually or contingently owed to it (or, in the case of a Beneficiary Representative, the Beneficiary or the Beneficiaries it represents) at a date nominated by the Security Trustee for such purpose and as to such other matters as the Security Trustee may deem necessary or desirable to enable it to determine the amount of any Commitment, Credit Participation, Outstandings or any other amount, or the composition of the Majority Beneficiaries, for any purpose in connection with this Deed.
- (b) The Borrower undertakes to the Security Trustee that it will:
- (i) on at least a semi-annual basis and at any other time on request by the Security Trustee verify to the Security Trustee the then-current details set out in the register maintained by the Security Trustee under clause 12 (and provide the Security Trustee with up-to-date details as necessary); and
  - (ii) on request by the Security Trustee at any time, provide the Security Trustee with such other credit or other information concerning the financial condition or affairs of the Obligors as may reasonably be requested for the purpose of the Security Trustee exercising its rights and performing its duties and obligations under this Deed.
- (c) The Security Trustee shall be entitled to rely on any such certificate or other information provided in accordance with this clause 4.7, and shall not be liable or responsible to the Beneficiaries or any other person for so relying.

#### 4.8 **Unwinding**

Any appropriation which later transpires to have been, or is determined by the Security Trustee to have been, invalid shall be deemed never to have been made (to the extent that

such appropriation is unwound) and any distribution which has to be refunded shall be refunded and shall be deemed never to have been made.

#### 4.9 **Contingent Liabilities**

When distributing moneys owed in accordance with clause 4.1, if any amount is contingently owing to any Beneficiary the Security Trustee shall retain an amount equal to that contingent indebtedness and shall place such amount upon deposit bearing a commercial rate of interest until the relevant Beneficiary notifies the Security Trustee that the contingent indebtedness has become actually due and payable or otherwise ceases to be contingently owed (at which point such amount shall be applied in accordance with the terms of clause 4.1).

### 5. **Consultation and Enforcement**

#### 5.1 **Default Events**

Each Beneficiary Representative and Unrepresented Beneficiary undertakes to the other Beneficiary Representative(s) and each other Unrepresented Beneficiary that it shall promptly notify the Security Trustee (who shall promptly give such notification to each other Beneficiary Representative(s) and each other Unrepresented Beneficiary) of the occurrence of any Default Event of which any of its officers administering the relevant Approved Facilities, Bond transactions or USPP Transaction (as applicable) has actual notice or knowledge and provide reasonable details of the relevant Default Event to the Security Trustee (who shall promptly give such information to each other Beneficiary Representative(s) and each other Unrepresented Beneficiary).

#### 5.2 **Notification of Enforcement**

If, following the occurrence of:

- (a) a Senior Facility Default Event, the Facility Agent;
- (b) a Bond Default Event, the relevant Bond Supervisor or, as the context requires, the Wholesale Bond Required Holders;
- (c) a USPP Default Event in respect of a USPP Transaction, the USPP Required Holders in respect of that USPP Transaction; or
- (d) any other Default Event, the relevant Beneficiary Representative or Unrepresented Beneficiary,

is of the view that, to the extent permitted, Security Rights should be exercised, then that party must, in addition to complying with the obligation under clause 5.1, promptly notify the Security Trustee of such view (who shall promptly give such notification to each other Beneficiary Representative(s) and each other Unrepresented Beneficiary/ies).

#### 5.3 **Consultation**

- (a) Following the giving of a notice by the Security Trustee pursuant to clause 5.2, without limiting (in relation to the Bond Supervisor) its obligations at law (including, but not limited to, under the Financial Markets Conduct Act 2013), each Beneficiary Representative and Unrepresented Beneficiary must (and so undertakes to each other to) consult with the other(s) for a period of fifteen Business Days from the date of such notice with a view to agreeing appropriate action in the circumstances to protect the mutual interests of the Beneficiaries (including, if enforcement is appropriate, the best means of achieving an orderly realisation on enforcement of Security Rights to the



best advantage of the Beneficiaries and with a view to maximising recovery of the Total Outstandings).

- (b) If all the Beneficiary Representatives and Unrepresented Beneficiary/ies, following such consultation, agree on appropriate enforcement actions in the circumstances, they shall together provide written notice to the Security Trustee setting out the enforcement steps agreed and the Security Trustee shall proceed to exercise the relevant Security Rights in the manner agreed.

#### 5.4 Direction to Enforce

If, following the period of consultation contemplated in clause 5.3, all the Beneficiary Representatives and Unrepresented Beneficiary/ies cannot agree on appropriate enforcement action, then:

- (a) the Majority Beneficiaries; or
- (b) where the relevant Default Event is a Senior Facility Default Event, the Facility Agent; or
- (c) where the relevant Default Event is a Major Retail Bond Default Event, the relevant Bond Supervisor; or
- (d) where the relevant Default Event is a USPP Default Event in respect of a USPP Transaction, the USPP Required Holders in respect of that USPP Transaction; or
- (e) where the relevant Default Event is a Bond Default Event in respect of a Wholesale Bond Transaction, the Wholesale Bond Required Holders in respect of that Wholesale Bond Transaction,

(each an **Instructing Majority**) shall provide written notice to the Security Trustee setting out the enforcement steps it requires the Security Trustee to take and:

- (f) subject to paragraph (g) below, the Security Trustee shall proceed to exercise the relevant Security Rights in the manner required by the Instructing Majority; or
- (g) if more than one Instructing Majority provides such a notice to the Security Trustee and there is a conflict between the instructions so given, then the Security Trustee shall act on the instructions of the Majority Beneficiaries (and shall not act in the absence of such instructions), provided that, if the Majority Beneficiaries instruct the Security Trustee not to enforce, the Security Trustee shall act on those instructions of the Majority Beneficiaries.

Once enforcement action has commenced, this can only be terminated with the consent of each Instructing Majority that has instructed the Security Trustee to take enforcement action or by the Majority Beneficiaries (as the case may be).

For the purposes of determining whether (f) or (g) applies, the Security Trustee may rely on each notice received from an Instructing Majority no later than sixteen Business Days after the Security Trustee first gives any notice pursuant to clause 5.2 (and shall not commence any Enforcement action until after that date in the absence of instructions under clause 5.3(b)), and shall not be liable or responsible to the Beneficiaries or any other person for so acting or for failing to act on any notice received by an Instructing Majority after that date.

#### 5.5 Powers of Sale

In exercising any power of sale under a Security Document the Security Trustee must exercise the powers and discretions conferred on it in a manner which ensures that the

duties of a mortgagee exercising enforcement rights are complied with but, subject to those requirements, the Security Trustee shall have the following rights and powers:

- (a) to take independent legal advice;
- (b) to obtain such valuations and reports as it considers prudent in the circumstances;
- (c) to exercise the Security Rights for and on behalf of the Beneficiaries in such manner as the Security Trustee determines in its discretion will best achieve an orderly realisation to the best advantage of the Beneficiaries and with a view to maximising recovery of the Total Outstandings (including sale prices, terms of sale, timing of sales, management and use of the property charged by the Security Documents pending sale, and application of receivables); and
- (d) to be paid its costs and expenses reasonably incurred (including legal and valuation costs) on distribution of Security Proceeds in accordance with clause 4.1.

## 6. Further funding

### 6.1 Designation Notice

The Borrower may at any time execute and deliver a Designation Notice to the Security Trustee designating:

- (a) a loan, other debt issuance or other financial accommodation with any person; or
- (b) a transaction under a Risk Management Product with a person who is not yet a Lender or Lender Affiliate,

(a **Relevant Obligation**) entered into by an Obligor as an Approved Loan or Ancillary Transaction. Each Designation Notice must include a date on which such Relevant Obligation will or is intended to become effective, which must fall not less than 10 Business Days after the date of delivery of the Designation Notice.

