

**POST-ENFORCEMENT CALL OPTION AGREEMENT**

**28 NOVEMBER 2006**

**FOSSE MASTER ISSUER PLC**  
**as Issuer**

**and**

**FOSSE PECO LIMITED**  
**as Post-Enforcement Call Option Holder**

**and**

**LAW DEBENTURE TRUST COMPANY OF NEW YORK**  
**as Issuer Security Trustee and Note Trustee**

**ALLEN & OVERY**

**Allen & Overy LLP**

## CONTENTS

Clause	Page
1. Definitions and Interpretation .....	1
2. Post-Enforcement Call Option .....	1
3. Consideration .....	2
4. Acknowledgement .....	2
5. Assignment .....	3
6. Notices .....	3
7. Exclusion of Third Party Rights .....	4
8. Counterparts .....	4
9. Non-petition .....	4
10. Governing Law .....	4
11. Submission to Jurisdiction .....	4
 Signatories .....	 6

**THIS POST-ENFORCEMENT CALL OPTION AGREEMENT** is made on 28 November 2006

**BETWEEN:**

- (1) **FOSSE MASTER ISSUER PLC** (registered number 5925693), a public limited company incorporated under the laws of England and Wales whose registered office is at 35 Great St. Helen's, London EC3A 6AP (the **Issuer**);
- (2) **FOSSE PECO LIMITED** (registered number 5925699), a private limited company incorporated under the laws of England and Wales whose registered office is at 35 Great St. Helen's, London EC3A 6AP (the **Post-Enforcement Call Option Holder**);
- (3) **LAW DEBENTURE TRUST COMPANY OF NEW YORK**, acting through its offices at 767 Third Avenue – 31<sup>st</sup> Floor, New York, New York 10017 (acting in its capacity as the **Issuer Security Trustee**); and
- (4) **LAW DEBENTURE TRUST COMPANY OF NEW YORK**, acting through its offices at 767 Third Avenue – 31<sup>st</sup> Floor, New York, New York 10017 (acting in its capacity as the **Note Trustee**).

**IT IS HEREBY AGREED AS FOLLOWS:**

## **1. DEFINITIONS AND INTERPRETATION**

The master definitions and construction schedule signed by, amongst others, Alliance & Leicester and dated 28 November 2006 (as the same may be amended, varied or supplemented from time to time with the consent of the parties to this Agreement) (the **Master Definitions and Construction Schedule**) and the issuer master definitions and construction schedule, signed by, amongst others, the parties to this Agreement on 28 November 2006 (as the same may be amended, varied or supplemented from time to time with the consent of the parties to this Agreement) (the **Issuer Master Definitions and Construction Schedule**) are expressly and specifically incorporated into this Agreement and, accordingly, the expressions defined in the Master Definitions and Construction Schedule and the Issuer Master Definitions and Construction Schedule shall, except where the context otherwise requires and save where otherwise defined herein, have the same meanings in this Agreement and this Agreement shall be construed in accordance with the interpretation provisions set out in clause 2 of the Master Definitions and Construction Schedule and the Issuer Master Definitions and Construction Schedule.

## **2. POST-ENFORCEMENT CALL OPTION**

### **2.1 In the event that:**

- (a) the Issuer Security is enforced and the Issuer Security Trustee determines that:
  - (i) the proceeds of such enforcement, after distribution of such proceeds to the persons entitled thereto ranking in priority to the Notes under the Issuer Deed of Charge and to the Noteholders (to the extent entitled thereto), are insufficient to pay in full all principal and interest and other amounts whatsoever due in respect of the Notes and all other claims ranking *pari passu* therewith;
  - (ii) such proceeds of enforcement have been so distributed in accordance with the terms of the Issuer Deed of Charge; and

- (iii) there are no further assets available to pay principal and interest and other amounts whatsoever due in respect of the Notes; or
- (b) within 20 working days following the Final Maturity Date of the latest maturing Notes, the Issuer Security Trustee certifies that there is no further amount outstanding under the Intercompany Loan Agreement,

then the Noteholders shall, upon the Issuer Security having been enforced and realised to the maximum possible extent as certified by the Issuer Security Trustee, be forthwith entitled to their respective shares of such remaining proceeds (as determined in accordance with the provisions of the Issuer Deed of Charge), and the date upon which payment to each Noteholder is made shall be called the **Option Exercise Date**.

