

A decorative graphic consisting of a grid of teal squares of varying shades, arranged in a pattern that tapers to the right, set against a dark teal background.

DUTY OF CARE AGREEMENT



DATED

DUTY OF CARE AGREEMENT

between

[BORROWER]

and

[PROPERTY MANAGER]

and

Cynergy Bank plc

CONTENTS

CLAUSE

1. Definitions and interpretation..... 2

2. Facility Letter..... 6

3. Care, skill and reliance..... 8

4. Rental Income and Tenant Contributions..... 9

5. Documents and copyright..... 10

6. Termination of Property Management Agreement..... 11

7. Property Management Agreement..... 13

8. Insurance..... 14

9. No counterclaim by Property Manager..... 14

10. Property Manager's liability 15

11. Rights of Lender..... 15

12. Further assurance 16

13. Assignment and transfer 16

14. Amendments, waivers and consents 16

15. Partial invalidity..... 17

16. Counterparts 17

17. Third party rights 17

18. Notices..... 17

19. Termination..... 19

20. Governing law and jurisdiction..... 19

This deed is dated [DATE]

Parties

- (1) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Borrower**)
- (2) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Property Manager**)
- (3) Cynergy Bank plc incorporated and registered in England and Wales with company number 04728421 whose registered office is at 4th Floor, One New Change, London EC4M 9AF (**Lender**)

BACKGROUND

- (A) The Lender has agreed, under the Facility Letter, to provide the Borrower with a loan facility on a secured basis.
- (B) The Property Manager has been appointed by the Borrower under the Property Management Agreement to manage the Property.
- (C) It is a condition precedent to the facility being made available under the Facility Letter that the Property Manager enters into this deed.

AGREED TERMS

1. Definitions and interpretation

1.1 Definitions

Terms defined in the Facility Letter shall, unless otherwise defined in this deed, have the same meaning in this deed. In addition, the following definitions apply in this deed:

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Collection Account: the trust or client account maintained by the Property Manager solely for the benefit of the Borrower in respect of the Property in accordance with the Property Management Agreement and includes any interest of the Borrower in that account, or of the Property Manager or the Borrower in any replacement account or sub-account or subdivision of that account.

Documents: copies of, and extracts from, any plans, drawings, specifications, calculations, records and other documents and information prepared by, or on behalf of, the Property Manager in relation to the Property and all revisions and additions to them.

Event of Default: has the meaning given to that expression in the Facility Letter.

Facility Letter: the facility letter dated [DATE] between the Borrower and the Lender.

Facility Documents: has the meaning given to that expression in the Facility Letter.

Insurance: the professional indemnity insurance referred to in clause 8.1(a).

Net Rental Income: Rental Income but excluding (to the extent otherwise included) and without double counting:

- a) all Tenant Contributions in relation to the Property; and
- b) any sum representing any value added tax or similar tax chargeable in respect of Rental Income.

Occupational Lease: any occupational lease, underlease or sublease or tenancy of, or licence, or other right to occupy the Property (or part of it).

Property: [DETAILS OF PROPERTY].

Property Management Agreement: the agreement dated [DATE] between the Property Manager and the Borrower relating to managing the Property and includes any replacement of that agreement or supplement to it.

Rent Account: the Borrower's account with account number [NUMBER], sort code [NUMBER] held with the [BRANCH DETAILS] branch of [NAME OF BANK], as that account may be renumbered or redesignated from time to time.

Rental Income: all amounts paid or payable to, or for the account of, the Borrower in connection with the letting, licence or grant of other rights of use or occupation of all or any part of the Property, including (but not limited to and without double counting) each of the following amounts:

- a) rent, licence fees, service charges, insurance premiums, contributions to a sinking fund and other monies reserved by, or arising out of, any Occupational Lease (and any equivalent amounts);
- b) monies in respect of the occupation or use of the Property (or part of it) or in respect of a fixture or fitting on the Property, including a fixture for display or advertisement, whether under a licence or otherwise;
- c) a sum equal to any apportionment of rent in favour of the Borrower under any contract to purchase the Property;