### 6.2 Procedure for Designation

Where a Designation Notice is delivered pursuant to clause 6.1, a summary of the relevant finance or transaction proposal shall be supplied by the Borrower to the Security Trustee, each Beneficiary Representative and each Unrepresented Beneficiary together with any other information as the Security Trustee, a Beneficiary Representative or an Unrepresented Beneficiary reasonably requires (it being agreed that such summary need not include, and may not be requested by the Security Trustee, a Beneficiary Representative or an Unrepresented Beneficiary to include, information that the Borrower or the proposed financier advises is of a sensitive nature as between the Obligors and the proposed financier).

### 6.3 Additional Approved Funding

Where:

- (a) any Designation Notice is delivered pursuant to clause 6.1; and
- (b) the Borrower has satisfied its obligations under clause 6.2 in respect of that Designation Notice and has delivered a certificate to the Security Trustee confirming the same; and

- (c) following completion of any steps required under clause 6.4,

the Security Trustee will (subject to the Security Trustee not having received notice that a Default Event has occurred) enter the details of the Relevant Obligations on the register maintained by it under clause 12 and, with effect from the date on which such entry is recorded, the additional indebtedness of the relevant Obligor(s) to the proposed Beneficiary shall:

- (d) be an Approved Facility for the purposes of this Deed;
- (e) form part of the Outstandings to the relevant Beneficiary for the purposes of this Deed and rank and be secured on the same basis as specified in clause 4.2; and
- (f) be included and be taken into account as part of the Outstandings to the relevant Beneficiary for the purposes of distributions under clause 4.1.

## 6.4 Accession Deed

- (a) Where:

- (i) any Designation Notice is delivered pursuant to clause 6.1;
- (ii) the Borrower has satisfied its obligations under clause 6.2 in respect of that Designation Notice and has delivered a certificate to the Security Trustee confirming the same; and
- (iii) the Designation Notice relates to a loan, other debt security issuance or other financial accommodation entered into by an Obligor with a counterparty that is not a Beneficiary and the particulars of the counterparty (once it becomes a Beneficiary) will not be recorded in a register kept by a recognised securities registrar; or

- (b) the Borrower provides an Accession Deed duly executed by a transferor and transferee of Outstandings or Commitments under a Financing Document and the applicable requirements to transfer those Outstandings or Commitments have been satisfied in accordance with the terms of the applicable Financing Document (and the Borrower has delivered a certificate to the Security Trustee confirming the same),

then:

- (c) each Beneficiary irrevocably and unconditionally authorises and instructs the Security Trustee to execute each Accession Deed delivered to the Security Trustee and the Security Trustee shall, as soon as reasonably practicable after receipt by it (but subject to its receipt of any information required under clause 18.6), execute and accept the same if the Accession Deed appears on its face to have been completed, executed and, where applicable, delivered in the form contemplated by this Deed, and provide a copy of the same to the Borrower; and
- (d) upon receipt, the Borrower shall provide a copy of the signed Accession Deed to each Beneficiary Representative and each Unrepresented Beneficiary.

## 7. Assignment

- (a) Subject to any restrictions in the relevant Financing Documents, a Beneficiary may assign and transfer all or part of its rights under the Financing Documents to which that Beneficiary is a party and/or of which the Beneficiary has the benefit, to any person.

- (b) Upon execution and delivery of an Accession Deed and the Security Trustee countersigning the same:
  - (i) (in respect of Beneficiaries particulars of whom are recorded in a register kept by a recognised securities registrar) such assignment or transfer being recorded in such register; or
  - (ii) (in respect of other Beneficiaries) execution and delivery of an Accession Deed and the Security Trustee countersigning the same,

such person shall become a Beneficiary for the purposes of this Deed.

- (c) Each Beneficiary (other than Beneficiaries particulars of whom are recorded in a register kept by a recognised securities registrar) that assigns or transfers all or part of its rights in accordance with this clause (or, as applicable, its Beneficiary Representative) undertakes to inform the Security Trustee of such assignment or transfer and all related information as required by the Security Trustee to maintain the register of Beneficiaries in accordance with clause 12.

## 8. Custodial arrangements and security releases

### 8.1 Custody of Security Documents

The Security Documents shall be held by the Security Trustee on behalf of the Beneficiaries and subject to the terms of this Deed.

### 8.2 Repayment of Total Outstandings

If the Security Trustee has received written notice from each Beneficiary Representative and Unrepresented Beneficiary that the Total Outstandings have been repaid, that the total Commitments of all Beneficiaries have been cancelled and that no payment made by any Obligor to any Beneficiary is likely to be voided under any provision or enactment relating to insolvency or liquidation or for any other reason, and if no amounts are owing to the Security Trustee (or any predecessor security trustee) under any Financing Document, the Security Trustee shall deliver releases of the Security Documents executed by the Security Trustee to the relevant Obligor (as relevant).

### 8.3 Release of security interests

If:

- (a) the Security Trustee sells or otherwise disposes of or deals with (or is to sell or otherwise dispose of or deal with) of any Secured Property in accordance with instructions received under clause 5.3 or 5.4; or
- (b) an Obligor disposes (or intends to dispose) of any Secured Property or otherwise deals with the Secured Property:
  - (i) in any manner that requires the consent of the Security Trustee, where each of:
    - (A) the Facility Agent has confirmed in writing to the Security Trustee that the disposal or dealing is expressly permitted or not prohibited by the terms of the Senior Facility Agreement and that any conditions relating to that disposal or dealing have been or will be satisfied or waived to the satisfaction of the Facility Agent; and

- (B) the Security Trustee has received from a director or an authorised signatory of the Borrower a written confirmation (with a copy delivered by the Borrower to each other Beneficiary Representative or Unrepresented Beneficiary), in a form acceptable to the Security Trustee (acting reasonably), that the disposal or dealing will not result in any breach of the terms of any Financing Document and that any conditions relating to that disposal or dealing have been satisfied or waived to its satisfaction; or at the request of the Security Trustee (on instructions received under clause 5.3 or 5.4) where the disposal or dealing is consistent with those instructions,

the Security Trustee is authorised by the Beneficiaries to, and the Security Trustee shall, execute, without the need for any further referral to or authority from the Beneficiaries, any release of the security interests created by the Security Documents over that Secured Property against the receipt of the relevant sale proceeds.

The Facility Agent and the Borrower agree to respond promptly to any request for confirmation under this clause 8.3.

## 8.4 Leases

The Security Trustee and the Beneficiaries agree that:

- (a) notwithstanding any Financing Document or any other provision of this Deed, the consent of the Security Trustee and the Beneficiaries is not required to any disposition of or dealing with any Secured Property which comprises an agreement to lease or a lease entered into in the ordinary course of an Obligor's business on arms' length commercial terms and no Default Event will occur as a result of entering into that agreement to lease or lease; and
- (b) they consent to all agreements to lease and leases of the Secured Property in effect as at the date of this Deed on the basis that the Borrower hereby directs the Security Trustee to provide such consent and confirms that such agreements to lease and leases are in the ordinary course of the Obligor's business, are on arms' length commercial terms and there is no Default Event continuing; and
- (c) the Security Trustee will promptly on receipt of a written request from the Borrower provide mortgagee consent (in such form as the Borrower may reasonably require) to any agreement to lease or lease of the Secured Property entered into after the date of this Deed by an Obligor which the Borrower confirms is in the ordinary course of the relevant Obligor's business, is on arms' length commercial terms and no Default Event will occur as a result of entering into that agreement to lease or lease.

