**CHANCE**

EXECUTION COPY

€795,000,000

FACILITIES AGREEMENT

DATED FEBRUARY 2010

FOR

INMOBILIARIA COLONIAL, S.A. AND COLREN, S.L.  
AS BORROWERS

ARRANGED BY  
CALYON, SUCURSAL EN ESPARA  
CORAL PARTNERS (LUX) S.A.R.L.  
EUROHYPO AG, SUCURSAL EN ESPARA  
AND  
THE ROYAL BANK OF SCOTLAND PLC  
WITH

THE ROYAL BANK OF SCOTLAND PLC  
ACTING AS AGENT

AND

THE ROYAL BANK OF SCOTLAND PLC  
ACTING AS SECURITY AGENT

TERM FACILITIES AGREEMENT

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THIS AGREEMENT is dated February 2010.

(1) INMOBILIARIA COLONIAL, S.A. (with registered office at Avenida Diagonal

532, Barcelona, registered with the Commercial Registry of Barcelona at Volume 39608, Street 63, Page B-347795 with NIF A-28027399) ("HoldCo");

(2) COLREN, S.L. (with relstered office at Avenida Diagonal 532, Barcelona,

registered witii-the—05iinThier egistry of Barcelona at Volume 41010, Sheet 1,  
Page B-378037) ("DevCo");

CALYONTIGURSAL -EN ESPARA, CORAL PARTNERS (LUX) S.A.R.L., EUROHYPO AG, SUCURSAL EN ESPASA and THE ROYAL BANK OF SCOTLAND PLC as mandated lead arrangers (whether acting individually or together the "Arranger");

(3)

1. THE FINANCIAL INSTITUTIONS AND OTHER ENTITIES listed in Part II of Schedule 1 *(The Original Parties)* as lenders (the "Original Lenders");
2. THE ROYAL BANK OF SCOTLAND PLC as agent of the other Finance Parties (the "Agent"); and
3. THE ROYAL BANK OF SCOTLAND PLC as security agent of the other Finance Parties (the "Security Agent").

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

"Accion de Responsabilidad" means the corporate social responsibility claim approved by shareholders in HoldCo's general meeting of 30 June 2009 and made against certain previous directors of HoldCo responsible for:

1. the purchase of certain assets in which the sellers used amounts received to  
   subscribe for and purchase shares in HoldCo, centred around the capital increase of June 2006 and other transactions;
2. the purchase of Riofisa by HoldCo; and

(a) transactions with respect to treasury shares taking place between March and

December of 2007.

"Ro La" means

"Additional Cost Rate" has the meaning given to it in Schedule 4 *(Mandatory Cost Formulae).*

"Affiliate" means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company.

"Annual Financial Statements" has the meaning given to such term in paragraph 1(a) of Clause 25.1 *(Financial Statements).*

"Appraisal Valuation" means:

1. any appraisal valuations of assets to be made by third parties acceptable to the  
   Agent (the identity of such third party to be agreed between the Majority Lenders and the Borrowers promptly following the date of this Agreement) and published by DevCo on a semi-annual basis; and
2. any updates of any appraisal valuations made by third parties acceptable to the  
   Agent and published by DevCo on a semi annual basis, provided that such updates shall be made by way of inclusion of any investments (calculated at purchase price) and exclusion of any disinvestments made since the date of the relevant appraisal valuation to be updated (calculated at the value ascribed to it in such appraisal valuation).

"Assignment Agreement" means an agreement substantially in the form set out in Schedule 6 (Form of Assignment Agreement) or any other form agreed between the relevant assignor and assignee.ggg

"Auditors" means one of PricewaterhouseCoopers, Ernst & Young, KPMG or Deloitte & Touche Tohmatsu (or any amalgamation of the same or their successors) or such other firm approved in advance by the Majority Lenders.

"Authorisation" means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration.

"Available Commitment" means, in relation to a Facility, a Lender's Commitment under that Facility minus:

1. the amount of its participation in any outstanding Loans under that Facility;  
   and
2. in relation to any proposed Utilisation, the amount of its participation in any  
   Loans that are due to be made under that Facility on or before the proposed Utilisation Date.

"Available Facility" means, in relation to a Facility, the aggregate for the time being of each Lender's Available Commitment in respect of that Facility.

"BBVA" means Banco Bilbao Vizcaya Argentaria, S.A. dddd

"Borrower" means (subject to Clause 6.1 *(Release of HoldCo and Assumptions by DevCo))* HoldCo and DevCo.

"Break Costs" means the amount (if any) by which:

(a) the interest which a Lender should have received for the period from the date

of receipt of all or any part of its participation in a Loan or Unpaid Sum to the last day of the current Interest Period in respect of that Loan or Unpaid Sum,

had the principal amount or Unpaid Sum received been paid on the last day of that Interest Period;

exceeds:

(b) the amount which that Lender would be able to obtain by placing an amount

equal to the principal amount or Unpaid Sum received by it on deposit with a leading bank in the Relevant Interbank Market for a period starting on the Business Day following receipt or recovery and ending on the last day of the current Interest Period.

"Business Day" means a day (other than a Saturday or Sunday) on which banks are open for general business in London, Madrid, Barcelona and (in relation to any date for payment or purchase of euro) any TARGET Day.

"Business Plan" means the five year business plan delivered by the Borrowers to the Agent as a condition precedent to this Agreement (as the same may be updated by DevCo pursuant to Clause 25.5 *(Business Plan)* of this Agreement.

"Caja Madrid" means Caja de Ahorros y Monte de Piedad de Madrid. dffff

"Cash Position" has the meaning given to such term in Clause 9.2 *(Proceeds and Excess Cashflow)*

"Certifying Officer" means any of two directors, the chief executive officer or the chief financial officer of an Obligor. dddd

"Change of Control" means any person or group of persons acting in concert gaining direct or indirect control of any Obligor. For the purposes of this definition of Change of Control:

1. "acting in concert" means, a group of persons who, pursuant to an agreement  
   or understanding (whether formal or informal), actively co-operate, through the acquisition directly or indirectly of shares in an Obligor by any of them, either directly or indirectly, to obtain or consolidate control of that Obligor; and

|  |  |
| --- | --- |
|  | "control" means:  (i) in the case of DevCo:  (A) the power (whether by way of ownership of shares, proxy, contract, agency or otherwise) to:   1. cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of DevCo; or 2. appoint or remove all, or the majority, of the directors or other equivalent officers of DevCo; or |

(3) give directions with respect to the operating and

financial policies of DevCo which the directors or other equivalent officers of DevCo are obliged to comply with; or

(B) the holding of more than one-half of the issued share capital of

DevCo (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital),

provided that no Change of Control shall be triggered under this definition as a result of any Lender having an interest in the share capital of DevCo pursuant to a conversion into equity of Profit Participative Loans in accordance with paragraph (b) of Clause 26.22 *(Loan to Value);* and

(ii) in the case of HoldCo:

(A) the holding (directly or indirectly) of an interest in HoldCo

from time to time triggering an obligation under Spanish law to make a bid for the entire share capital of HoldCo (provided that no Change of Control shall be triggered under this definition as a result of:

1. any HoldCo Lender (or an Affiliate of a HoldCo  
   Lender) having an interest in the share capital of HoldCo pursuant to the HoldCo Facility B Take-out or the conversion into equity of Existing HoldCo Convertible Notes held by it or an Affiliate;
2. any Lender (or an Affiliate of a Lender) having an  
   interest in the share capital of HoldCo pursuant to the HoldCo Warrants;
3. the increase by each of Banco Popular Espafiol, S.A.  
   and Caixa D'Estalvis I Pensions de Barcelona of its interest in the share capital of HoldCo pursuant to the conversion into equity of Existing HoldCo Convertible Notes held by it or an Affiliate); or
4. any lender under a bilateral facility made available to  
   HoldCo having an interest in the share capital of HoldCo pursuant to a conversion into equity of Financial Indebtedness under such bilateral facility in accordance with the Second Restructuring Agreements with Bilateral Lenders to which such lender is a party; or

(B) the making of an offer to acquire the entire issued share capital

of HoldCo, and such offer is accepted by the majority of

shareholders of HoldCo required by applicable law.

"Charged Property" means all of the assets of the Obligors which from time to time are, or are expressed to be, the subject of the Transaction Security.

"CNMV" means the Comision Nacional del Mercado de Valores or any body or authority substituting the same.

"Commitment" means a Term Facility Commitment or a Convertible Facility Commitment.

"Compliance Certificate" means a certificate substantially in the form of Schedule 12 *(Form of Compliance Certificate).*

"Confidentiality Undertaking" means a confidentiality undertaking substantially in a recommended form of the LMA or in any other form agreed between the Borrowers and the Agent. vvvv

"Convertible Facility" means the convertible term loan facility made available under this Agreement as described in paragraph (b) of Clause 2.1 (The Facilities) (and including any Convertible Facility PIK hhhhh Loan made pursuant to Clause 11.2 (Capitalisation of interest).

"Convertible Facility Commitment" means:

1. in relation to an Original Lender, the amount set opposite its name under the  
   heading "Convertible Facility Commitment" in Part II of Schedule 1 *(The Original Parties)* and the amount of any other Convertible Facility Commitment transferred to it under this Agreement; and
2. in relation to any other Lender, the amount of any Convertible Facility  
   Commitment transferred to it under this Agreement,

plus in each case, an amount equal to the amount of all interest which has accrued on that Lender's participation in Convertible Facility but only to the extent it has been capitalised pursuant to Clause 11.2 *(Capitalisation of Interest)* in each case to the extent not cancelled, reduced or transferred by it under this Agreement.

"Convertible Facility Loan" means the loan made under the Convertible Facility pursuant to Clause *5.5 (Deemed Utilisation)* or the principal amount outstanding for the time being of that loan.

"Convertible Facility PIIC Loan" means a loan made or to be made under the Convertible Facility for the purposes of Clause 11.2 *(Capitalisation of interest)* or the principal amount outstanding for the time being of that loan.

"Corresponding PIK Loan" means, in relation to the Convertible Facility Loan, the Convertible Facility PIK Loan, and in relation to the Term Facility Loan, the Term Facility PIK Loan.

"Declared Default" means an Event of Default in respect of which a notice of acceleration has been served in accordance with Clause 23.2 *(Acceleration)* (in the case of a HoldCo Event of Default) or Clause 27.16 *(Acceleration)* (in the case of a DevCo Event of Default).

"Default" means an Event of Default or:

1. for the period from and including the date of this Agreement to the DevCo Asset Transfer Date, any event or circumstance specified in Part IV *(Events of* Default) of Schedule 8 *(HoldCo Provisions);* and
2. any event or circumstance specified in Clause 27 *(Events of Default),*

which would in either case (with the expiry of a grace period, the giving of notice, the making of any determination under the Finance Documents or any combination of any of the foregoing) be, as the case may be, a HoldCo Event of Default or a DevCo Event of Default.

"Defaulting Lender" means any Lender:

1. which has failed to make its participation in a Loan available or has notified the Agent that it will not make its participation in a Loan available by the Utilisation Date of that Loan in accordance with Clause 5.4 *(Lenders' participation);*
2. which has otherwise rescinded or repudiated a Finance Document; or
3. with respect to which an Insolvency Event has occurred and is continuing, unless, in the case of paragraph (a) above:

(i) its failure to pay is caused by:

1. administrative or technical error; or
2. a Disruption Event; and

payment is made within five Business Days of its due date; or

(ii) the Lender is disputing in good faith whether it is contractually obliged

to make the payment in question.

"Delegate" means any delegate, agent, attorney or co-trustee appointed by the Security Agent.

"DevCo Asset Transfers" means the contribution, by HoldCo to DevCo of the DevCo Branch of Activity Business.

"DevCo Asset Transfer Date" means the date of registration of the deed of segregation in relation to the DevCo Asset Transfers with the Mercantile Registry as set out in step 22 contained in Schedule 10 *(Steps for DevCo Asset Transfers to DevCo)* of the Second Restructuring Agreement.

"DevCo Branch of Activity Business" means the land bank *(suelo)* and the residential development *unidad econOmica autondma* (branch of activity) business assets and liabilities (including, without limitation, associated indebtedness) of HoldCo set out in schedule 6 *(DevCo Branch of Activity Business)* of the Second

Restructuring Agreement, which includes cash in an amount which, with effect from 1 January 2010, would have provided DevCo at such date with a Cash Position of EUR10,000,000 plus an amount equal to the part of the acquisition price in respect of the El Prat Transaction which is still unpaid.

"DevCo Event of Default" means an event or circumstance specified in Clause 32 *(Events of Default — DevCo).*

"DevCo Payment Cascade" has the meaning given to such term in paragraph (a) of Clause 9.3 *(Application of Mandatoty Prepayments).*

"DevCo Share Pledge" means the deed of pledge of shares granted by HoldCo over the entire issued share capital of DevCo on or about the Second Restructuring Date.

"Disruption Event" means either or both of:

1. a material disruption to those payment or communications systems or to those  
   financial markets which are, in each case, required to operate in order for payments to be made in connection with the Facilities (or otherwise in order for the transactions contemplated by the Finance Documents to be carried out) which disruption is not caused by, and is beyond the control of, any of the Parties; or
2. the occurrence of any other event which results in a disruption (of a technical  
   or systems-related nature) to the treasury or payments operations of a Party preventing that, or any other Party:
3. from performing its payment obligations under the Finance  
   Documents; or
4. from communicating with other Parties in accordance with the terms of  
   the Finance Documents,

(and which (in either such case)) is not caused by, and is beyond the control of, the Party whose operations are disrupted.

"El Prat Transaction" means the transactions contemplated by the sale and purchase agreement dated 10 July 2007 between HoldCo as purchaser and Tein Quimica, S.A.U. as seller (and others) relating to the purchase by HoldCo of 50 per cent. of certain properties at El Prat de Llobregat (such properties to form part of the DevCo Asset Transfers) and the participation of HoldCo (or, after the DevCo Asset Transfer Date, DevCo) with the seller in the commercial development of those properties.

"Entrenticleos Asset Transfer" means the contribution of the related to the property located at Dos Hermanas, Sevilla by HoldCo to the Entremicleos SPV.

"Entrenticleos SPV" means Desarrollos Urbanisticos Entrenficleos 2009, S.L., a company incorporated in Spain in which both HoldCo and the council of Dos Hermanas, whether directly or indirectly, will have an interest.

"Environmental Law" means any applicable law in any jurisdiction in which any member of the Group conducts business which relates to the pollution or protection of

the environment or harm to or the protection of human health or the health of animals or plants.

"EURIBOR" means in relation to any Loan:

1. the applicable Screen Rate; or
2. (if no Screen Rate is available for the Interest Period of that Loan) the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Agent at its request quoted by the Reference Banks to leading banks in the European interbank market;

as of the Specified Time on the Quotation Day for the offering of deposits in euro for a period comparable to the Interest Period of the relevant Loan.

"Event of Default" means:

1. for the period from and including the date of this Agreement to the DevCo  
   Asset Transfer Date, a HoldCo Event of Default; or
2. a DevCo Event of Default.

"Existing HoldCo Convertible Notes" means the floating rate payment in kind convertible notes convertible into shares issued by HoldCo in an amount of EUR 1,310,076,500 with ISIN ES0239140009 and registered with the CNMV on 13 January 2009.

"Existing Lender" has the meaning given to it in Clause 28.1 *(Assignments and transfers by the Lenders).*

"Facility" means the Term Facility, the Convertible Facility or any Profit Participative Loan.

"Facility Office" means the office or offices notified by a Lender to the Agent in writing on or before the date it becomes a Lender (or, following that date, by not less than five Business Days' written notice) as the office or offices through which it will perform its obligations under this Agreement.

"Fee Letter" means any letter or letters dated on or about the date of this Agreement between the Agent and the Borrowers or the Security Agent and the Borrowers setting out any of the fees referred to in Clause 14 *(Fees).*

"Finance Document" means this Agreement, any Fee Letter, each Transaction Security Document, any Assignment Agreement, any Irrevocable Power of Attorney, any Selection Notice, any Transfer Certificate, the Second Restructuring Agreement, the Second Restructuring Undertakings, the HoldCo Warrants Guarantee, any Utilisation Request, any Compliance Certificate and any other document designated as a "Finance Document" by the Agent and the Borrowers.

"Finance Party" means the Agent, the Security Agent, the Arranger or a Lender. "Finance Lease" means a lease defined as such in accordance with GAAP.

"Financial Indebtedness" means, at any time, the consolidated outstanding principal, capital or nominal amount (and any fixed or minimum premium payable on prepayment or redemption) of any indebtedness of members of the Group for or in respect of:

1. moneys borrowed and debit balances at banks or other financial institutions;
2. any acceptances under any acceptance credit or bill discount facility (or dematerialised equivalent);
3. any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
4. any Finance Lease;
5. receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis and meet any requirements for de-recognition under GAAP);
6. any counter-indemnity obligation in respect of a guarantee, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution in respect of an underlying liability of an entity which is not a member of the Group which would fall within one of the other paragraphs of this definition;
7. any amount raised by the issue of shares which are redeemable (other than at the option of the issuer) before the date falling 60 months after the Second Restructuring Date or are otherwise classified as borrowings under GAAP;
8. any amount of any liability under an advance or deferred purchase agreement if (i) one of the primary reasons behind the entry into the agreement is to raise finance or to finance the acquisition or construction of the asset or service in question or (ii) the agreement is in respect of the supply of assets or services and payment is due more than 180 days after the date of supply;
9. any amount raised under any other transaction (including any forward sale or purchase agreement, sale and sale back or sale and leaseback agreement) having the commercial effect of a borrowing or otherwise classified as borrowings under GAAP;

a) any derivative transaction entered into in connection with protection against or

benefit from fluctuation in any rate or price (and, when calculating the value of that transaction, only the marked to market value (or, if any actual amount is due as a result of the termination or close out of that transaction, that amount) shall be taken into account); and

(k) (without double counting) the amount of any liability in respect of any

guarantee or indemnity for any of the items referred to in paragraphs (a) to (i) above.

"Financial Quarter" means the period commencing on the day after one Quarter Date and ending on the next Quarter Date.

"Financial Year" means:

1. in respect of DevCo, the annual accounting period of DevCo and its  
   Subsidiaries ending on or about 31 December in each year;
2. in respect of HoldCo, the annual accounting period of HoldCo ending on or  
   about 31 December in each year; and
3. in respect of Riofisa, the annual accounting period of Riofisa and its  
   subsidiaries ending on or about 31 December in each year.

"GAAP" means generally accepted accounting principles in The Kingdom of Spain including EMS.

"Group" means DevCo and its Subsidiaries for the time being.

"HoldCo Event of Default" means an event or circumstance specified in Part IV *(Events of Default)* of Schedule 8 *(HoldCo Provisions).*

"HoldCo Facilities" means the Facilities as defined in the HoldCo Facilities Agreement.

"HoldCo Facilities Agreement" means the Original HoldCo Facilities Agreement as amended and restated by the Second Restructured Amendment and Restatement Agreement.

"HoldCo Facility B Take-out" means the Facility B Take-out under and as defined in the Holdco Facility.

"HoldCo Finance Documents" means the Finance Documents, as defined in the HoldCo Facilities Agreement.

"HoldCo Lender" means a Lender under and as defined in the HoldCo Facilities Agreement

"HoldCo Warrants" means the warrants granted by HoldCo to the Lenders with respect to the Loans referred to in Clause 2.4 *(HoldCo Warrants Take-Out)* and to ING as lender under the PSL (as defined in the Second Restructuring Agreement) to subscribe for shares in HoldCo as constituted pursuant to the HoldCo Warrants Resolution.

**"HoldCo Warrants Guarantee"** means a guarantee granted by HoldCo in favour of the Lenders and ING as lender under the PSL on or about the Second Restructuring Date.

**"HoldCo Warrants Resolution"** means the resolution to be passed by the general shareholders' meeting of HoldCo by virtue of which the HoldCo Warrants will be issued based on the HoldCo Warrants Term Sheet.

**"HoldCo Warrants Take-out"** has the meaning given to such term in Clause 2.4 *(HoldCo Warrants Take-out).*

"HoldCo Warrants Term Sheet" means the term sheet relating to the HoldCo Warrants in the agreed form provided as a condition precedent to the Second Restructuring Agreement.

"Holding Account" means an account:

1. held in the United Kingdom by HoldCo with the Agent and contributed to DevCo pursuant to the DevCo Agent Transfers;
2. identified in a letter between HoldCo and the Agent as a Holding Account; and
3. subject to Security granted, as at the Second Restructuring Date, by HoldCo  
   pursuant to the Holding Account Charge and later by DevCo pursuant to Clause 26.19 *(Security)* (in each case) in favour of the Security Agent which Security is in form and substance satisfactory to the Security Agent,

as the same may be redesignated, substituted or replaced from time to time.

"Holding Account Charge" means the security over cash agreement entered into by HoldCo on or about the date of this Agreement with respect to the Holding Account.

"Holding Company" means, in relation to a company or corporation, any other company or corporation in respect of which it is a Subsidiary.

"IFRS" means international accounting standards within the meaning of the IAS Regulation 1606/2002 to the extent applicable to the relevant financial statements.

"Impaired Agent" means the Agent at any time when:

1. it has failed to make (or has notified a Party that it will not make) a payment required to be made by it under the Finance Documents by the due date for payment;
2. the Agent otherwise rescinds or repudiates a Finance Document;
3. (if the Agent is also a Lender) it is a Defaulting Lender under paragraph (a) or (b) of the definition of "Defaulting Lender"; or
4. an Insolvency Event has occurred and is continuing with respect to the Agent, unless, in the case of paragraph (a) above:

(i) its failure to pay is caused by:

1. administrative or technical error; or
2. a Disruption Event; and

payment is made within five Business Days of its due date; or

the Agent is disputing in good faith whether it is contractually obliged to make the payment in question.

**"Increase Confirmation"** means a confirmation substantially in the form contained in Schedule 13 *(Form of Increase Confirmation).*

**"Independent Expert"** means KPMG Auditores, S.L., the independent expert appointed by the Mercantile Registry of Barcelona to review, accept and validate the arrangements relating to the Second Restructuring.

"ING" means ING Real Estate Finance S.E., E.F.C., S.A.

**"Initial Liquidity Plan"** has the meaning given to such term in Clause 25.4 *(Liquidity Plan).*

**"Insolvency Event"** in relation to a Finance Party means that the Finance Party:

1. is dissolved (other than pursuant to a consolidation, amalgamation or merger);
2. becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;
3. makes a general assignment, arrangement or composition with or for the benefit of its creditors;
4. institutes or has instituted against it, by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organisation or the jurisdiction of its head or home office, a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation by it or such regulator, supervisor or similar official;
5. has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition is instituted or presented by a person or entity not described in paragraph (d) above and:
6. results in a judgment of insolvency or bankruptcy or the entry of an  
   order for relief or the making of an order for its winding-up or liquidation; or
7. is not dismissed, discharged, stayed or restrained in each case within  
   30 days of the institution or presentation thereof;

(t) has exercised in respect of it one or more of the stabilisation powers pursuant

to Part 1 of the Banking Act 2009 and/or has instituted against it a bank insolvency proceeding pursuant to Part 2 of the Banking Act 2009 or a bank

administration proceeding pursuant to Part 3 of the Banking Act 2009;

(g) has a resolution passed for its winding-up, official management or liquidation

(other than pursuant to a consolidation, amalgamation or merger);

1. seeks or becomes subject to the appointment of an administrator, provisional  
   liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets;
2. has a secured party take possession of all or substantially all its assets or has a  
   distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter;

causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in paragraphs (a) to (i) above; or

takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

"Intellectual Property" means:

1. any patents, trademarks, service marks, designs, business names, copyrights,  
   design rights, moral rights, inventions, confidential information, knowhow and other intellectual property rights and interests, whether registered or unregistered; and
2. the benefit of all applications and rights to use such assets of each member of  
   the Group.

"Interest Period" means, in relation to a Loan, each period determined in accordance with Clause 12 *(Interest Periods)* and, in relation to an Unpaid Sum, each period determined in accordance with Clause 11.4 *(Default interest).*

"Irrevocable Power of Attorney" means each irrevocable power of attorney granted by an Obligor on or about the Second Restructuring Date as a condition precedent to the Second Restructuring Agreement.

"Joint Venture" means any joint venture entity, whether a company, unincorporated firm, undertaking, association, joint venture or partnership or any other entity.

"KPMG" means KPMG Auditors, S.L. in its capacity as adviser to the Lenders pursuant to the KPMG Engagement Letter.

"KPMG Engagement Letter" means the engagement letter delivered as a condition subsequent to this Agreement between KPMG and HoldCo.

"KPMG Report" means any report delivered by KPMG on the Business Plan and the Liquidity Plans pursuant to the KPMG Engagement Letter, addressed to and/or capable of being relied on by the Lenders.

"Land Bank Business" means the administration, management, sale and letting of the real estate listed in schedule 6 *(DevCo Branch of Activity Business)* of the Second Restructuring Agreement.

"Legal Opinion" means any legal opinion delivered to the Agent under Clause 2 *(Legal Opinions)* of Schedule 2 *(Conditions precedent to initial utilisation)* of Schedule 2 *(Conditions Precedent),* or pursuant to any other Finance Document.

"Legal Reservations" means:

1. the principle that equitable remedies may be granted or refused at the discretion of a court and the limitation of enforcement by laws relating to insolvency, reorganisation and other laws generally affecting the rights of creditors;
2. the time barring of claims under the Limitation Acts, the possibility that an undertaking to assume liability for or indemnify a person against non-payment of United Kingdom stamp duty may be void and defences of set-off or counterclaim;
3. similar principles, rights and defences under the laws of any Relevant Jurisdiction; and
4. any other matters which are set out as qualifications or reservations as to matters of law of general application in the Legal Opinions.

"Lender" means:

1. any Original Lender; and
2. any bank, financial institution, trust, fund or other entity which has become a Party in accordance with Clause 28 *(Changes to the Lenders),*

which in each case has not ceased to be a Party in accordance with the terms of this Agreement.

"Liquidity Plan" has the meaning given to such term in Clause 25.4 *(Liquidity Plan)* of this Agreement.

"LMA" means the Loan Market Association.

"Loan" means a Term Facility Loan, a Convertible Facility Loan, a MK Loan or a Profit Participative Loan.

"Los Naranjos Facility" means the mortgage facility entered into between Caja Madrid and HoldCo dated 21 February 2005 as amended on 10 December 2008 and from time to time.

"Majority Lenders" means:

(a) if there are no Loans then outstanding, a Lender or Lenders whose

Commitments aggregate more than 662/3 per cent. of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated more than 662/3 per cent. of the Total Commitments immediately prior to the reduction); or

|  |  |
| --- | --- |
| (b) | at any other time, a Lender or Lenders whose participations in the Loans then outstanding aggregate more than 662/3 per cent. of all the Loans then outstanding. |

"Mandatory Cost" means the percentage rate per annum calculated by the Agent in accordance with Schedule 4 *(Mandatory Cost Formulae).*

"Mandatory Prepayment Account" means an interest-bearing account:

1. held in the United Kingdom by HoldCo with the Agent and contributed to  
   DevCo pursuant to the DevCo Asset Transfers;
2. identified, upon opening, in a letter between HoldCo and the Agent as a  
   Mandatory Prepayment Account;
3. subject to Security granted, as at the Second Restructuring Date, by HoldCo  
   pursuant to the Mandatory Prepayment Account Charge and later by DevCo in accordance with Clause 26.19 *(Security)* (in each case) in favour of the Security Agent which Security is in form and substance satisfactory to the Security Agent; and
4. from which no withdrawals may be made by any members of the Group  
   except as contemplated by this Agreement,

as the same may be redesignated, substituted or replaced from time to time.

