

For the avoidance of doubt, this document is in a non-binding, recommended form. Its intention is to be used as a starting point for negotiation only. Individual parties are free to depart from its terms and should always satisfy themselves of the regulatory implications of its use.

ADDITIONAL DRAFTING OPTION FOR FINANCIAL COVENANT CURE RIGHTS¹

Provisions to be inserted in the facility agreement if cures of breaches of financial covenants are to be permitted

1. *Insert in clause 1.1 (Definitions) (in alphabetical order):*

“**Cure Account**” means the account designated as such under Clause 17.1 (*Designation of Accounts*) and includes any replacement of that account.”

2. *Amend the following definitions in clause 1.1 (Definitions) as follows:*

- (a) amend the definition of Account by adding the language shown in bold and underlined:

“**Account**” means the General Account, the Deposit Account, the Disposals Account, the Rent Account **or the Cure Account**.”;

- (b) amend the definition of Historical Interest Cover by adding a new paragraph (e) as follows (and renumbering subsequent paragraphs accordingly):

“(e) in calculating finance costs, any amount standing to the credit of the Cure Account during the relevant calculation period will be deemed to have been applied in prepayment of the Loans at the start of that calculation period;”²

- (c) amend the definition of Loan to Value by adding the language shown in bold and underlined:

“**Loan to Value**” means, at any time, the Loans less[: **(i)** so much of the amount standing to the credit of the Disposals Account as is required to be applied in prepayment of the Loans; **and (ii) any amount standing to the credit of the Cure Account**, as a percentage of the aggregate market value of the Properties (determined in accordance with the most recent Valuation of the Properties at that time).”; and

- (d) amend the definition of Projected Interest Cover by adding a new paragraph (e) as follows (and renumbering subsequent paragraphs accordingly):

“(e) in calculating finance costs, any amount standing to the credit of the Cure Account during the relevant calculation period will be deemed to have been applied in prepayment of the Loans at the start of that calculation period;”³

¹ This additional drafting option assumes that the facility agreement used is the LMA recommended form of REF investment multiple property facility agreement.

² Users should note that this additional drafting option provides for interest cover breaches to be cured by adjusting the amount of the Loans on which interest is paid and not by deducting interest on the cure deposit. Whether or not this is appropriate is a matter for commercial negotiation and should therefore be considered on a transaction by transaction basis.

³ Users should note that this additional drafting option provides for interest cover breaches to be cured by adjusting the amount of the Loans on which interest is paid and not by deducting interest on the cure deposit. Whether or not this is appropriate is a matter for commercial negotiation and should therefore be considered on a transaction by transaction basis.

3. ***Insert in clause 7.3 (Mandatory prepayment) a new paragraph (b) as follows (and renumber subsequent paragraphs accordingly):***

“(b) the amount required to be applied in prepayment of the Loans under paragraph (d) of Clause 17.6 (*Cure Account*);”.

4. ***Insert in clause 7.4 (Application of mandatory prepayments) a new paragraph (b) as follows (and renumber subsequent paragraphs accordingly):***

“(b) An amount referred to in paragraph (b) of Clause 7.3 (*Mandatory prepayment*) shall be applied on the date provided for in accordance with paragraph (d) of Clause 17.6 (*Cure Account*) as follows:

(i) **first:**

(A) in or towards prepayment of the Loans [pro rata]; and

(B) in or towards payment of prepayment fees[, any amount that is or will become due and payable under the Hedging Agreements]⁴ and any other amount that is or will become due and payable in accordance with paragraph (b) of Clause 7.9 (*Restrictions*) as a result of those prepayments; and

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

5. ***Insert in clause 17.1 (Designation of Accounts) a new paragraph (v) as follows:***

“(v) a deposit account designated the “**Cure Account**”.”.

This will mean that the “and” at the end of paragraph (iii) will need to be moved to the end of paragraph (iv).

6. ***Insert a new clause 17.6 as follows (and renumber subsequent clauses accordingly):***

“17.6 Cure Account

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

(b) The Company may pay amounts into the Cure Account in accordance with Clause 21.4 (*Cure rights*).