## 8.5 Insurance proceeds

If any event occurs which, pursuant to the terms of the Financing Documents, results in the insurance proceeds under any of the insurance policies over the Secured Properties effected by an Obligor being required to be paid to one or more Beneficiaries, then the following will apply:

- (a) prior to the Enforcement Date, the proceeds payable under such insurance policies must be applied in accordance with the relevant Financing Documents;
- (b) on or after the Enforcement Date:
- (i) unless the Majority Beneficiaries agree in writing to the application of insurance proceeds as set out in paragraph (ii) below, the proceeds payable under such insurance policies must be applied in the same manner as contemplated by clause 4.1 (as if the Beneficiaries were exercising Security Rights); and

- (ii) if the Majority Beneficiaries agree to the relevant Obligor applying such insurance payments towards reinstatement of the relevant Secured Property, such insurance proceeds must be applied solely for that purpose and, pending application for such purpose, be held in trust (on behalf of the Obligors and the Beneficiaries) by the Security Trustee.

## 9. Security Trustee's powers, obligations and liability

### 9.1 Appointment of Security Trustee

- (a) Subject to clause 10, each Beneficiary:
  - (i) appoints the Security Trustee to act as its security representative under the Security Documents on the terms and conditions of this Deed; and
  - (ii) irrevocably authorises the Security Trustee to:
    - (A) enter into the Security Documents on its behalf; and
    - (B) perform its obligations and exercise its powers expressly set out in this Deed and the Security Documents together with any other rights, powers, discretions or remedies that are reasonably incidental to those obligations and powers.
- (b) Without limiting the generality of clause 9.1(a) but subject to the Security Documents, the Security Trustee shall act as security trustee for the Beneficiaries in:
  - (i) entering into the Security Documents to which it is a party;
  - (ii) making demand or claim for any moneys payable under any Security Document;
  - (iii) exercising the rights, powers and remedies of the Beneficiaries against the Obligors under the Security Documents;
  - (iv) enforcing or attempting to enforce the Security Documents or any part of them; and
  - (v) issuing and receiving notices under the Security Documents on behalf of the Beneficiaries.

### 9.2 Remuneration and indemnity

Each Obligor agrees:

- (a) to pay the Security Trustee, as and when due, such remuneration for the performance by the Security Trustee of its obligations and exercise of its powers under this Deed as is agreed between them in writing from time to time; and
- (b) to pay and indemnify the Security Trustee on demand an amount equal to all claims, actions, damages, fees, expenses, costs, charges, liabilities and out-of-pocket expenses and legal costs (on a full indemnity basis) properly incurred (or, in the case of subparagraphs (i) and (ii) and prior to the Enforcement Date, reasonably incurred) by the Security Trustee in connection with:
  - (i) acting as Security Trustee;

- (ii) the performance of its obligations and exercise of (or failure to exercise) its powers under this Deed, any other Security Document or by law;
- (iii) the preparation and execution of this Deed and any other Financing Document to which it is a party, and, in each case, any amendment to it;
- (iv) the occurrence of any Default Event or any other breach or default in the observance or performance by any Obligor of its obligations under this Deed or any other Financing Document, including any investigation into any potential Default Event;
- (v) the Secured Property or the existence of any interest in, or control or power with respect to, the Secured Property; and
- (vi) acting or relying on any notice, request or instruction from the Borrower which it reasonably believes to be genuine, correct and appropriately authorised,

except, in each case, to the extent that they arise directly from the Security Trustee's fraud, gross negligence or wilful misconduct.

### 9.3 Security Trustee's Duties

The Security Trustee shall have only those duties and obligations which are expressly specified in this Deed and any other Financing Document to which it is a party and those duties and obligations are solely of a mechanical and administrative nature and shall not have or be deemed to have any duty, obligation or responsibility to or relationship of trust or agency with any Obligor.

### 9.4 Rights and discretions of Security Trustee

- (a) In the exercise of its rights under this Deed or any other Financing Document, the Security Trustee will act in accordance with the instructions of the Majority Beneficiaries or, where clause 5.4 applies, on the instructions of an Instructing Majority, or otherwise as expressly specified. No Beneficiary has any right to instruct the Security Trustee to act or refrain from acting other than the Majority Beneficiaries or, where clause 5.4 applies, an Instructing Majority, or otherwise as expressly specified.
- (b) In the absence of such instructions the Security Trustee may act as it considers to be in the best interest of all the Beneficiaries or may refrain from taking any (or any further) action or exercising any right under or in respect of this Deed or any other Financing Document to which it is a party until it has received instructions from the Majority Beneficiaries or, where clause 5.4 applies, an Instructing Majority, or otherwise as expressly specified.
- (c) Actions taken by the Security Trustee in accordance with this clause will be binding on all the Beneficiaries and the Security Trustee will not be liable to any Beneficiary for so acting (even if a Beneficiary's interests are prejudiced as a result). The Security Trustee is not liable for any failure to act or exercise any right or power under this Deed in circumstances where it has not received clear instructions from the Majority Beneficiaries or, where clause 5.4 applies, an Instructing Majority or such other individual Beneficiary or group of Beneficiaries expressly specified.
- (d) Regardless of paragraphs (a) to (c) above, the Security Trustee is not obliged to take, or refrain from taking, action under this Deed or any other Financing Document until it is first indemnified, secured or paid to its satisfaction in accordance with clause 9.7 and/or 9.11 and unless the Security Trustee's liability is limited in the same manner as set out in clause 19.

- (e) Except where this Deed or any other Financing Document to which it is a party expressly provides, the Security Trustee is not obliged to consult with any Beneficiary before giving a consent or making a determination under this Deed or any other Financing Document.

## 9.5 Responsibility for Documentation

The Security Trustee will not be responsible to any Beneficiary or any Obligor for:

- (a) the execution, genuineness, validity, enforceability or sufficiency of this Deed, the other Financing Documents or any other documents;
- (b) the collectability of amounts payable under any Financing Document; or
- (c) the accuracy of any statements (whether written or oral) made by any other party in or in connection with any Financing Document or any other communication or document.

## 9.6 No Responsibility to Monitor

- (a) The Security Trustee is not obliged to monitor or enquire as to whether or not any Default Event has occurred and will not be deemed to have knowledge of the occurrence of any Default Event. If however the Security Trustee receives notice from an Obligor of any Default Event it shall promptly notify the Beneficiary Representatives and each Unrepresented Beneficiary.
- (b) The Security Trustee is not obliged to monitor or enquire as to the accuracy or completeness of the details set out at any time in the register maintained by it under clause 12, and in maintaining that register is entitled to rely on all information provided to it for that purpose by any Obligor or any Beneficiary.
- (c) The Security Trustee is not obliged to monitor or enquire as to whether the Beneficiary Representatives and Unrepresented Beneficiaries, or the Majority Beneficiaries have complied with their obligations under clauses 5.3 or 11.3 to consult with each other Beneficiary Representative and Unrepresented Beneficiary and, in receiving instructions from such parties where such parties are required to consult, is entitled to assume that such parties have complied with such consultation obligations and shall not be liable for any breach or non-compliance of such parties of their obligations to consult.

## 9.7 Security for Liability

- (a) The Security Trustee may require the receipt of security satisfactory to it, whether by way of payment in advance or otherwise, against any liability or loss which it will or may incur in taking any proceedings or action arising out of or in connection with any Security Document before it commences those proceedings or takes that action.
- (b) The Security Trustee will not be liable to any Beneficiary or any other person for any action taken or not taken by it under or in connection with any Security Document unless directly caused by its fraud, gross negligence or wilful misconduct.
- (c) No Beneficiary may take any proceedings against any officer, employee or agent of the Security Trustee in respect of any claim that it might have against the Security Trustee or in respect of any act or omission of any kind (including fraud, gross negligence or wilful misconduct) by that officer, employee or agent in relation to any Security Document.