- 2.2 The Note Trustee acting in its capacity as representative of the Noteholders to the extent of and in accordance with the authorisation afforded to it pursuant to **clause 14** (The Post-Enforcement Call Option) of the Note Trust Deed and **Condition 10.2** (Post-Enforcement Call Option) hereby grants, and the Issuer hereby acknowledges, an option (the **Option**), under which the Note Trustee has no personal liability, exercisable by the Post-Enforcement Call Option Holder (or by any designated subsidiary of the Post-Enforcement Call Option Holder, to be designated by notice from the Post-Enforcement Call Option Holder to the Note Trustee and the Issuer Security Trustee at the discretion of the Post-Enforcement Call Option Holder (the **Designated Subsidiary**)) permitting the Post-Enforcement Call Option Holder (or any Designated Subsidiary) to acquire at any time on or after the Option Exercise Date all (but not some only) of the Notes outstanding as at the Option Exercise Date, together with accrued interest thereon.
- 2.3 The Option shall be exercised by the Post-Enforcement Call Option Holder (or the Designated Subsidiary) by notice from the Post-Enforcement Call Option Holder (or the Designated Subsidiary) to the Note Trustee, the Issuer Security Trustee and the Noteholders in accordance with **Condition 14**.
- 2.4 The Post-Enforcement Call Option Holder (or the Designated Subsidiary) hereby undertakes to the Issuer that following the exercise of the Option it will not release the debt, or write down the debt created by the Option.

### 3. **CONSIDERATION**

The Post-Enforcement Call Option Holder (or the Designated Subsidiary) shall pay to the Noteholders in respect of the exercise of the Option, a nominal amount of the sum of one pence sterling (in the case of all outstanding Sterling Notes), one euro cent (in the case of all outstanding Euro Notes), one dollar cent (in the case of all outstanding US Dollar Notes) or the lowest denomination of the Specified Currency (in the case of all outstanding Notes of each specified currency other than the US Dollar Notes, Euro Notes or Sterling Notes) (as appropriate) in respect of each Class of Notes then outstanding.

### 4. **ACKNOWLEDGEMENT**

- 4.1 Each of the Issuer Security Trustee and Note Trustee acknowledges that the Notes are to be issued subject to the Option and the Note Trustee hereby grants the Option but does so entirely without warranty, responsibility for or liability as to its effectiveness or otherwise on the part of the Note Trustee to the Noteholders or any other person in connection with:
  - (a) the legality, validity or enforceability of:

- (i) the agency appointment pursuant to this Agreement pursuant to which it is purporting to act; and
- (ii) its obligations under this Agreement;
- (b) whether or not such agency appointment is continuing or has been revoked at any time;
- (c) whether any ratification procedure applicable to such agency appointment is legal, valid or binding; and/or
- (d) the performance by the Noteholders of the obligations imposed on them by this Agreement; and/or
- (e) its authority to act as agent of the Noteholders and generally its entry into this Agreement.

4.2 In accordance with the Conditions, each of the relevant Noteholders, by subscribing for or purchasing Notes, shall, upon subscription or purchase, be deemed to have agreed to be bound by and, to the extent necessary, to have ratified the granting of the Option.

The Note Trustee shall not be obliged to take any action in connection with this Agreement to the extent it considers that doing so may:

- (a) prejudice or conflict with its fiduciary duties to the Noteholders; or
- (b) prejudice or otherwise affect its economic position or market reputation,

and in any event, the Note Trustee shall be entitled to be indemnified and/or secured to its satisfaction prior to taking such action. The Note Trustee shall not be held responsible or liable in any way for failing to take any action in connection with this Agreement. Notwithstanding any other provision of this Agreement nothing shall oblige the Note Trustee to take action against any of the Noteholders to enforce performance of their obligations hereunder.

## 5. ASSIGNMENT

The Post-Enforcement Call Option Holder may at any time novate, assign or transfer all or any part of its rights and/or obligations under this Agreement to a company that is not connected with the Issuer for the purposes of section 87 of the Finance Act 1996 and which (a) has sufficient funds to enable it to fulfil the obligations of the Post-Enforcement Call Option Holder in respect of this Agreement and (b) agrees to enter into an agreement with the Issuer, the Issuer Security Trustee and the Note Trustee in substantially the same form as this Agreement, but as if this **Clause 5** (Assignment) did not form part of this Agreement, and the Note Trustee hereby consents to any such novation, assignment or transfer.