"Mandatory Prepayment Account Charge" means the security over cash agreement entered into by HoldCo on or about the Second Restructuring Date in relation to the Mandatory Prepayment Account.

''Margin" means 4.00 per cent. per annum.

"Material Adverse Effect" means any event which:

1. is materially adverse to the ability of any Borrower to perform its payment  
   obligations under the Finance Documents; or
2. is materially adverse to the ability of HoldCo to complete the DevCo Asset  
   Transfers on or prior to the Second Restructuring Longstop Date and, if HoldCo can demonstrate (to the satisfaction of the Majority Lenders (acting reasonably)) that such event is capable of remedy, which is not remedied with 10 Business Days of HoldCo becoming aware of such event or being given notice of such event by the Agent;
3. which affects the validity or enforceability of any Security granted or  
   purporting to be granted pursuant to any of the Transaction Security Documents or the rights or remedies of any Finance Party under the Finance Documents, in each case in a manner and to the extent which the Majority Lenders reasonably consider to be materially prejudicial to the interests of the Finance Parties under the Finance Documents.

"Monteverde" means Monteverde Grupo Inmobiliario, S.L. Italics Proyectos Inmobiliarios, S.L. and Carlos Monteverde de Mesa.

"Monteverde Transaction" means the transactions contemplated by agreements entered into in December 2007 between HoldCo and Monteverde and related documents with respect to the project of acquisition by HoldCo, and the sale by Monteverde, of 100 per cent. of the share capital of Proyecto Kopernico 2007, S.L., subject to specific conditions (and in respect of which Monteverde asserts that the required conditions have been satisfied, whereas HoldCo considers that Monteverde has failed to satisfy the conditions).

"Month" means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, except that:

1. (subject to paragraph (c) below) if the numerically corresponding day is not a  
   Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day;
2. if there is no numerically corresponding day in the calendar month in which  
   that period is to end, that period shall end on the last Business Day in that calendar month; and
3. if an Interest Period begins on the last Business Day of a calendar month, that  
   Interest Period shall end on the last Business Day in the calendar month in which that Interest Period is to end.

The above rules will only apply to the last Month of any period.

"Mortgage" means a real estate mortgage substantially in the form of Schedule 9 *(Form of Mortgage).*

"New Lender" has the meaning given to it in Clause 28.1 *(Assignment and transfers by the Lenders).*

"Obligor" means a vv Borrower.

"Original HoldCo Facilities Agreement" means the facilities agreement originally dated 12 April 2007 as amended and restated on 18 September 2007, as amended on 5 June 2008, as amended and restated on 14 September 2008, as amended on 15 October 2008 made between (amongst others) HoldCo as borrower, the Arrangers as arrangers, the Agent as facility agent and the Security Agent as security agent.

"Original Financial Statements" means, in the case of HoldCo, the audited consolidated financial statements of the Group for the financial year ended 31 December 2008, as delivered to the Agent under schedule 3 *(Conditions to the Restructuring)* to the Second Restructuring Agreement.

"Original Senior Facilities" has the meaning given to such term in Clause 2.1 *(The Facilities).*

"Participating Member State" means any member state of the European Communities that adopts or has adopted the euro as its lawful currency in accordance with legislation of the European Community relating to Economic and Monetary Union.

"Party" means a party to this Agreement.

"Perfection Requirements" means the making or the procuring of the appropriate registrations, filings, endorsements, notarisations, stampings and/or notifications of the Transaction Security Documents and/or the Security expressed to be created under the Transaction Security Documents.

"PIK Loan" means a Convertible Facility PIK Loan or a Term Facility PIK Loan.

"PPL Fixed Interest Rate" means the higher of (a) 6.5 per cent. per annum or (b) EURIBOR plus 1 per cent. per annum.

"PPL Variable Interest" means an amount per annum equal to 15 per cent. of the profits of DevCo (as demonstrated by the annual fmancial statements delivered to the Agent pursuant to Clause 25.1 *(Financial statements)* for the most recently completed Financial Year).

"Profit Participative (Convertible Facility) Loan" has the meaning given to such term in paragraph (a)(ii) of Clause 2.2 *(Conversion into Profit Participative Loans).*

"Profit Participative (Convertible Facility PIK) Loan" has the meaning given to such term in paragraph (a)(i) of Clause 2.2 *(Conversion into Profit Participative Loans).*

"Profit Participative Loan" means the Profit Participative (Convertible Facility) Loan, the Profit Participative (Convertible Facility PIK) Loan or the Profit Participative (Term Facility PIK) Loan.

"Profit Participative (Term Facility PIK) Loan" has the meaning given to such term in paragraph (a)(i) of Clause 2.2 *(Conversion into Profit Participative Loans).*

"PSL" means a EUR. 35,000,000 subordinated participating loan to be made available to a special purpose company to be incorporated in Spain as a wholly owned Subsidiary of HoldCo (as set out in clause 3.7 of the Second Restructuring Agreement) pursuant to a facility agreement to be entered into between 1NG and the Llacuna SPV.

"Qualifying Lender" has the meaning given to it in Clause 15 *(Tax gross-up and indemnities).*

"Quarter Date" means each of 31 March, 30 June, 30 September and 31 December.

"Quarterly Financial Statements" means the financial statements delivered pursuant to paragraph (d) of Clause 25.1 *(Financial statements).*

"Quarterly Management Report" means the quarterly management report to be delivered by DevCo in accordance with Clause 25.7 *(Information: property)* in the form set out in Schedule 10 *(\_Quarterly Management Report).*

"Quotation Day" means, in relation to any period for which an interest rate is to be determined, two TARGET Days before the first day of that period unless market practice differs in the Relevant Interbank Market, in which case the Quotation Day will be determined by the Agent in accordance with market practice in the Relevant Interbank Market (and if quotations would normally be given by leading banks in the Relevant Interbank Market on more than one day, the Quotation Day will be the last of those days).

"Real Estate Assets" means:

1. Real Property;
2. the carrying on of rental activities, home building activities or the acquisition, development and exploitation of Real Property; and/or
3. any shareholding or ownership interest in any entity principally carrying on any business described in paragraph (b).

"Real Property" means:

1. any freehold, leasehold or immovable property; and
2. any buildings, fixtures, fittings, fixed plant or machinery from time to time situated on or forming part of that freehold, leasehold or immovable property.

"Receiver" means a receiver or receiver and manager or administrative receiver of the whole or any part of the Charged Property.

"Reference Banks" means the principal office nominated by such bank for quoting EURIBOR rates of The Royal Bank of Scotland plc, Banco Santander, S.A. and HSBC Bank plc or such other banks as may be appointed by the Agent in consultation with the Borrower.

"Related Fund" in relation to a fund (the "first fund"), means a fund which is managed or advised by the same investment manager or investment adviser as the first fund or, if it is managed by a different investment manager or investment adviser, a fund whose investment manager or investment adviser is an Affiliate of the investment manager or investment adviser of the first fund.

"Relevant Interbank Market" means in relation to euro, the European interbank market.

"Relevant Jurisdiction" means, in relation to any Obligor:

1. its jurisdiction of incorporation;
2. any jurisdiction where any asset subject to or intended to be subject to the Transaction Security to be created by it is situated;
3. any jurisdiction where it conducts its business;
4. the jurisdiction whose laws govern the perfection of any of the Transaction Security Documents entered into by it.

"Relevant Obligations" has the meaning given to it in paragraph (c)(ii) of Clause 28.6 *(Procedure for assignment).*

"Rental Assets" means:

1. any Real Property which yields an ongoing rent; and
2. standing assets that are undergoing a refurbishment or development, provided that, and to the extent (in terms of square metres leased or pre-sold in proportion to the total square metres of the asset in question) there is a tenancy or pre-sale agreement in respect of them, in each case agreed at arm's length and on market terms and conditions.

"Repeating Representations" means:

1. in the case of DevCo, each of the representations set out in Clauses 24.2 *(Status)* to 24.8 *(Governing law and enforcement),* Clause 24.11 *(No default),* paragraph (a)(i) of Clause 24.12 *(No misleading information),* Clause 24.14 *(Pari passu ranking)* and Clause 24.17 *(Legal and Beneficial Ownership);* and
2. in the case of HoldCo, each of the representations set out in paragraph 1 *(Status)* to paragraph *7 (Governing law and enforcement),* paragraph 10 *(No default),* paragraph 12 *(No misleading information),* paragraph 17 *(Ranking)* and paragraph 18 *(Legal and beneficial ownership).*

"Representative" means any delegate, agent, manager, administrator, nominee, attorney, trustee or custodian.

"Riofisa" means Riofisa, S.A., a company incorporated under the law of Spain and registered at the Mercantile Registry of Barcelona, in tomo 41221 folio 127, page number B-378495.

"Riofisa Caja Madrid Facility" means a facility dated 18 September 2006 and amended on 2 June 2008 between Riofisa as borrower and Caja Madrid as lender in an amount of EUR 10,000,000.

"Riofisa Intercompany Loan" means a loan dated 30 June 2008, as amended and restated on 30 June 2009 between HoldCo as lender and Riofisa as borrower in an amount, as at 30 June 2009, of EUR 61,983,273.32 with a maturity of 30 June 2014.

"Riofisa Restructuring Agreement" means the public deed authorised by the Notary Public of Madrid, Mr. Luis Maiz Cal, on 19 July 2009, with number 1261 of his official records, to include all refinancing arrangements agreed with partners of financial indebtedness to Riofisa referred to therein.

"Riofisa Santander Facility" means a facility dated 28 January 2010 between Riofisa as borrower and Banco Santander, S.A. as lender in an amount of EUR 10,000,000 guaranteed by the Llinars del Valles (Barcelona) property.

"Riofisa Share Pledge" means the deed of pledge over the Riofisa Shares (including pledge of dividends) granted by DevCo on or about the Second Restructuring Date.

"Riofisa Shares" means the entire issued share capital of Riofisa.

"Screen Rate" means the percentage rate per annum determined by the Banking Federation of the European Union for the relevant period, displayed on the appropriate page of the Reuters screen. If the agreed page is replaced or service ceases to be available, the Agent may specify another page or service displaying the appropriate rate after consultation with the Borrowers and the Lenders.

**"Second Restructured Amendment and Restatement Agreement"** means the amendment and restatement agreement dated the same date as this Agreement between, amongst others, HoldCo, the HoldCo Lenders and the Agent, amending and restating the Original HoldCo Facilities Agreement.

**"Second Restructuring"** means the restructuring of the Original Senior Facilities through the entry into of the Second Restructured Amendment and Restatement Agreement, this Agreement, and the Second Restructuring Agreement.

**"Second Restructuring Agreement"** means the agreement dated the same date as the Second Restructured Amendment and Restatement Agreement and made between, amongst others, HoldCo, DevCo and the Lenders.

**"Second Restructuring Agreements with Bilateral Lenders"** means the letters entered into on or prior to the Second Restructuring Date between HoldCo and certain lenders of facilities and/or credit lines to the Company copies of which are attached at schedule 19 *(Second Restructuring Agreements with Bilateral Lenders)* to the form of HoldCo Facilities Agreement contained at schedule 2 *(Restated* Agreement) to the Second Restructured Amendment and Restatement Agreement.

**"Second Restructuring Date"** means the date on which the Agent has received all documents and other evidence listed in Schedule 2 *(Conditions Precedent to Initial Utilisation)* as described in Clause 4.1 *(Initial conditions precedent).*

**"Second Restructuring Longstop Date"** means the earlier of:

1. the date falling six months after the Second Restructuring Date; and
2. 30 July 2010.

**"Second Restructuring Undertakings"** means the Principal Shareholders Undertaking and the Existing Convertible Noteholders Undertaking (each as defined in the Second Restructuring Agreement).

**"Secured Parties"** means each Finance Party from time to time party to this Agreement and any Receiver or Delegate.

"Security" means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

"Selection Notice" means a notice substantially in the form set out in Part II *(Selection Notice)* of Schedule 3 *(Requests)* given in accordance with Clause 12 *(Interest Periods).*

"Specified Time" means a time determined in accordance with Schedule *7 (Timetables).*

"Subsidiary" means, in relation to any company or corporation, a company or corporation:

1. which is controlled, directly or indirectly, by the first mentioned company or  
   corporation;
2. more than half (or, in the case of a Finance Party, half or more than half) the  
   issued share capital of which is beneficially owned, directly or indirectly by the first mentioned company or corporation; or
3. which is a Subsidiary of another Subsidiary of the first mentioned company or  
   corporation,

and for this purpose, a company or corporation shall be treated as being controlled by another if that other company or corporation is able to direct its affairs and/or to control the composition of its board of directors or equivalent body.

"Super Majority Lenders" means a Lender or Lenders whose Commitments aggregate more than ninety two per cent. (or, for any amendment or waiver of Clause 9.1 *(Exit),* ninety five per cent.) of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated more than ninety two per cent. (or, for any amendment or waiver of Clause 9.1 *(Exit),* ninety five per cent.) of the Total Commitments immediately prior to that reduction).

"TARGET2" means the Trans-European Automated Real-time Gross Settlement Express Transfer payment system which utilises a single shared platform and which was launched on 19 November 2007.

"TARGET Day" means any day on which TARGET2 is open for the settlement of payments in euro.

"Tax" means any tax, levy, impost, duty or other charge 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).

"Tax Arrangements" means the rescheduling of certain Tax liabilities agreed between HoldCo and the Spanish tax authorities with respect to the following tax payments:

(a) for an amount of EUR 30,243,806.49 owed by Subirats Coslada Logistica,

S.L. in respect of corporate tax; and

(b) for an amount of EUR 15,324,642.83 owed by HoldCo in respect of VAT,

such payment being secured over property registered with the Colmenar Viejo 1 Register,

each as disclosed to the Agent prior to the Second Restructuring Date.

**"Term Facility"** means the term loan facility made available under this Agreement as described in paragraph (a) of Clause 2.1 *(The Facilities)* and including any Term Facility PIK Loan made pursuant to Clause 11.2 *(Capitalisation of interest).*

**"Term Facility Commitment"** means:

1. in relation to an Original Lender, the amount set opposite its name under the heading "Term Facility Commitment" in Part II of Schedule 1 *(The Original Parties)* and the amount of any other Term Facility Commitment transferred to it under this Agreement; and
2. in relation to any other Lender, the amount of any Term Facility Commitment transferred to it under this Agreement,

(plus in each case, an amount equal to the amount of all interest which has accrued on that Lender's participation in the Term Facility but only to the extent it has been capitalised pursuant to Clause 11.2 *(Capitalisation of Interest))* in each case to the extent not cancelled, reduced or transferred by it under this Agreement.

**"Term Facility Loan"** means a loan made or to be made under the Term Facility pursuant to Clause *5.5 (Deemed Utilisation)* or the principal amount outstanding for the time being of that loan.

**"Term Facility PIK Loan"** means a loan made or to be made under the Term Facility for the purposes of Clause 11.2 *(Capitalisation of interest)* or the principal amount outstanding for the time being of that loan.

**"Termination Date"** means:

1. in relation to the Term Facility, 31 December 2014; and
2. in relation to the Convertible Facility, 31 December 2014 or, if earlier, the date of the HoldCo Warrants Take-out.

**"Total Commitments"** means the aggregate of the Total Term Facility Commitments and the Total Convertible Facility Commitments, being €795,000,000 at the date of this Agreement.

**"Total Convertible Facility Commitments"** means the aggregate of the Convertible Facility Commitments, being €275,000,000 at the date of this Agreement (notwithstanding whether the Convertible Facility is made available by DevCo by way of a Convertible Facility Loan or, following a conversion in whole or part pursuant to Clause 2.2 *(Conversion into Profit Participative Loans),* a Profit Participative (Convertible Facility) Loan) plus an amount equal to the amount of the Convertible Facility PIK Loan and, if applicable, any Profit Participative (Convertible

Facility PEP Loan granted in accordance with Clause 2.2 *(Conversion into Profit Participative Loans).*

**"Total Term Facility Commitments"** means the aggregate of the Term Facility Commitments, being €520,000,000 at the date of this Agreement plus an amount equal to the amount of the Term Facility PIK Loan and, if applicable, any Profit Participative (Term Facility PIK) Loan granted in accordance with Clause 2.2 *(Conversion into Profit Participative Loans).*

**"Transaction Documents"** means the Finance Documents and the HoldCo Finance Documents.

**"Transaction Security"** means the Security created, evidenced or expresses to be created or evidenced pursuant to the Transaction Security Documents.

**"Transaction Security Documents"** means:

1. the Holding Account Charge;
2. the Mandatory Prepayment Account Charge;
3. the DevCo Share Pledge;
4. the Riofisa Share Pledge; and
5. each of the documents required to be granted by DevCo pursuant to Clause 26.19 *(Security).*

**"Transfer Certificate"** means a certificate substantially in the form set out in Schedule *5 (Form of Transfer Certificate)* or any other form agreed between the Agent and the Borrowers.

**"Transfer Date"** means, in relation to an assignment or a transfer, the later of:

1. the proposed Transfer Date specified in the relevant Assignment Agreement or Transfer Certificate; and
2. the date on which the Agent executes the relevant Assignment Agreement or Transfer Certificate.

**"Unpaid Sum"** means any sum due and payable but unpaid by a Borrower under the Finance Documents.

**"Utilisation"** means a utilisation of a Facility.

**"Utilisation Date" means** the date of a Utilisation, being the date on which the relevant Loan is to be made.

**"Utilisation Request"** means a notice substantially in the form set out in Part I *(Utilisation Request)* of Schedule 3 *(Requests).*

**"VAT"** means value added tax as provided for in the Value Added Tax Act 1994 and any other tax of a similar nature.

1.2 Construction

(a) Unless a contrary indication appears any reference in this Agreement to:

1. the "Agent", the "Arranger", any "Finance Party", any "Lender",  
   any "Borrower", the "Security Agent" or any "Party" shall be construed so as to include its successors in title, permitted assigns and permitted transferees and, in the case of the Security Agent, any person for the time being appointed as Security Agent or Security Agents in accordance with the Finance Documents;
2. a document in "agreed form" is a document which is previously agreed in writing by or on behalf of a Borrower and the Agent or, if not so agreed, is in the form specified by the Agent;
3. "assets" includes present and future properties, revenues and rights of every description;
4. a "Finance Document" or a "Transaction Document" or any other agreement or instrument is a reference to that Finance Document or Transaction Document or other agreement or instrument as amended, novated, supplemented, extended, replaced or restated (in each case, however fundamentally);
5. "guarantee" means any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets of any person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness;
6. "indebtedness" includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
7. a "person" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality);
8. a "regulation" includes any regulation, rule, official directive, request or guideline (whether or not baying the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
9. a provision of law is a reference to that provision as amended or re­enacted; and
10. a time of day is a reference to London time.
11. Section, Clause and Schedule headings are for ease of reference only.
12. Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement.
13. A Default is **"continuing"** if it has not been remedied or waived.

1.3 **Currency Symbols and Definitions**

**"FUR", "E"** and **"euro"** denote the single currency unit of the Participating Member States.

1.4 **Third party rights**

1. A person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the **"Third Parties Act")** to enforce or enjoy the benefit of any term of this Agreement, unless otherwise expressly stated herein to the contrary.
2. Notwithstanding any term of any Finance Document, the consent of any person who is not a Party is not required to rescind or vary this Agreement at any time.

**2. THE FACILITIES**

**2.1 The Facilities**

Subject to the terms of this Agreement, the Lenders make available to the Borrowers:

1. a euro term loan facility in an aggregate amount equal to the Total Term Facility Commitments; and
2. a euro convertible term loan facility in an aggregate amount equal to the Total Convertible Facility Commitments.

Immediately prior to the Second Restructuring Date, certain lenders under the Original HoldCo Facilities Agreement had made available a "Facility A", a "Facility B" (each of which was drawn in full) and a "Revolving Facility" to HoldCo (together, the **"Original Senior Facilities").** Pursuant to the terms of the Second Restructured Amendment and Restatement Agreement, those facilities (including the amount of any undrawn commitment in respect of the Revolving Facility) were converted to form the Term Facility, the Convertible Facility and the HoldCo Facilities on the Second Restructuring Date.

**2.2 Conversion into Profit Participative Loans**

(a) At any time following the DevCo Asset Transfer Date, if so required to

increase DevCo's net worth in order to avoid a mandatory dissolution event in accordance with article 104.1(e) of Law 2/1995 of 23 March on Private Limited Companies *(Ley 2/19995 de 23 de marzo de Sociedades de*

*Responsabilidad Limitada)* (a **"Mandatory Dissolution Event"),** at any time upon written request to the Agent from DevCo's sole director (or any replacement administration body) providing evidence verified or confirmed in writing by the Auditors of DevCo as to the need to make such an increase (but only after DevCo has taken any available measures (including decreasing its share capital) in order to avoid the Mandatory Dissolution Event and in spite of such measures, the Mandatory Dissolution Event has not still been remedied) the Lenders will be obliged to:

convert an amount as necessary to avoid the Mandatory Dissolution Event of the Term Facility PIK Loan and the Convertible Facility PIK Loan, *pro rata,* into profit participating loans *(prestamos participativos)* (respectively, the **"Profit Participative (Term Facility) PIK Loan"** and **"Profit Participative (Convertible Facility) PIK Loan")** and such Profit Participative Loans in such necessary amount shall be granted to the Borrower; and

(ii) if, having converted pursuant to sub paragraph (i) above, the

conversion of the total outstanding amount of PIK Loans at such time is insufficient to avoid a Mandatory Dissolution Event, convert an amount of the Convertible Facility Loan as necessary to avoid a Mandatory Dissolution Event into a profit participating loan *(prestamo participativo)* (the **"Profit Participative (Convertible Facility) Loan")** and such Profit Participative Loan in such necessary amount shall be granted to the Borrower,

such conversions to be made by the Lenders as soon as practicable (and in any case in a maximum of 45 days as from the date in which the Agent receives such a request).

1. A Borrower shall be deemed to have made a Utilisation under, as the case may be, the Profit Participative (Term Facility PIK) Loan, the Profit Participative (Convertible Facility PIK) Loan and the Profit Participative (Convertible Facility) Loan in an aggregate amount in each case equal to the amounts of PIK Loans or the Convertible Facility Loan converted in accordance with paragraph (a) above.
2. For the purposes of paragraph (a) above, the Agent is hereby irrevocably authorised and, to the extent practicable, empowered by the Lenders to appear before a Notary of its choice for the purposes of documenting the cancellation (in whole or part) of the PIK Loans and, if applicable, the Convertible Facility, and the grant of the Profit Participative Loans and, on request of the Agent, DevCo shall appear together with the Agent before the Notary to effect the same and:

(i) DevCo grants an Irrevocable Power of Attorney in favour of the Agent

(as delivered as a condition precedent to the Second Restructuring Agreement) which the Agent may use to act on behalf of DevCo in the event that it fails to appear before the relevant Notary following a request made to it in accordance with this paragraph (b); and

(ii) any Lender which cannot empower the Agent as per the terms of this

paragraph (b) undertakes either (A) to grant at the time a specific notarial power of attorney in favour of the Agent, or (B) to appear together with the Agent and DevCo before the relevant Notary specified by the Agent for the purposes described herein.

1. Any conversion of the PIK Loans or, as the case may be, the Convertible  
   Facility, as described in this Clause 2.2 shall apply pro rata to the participations of the Lenders under the PIK Loans or, as the case may be, the Convertible Facility.
2. Any Profit Participative Loan created pursuant to this Clause 2.2 shall be  
   allocated *pro rata* amongst the Lenders under the Convertible Facility in exchange for the principal amount of each such Lender's participation in the PIK Loans and, if applicable, the Convertible Facility Loan, which have been the subject of conversion as described in this Clause 2.2.

2.3 Terms of the Profit Participative Loans

Each Profit Participative Loan granted under this Agreement will be subject to the terms and conditions set out herein (except that none of the conditions to Utilisation set out in Clause 4.2 *(Further conditions precedent)* or the requirements of Clause *5 (Utilisation — Loans)* shall apply) and also to the provisions contained in Article 20 of Royal Decree-Law 7/1996, of 7 June, regarding Urgent Tax Measures and Measures for Economic Development and Deregulation *(Real Decreto-Ley de Medidas Urgentes de Caracter Fiscal y de Fomento y Liberalizacion de la Actividad Economica),* as amended from time to time.

2.4 HoldCo Warrants Take-out

The following amounts under this Agreement may be converted into equity of HoldCo in accordance with the terms of the HoldCo Warrant Term Sheet and the HoldCo Warrants Guarantee (the "HoldCo Warrants Take-out") and subject to the total aggregate amount which is convertible pursuant to the HoldCo Warrants Take­out being limited to EUR 275,000,000 (the "Guaranteed Amount"):

1. first, the outstanding amount of the Convertible Facility (including the amount  
   of any Profit Participative (Convertible Facility) Loan created pursuant to paragraph (a)(ii) of (Clause 2.2 *(Conversion into Profit Participative Loans)* above but excluding the amount of any Profit Participative (Convertible Facility PIK) Loan created pursuant to paragraph (a)(i) of Clause 2.2 *(Conversion into Profit Participative Loans)* above); and
2. thereafter, but only if the aggregate outstanding amounts under paragraph (a)  
   above are less than the Guaranteed Amount on the date of demand under the HoldCo Warrants Guarantee, the outstanding amounts of (i) interest accrued under the HoldCo Warrants Guarantee on the Term Facility Loan, the Convertible Facility Loan and the PIK Loans but not yet capitalised as at the date of demand under Clause 11.2 *(Capitalisation of interest)* and (ii) the PIK Loans (in each case, pro rata between the Term Facility and the Convertible Facility).

2.5 Increase

(a) A Borrower may by giving prior notice to the Agent by no later than the date

falling 10 Business Days after the effective date of a cancellation of

1. the Available Commitments of a Defaulting Lender in accordance with  
   Clause 8.4 *(Right of cancellation in relation to a Defaulting Lender);*

Or

1. the Commitments of a Lender in accordance with Clause 8.1  
   *(Illegality),*

request that the Total Commitments be increased (and the Total Commitments under that Facility shall be so increased) in an aggregate amount in the Base Currency of up to the amount of the Available Commitments or Commitments so cancelled as follows:

1. the increased Commitments will be assumed by one or more Lenders or other banks, financial institutions, trusts, funds or other entities willing to accept an Increase Commitment (each an "Increase Lender") selected by that Borrower and acceptable to the Agent (acting reasonably) and each such Increase Lender confirms its willingness to assume and does assume all the obligations of a Lender corresponding to that part of the increased Commitments which it is to assume, as if it had been an Original Lender;
2. each of the Obligors and any Increase Lender shall assume obligations  
   towards one another and/or acquire rights against one another as the Obligors and the Increase Lender would have assumed and/or acquired had the Increase Lender been an Original Lender (including with respect to the HoldCo Warrants Guarantee as set out in clause 10.2 thereof);
3. each Increase Lender shall become a Party as a "Lender" and any  
   Increase Lender and each of the other Finance Parties shall assume obligations towards one another and acquire rights against one another as that Increase Lender and those Finance Parties would have assumed and/or acquired had the Increase Lender been an Original Lender;
4. the Commitments of the other Lenders shall continue in full force and  
   effect; and

(B) any increase in the Total Commitments shall take effect on the date

specified by that Borrower in the notice referred to above or any later date on which the conditions set out in paragraph (b) below are satisfied.