## 9.8 Reliance by Security Trustee



The Security Trustee may:

- (a) rely on any notice or document believed by it to be genuine and correct and to have been signed by, or with the authority of, the proper person;
- (b) rely on any statement made or certificate given by a director or employee of any person regarding any matters which may reasonably be assumed to be within his knowledge or within his power to verify; and
- (c) engage, pay for and rely on legal or other professional advisers selected by it (including those in the Security Trustee's employment and those representing a Beneficiary other than the Security Trustee), and the Security Trustee shall not be liable or responsible to the Beneficiaries or any other person for any loss or damage arising from any act, default, omission or misconduct on the part of any such person selected by it in good faith and with due care.

## 9.9 Credit Approval and Appraisal

Each Beneficiary confirms that:

- (a) it has made its own independent investigation and assessment of the financial condition and affairs of the Obligors and their related entities in connection with its participation in this Deed and has not relied on any information provided to it by the Security Trustee or any other Beneficiary;
- (b) it will continue to make its own independent appraisal of the credit worthiness of the Obligors and their related entities while any amount is or may be outstanding under a Financing Document;
- (c) neither the Security Trustee nor any Beneficiary has any duty either initially or on a continuing basis to provide any Beneficiary with any credit or other information concerning the financial condition or affairs of the Obligors or any of their related entities whether coming into its possession before, on or after the date of this Deed; and
- (d) the Security Trustee has made no representations or warranties upon which the Beneficiary has relied, except to the extent set out in this Deed.

## 9.10 Additional Powers

The rights and trusts conferred upon the Security Trustee by this Deed and the Security Documents shall be in addition to any which may from time to time be vested in the Security Trustee by the general law.

## 9.11 Indemnity from Beneficiaries

- (a) Without limiting the liability of any Obligor under the Financing Documents, and in the case of each Bond Supervisor subject always to clause 19, each Beneficiary (treating each relevant group of Bondholders for this purpose as a single Beneficiary, acting through the relevant Bond Supervisor) shall, severally, forthwith on demand indemnify the Security Trustee for its proportion of any claims, actions, damages, fees, expenses, costs, charges, liability or loss incurred by the Security Trustee in any way relating to or arising out of this Deed, any other Financing Document or the Security Trustee's acting as the Security Trustee, except to the extent that the liability or loss arises directly from the Security Trustee's fraud, gross negligence or wilful misconduct.

- (b) A Beneficiary's proportion of any liability under this clause 9.11 will be the proportion which its Credit Participation bears to the total Credit Participations at that time, or if the Credit Participations have been reduced to zero, immediately prior to the time they were reduced to zero. For the avoidance of doubt, this indemnity is a personal and non-assignable covenant to the Security Trustee from each Beneficiary and for the purposes of Part 2 Subpart 1 of the Contract and Commercial Law Act 2017 confers no right or benefit enforceable by any creditor of the trust created pursuant to clause 2 of this Deed and no creditor shall be entitled to subrogate itself to the Security Trustee's rights under this indemnity against the Beneficiaries.

## 9.12 Security Trustee May Decline to Act

Notwithstanding any other provision of this Deed or any other Financing Document, the Security Trustee may refrain from doing anything which might, in its opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty or be otherwise actionable at the suit of any person, and may do anything which, in its opinion, is necessary or desirable to comply with any such law, regulation or duty. The Security Trustee need not disclose any information relating to the Obligors or any of their related entities if the disclosure might, in the opinion of the Security Trustee, constitute a breach of any law or regulation or any duty of secrecy or confidentiality or be otherwise actionable at the suit of any person.

## 9.13 No Liability for Security Documents

The Security Trustee in its capacity as trustee or otherwise, any predecessor security trustee or any Beneficiary:

- (a) shall not be liable for any failure, omission, or defect in perfecting the security constituted by any Security Document or any security created thereby;
- (b) may accept without enquiry such title as an Obligor may have to the property over which security is intended to be created by any Security Document.

## 9.14 Investment of Funds

All moneys which are received by the Security Trustee in its capacity as trustee or otherwise may be invested in the name of or under the control of the Security Trustee in any investment for the time authorised by New Zealand law for the investment by trustees of trust money or in any other investments which may be selected by the Security Trustee on the instructions of the Majority Beneficiaries. Additionally, such moneys may be placed on deposit in the name of or under the control of the Security Trustee at such bank or institution and upon such terms as the Security Trustee may think fit.

## 9.15 Delegation by Security Trustee

The Security Trustee may, with the prior written consent of the Majority Beneficiaries, delegate to any person any of the duties or obligations which are for the time being exercisable by the Security Trustee under this Deed or the Security Documents. The Security Trustee shall not be liable or responsible to the Beneficiaries or any other person for any loss or damage arising from any act, default, omission or misconduct on the part of any such delegate.

## 9.16 Security Trustee's general undertakings

The Security Trustee undertakes to the Beneficiaries that it will:

- (a) act honestly and in good faith in the performance of its functions as Security Trustee, and show the degree of care and diligence required of a trustee having regard to the extent of its rights and obligations under this Deed;

- (b) act continuously as Security Trustee until this Deed is terminated, or it retires or is removed in accordance with this Deed;
- (c) hold, and account for, the Security Documents and any rights or proceeds relating thereto separate from any other property owned or administered by it;
- (d) not sell or otherwise dispose or part with possession of any part of the Secured Property, except to the extent contemplated by this Deed.

### 9.17 Representations and warranties by the Security Trustee

The Security Trustee represents and warrants for the benefit of each Beneficiary that:

- (a) it is duly registered and has the corporate power to own its property and to carry on its business as is now being conducted;
- (b) the execution, delivery and performance of this Deed does not violate its constitution;
- (c) it has the power, and has taken all corporate and other action required, to enter into this Deed and to authorise the execution and delivery of this Deed and the performance of its obligations under this Deed; and
- (d) this Deed constitutes its valid and legally binding obligations and is enforceable in accordance with its terms (except to the extent limited by equitable principles and laws affecting creditors' rights generally), subject to any necessary stamping and registration.

### 9.18 Security Trustee as Beneficiary

Nothing in this Deed will be deemed to prohibit the Security Trustee or any related company or director of the Security Trustee from being a Beneficiary or it or any of its subsidiaries from acting in any representative capacity for a Beneficiary provided that, in its capacity as a Beneficiary, neither the Security Trustee nor any such related company or director will enjoy any rights different to those enjoyed by any other Beneficiary.

## 10. Appointment of new Security Trustee, remuneration, etc.

### 10.1 Appointment

The power of appointing a new Security Trustee shall, subject as provided in this clause, be vested in the Majority Beneficiaries.

### 10.2 Removal of Security Trustee

The Majority Beneficiaries may at any time by notice in writing to the Borrower and the Security Trustee remove the Security Trustee for the time being under this Deed and appoint a successor. The removal of a Security Trustee shall not become effective unless there remains a Security Trustee in office after such removal. The Security Trustee shall notify each Beneficiary Representative and each Unrepresented Beneficiary of its removal and/or the appointment (after consultation with the Borrower) of a new Security Trustee.

### 10.3 Resignation

- (a) The Security Trustee may resign by giving not less than one month's prior written notice to each Beneficiary Representative and each Unrepresented Beneficiary (with a

copy to the Borrower) following receipt of which the Majority Beneficiaries shall (after consultation with the Borrower) appoint a successor Security Trustee.