- d) monies from any deposit held as security for the performance of any tenant's obligations;
- e) payments in respect of a breach of covenant under an Occupational Lease or dilapidations in relation to the Property and for expenses incurred by the Borrower in relation to any such breach or dilapidations;
- f) profits awarded, or agreed to be payable, because of any proceedings taken or claim made;
- g) damages, compensation, settlement or expenses for, or representing, loss of rent or interest on rent, awarded or agreed to be payable because of any proceedings taken or claim made for the same less any fees and expenses paid (which have not been reimbursed to, and are not recoverable by, the Borrower) in respect of those proceedings or claim;
- h) insurance proceeds in respect of loss of rent or interest on rent;
- i) any sum, or the value of any consideration, for the grant, surrender or variation of any Occupational Lease or agreement for the occupation or use of the Property (or part of it);
- j) monies from any guarantor or other surety of any tenant under an Occupational Lease or other occupier or user;
- k) interest, damages, compensation or settlement in respect of any sum referred to above; and
- l) value added tax or similar tax on any sum referred to above.

Secured Liabilities: means all of each Borrower's present and future obligations and liabilities of any kind and in any currency (whether actual or contingent and whether owed jointly or severally or in any other capacity whatsoever) to the Lender together with all costs, charges and expenses incurred by the Lender in connection with the protection, preservation or enforcement of its rights, including but not limited to obligations and liabilities under the Facility Documents or any other document evidencing or securing any such liabilities.

Tenant Contributions: each of the following amounts:

- a) all amounts paid or payable to, or for the account of, the Borrower from any tenant under an Occupational Lease or other occupier or user of the Property (or part of it) by way of payment of, or contribution to, insurance premiums or the cost of any insurance valuation or by way of service charge in respect of costs incurred, or to be incurred, by the Borrower in relation to the management, maintenance or repair of the Property or any similar obligation or in providing services to a tenant, other occupier or user of the Property (or part of it);

- b) all amounts paid or payable to, or for the account of, the Borrower in respect of a breach of covenant under an Occupational Lease or dilapidations in relation to the Property or for expenses incurred by the Borrower in relation to any such breach or dilapidations, where the amount received is, or is to be, applied by the Borrower in remedying the breach, carrying out work in respect of the dilapidations or discharging those expenses;
- c) any contribution to a sinking fund by any tenant or other occupier or user of the Property (or part of it); and
- d) value added tax or similar tax on any sum referred to above.

1.2 Interpretation

In this deed:

- (a) clause and Schedule **OR** clause, Schedule and paragraph headings shall not affect the interpretation of this deed;
- (b) a **person** includes an individual, firm, company, corporation, partnership, unincorporated body of persons, government, state or agency of a state or any association, trust, joint venture or consortium (whether or not having separate legal personality);
- (c) unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;
- (d) unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;
- (e) a reference to a party shall include that party's successors, permitted assigns and permitted transferees and this deed shall be binding on, and enure to the benefit of, the parties to this deed and their respective personal representatives, successors, permitted assigns and permitted transferees;
- (f) a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;
- (g) a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision;
- (h) a reference to **writing** or **written** includes fax and email;
- (i) an obligation on a party not to do something includes an obligation not to allow that thing to be done;
- (j) a reference to **this deed** (or any provision of it) or to any other agreement or document referred to in this deed is a reference to this deed, that provision or such other agreement or document as amended (in each case, other than in breach of the provisions of this deed) from time to time;

- (k) unless the context otherwise requires, a reference to a clause or Schedule is to a clause of, or Schedule to, this deed and a reference to a paragraph is to a paragraph of the relevant Schedule;
- (l) any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;
- (m) a reference to an **amendment** includes a novation, supplement or variation (and **amend** and **amended** shall be construed accordingly);
- (n) a reference to an **authorisation** includes an approval, authorisation, consent, exemption, filing, licence, notarisation, registration or resolution;
- (o) a reference to **continuing** in relation to an Event of Default means an Event of Default that has not been remedied or waived;
- (p) a reference to **determines** or **determined** means, unless the contrary is indicated, a determination made at the absolute discretion of the person making it; and
- (q) a reference to a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation.

2. Facility Letter

2.1 Representations

The Property Manager makes the representations and warranties in clause 2.2 to clause 2.9 to the Lender on the date of this deed.

2.2 Tax residency

The Property Manager has, and will for the duration of the Property Management Agreement continue to have, its usual place of abode (for the purposes of the Taxation of Income from Land (Non-residents) Regulations 1995) in the United Kingdom.