(b) An increase in the Total Commitments will only be effective on:

(i) the execution by the Agent of an Increase Confirmation from the

relevant Increase Lender; and

(ii) in relation to an Increase Lender which is not a Lender immediately

prior to the relevant increase, the performance by the Agent of all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to the assumption of the increased Commitments by that Increase Lender, the completion of which the Agent shall promptly notify to the Borrowers and the Increase Lender.

1. Each Increase Lender, by executing the Increase Confirmation, confirms (for the avoidance of doubt) that the Agent has authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of the requisite Lender or Lenders in accordance with this Agreement on or prior to the date on which the increase becomes effective.
2. Unless the Agent otherwise agrees or the Increase Commitment is assumed by an existing Lender, the Borrowers shall, on the date upon which the increase takes effect, pay to the Agent (for its own account) a fee of EUR3,000 and the Borrowers shall promptly on demand pay the Agent and the Security Agent the amount of all costs and expenses (including legal fees) reasonably incurred by either of them and, in the case of the Security Agent, by any Receiver or Delegate in connection with any increase in Commitments under this Clause 2.5.
3. The Borrowers may pay to the Increase Lender a fee in the amount and at the times agreed between the Borrowers and the Increase Lender in a fee letter.
4. Clause 28.4 *(Limitation of responsibility of Existing Lenders)* shall apply *mutatis mutandis* in this Clause 2.5 in relation to an Increase Lender as if references in that Clause to:
5. an **"Existing Lender"** were references to all the Lenders immediately  
   prior to the relevant increase;
6. the **"New Lender"** were references to that **"Increase Lender";** and
7. a **"re-transfer"** and **"re-assignment"** were references to respectively a **"transfer"** and **"assignment".**

2.6 **Finance Parties' rights and obligations**

1. The obligations of each Finance Party under the Finance Documents are several. Failure by a Finance Party to perform its obligations under the Finance Documents does not affect the obligations of any other Party under the Finance Documents. No Finance Party is responsible for the obligations of any other Finance Party under the Finance Documents.
2. The rights of each Finance Party under or in connection with the Finance Documents are separate and independent rights and any debt arising under the Finance Documents to a Finance Party from the Borrowers shall be a separate and independent debt.

(c) A Finance Party may, except as otherwise stated in the Finance Documents,

separately enforce its rights under the Finance Documents.

3. PURPOSE

3.1 Purpose

The Borrowers shall apply all amounts borrowed by it under the Facilities towards financing the continuation of the DevCo Branch of Activity Business.

3.2 **Monitoring**

No Finance Party is bound to monitor or verify the application of any amount borrowed pursuant to this Agreement.

4. **CONDITIONS OF UTILISATION**

4.1 **Initial conditions precedent**

A Borrower may not deliver a Utilisation Request unless the Agent has received all of the documents and other evidence listed in Schedule 2 *(Conditions precedent to Initial Utilisation)* in form and substance satisfactory to the Agent. The Agent shall notify the Borrowers and the Lenders promptly upon being so satisfied.

4.2 **Further conditions precedent**

The Lenders will only be obliged to comply with Clause 5.4 *(Lenders' participation)* if on the date of the Utilisation Request and on the proposed Utilisation Date:

1. no Default is continuing or would result from the proposed Loan; and
2. the Repeating Representations to be made by the Borrowers are true in all material respects.

4.3 **Maximum number of Loans**

A Borrower may not deliver a Utilisation Request if as a result of the proposed Utilisation:

1. two or more Term Facility Loans would be outstanding; or
2. two or more Convertible Facility Loans would be outstanding.

**5. UTILISATION - LOANS**

**5.1 Delivery of a Utilisation Request**

A Borrower may utilise a Facility by delivery to the Agent of a duly completed Utilisation Request not later than the Specified Time.

5.2 Completion of a Utilisation Request

(a) Each Utilisation Request is irrevocable and will not be regarded as having

been duly completed unless:

1. it identifies the Facility to be utilised;
2. the proposed Utilisation Date is the Second Restructuring Date;
3. the currency and amount of the Utilisation comply with Clause 5.3 *(Currency and amount);* and
4. the proposed Interest Period complies with Clause 12 *(Interest Periods).*

(b) Only one Loan may be requested in each Utilisation Request.

5.3 Currency and amount

1. The currency specified in a Utilisation Request must be euro.
2. The amount of the proposed Loan must be a minimum amount which is not less than the Total Term Facility Commitments or, as the case may be, the Total Convertible Facility Commitments (in each case, as at the Second Restructuring Date) or in either case, if less, the Available Facility.

5.4 Lenders' participation

1. If the conditions set out in this Agreement have been met, each Lender shall (subject to Clause *5.5 (Deemed Utilisation))* make its participation in each Loan available by the Utilisation Date through its Facility Office.
2. The amount of each Lender's participation in each Loan will be equal to the  
   proportion borne by its Available Commitment to the Available Facility immediately prior to making the Loan.
3. The Agent shall notify each Lender of the amount of each Loan and the amount of its participation in that Loan, in each case by the Specified Time.

5.5 Deemed Utilisation

In respect of the first Utilisation of each of the Convertible Facility and the Term Facility (and subject to the conditions of this Agreement and the terms of the Second Restructured Amendment and Restatement Agreement), each Original Lender which is, immediately prior to the Second Restructuring Date, a lender under the Original HoldCo Facilities Agreement, shall be deemed to make its participation in each Loan available by the Utilisation Date through its Facility Office.

5.6 Cancellation of Commitment

Any Commitments which are not utilised on the Second Restructuring Date shall be immediately cancelled.

6. THE BORROWERS

6.1 Obligations of DevCo

Notwithstanding any indication to the contrary in this Agreement, until the DevCo Asset Transfer Date, DevCo shall have no obligations or liabilities with respect to payments to be made by a Borrower under this Agreement or any Finance Document.

6.2 Release of HoldCo and Assumptions by DevCo

C.

(a) On the DevCo Asset Transfer Date and, without the need for the execution or

filing of any document or taking of any further act by HoldCo, DevCo or any of the Finance Parties:

1. HoldCo shall assign all its rights, and DevCo shall assume, all  
   liabilities and obligations of HoldCo, as Borrower and Obligor under this Agreement and any other relevant Finance Document, for all purposes including (without limitation) in respect of all Loans previously made to HoldCo that are then outstanding;
2. HoldCo shall thereupon cease to be a Borrower and Obligor under this  
   Agreement and the other relevant Finance Documents and shall be released from all of its obligations and liabilities in any capacity thereunder (subject to paragraphs (d) and (e) below).

(b) Without prejudice to paragraph (a) above, each of HoldCo and DevCo

undertakes to enter into all documents and do all other acts and things within its powers (including in the case of DevCo, without limitation, filing a Form PE-1 with the Bank of Spain to obtain a Financial Operation Number for the borrowings assumed by DevCo pursuant to this Clause 6.2) which are necessary in order to ensure that:

1. DevCo acquires the rights, and assumes the obligations, of HoldCo as  
   Borrower and Obligor under this Agreement and any other relevant Finance Document and substitutes HoldCo (to the extent necessary) for all purposes thereunder; and
2. HoldCo is released from all of its liabilities and obligations under this  
   Agreement and any other relevant Finance Documents with effect from the DevCo Asset Transfer Date.

(c) HoldCo shall bear all reasonable costs reasonably and properly incurred by

any Finance Party in connection with the foregoing.

(d) In this Clause, "relevant Finance Documents" means this Agreement and any

Finance Document (including, without limitation, any Fee Letter) under which HoldCo had any obligation or liability immediately before the DevCo Asset Transfer Date except in its capacity as (i) a guarantor under the HoldCo Warrants Guarantee or (ii) a provider of Security under (A) the DevCo Share Pledge, and (B) the Mandatory Prepayment Account Charge or the Holding Account Charge (save to the extent that each of the Mandatory Prepayment Account Charge and the Holding Account Charge is replaced by analogous

Transaction Security over the Mandatory Prepayment Account and the

Holding Account by DevCo pursuant to Clause 26.19 *(Security)).*

(e) The rights and obligations of HoldCo (in such capacity) including but not

limited to those set out under paragraph (c) of Clause 9.2 *(Proceeds and Excess Cashflow)* shall not be affected by the assignment and assumption of DevCo of the rights and obligations of HoldCo as a Borrower or an Obligor under this Agreement.

7. REPAYMENT

7.1 Repayment of Loans

1. The Borrowers shall repay the Term Facility Loan together with (i) the Term Facility PIK Loan and (ii) if made, the Profit Participative (Term Facility PIK) Loan made to it in each case in full on the Termination Date.
2. The Borrowers shall repay the Convertible Facility Loan together with (i) the  
   Convertible Facility PIK Loan and (ii) if made, the Profit Participative (Convertible Facility PIK) Loan and the Profit Participative (Convertible Facility) Loan made to it in full on the Termination Date.
3. No Borrower may reborrow any part of a Facility which is repaid.

7.2 Effect of cancellation and prepayment

(a) if

1. a Borrower cancels the whole or any part of the Term Facility  
   Commitments or Convertible Facility Commitments in accordance with Clause 8.3 *(Right of replacement or repayment and cancellation in relation to a single Lender)* or Clause 8.4 *(Right of cancellation in relation to a Defaulting Lender)* or if the Term Facility Commitment or Convertible Facility Commitment of any Lender is reduced under Clause 8.1 *(Illegality);* or
2. any of the Loans are prepaid in accordance with Clause 8.3 *(Right of  
   replacement or repayment and cancellation in relation to a single Lender)* or Clause 8.1 *(Illegality),*

then (other than, in any relevant case, to the extent that any part of the relevant Commitment(s) is subsequently increased pursuant to Clause 2.2 *(Increase))* the amount of the relevant Facility to be repaid on the applicable Termination Date will reduce by the amount of the Loan so prepaid.

(b) If a Borrower makes any voluntary prepayment in accordance with Clause 8.2

*(Voluntary prepayment of Loans),* then any prepayment shall be applied as set out therein.

(c) If any of the Loans are prepaid in accordance with Clause 9.2 *(Disposal*

*Proceeds, Insurance Proceeds, Equity Fundraising Proceeds and Debt*

*Fundraising Proceeds)* then prepayments shall be applied as set out in paragraph (a) of Clause 9.3 *(Application of mandatory prepayments).*

8. ILLEGALITY AND VOLUNTARY PREPAYMENT

8.1 Illegality

If it becomes unlawful in any applicable jurisdiction for a Lender to perform any of its obligations as contemplated by this Agreement or to fund, issue or maintain its participation in any Utilisation:

1. that Lender, shall promptly notify the Agent upon becoming aware of that  
   event;
2. upon the Agent notifying the Borrowers, the Commitment of that Lender will  
   be immediately cancelled; and
3. each Borrower shall repay that Lender's participation in the Utilisations made  
   to it on the last day of the Interest Period for each Utilisation occurring after the Agent has notified the Borrowers or, if earlier, the date specified by the Lender in the notice delivered to the Agent (being no earlier than the last day of any applicable grace period permitted by law).

8.2 Voluntary prepayment of Loans

A Borrower may, if it gives the Agent not less than five Business Days' (or such shorter period as the Majority Lenders may agree) prior notice, prepay the whole or any part of the Loans in the order set out in the DevCo Payment Cascade (and, with respect to a part payment of any individual Loan, in an amount that reduces the amount of the Loan by a minimum amount of €2,000,000).

8.3 Right of replacement or repayment and cancellation in relation to a single

Lender

|  |  |
| --- | --- |
| _Pic89 | any sum payable to any Lender by a Borrower is required to be increased under paragraph (c) of Clause 15.2 *(Tax gross-up);* |

1. any Lender claims indemnification from a Borrower under Clause 15.3  
   *(Tax indemnity)* or Clause 16.1 *(Increased costs);*
2. the Agent makes a determination of the Additional Cost Rate of any Lender under paragraph 3 of Schedule 4 *(Mandatory Cost formulae),*

that Borrower may, whilst the circumstance giving rise to the requirement for an increased payment or indemnification continues, give the Agent notice of cancellation of the Commitment of that Lender and its intention to procure the repayment of that Lender's participation in the Utilisations.

(b) On receipt of a notice of cancellation referred to in paragraph (a) above, the

Commitment of that Lender shall immediately be reduced to zero.

1. On the last day of each Interest Period which ends after a Borrower has given  
   notice of cancellation under paragraph (a) above (or, if earlier, the date specified by that Borrower in that notice), that Borrower shall repay that Lender's participation in that Loan.

8.4 Right of cancellation in relation to a Defaulting Lender

1. If any Lender becomes a Defaulting Lender, a Borrower may, at any time whilst the Lender continues to be a Defaulting Lender, give the Agent 10 Business Days' notice of cancellation of each Available Commitment of that Lender.
2. On the notice referred to in paragraph (a) above becoming effective, each Available Commitment of the Defaulting Lender shall immediately be reduced to zero.
3. The Agent shall as soon as practicable after receipt of a notice referred to in paragraph (a) above, notify all the Lenders.

9. MANDATORY PREPAYMENT

9.1 Exit

Upon the occurrence of a Change of Control, the Facilities will be cancelled and all outstanding Utilisation, together with accrued interest, and all other amounts accrued under the Finance Documents, shall become immediately due and payable.

9.2 Proceeds and Excess Cashflow

(a) For the purposes of this Clause 9.2, Clause 9.3 *(Application of mandatory*

*prepayments)* and Clause 9.4 *(Mandatory Prepayment Accounts and Holding Accounts):*

"Acceptable Bank" means:

1. a bank or financial institution which has a rating for its short-term unsecured and non credit-enhanced debt obligations of Al+/F1+ or higher by Standard & Poor's Rating Services or Fitch Ratings Ltd or (in respect of both short-term and long-term obligations) Pl/Aa3 or higher by Moody's Investor Services Limited or a comparable rating from an internationally recognised credit rating agency; or
2. any other bank or financial institution approved by the Agent.

"Accion de Responsabilidad Claim Proceeds" means the proceeds received by HoldCo of any claim in respect of the Acci6n de Responsibilidad after deducting any reasonable expenses and Extraordinary Expenses which are incurred by HoldCo with respect to such amount to persons who are not members of the Group.

"Cash" means, at any time, cash denominated in Euro in hand or at bank and (in the latter case) credited to an account in the name of a Borrower with an

Acceptable Bank and to which that Borrower is beneficially entitled and for so long as:

1. that cash is repayable within 30 days after the relevant date of calculation;
2. repayment of that cash is not contingent on the prior discharge of any other indebtedness of any member of the Group or of any other person whatsoever or on the satisfaction of any other condition;
3. there is no Security over that cash except for Transaction Security or Security permitted by this Agreement constituted by a netting or set-off arrangement entered into by members of the Group in the ordinary course of their banking arrangements; and
4. the cash is freely and (except as mentioned in paragraph (a) above) immediately available to be applied in repayment or prepayment of the Facilities.

"Cash Equivalent Investments" means at any time:

1. certificates of deposit maturing within one year after the relevant date of calculation and issued by an Acceptable Bank or other entity with similar rating;
2. any investment in marketable debt obligations issued or guaranteed by the government of the United States of America, the United Kingdom, any member state of the European Economic Area or any Participating Member State or by an instrumentality or agency of any of them having an equivalent credit rating, maturing within one year after the relevant date of calculation and not convertible or exchangeable to any other security;
3. commercial paper not convertible or exchangeable to any other security:

(i) for which a recognised trading market exists;

issued by an issuer incorporated in the United States of America, the United Kingdom, any member state of the European Economic Area or any Participating Member State;

1. which matures within one year after the relevant date of calculation; and
2. which has a credit rating of either A-1 or higher by Standard & Poor's Rating Services or F1 or higher by Fitch Ratings Ltd or P-1 or higher by Moody's Investor Services Limited, or, if no rating is available in respect of the commercial paper, the issuer of which has, in respect of its long-term unsecured and non­credit enhanced debt obligations, an equivalent rating;
3. any negotiable instruments eligible for rediscount by the Bank of Spain or the European Central Bank and in each case accepted by an Acceptable Bank or other entity with similar rating (or their dematerialised equivalent);
4. any investment accessible within 30 days in money market funds which (i) have a credit rating of either A-1 or higher by Standard & Poor's Rating Services or F1 or higher by Fitch Ratings Ltd or P-1 or higher by Moody's Investor Services Limited and (ii) which invest substantially all their assets in securities of the types described in paragraphs (a) to (d) above; or

(1) any other debt security approved by the Majority Lenders,

in each case, denominated in Euro and USD and to which any member of the Group is alone (or together with other members of the Group) beneficially entitled at that time and which is not issued or guaranteed by any member of the Group or subject to any Security (other than Security arising under the Transaction Security Documents).

"Cash Need" means the minimum amount that would be required to be stated as the Cash Position on in the Business Plan on the first day of the Financial Quarter in respect of which the Business Plan has been prepared (but excluding,

1. in respect of Disposals which are forecast in the Business Plan, any amounts of Disposal Proceeds forecast to be received on account thereof which are permitted to be retained by DevCo or, as the case may be, HoldCo, as per the definition of "Specified Amount of Disposal Proceeds" in Clause 9.2 *(Proceeds and Excess Cashflow);* and
2. the amount of any amortisation payment in respect of any item referred to in paragraph (a) of the definition of Financial Indebtedness of DevCo scheduled to be made on 31 December 2014),

in order that the minimum Cash Position at all times until the latest falling Termination Date is EUR 5,000,000.

"Cash Position" means, at any time, the sum of Cash and Cash Equivalent Investments of DevCo.

"Claim Proceeds" means Acci6n de Responsabilidad Claim Proceeds, Monteverde Claim Proceeds and Nozar Claim Proceeds.

"Disposal" means a sale, lease, licence, transfer, loan or other disposal by a person of any asset (including, but not limited to, any shares), undertaking or business (whether by a voluntary or involuntary single transaction or series of transactions).

"Disposal Proceeds" means, in respect of a Disposal made by HoldCo (prior to the DevCo Asset Transfer Date only), Riofisa (or any Subsidiary of Riofisa)

or DevCo, the consideration received by HoldCo, Riofisa, that Subsidiary of Riofisa or DevCo (as appropriate), for that Disposal, after deducting:

1. any reasonable expenses and Extraordinary Expenses which are  
   incurred by HoldCo, DevCo, Riofisa or that Subsidiary of Riofisa, as appropriate, with respect to that Disposal to persons who are not members of the Group;
2. any Tax incurred and required to be paid by HoldCo, DevCo, Riofisa  
   or that Subsidiary of Riofisa, as appropriate, in connection with that Disposal (as reasonably determined by HoldCo, DevCo, Riofisa or that Subsidiary of Riofisa, as appropriate, on the basis of existing rates and taking account of any available credit, deduction or allowance);
3. the amount of any Financial Indebtedness which, as at the date of the  
   relevant Disposal, is secured on any asset which is the subject of that Disposal and is required to be discharged by HoldCo, DevCo, Riofisa or that Subsidiary of Riofisa, as appropriate, on the completion of that Disposal; and
4. in the case of a Disposal by Riofisa (or any Subsidiary of Riofisa), the  
   amount of any repayments required to be made by Riofisa under the Riofisa Intercompany Loan.

Provided that, in the case of Disposal Proceeds received by a Subsidiary, the following provisions shall apply:

1. if the Subsidiary is, directly or indirectly, wholly-owned by the  
   relevant Borrower, that Borrower shall ensure that the Subsidiary applies such Disposal Proceeds in making payment of a dividend to that Borrower (except where, after that Borrower and the relevant Subsidiary have used their reasonable endeavours to overcome any legal impediment to a dividend being made, payment of a dividend is not legally possible), and that Borrower shall apply the dividend so received in full in prepayment of Utilisations;
2. if the Subsidiary is owned, directly or indirectly, by the relevant  
   Borrower in a percentage representing between sixty-six and two thirds (662/3) and less than one hundred (100) per cent. of the Subsidiary's share capital, that Borrower shall ensure that, except if not legally possible or there is a restriction in the by-laws of the Subsidiary or any shareholders' agreements in force at the date hereof (or which have been agreed by the Agent) preventing this, the Subsidiary applies the Disposal Proceeds in making payment of a dividend (except where, after that Borrower and the relevant Subsidiary have used their reasonable endeavours to overcome any legal impediment to a dividend being made, payment of a dividend is not legally possible), in which case that Borrower shall apply the dividend so received in full in prepayment of Utilisations; and

(c) if the direct or indirect percentage shareholding of the relevant

Borrower in the capital of the Subsidiary is less than sixty-six and two thirds (662/3), that Borrower shall use its commercially reasonable endeavours so that, except if not legally possible or there is a restriction in the by-laws of the Subsidiary or any shareholder's agreements in force at the date hereof (or which have been agreed by the Agent) preventing this, the Disposal Proceeds are applied as described in paragraph (B) above and that Borrower shall, at the request of the Agent, provide reasonable evidence to it of the commercially reasonable endeavours used to do so.

"Excess Cashflow" means for the Financial Quarters ending on 30 June and 31 December in each case, the higher of:

(a) the difference between the Cash Position as at the last day of the

relevant Financial Quarter and the Cash Need, less amounts standing to the credit of:

1. the Holding Account; and
2. the Mandatory Prepayment Account, on such date; and

(b) zero.

"Extraordinary Expenses" means any extraordinary expenses incurred by HoldCo, DevCo, Riofisa or a Subsidiary of Riofisa (as appropriate), owing to persons who are not members of the Group in respect of (as the case may be) the Accion de Responsabilidad, the claims against Monteverde or Nozar or a Disposal, provided that the deduction of such expenses from (as the case may be) the relevant Claim Proceeds or Disposal Proceeds has been approved by the Majority Lenders.

"Monteverde Claim Proceeds" means any amount received by HoldCo from or on behalf of Monteverde in respect of the Monteverde Transaction after deducting any reasonable expenses and Extraordinary Expenses which are incurred by HoldCo with respect to such amounts to persons who are not members of the Group and which, after the DevCo Asset Transfer Date, are received by DevCo from HoldCo by way of a subscription for shares in DevCo pursuant to paragraph (c) below.

"Nozar Claim Proceeds" means any amount received by HoldCo from or on behalf of Grupo Nozar Inmobiliario ("Nozar") in relation to the loan agreement between HoldCo as lender and Nozar as borrower dated 31 January 2008, as amended from time to time, in an amount of EUR 76,852,657.53 after deducting any reasonable expenses and Extraordinary Expenses which are incurred by HoldCo with respect to such amounts to persons who are not members of the Group and which, after the DevCo Asset Transfer Date, are received by DevCo from HoldCo by way of a subscription for shares in DevCo pursuant to paragraph (c) below.

**"Other Asset Disposal"** means any Disposal of (i) prior to the DevCo Asset Transfer Date, any asset of HoldCo which is part of the DevCo Branch of Activity Business, (ii) any asset of DevCo or Riofisa (or a Subsidiary of Riofisa) which is (in either case) permitted by this Agreement but excluding any Disposal of a home building unit or any shares in any company.

**"Riofisa Distribution Proceeds"** means the amount of any dividend or any other distribution or payment made by Riofisa to DevCo (in any such case, whether per annum or in any given period).

**"Specified Amount of Accirin de Responsabilidad Claim Proceeds"** means an amount of the Accion de Responsabilidad Claim Proceeds which is proportionate to the amount borne by the Facilities to the aggregate amount of the Facilities and the HoldCo Facilities (in each case as at the Second Restructuring Date) and which, after the DevCo Asset Transfer Date, are received by DevCo from HoldCo by way of a subscription for shares in DevCo pursuant to paragraph (c) below.

**"Specified Amount of Disposal Proceeds"** means:

(a) in the case of Disposal Proceeds arising out of a Disposal of a home

building unit, where the aggregate amount of headroom in the Holding Account is:

1. less than EUR 10,000,000 plus the amount of any capital expenditure payments committed by HoldCo or, after the DevCo Asset Transfer Date, DevCo in the three month period following the date of receipt of such Disposal Proceeds, zero (and, **provided that** such amounts are paid into the Holding Amount as set out in Clause 9.4 *(Mandatory Prepayment Accounts and Holding Accounts),* zero (and HoldCo or, after the DevCo Asset Transfer Date, DevCo may retain an amount of such Disposal Proceeds for application towards capital expenditure requirements (and the Land Bank Business); and
2. equal to or greater than EUR 10,000,000 plus the amount of any committed capital expenditure payments in the three month period following the date of receipt of such Disposal Proceeds, the amount of such Disposal Proceeds,

(b) in the case of Disposal Proceeds arising out of Other Asset Disposals,

the amount of such Disposal Proceeds;

(c) in the case of Disposal Proceeds relating to any Disposal of Riofisa

Shares, the amount of such Disposal Proceeds.

The Borrowers shall prepay Utilisations at the times and in the order of application contemplated by Clause 9.3 *(Application of mandatory prepayments)* in the following amounts:

**(b)**

(i) the Specified Amount of Disposal Proceeds;

1. the amount of Riofisa Distribution Proceeds;
2. the Specified Amount of Acci6n de Responsabilidad Claim Proceeds;
3. the amount of Nozar Claim Proceeds and Monteverde Claim Proceeds; and
4. the amount of Excess Cashflow,

provided that no prepayment of any Disposal Proceeds received by Riofisa or any of its Subsidiaries shall be required to be made to the extent prohibited by the Riofisa Restructuring Agreement.

1. In the event that, after the DevCo Asset Transfer Date, HoldCo receives any amounts of Claim Proceeds:

HoldCo shall implement an increase in the share capital of DevCo, and shall apply the Specified Accion de Responsibilidad Claim Proceeds, the amount of Nozar Claim Proceeds or the amount of Monteverde Claim Proceeds (as the case may be) to subscribe for shares in DevCo; and

(ii) DevCo shall take all steps necessary to implement the increase in share

capital referred to in sub paragraph (i) above and, on receipt of the proceeds of the subscription for shares, DevCo shall apply such proceeds in prepayment of the Utilisation as required by paragraph (b) above.

1. For the purposes of malcing any Disposal of shares over which Transaction Security has been granted, the relevant Borrower will notify in writing the Security Agent of its intention to make such a Disposal, with details of the company whose shares are to be the subject of such Disposal, the number of shares to be disposed of (the "Disposable Shares") and the completion date for such Disposal (the "Completion Date"), and the Security Agent will be obliged to release the Security created over those Disposable Shares against receipt of cash by the Agent in accordance with this Clause 9.3 and Clause 9.4 *(Application of mandatory prepayments)* on the Completion Date in accordance with the following procedure:
2. For the purposes of a release of Security over shares in Riofisa, the Security Agent and DevCo will grant the corresponding deed of release before a Spanish Notary substantially in the form set out in Schedule 11 *(Form of Deed of Release).*
3. The relevant Borrower must provide evidence to the Security Agent as to the effective Disposal having been made on the Completion Date.
4. In the event that the Disposal is not made on the Completion Date, the relevant Borrower will be obliged to re-grant Security over the Disposable Shares on the following Business Day, and for these purposes that Borrower and the Security Agent will grant the corresponding deed of pledge (in the case of Security over shares in

Riofisa, before a Spanish Notary) substantially in the form of the Riofisa Share Pledge as applicable. In this regard, if that Borrower fails to appear for the purposes of executing such a deed of pledge, the Security Agent will be entitled to grant it in the name and on behalf of that Borrower by virtue of the Irrevocable Power of Attorney.

(e) For the purposes of making any Disposal of any asset in respect of which a

Mortgage has been granted, DevCo shall notify the Security Agent in writing of its intention to make such a Disposal and the Rental Asset(s) or other asset to be disposed of (the "Disposable Asset"), no less than 5 Business Days prior to the date of the Disposal. The Security Agent shall release the Security created over the Disposable Asset upon execution of an *escritura de yenta* (deed of sale) in relation to the Disposable Asset. For these purposes, the Security Agent and DevCo will grant the relevant deed of release before a Spanish Notary.