- (b) If the Majority Beneficiaries have not, within 30 days after notice of the Security Trustee's resignation, appointed a successor Security Trustee which accepts the appointment, the Security Trustee may appoint (after consultation with the Borrower) a successor Security Trustee.
- (c) The resignation of the Security Trustee and the appointment of any successor Security Trustee will both become effective only upon the successor Security Trustee notifying each Beneficiary Representative and each Unrepresented Beneficiary that it accepts its appointment.
- (d) On giving such notification, the successor Security Trustee will succeed to the position of the Security Trustee and thereafter the term Security Trustee will mean the successor Security Trustee.
- (e) All reasonable costs and expenses associated with such succession will be borne by the Borrower.
- (f) The retiring Security Trustee shall make available to the successor Security Trustee such documents and records and provide such assistance as the successor Security Trustee may reasonably request for the purposes of performing its functions as Security Trustee under this Deed.
- (g) Upon its resignation becoming effective this Deed shall continue to benefit the retiring Security Trustee in respect of any action taken or not taken by it under or connection with this Deed and the Security Documents while it was the Security Trustee and, subject to the obligations contained in clause 10.3(f), the retiring Security Trustee shall have no further obligations under this Deed or the Security Documents.

#### 10.4 **Accountability**

The Security Trustee shall not be accountable to any of the other Beneficiaries for any remuneration nor for any other payment of any nature (whether in respect of its costs, expenses or otherwise) which it has received or may receive from any person in respect of its acting as Security Trustee. The Security Trustee shall not by virtue of receiving such remuneration or other payment be deprived of any rights, powers, privileges or immunities under this Deed or the Security Documents or under statute or at common law.

### 11. **Covenants, representations and negative undertakings**

#### 11.1 **Protection of Purchaser**

A purchaser dealing with the Security Trustee or any receiver appointed pursuant to this Deed shall not be concerned in any way with the provisions of this Deed but shall be entitled to assume that the Security Trustee is, or that receiver is, as the case may be, acting in accordance with the provisions of this Deed.

#### 11.2 **No Action to Detriment**

No Beneficiary shall do, nor permit to be done, any act or thing or enter into any agreement with any Obligor that would prejudice or affect in any way any of the arrangements recorded in this Deed.

#### 11.3 **Beneficiaries to consult**

Each Beneficiary Representative and each Unrepresented Beneficiary undertakes to each other Beneficiary Representative and Unrepresented Beneficiary that, prior to issuing instructions to the Security Trustee under any of clauses 9.4(a), 9.4(b), 9.14, 9.15, 14.2(a) or 14.2(b), it will consult with each Beneficiary Representative and Unrepresented Beneficiary for a period of 3 Business Days or any shorter period acceptable to the relevant Beneficiary Representative or Unrepresented Beneficiary in relation to the subject matter of the proposed instructions. For the avoidance of doubt, this undertaking is only to consult, and does not require the Majority Beneficiaries to reach an agreement with any Beneficiary Representative or Unrepresented Beneficiary before the Majority Beneficiaries give their instructions to the Security Trustee pursuant to the relevant clauses.

## 11.4 Representations

- (a) **General:** Each Obligor makes the representations and warranties set out in this clause 11.4 to the Security Trustee on the date of this Deed and on the other dates referred to in clause 11.4(b).
- (i) **Status:** It is duly established and existing under the laws of its jurisdiction of incorporation.
  - (ii) **Power:** It has power to enter into and perform its obligations under the Security Documents.
  - (iii) **Authorisations:** It has all necessary authorisations and has taken all necessary corporate and other action to authorise the entry into, execution and delivery of the Security Documents, and the performance of all the obligations expressed to be binding on it under the Security Documents;
  - (iv) **Binding obligations:** Its obligations under the Security Documents are legal, valid, binding and enforceable against it, in each case in accordance with its terms, subject to applicable bankruptcy, re-organisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject also (as to enforceability) to equitable principles of general application regardless of whether enforcement is sought in a proceeding in equity or at law.
  - (v) **No violation:** To the best of its knowledge, the execution, delivery and performance by it of its obligations under the Security Documents do not violate:
    - (A) any law applicable to it;
    - (B) its constitutional documents; or
    - (C) any agreement or other instrument binding upon it or any of its assets, breach of which would reasonably be expected to have a material adverse effect on the Security Trustee.
  - (vi) **Solvency test:** It satisfies the solvency test (as defined in section 4 of the Companies Act).
  - (vii) **No filing or stamp taxes:** It is not necessary that any of the Security Documents be filed, recorded or enrolled with any court or other authority or that any stamp, registration or similar tax be paid on or in relation to the Security Documents or the transactions contemplated by this Deed.
- (b) **Repetition:** Each Obligor shall be deemed to repeat the representations and warranties in this clause 11.4 (other than the representation in sub-clause (vi)) on the first day of each month until the Borrower is released from its obligations under the Security Documents, in each case by reference to the facts and circumstances then existing.

## 12. Register

The Security Trustee shall maintain a register in which shall be recorded:

- (a) the name and address of each Beneficiary (other than Beneficiaries particulars of whom are recorded in a register kept by a recognised securities registrar); and
- (b) brief particulars of each Approved Facility of each Beneficiary, including the original principal amount of the Approved Facility, that Beneficiary's original commitment under the Approved Facility and currency of account,

and shall upon request by any Beneficiary (or, where one exists, its Beneficiary Representative) provide to that Beneficiary or Beneficiary Representative a copy of the information recorded in the register.

## 13. Notice

### 13.1 In writing

Each notice or other communication to be given or made to any party to this Deed shall:

- (a) be given or made in writing, by letter or email and be signed by the sender or an authorised officer of the sender;
- (b) be given or made to that party at the address or email address notified by that party to the other parties as that party's address and email address for the receipt of notices and communications under this Deed, and marked for the attention of the person (if any), from time to time designated by that party to the other for the purposes of this Deed; and
- (c) not be effective until received by that party, and any such notice or communication shall be deemed to be received by that party (if given or made by letter) when left at the address of that party or 5 Business Days after being put in the post, postage prepaid, and addressed to that party at that address,

provided that any notice or communication received or deemed received after 5 pm on a Business Day at the place to which it is sent, or on a day which is not a Business Day in that place, shall be deemed not to have been received until the next Business Day in that place.

### 13.2 Initial Address and Numbers

The initial address, email address and person (if any) so designated by each party to this Deed are set out below:

- (a) In the case of the Facility Agent:

ANZ Bank New Zealand Limited  
Level 25, ANZ Centre  
23-29 Albert Street  
Auckland 1052

Attention: Loan Agency and Syndications

Email address:

- (b) In the case of the Security Trustee:

NZGT Security Trustee Limited  
Level 14, 191 Queen Street  
Auckland 1010

Attention: Relationship Manager

Email address:

- (c) In the case of the Obligors:

Argosy Property Limited  
39 Market Place  
Auckland 1010

Attention: Chief Financial Officer

Email address:

### 13.3 Receipt

A communication under this Deed will only be effective:

- (a) in the case of personal delivery, when delivered;
- (b) if posted or delivered to a document exchange, five working days in the place of receipt after posting (by airmail if to another country) or delivery to the document exchange; or
- (c) if sent by email, when delivered to the addressee,

provided that any communication received or deemed received after 5:00pm or on a day which is not a working day in the place to which it is delivered, posted or sent shall be deemed not to have been received under the next working day in that place.

### 13.4 Electronic communication

Any communication to be made between the parties to this Deed under or in connection with this Deed may be made by electronic mail or other electronic means. The parties:

- (a) agree that, unless and until notified to the contrary, this is to be an accepted form of communication;
- (b) shall notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means;
- (c) shall notify each other of any change to their address or any other such information supplied by them;
- (d) agree that an electronic communication made will be effective only when it is actually received in readable form and in the case of an electronic communication made to the Security Trustee, only if it is addressed in such a manner as the Security Trustee shall specify for this purpose;
- (e) agree that notwithstanding anything else in this Deed, a certificate or other document required from an Obligor under this Deed may not be served by email unless the email attaches a scanned copy of the signed certificate or other documents. If required, the relevant Obligor must provide to the Security Trustee the original of the signed certificate or other document; and

- (f) agree that in relation to any communication made to or received by the Security Trustee (as the case may be) pursuant to this clause 13.4, the Security Trustee:
  - (i) has no obligation to investigate an instruction to check it was sent by the person it was purported to be sent by;
  - (ii) has no obligation to act on incorrect or incomplete instructions or instructions which do not follow the agreed process; and
  - (iii) is authorised to accept any email address advised to it by any authorised representative of the person making such communication.