2.3 Due incorporation

The Property Manager:

- (a) is a duly incorporated [limited liability company **OR** limited liability partnership] validly existing under the law of its jurisdiction of incorporation; and

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

2.4 Power and authority

The Property Manager has the power to enter into, deliver and perform, and has taken all necessary action to authorise its entry into, delivery and performance of this deed and the Property Management Agreement and the transactions contemplated by them.

2.5 Non-contravention

The entry into and performance by the Property Manager of, and the transactions contemplated by, this deed and the Property Management Agreement do not and will not contravene or conflict with:

- (a) any law or regulation or judicial or official order applicable to it;
- (b) its constitutional documents; or
- (c) any agreement or instrument binding on it or its assets or constitute a default or termination event (however described) under any such agreement or instrument.

2.6 Authorisations

The Property Manager has obtained all required or desirable authorisations to enable it to enter into, exercise its rights and comply with its obligations in this deed and the Property Management Agreement and to make them admissible in evidence in its jurisdiction of incorporation. Any such authorisations are in full force and effect.

2.7 Binding obligations

Subject to general equitable principles and insolvency and other laws generally applicable to creditors' rights, the obligations expressed to be assumed by the Property Manager in this deed and the Property Management Agreement are legal, valid, binding and enforceable obligations.

2.8 Governing law and enforcement

The choice of the law of England and Wales as the governing law of this deed and the Property Management Agreement will be recognised and enforced in the Property Manager's jurisdiction of incorporation and any judgment obtained in England or Wales in relation to this deed or the Property Management Agreement will be recognised and enforced in that jurisdiction.

2.9 Insolvency proceedings

- (a) No action, proceeding, procedure or step has been taken (save for the purposes of any solvent reorganisation or reconstruction that has previously been approved in writing by the Lender) in relation to:
 - (i) the suspension of payments, a moratorium in respect of any indebtedness, winding-up, dissolution, administration or reorganisation (using a voluntary arrangement, scheme of arrangement or otherwise) of the Property Manager;
 - (ii) a composition, compromise, assignment or arrangement with any creditor of the Property Manager; or
 - (iii) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of the Property Manager or any of its assets.
- (b) No event has occurred in relation to the Property Manager that is analogous to those set out in clause 2.9(a) in any jurisdiction.
- (c) A winding-up petition that is frivolous or vexatious and is discharged, stayed or dismissed within 14 days of commencement or, if earlier, the date on which it is advertised shall be excluded from clause 2.9(a).

2.10 Repetition

The Property Manager repeats the representations and warranties in clause 2.2 to clause 2.9 on the date of each Drawdown Request, each Drawdown Date and the first day of each Interest Period (each as defined in the Facility Letter) by reference to the facts and circumstances existing on each such date.

3. Care, skill and reliance

3.1 Duty of care

The Property Manager shall:

- (a) comply with the terms of, and fulfil its obligations in, the Property Management Agreement (as varied by this deed); and
- (b) exercise all reasonable skill, care and diligence in performing its obligations under the Property Management Agreement (as varied by this deed), provided that the Property Manager will have no greater liability to the Lender by virtue of this clause 3 than it would have had if the Lender were a party to the Property Management Agreement (as varied by this deed).

3.2 Acknowledgements

The Property Manager acknowledges that each of the Lender and the Borrower is deemed to have relied on the Property Manager's reasonable skill, care and diligence in respect of those matters relating to the Property that lie within the scope of the Property Manager's responsibilities under the Property Management Agreement and that the Property Manager owes to each of the Lender and the Borrower a professional duty of care.

4. Rental Income and Tenant Contributions

4.1 Collection of Rental Income and Tenant Contributions

The Property Manager undertakes separately to each of the Lender and the Borrower that it will:

- (a) promptly demand Rental Income and (if, and to the extent, it receives any amounts in respect of Rental Income) pay all amounts in respect of Net Rental Income immediately on receipt or, if later, clearance and without withholding (unless obliged to do so by law), set-off or counterclaim directly into the Rent Account and the balance of the Rental Income (including any amounts in respect of Tenant Contributions) into the Collection Account;
- (b) until receipt into the Rent Account or, as the case may be, Collection Account, hold all Rental Income (including Tenant Contributions) on trust for the Lender and notify that trust to any financial institution where the Property Manager has accounts in which Rental Income is held; and
- (c) keep accurate and proper records of all Rental Income (including, without limitation, all Tenant Contributions) paid to it.