9.3 Application of mandatory prepayments

(a) A prepayment under Clause 9.2 *(Proceeds)* shall prepay the Loans *pro rata* in

the following order (the "DevCo Payment Cascade"):

1. first, in prepayment of the Term Facility Loan;
2. second, in prepayment of the Convertible Facility Loan;
3. third, in prepayment of the Term Facility PIK Loan;
4. fourth, in prepayment of the Convertible Facility PIK Loan;
5. fifth, in prepayment of any Profit Participative (Convertible Facility) Loan; and
6. sixth, in prepayment of any Profit Participative (Convertible Facility PIK) Loans and any Profit Participative (Term Facility PIK) Loans *pro rata,*

provided that a prepayment under Clause 9.2 *(Proceeds and Excess Cashflow)* of Disposal Proceeds relating to a Disposal of Finca de Dos Hermanas, number 3443, previously finca 82.135 ("Los Naranjos") shall be applied as follows:

1. with respect to the first EUR 44,999,999 of such Disposal  
   Proceeds (the "Caja Madrid Secured Amount"), in prepayment of outstanding amounts owed to Caja Madrid under (1) first, the Los Naranjos Facility and (2) when the Los Naranjos Facility has been prepaid in full, the Riofisa Caja Madrid Facility; and
2. with respect to all amounts of such Disposal Proceeds  
   exceeding the Caja Madrid Secured Amount, in prepayment of the Facilities accordance with sub paragraphs (i) to (vi) of this paragraph (a).
3. The Borrowers shall prepay Loans with the amounts of Disposal Proceeds, Riofisa Distribution Proceeds or Claim Proceeds as required under paragraph (b) of Clause 9.2 *(Proceeds and Excess Cashflow)* by placing (or procuring that a member of the Group or (until the DevCo Asset Transfer Date) Holdco shall place) such proceeds in a Mandatory Prepayment Account immediately on receipt.
4. The Borrowers shall prepay Loans with the amount of Excess Cashflow on a semi annual basis within 14 days of delivery of the Business Plan for the Financial Quarters ending 30 June and 31 December in each year under Clause 25.5 *(Business Plan).*
5. Subject to paragraph (h) below, the Borrowers may, by giving the Agent not less than 1 Business Day's (or such shorter period as the Majority Lenders may agree) prior written notice, elect that any prepayment under Clause 9.2 *(Proceeds)* be applied in prepayment of a Loan on the last day of the Interest Period relating to that Loan.
6. If a Borrower does not make the election under paragraph (d) above, then a proportion of the relevant Loan equal to the amount of the relevant prepayment will be due and payable on the second Business Day after the date of receipt of the relevant proceeds.

If a Borrower makes the election under paragraph (e) above then a proportion of the relevant Loan equal to the amount of the relevant prepayment will be due and payable on the last day of its Interest Period.

If a Borrower has made an election under paragraph (e) above but a Default has occurred and is continuing, that election shall no longer apply and a proportion of the Loan in respect of which the election was made equal to the amount of the relevant prepayment shall be immediately due and payable (unless the Majority Lenders otherwise agree in writing).

The Agent shall calculate the portion attributable to each Lender of any prepayments made under this Clause 9 *(Mandatory Prepayments) pro rata* to that Lender's Commitment under the relevant Facility being prepaid.

If HoldCo has successfully completed a Disposal of the property Serrano Galvache and has received Disposal Proceeds in excess of EUR 80,000,000, then an amount from such excess Disposal Proceeds (up to a maximum aggregate amount of EUR 40,000,000) (the "Serrano Galvache Payment") shall be paid to Caja Madrid for application in prepayment of:

1. first, any amounts then outstanding under the Los Naranjos Facility; and
2. when the Los Naranjos Facility has been prepaid in full, any amounts then outstanding under the Riofisa Caja Madrid Facility,

and, upon the prepayments referred to in sub paragraphs (i) and (ii) above, HoldCo may take the benefit by way of subrogration of the rights of Caja Madrid to receive payments pursuant to the proviso to paragraph (a) of this

Clause 9.3 and to receive the benefit of Security (in each case) up to the amount of the Serrano Galvache Payment.

(j) Each of HoldCo and DevCo (and, to the extent required, Caja Madrid) shall

promptly do all such acts or execute all such documents reasonably required to confer on HoldCo Security as contemplated by paragraph (i) above in favour of HoldCo or for the exercise of any rights, powers and remedies of HoldCo in connection therewith.

9.4 Mandatory Prepayment Accounts and Holding Accounts

(a) The Borrowers shall ensure that:

(i) Disposal Proceeds, Riofisa Distribution Proceeds and Claim Proceeds

in respect of which the Parent has made an election under paragraph

1. of Clause 9.3 *(Application of mandatory prepayments)* are paid into a Mandatory Prepayment Account as soon as reasonably practicable after receipt by a member of the Group; and

(ii) amounts of Disposal Proceeds from Disposals of home building units

which, as set out in the definition of "Specified Amount of Disposal Proceeds" are permitted to be retained by a Borrower, are paid into a Holding Account as soon as reasonably practicable after receipt by a member of the Group;

(b) Each Borrower irrevocably authorises the Agent to apply amounts credited to

the Mandatory Prepayment Account to pay amounts due and payable under Clause 9.3 *(Application of mandatory prepayments)* and otherwise under the Finance Documents.

(c) The Agent acknowledges and agrees that (i) interest shall accrue at normal

commercial rates on amounts credited to those accounts and that the account holder shall be entitled to receive such interest (which shall be paid in accordance with the mandate relating to such account) unless a Default is continuing and (ii) each such account is subject to the Transaction Security.

(d) For the avoidance of doubt, the Borrowers shall be free to use the Disposal

Proceeds standing to the credit of the Holding Account and such amount shall not be required to be applied in prepayment.

1 0 . RESTRICTIONS

1. Any notice of cancellation or prepayment given by any Party under this Clause 10 *(Restrictions)* shall be irrevocable and, unless a contrary indication appears in this Agreement, shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of that cancellation or prepayment.
2. Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid and, subject to any Break Costs, without premium or penalty.

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1. No Borrower may reborrow any part of a Facility which is prepaid.
2. The Borrowers shall not repay or prepay all or any part of the Loans or cancel all or any part of the Commitments except at the times and in the manner expressly provided for in this Agreement.
3. No amount of the Total Commitments cancelled under this Agreement may be subsequently reinstated.
4. If the Agent receives a notice under this Clause 8 *(Restrictions)* it shall promptly forward a copy of that notice to either the Borrowers or the affected Lender, as appropriate.

11. INTEREST

11.1 Calculation of interest

The rate of interest on each Loan (other than a Profit Participative Loan) for each Interest Period is the percentage rate per annum which is the aggregate of the applicable:

1. Margin;
2. EURIBOR; and
3. Mandatory Cost, if any. 11.2 Capitalisation of interest

(a) Interest shall accrue on each Loan (other than a Profit Participative Loan or a

PIK Loan) at the rate calculated in accordance with Clause 11.1 *(Calculation*

*of interest)* above, shall be recorded by the Agent in a ledger and:

1. on the last day of the first Interest Period ending after the Second  
   Restructuring Date, the Borrower to which the relevant Loan was made shall be deemed to have issued a Utilisation Request for a Corresponding PIK Loan in an amount equal to the amount of all such interest which has accrued in respect of the relevant Loan, and such interest shall be capitalised and added to the outstanding principal amount of the Corresponding PIK Loan; and
2. on the last day of each subsequent Interest Period (and, if the Interest  
   Period is longer than six Months, on the dates falling at six Monthly intervals after the first day of the Interest Period), such interest shall be capitalised and added to the outstanding principal amount of the Corresponding PIK Loan.

(b) Each PIK Loan shall itself bear interest at the rate calculated in accordance

with Clause 11.1 *(Calculation of interest),* such interest shall be recorded by the Agent in a ledger and, on the last day of each Interest Period, the interest accrued on the PIK Loan to which that Interest Period relates (and, if the Interest Period is longer than six Months, on the dates falling at six Monthly

intervals after the first day of the Interest Period) shall be capitalised and added to the outstanding principal amount of that PIK Loan.

1. Each PIK Loan shall be repaid in accordance with the repayment or, as the case may be, prepayment provisions of this Agreement.
2. For the purposes of any Utilisation Request deemed to have been made under paragraph (a)(i) of this Clause 11.2, for the avoidance of doubt, the conditions of Utilisation set out in Clause 4 *(Conditions of Utilisation)* shall not apply and the amount of the relevant PIK Loan shall not be required to comply with paragraph (b) of Clause 5.3 *(Currency and amount).*

11.3 **Interest — Profit Participative Loans**

Interest shall accrue on each Profit Participative Loan for each Interest Period at:

1. the PPL Fixed Interest Rate; plus
2. an amount equal to that portion of the PPL Variable Interest equivalent to the proportion borne by the length of the applicable Interest Period to a period of 12 Months,

this shall be recorded by the Agent in a ledger and, on the last day of each Interest Period, the interest accrued on the Profit Participative Loan to which that Interest Period relates shall be capitalised and added to the outstanding amount of the relevant Profit Participative Loan.

11.4 **Default interest**

1. If a Borrower fails to pay any amount payable by it under a Finance Document on its due date, interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate which, subject to paragraph (b) below, is two per cent. higher than the rate which would have been payable if the overdue amount had, during the period of non-payment, constituted a Loan in the currency of the overdue amount for successive Interest Periods, each of a duration selected by the Agent (acting reasonably). Any interest accruing under this Clause 11.4 *(Default interest)* shall be immediately payable by that Borrower on demand by the Agent.
2. If any overdue amount consists of all or part of a Loan which became due on a day which was not the last day of an Interest Period relating to that Loan:
3. the first Interest Period for that overdue amount shall have a duration  
   equal to the unexpired portion of the current Interest Period relating to that Loan; and
4. the rate of interest applying to the overdue amount during that first  
   Interest Period shall be two per cent. higher than the rate which would have applied if the overdue amount had not become due.

(c) Default interest (if unpaid) arising on an overdue amount will be compounded

with the overdue amount at the end of each Interest Period applicable to that overdue amount but will remain immediately due and payable.

11.5 Notification of rates of interest

The Agent shall promptly notify the Lenders and the Borrowers of the determination of a rate of interest under this Agreement.

12. INTEREST PERIODS

12.1 Selection of Interest Periods

1. A Borrower may select an Interest Period for a Loan in the Utilisation Request  
   for that Loan or (if the Loan has already been borrowed) in a Selection Notice.
2. Each Selection Notice for a Loan is irrevocable and must be delivered to the  
   Agent by the relevant Borrower not later than the Specified Time.
3. If a Borrower fails to deliver a Selection Notice to the Agent in accordance  
   with paragraph (b) above, the relevant Interest Period will be one Month.
4. Subject to this Clause 12 *(Interest periods),* a Borrower may select an Interest  
   Period of one, three or six Months or any other period agreed between the Borrowers and the Agent (acting on the instructions of all the Lenders in relation to the relevant Loan).
5. An Interest Period for a Loan shall not extend beyond the Termination Date  
   applicable to its Facility.
6. Each Interest Period for a Loan shall start on the Utilisation Date or (if already  
   made) on the last day of its preceding Interest Period.

12.2 Non-Business Days

If an Interest Period would otherwise end on a day which is not a Business Day, that Interest Period will instead end on the next Business Day in that calendar month (if there is one) or the preceding Business Day (if there is not).

12.3 Consolidation of Loans

Subject to paragraph (b) below, if two or more Interest Periods which relate to Term Facility Loans or, as the case may be, Convertible Facility Loans end on the same date, those Term Facility Loans or, as the case may be, Convertible Facility Loans will, unless a Borrower specifies to the contrary in the Selection Notice for the next Interest Period, be consolidated into, and treated as, a single Term Facility Loan or, as the case may be, Convertible Facility Loan on the last day of the Interest Period.

13. CHANGES TO THE CALCULATION OF INTEREST 13.1 Absence of quotations

Subject to Clause 13.2 *(Market disruption),* if EURIBOR is to be determined by reference to the Reference Banks but a Reference Bank does not supply a quotation by the Specified Time on the Quotation Day, the applicable EURIBOR shall be determined on the basis of the quotations of the remaining Reference Banks.

13.2 Market disruption

(a) If a Market Disruption Event occurs in relation to a Loan for any Interest

Period, then the rate of interest on each Lender's share of that Loan for the Interest Period shall be the percentage rate per annum which is the sum of:

1. the Margin;
2. the rate notified to the Agent by that Lender as soon as practicable and in any event before interest is due to be paid in respect of that Interest Period, to be that which expresses as a percentage rate per annum the cost to that Lender of funding its participation in that Loan from whatever source it may reasonably select; and
3. the Mandatory Cost, if any, applicable to that Lender's participation in the Loan.

(b) In this Agreement "Market Disruption Event" means:

at or about noon on the Quotation Day for the relevant Interest Period the Screen Rate is not available and none or only one of the Reference Banks supplies a rate to the Agent to determine EURIBOR for euro and the relevant Interest Period; or

before close of business in London on the Quotation Day for the relevant Interest Period, the Agent receives notifications from a Lender or Lenders (whose participations in a Loan exceed 35.00 per cent. of that Loan) that the cost to it of obtaining matching deposits in the Relevant Interbank Market would be in excess of EURIBOR.

13.3 Alternative basis of interest or funding

1. If a Market Disruption Event occurs and the Agent or a Borrower so requires, the Agent and that Borrower shall enter into negotiations (for a period of not more than thirty days) with a view to agreeing a substitute basis for determining the rate of interest.
2. Any alternative basis agreed pursuant to paragraph (a) above shall, with the prior consent of all the Lenders and the Borrowers, be binding on all Parties.

13.4 Break Costs

1. Each Borrower shall, within three Business Days of demand by a Finance Party, pay to that Finance Party its Break Costs attributable to all or any part of a Loan or Unpaid Sum being paid by that Borrower on a day other than the last day of an Interest Period for that Loan or Unpaid Sum.
2. Each Lender shall, as soon as reasonably practicable after a demand by the Agent, provide a certificate confirming the amount of its Break Costs for any Interest Period in which they accrue.
3. In the event that a Loan or Unpaid Sum is paid by a Borrower on a day other than the last day of an Interest Period for that Loan or Unpaid Sum, any Break Costs and any interest accrued as at such payment date shall automatically capitalise and be added to the outstanding principal amount of the Corresponding PIK Loan.
4. FEES 14.1 Agency fee

The Borrowers shall pay to the Agent (for its own account) an agency fee in the amount and at the times agreed in a Fee Letter.

14.2 Security Agent fee

The Borrowers shall pay to the Security Agent (for its own account) the Security Agent fee in the amount and at the times agreed in a Fee Letter.

1. TAX GROSS-UP AND INDEMNITIES 15.1 Definitions

(a) In this Agreement:

"Protected Party" means a Finance Party which is or will be subject to any liability or required to make any payment for or on account of Tax in relation to a sum received or receivable (or any sum deemed for the purposes of Tax to be received or receivable) under a Finance Document.

"Qualifying Lender" means:

(i) a Lender which is resident for tax purposes in any of the member states

of the European Union other than The Kingdom of Spain and which becomes a Party to this Agreement directly (other than through a permanent establishment) or through a permanent establishment located in another member state of the European Union other than The Kingdom of Spain, provided that the interest income is not attributable to a permanent establishment located in The Kingdom of Spain and provided further the interest income is not obtained by such Lender through a territory of country identified as a tax haven in the Spanish legislation; or

1. a Lender which is a credit institution or a credit financial establishment registered in the special registries of the Bank of Spain **provided that** the Lender is resident or established for tax purposes in The Kingdom of Spain; or
2. a permanent establishment of a non Spanish resident financial entity as described in Article 8.1 of the Royal Decree 1776/2004, of 30 July, approving the Non Residents Income Tax regulations; or
3. a Treaty Lender,

and, in each case, where, if the relevant tax authority requires the Lender to be beneficially entitled to the interest income in order for such interest to be paid without a tax deduction, it is so entitled.

**"Tax Credit"** means a credit against, relief or remission for, or repayment of, any Tax.

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**"Tax Deduction"** means a deduction or withholding for or on account of Tax from a payment under a Finance Document.

**"Tax Payment"** means either the increase in a payment made by an Obligor to a Finance Party under Clause 15.2 *(Tax gross-up)* or a payment under Clause 15.3 *(Tax indemnity).*

**"Treaty Lender"** means a Lender which:

is treated as a resident of a Treaty State for the purposes of the Treaty;

1. does not carry on a business in The Kingdom of Spain through a permanent establishment with which that Lender's participation in the Loan is effectively connected; and
2. is entitled under the provisions of the Treaty to receive payments without a Tax Deduction.

**"Treaty State"** means a jurisdiction having a double taxation agreement (a **"Treaty")** with The Kingdom of Spain which makes provision for full exemption from tax imposed by The Kingdom of Spain on interest.

Unless a contrary indication appears, in this Clause *15 (Tax gross-up and indemnities)* a reference to **"determines"** or **"determined"** means a determination made in the absolute discretion of the person making the determination.

15.2 **Tax gross-up**

1. Each Obligor shall make all payments to be made by it without any Tax Deduction, unless a Tax Deduction is required by law.
2. Each Obligor shall promptly upon becoming aware that it must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax

Deduction) notify the Agent accordingly. Similarly, a Lender shall notify the Agent on becoming so aware in respect of a payment payable to that Lender. If the Agent receives such notification from a Lender it shall notify the Borrower.

(c) If a Tax Deduction is required by law to be made by an Obligor, the amount of

the payment due from that Obligor shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.

(d) An Obligor is not required to make an increased payment to a Lender under

paragraph (c) above for a Tax Deduction in respect of tax imposed by The Kingdom of Spain from a payment due under a Loan, if on the date on which the payment falls due:

1. the payment could have been made to the relevant Lender without a  
   Tax Deduction if it was a Qualifying Lender, but on that date that Lender is not or has ceased to be a Qualifying Lender other than as a result of any change after the date it became a Lender under this Agreement in (or in the interpretation, administration, or application of) any law or Treaty, or any published practice or concession of any relevant taxing authority; or
2. the relevant Lender is a Qualifying Lender that has failed to comply  
   with its obligations under paragraph (g) below.

(e) If an Obligor is required to make a Tax Deduction, that Obligor shall make

that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.

(f) Within thirty days of making either a Tax Deduction or any payment required

in connection with that Tax Deduction, the Obligor making that Tax Deduction shall deliver to the Agent for the Finance Party entitled to the payment evidence reasonably satisfactory to that Finance Party that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.

(g) A Qualifying Lender and an Obligor which makes a payment to which that

Qualifying Lender is entitled shall co-operate in completing any procedural formalities necessary for that Obligor to obtain authorisation to make that payment without a Tax Deduction. Each Qualifying Lender shall provide the Obligor on or before the first day upon which the Obligor is to make a payment to or for the account of a Qualifying Lender and, thereafter on a yearly basis (or more frequently if required by the Spanish tax legislation), with a tax residence certificate duly issued by the tax authorities of its jurisdiction of residence accrediting that Lender as resident for tax purposes in such jurisdiction or if such Qualifying Lender is a Treaty Lender, with a tax residence certificate duly issued by the tax authorities of its jurisdiction of residence accrediting such Lender as resident of the relevant Treaty State for

the purpose of the Treaty, with the corresponding form required under the applicable Treaty, if any.

If in the reasonable opinion of a Borrower the certificate of residence delivered to it by a Qualifying Lender is not correct pursuant to Spanish tax legislation and, therefore, does not allow it to make payments without a Tax Deduction, it shall notify the relevant Qualifying Lender within the five days immediately after its receipt, requesting the delivery of a new certificate of residence. The relevant Qualifying Lender shall deliver to that Borrower an amended certificate of tax residence as soon as reasonably practicable and, in any case, before any payment from that Borrower to such Qualifying Lender becomes due. If the relevant Qualifying Lender does not submit the amended certificate of residence on time, it will be treated by that Borrower as a Non Qualifying Lender, not being entitled to receive an increased payment under paragraph (c) above until such time as that Qualifying Lender delivers to that Borrower a correct certificate of residence.

15.3 Tax indemnity

1. Each Borrower shall (within three Business Days of demand by the Agent) pay to a Protected Party an amount equal to the loss, liability or cost which that Protected Party determines will be or has been (directly or indirectly) suffered for or on account of Tax by that Protected Party in respect of a Finance Document.
2. Paragraph (a) above shall not apply:

(i) with respect to any Tax assessed on a Finance Party:

1. under the law of the jurisdiction in which that Finance Party is  
   incorporated or, if different, the jurisdiction (or jurisdictions) in which that Finance Party is treated as resident for tax purposes;

Or

1. under the law of the jurisdiction in which that Finance Party's  
   Facility Office is located in respect of amounts received or receivable in that jurisdiction,

if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any slim deemed to be received or receivable) by that Finance Party; or

(ii) to the extent a loss, liability or cost:

1. is compensated for by an increased payment under Clause 15.2 *(Tax gross-up);* or
2. would have been compensated for by an increased payment under Clause 15.2 *(Tax gross-up)* but was not so compensated solely because one of the exclusions in paragraph (d) of Clause 15.2 *(Tax gross-up)* applied.
3. A Protected Party making, or intending to make a claim under paragraph (a) above shall promptly notify the Agent of the event which will give, or has given, rise to the claim, following which the Agent shall notify the Borrower.
4. A Protected Party shall, on receiving a payment from a Borrower under this Clause 15.3 *(Tax indemnity),* notify the Agent.

15.4 Tax Credit

If an Obligor makes a Tax Payment and the relevant Finance Party determines that:

1. a Tax Credit is attributable either to an increased payment of which that Tax Payment forms part or to that Tax Payment; and
2. that Finance Party has obtained, utilised and retained that Tax Credit,

the Finance Party shall pay an amount to the Obligor which that Finance Party determines will leave it (after that payment) in the same after-Tax position as it would

have been in had the Tax Payment not been required to be made by the Obligor.

15.5 Stamp taxes

Each Borrower shall pay and, within three Business Days of demand, indemnify each Secured Party and Arranger against any cost, loss or liability that Secured Party or Arranger incurs in relation to all stamp duty, registration and other similar Taxes applicable in the Kingdom of Spain, payable in respect of:

1. any Finance Document executed on or about the Second Restructuring Date;
2. the granting of any Mortgage pursuant to the promissory mortgages referred to in paragraph (a) of Clause 26.19 *(Security);*
3. any Finance Document executed in connection with a request (or, as the case may be, election) by a Borrower for (i) the assumption of Commitments of a Defaulting Lender by an Increase Lender pursuant to Clause 2.5 *(Increase))* or (ii) the transfer of rights and obligations of a Defaulting Lender under this Agreement pursuant to Clause 41.4 *(Replacement of a Defaulting Lender);* and
4. any conversion of the Convertible Facility into equity of HoldCo pursuant to an exercise of the HoldCo Warrants,

provided that any such applicable stamp duty, registration and other similar Taxes payable in respect of a conversion by a Lender of Profit Participative Loans into equity of DevCo pursuant to Clause 26.22 *(Loan to Value)* shall be for the account of such Lender.

15.6 Value added tax

(a) All amounts set out, or expressed to be payable under a Finance Document by

any Party to a Finance Party which (in whole or in part) constitute the consideration for VAT purposes shall be deemed to be exclusive of any VAT which is chargeable on such supply, and accordingly, subject to paragraph (c)

below, if VAT is chargeable on any supply made by any Finance Party to any Party under a Finance Document, that Party shall pay to the Finance Party (in addition to and at the same time as paying the consideration) an amount equal to the amount of the VAT (and such Finance Party shall promptly provide an appropriate VAT invoice to such Party).

1. If VAT is chargeable on any supply made by any Finance Party (the "Supplier") to any other Finance Party (the "Recipient") under a Finance Document, and any Party (the "Relevant Party") is required by the terms of any Finance Document to pay an amount equal to the consideration for such supply to the Supplier (rather than being required to reimburse the Recipient in respect of that consideration), such Party shall also pay to the Supplier (in addition to and at the same time as paying such amount) an amount equal to the amount of such VAT. The Recipient will promptly pay to the Relevant Party an amount equal to any credit or repayment from the relevant tax authority which it reasonably determines relates to the VAT chargeable on that supply.
2. Where a Finance Document requires any Party to reimburse a Finance Party for any costs or expenses, that Party shall also at the same time pay and indemnify the Finance Party against all VAT incurred by the Finance Party in respect of the costs or expenses to the extent that the Finance Party reasonably determines that neither it nor any other member of any group of which it is a member for VAT purposes is entitled to credit or repayment from the relevant tax authority in respect of the VAT.

16. INCREASED COSTS 16.1 Increased costs

1. Subject to Clause 16.3 *(Exceptions)* the Borrowers shall, within three Business Days of a demand by the Agent, pay for the account of a Finance Party the amount of any Increased Costs incurred by that Finance Party or any of its Affiliates as a result of (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation or (ii) compliance with any law or regulation made after the date of this Agreement.
2. In this Agreement "Increased Costs" means:
3. a reduction in the rate of return from the Facility or on a Finance Party's (or its Affiliate's) overall capital;
4. an additional or increased cost; or
5. a reduction of any amount due and payable under any Finance Document,

which is incurred or suffered by a Finance Party or any of its Affiliates to the extent that it is attributable to that Finance Party having entered into its Commitment or funding or performing its obligations under any Finance Document.

16.2 Increased cost claims

1. A Finance Party intending to make a claim pursuant to Clause 16.1 *(Increased costs)* shall notify the Agent of the event giving rise to the claim, following which the Agent shall promptly notify the Borrowers.
2. Each Finance Party shall, as soon as practicable after a demand by the Agent, provide a certificate confirming the amount of its Increased Costs.

16.3 Exceptions

(a) Clause 16.1 *(Increased costs)* does not apply to the extent any Increased Cost

is:

1. attributable to a Tax Deduction required by law to be made by a Borrower;
2. compensated for by Clause 15.3 *(Tax indemnity)* (or would have been compensated for under Clause 15.3 *(Tax indemnity)* but was not so compensated solely because any of the exclusions in paragraph (b) of Clause 15.3 *(Tax indemnity)* applied);
3. compensated for by the payment of the Mandatory Cost; or
4. attributable to the wilful breach by the relevant Finance Party or its Affiliates of any law or regulation.

(b) In this Clause 16.3 *(Exceptions),* a reference to a "Tax Deduction" has the

same meaning given to the term in Clause 15.1 *(Definitions).*

17. OTHER INDEMNITIES 17.1 Currency indemnity

(a) If any sum due from an Obligor under the Finance Documents (a "Sum"), or

any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the "First Currency") in which that Sum is payable into another currency (the "Second Currency") for the purpose of:

1. making or filing a claim or proof against that Obligor;
2. obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

that Obligor shall as an independent obligation, within three Business Days of demand, indemnify each Finance Party to whom that Sum is due against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.

(b) Each Obligor waives any right it may have in any jurisdiction to pay any

amount under the Finance Documents in a currency or currency unit other than that in which it is expressed to be payable.

17.2 **Other indemnities**

Each Borrower shall, within three Business Days of demand, indemnify each Finance Party against any cost, loss or liability incurred by that Finance Party as a result of

1. the occurrence of any Event of Default;
2. a failure by an Obligor to pay any amount due under a Finance Document on its due date, including without limitation, any cost, loss or liability arising as a result of Clause 33 *(Sharing among the Finance Parties);*
3. funding, or making arrangements to fund, its participation in a Loan requested by a Borrower in a Utilisation Request but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by that Finance Party alone); or
4. a Loan (or part of a Loan) not being prepaid in accordance with a notice of prepayment given by a Borrower.