## 14. Waivers and remedies

### 14.1 Exercise of Rights

Except as otherwise provided in this Deed, all rights of the Security Trustee may be exercised at any time and from time to time at the absolute discretion of the Security Trustee. No failure on part of the Security Trustee to exercise, and no delay on its part in exercising, any right under this Deed or any Security Document will operate as a waiver thereof, nor shall any single or partial exercise of any right preclude any other or further exercise thereof or the exercise of any other right. The rights and remedies provided in this Deed and the Security Documents are cumulative and not exclusive of any rights or remedies provided by law.

### 14.2 Amendments and Waivers

- (a) Subject to the terms of this Deed (including, for the avoidance of doubt, clauses 17.4 and 17.5), any provision of this Deed or any Security Document may be amended or supplemented or a waiver or consent given in respect of it only if the Borrower and the Security Trustee acting on the instructions of the Majority Beneficiaries agree in writing, but an amendment, supplement or waiver or consent which:
  - (i) changes or relates to clause 4, clause 5.4, clause 8.3, clause 17.2, clause 19 or clause 20, or this clause 14.2 (or any of the defined terms directly or indirectly used therein); or
  - (ii) changes the required majority or majorities of Beneficiaries (or any unanimity of Beneficiaries) necessary to enact any agreement, consent or deliver any instructions under this Deed or Security Document; or
  - (iii) has the effect of permitting the release of any Secured Property from the Security Documents except as permitted by this Deed prior to such amendment, supplement or waiver,

shall only be made or given by the Security Trustee acting on the instructions of all Beneficiary Representatives and Unrepresented Beneficiaries.

- (b) If any proposed amendment, supplement or waiver or consent would have a material adverse effect on the Bondholders, any other group of Represented Beneficiaries, any Unrepresented Beneficiary or any group of Unrepresented Beneficiaries, when compared with the effect it has on the other Beneficiaries, then solely for the purposes of giving instructions to the Security Trustee in relation to the relevant amendment, supplement or waiver or consent, any approval of the Majority Beneficiaries must also include the approval of the relevant Bond Supervisor or the relevant Beneficiary Representative or the other Unrepresented Beneficiary or group of Unrepresented Beneficiaries, as the case may be.



- (c) The Security Trustee may agree with the Obligors to make any amendment or supplement to, or give any waiver or consent in respect of, this Deed or any Security Document, with the prior consent of the Majority Beneficiaries but without the prior consent of the other Beneficiaries, if the amendment, waiver, consent or supplement (in the opinion of the Security Trustee):
- (i) is made to correct a manifest error; or
  - (ii) is of a minor, administrative or technical nature; or
  - (iii) is to comply with the requirements or a modification of the requirements of any applicable law or any rules of any stock exchange in New Zealand or elsewhere,

and, in any such case, the Security Trustee is of the opinion that such amendment, waiver, consent or supplement will not be materially prejudicial to the interests of the Beneficiaries generally or any Beneficiary or group of Beneficiaries individually. The Borrower shall provide notice of any such proposed amendment, waiver, consent or supplement to each Beneficiary Representative, each Unrepresented Beneficiary and the Security Trustee and, if no objection is received and notified to the Security Trustee within 10 Business Days, the Security Trustee may take all steps necessary to effect such amendment, waiver, consent or supplement (and the Security Trustee shall not be liable or responsible to the Beneficiaries or any other person for taking such steps where it is not notified of any objection within that 10 Business Day period).

- (d) An amendment or supplement or waiver or consent that, in any way, affects the rights or obligations of an Obligor (and does not relate solely to the rights of the Beneficiaries as between themselves) shall require the written consent of the Borrower and relevant Guarantor(s).
- (e) Any such amendment, supplement or waiver and any consent or approval by the Security Trustee under this Deed or any other Security Document:
- (i) shall not be effective unless it is in writing, may be given subject to any conditions thought fit by the person/s giving it, may be withdrawn or modified at any time, and shall be effective only in the instance and for the purpose for which it is given; and
  - (ii) in the case of an amendment, supplement or waiver or consent in accordance with clauses 14.2(a) or 14.2(c), shall take effect upon the later of the following dates:
    - (A) the date of execution by the Security Trustee and the Borrower (and any other relevant party or parties to the relevant document) of a deed embodying such variation; and
    - (B) the date on which the Majority Beneficiaries, or, in the case of an amendment, supplement, waiver or consent which requires the consent of all Beneficiary Representatives and Unrepresented Beneficiaries pursuant to clause 14.2(a), all Beneficiary Representatives and Unrepresented Beneficiaries, consent(s) in writing to the variation embodied in the deed of variation, or to the waiver, consent or approval, as the case may be; and
  - (iii) in the case of an amendment, supplement, waiver or consent in accordance with clause 14.2(b), shall take effect upon the later of the following dates:

- (A) the date of execution by the Security Trustee and the Borrower (and any other relevant party or parties to the relevant document) of a deed embodying such variation; and
  - (B) the date on which the materially adversely affected Bondholders, any other group of Represented Beneficiaries, any Unrepresented Beneficiary or any group of Unrepresented Beneficiaries (as applicable) consent(s) in writing to the variation embodied in the deed of variation, or to the waiver, consent or approval, as the case may be.
- (f) Any amendment, supplement or waiver made pursuant to this clause 14.2 shall thereafter bind all Beneficiaries from time to time whether or not they have consented to the amendment, supplement or waiver, and the rights and entitlements of all Beneficiaries under this Deed shall thereafter be read and construed accordingly.
- (g) Where a decision is to be made by all the Beneficiary Representatives and Unrepresented Beneficiaries, the Majority Beneficiaries or an Instructing Majority to take any action under this Deed, or an instruction is to be given to the Security Trustee by such parties under this Deed, such decision or instruction shall be evidenced by a written instrument signed by or on behalf of the relevant Beneficiary Representative(s) and Unrepresented Beneficiary/ies. Any such instrument may consist of several documents in like form, each signed by or on behalf of one or more of the relevant Beneficiary Representative(s) and Unrepresented Beneficiary/ies.

### 14.3 Determinations

Any determination by the Security Trustee pursuant to this Deed shall be conclusive save for manifest error.

## 15. Release and reinstatement

### 15.1 Release and Discharge

Except as otherwise expressly provided in this Deed the respective obligations and liabilities of each party to this Deed under this Deed shall remain in full force and effect until the execution by the Security Trustee of a deed of release and discharge (in such form as may be agreed by those parties).

### 15.2 Reinstatement

Where, by reason of the operation of this Deed or otherwise, any payment made to a Beneficiary by an Obligor or any Beneficiary is avoided, set aside or reversed under any law in force relating to liquidation or the relief of creditors or otherwise then notwithstanding the provisions of any document (including any discharge, receipt or other acknowledgement made or given by the relevant Beneficiary in receipt of such payment) that payment shall be deemed not to have been made and the rights and remedies of that Beneficiary pursuant to this Deed shall be reinstated and restored to the necessary extent.

## 16. Costs

The Obligors will pay each cost or loss incurred by the Security Trustee in connection with:

- (a) the preparation, negotiation, entry into, registration and release of each Financing Document to which it is party (such costs to be reasonable);

- (b) each amendment to, waiver in respect of, or discharge of, a Financing Document to which it is party (such costs to be reasonable); and
- (c) the exercise, protection or enforcement of the Beneficiaries' rights under a Financing Document,

in each case, within 3 business days of demand and on a full indemnity basis and will indemnify and hold the Security Trustee harmless against any liability with respect to, or resulting from, any failure to pay, when due, any such cost.