## 6. NOTICES

Save as otherwise provided herein, any notices to be given pursuant to this Agreement to any of the parties hereto shall be sufficiently served if sent by prepaid first class post, by hand or facsimile transmission and shall be deemed to be given (in the case of facsimile transmission) when despatched, (where delivered by hand) on the day of delivery if delivered before 5:00 p.m. on a London Business Day or on the next London Business Day if delivered thereafter or on a day which is not a London Business Day or (in the case of first class post) when it would be received in the ordinary course of the post and shall be sent:

- (a) in the case of the Issuer to: Fosse Master Issuer plc, 35 Great St. Helen's, London EC3A 6AP (facsimile number +44 (0)20 7398 6325) for the attention of The Directors;
- (b) in the case of the Post-Enforcement Call Option Holder to: Fosse PECO Limited, 35 Great St. Helen's, London EC3A 6AP (facsimile number +44 (0)20 7398 6325) for the attention of The Directors; and
- (c) in the case of the Issuer Security Trustee and the Note Trustee to: Law Debenture Trust Company of New York, 767 Third Avenue – 31<sup>st</sup> Floor, New York, New York 10017 (facsimile number +1 212 750 1361) for the attention of Patrick Healy,

or to such other address or facsimile number or for the attention of such other person or entity as may from time to time be notified by any party to the others by written notice in accordance with the provisions of this **Clause 6**.

## **7. EXCLUSION OF THIRD PARTY RIGHTS**

A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement, but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

## **8. COUNTERPARTS**

This Agreement may be executed in any number of counterparts, and by the parties on separate counterparts, but shall not be effective until each party has executed at least one counterpart. Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute but one and the same instrument.

## **9. NON-PETITION**

The Post-Enforcement Call Option Holder hereby acknowledges and agrees that it is bound by **clause 5.3** (No enforcement by Issuer Secured Creditors) of the Issuer Deed of Charge and, except as provided therein, it will not take any steps or proceedings to procure the winding up, administration or liquidation of the Issuer and it will not take any other steps or action against the Issuer for the purpose of recovering any amounts owing to the Post-Enforcement Call Option Holder pursuant to this Agreement (including by exercising any rights of set-off) or enforcing any rights arising out of this Agreement.

## **10. GOVERNING LAW**

This Agreement shall be governed by, and construed in accordance with, the laws of England and Wales.

## **11. SUBMISSION TO JURISDICTION**

The Issuer irrevocably agrees for the benefit of the Issuer Security Trustee and Note Trustee and the other Issuer Secured Creditors that the English courts have exclusive jurisdiction to settle any dispute which may arise out of or in connection with this Agreement and accordingly submits to the exclusive jurisdiction of the English courts. The Issuer waives any objection to the courts of England on the grounds that they are an inconvenient or inappropriate forum. The Issuer Security Trustee and Note Trustee and the other Issuer Secured Creditors may take any suit, action or proceeding arising out of or in connection with this Agreement (together referred to as **Proceedings**) against the Issuer in any other court of competent jurisdiction and concurrent Proceedings in any number of jurisdictions.

**IN WITNESS WHEREOF** the parties hereto have executed this Agreement as a deed on the day and year first before written.

## SIGNATORIES

### Issuer

SIGNED by	)	
<b>SFM DIRECTORS LIMITED,</b>	)	
as Director	)	<b>JAMES MACDONALD</b>
for and on behalf of	)	
<b>FOSSE MASTER ISSUER PLC</b>	)	

### Post-Enforcement Call Option Holder

SIGNED by	)	
<b>SFM DIRECTORS LIMITED,</b>	)	
as Director	)	<b>JAMES MACDONALD</b>
for and on behalf of	)	
<b>FOSSE PECO LIMITED</b>	)	

### Issuer Security Trustee

SIGNED by	)	
for and on behalf of	)	<b>JULIAN MASON-JEBB</b>
<b>LAW DEBENTURE TRUST COMPANY</b>	)	
<b>OF NEW YORK</b>	)	

### Note Trustee

SIGNED by	)	
for and on behalf of	)	<b>JULIAN MASON-JEBB</b>
<b>LAW DEBENTURE TRUST COMPANY</b>	)	
<b>OF NEW YORK</b>	)	