17.3 **Indemnity to the Agent and the Security Agent**

(a) Each Borrower shall promptly indemnify the Agent against any cost, loss or

liability incurred by the Agent (acting reasonably) as a result of:

1. investigating any event which it reasonably believes is a Default;
2. entering into or performing any foreign exchange contract for the purposes of paragraph (b) of Clause 34.10 *(Change of currency);* or

acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised.

(b) Each Borrower shall promptly indemnify the Security Agent and each

Receiver or Delegate against any cost, loss or liability incurred by any of them (acting reasonably) as a result of:

(i) (in the case of the Security Agent only) any actions it may take in use

of the Irrevocable Power of Attorney, save unless it has exercised such power for purposes other than those set out herein or if it has breached the terms of the Irrevocable Power of Attorney;

the taking, holding, protection or enforcement of the Transaction Security;

(iii) the exercise of any of the rights, powers, discretion and remedies vested in the Security Agent and each Receiver or Delegate by the Finance Documents or by law; or

(iv) any Default by an Obligor win the performance of any of the obligations expressed to be assumed by it in the Finance Documents.

18. MITIGATION BY THE LENDERS 18.1 Mitigation

1. Each Finance Party shall, in consultation with the Borrowers, take all reasonable steps to mitigate any circumstances which arise and which would result in any amount becoming payable under or pursuant to, or cancelled pursuant to, any of Clause 8.1 *(Illegality),* Clause 15 *(Tar gross-up and indemnities),* Clause 16 *(Increased costs)* or paragraph 3 of Schedule 4 *(Mandatory Cost formulae)* including (but not limited to) transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.
2. Paragraph (a) above does not in any way limit the obligations of the Borrowers under the Finance Documents.

18.2 Limitation of liability

1. Each Borrower shall promptly indemnify each Finance Party for all costs and expenses reasonably incurred by that Finance Party as a result of steps taken by it under Clause 18.1 *(Mitigation by the Lenders).*
2. A Finance Party is not obliged to take any steps under Clause 18.1 *(Mitigation)* if, in the opinion of that Finance Party (acting reasonably), to do so might be prejudicial to it.

19. COSTS AND EXPENSES 19.1 Transaction expenses

Each Borrower shall promptly on demand pay the Agent, the Arranger and the Security Agent the amount of all costs and expenses (including legal fees subject to any cap agreed between the Arranger and that Borrower) reasonably incurred by any of them (and, in the case of the Security Agent, by any Receiver or Delegate) in connection with the negotiation, preparation, printing, execution, notarisation, syndication and perfection of:

1. this Agreement and any other documents referred to in this Agreement and the Transaction Security; and
2. any other Finance Documents executed after the date of this Agreement. 19.2 Amendment costs

If (a) a Borrower requests an amendment, waiver or consent or (b) an amendment is required pursuant to Clause 34.10 *(Change of currency),* that Borrower shall, within three Business Days of demand, reimburse each of the Agent and the Security Agent for the amount of all costs and expenses (including legal fees) reasonably incurred by the Agent and the Security Agent (and, in the case of the Security Agent, by any

Receiver or Delegate) in responding to, evaluating, negotiating or complying with that request or requirement.

19.3 Security Agent's ongoing costs

1. In the event of (i) a Default or (ii) the Security Agent considering it necessary  
   or expedient or (iii) the Security Agent being requested by a Borrower or the Majority Lenders to undertake duties which the Security Agent and that Borrower agree to be of an exceptional nature and/or outside the scope of the normal duties of the Security Agent under the Finance Documents, that Borrower shall pay to the Security Agent any additional remuneration that may be agreed between them.
2. If the Security Agent and a Borrower fail to agree upon the nature of the duties  
   or upon any additional remuneration, that dispute shall be determined by an investment bank (acting as an expert and not as an arbitrator) selected by the Security Agent and approved by that Borrower or, failing approval, nominated (on the application of the Security Agent) by the President for the time being of the Law Society of England and Wales (the costs of the nomination and of the investment bank being payable by that Borrower) and the determination of any investment bank shall be final and binding upon the parties to this Agreement.

19.4 Enforcement and preservation costs

Each Borrower shall, within three Business Days of demand, pay to the Arranger and each other Secured Party the amount of all costs and expenses (including legal fees) incurred by it in connection with the enforcement of or the preservation of any rights under any Finance Document and the Transaction Security• and any proceedings instituted by or against the Security Agent as a consequence of taking or holding the Transaction Security or enforcing these rights.

20. REPRESENTATIONS - HOLDCO 20.1 General

1. HoldCo makes the representations and warranties set out in Part I  
   *(Representations)* of Schedule 8 *(HoldCo Provisions)* to each Finance Party on the date of this Agreement.
2. The representations and warranties set out in Part I *(Representations)* of  
   Schedule 8 *(HoldCo Provisions)* are qualified by knowledge and belief (having made due and careful enquiries) of the management of HoldCo.

20.2 Times when representations made

(a) All the representations and warranties in Part I *(Representations)* of Schedule

8 *(HoldCo Provisions)* are made by HoldCo on the Second Restructuring Date except for the representations and warranties set out in sub-paragraphs (d) and (e) of paragraph 13 *(Original Financial Statements)* of Part I *(Representations)* of Schedule 8 *(HoldCo Provisions).*

1. The Repeating Representations are deemed to be made by HoldCo on the date  
   of each Utilisation Request delivered by a Borrower, on each Utilisation Date and on the first day of each Interest Period.
2. Sub-paragraphs (d) and (e) of paragraph 13 *(Original Financial Statements)* of  
   Part I *(Representations)* of Schedule 8 *(HoldCo Provisions)* shall be deemed repeated by HoldCo on each date after the date of this Agreement on which financial statements are delivered pursuant to paragraph 1 *(Financial statements)* of Part II *(Information Undertakings)* of Schedule 8 *(HoldCo Provisions).*
3. Each representation or warranty deemed to be made after the date of this  
   Agreement shall be deemed to be made by reference to the facts and circumstances existing at the date the representation or warranty is deemed to be made.

20.3 Release of HoldCo

From and including the DevCo Asset Transfer Date and at all times thereafter, this Clause 20 shall cease to have effect.

1. INFORMATION UNDERTAKINGS — HOLDCO 21.1 General

HoldCo makes the undertakings set out in Part II *(Information Undertakings)* of Schedule 8 *(HoldCo Provisions)* and such undertakings remain in force from the date of this Agreement until the DevCo Asset Transfer Date.

21.2 Release of HoldCo

From and including the DevCo Asset Transfer Date and at all times thereafter, this Clause 21 shall cease to have effect.

1. GENERAL UNDERTAKINGS — HOLDCO 22.1 General

HoldCo makes the undertakings set out in Part III *(General Undertakings)* of Schedule 8 *(HoldCo Provisions)* and such undertakings remain in force from the date of this Agreement until the DevCo Asset Transfer Date.

22.2 Release of HoldCo

From and including the DevCo Asset Transfer Date and at all times thereafter, this Clause 22 shall cease to have effect.

23. EVENTS OF DEFAULT — HOLDCO 23.1 Events of Default

For the period from the date of this Agreement until the DevCo Asset Transfer Date, each of the events or circumstances set out in Part N *(Events of Default)* of Schedule 8 *(HoldCo Provisions)* is a Holdco Event of Default.

23.2 Acceleration

On and at any time after the occurrence of a HoldCo Event of Default which is continuing, the Agent may, and shall if so directed by the Majority Lenders, by notice to the Borrowers:

1. cancel the Total Commitments, at which time they shall immediately be  
   cancelled;
2. declare that all or part of the Loans, together with accrued interest, and all  
   other amounts accrued or outstanding under the Finance Documents be immediately due and payable, at which time they shall become immediately due and payable; and/or
3. declare that all or part of the Loans be payable on demand, at which time they  
   shall immediately become payable on demand by the Agent on the instructions of the Majority Lenders; and/or
4. exercise or direct the Security Agent to exercise any or all of its rights,  
   remedies, powers or discretions under the Finance Documents.

23.3 Release of HoldCo

From and including the DevCo Asset Transfer Date and at all times thereafter, this Clause 23 shall cease to have effect.

24. REPRESENTATIONS 24.1 General

1. DevCo makes the representations and warranties set out in this Clause 24  
   *(Representations)* to each Finance Party on the date of this Agreement.
2. The representations and warranties set out in this Clause 24 *(Representations)*are qualified by knowledge and belief (having made due and careful enquiries) of the management of DevCo.
3. None of the representations and warranties in this Clause 24 shall apply to  
   Entrendcleos SPV, Riofisa or any of their respective Subsidiaries.

24.2 Status

(a) It is a corporation, duly incorporated and validly existing under the law of its

jurisdiction of incorporation.

(b) It and each of its Subsidiaries has the power to own its assets and carry on its

business as it is being conducted.

24.3 Binding obligations

Subject to the Legal Reservations and Perfection Requirements:

1. the obligations expressed to be assumed by it in each Transaction Document to which it is a party are legal, valid, binding and enforceable obligations; and
2. (without limiting the generality of paragraph (a) above), each Transaction Security Document to which it is a party creates the security interests which that Transaction Security Document purports to create and those security interests are valid and effective.

24.4 **Non-conflict with other obligations**

The entry into and performance by it of, and the transactions contemplated by, the Finance Documents to which it is a party and the granting of the Transaction Security do not and will not conflict with:

1. any law or regulation applicable to it;
2. its constitutional documents; or
3. any agreement or instrument binding upon it or any member of the Group or any of its or any member of the Group's assets or constitute a default or termination event (however described) under any such agreement or instrument;

in each case to an extent which has or is reasonably likely to have a Material Adverse Effect.

24.5 **Power and authority**

It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, the Finance Documents to which it is or will be a party and the transactions contemplated by those Finance Documents.

24.6 **Relationship between Parties**

DevCo acts for its own account and is not acting as an agent for any other party. 24.7 **Validity and admissibility in evidence**

(a) All Authorisations required:

to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Finance Documents to which it is a party; and

(ii) to make the Finance Documents to which it is a party admissible in

evidence in its Relevant Jurisdictions,

have been obtained or effected and are in full force and effect except in respect of any Perfection Requirement which shall be promptly made after the execution of the relevant documents and in any event within applicable time limits.

(b) All Authorisations necessary for the conduct of the business, trade and

ordinary activities of members of the Group have been obtained or effected and are in full force and effect if failure to obtain or effect those Authorisations has or is reasonably likely to have a Material Adverse Effect.

24.8 **Governing law and enforcement**

1. Subject to the Legal Reservations, the choice of governing law of the Finance  
   Documents will be recognised and enforced in its Relevant Jurisdictions.
2. Subject to the Legal Reservations, any judgment obtained in relation to a  
   Finance Document in the jurisdiction of the governing law of that Finance Document will be recognised and enforced in its Relevant Jurisdictions.

24.9 **Deduction of Tax**

It is not required to make any deduction for or on account of Tax from any payment it may make under any Finance Document to any Qualifying Lender **provided that** such Qualifying Lender complies with the obligations under Clause 15.2 *(Tax gross-up).*

24.10 **No filing or stamp taxes**

Under the law of its jurisdiction of incorporation it is not necessary that the Finance Documents be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration or similar tax be paid on or in relation to the Finance Documents or the transactions contemplated by the Finance Documents.

24.11 **No default**

1. No Event of Default and, on the date of this Agreement, no Default is  
   continuing or is reasonably likely to result from the making of any Utilisation; and
2. No other event or circumstance is outstanding which constitutes (or, with the  
   expiry of a grace period, the giving of notice, the making of any determination or any combination of any of the foregoing, would constitute) a default or termination event (however described) in an amount which, when taken together with the amount of any other default or termination event to which this paragraph (b) refers, exceeds E1,000,000 under any other agreement or instrument which is binding on it or any of its Subsidiaries or to which its (or any of its Subsidiaries') assets are subject which has or is reasonably likely to have a Material Adverse Effect.

24.12 No misleading information

The Business Plan and each Liquidity Plan were arrived at after careful consideration (and, in the case of the Initial Liquidity Plan and the Business Plan, validated by the Independent Expert and, following their appointment pursuant to paragraph 27 of Part III *(General Undertakings)* of Schedule 8 *(HoldCo Provisions),* KPMG) and have been prepared in good faith on the basis of recent historical information and on assumptions which in the opinion of DevCo were reasonable at the time they were made.

24.13 Financial statements

(a) The Original Financial Statements were prepared in accordance with GAAP

consistently applied.

(b) The Original Financial Statements present fairly in all material respects the

financial position, financial performance and cash flows of the Group during the relevant Financial Year.

(c) There has been no material adverse change in the consolidated assets, business

or financial condition of DevCo since the date of the Original Financial Statements.

(d) Its most recent financial statements and those of Riofisa delivered pursuant to

Clause 24.13 *(Financial statements):*

1. have been prepared in accordance with GAAP; and
2. give a true and fair view of (if audited) or fairly present (if unaudited) in all material respects its or, as the case may be, Riofisa's financial condition as at the end of, and results of operations for, the period to which they relate.

(e) The budgets and forecast supplied under this Agreement were arrived at after

careful consideration and have been prepared in good faith on the basis of recent historical information and on assumptions which in the opinion of DevCo were reasonable at the time they were made.

24.14 ***Pari passe* ranking**

Its payment obligations under the Finance Documents rank (except for the Profit Participative Loans) at least *pari passe* with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.

24.15 **No proceedings pending or threatened**

No litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency which, if adversely determined, might reasonably be expected to have a Material Adverse Effect has (to the best of its knowledge and belief) been started or threatened against any member of the Group (or against the directors of any member of the Group).

24.16 No breach of laws

1. It has not (and none of its Subsidiaries has) breached any law or regulation  
   which breach has or is reasonably likely to have a Material Adverse Effect.
2. No labour disputes are current or threatened against any member of the Group  
   which have or are reasonably likely to have a Material Adverse Effect.

24.17 Legal and beneficial ownership

It and each of its wholly owned Subsidiaries is the sole legal and beneficial owner of the respective assets over which it purports to grant Security.

24.18 Centre of main interests

It has its "centre of main interests" (as that term is used in Article 3(1) of The Council of the European Union Regulation No. 1346/2000 on Insolvency Proceedings (the "Regulation") in its jurisdiction of incorporation.

24.19 Overseas Obligors

It has not registered one or more "establishments" (as that term is defined in Part 1 of The Overseas Companies Regulations 2009) with the Registrar of Companies or, if it has so registered, it has provided to the Agent sufficient details to enable an accurate search against it to be undertaken by the Lenders at the Companies Registry.

24.20 Taxation

1. It is not (and none of its Subsidiaries is) materially overdue in the filing of any  
   Tax returns and it is not (and none of its Subsidiaries is) overdue in the payment of any amount in respect of Tax save to the extent payment thereof is being disputed in good faith and adequate reserves are being maintained for this unpaid amount (if required in the opinion of DevCo acting reasonably) or to the extent required by the Accounting Principles.
2. No claims or investigations are being, or are reasonably likely to be, made or  
   conducted against it (or any of its Subsidiaries) with respect to Taxes which have or are reasonably likely to have a Material Adverse Effect.

24.21 Repetition

1. All the representations and warranties in this Clause 24 are made by DevCo on  
   the date of this Agreement except for the representations and warranties set out in paragraph (d) of Clause 24.13 *(Financial Statements).*
2. The representations and warranties in paragraph (a) of Clause 24.12 *(No  
   misleading information)* are deemed to be made by DevCo on each date on which a Liquidity Plan is delivered pursuant to Clause 25.4 *(Liquidity Plan)* and thereafter, in accordance with paragraph (c) below.
3. The applicable Repeating Representations are deemed to be made by DevCo  
   on the date of each Utilisation Request, on each Utilisation Date and on the first day of each Interest Period.
4. Paragraph (d) of Clause 24.13 *(Financial Statements)* shall be deemed  
   repeated by DevCo on each date after the date of this Agreement on which financial statements are delivered pursuant to Clause 25.1 *(Financial statements).*
5. Each representation or warranty deemed to be made after the date of this  
   Agreement shall be deemed to be made by reference to the facts and circumstances existing at the date the representation or warranty is deemed to be made.

25. INFORMATION UNDERTAKINGS

The undertakings in this Clause 25 *(Information undertalcings)* remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

25.1 Financial statements

DevCo shall supply to the Agent in sufficient copies for all the Lenders:

1. as soon as they are available, but in any event within 120 days after the end of  
   each of its Financial Years its financial statements (on a subgroup basis) for that Financial Year (the "Annual Financial Statements");
2. as soon as they are available, but in any event within 60 days of the end of  
   each of its financial half-years, its financial statements (on a subgroup basis) for that fmancial half-year;
3. as soon as they are available, but in any event within 120 days after the end of  
   each of Riofisa's Financial Years, the consolidated annual Financial Statements of Riofisa (on a subgroup basis) for that Financial Year;
4. as soon as they are available, but in any event within 60 days of the end of  
   each of Riofisa's financial half-years, the consolidated financial statements of Riofisa (on a subgroup basis) for each financial half-year.

25.2 Provision and contents of Compliance Certificate

1. DevCo shall supply a Compliance Certificate (signed by a Certifying Officer)  
   to the Agent within falling 60 days after the last day of each complete financial half-year.
2. Each Compliance Certificate shall set out (in reasonable detail), in each case  
   as at the last day of the financial half-year to which that Compliance Certificate relates, computations as to Total Loan to Value and Net Loan to Value.

(c) For the purposes of this Clause 25.2: C

(i) "GAV" means, at any time, the value of the DevCo Branch of Activity

Business Assets, taken from (A) for the period from the Second Restructuring Date until the second anniversary thereof, the valuation thereof as at 31 December 2009 prepared by Jones Lang LaSalle; thereafter, the latest Appraisal Valuation, and where any asset is not wholly owned by HoldCo or, after the DevCo Asset Transfer Date, DevCo or Riofisa, taking account only of the proportion of the value of that asset which is borne by the Percentage Owned;

(ii) "Net Loan **to Value"** means the percentage of Total Net Debt

(excluding any amounts of Financial Indebtedness in respect of any Profit Participative (Convertible Facility PIK) Loans and any Profit Participative (Term Facility PIK) Loans) to the aggregate of GAV and Riofisa NAV;

(iii) **''Percentage Owned"** means the percentage of the relevant asset

which is owned by, as the case may be, HoldCo or a Subsidiary or, after the DevCo Asset Transfer Date, DevCo or Riofisa;

(iv) **"Riofisa NAV"** means, at any time:

1. the value of the Real Estate Assets of that Subsidiary, taken from (1) for the period from the Second Restructuring Date until the second anniversary thereof, the valuation of the assets of that Subsidiary as at 31 December 2009 prepared by Jones Lang LaSalle; and (2) thereafter, the latest Appraisal Valuation, and, where any Real Estate Asset is not wholly owned by Riofisa, taking account only of the proportion of the value of that Real Estate Asset which is borne by the Percentage Owned; less
2. the amount of all obligations of Riofisa for or in respect of Financial Indebtedness (where any Financial Indebtedness relates to an asset which is not wholly owned by Riofisa, taking account only of the proportion of that Financial Indebtedness which is borne by the Percentage Owned) at that time,

multiplied by the percentage of the issued share capital of Riofisa which is held by DevCo at that time;

(v) **"Total Loan to Value"** means the percentage of Total Net Debt to the

aggregate of GAV and Riofisa NAV; and

(vi) **"Total Net Debt"** means, at any time, the amount of all obligations of

DevCo for or in respect of Financial Indebtedness at that time but:

(A) where any Financial Indebtedness relates to an asset which is

not wholly owned by DevCo, taking account only of the proportion of that Financial Indebtedness which is borne by the

percentage of that asset which is owned by DevCo; and

(B) deducting the aggregate amount of cash at hand or at bank and

Cash Equivalent Investments held by DevCo at that time,

and so that no amount shall be included or excluded more than once. 25.3 Requirements as to financial statements

(a) Each set of financial statements delivered pursuant to Clause 24.13 *(Financial*

*statements):*

shall be certified by an authorised representative of the relevant company as giving a true and fair view of (in the case of Annual Financial Statements for any Financial Year), or fairly representing (in other cases), its financial condition and operations as at the date as at which those financial statements were drawn up and, in the case of the Annual Financial Statements, shall be accompanied by any letter addressed to the management of the relevant company by the Auditors and accompanying those Annual Financial Statements;

1. in the case of the Annual Financial Statements of the Group, shall be  
   accompanied by a statement by a Certifying Officer comparing actual performance for the period to which the financial statements relate to the actual performance for the corresponding period in the preceding Financial Year of the Group; and
2. shall be prepared in accordance with the Accounting Principles,  
   accounting practices and financial reference periods consistent with those applied in the preparation of the Original Financial Statements,

unless, in relation to any set of financial statements, DevCo notifies the Agent that there has been a change in the Accounting Principles or the accounting practices and its Auditors deliver to the Agent a description of any change necessary for those financial statements to reflect the Accounting Principles, or accounting practices upon which the Original Financial Statements were prepared.

Any reference in this Agreement to any financial statements of DevCo or the Group shall be construed as a reference to those financial statements as adjusted to reflect the basis upon which the Original Financial Statements were prepared.

25.4 Liquidity Plan

(a) From the Second Restructuring Date until such time as the Agent (acting on

the instructions of the Majority Lenders) confirms in writing, DevCo shall deliver to the Agent on a monthly basis, an eight week rolling cashflow forecast in the form of the Initial Liquidity Plan (for the purposes of this paragraph, "Initial Liquidity Plan" means the eight week rolling cashflow forecast dated on or about the Second Restructuring Date prepared by the Borrowers and validated by the Independent Expert at the level of HoldCo but including the Residential Development Business, the Land Bank and Riofisa only (taking into account the cashflow needs of the Group) and showing, inter

alia, available facilities and cash balances (by way of a detailed breakdown)) (each such forecast, together with the Initial Liquidity Plan, a "Liquidity Plan").

1. DevCo shall ensure that:

(1) each Liquidity Plan delivered under sub paragraph (i) of paragraph (a)

above details variances from the Initial Liquidity Plan and reconciles projected cash balance to actual cash balance;

(ii) each Liquidity Plan is prepared in accordance with the Accounting

Principles and the accounting practices and financial reference periods applied to financial statements under Clause 25.1 *(Financial statements);*

1. For the period from the Second Restructuring Date until 31 December 2010, DevCo shall provide KPMG with a copy of each Liquidity Plan to enable KMPG to prepare the initial KPMG Report to be delivered pursuant to paragraph 27 *(KPMG)* of Part III *(General Undertakings)* of Schedule 8 *(HoldCo Provisions),* and the semi-annual KPMG Reports contemplated by the KPMG Engagement Letter.

25.5 Business Plan

(a) DevCo shall:

(i) ensure that the Business Plan is consistent with the Liquidity Plans

delivered under Clause 25.4 *(Liquidity Plan);*

update the Business Plan on a quarterly basis to reflect the content of each Liquidity Plan;

1. include, in each updated Business Plan, details of the Cash Position as at the first day of the Financial Quarter to which that Business Plan relates and as at the last day of each following Financial Quarter; and
2. promptly deliver to the Agent, in sufficient copies for each of the Lenders, copies of such updated Business Plan prepared by DevCo, together with a written explanation of the main changes in that Business Plan (provided that any material changes to assumptions used in the Business Plan shall require the approval of the Majority Lenders).

(b) For the period from Second Restructuring Date until 31 December 2010,

DevCo shall provide KPMG with a copy of each Business Plan to enable KM\_PG to prepare the initial KPMG Report to be delivered pursuant to paragraph 27 *(KPMG)* of Part III *(General Undertakings)* of Schedule 8 *(HoldCo Provisions),* and the semi-annual KPMG Reports contemplated by the KPMG Engagement Letter.

25.6 Presentations

Quarterly, or more frequently if requested to do so by the Agent if the Agent reasonably suspects an Event of Default is continuing, at least two directors, the Chief Financial Officer and Chairman of the Restructuring Committee must give a presentation to the Finance Parties about the on-going business and financial performance of the Group.

25.7 Information: Riofisa and properties DevCo shall supply to the Agent:

1. on or before the day falling 45 days after the end of each Financial Quarter (or, if a non-Business Day, on the Business Day falling immediately before such date) a Quarterly Management Report for the previous Financial Quarter (to include detailed reporting with respect to Riofisa, and details of any Disposals of assets of DevCo or of Riofisa);
2. upon the request of the Agent, promptly such information in respect of any property or any occupational tenant of any part of the properties, as well as insurance and such other information as the Agent may reasonably request;
3. upon the request of the Agent, a copy of the latest published summary valuation reports (in English) regarding the Real Estate Assets of the Group, including detailed information on main asset groups and valuation standards and assumptions; and
4. upon the request of the Agent, further details (in English) regarding the Real Estate Assets of the Group on an asset by asset basis.

25.8 Information: miscellaneous

DevCo shall supply to the Agent (in sufficient copies for all the Lenders, if the Agent so requests):

1. all documents despatched by DevCo to its shareholders (or any class of them) in accordance with all applicable requirements under Spanish law or its creditors generally at the same time as they are dispatched;
2. promptly upon becoming aware of them, the details of any litigation,  
   arbitration or administrative proceedings which are current, threatened or pending against any member of the Group (or against the directors of any member of the Group), and which might, if adversely determined, have a Material Adverse Effect; and
3. promptly on request, such further information regarding the financial condition, assets and operations of the Group and/or any member of the Group (including any requested amplification or explanation of any item in the financial statements, budgets or other material provided by DevCo under this Agreement, any changes to management of the Group and an up to date copy of its Shareholders' register (or equivalent in its jurisdiction of incorporation)) as any Finance Party through the Agent may reasonably request; and

(d) promptly, details of any Change of Control of DevCo.

25.9 Notification of default

1. DevCo shall notify the Agent of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence.
2. Promptly upon a request by the Agent, DevCo shall supply to the Agent a certificate signed by two of its directors or senior officers on its behalf certifying that no Default is continuing (or if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it).

25.10 Valuations

1. DevCo shall provide the Agent with copies of Appraisal Valuations on a semi­annual basis.
2. The Agent shall be entitled to appoint an additional independent valuation expert to carry out additional valuations of the assets to which an Appraisal Valuation relates as it considers necessary once every twelve months or at any time while an Event of Default is continuing.
3. The cost of any valuation carried out under paragraph (b) of this Clause shall be borne by DevCo.
4. The independent valuation expert shall be appointed by the Agent in consultation with DevCo, which shall select one out of a list of three highly reputed valuation experts proposed by the Agent within five Business Days of the Agent's proposal and, if DevCo fails to make a selection, the Agent shall be entitled to select any independent valuation expert included in the list and shall promptly inform DevCo of its selection (which shall be binding on DevCo and the other Parties).

25.11 Use of websites

(a) DevCo may satisfy its obligation under this Agreement to deliver any

information in relation to those Lenders (the "Website Lenders") who accept this method of communication by posting this information onto an electronic website designated by DevCo and the Agent (the "Designated Website") if:

1. the Agent expressly agrees (after consultation with each of the Lenders) that it will accept communication of the information by this method;
2. both DevCo and the Agent are aware of the address of and any relevant password specifications for the Designated Website; and

) the information is in a format previously agreed between the Borrowers and the Agent.