## 17. Miscellaneous provisions

### 17.1 Partial Invalidity

If, at any time, any provision of this Deed is or becomes illegal, invalid or unenforceable that illegality, invalidity or unenforceability shall not affect the ability of any party to enforce the remaining provisions of this Deed.

### 17.2 Governing Law

This Deed shall be governed by and construed in accordance with New Zealand law and by execution of this Deed each party hereto accepts for itself and in respect of its property and assets, generally and unconditionally the non-exclusive jurisdiction of the courts of New Zealand.

### 17.3 Perpetuity Period

The perpetuity period for each trust created by this Deed shall be 80 years from the date of this Deed.

### 17.4 Modified application

Subject to paragraph (b) below, any provision in any Financing Document or other documentation (other than this Deed) entered into between, or binding upon, an Obligor and any Beneficiary or group of Represented Beneficiaries which:

- (a) provides (expressly or by implication) for the rights or benefits of that Beneficiary or group of Represented Beneficiaries under or arising out of this Deed (including, without limitation, in respect of the giving of notices, reporting requirements, voting entitlements, waivers or modifications) to be exercised or held by or through any Beneficiary Representative, and/or that any such rights or benefits are to be held or exercised only by or with the consent of any particular quorum or number of such Beneficiaries or subject to any other qualification or limitation, and/or for such actions to bind all Beneficiaries of the relevant class; or
- (b) otherwise regulates (expressly or by implication) the mode of application, entitlement or exercise by such Beneficiary or group of Represented Beneficiaries of their rights and benefits hereunder,

(a **Provision**) shall have full effect and this Deed shall be read and construed accordingly.

Paragraph (a) above does not limit the Security Trustee's right under clause 9 to rely on notices, statements, documents and instructions and the Security Trustee is not obliged to monitor or enquire into compliance with any Provision.

### 17.5 Consent by Beneficiary Representative

Any consent or approval given by a Beneficiary Representative shall for the purposes of this Deed be deemed to have been validly given on behalf of, and to bind, the group of Represented Beneficiaries that the Beneficiary Representative represents, and none of any of the Obligors, any of the Guarantors, any other Beneficiary or the Security Trustee shall be obliged to enquire or ascertain whether the Beneficiary Representative has obtained consent of the relevant group of Represented Beneficiaries or observed any other formalities required by the terms of issue of the provisions of the relevant Financing Documents, prior to giving such consent or approval.

## 17.6 Contracting out

- (a) To the maximum extent permitted by law, the parties agree to contract out of any non-mandatory or default duties of trustees implied into this Deed by the operation of any law applicable to the Security Trustee or to trustees generally from time to time.
- (b) Each party agrees that any amendment to this Deed required by the Security Trustee solely to give effect to paragraph (a) above shall be an amendment which may be made pursuant to clause 14.2(c) such that only the agreement of the Obligors and the prior consent of the Majority Beneficiaries are required.

## 17.7 Set off

If any party (including any Beneficiary) owes an amount to the Security Trustee under any Security Document, the Security Trustee may set off the amount against any payments or distributions to that party which the Security Trustee would otherwise be obliged to make under the Security Documents. For the purposes of the Security Documents, that party shall be regarded as having received any amount set off.

## 17.8 Indemnities continuing

All indemnities of each party (and any other payment obligations of any Obligor) in each Security Document are continuing and survive termination or discharge of the Security Document and termination of the trust created in clause 2.

## 18. Anti-money laundering

### 18.1 Obligations and information

Notwithstanding any other provision of a Financing Document to the contrary:

- (a) the Security Trustee is not obliged to do or omit to do anything in connection with a Financing Document if it would, or might in its reasonable opinion, constitute a breach of any AML/CFT Law; and
- (b) each Obligor and Beneficiary agrees to provide any information and documents that are within its possession, custody or control reasonably required by the Security Trustee in order for the Security Trustee to comply with any AML/CFT Law in connection with a Financing Document.

### 18.2 Disclosure

If the Security Trustee forms the view that, in its reasonable opinion, it is required to disclose information obtained in connection with the Financing Documents to any person in order to comply with any AML/CFT Law, the parties agree that, to the extent permitted by law, such disclosure will not breach any duty of confidentiality owed by the Security Trustee to any other party to this document.

### 18.3 Representation and warranty

Each Obligor and Beneficiary represents and warrants in favour of the Security Trustee that it is not acting as trustee or agent in entering into the Financing Documents, except to the extent expressly provided in the Financing Documents or disclosed in writing to the Security Trustee.

### 18.4 Obligations

Each Obligor and Beneficiary agrees to exercise its rights and perform its obligations under the Financing Documents in accordance with all applicable AML/CFT Law.

### 18.5 Sanctions

- (a) Each Obligor represents to the Security Trustee that it is not, and none of its subsidiaries are, nor, to the knowledge of that Obligor, any officer of that Obligor or any of its subsidiaries is an individual or entity (**Person**) that is, or is controlled by Persons that are:
- (i) the subject of any sanctions administered or enforced by the US Department of Treasury's Office of Foreign Assets Control, the US Department of State, the United Nations Security Council, the Hong Kong Monetary Authority, the European Union or Her Majesty's Treasury (collectively, the **Sanctions**); or
  - (ii) located, organised or resident in a country or territory that is, whose government is, the subject of Sanctions, including, without limitation, currently the Crimea region, Cuba, Iran, North Korea, Sudan and Syria.
- (b) Each Obligor undertakes to the Security Trustee that it will not, directly or indirectly, use the proceeds of any Approved Facilities, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other person:
- (i) to fund any activities or business of or with any person, or in any country or territory, that, at the time of such funding is, or whose government is, the subject of Sanctions; or
  - (ii) in any other manner that would result in a violation of Sanctions by any person (including any person participating in an Approved Facility, whether as underwriter, advisor, investor or otherwise).

### 18.6 Information

Each party must provide all information to the Security Trustee which the Security Trustee reasonably requires in order to manage its money-laundering, terrorism-financing or economic and trade sanctions risk or to comply with any laws or regulations in Australia, New Zealand or any other country. Each party agrees that the Security Trustee may disclose any information concerning any other party to any law enforcement, regulatory agency or court where required by any such law or regulation in Australia, New Zealand or elsewhere. The Security Trustee may refuse or delay execution of any Accession Deed until it has received any information required by it under this clause 18.6.

### 18.7 Not a trustee

Unless it has disclosed that it is acting in a trustee capacity or on behalf of another party, each party warrants in respect of itself that it is acting on its own behalf in entering into this Deed.

## 18.8 Declaration

Each party declares and undertakes to the Security Trustee that the processing of any transaction by the Security Trustee in accordance with its instructions will not breach any laws or regulations relating to anti-money laundering in Australia, New Zealand or any other country.

## 19. Security Trustee limitation of liability

(a) Without prejudice to the right of indemnity given by law to trustees generally, the Security Trustee will be indemnified out of the Secured Property against all costs, expenses (including legal expenses and disbursements on a full indemnity basis), loss and liabilities incurred by it in acting as Security Trustee, performing any of its duties or exercising any of its powers under this Deed or any other Financing Document to the extent that the costs, expense, loss or liability has been incurred by the Security Trustee in connection with the performance of its duties or the exercise of its powers under this Deed or any other Financing Document but this indemnity does not extend to liabilities arising from the Security Trustee's fraud, gross negligence or wilful default.

