

**Letter from the Borrower’s Solicitors to the Lender’s Solicitors and the Security Agent/Trustee.**

*Adapt as appropriate to the transaction*

*[On headed paper of Borrower’s solicitors]*

[To: *[insert name of Lender’s solicitors]*]

To: *[insert name of Security Agent/Trustee]* in its capacity as *[Security Agent/Trustee]*<sup>1</sup>

[Date]

Dear Sir/Madam,

*[Basic transaction description]*

This letter concerns the facility agreement dated [●] between our client, [●] as Borrower (the “**Borrower**”), [●] as *[Lender/Agent]* and *[other parties]* (the “**Facility Agreement**”) and the dealings referred to in the Schedule (the “**Dealings**”) in respect of the *[property/properties]* listed in the Schedule (*[each a][the]* “**Property**” *[and together the “Properties”]*).

Unless the context otherwise requires or expressly defined in this letter, words or expressions used in this letter have the meanings given to them in the Facility Agreement. References *[to the Lender’s Solicitors are to [insert name of lender’s solicitors] and]*<sup>2</sup> to the Schedule are to the Schedule attached to this letter.

We refer to Schedule [2] (*Conditions Precedent*) of the Facility Agreement and confirm that this letter is delivered to you in satisfaction of the condition precedent detailed in paragraph[s] [●] of that schedule.

We act as solicitors for the Borrower and undertake to you, as follows:

**[SDLT [and LTT] Returns]**<sup>3</sup>

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<sup>1</sup> Including the Lender's Solicitors as well as the Security Trustee/Agent as joint addressees would require the Security Trustee/Agent to join the Lender's Solicitors into any action by the Security Trustee/Agent to enforce the undertaking. It is not an attractive proposition for either the Lender's Solicitors (especially if they are no longer acting for the lender which is possible given the ongoing nature of the undertaking to hold deeds to order) or for the Security Trustee/Agent for the Lender's Solicitors to be joined into an action. Also the Lender's Solicitors do not obtain any obvious benefit from the undertaking so have no need to be an addressee. Having the Security Trustee/Agent as the only addressee would avoid this issue. As the undertaking deals only with matters relating to security, the only addressee is the Security Agent/Trustee, rather than any other finance parties such as the Original Lender, Arranger or Agent.

<sup>2</sup> Include if Lender’s Solicitors are not party to the undertaking

<sup>3</sup> Only include this section where there has been a SDLT/LTT chargeable disposition. Include references to LTT where there is a property located in Wales.

1. To submit [online]<sup>4</sup> to HM Revenue & Customs (“**HMRC**”) [and the Welsh Revenue Authority (“**WRA**”), as applicable], within 5 Business Days after completion of each relevant Dealing (as indicated in the Schedule), required Stamp Duty Land Tax Returns (the “**SDLT Returns**”) [and Land Transaction Returns (“the **LTT Returns**”)] in relation to each relevant Dealing signed, or approved in writing, by the Borrower and with us named as the Borrower’s agent and, subject to being placed in funds, to pay to HMRC any Stamp Duty Land Tax (“**SDLT**”) [and to the WRA any Land Transaction Tax (“**LTT**”)] due pursuant to the SDLT Returns [and the LTT Returns].
2. To provide the Lender’s Solicitors with copies of all relevant correspondence in relation to the submission of the SDLT Returns [and LTT Returns] and to use reasonable endeavours to satisfy any requisitions raised by HMRC [and WRA, as applicable] as soon as is reasonably practical but without any personal liability to pay any SDLT [or LTT].
3. To forward to the Lender’s Solicitors an original or a certified copy of the land transaction return certificates received in respect of the SDLT Returns [and the LTT Returns] (the “**SDLT Certificates**”) promptly following receipt by us from HMRC [and WRA, as applicable].

#### **HM Land Registry Applications<sup>5</sup>**

4. Subject to:
  - 4.1 the Lender’s Solicitors having given to us:
    - (a) the original or a certified copy of the [[security agreement]/[debenture], to be granted under the terms of the Facility Agreement on or about the date of this letter [(the “**Security Agreement**”)]/[(the “**Debenture**”)]<sup>6</sup>; [and]
    - (b) [the original or a certified copy of the certificate of registration issued by Companies House in respect of the [Security Agreement]/[Debenture]; and
    - (c) written confirmation from the Lender’s Solicitors that the [Security Agreement]/[Debenture] provided to us is the original or a certified copy of the original charge of which a [redacted] copy has been filed at Companies House and the original or a certified copy of the charge to which the Companies House certificate of registration relates<sup>7</sup>; and]
  - 4.2 receipt of completed, executed and dated Forms DS1 for each of the existing charges over the Properties, details of which are set out in the Schedule<sup>8</sup>; and]
  - 4.3 receipt of evidence of identity documentation in relation to unrepresented parties to the documents referred to in paragraph[s] 4.1 [and 4.2] above,

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<sup>4</sup> Submitting SDLT and LTT returns online generates the land transaction return certificates immediately after submission, without the delays associated with a postal submission.

<sup>5</sup> This undertaking is prepared on the assumption that the Lender’s Solicitors will make the Companies House filing if required and the Borrower’s Solicitors will make all HM Land Registry filings.