If any Lender (a "Paper Form Lender") does not agree to the delivery of information electronically then the Agent shall notify DevCo accordingly and

DevCo shall supply the information to the Agent (in sufficient copies for each Paper Form Lender) in paper form. In any event DevCo shall supply the Agent with at least one copy in paper form of any information required to be provided by it.

(b) The Agent shall supply each Website Lender with the address of and any

relevant password specifications for the Designated Website following designation of that website by DevCo and the Agent.

(c) DevCo shall promptly upon becoming aware of its occurrence notify the Agent

if:

1. the Designated Website cannot be accessed due to technical failure;
2. the password specifications for the Designated Website change;
3. any new information which is required to be provided under this Agreement is posted onto the Designated Website;
4. any existing information which has been provided under this Agreement and posted onto the Designated Website is amended; or
5. DevCo becomes aware that the Designated Website or any information posted onto the Designated Website is or has been infected by any electronic virus or similar software.

If DevCo notifies the Agent under paragraph (c)(i) or paragraph (c)(v) above, all information to be provided by DevCo under this Agreement after the date of that notice shall be supplied in paper form unless and until the Agent and each Website Lender is satisfied that the circumstances giving rise to the notification are no longer continuing.

(d) Any Website Lender may request, through the Agent, one paper copy of any

information required to be provided under this Agreement which is posted onto the Designated Website. DevCo shall comply with any such request within ten Business Days.

25.12 "Know your customer" checks (a) If

the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the date of this Agreement;

1. any change in the status of any Obligor or the composition of the shareholders of any Obligor after the date of this Agreement; or
2. a proposed assignment or transfer by a Lender of any of its rights and obligations under this Agreement to a party that is not a Lender prior to such assignment or transfer,

obliges the Agent or any Lender (or, in the case of paragraph (iii) above, any prospective new Lender) to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not already available to it, DevCo shall promptly upon the request of the Agent or any Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself or on behalf of any Lender) or any Lender (for itself or, in the case of the event described in paragraph (iii) above, on behalf of any prospective new Lender) in order for the Agent, such Lender or, in the case of the event described in paragraph (iii) above, any prospective new Lender to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

(b) Each Lender shall promptly upon the request of the Agent supply, or procure

the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself) in order for the Agent to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

26. GENERAL UNDERTAKINGS

The undertakings in this Clause 26 *(General undertakings)* remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force. None of the undertakings in this Clause 26 shall apply to Entreratcleos SPV, Riofisa or any of their respective Subsidiaries.

26.1 Authorisations DevCo shall promptly:

1. obtain, comply with and do all that is necessary to maintain in full force and  
   effect; and
2. supply certified copies to the Agent of,

any Authorisation required under any law or regulation of a Relevant Jurisdiction to:

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1. enable it to perform its obligations under the Finance Documents to  
   which it is a party;
2. (subject to the Legal Reservations and the Perfection Requirements)  
   ensure the legality, validity, enforceability or admissibility in evidence of any Finance Document to which it is a party; and
3. enable it to own its assets and to carry on its business where failure to  
   obtain or comply with those Authorisations is reasonably likely to have a Material Adverse Effect.

26.2 Compliance with laws

DevCo shall (and shall ensure that each member of the Group will) comply in all respects with all laws (including, without limitation, Environmental Laws) to which it may be subject, if failure so to comply, has or is reasonably likely to have a Material Adverse Effect.

26.3 Taxation

(a) DevCo shall (and shall ensure that each member of the Group will) duly and

punctually pay and discharge all Taxes imposed upon it or its assets within the time period allowed without incurring penalties unless and only to the extent that:

1. such payment is being contested in good faith; and
2. such payment can be lawfully withheld and failure to pay those Taxes does not have or is not reasonably likely to have a Material Adverse Effect).

(b) No member of the Group may change its residence for Tax Purposes.

26.4 Acquisitions and investments

1. DevCo shall not (and shall ensure that no wholly owned Subsidiary will) directly or via a Permitted Joint Venture acquire or invest (except for capital expenditure as set out in the Business Plan) in any asset or assets, a company or any shares or securities or a business or undertaking (or, in each case, any interest in any of them) or incorporate any company unless the Majority Lenders have given their prior written consent.
2. Paragraph (a) above shall not apply to the acquisition by DevCo of:
3. Entremicleos SPV; or
4. shares in HoldCo for the purposes of an incentive plan approved by the sole director of DevCo (or any replacement administration body).

26.5 Joint ventures

(a) Except as permitted under paragraph (b) below, DevCo shall not (and shall

ensure that no wholly owned Subsidiary will):

1. enter into, invest in or acquire (or agree to acquire) any shares, stocks, securities or other interest in any Joint Venture; or
2. transfer any assets or lend to or guarantee or give an indemnity for or give Security for the obligations of a Joint Venture or maintain the solvency of or provide working capital to any Joint Venture (or agree to do any of the foregoing).

(b) Paragraph (a) above does not apply to any transaction to which the Majority

Lenders have given their prior written consent.

26.6 Disposals

1. DevCo shall not (and shall ensure that no other member of the Group will), enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, transfer or otherwise dispose of any asset.
2. Paragraph (a) above does not apply to any sale, lease, transfer or other disposal:

(i) made in the ordinary course of trading of the disposing entity;

of assets in exchange for other assets comparable or superior as to type, value and quality; or

1. which is a Disposal of a home building unit or any other Real Estate Asset provided that any such Disposal at a discount to the value ascribed to the relevant asset in the valuation by Jones Lang LaSalle dated 31 December 2009 or, if an Appraisal Valuation has been provided since the date of that valuation, the latest Appraisal Valuation, exceeding 10 per cent. shall require the consent of the Majority Lenders; or
2. to which the Majority Lenders have given their prior written consent. 26.7 Preservation of assets

DevCo shall (and shall ensure that each wholly owned Subsidiary will) maintain in good working order and condition (ordinary wear and tear excepted) all of its assets necessary or desirable in the conduct of its business.

26.8 Negative pledge

hi this Clause 26.8 *(Negative pledge),* "Quasi-Security" means an arrangement or transaction described in paragraph (b) below.

1. DevCo shall not create or permit to subsist any Security over any of its assets.
2. DevCo shall not:
3. sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by DevCo or any wholly owned Subsidiary;
4. sell, transfer or otherwise dispose of any of its receivables on recourse terms;
5. enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or
6. enter into any other preferential arrangement having a similar effect,

in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.

1. Paragraphs (a) and (b) above do not apply to any Security (or as the case may be) Quasi-Security, listed below:
2. any lien arising by operation of law and in the ordinary course of trading;
3. any Security or Quasi-Security entered into pursuant to any Transaction Document or pursuant to the Second Restructuring Agreements with Bilateral Lenders;
4. any Security or Quasi-Security arising in connection with the Tax Arrangements; and
5. any Security or Quasi-Security arising in connection with the Riofisa Santander Facility or the Los Naranjos Facility provided that the aggregate amount secured thereby may not be increased after the Second Restructuring Date.

26.9 Pari passu ranking

DevCo shall ensure that at all times any unsecured and unsubordinated claims of a Finance Party against it under the Finance Documents rank (except for the Profit Participative Loans) at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors except those creditors whose claims are mandatorily preferred by laws of general application to companies. DevCo shall not be in breach of its undertaking hereunder by reason of the application of the mandatory rules of subordination in the case of a Lender which is a specially related person *(persona especialmente relacionada).*

26.10 Merger

DevCo shall not (and shall ensure that no other member of the Group will) enter into any amalgamation, demerger, merger or corporate reconstruction.

26.11 Arm's length basis

1. Except as permitted by paragraph (b) below, DevCo shall not (and shall ensure that no wholly owned Subsidiary will) enter into any transaction with any person except on arm's length terms and for full market value.
2. The payment of fees, costs and expenses payable under the Transaction  
   Documents in the amounts set out in the Transaction Documents delivered to

the Agent under Clause 4.1 *(Initial conditions precedent)* or agreed by the Agent shall not be a breach of this Clause 26.11.

26.12 **Loans and Guarantees**

DevCo shall not (and shall ensure that no other member of the Group will) make any loans, grant any credit (save in the ordinary course of business) or give any guarantee or indemnity (except as required under any of the Finance Documents or in the ordinary course of business) to or for the benefit of any person or otherwise voluntarily assume any liability, whether actual or contingent, in respect of any obligation of any person.

26.13 **Dividends**

DevCo shall not pay, make or declare any dividend or other distribution in respect of any Financial Year.

26.14 **Financial indebtedness**

1. DevCo shall not incur any additional Financial Indebtedness.
2. Paragraph (a) shall not apply to:

Financial Indebtedness arising under the Finance Documents or any refinancing thereof, **provided that** the aggregate principal amount in respect of such Financial Indebtedness is not increased above the amount of the Facilities as at the Second Restructuring Date, except as contemplated by this Agreement;

1. Financial Indebtedness incurred on the terms set out (and in the amounts referred to) in the Second Restructuring Agreements with Bilateral Lenders;
2. Financial Indebtedness under the Riofisa Santander Facility or the Los Naranjos Facility provided that the aggregate principal amount in respect of such Financial Indebtedness is not increased after the Second Restructuring Date; or
3. Financial Indebtedness not included in sub paragraphs (i) or (ii) above in an aggregate principal amount of E1,000,000.

26.15 **Insurance**

1. DevCo shall (and shall ensure that each member of the Group will) maintain insurances on and in relation to its business and assets with reputable underwriters or insurance companies against those risks and to the extent as is usual for companies carrying on the same or substantially similar business.
2. All insurances must be with reputable independent insurance companies or underwriters.

26.16 Access

If an Event of Default is continuing or the Agent has reasonable grounds to suspect that any financial statements or calculations provided by DevCo are inaccurate or incomplete in any material respect, DevCo shall, and shall ensure that each wholly owned Subsidiary will, (not more than once in every Financial Year unless the Agent has reasonable grounds to suspect that any financial statements or calculations provided by DevCo are inaccurate or incomplete in any material respect) permit the Agent and/or the Security Agent and/or accountants or other professional advisers and contractors of the Agent or Security Agent free access at all reasonable times and on reasonable notice to the premises, assets, books, accounts and records of each member of the Group to the extent relevant to the circumstances giving rise to the Event of Default or establishing the accuracy of such financial statements. The cost and expense of any such access (including in respect of accountants and other professional advisors) shall be met .by DevCo unless, where the Agent suspected inaccuracy of financial statements or calculations, and such financial statements or calculations do not prove to be misleading or inaccurate in any material respect, in which case such costs and expenses shall be for the account of the Lenders.

26.17 Intellectual Property

DevCo shall (and shall procure that each wholly owned Subsidiary will):

1. preserve and maintain the subsistence and validity of the Intellectual Property necessary for the business of the relevant Group member;
2. use reasonable endeavours to prevent any infringement in any material respect of the Intellectual Property;
3. make registrations and pay all registration fees and taxes necessary to maintain the Intellectual Property in full force and effect and record its interest in that Intellectual Property;
4. not use or permit the Intellectual Property to be used in a way or take any step or omit to take any step in respect of that Intellectual Property which may materially and adversely affect the existence or value of the Intellectual Property or imperil the right of any member of the Group to use such property; and
5. not discontinue the use of the Intellectual Property, where failure to do so is reasonably likely to have a Material Adverse Effect. 26.18 Financial Assistance

DevCo shall (and shall procure that each wholly Subsidiary will) comply in all respects with any applicable law or regulation in any Relevant Jurisdiction concerning financial assistance by a company for the acquisition of or subscription for shares or concerning the protection of shareholders' capital including in relation to the execution of the Transaction Security Documents and payments of amounts due under this Agreement.

26.19 Security

1. DevCo shall, on the Devco Asset Transfer Date, grant promissory mortgages over all of the Real Estate Assets of DevCo (with Irrevocable Power of Attorney granted to the Security Agent on or about the Second Restructuring Date).
2. The promissory mortgages referred to in sub-paragraph (a) above shall be formalised by DevCo into mortgages in the circumstances set out in Clause 26.22 *(Loan to Value).*
3. By no later than the date falling 10 Business Days after the DevCo Asset Transfer Date, DevCo shall grant Security over the Mandatory Prepayment Account and the Holding Account on substantially the same terms as the Mandatory Prepayment Account Charge and the Holding Account Charge.
4. The Security referred to in paragraph (a) and (b) above may be granted by the Security Agent in the name and on behalf of DevCo by virtue of the Irrevocable Power of Attorney in the case that DevCo fails to do so within the time period indicated in paragraphs (a) and (b) above.
5. The maximum aggregate amount secured under the actual mortgages to be created as Security for the obligations of the Obligors in respect of the Facilities (excluding any Profit Participative Loans) will be 135% of the value of each asset (as evidenced in the most recent Appraisal Valuation), limited to 120% of the outstanding amounts under the Facilities from time to time. Such mortgages will have the most favourable ranking possible, depending on whether other mortgages have been granted over the relevant assets.
6. The provisions of this Agreement shall prevail over the provisions of any Security Document to the extent that this Agreement permits any action or procedure.

26.20 Further assurance

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| --- | --- |
| (a) DevCo shall promptly do all such acts or execute all such documents  (including assignments, transfers, mortgages, charges, notices and instructions) as the Security Agent may reasonably specify (and in such form as the Security Agent may reasonably require in favour of the Security Agent or its nominee(s)): | C |

(i) to perfect the Security created or intended to be created under or

evidenced by the Transaction Security Documents (which may include the execution of a mortgage, charge, assignment or other Security over all or any of the assets which are, or are intended to be, the subject of the Transaction Security) or for the exercise of any rights powers and remedies of the Security Agent or the Finance Parties provided by or pursuant to the Finance Documents or by law;

to confer on the Security Agent or confer on the Finance Parties Security over any of its property and assets located in any jurisdiction

equivalent or similar to the Security intended to be conferred by or pursuant to the Transaction Security Documents; and/or

(iii) to facilitate the realisation of the assets which are, or are intended to

be, the subject of the Transaction Security.

(b) DevCo shall take all such action as is available to it (including making all

filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Security conferred or intended to be conferred on the Security Agent or the Finance Parties by or pursuant to the Finance Documents.

26.21 Management

DevCo shall nominate (in consultation with the Majority Lenders) qualified permanent senior management with appropriate skills and a record of previous experience to manage the DevCo Branch of Activity Business Assets for approval by the Majority Lenders and, if so approved, DevCo shall take all steps necessary to appoint such management to its Board of Directors by no later than the Second Restructuring Longstop Date.

26.22 Loan to Value

(a) If:

1. for any financial half-year of DevCo (in each case as demonstrated by the Compliance Certificate delivered by DevCo to the Agent under Clause 25.2 *(Provision and contents of Compliance Certificate)),* Net Loan to Value is greater than 95 per cent.; or
2. DevCo does not comply with its obligation to deliver a Compliance Certificate in respect of any financial half-year to the Agent under Clause 25.2 *(Provision and contents of Compliance Certificate))* by the date set out therein (and provided that, notwithstanding anything to the contrary in this Agreement, for the purposes of this paragraph (a), no grace period shall apply to any such failure to comply); or
3. DevCo does not comply with any obligation to apply Disposal Proceeds of any land bank asset *(suelo)* or any Riofisa Distribution Proceeds in accordance with Clause 9.2 *(Proceeds and Excess Cashflow),*

the Majority Lenders may (by notice to the Agent for delivery to DevCo) require the promissory mortgages referred to in sub-paragraph (a) of Clause 26.19 *(Security)* above to be formalised by DevCo into mortgages in the form set out in Schedule 10 *(Form of Mortgage),* and, if the Majority Lenders so require, DevCo shall formalise such promissory mortgages within 15 days of written request to DevCo by the Agent.

(b) lf, for any financial half-year of DevCo (in each case as demonstrated by the

Compliance Certificate delivered by DevCo to the Agent under Clause 25.2 *(Provision and contents of Compliance Certificate)),*

1. Total Loan to Value is greater than 100 per cent., any Lender may (if the Majority Lenders have given their prior written consent); or
2. Net Loan to Value is greater than 110 per cent., any Lender may require,

by notice to the Agent within 30 days of delivery of the Compliance Certificate for sending to DevCo, the conversion of all or part of its participation in the Profit Participative (Convertible Facility PIK) Loans and/or the Profit Participative (Term Facility PIK) Loans into new shares in DevCo (such shares to be issued at par value) (the "DevCo Share Conversion"), and:

1. DevCo shall take all reasonable endeavours to procure that its sole director (or any replacement administration body) ,takes all actions necessary to effect any increase in the share capital of DevCo required to be made to cater for the DevCo Share Conversion;
2. HoldCo shall take all actions necessary for the execution of the  
   DevCo Share Conversion including, without limitation, passing the required sole shareholder resolutions for the increase of the share capital of DevCo, in addition to the exclusion or waiver of pre-emption rights; and
3. the Parties further agree that all or part of the Profit Participative (Convertible Facility PIK) Loans and/or the Profit Participative (Term Facility PIK) Loans will be declared liquid and enforceable at the time of the DevCo Share Conversion, to the extent necessary.

26.23 Upstream Loan

On or following the DevCo Asset Transfer Date, DevCo shall make an upstream loan to HoldCo (repayable in full on or prior to 31 July 2010) using any amounts of cash contributed to it by HoldCo pursuant to the definition of "DevCo Branch of Activity Business" which are not needed to be retained by DevCo.

27. EVENTS OF DEFAULT

From and including the date of this Agreement of the events or circumstances set out in this Clause 27 *(Event of Default)* is a DevCo Event of Default (save as for Clause 27.16 *(Acceleration).*

27.1 Non-payment

DevCo does not pay on the due date any amount payable pursuant to a Finance Document at the place at and in the currency in which it is expressed to be payable unless:

(a) its failure to pay is caused by:

1. administrative or technical error; or
2. a Disruption Event; and

(b) payment is made within three Business Days of its due date.  
27.2 Security

Any requirement of paragraph (c) of Clause 26.19 *(Security)* is not satisfied. 27.3 Other obligations

1. DevCo does not comply with any provision of the Finance Documents (other than those referred to in Clause 27.1 *(Non-payment)* and paragraph (c) of Clause 26.19 *(Security)).*
2. No Event of Default under paragraph (a) above will occur if the failure to comply is capable of remedy and is remedied within thirty days of the Agent giving notice to DevCo or DevCo becoming aware of the failure to comply.

27.4 Misrepresentation

Any representation or statement made or deemed to be made by DevCo in the Finance Documents or any other document delivered by or on behalf of DevCo under or in connection with any Finance Document is or proves to have been incorrect or misleading in any material respect when made or deemed to be made unless the circumstances giving rise to that incorrectness are capable of remedy and are remedied within thirty days of the Agent giving notice to DevCo or DevCo becoming aware thereof.

27.5 Cross default

1. Any Financial Indebtedness of DevCo is not paid when due nor within any originally applicable grace period.
2. Any Financial Indebtedness of DevCo is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described).
3. Any commitment for any Financial Indebtedness of DevCo is cancelled or suspended by a creditor of DevCo as a result of an event of default (however described).

(d) Any creditor of DevCo becomes entitled to declare any Financial Indebtedness

of DevCo due and payable prior to its specified maturity as a result of an event of default (however described).

No Event of Default will occur under this Clause 27.5 *(Cross default)* if the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness falling within paragraphs (a) to (d) above is less than E1,000,000 (or its equivalent in any other currency or currencies).

27.6 Insolvency

(a) DevCo is unable or admits inability to pay its debts as they fall due, suspends

making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness.

(b) The value of the assets of DevCo is less than its liabilities (taking into account

contingent and prospective liabilities).

(c) A moratorium is declared in respect of any indebtedness of any Relevant

Group member. If a moratorium occurs, the ending of that moratorium will not remedy any Event of Default caused by that moratorium.

27.7 Insolvency proceedings

(a) Any corporate action, legal proceedings or other procedure or step is taken in

relation to:

(i) the suspension of payments, a moratorium of any indebtedness,

winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of DevCo;

a composition, compromise, assignment or arrangement with any creditor of DevCo;

1. the appointment of a liquidator receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of DevCo or any of its assets; or
2. enforcement of any Security over any assets of DevCo, or any analogous procedure or step is taken in any jurisdiction.

(b) Paragraph (a) shall not apply to any winding-up petition which 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; or

27.8 Creditors' process

Any expropriation, attachment, sequestration, distress or execution affects any asset or assets of DevCo having a Material Adverse Effect and is not discharged within 15 Business Days.

27.9 Unlawfulness and invalidity

Subject to the Legal Reservations and the Perfection Requirements:

1. it is or becomes unlawful for DevCo to perform any of its obligations under the Finance Documents or any Transaction Security created or expressed to be created or evidenced by the Transaction Security Documents ceases to be effective;
2. any obligation or obligations of DevCo under any Finance Documents are not  
   or cease to be legal, valid, binding or enforceable and the cessation individually or cumulatively materially and adversely affects the interests of the Lenders under the Finance Documents; or
3. any Finance Document ceases to be in full force and effect or any Transaction Security ceases to be legal, valid, binding, enforceable or effective or is alleged by a party to it (other than a Finance Party) to be ineffective.

27.10 Cessation of business

The Group (taken as a whole) suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a material part of its business.

27.11 Expropriation

The authority or ability of any member of the Group to conduct its business is limited or wholly or substantially curtailed by any seizure, expropriation, nationalisation, intervention, restriction or other action by or on behalf of any governmental, regulatory or other authority or other person in relation to any member of the Group or any of its assets to an extent that has or is reasonably likely to have a Material Adverse Effect.

27.12 Repudiation and rescission of agreements

DevCo rescinds or purports to rescind or repudiates or purports to repudiate a Finance Document or evidences an intention to rescind or repudiate a Finance Document in any manner which has material adverse effect on the interests of the Lenders under the Finance Documents taken as a whole.

27.13 Litigation

Any litigation, arbitration, administrative, governmental, regulatory or other investigations, proceedings or disputes are commenced or threatened in relation to the Transaction Documents or the transactions contemplated in the Transaction Documents or against DevCo or its assets which is reasonably likely to be adversely determined against such member of the Group and if so determined might reasonably be expected to have a Material Adverse Effect.

27.14 Second Restructuring Agreement and Second Restructuring Undertakings

1. Any party to the Second Restructuring Agreement or a Second Restructuring Undertaking (other than a Finance Party or an Obligor) fails to comply with the provisions of, or does not perform its obligations under, the Second Restructuring Agreement; or
2. a representation or warranty given by that party in the Second Restructuring  
   Agreement or a Second Restructuring Undertaking is incorrect in any material respect; and
3. if the non-compliance or circumstances giving rise to the misrepresentation are capable of remedy, it is not remedied within 30 days of the earlier of the Agent giving notice to that party or that party becoming aware of the non-compliance or misrepresentation.

27.15 Material Adverse Change

Any event or circumstance occurs which has or is reasonably likely to have a Material Adverse Effect.

27.16 Acceleration

On and at any time after the occurrence of an Event of Default which is continuing the Agent may, and shall if so directed by the Majority Lenders, by notice to the Borrowers:

1. cancel the Total Commitments, at which time they shall immediately be cancelled;
2. declare that all or part of the Loans, together with accrued interest, and all  
   other amounts accrued or outstanding under the Finance Documents be immediately due and payable, at which time they shall become immediately due and payable; and/or
3. declare that all or part of the Loans be payable on demand, at which time they shall immediately become payable on demand by the Agent on the instructions of the Majority Lenders; and/or
4. exercise or direct the Security Agent to exercise any or all of its rights, remedies, powers or discretions under the Finance Documents.

28. CHANGES TO THE LENDERS

28.1 Assignments and transfers by the Lenders

Subject to this Clause 28 *(Changes to the Lenders),* a Lender (the "Existing Lender") may:

(a) assign any of its rights; or

Co) transfer by novation any of its rights and obligations,

under any Finance Document to another bank or financial institution or to a trust, fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets (the "New Lender").

28.2 Conditions of assignment or transfer

(a) The consent of any Borrower to any assignment, transfer or disposal under this

Clause 28 *(Changes to the Lenders)* will not be required.

(b) An assignment will only be effective on:

1. receipt by the Agent (whether in the Assignment Agreement or otherwise) of written confirmation from the New Lender (in form and substance satisfactory to the Agent) that the New Lender will assume the same obligations to the other Finance Parties as it would have been under if it was an Original Lender; and
2. performance by the Agent of all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to such assignment to a New Lender, the completion of which the Agent shall promptly notify to the Existing Lender and the New Lender.

(c) A transfer will only be effective if the procedure set out in Clause 28.5

*(Procedure for transfer)* is complied with.

(d) If:

1. a Lender assigns or transfers any of its rights or obligations under the Finance Documents or changes its Facility Office; and
2. as a result of circumstances existing at the date the assignment, transfer or change occurs, a Borrower would be obliged to make a payment to the New Lender or Lender acting through its new Facility Office under Clause *15 (Tax gross-up and indemnities)* or Clause 16 *(Increased Costs),*

then the New Lender or Lender acting through its new Facility Office is only entitled to receive payment under those Clauses to the same extent as the

Existing Lender or Lender acting through its previous Facility Office would

have been if the assignment, transfer or change had not occurred.

(e) Amounts transferred or assigned by a Lender to a New Lender will include (i)

the amount of principal owed to that Lender under the relevant Term Facility or Convertible Facility Loan, (ii) the proportionate amount of accrued PIK interest which has accrued in respect of that Loan (as recorded by the Agent but not capitalised) pursuant to Clause 11.2 *(Capitalisation of interest),* (iii) the amount of principal owed to that Lender under any Corresponding PIK Loans made available by it, (iv) the amount of principal owed to that Lender under any Profit Participative Loans made available by it; and (v) the proportionate amount of PIK interest which has accrued in respect of such Profit Participative Loans (as recorded by the Agent but not yet capitalised) pursuant to Clause 11.3 *(Interest — Profit Participative Loans).*

(±) On and at all times after the date on which the HoldCo Warrants are issued,

assignments or transfers of the Convertible Facility may be made in respect of the whole of a Lender's participation and/or Commitment thereunder but not in part and, in the event of such an assignment or transfer, the relevant Lender shall also transfer all amounts of warrants granted to it pursuant to the HoldCo Warrants Term Sheet.

(g) Any Lender assigning or transferring its participation in Convertible Facility

Loans and/or its Convertible Facility Commitment shall assign or transfer a corresponding amount of its rights under the HoldCo Warrants Guarantee (being, in the event of an assignment or transfer in the circumstances described at paragraph (f) above, all such rights) in accordance with clause 10 thereof to the New Lender.

28.3 **Assignment or transfer fee**

Unless the Agent otherwise agrees and excluding an assignment or transfer (i) to an Affiliate of a Lender, or (ii) to a Related Fund, the New Lender shall, on the date upon which an assignment or transfer takes effect, pay to the Agent (for its own account) a fee of E3,000.

28.4 **Limitation of responsibility of Existing Lenders**

(a) Unless expressly agreed to the contrary, an Existing Lender makes no

representation or warranty and assumes no responsibility to a New Lender for:

1. the legality, validity, effectiveness, adequacy or enforceability of the  
   Finance Documents, the Transaction Security or any other documents;
2. the financial condition of the Borrowers;
3. the performance and observance by the. Borrowers or any other member of the Group of its obligations under the Finance Documents or any other documents; or
4. the accuracy of any statements (whether written or oral) made in or in  
   connection with any Finance Document or any other document,

and any representations or warranties implied by law are excluded.