4.2 Acknowledgement of security

- (a) The Property Manager acknowledges that the Borrower has charged, by way of legal mortgage, the Property and has assigned the Rental Income absolutely, subject to a proviso for reassignment on irrevocable discharge in full of the Secured Liabilities, in each case, to the Lender.
- (b) If the Lender gives written notice to the Property Manager and the Borrower that an Event of Default has occurred, then the Property Manager acknowledges that the Lender may require the Borrower to give notice or further notice to the tenants, occupiers or other users of the Property to pay all Rental Income including Tenant Contributions in accordance with the Lender's instructions and that this will not constitute a breach of the Property Management Agreement.

4.3 Tenant Contributions shortfall or arrears

The Borrower undertakes with the Property Manager that it shall, where there is a shortfall or arrears in respect of Tenant Contributions received by the Property Manager, provide the Property Manager with sufficient funds to enable the Property Manager to perform its obligations under the Property Management Agreement and the Property Manager undertakes to use those funds for the purpose of performing those obligations.

5. Documents and copyright

5.1 Documents and other information

- (a) The Property Manager shall, within ten Business Days of a written request from the Lender, provide to the Lender:
 - (i) the Documents; and
 - (ii) any information that the Lender (acting reasonably) requests from time to time relating to the Property or any tenant, occupier or other user of the Property of which the Property Manager is aware including, without limitation, information relating to the state or condition of the Property and any rental arrears or disputes relating to the Property,and the Borrower grants its consent for all those Documents and other information to be provided to the Lender.
- (b) The Borrower shall reimburse the Property Manager for the cost to the Property Manager of providing the Documents or any other information under clause 5.1(a) to the Lender.

5.2 Lender's licence

- (a) The Property Manager, in so far as it is able, grants to the Lender (and the Borrower grants its consent) an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of the Documents and all works, designs and inventions of the Property Manager in relation to the Property for all purposes in connection with the Property, including (without limitation) any construction, completion, reconstruction, alteration, modification, extension, repair, use, letting, sale or advertisement of the Property or the interests of the Borrower or of the Lender in the Property. The Property Manager will not be liable for:
 - (i) any use of any Document not prepared by the Property Manager;
 - (ii) any modification made to any Document that is not agreed by the Property Manager; or

- (iii) any use of any Document for a purpose other than the purpose for which that Document was prepared and provided by the Property Manager.
- (b) This licence carries the right to grant sub-licences and is transferable to third parties without the Property Manager's consent.

6. Termination of Property Management Agreement

6.1 Termination by Property Manager

- (a) The Property Manager may not:
 - (i) discontinue or suspend performance of its obligations under the Property Management Agreement;
 - (ii) rescind or terminate the Property Management Agreement or its appointment under it; or
 - (iii) attempt to take any step referred to in clause 6.1(a)(i) or clause 6.1(a)(ii) above,

unless it has first given the Lender and the Borrower at least 28 days' prior written notice of its intention to do so (**Termination Notice**).

- (b) If the Property Management Agreement allows the Property Manager a shorter notice period to exercise a right referred to in clause 6.1(a), the notice period in the Property Management Agreement shall be extended to take account of the notice period required under clause 6.1(a).
- (c) During such 28-day period, the Property Manager will continue to perform fully its obligations under the Property Management Agreement.
- (d) Each Termination Notice must include reasonable details of:
 - (i) the basis on which the Property Manager intends to discontinue or suspend performance of its obligations under the Property Management Agreement or rescind or terminate the Property Management Agreement or its appointment under it; and
 - (ii) any unpaid sum owed by the Borrower to the Property Manager for invoices issued before the Termination Notice.
- (e) If a Termination Notice has been served by the Property Manager in respect of a default by the Borrower of the Borrower's obligations under the Property Management Agreement, any right of the Property Manager referred to in clause 6.1(a) shall cease in respect of that default if, within 28 days of receipt of the Termination Notice, the Lender rectifies or procures the rectification of

the breach to which that Termination Notice relates and gives written notice to the Property Manager:

- (i) requiring the Property Manager not to discontinue or suspend performance of its obligations under the Property Management Agreement nor rescind or terminate the Property Management Agreement or its appointment under it; and
 - (ii) electing to undertake to perform the Borrower's obligations under the Property Management Agreement from the date of the Termination Notice.
- (f) If the Lender gives written notice to the Property Manager under clause 6.1(e):
- (i) the Termination Notice will be revoked automatically on service of that notice; and
 - (ii) the Property Manager will perform its obligations under the Property Management Agreement and the Lender will perform the obligations of the Borrower as though the Lender was and always had been party to the Property Management Agreement in the place of the Borrower.
- (g) The Borrower consents to any election by the Lender made under clause 6.1(e).
- (h) The Property Manager shall not incur any liability to the Borrower by acting in accordance with this clause 6.1.