(b) Notwithstanding any other provision of this Deed:

- (i) the Security Trustee will have no liability under or in connection with this Deed or any other Financing Document (whether to the Beneficiaries, the Obligors or any other person) other than to the extent to which the liability is able to be satisfied in accordance with this Deed out of the Secured Property from which the Security Trustee is actually indemnified for the liability; and
- (ii) no person (including, without limitation, the Beneficiaries and the Obligors) may sue the Security Trustee in relation to this Deed or any other Financing Document in any capacity other than as trustee of the trust constituted under clause 2, including seeking the appointment of a receiver (except in relation to the Secured Property), a liquidator, an administrator or similar person to the Security Trustee or prove in any liquidation, administration or arrangement of or affecting the Security Trustee (except in relation to the Secured Property),

but provided that the limitations in paragraphs (i) and (ii) above will not apply to a liability of the Security Trustee to the extent that it is not satisfied because under this Deed or by operation of law there is a reduction in the extent of the Security Trustee's indemnification out of the Secured Property as a result of the Security Trustee's fraud, gross negligence or wilful default. Nothing in this clause 19 or any similar provision in any other Financing Document limits, or adversely affects, the powers of the Security Trustee in respect of this Deed or the Secured Property.

(c) To the extent permitted by law, each Beneficiary releases the Security Trustee, and its officers, employees, agents and delegates, from liability of any type to it under or in connection with this Deed or any other document to which the Security Trustee is a party in the role of Security Trustee or any related transaction or past or future conduct (including omissions), except to the extent that the Beneficiary suffers a loss, liability or cost directly as a result of fraud, gross negligence or wilful default by the Security Trustee or any officer, employee, agent or delegate.

(d) The Security Trustee holds the benefit of this clause on trust for its officers, personnel, agents, attorneys and delegates, as well as for itself.

## 20. Bond Supervisor limitation of liability

The liability (if any) of each Bond Supervisor under this Deed shall not be unlimited and personal but shall be limited to its right of indemnity under the relevant Bond Documents, to which shall be added such sum as represents the amount by which that Bond Supervisor is not entitled to be indemnified by reason of its wilful default, negligence or wilful breach of trust.

## 21. Delivery

For the purposes of section 9 of the Property Law Act 2007, and without limiting any other mode of delivery, this Deed will be delivered by a party (the **delivering party**), immediately on the earlier of:

- (a) physical delivery of an original of this Deed, executed by the delivering party, into the custody of the Security Trustee or its solicitors; or
- (b) transmission by the delivering party or its solicitors (or any other person authorised in writing by the delivering party) of a photocopied or scanned copy of an original of this Deed, executed by the delivering party, to the Security Trustee or its solicitors.

**Execution**

**Executed** and delivered as a deed.

**Borrower**

**Argosy Property Limited** by:

\_\_\_\_\_  
Director/Authorised Signatory

\_\_\_\_\_  
Director/Authorised Signatory

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
Address

**Guarantors**

**Argosy Property Management  
Limited** by:

\_\_\_\_\_  
Director/Authorised Signatory

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
Address



**Argosy Property No.1 Limited** by:

\_\_\_\_\_  
Director/Authorised Signatory

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
Address

**Argosy Property No.3 Limited** by:

\_\_\_\_\_  
Director/Authorised Signatory

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
Address

**Facility Agent**

**SIGNED** on behalf of **ANZ Bank  
New Zealand Limited**  
by its attorney in the presence of:

\_\_\_\_\_  
Attorney

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
Address

**Security Trustee**

**NZGT Security Trustee Limited**  
by:

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

**Existing Lenders**

**SIGNED** on behalf of **ANZ Bank  
New Zealand Limited**  
by its attorney in the presence of:

\_\_\_\_\_  
Attorney

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
Address

**SIGNED** on behalf of **Bank of New Zealand** by its attorneys in the presence of:

\_\_\_\_\_  
Attorney

\_\_\_\_\_  
Attorney

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Witness to both Signatures

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
Address

**SIGNED** on behalf of **The Hongkong and Shanghai Banking Corporation Limited**, incorporated in the Hong Kong SAR, acting through its New Zealand branch by its attorney in the presence of:

\_\_\_\_\_  
Attorney

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
Address

## Schedule 1: Designation Notice

To: [●] (the **Security Trustee**)

Argosy Property Limited (the **Borrower**) refers to the Security Trust Deed (the **Security Trust Deed**) dated [●] between [●] (as amended or restated from time to time).

Other than as expressly defined in this notice or where the contrary intention appears, capitalised terms defined in the Security Trust Deed shall have the same meanings in this notice.

The Borrower requests that the Security Trustee (on behalf of the Beneficiaries) designates the [loan, other debt security issuance or other financial accommodation or transaction] entered into by [●] described below as an [Approved Loan] [Ancillary Transaction] for the purposes of the Security Trust Deed.

The Borrower represents and warrants to the Security Trustee (on behalf of the Beneficiaries) that the designation of the loan, other debt issuance or other financial accommodation or transaction described below as an Approved Loan will not breach the terms of any Financing Document.

*[Insert description of loan, other debt security issuance or other financial accommodation or transaction, including amount, currency, commitments, and all other relevant details of the relevant indebtedness]*

**Dated** 20[ ]

**Signed by Argosy Property Limited by:**

## Schedule 2: Form of Accession Deed

Deed dated 20[ ]

**BETWEEN [ ] (the [New Beneficiary Representative] [New Unrepresented Beneficiary] [Bond Supervisor])**

**AND [•] (Security Trustee)**

is supplemental to the Security Trust Deed (**Security Trust Deed**) dated 17 May 2010 (as amended or restated from time to time) between, among others, the Security Trustee, ANZ Bank New Zealand Limited as Facility Agent[, [•] as Bond Supervisor] and Argosy Property Limited.

### NOW THIS DEED WITNESSES AS FOLLOWS:

#### ACCESSION

In accordance with the provisions of the Security Trust Deed the [New Beneficiary Representative][New Unrepresented Beneficiary][Bond Supervisor] hereby affirms and ratifies the Security Trust Deed and by the execution of this Accession Deed agrees to observe and be bound by the terms and provisions of the Security Trust Deed as if it were an original party to the Security Trust Deed in the capacity of [Beneficiary Representative][Unrepresented Beneficiary][Bond Supervisor] . [The Beneficiaries represented by that Beneficiary Representative are [ ]

#### INTEGRATION

This Accession Deed shall be read as one with the Security Trust Deed so that any reference therein to "this Deed" and similar shall include and be deemed to include this Accession Deed.

#### INTERPRETATION

Save as expressly defined herein or where the contrary intention appears, capitalised terms defined in the Security Trust Deed shall have the same meanings herein as therein.

#### NOTICES

The initial address, facsimile number and person (if any) designated by the [New Beneficiary Representative][Unrepresented Beneficiary][Bond Supervisor] for the purposes of clause 13 of the Security Trust Deed are as follows:

Address:

Attention:

Facsimile:

#### GOVERNING LAW

This Accession Deed is governed by New Zealand law.

#### EXECUTED AS A DEED

**[NEW BENEFICIARY REPRESENTATIVE][NEW UNREPRESENTED BENEFICIARY][BOND SUPERVISOR]**

Signed by **[New Beneficiary Representative]**  
**[New Unrepresented Beneficiary]****[Bond**  
**Supervisor]** by its attorney [name]

\_\_\_\_\_

in the presence of:

\_\_\_\_\_

Name:

Occupation:

Address:

The Security Trustee confirms that it has received an Designation Notice in respect of the **[NEW BENEFICIARY REPRESENTATIVE]****[NEW UNREPRESENTED BENEFICIARY]**

**SECURITY TRUSTEE**

Signed by **[•]** as Security Trustee by two directors:

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Name of director

\_\_\_\_\_  
Name of director