(b) Each New Lender confirms to the Existing Lender and the other Finance

Parties that it:

1. has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of the Borrowers and its related entities in connection with its participation in this Agreement and has not relied exclusively on any information provided to it by the Existing Lender or any other Finance Party in connection with any Finance Document or the Transaction Security; and
2. will continue to make its own independent appraisal of the creditworthiness of the Borrowers and its related entities whilst any amount is or may be outstanding under the Finance Documents or any Commitment is in force.

(c) Nothing in any Finance Document obliges an Existing Lender to:

1. accept a re-transfer or re-assignment from a New Lender of any of the rights and obligations assigned or transferred under this Clause 28; or
2. support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by any Borrower of its obligations under the Finance Documents or otherwise.

28.5 Procedure for transfer

1. Subject to the conditions set out in Clause 28.2 *(Conditions of assignment or transfer)* a transfer is effected in accordance with paragraph (c) below when the Agent executes an otherwise duly completed Transfer Certificate delivered to it by the Existing Lender and the New Lender. The Agent shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a duly completed Transfer Certificate appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Transfer Certificate.
2. The Agent shall only be obliged to execute a Transfer Certificate delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary "know your customer" or other similar other checks under all applicable laws and regulations in relation to the transfer to such New Lender.
3. On the Transfer Date:

(i) to the extent that in the Transfer Certificate the Existing Lender seeks

to transfer by novation its rights and obligations under the Finance Documents and in respect of the Transaction Security the Borrowers and other members of the Group party to any Finance Document and the Existing Lender shall be released from further obligations towards one another under the Finance Documents and in respect of the

Transaction Security and their respective rights against one another under the Finance Documents and in respect of the Transaction Security shall be cancelled (being the "Discharged Rights and Obligations");

1. the Borrowers and other members of the Group party to any Finance Document and the New Lender shall assume obligations towards one another and/or acquire rights against one another which differ from the Discharged Rights and Obligations only insofar as the Borrowers or other member of the Group and the New Lender have assumed and/or acquired the same in place of the Borrowers and the Existing Lender;
2. the Agent, the Arranger, the Security Agent, the New Lender and the other Lenders shall acquire the same rights and assume the same obligations between themselves and in respect of the Transaction Security as they would have acquired and assumed had the New Lender been an Original Lender with the rights, and/or obligations acquired or assumed by it as a result of the transfer and to that extent the Agent, the Arranger, the Security Agent and the Existing Lender shall each be released from further obligations to each other under the Finance Documents; and
3. the New Lender shall become a Party as a "Lender".
4. At the request of the Agent and the cost of the New Lender, the New Lender  
   and the Existing Lender shall promptly elevate the duly completed Transfer Certificate to the status of Spanish public document (in the form of "escritura ptiblica").

28.6 Procedure for assignment

1. Subject to the conditions set out in Clause 28.2 *(Conditions of assignment or  
   transfer)* an assignment may be effected in accordance with paragraph (c) below when the Agent executes an otherwise duly completed Assignment Agreement delivered to it by the Existing Lender and the New Lender. The Agent shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a duly completed Assignment Agreement appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Assignment Agreement.
2. The Agent shall only be obliged to execute an Assignment Agreement  
   delivered to it by the Existing Lender and the New Lender upon its completion of all "know your customer" or other checks relating to any person that it is required to carry out in relation to the assignment to such New Lender.
3. On the Transfer Date:

(i) the Existing Lender will assign absolutely to the New Lender its rights

under the Finance Documents and in respect of the Transaction Security expressed to be the subject of the assignment in the Assignment Agreement;

(ii) the Existing Lender will be released from the obligations (the

"Relevant Obligations") expressed to be the subject of the release in the Assignment Agreement (and any corresponding obligations by which it is bound in respect of the Transaction Security); and

(iii) the New Lender shall become a Party as a "Lender" and will be bound by obligations equivalent to the Relevant Obligations.

(d) Lenders may utilise procedures other than those set out in this Clause 28.6

*(Procedure for assignment)* to assign their rights under the Finance Documents provided that they comply with the conditions set out in Clause 28.2 *(Conditions of assignment or transfer).*

28.7 Copy of Transfer Certificate or Assignment Agreement to Borrowers

The Agent shall, as soon as reasonably practicable after it has executed a Transfer Certificate or an Assignment Agreement, send to each Borrower a copy of that Transfer Certificate or Assignment Agreement.

28.8 Disclosure of information

(a) Any Lender may disclose to any of its Affiliates and any other person:

(i) to (or through) whom that Lender assigns or transfers (or may

potentially assign or transfer) all or any of its rights and obligations under the Finance Documents;

with (or through) whom that Lender enters into (or may potentially enter into) any sub-participation in relation to, or any other transaction under which payments are to be made by reference to, the Finance Documents or the Borrowers; or

(iii) to whom, and to the extent that, information is required to be disclosed

by any applicable law or regulation; or

(iv) for whose benefit that Lender creates Security (or may do so) pursuant

to Clause 28.9 *(Security over Lenders' rights);*

(v) to an investor or any potential investor in a securitisation; or

(vi) any trustee, agent of or professional advisor to any person named in

paragraphs (i) to (v) above; and

(b) any Finance Party may disclose to a rating agency or its professional advisers,

or (with the consent of the Borrowers) any other person,

any information about the Obligors, the Group and the Finance Documents as that Lender or other Finance Party shall consider appropriate provided that:

(A) in respect of paragraphs (a)(i), (ii), (iv) and (vi) the person to

whom such information is given has first entered into a

Confidentiality Undertaking; and

(B) in relation to paragraph (a)(v), such information is in the public

domain or is not price sensitive or the recipients have undertaken to the Borrowers to keep it confidential.

Any Confidentiality Undertaking signed by a Finance Party pursuant to this Clause 28.8 *(Disclosure of information)* shall supersede any prior confidentiality undertaking signed by such Finance Party for the benefit of any member of the Group.

28.9 Security over Lenders' rights

In addition to the other rights provided to Lenders under this Clause 28 *(Changes to the Lenders),* each Lender may without consulting with or obtaining consent from any Borrower, at any time create Security in or over (whether by way of collateral or otherwise) all or any of its rights under any Finance Document to secure obligations of that Lender including, without limitation:

1. any charge, assignment or other Security to secure obligations to a federal  
   reserve or central bank; and
2. in the case of any Lender which is a fund, any charge, assignment or other  
   Security granted to any holders (or trustee or representatives of holders) of obligations owed, or securities issued, by that Lender as security for those obligations or securities,

except that no such charge, assignment or other Security shall:

(i) release a Lender from any of its obligations under the Finance

Documents or substitute the beneficiary of the relevant charge, assignment or other Security for the Lender as a party to any of the Finance Documents; or

require any payments to be made by the Borrowers or grant to any person any more extensive rights than those required to be made or granted to the relevant Lender under the Finance Documents.

1. CHANGES TO THF, OBLIGORS 29.1 Assignment and transfers by the Obligors

Other than in accordance with Clause 6.2 *(Release of HoldCo and Assumptions of DevCo),* no Obligor may assign any of its rights or transfer any of its rights or obligations under the Finance Documents.

1. ROLE OF THE AGENT AND TM', ARRANGER 30.1 Appointment of the Agent
2. Each of the Arranger and the Lenders appoints the Agent to act as its agent  
   under and in connection with the Finance Documents.
3. Each of the Arranger and the Lenders authorises the Agent to exercise the  
   rights, powers, authorities and discretions specifically given to the Agent

under or in connection with the Finance Documents together with any other incidental rights, powers, authorities and discretions.

30.2 Duties of the Agent

1. Subject to paragraph (b) below, the Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Agent for that Party by any other Party.
2. Without prejudice to Clause 28.7 *(Copy of Transfer Certificate or Assignment  
   Agreement to Borrowers),* paragraph (a) above shall not apply to any Transfer Certificate or to any Assignment Agreement.
3. Except where a Finance Document specifically provides otherwise, the Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
4. If the Agent receives notice from a Party referring to this Agreement, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the other Finance Parties.
5. If the Agent is aware of the non-payment of any principal, interest,  
   commitment fee or other fee payable to a Finance Party (other than the Agent, the Security Agent or the Arranger) under this Agreement it shall promptly notify the other Finance Parties.
6. The Agent duties under the Finance Documents are solely mechanical and administrative in nature.

30.3 Role of the Arranger

Except as specifically provided in the Finance Documents, the Arranger has no obligations of any kind to any other Party under or in connection with any Finance Document.

30.4 No fiduciary duties

1. Nothing in this Agreement constitutes the Agent or the Arranger as a trustee or fiduciary of any other person.
2. None of the Agent or the Arranger shall be bound to account to any Lender for any sum or the profit element of any sum received by it for its own account.

30.5 Business with the Group

The Agent and the Arranger may accept deposits from, lend money to and generally

engage in any kind of banking or other business with any member of the Group.

30.6 Rights and discretions

(a) The Agent may rely on:

1. any representation, notice or document believed by it to be genuine, correct and appropriately authorised; and
2. any statement made by a director, authorised signatory or employee of any person regarding any matters which may reasonably be assumed to be within his knowledge or within his power to verify.

(b) The Agent may assume (unless it has received notice to the contrary in its

capacity as agent for the Lenders) that:

1. no Default has occurred (unless it has actual knowledge of a Default arising under Clause 27.1 *(Non-payment));* and
2. any right, power, authority or discretion vested in any Party or the Majority Lenders has not been exercised.

(c) The Agent may engage, pay for and rely on the advice or services of any

lawyers, accountants, surveyors or other experts.

(d) The Agent may act in relation to the Finance Documents through its personnel

and agents.

(e) The Agent may disclose to any other Party any information it reasonably

believes it has received as Agent or Security Agent under this Agreement.

Without prejudice to the generality of paragraph (e) above, the Agent may disclose the identity of a Defaulting Lender to the other Finance Parties and the Borrowers and shall disclose the same upon the written request of a Borrower or the Majority Lenders.

(g) Notwithstanding any other provision of any Finance Document to the contrary,

neither the Agent nor the Arranger is obliged to do or omit to do anything if it would or might in its reasonable opinion constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.

30.7 Majority Lenders' instructions

1. Unless a contrary indication appears in a Finance Document, the Agent shall (i) exercise any right, power, authority or discretion vested in it as Agent in accordance with any instructions given to it by the Majority Lenders (or, if so instructed by the Majority Lenders, refrain from exercising any right, power, authority or discretion vested in it as Agent) and (ii) not be liable for any act (or omission) if it acts (or refrains from taking any action) in accordance with an instruction of the Majority Lenders.
2. Unless a contrary indication appears in a Finance Document, any instructions given by the Majority Lenders will be binding on all the Finance Parties.
3. The Agent may refrain from acting in accordance with the instructions of the Majority Lenders (or, if appropriate, the Lenders) until it has received such security as it may require for any cost, loss or liability (together with any associated VAT) which it may incur in complying with the instructions.
4. In the absence of instructions from the Majority Lenders, (or, if appropriate, the Lenders) the Agent may act (or refrain from taking action) as it considers to be in the best interest of the Lenders.
5. The Agent is not authorised to act on behalf of a Lender (without first obtaining that Lender's consent) in any legal or arbitration proceedings relating to any Finance Document. This paragraph (e) shall not apply to any legal or arbitration proceeding relating to the perfection, preservation or protection of rights under the Transaction Security Documents or enforcement of the Transaction Security or Transaction Security Documents.

30.8 Responsibility for documentation

None of the Agent or the Arranger is responsible for:

1. the adequacy, accuracy and/or completeness of any information (whether oral or written) provided by the Agent, the Arranger or an Obligor or any other person given in or in connection with any Finance Document or the transactions contemplated by the Finance Documents;
2. the legality, validity, effectiveness, adequacy or enforceability of any Finance Document or any other agreement, arrangement or document entered into, made or executed in anticipation of or in connection with any Finance Document; or
3. any determination as to whether any information provided or to be provided to any Finance Party is non-public information the use of which may be regulated or prohibited by applicable law or regulation relating to insider dealing or otherwise.

30.9 Exclusion of liability

1. Without limiting paragraph (b) below (and without prejudice to the provisions of paragraph (e) of Clause 34.11 *(Disruption to Payment Systems etc.),* the Agent will not be liable (including, without limitation, for negligence or any other category of liability whatsoever) for any action taken by it under or in connection with any Finance Document, unless directly caused by its gross negligence or wilful misconduct.
2. No Party (other than the Agent) may take any proceedings against any officer, employee or agent of the Agent in respect of any claim it might have against the Agent or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document and any officer, employee or agent of the Agent may rely on this Clause subject to Clause 1.4 *(Third party rights)* and the provisions of the Third Parties Act.
3. The Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents to be paid by the Agent if the Agent has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by the Agent for that purpose.
4. Nothing in this Agreement shall oblige the Agent or the Arranger to carry out any "know your customer" or other checks in relation to any person on behalf of any Lender and each Lender confirms to the Agent and the Arranger that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Agent or the Arranger.

30.10 Lenders' indemnity to the Agent

Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify the Agent, within three Business Days of demand, against any cost, loss or liability (including, without limitation, for negligence or any other category of liability whatsoever) incurred by the Agent (otherwise than by reason of the Agent's gross negligence or wilful misconduct) (or, in the case of any cost, loss or liability pursuant to Clause *34.11 (Disruption to Payment Systems etc.)* notwithstanding the Agent or the Security Agent's negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent) in acting as Agent under the Finance Documents (unless the Agent has been reimbursed by a Borrower pursuant to a Finance Document).

30.11 Resignation of the Agent

1. The Agent may resign and appoint one of its Affiliates as successor by giving notice to the other Finance Parties and the Borrowers.
2. Alternatively the Agent may resign by giving 30 days' notice to the other  
   Finance Parties and the Borrowers, in which case the Majority Lenders (after consultation with the Borrowers) may appoint a successor Agent.
3. If the Majority Lenders have not appointed a successor Agent in accordance  
   with paragraph (b) above within 20 days after notice of resignation was given, the retiring Agent (after consultation with the Borrowers) may appoint a successor Agent.
4. The retiring Agent shall, at its own cost, make available to the successor Agent such documents and records and provide such assistance as the successor Agent may reasonably request for the purposes of performing its functions as Agent under the Finance Documents.
5. The Agent's resignation notice shall only take effect upon the appointment of a successor.

(1) Upon the appointment of a successor, the retiring Agent shall be discharged

from any further obligation in respect of the Finance Documents but shall remain entitled to the benefit of this Clause 30. Any successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.

(g) After consultation with the Borrowers, the Majority Lenders may, by notice to

the Agent, require it to resign in accordance with paragraph (b) above. In this event, the Agent shall resign in accordance with paragraph (b) above.

30.12 Replacement of the Agent

1. After consultation with the Borrowers, the Majority Lenders may, by giving  
   30 days' notice to the Agent (or, at any time the Agent is an Impaired Agent, by giving any shorter notice determined by the Majority Lenders) replace the Agent by appointing a successor Agent.
2. The retiring Agent shall (at its own cost if it is an Impaired Agent and  
   otherwise at the expense of the Lenders) make available to the successor Agent such documents and records and provide such assistance as the successor Agent may reasonably request for the purposes of performing its functions as Agent under the Finance Documents.
3. The appointment of the successor Agent shall take effect on the date specified  
   in the notice from the Majority Lenders to the retiring Agent. As from this date, the retiring Agent shall be discharged from any further obligation in respect of the Finance Documents but shall remain entitled to the benefit of this Clause 30 (and any agency fees for the account of the retiring Agent shall cease to accrue from (and shall be payable on) that date).
4. Any successor Agent and each of the other Parties shall have the same rights  
   and obligations amongst themselves as they would have had if such successor had been an original Party.

30.13 Confidentiality

1. In acting as agent for the Finance Parties, the Agent shall be regarded as acting  
   through its agency division which shall be treated as a separate entity from any other of its divisions or departments.
2. If information is received by another division or department of the Agent, it  
   may be treated as confidential to that division or department and the Agent shall not be deemed to have notice of it.
3. Notwithstanding any other provision of any Finance Document to the  
   contrary, none of the Agent and the Arranger are obliged to disclose to any other person (i) any information or (ii) any other information if the disclosure would or might in its reasonable opinion constitute a breach of any law or fiduciary duty.

30.14 Relationship with the Lenders

(a) The Agent may treat the person shown in its records as Lender at the opening

of business (in the place of the Agent's principal office as notified to the Finance Parties from time to time) as the Lender acting through its Facility Office:

1. entitled to or liable for any payment due under any Finance Document on that day; and
2. entitled to receive and act upon any notice, request, document or communication or make any decision or determination under any Finance Document made or delivered on that day,

unless it has received not less than five Business Days' prior notice from that Lender to the contrary in accordance with the terms of this Agreement.

(b) Each Lender shall supply the Agent with any information required by the

Agent in order to calculate the Mandatory Cost in accordance with Schedule 4 *(Mandatory Cost formulae).*

(c) Each Lender shall supply the Security Agent with any information that the

Security Agent may reasonably specify (through the Agent) as being necessary or desirable to enable the Security Agent to perform its functions as Security Agent. Each Lender shall deal with the Security Agent exclusively through the Agent and shall not deal directly with the Security Agent.

(d) Any Lender may by notice to the Agent appoint a person to receive on its

behalf all notices, communications, information and documents to be made or despatched to that Lender under the Finance Documents. Such notice shall contain the address, fax number and (where communication by electronic mail or other electronic means is permitted under Clause 37.6 *(Electronic communication))* electronic mail address and/or any other information required to enable the sending and receipt of information by that means (and, in each case, the department or officer, if any, for whose attention communication is to be made) and be treated as a notification of a substitute address, fax number, electronic mail address, department and officer by that Lender for the purposes of Clause 37.2 *(Addresses)* and paragraph (a)(iii) of Clause 37.6 *(Electronic communication)* and the Agent shall be entitled to treat such person as the person entitled to receive all such notices, communications, information and documents as though that person were that Lender.

30.15 Credit appraisal by the Lenders

Without affecting the responsibility of each Obligor for information supplied by it or on its behalf in connection with any Finance Document, each Lender confirms to the Agent and the Arranger that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with any Finance Document including but not limited to:

(a) the financial condition, status and nature of each member of the Group;

1. the legality, validity, effectiveness, adequacy or enforceability of any Finance Document and the Transaction Security and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Transaction Security;
2. whether that Lender has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Finance Document, the Transaction Security, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; and
3. the adequacy, accuracy and/or completeness of any other information provided by the Agent, any Party or by any other person under or in connection with any Finance Document, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document, and
4. the right or title of any person in or to, or the value or sufficiency of any part of the Charged Property, the priority of any of the Transaction Security or the existence of any Security affecting the Charged Property.

30.16 Reference Banks

If a Reference Bank (or, if a Reference Bank is not a Lender, the Lender of which it is an Affiliate) ceases to be a Lender, the Agent shall (in consultation with the Borrower) appoint another Lender or an Affiliate of a Lender to replace that Reference Bank.

30.17 Deduction from amounts payable by the Agent

If any Party owes an amount to the Agent under the Finance Documents the Agent may, after giving notice to that Party, deduct an amount not exceeding that amount from any payment to that Party which the Agent would otherwise be obliged to make under the Finance Documents and apply the amount deducted in or towards satisfaction of the amount owed. For the purposes of the Finance Documents that Party shall be regarded as having received any amount so deducted.

30.18 Reliance and Engagement Letters

Each Finance Party and Secured Party confirms that each of the Arranger and the Agent has authority to accept on its behalf and ratifies the acceptance on its behalf of any letters or reports already accepted by the Arranger or Agent the terms of any reliance letter or engagement letters relating to any Appraisal Valuation or any reports or letters provided by accountants in connection with the Finance Documents or the transactions contemplated in the Finance Documents and to bind it in respect of the Appraisal Valuation, such reports or letters and to sign such letters on its behalf and further confirms that it accepts the terms and qualifications set out in such letters except, in any such case, in respect of any Finance Party or Secured Party which has notified the Arranger and/or the Agent that it wishes to accept and sign any such

letters or accept any such reports directly on its own behalf (and any costs and expenses associated therewith shall be for the account of such Finance Party or Secured Party).

31. ROLE OF SECURITY AGENT 31.1 Appointment of Security Agent

1. Each of the Arranger, the Agent and the Lenders appoints the Security Agent to act as its agent and trustee under and in connection with the Finance Documents.
2. Each of the Arranger, the Agent and the Lenders authorises the Security Agent to exercise the rights, powers, authorities and discretions specifically given to the Security Agent under or in connection with the Finance Documents, together with any other incidental rights, powers, authorities and discretions.
3. Each of the Arranger, the Agent and the Lenders authorises the Security Agent to execute the Transaction Security Documents on its behalf.

31.2 Trust

The Security Agent declares that it shall hold the Transaction Security on trust for the Secured Parties on the terms contained in this Agreement. Each of the parties to this Agreement agrees that the Security Agent shall have only those duties, obligations and responsibilities expressly specified in this Agreement or in the Security Documents (and no others shall be implied).

31.3 No Independent Power

The Secured Parties shall not have any independent power to enforce, or have recourse to, any of the Transaction Security or to exercise any rights or powers arising under the Security Documents except through the Security Agent.

31.4 Security Agent's Instructions The Security Agent shall:

1. unless a contrary indication appears in a Finance Document, act in accordance with any instructions given to it by the Agent and shall be entitled to assume that (i) any instructions received by it from the Agent are duly given by or on behalf of the Majority Lenders or, as the case may be, all of the Lenders in accordance with the terms of the Finance Documents and (ii) unless it has received actual notice of revocation that any instructions or directions given by the Agent have not been revoked;
2. be entitled to request instructions, or clarification of any direction, from the Agent as to whether, and in what manner, it should exercise or refrain from exercising any rights, powers and discretions and the Security Agent may refrain from acting unless and until those instructions or clarification are received by it; and

(c) be entitled to, carry out all dealings with the Secured Parties through the Agent

and may give to the Agent any notice or other communication required to be given by the Security Agent to the Secured Parties.

31.5 Security Agent's Actions

Subject to the provisions of this Clause 31:

(a) the Security Agent may, in the absence of any instructions to the contrary from

the Agent, take such action in the exercise of any of its powers and duties under the Finance Documents which in its absolute discretion it considers to be for the protection and benefit of all the Secured Parties; and

(b) at any time after receipt by the Security Agent of notice from the Agent

directing the Security Agent to exercise all or any of its rights, remedies, powers or discretions under any of the Finance Documents, the Security Agent may, and shall if so directed by the Agent, take any action as in its sole discretion it thinks fit to enforce the Transaction Security.

31.6 Security Agent's Discretions The Security Agent may:

1. assume (unless it has received actual notice to the contrary from the Agent in its capacity as Security Agent for the Secured Parties) that (i) no Default has occurred and no Obligor is in breach of or default under its obligations under any of the Finance Documents; and (ii) any right, power, authority or discretion vested in any person has not been exercised;
2. if it receives any instructions or directions from the Agent to take any action in relation to the Transaction Security, assume that all applicable conditions under the Finance Documents for taking that action have been satisfied;
3. engage, pay for and rely on the advice or services of any lawyers, accountants, surveyors or other experts (whether obtained by the Security Agent or by any other Secured Party) whose advice or services may at any time seem necessary, expedient or desirable;
4. rely upon any communication or document believed by it to be genuine and, as to any matters of fact which might reasonably be expected to be within the knowledge of a Secured Party or an Obligor, upon a certificate signed by or on behalf of that person; and
5. refrain from acting in accordance with the instructions of the Agent or Lenders (including bringing any legal action or proceeding arising out of or in connection with the Finance Documents) until it has received any indemnification and/or security that it may in its absolute discretion require (whether by way of payment in advance or otherwise) for all costs, losses and liabilities which it may incur in bringing such action or proceedings.

31.7 Security Agent's Obligations

The Security Agent shall promptly inform the Agent of:

1. the contents of any notice or document received by it in its capacity as Security Agent from any Obligor under any Finance Document;
2. the contents of any notice or document received by it in its capacity as  
   Security Agent from any third party that refer to any fact, circumstance or action may have a negative impact or negatively affect the validity, enforceability of any Security or the value of any asset subject to Security, or regarding non compliance by any Obligor of its obligations under the relevant Transaction Security Document; and
3. the occurrence of any Default or any default by an Obligor in the due performance of or compliance with its obligations under any Finance Document of which the Security Agent has received notice from any other party to this Agreement.

31.8 Excluded Obligations

Notwithstanding anything to the contrary expressed or implied in the Finance Documents, the Security Agent shall not:

1. be bound to enquire as to (i) whether or not any Default has occurred or (ii) the performance, default or any breach by an Obligor of its obligations under any of the Finance Documents;
2. be bound to account to any other Secured Party for any sum or the profit element of any sum received by it for its own account;
3. be bound to disclose to any other person (including but not limited to any Secured Party) (i) any confidential information or (ii) any other information if disclosure would, or might in its reasonable opinion, constitute a breach of any law or be a breach of fiduciary duty;
4. be under any obligations other than those which are specifically provided for in the Finance Documents; or
5. have or be deemed to have any duty, obligation or responsibility to, or relationship of trust or agency with, any Obligor.

31.9 Exclusion of Security Agent's liability

The Security Agent is not responsible or liable for:

(a) the adequacy, accuracy and/or completeness of any information (whether oral

or written) supplied by the Security Agent or any other person in or in connection with any Finance Document or any other agreement, arrangement or document entered into, made or executed in anticipation of or in connection with any Finance Document or the transactions contemplated in the Finance Documents;

1. the legality, validity, effectiveness, adequacy or enforceability of any Finance Document or the Transaction Security or any other agreement, arrangement or document entered into, made or executed in anticipation of or in connection with any Finance Document or the Transaction Security;
2. any losses to any person or any liability arising as a result of taking or refraining from taking any action in relation to any of the Finance Documents or the Transaction Security or otherwise, whether in accordance with an instruction from the Agent or otherwise, unless directly caused by its gross negligence or wilful misconduct or a violation of its duties under this Agreement;
3. the exercise of; or the failure to exercise, any judgement, discretion or power given to it by or in connection with any of the Finance Documents, the Transaction Security or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, the Finance Documents or the Transaction Security, unless directly caused by its gross negligence or wilful misconduct or a violation of its duties under this Agreement; or
4. any shortfall which arises on the enforcement of the Transaction Security. 31.10 No proceedings

No Party (other than the Security Agent) may take any proceedings against any officer, employee or agent of the Security Agent in respect of any claim it might have against the Security Agent or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document or any Transaction Security and any officer, employee or agent of the Security Agent may rely on this Clause subject to Clause 1.4 *(Third party rights)* and the provisions of the Third Parties Act.

31.11 Own responsibility

Without affecting the responsibility of any Obligor for information supplied by it or on its behalf in connection with any Finance Document, each Secured Party confirms to the Security Agent that it has at all times been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with any Finance Document including but not limited to:

1. the financial condition, creditworthiness, condition, affairs, status and nature of each member of the Group;
2. the legality, validity, effectiveness, adequacy and enforceability of any Finance Document and the Transaction Security and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Finance Document or the Transaction Security;
3. whether that Secured Party has recourse, and the nature and extent of that recourse, against any Party or any other person or any of their respective assets

under or in connection with any Finance Document, the Transaction Security, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Finance Document or the Transaction Security;

1. the adequacy, accuracy and/or completeness of any information provided by the Security Agent or by any other person under or in connection with any Finance Document, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Finance Document; and
2. the right or title of any person in or to, or the value or sufficiency of any part of the Charged Property, the priority of any of the Transaction Security or the existence of any Security affecting the Charged Property,

and each Secured Party warrants to the Security Agent that it has not relied on and

will not at any time rely on the Security Agent in respect of any of these matters.