6.2 Termination by Borrower

The Borrower may not terminate the Property Management Agreement except with the prior written consent of the Lender.

6.3 Termination by Lender for Property Manager's breach

If the Lender determines (acting reasonably) that the Property Manager is in material breach of its obligations under this deed or the Property Management Agreement and that breach continues unremedied for 14 days following written notice to the Property Manager from the Borrower or the Lender, then the Lender may by written notice to the Borrower require that the Borrower:

- (a) immediately terminate the Property Management Agreement in accordance with that agreement; and
- (b) appoint a new managing agent of the Property whose identity has been, and on terms, approved by the Lender.

6.4 Termination by Lender following Event of Default

- (a) If an Event of Default has occurred , the Lender may, by written notice to the Property Manager and the Borrower, elect:
 - (i) that it (or a nominee) undertake to perform the obligations of the Borrower under the Property Management Agreement from the date of the election; or
 - (ii) to terminate immediately the Property Management Agreement and appoint a new managing agent of the Property whose identity is, and on terms, acceptable to the Lender.
- (b) If the Lender makes an election under clause 6.4(a)(i), the Property Manager will perform its obligations under the Property Management Agreement and the Lender (or its nominee) will perform the obligations of the Borrower as though the Lender (or its nominee) was and always had been party to the Property Management Agreement in the place of the Borrower.
- (c) The Borrower consents to any election by the Lender made under clause 6.4(a).
- (d) The Property Manager is entitled to assume that as between the Borrower and the Lender, the Lender is entitled to give notice under clause 6.4(a) and may rely on any notice given under clause 6.4(a) without further enquiry.
- (e) The Property Manager and the Borrower shall, if required to do so by the Lender, execute a novation agreement in form and substance satisfactory to the Lender (acting reasonably) by which the Lender's nominee assumes the rights and obligations of the Borrower under the Property Management Agreement.
- (f) The Property Manager shall not incur any liability to the Borrower by acting in accordance with this clause 6.4.

7. Property Management Agreement

7.1 No reduction of services nor rescission or transfer

Without the prior written consent of the Lender, neither the Property Manager nor the Borrower will:

- (a) reduce the scope of the services to be performed by, or the obligations of, the Property Manager under the Property Management Agreement;
- (b) discharge, rescind or determine the Property Management Agreement by mutual agreement except in accordance with clause 6; or
- (c) assign any of its rights or transfer any of its rights or obligations under the Property Management Agreement or enter into any transaction that would

result in any of those rights or obligations passing to another person other than by way of security pursuant to a Finance Document.

7.2 Notification of breach of Property Management Agreement

The Property Manager will notify the Lender promptly on becoming aware of any breach of the Property Management Agreement by the Borrower and will, at the same time, give to the Lender and the Borrower particulars of the breach.

7.3 Effectiveness if Borrower unable or fails to recover for loss

This deed will be effective despite any inability or failure by the Borrower to recover any loss against the Property Manager for any reason whatsoever under the Property Management Agreement.

8. Insurance

8.1 Professional indemnity insurance

The Property Manager warrants and undertakes to the Lender and the Borrower that:

- (a) at the date of this deed it has professional indemnity insurance with a limit of not less than £5 million in respect of each and every claim arising out of the negligent performance of the services to be performed by it under the Property Management Agreement; and
- (b) for so long as any liability may arise under this deed, it will maintain the Insurance on customary and usual terms for such insurance with reputable insurers lawfully carrying on insurance business in the UK.

8.2 Insurance information

The Property Manager will, promptly on receiving a written request from the Lender or the Borrower, provide to the Lender evidence that the Property Manager has complied with its obligations in this deed and the Property Management Agreement (as varied by this deed) relating to maintaining the Insurance.