(c) Subject to paragraph (f) below, if, on each of the [two] consecutive Interest Payment Dates immediately following the payment of an amount into the Cure Account in accordance with Clause 21.4 (*Cure rights*), the Company is in compliance with the requirements of Clause 21 (*Financial covenants*) without taking into account any amount standing to the credit of the Cure Account, the Company may request that the Security Agent withdraws, and following any such request the Security Agent shall withdraw, all amounts standing to the credit of the Cure Account and transfer all such amounts to the General Account.

(d) If, following the payment of an amount into the Cure Account in accordance with Clause 21.4 (*Cure rights*), the Company is not in compliance with the requirements of Clause 21 (*Financial covenants*) on either of the [two] consecutive Interest Payment Dates immediately following that payment without taking into account any amount standing to the credit of the Cure Account, the Security Agent must, if so requested by the Majority Lenders, on or at any time following the Interest Payment Date on which the Company is not

⁴ Include for a floating rate loan with hedging by way of an interest rate swap.

in compliance with the requirements of Clause 21 (*Financial covenants*), withdraw all amounts standing to the credit of the Cure Account and apply them, on behalf of the Company, in prepayment of the Loans in accordance with Clause 7.3 (*Mandatory prepayment*).

- (e) The Company may at any time elect that all or part of any amount standing to the credit of the Cure Account is applied in prepayment of the Loans in accordance with Clause 7.6 (*Voluntary prepayment of Loans*).
- (f) The Security Agent is obliged to make a withdrawal from the Cure Account in accordance with paragraph (c) above only if:
 - (i) no Default is continuing; and
 - (ii) the Repeating Representations are correct and will be correct immediately after the withdrawal.”.

7. ***Insert a new clause 21.4 as follows:***

“21.4 Cure rights

- (a) Subject to paragraph (c) below, if the Agent notifies the Company, or an Obligor becomes aware, that there is a breach of any of [Clause 21.1 (*Historical Interest Cover*)][,] [Clause 21.2 (*Projected Interest Cover*)] or Clause 21.3 (*Loan to Value*), the Company may within [] Business Days of that notification or that Obligor becoming aware (as applicable):
 - (i) deposit into the Cure Account an amount calculated by the Agent to ensure compliance with [Clause 21.1 (*Historical Interest Cover*)][,] [Clause 21.2 (*Projected Interest Cover*)] or Clause 21.3 (*Loan to Value*)] (as applicable) as from the start of the relevant calculation period; or
 - (ii) prepay the Loans in accordance with Clause 7.6 (*Voluntary prepayment of Loans*) in an amount calculated by the Agent to ensure compliance with [Clause 21.1 (*Historical Interest Cover*)][,] [Clause 21.2 (*Projected Interest Cover*)] or Clause 21.3 (*Loan to Value*)] (as applicable) as from the start of the relevant calculation period,

each of the deposit and the prepayment referred to in paragraphs (i) and (ii) above, respectively, being the exercise of a **Cure Right**.⁵

- (b) Subject to paragraph (c) below, if the Company:
 - (i) makes a deposit in accordance with paragraph (a)(i) above; or
 - (ii) makes a prepayment in accordance with paragraph (a)(ii) above,

it will not be regarded as being in breach of [Clause 21.1 (*Historical Interest Cover*)][,] [Clause 21.2 (*Projected Interest Cover*)] or Clause 21.3 (*Loan to Value*)] (as applicable), without prejudice to any subsequent breach of any of those Clauses.

- (c) The Cure Rights may:

⁵ Users should note that this additional drafting option provides for one amount to cure both interest cover breaches and loan to value breaches. Whether this is appropriate or, for example, separate amounts should be paid to cure separate breaches is a matter for commercial negotiation and should therefore be considered on a transaction by transaction basis.

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- (i) only be exercised a maximum of [] times in aggregate during the life of the Facility; and
- (ii) not be exercised more than [] times during any [] consecutive Interest Periods.”.

8. ***Insert a new paragraph (b) in clause 24.2 as follows:***

“(b) No Event of Default under paragraph (a) will occur if the failure to comply is cured in accordance with Clause 21.4 (*Cure Rights*).”.