<sup>6</sup> The description of the charging documents should be tailored to the transaction.

<sup>7</sup> Only include if the charge is being registered at Companies House.

<sup>8</sup> Only include where there is existing security being discharged.

to submit to HM Land Registry prior to the expiry of the priority period of the priority searches undertaken by [us] pursuant to the Conditions Precedent the applications in respect of the Dealings referred to in the Schedule (the “**Applications**”) duly completed by us in the form agreed pursuant to the Conditions Precedent<sup>9</sup> with all requisite fees and supporting documentation.

- 4.4 To provide the Lender’s Solicitors with certified copies of all HM Land Registry forms and documents submitted in respect of the Applications (other than those referred to in paragraph[s] 4.1[[and 4.2]/[, 4.2 and 4.3]] above).
- 4.5 To provide the Lender’s Solicitors with copies of all relevant correspondence in relation to the Applications promptly following receipt by us from HM Land Registry.
- 4.6 To use reasonable endeavours to respond to any requisition raised by HM Land Registry as soon as reasonably practical. We will, however, be unable to deal with any requisitions relating to the capacity, constitution, powers and authority of the Lender, and will therefore forward on such queries to the Lender’s Solicitors promptly following receipt by us from HM Land Registry.
- 4.7 Within 5 Business Days of completion of any Applications, to send to the Lender’s Solicitors the official copies of the Property or Properties to which the Applications relate.

#### **Deeds undertaking**

5. Until the Secured Liabilities have been fully discharged, to hold all deeds and documents which we have or will have in relation to the Properties, strictly to the [Security Agent’s/Trustee’s] order, not to pass them to a third party and to send them to the [Security Agent/Trustee] (or as the [Security Agent/Trustee] may reasonably direct) when the [Security Agent/Trustee] asks us. We have a schedule of the deeds and documents that we hold in our possession as at the date of this letter, and it is appended to this letter and initialled by us.<sup>10</sup>
6. We shall not be in breach of the undertaking in paragraph 5 if we release any deeds or documents relating to the Properties to: HMRC[, WRA] and/or any other relevant authority or body where such release is required by law; or in order to discharge the [Borrower’s] obligations under the [Debenture]/[Security Agreement]; or to HM Land Registry in connection with the Applications.

#### **Notices**

7. To serve the agreed form<sup>11</sup> Notice of [Charge] [Transfer] [Lease], duly signed, together with the fee payable, on the [current Landlord] [and any superior landlord] [other relevant third party] within 5 Business Days of the date of this letter and to deliver within 5 Business Days of receipt from the relevant landlord [and/or superior landlord]

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<sup>9</sup> This undertaking is prepared on the assumption that the production of the appropriate HM Land Registry forms is a separate Condition Precedent to the Facility Agreement. If not the undertaking will need to be amended to provide for these to be supplied to the Lender’s Solicitors by the Borrower’s Solicitors.

<sup>10</sup> The references to the [Security Agent/Trustee] could revert to "you" if the [Security Agent/Trustee] is the sole addressee and the person to whose order the deeds are being held.

<sup>11</sup> This will need amending if not approved prior to completion.

[other relevant third party] or their solicitors, an original or a certified copy of all received notices.

8. To serve the agreed form<sup>12</sup> rent authority letter on all current tenants [and other relevant third party] of the Property[ies] within 5 Business Days of the date of this letter.

### **General**

Any person who replaces [*insert name of Security Agent/Trustee*] or their replacement as [Security Agent/Trustee] (the "**Outgoing Party**") under the Facility Agreement may enforce this letter for so long as they are, and only in their capacity as, [Security Agent/Trustee] as if the letter had originally been addressed to such person (and in such case, we shall owe no ongoing obligations under this letter to the Outgoing Party from the date they are replaced as [Security Agent/Trustee]).

Once we have complied with our obligations under any of the paragraphs in this letter, our undertaking in respect of such obligations is automatically discharged.

This undertaking shall be governed and construed in accordance with English law.

Yours faithfully,

[*Borrower's solicitors*]<sup>13</sup>

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<sup>12</sup> This will need amending if not approved prior to completion.

<sup>13</sup> Firms may have best practice guidelines as to who is authorised to sign undertakings given by the firm and are reminded of their obligations to keep records of undertakings given

## SCHEDULE

*[List each dealing in respect of each property]*

<b>Property</b>	<b>Title No.</b>	<b>Dealings</b>	<b>Land Registry Applications</b>	<b>SDLT [or LTT] Return Required?</b>
Examples:		Charge of the Property by the [Borrower]	Registration of the charge of the Property (including registration of a restriction and a note of further advances)	No
		AND/OR Transfer of the Property to [Borrower]	Registration of the transfer of the Property to [Borrower]	[SDLT]/[LTT]
		AND/OR Grant of a lease of the Property to [Borrower]	Registration of the lease of the Property	[SDLT]/[LTT]
		AND/OR Discharge of existing charge over the Property dated [•] in favour of [•]	Registration of the discharge of existing security over the Property	No

**APPENDIX**  
**DEEDS SCHEDULE**