9. No counterclaim by Property Manager

9.1 No counterclaim by Property Manager

The Property Manager will not make any claim (whether by way of defence, counterclaim, set-off, lien or otherwise) against the Lender (or any nominee) for any breach by the Borrower of its obligations to the Property Manager under the Property Management Agreement except:

- (a) following an election by the Lender under clause 6.1(e), clause 6.4(a)(i) or other effective novation of the Property Management Agreement by the Borrower to the Lender, for any obligation of the Borrower remaining to be fulfilled; or
- (b) if monies are paid in error by the Property Manager to the Lender.

10. Property Manager's liability

10.1 Property Manager's liability

The Property Manager's liability under this deed will not be diminished, discharged or released or in any other way lessened or affected by either:

- (a) an independent enquiry into any relevant matter that may be made or carried out by or on behalf of the Lender; or
- (b) any act or omission of any person acting on behalf of the Lender (and appointed by the Property Manager in so far as it is able to do so), whether or not the act or omission may or does give rise to an independent liability of that person to the Lender.

11. Rights of Lender

11.1 Delegation by Lender

- (a) The Lender may from time to time delegate by power of attorney or otherwise to any person any of the powers and discretions of the Lender under this deed (whether arising by statute, under this deed or otherwise) on such terms and for such periods as it may think fit and may terminate any such delegation.
- (b) The Lender will not be liable to the Borrower or the Property Manager for any loss or damage arising from any act, default, omission or misconduct of any such delegate (except in the case of gross negligence or wilful default on its part) and references in this deed to the Lender will, where the context so admits, include references to any delegates so appointed.

11.2 Indulgence

The Lender may, at its discretion, grant time or other indulgence, or make any other arrangement, variation or release to the Borrower or with any person not being a party to this deed (whether or not any such person is jointly liable with the Borrower) in respect of any of the Secured Liabilities, or of any other security for them without in any way affecting any transaction effected by or pursuant to this deed or any remedy of the Lender under this deed.

12. Further assurance

12.1 Further assurance

Each of the Borrower and the Property Manager shall promptly, at its own expense, take whatever action the Lender may reasonably require to confirm or establish the obligations of the Borrower and the Property Manager to the Lender under this deed.

13. Assignment and transfer

13.1 Assignment by Lender

- (a) At any time, without the consent of the Borrower or the Property Manager, the Lender may assign any of its rights or transfer any of its rights and obligations under this deed.
- (b) The Lender may disclose to any actual or proposed assignee or transferee any information in its possession that relates to the Borrower, the Property Manager and this deed that the Lender considers appropriate.

13.2 Assignment by Borrower or Property Manager

Neither the Borrower nor the Property Manager may assign any of its rights, or transfer any of its rights or obligations, under this deed or enter into any transaction that would result in any of those rights or obligations passing to another person.

14. Amendments, waivers and consents

14.1 Amendments

No amendment of this deed shall be effective unless it is in writing and signed by, or on behalf of, each party (or its authorised representative).

14.2 Waivers and consents

- (a) A waiver of any right or remedy under this deed or by law, or any consent given under this deed, is only effective if given in writing by the waiving or consenting party and shall not be deemed a waiver of any subsequent right or remedy. It only applies to the circumstances in relation to which it is given and shall not prevent the party giving it from subsequently relying on the relevant provision.
- (b) A failure by the Lender to exercise or delay by it in exercising any right or remedy provided under this deed or by law shall not constitute a waiver of that or any other right or remedy, prevent or restrict any further exercise of that or any other right or remedy or constitute an election to affirm this deed. No single or partial exercise of any right or remedy provided under this deed

or by law shall prevent or restrict the further exercise of that or any other right or remedy. No election to affirm this deed by the Lender shall be effective unless it is in writing.

14.3 Rights and remedies

The rights and remedies provided under this deed are cumulative and are in addition to, and not exclusive of, any rights and remedies provided by law.

15. Partial invalidity

15.1 Partial invalidity

If, at any time, any provision of this deed is or becomes invalid, illegal or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

16. Counterparts

16.1 Counterparts

- (a) This deed may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute one deed.
- (b) No counterpart shall be effective until each party has executed and delivered at least one counterpart.

17. Third party rights

17.1 Third party rights

- (a) A person who is not a party to this deed has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce, or enjoy the benefit of, any term of this deed.
- (b) Notwithstanding any term of this deed, the consent of any person who is not a party to this deed is not required to rescind or vary this deed at any time.

18. Notices

18.1 Delivery

18.2 Any notice or other communication given to a party under or in connection with this deed shall be:

- (a) in writing;
 - (b) delivered by hand, by pre-paid first-class post or other next working day delivery service or sent by fax; and
 - (c) sent to:
 - (i) the Borrower at:
[ADDRESS]
Attention: [NAME]
 - (ii) the Property Manager at:
[ADDRESS]
Attention: [NAME]
 - (iii) the Lender at:
4th Floor, One New Change, London EC4M 9AF
Attention: Legal Department
- or to any other address notified in writing by one party to the others from time to time.

18.3 Receipt by Borrower and Property Manager

Any notice or other communication that the Lender gives to the Borrower or Property Manager shall be deemed to have been received:

- (a) if delivered by hand, at the time it is left at the relevant address; and
- (b) if posted by pre-paid first-class post or other next working day delivery service, on the second Business Day after posting.

A notice or other communication given as described in clause 18.3(a) or clause 18.3(b) on a day that is not a Business Day, or after normal business hours, in the place it is received, shall be deemed to have been received on the next Business Day.

18.4 Receipt by Lender

Any notice or other communication given to the Lender shall be deemed to have been received only on actual receipt.

18.5 Service of proceedings

This clause 18 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

18.6 No notice by email

A notice or other communication given under or in connection with this deed is not valid if sent by email.

19. Termination

19.1 Termination

This deed will terminate (save for clause 8.1(b), which shall continue in full force and effect) on the earlier to occur of:

- (a) the Property Manager ceasing to act as managing agent in respect of the Property under the Property Management Agreement (or any replacement of it) subject to the provisions of this deed; and
- (b) the date the Lender confirms to the Property Manager that the Secured Liabilities are irrevocably paid or discharged in full and all sums due under the Facility Letter are reduced to nil.

20. Governing law and jurisdiction

20.1 Governing law

This deed and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

20.2 Jurisdiction

Each party irrevocably agrees that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction over any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this deed or its subject matter or formation. Nothing in this clause shall limit the right of the Lender to take proceedings against the Borrower or Property Manager in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

20.3 Other service

Each of the Borrower and the Property Manager irrevocably consents to any process in any legal action or proceedings under clause 20.2 being served on it in accordance with the provisions of this deed relating to service of notices. Nothing contained in this deed shall affect the right to serve process in any other manner permitted by law.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Executed as deed by [NAME OF BORROWER] acting by [NAME OF FIRST DIRECTOR], a director, and [NAME OF SECOND DIRECTOR/SECRETARY], [a director OR its secretary]

.....
[SIGNATURE OF FIRST DIRECTOR]

Director

.....
[SIGNATURE OF SECOND DIRECTOR OR SECRETARY]

Director OR Secretary

OR

Executed as deed by [NAME OF BORROWER] acting by [NAME OF DIRECTOR] a director, in the presence of:

.....

[SIGNATURE OF WITNESS]

[NAME, ADDRESS [AND OCCUPATION] OF WITNESS]

Executed as deed by [NAME OF PROPERTY MANAGER] acting by [NAME OF FIRST DIRECTOR], a director, and [NAME OF SECOND DIRECTOR/SECRETARY], [a director OR its secretary]

.....
[SIGNATURE OF DIRECTOR]

Director

.....
[SIGNATURE OF FIRST DIRECTOR]

Director

.....
[SIGNATURE OF SECOND DIRECTOR OR SECRETARY]

Director OR Secretary

OR

Executed as deed by [NAME OF PROPERTY MANAGER] acting by [NAME OF DIRECTOR] a director, in the presence of:

.....

[SIGNATURE OF WITNESS]

[NAME, ADDRESS [AND OCCUPATION] OF WITNESS]

.....
[SIGNATURE OF DIRECTOR]

Director

Executed as deed by Cynergy Bank plc acting by two authorised signatories

.....

Authorised Signatory

[INSERT NAME]

.....

Authorised Signatory

[INSERT NAME]



Cynergy Bank plc. Registered in England and Wales: 04728421.
Registered office: 4th Floor, One New Change, London EC4M 9AF.

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Cynergy Bank plc is a member of UK Finance and adheres to the Standards of Lending Practice published by the Lending Standards Board.

Lending is subject to approval and terms and conditions will apply. Your property may be repossessed if you do not keep up repayments on a mortgage or loan secured on it.