31.12 No responsibility to perfect Transaction Security The Security Agent shall not be liable for any failure to:

1. require the deposit with it of any deed or document certifying, representing or constituting the title of any Obligor to any of the Charged Property;
2. obtain any licence, consent or other authority for the execution, delivery,  
   legality, validity, enforceability or admissibility in evidence of any of the Finance Documents or the Transaction Security;
3. register, file or record or otherwise protect any of the Transaction Security (or the priority of any of the Transaction Security) under any applicable laws in any jurisdiction or to give notice to any person of the execution of any of the Finance Documents or of the Transaction Security;
4. take, or to require any of the Obligors to take, any steps to perfect its title to any of the Charged Property or to render the Transaction Security effective or to secure the creation of any ancillary Security under the laws of any jurisdiction; or
5. require any further assurances in relation to any of the Security Documents. 31.13 Insurance by Security Agent

(a) The Security Agent shall not be under any obligation to insure any of the

Charged Property, to require any other person to maintain any insurance or to verify any obligation to arrange or maintain insurance contained in the Finance Documents. The Security Agent shall not be responsible for any loss which may be suffered by any person as a result of the lack of or inadequacy of any such insurance.

(b) Where the Security Agent is named on any insurance policy as an insured

party, it shall not be responsible for any loss which may be suffered by reason of, directly or indirectly, its failure to notify the insurers of any material fact relating to the risk assumed by the insurers or any other information of any kind, unless any Secured Party has requested it to do so in writing and the Security Agent has failed to do so within fourteen days after receipt of that request.

31.14 Custodians and Nominees

The Security Agent may appoint and pay any person to act as a custodian or nominee on any terms in relation to any assets of the trust as the Security Agent may determine, including for the purpose of depositing with a custodian this Agreement or any document relating to the trust created under this Agreement and the Security Agent shall not be responsible for any loss, liability, expense, demand, cost, claim or proceedings incurred by reason of the misconduct, omission or default on the part of any person appointed by it under this Agreement or be bound to supervise the proceedings or acts of any person.

31.15 Acceptance of Title

The Security Agent shall be entitled to accept without enquiry, and shall not be obliged to investigate, the right and title that each of the Obligors may have to any of the Charged Property and shall not be liable for or bound to require any Obligor to remedy any defect in its right or title.

31.16 **Refrain from Illegality**

The Security Agent may refrain from doing anything which in its opinion will or may be contrary to any relevant law, directive or regulation of any jurisdiction which would or might otherwise render it liable to any person, and the Security Agent may do anything which is, in its opinion, necessary to comply with any law, directive or regulation.

31.17 **Business with the Obligors**

The Security Agent may accept deposits from, lend money to, and generally engage in any kind of banking or other business with any of the Obligors.

31.18 **Releases**

Upon a disposal of any of the Charged Property:

1. pursuant to the enforcement of the Transaction Security by a Receiver or the Security Agent; or
2. if that disposal is permitted under the Finance Documents,

the Security Agent shall (at the cost of the Obligors) release that property from the Transaction Security and is authorised to execute, without the need for any further authority from the Secured Parties, any release of the Transaction Security or other

claim over that asset and to issue any certificates of non-crystallisation of floating charges that may be required or desirable.

31.19 Winding up of Trust

If the Security Agent, with the approval of the Majority Lenders, determines that (a) all of the Secured Obligations and all other obligations secured by any of the Security Documents have been fully and finally discharged and (b) none of the Secured Parties is under any commitment, obligation or liability (actual or contingent) to make advances or provide other financial accommodation to any Obligor pursuant to the Finance Documents, the trusts set out in this Agreement shall be wound up and the Security Agent shall release, without recourse or warranty, all of the Transaction Security and the rights of the Security Agent under each of the Security Documents.

31.20 Perpetuity Period

The perpetuity period under the rule against perpetuities, if applicable to this

Agreement, shall be the period of eighty years from the date of this Agreement

31.21 Powers Supplemental

The rights, powers and discretion conferred upon the Security Agent by this Agreement shall be supplemental to the Trustee Act 1925 and the Trustee Act 2000 and in addition to any which may be vested in the Security Agent by general law or otherwise.

31.22 Trustee division separate

1. In acting as trustee for the Secured Parties, the Security Agent shall be regarded as acting through its agency or trustee division which shall be treated as a separate entity from any other of its divisions or departments.
2. If information is received by another division or department of the Security Agent, it may be treated as confidential to that division or department and the Security Agent shall not be deemed to have notice of it.

31.23 Lender indemnity to the Security Agent

Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify the Security Agent, within three Business Days of demand, against any cost, loss or liability incurred by the Security Agent (otherwise than by reason of the Security Agent's gross negligence or wilful misconduct) in acting as Security Agent under the Finance Documents (unless the Security Agent has been reimbursed by an Obligor pursuant to a Finance Document).

31.24 Disapplication

Section 1 of the Trustee Act 2000 shall not apply to the duties of the Security Agent in relation to the trusts constituted by this Agreement. Where there are any inconsistencies between the Trustee Act 1925 and the Trustee Act 2000 and the provisions of this Agreement, the provisions of this Agreement shall, to the extent

allowed by law, prevail and, in the case of any inconsistency with the Trustee Act 2000, the provisions of this Agreement shall constitute a restriction or exclusion for the purposes of that Act.

31.25 Resignation of Security Agent

1. The Security Agent may resign and appoint one of its Affiliates as successor by giving notice to the other Parties (or to the Agent on behalf of the Lenders).
2. Alternatively the Security Agent may resign by giving notice to the other Parties (or to the Agent on behalf of the Lenders) in which case the Majority Lenders may appoint a successor Security Agent.
3. If the Majority Lenders have not appointed a successor Security Agent in accordance with paragraph (b) above within 30 days after the notice of resignation was given, the Security Agent (after consultation with the Agent) may appoint a successor Security Agent.
4. The retiring Security Agent shall, at its own cost, make available to the successor Security Agent such documents and records and provide such assistance as the successor Security Agent may reasonably request for the purposes of performing its functions as Security Agent under the Finance Documents.
5. The Security Agent's resignation notice shall only take effect upon (i) the appointment of a successor and (ii) the transfer of all of the Transaction Security to that successor.
6. Upon the appointment of a successor, the retiring Security Agent shall be discharged from any further obligation in respect of the Finance Documents but shall remain entitled to the benefit of Clauses 30 *(Role of the Agent and the Arranger)* and 31 *(Role of Security Agent).* Its successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.
7. The Majority Lenders may, by notice to the Security Agent, require it to resign in accordance with paragraph (b) above. In this event, the Security Agent shall resign in accordance with paragraph (b) above.

31.26 Delegation

1. The Security Agent may, at any time, delegate by power of attorney or otherwise to any person for any period, all or any of the rights, powers and discretions vested in it by any of the Finance Documents.
2. The delegation may be made upon any terms and conditions (including the power to sub-delegate) and subject to any restrictions that the Security Agent may think fit in the interests of the Secured Parties and it shall not be bound to supervise, or be in any way responsible for any loss incurred by reason of any misconduct or default on the part of any delegate or sub-delegate.

31.27 Additional Security Agents

1. The Security Agent may at any time appoint (and subsequently remove) any person to act as a separate Security Agent or as a co-Security Agent jointly with it (i) if it considers that appointment to be in the interests of the Secured Parties or (ii) for the purposes of conforming to any legal requirements, restrictions or conditions which the Security Agent deems to be relevant or (iii) for obtaining or enforcing any judgment in any jurisdiction, and the Security Agent shall give prior notice to the Borrowers and the Agent of that appointment.
2. Any person so appointed shall have the rights, powers and discretion (not exceeding those conferred on the Security Agent by this Agreement) and the duties and obligations that are conferred or imposed by the instrument of appointment.

The remuneration that the Security Agent may pay to any person, and any costs and expenses incurred by that person in performing its functions pursuant to that appointment shall, for the purposes of this Agreement, be treated as costs and expenses incurred by the Security Agent.

32. CONDUCT OF BUSINESS BY THE FINANCE PARTIES No provision of this Agreement will:

1. interfere with the right of any Finance Party to arrange its affairs (tax or otherwise) in whatever manner it thinks fit;
2. oblige any Finance Party to investigate or claim any credit, relief, remission or  
   repayment available to it or the extent, order and manner of any claim; or
3. oblige any Finance Party to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of Tax.

33. SHARING AMONG THE FINANCE PARTIES 33.1 Payments to Finance Parties

If a Finance Party (a "Recovering Finance Party") receives or recovers any amount from an Obligor other than in accordance with Clause 34 *(Payment mechanics)* (a "Recovered Amount") and applies that amount to a payment due under the Finance Documents then:

1. the Recovering Finance Party shall, within three Business Days, notify details of the receipt or recovery, to the Agent;
2. the Agent shall determine whether the receipt or recovery is in excess of the amount the Recovering Finance Party would have been paid had the receipt or recovery been received or made by the Agent and distributed in accordance with Clause 34 *(Payment mechanics),* without taking account of any Tax which would be imposed on the Agent in relation to the receipt, recovery or distribution; and
3. the Recovering Finance Party shall, within three Business Days of demand by  
   the Agent, pay to the Agent an amount (the "Sharing Payment") equal to such receipt or recovery less any amount which the Agent determines may be retained by the Recovering Finance Party as its share of any payment to be made, in accordance with Clause 34.6 *(Partial payments).*

33.2 Redistribution of payments

The Agent shall treat the Sharing Payment as if it had been paid by the relevant Obligor and distribute it between the Finance Parties (other than the Recovering Finance Party) (the "Sharing Finance Parties") in accordance with Clause 34.6 *(Partial payments)* towards the obligations of the relevant Obligor to the Sharing Finance Parties.

33.3 Recovering Finance Party's rights

On a distribution by the Agent under Clause 33.2 *(Redistribution of payments)* of a payment received by a Recovering Finance Party from an Obligor as between the relevant Obligor and the Recovering Finance Party, an amount of the Recovered Amount equal to the Sharing Payment will be treated as not having been paid by the relevant Obligor.

33.4 Reversal of redistribution

If any part of the Sharing Payment received or recovered by a Recovering Finance

Party becomes repayable and is repaid by that Recovering Finance Party, then:

1. each Sharing Finance Party shall, upon request of the Agent, pay to the Agent for the account of that Recovering Finance Party an amount equal to the appropriate part of its share of the Sharing Payment (together with an amount as is necessary to reimburse that Recovering Finance Party for its proportion of any interest on the Sharing Payment which that Recovering Finance Party is required to pay) (the "Redistributed Amount"); and
2. as between the relevant Obligor and each relevant Sharing Finance Party, an amount equal to the relevant Redistributed Amount will be treated as not having been paid by the relevant Obligor.

33.5 Exceptions

1. This Clause 33 *(Sharing among the Finance Parties)* shall not apply to the  
   extent that the Recovering Finance Party would not, after making any payment pursuant to this Clause, have a valid and enforceable claim against the relevant Obligor.
2. A Recovering Finance Party is not obliged to share with any other Finance  
   Party any amount which the Recovering Finance Party has received or recovered as a result of taking legal or arbitration proceedings, if:

(i) it notified that other Finance Party of the legal or arbitration

proceedings; and

that other Finance Party had an opportunity to participate in those legal or arbitration proceedings but did not do so as soon as reasonably practicable having received notice and did not take separate legal or arbitration proceedings.

34. PAYMENT MECHANICS 34.1 Payments to the Agent

1. On each date on which an Obligor or a Lender is required to make a payment under a Finance Document, that Obligor or Lender shall make the same available to the Agent (unless a contrary indication appears in a Finance Document) for value on the due date at the time and in such funds specified by the Agent as being customary at the time for settlement of transactions in the relevant currency in the place of payment.
2. Payment shall be made to such account in the principal financial centre of the country of that currency (or, in relation to euro, in a principal financial centre in a Participating Member State or London) with such bank as the Agent specifies.

34.2 Distributions by the Agent

Each payment received by the Agent under the Finance Documents for another Party shall, subject to Clause 34.3 *(Distributions to an Obligor),* Clause 34.4 *(Clawback)* and Clause 30.17 *(Deduction from amounts payable by the Agent)* be made available by the Agent as soon as practicable after receipt to the Party entitled to receive payment in accordance with this Agreement (in the case of a Lender, for the account of its Facility Office), to such account as that Party may notify to the Agent by not less than five Business Days' notice with a bank in the principal financial centre of the country of that currency (or, in relation to euro, in the principal financial centre of a Participating Member State or London).

34.3 Distributions to an Obligor

The Agent may (with the consent of the Obligor or in accordance with Clause 35 *(Set­off))* apply any amount received by it for that Obligor in or towards payment (on the date and in the currency and funds of receipt) of any amount due from that Obligor under the Finance Documents or in or towards purchase of any amount of any currency to be so applied.

34.4 Clawback

1. Where a sum is to be paid to the Agent under the Finance Documents for another Party, the Agent is not obliged to pay that sum to that other Party (or to enter into or perform any related exchange contract) until it has been able to establish to its satisfaction that it has actually received that sum.
2. If the Agent pays an amount to another Party and it proves to be the case that the Agent had not actually received that amount, then the Party to whom that amount (or the proceeds of any related exchange contract) was paid by the Agent shall on demand refund the same to the Agent together with interest on

that amount from the date of payment to the date of receipt by the Agent, calculated by the Agent to reflect its cost of funds.

34.5 Impaired Agent

1. If, at any time, the Agent becomes an Impaired Agent, an Obligor or a Lender which is required to make a payment under the Finance Documents to the Agent in accordance with Clause 34.1 *(Payments to the Agent)* may instead either pay that amount direct to the required recipient or pay that amount to an interest-bearing account held with an Acceptable Bank within the meaning of paragraph (a) of the definition of "Acceptable Bank" and in relation to which no Insolvency Event has occurred and is continuing, in the name of the Obligor or the Lender making the payment and designated as a trust account for the benefit of the Party or Parties beneficially entitled to that payment under the Finance Documents. In each case such payments must be made on the due date for payment under the Finance Documents.
2. All interest accrued on the amount standing to the credit of the trust account  
   shall be for the benefit of the beneficiaries of that trust account *pro rata* to their respective entitlements.
3. A Party which has made a payment in accordance with this Clause 34.5 shall  
   be discharged of the relevant payment obligation under the Finance Documents and shall not take any credit risk with respect to the amounts standing to the credit of the trust account.
4. Promptly upon the appointment of a successor Agent in accordance with Clause 30.12 *(Replacement of the Agent),* each Party which has made a payment to a trust account in accordance with this Clause 34.534.5 shall give all requisite instructions to the bank with whom the trust account is held to transfer the amount (together with any accrued interest) to the successor Agent for distribution in accordance with Clause 34.2 *(Distributions by the Agent).*

34.6 Partial payments

(a) If the Agent receives a payment that is insufficient to discharge all the amounts

then due and payable by an Obligor under the Finance Documents, the Agent shall apply that payment towards the obligations of that Obligor under the Finance Documents in the following order:

(i) *first,* in or towards payment *pro rata* of any unpaid fees, costs and

expenses of the Agent, the Security Agent (including any Receiver or Delegate) and the Arranger under the Finance Documents;

*secondly,* in or towards payment *pro rata* of any accrued fee or

commission due but unpaid under this Agreement;

(iii) *thirdly,* in or towards payment *pro rata* of any principal due but unpaid under the Term Facility under this Agreement;

1. *fourthly,* in or towards payment *pro rata* of any principal due but unpaid under the Convertible Facility under this Agreement (prior to the HoldCo Warrants Take-out);
2. *fifthly,* in or towards payment *pro rata* of any interest accrued (but not yet capitalised under Clause *11.2 (Capitalisation of interest)* in respect of the Term Facility Loan and the Term Facility PIK Loan;
3. *sixthly,* in or towards payment *pro rata* of any interest accrued (but not yet capitalised under Clause *11.2 (Capitalisation of interest)* in respect of the Convertible Facility Loan and the Convertible Facility PIK Loan;
4. *seventhly,* in or towards payment *pro rata* of any Profit Participative (Convertible Facility) Loan (prior to the HoldCo Warrants Take-out) created pursuant to Clause *2.2 (Conversion into Profit Participative Loans);*
5. *eighthly,* in or towards payment *pro rata* of any Profit Participative (Convertible Facility P1K) Loans and any Profit Participative (Term Facility PIK) Loans created pursuant to Clause *2.2 (Conversion into Profit Participative Loans);*
6. *ninthly,* any other sum due but unpaid under the Finance Documents.
7. The Agent shall, if so directed by the Majority Lenders, vary the order set out in paragraphs (a) above.
8. Paragraphs (a) and (b) above will override any appropriation made by an Obligor.

34.7 No set-off by the Obligors

All payments to be made by the Obligors under the Finance Documents shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

34.8 Business Days

1. Any payment which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).
2. During any extension of the due date for payment of any principal or Unpaid Sum under this Agreement interest is payable on the principal or Unpaid Sum at the rate payable on the original due date.

34.9 Currency of account

(a) Subject to paragraphs (b) and (c) below, euro is the currency of account and

payment for any sum from an Obligor under any Finance Document.

1. Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.
2. Any amount expressed to be payable in a currency other than euro shall be paid in that other currency.

34.10 Change of currency

(a) Unless otherwise prohibited by law, if more than one currency or currency unit

are at the same time recognised by the central bank of any country as the lawful currency of that country, then:

1. any reference in the Finance Documents to, and any obligations arising under the Finance Documents in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the Agent (after consultation with the Borrower); and
2. any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the Agent (acting reasonably).

(b) If a change in any currency of a country occurs, this Agreement will, to the

extent the Agent (acting reasonably and after consultation with the Borrower) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the Relevant Interbank Market and otherwise to reflect the change in currency.

34.11 Disruption to Payment Systems etc.

If either the Agent determines (in its discretion) that a Disruption Event has occurred or the Agent is notified by a Borrower that a Disruption Event has occurred:

1. the Agent may, and shall if requested to do so by that Borrower, consult with that Borrower with a view to agreeing with that Borrower such changes to the operation or administration of the Facilities as the Agent may deem necessary in the circumstances;
2. the Agent shall not be obliged to consult with that Borrower in relation to any changes mentioned in paragraph (a) if, in its opinion, it is not practicable to do so in the circumstances and, in any event, shall have no obligation to agree to such changes;
3. the Agent may consult with the Finance Parties in relation to any changes mentioned in paragraph (a) but shall not be obliged to do so if, in its opinion, it is not practicable to do so in the circumstances;
4. any such changes agreed upon by the Agent and that Borrower shall (whether or not it is finally determined that a Disruption Event has occurred) be binding upon the Parties as an amendment to (or, as the case may be, waiver of) the terms of the Finance Documents notwithstanding the provisions of Clause 41 *(Amendments and Waivers);*

(e) the Agent shall not be liable for any damages, costs or losses whatsoever

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(including, without limitation for negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent) arising as a result of its taking, or failing to take, any actions pursuant to or in connection with this Clause 34.11; and

(±) the Agent shall notify the Finance Parties of all changes agreed pursuant to

paragraph (d) above.

35. SET-01111

A Finance Party may set off any matured obligation due from an Obligor under the Finance Documents (to the extent beneficially owned by that Finance Party) against any matured obligation owed by that Finance Party to that Obligor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Finance Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

36. APPLICATION OF PROCEEDS 36.1 Order of Application

All moneys from time to time received or recovered by the Security Agent in connection with the realisation or enforcement of all or any part of the Transaction Security shall be held by the Security Agent on trust to apply them at such times as the Security Agent sees fit, to the extent permitted by applicable law, in the following order of priority:

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1. in discharging any sums owing to the Security Agent (in its capacity as agent or trustee), any Receiver or any Delegate;
2. in payment of all costs and expenses reasonably incurred by the Agent, the Arranger or any Lender in relation to any realisation or enforcement of the Transaction Security taken in accordance with the terms of this Agreement or the Transaction Security Documents;

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1. in payment to the Agent, on behalf of the Secured Parties, for application towards the discharge of all sums due and payable by any Obligor under any of the Finance Documents in accordance with Clause 34.6 *(Partial Payments);*
2. if none of the Obligors is under any further actual or contingent liability under any Finance Document, in payment to any person to whom the Security Agent is obliged to pay in priority to any Obligor; and
3. the balance, if any, in payment to the relevant Obligor.

37. NOTICES

37.1 Communications in writing

Any communication to be made under or in connection with the Finance Documents shall be made in writing and, unless otherwise stated, may be made by fax or letter.

37.2 Addresses

The address and fax number (and the department or officer, if any, for whose attention  
the communication is to be made) of each Party for any communication or document

to be made or delivered under or in connection with the Finance Documents is:

1. in the case of each Obligor, that identified with its name below;
2. in the case of each Lender, that notified in writing to the Agent on or prior to the date on which it becomes a Party; and
3. in the case of the Agent, that identified with its name below,

or any substitute address or fax number or department or officer as the Party may notify to the Agent (or the Agent may notify to the other Parties, if a change is made by the Agent) by not less than five Business Days' notice.

37.3 Delivery

(a) Any communication or document made or delivered by one person to another

under or in connection with the Finance Documents will only be effective:

1. if by way of fax, when received in legible form; or
2. if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of its address details provided under Clause 37.2 *(Addresses),* if addressed to that department or officer.

(b) Any communication or document to be made or delivered to the Agent or the

Security Agent will be effective only when actually received by the Agent or the Security Agent and then only if it is expressly marked for the attention of the department or officer identified with the Agent or the Security Agent's signature below (or any substitute department or officer as the Agent or the Security Agent shall specify for this purpose).

(c) All notices from or to the Obligor shall be sent through the Agent.

37.4 Notification of address and fax number

Promptly upon receipt of notification of an address and fax number or change of address or fax number pursuant to Clause 37.2 *(Addresses)* or changing its own address or fax number, the Agent shall notify the other Parties.

37.5 Communication when Agent is Impaired Agent

If the Agent is an Impaired Agent the Parties may, instead of communicating with each other through the Agent, communicate with each other directly and (while the Agent is an Impaired Agent) all the provisions of the Finance Documents which

require communications to be made or notices to be given to or by the Agent shall be varied so that communications may be made and notices given to or by the relevant Parties directly. This provision shall not operate after a replacement Agent has been appointed.

37.6 Electronic communication

(a) Any communication to be made between the Agent, the Security Agent and a

Lender or an Obligor under or in connection with the Finance Documents may be made by electronic mail or other electronic means, if the Agent, the Security Agent and the relevant Lender or Obligor:

1. agree that, unless and until notified to the contrary, this is to be an accepted form of communication;
2. 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; and
3. notify each other of any change to their address or any other such information supplied by them.

(b) Any electronic communication made between the Agent, the Security Agent

and a Lender or an Obligor will be effective only when actually received in readable form and in the case of any electronic communication made by a Lender or Obligor to the Agent or the Security Agent only if it is addressed in such a manner as the Agent or the Security Agent shall specify for this purpose.

37.7 English language

1. Any notice given under or in connection with any Finance Document must be in English.
2. All other documents provided under or in connection with any Finance Document must be:
3. in English; or
4. if not in English, and if so required by the Agent, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

38. CALCULATIONS AND CERTIFICATES 38.1 Accounts

In any litigation or arbitration proceedings arising out of or in connection with a Finance Document, the entries made in the accounts maintained by a Finance Party are *prima facie* evidence of the matters to which they relate.

38.2 Certificates and determinations

Any certification or determination by a Finance Party of a rate or amount under any Finance Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

38.3 Day count convention

Any interest, commission or fee accruing under a Finance Document will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 360 days or, in any case where the practice in the Relevant Interbank Market differs, in accordance with that market practice.

38.4 Evidence of Debt

1. For the purposes of article 572 of the Spanish Civil Procedural Law *(Ley de Enjuiciamiento Civil),* the Parties expressly agree that upon the occurrence of an Event of Default, the Agent (and/or any Lender) will calculate the amount due following its accounting provisions and it will issue the relevant certificate (which will be upheld valid in a Court and shall produce all legal effects) detailing the total due amount as of the date of its issuance, being deemed such amount as true, net, due and payable.
2. For any enforcement actions in Spain the submission of a *"copia autorizada"* or *"testimonio con caracter ejecutivo"* of this Agreement will suffice, together with the certificate referred to in article 517.2.5 of the above Spanish Civil Procedural Law *(Ley de Enjuiciamiento Civil)* and the submission of another certificate issued by an authorised representative of the Agent (and/or the relevant Lender) establishing the due amount by the Obligors hereunder, in which the Notary witnessing such certificate, at the Agent's (and/or the relevant Lender's) request, will certify that the said balance coincides with that set out in the Agent's (and/or the relevant Lender's) account and that the settlement of the due amount has been made in the manner agreed by the Parties in this Agreement.

39. PARTIAL INVALIDITY

If, at any time, any provision of the Finance Documents is or becomes illegal, invalid 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.

1. REMEDIES AND WAIVERS

No failure to exercise, nor any delay in exercising, on the part of any Finance Party, any right or remedy under the Finance Documents shall operate as a waiver of any such right or remedy or constitute an election to affirm any of the Finance Documents. No election to affirm any of the Finance Documents on the part of any Finance Party shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

1. AMENDMENTS AND WAIVERS 41.1 Required consents
2. Subject to Clause 41.2 *(Exceptions)* any term of the Finance Documents may be amended or waived only with the consent of the Majority Lenders and the Borrowers and any such amendment or waiver will be binding on all Parties.
3. The Agent may effect, on behalf of any Finance Party, any amendment or  
   waiver permitted by this Clause.
4. With respect to any amendment to a Finance Document, any Lender which cannot empower the Agent as per the terms of paragraph (b) above undertakes either (A) to grant at the time of such amendment a specific notarial power of attorney in favour of the Agent, or (B) to appear together with the Agent and the Borrowers, to sign in person (if required) before the relevant Notary specified by the Borrowers for the purposes of effecting such amendment

41.2 Exceptions

(a) An amendment or waiver that has the effect of changing or which relates to:

(i) the definition of "Majority Lenders" or "Super Majority Lenders"

in Clause 1.1 *(Definitions);*

an extension to the Termination Date applicable to any Facility;

a reduction in the Margin or in the amount of any payment of fees or commission payable;

1. an increase in or an extension of any Commitment or the Total Commitments;
2. any provision which expressly requires the consent of all the Lenders; or
3. Clause 2.2 *(Finance Parties' rights and obligations),* Clause 28 *(Changes to the Lenders)* or this Clause 41 *(Amendments and waivers),*

shall not be made without the prior consent of all the Lenders.

(b) An amendment or waiver which relates to the rights or obligations of the

Agent, the Arranger or the Security Agent may not be effected without the consent of the Agent, the Arranger or the Security Agent.

(c) Any amendment or waiver that has the effect of changing or which relates to:

1. Clause 2.4 *(HoldCo Warrants Take-out)* or clause 2.2 of the HoldCo  
   Warrants Guarantee;
2. Clause 8.1 *(Illegality);*
3. Clause 9.1 *(Exit),* Clause 9.3 *(Application of Mandatory Prepayments)* and Clause 9.4 *(Mandatory Prepayment Accounts and Holding Accounts);*
4. Clause 34.6 *(Partial payments);*
5. the nature or scope of the Charged Property; or
6. the release of any Transaction Security or the manner in which the proceeds of enforcement of the Transaction Security are distributed, in each case in circumstances where the whole amount of the net proceeds of such release or, as the case may be, enforcement are not required to be applied in mandatory prepayment pursuant to Clause 9 *(Mandatory prepayment),*

(d) shall not be made without the consent of the Super Majority Lenders.

41.3 Disenfranchisement of Defaulting Lenders

1. For so long as a Defaulting Lender has any Available Commitment, in ascertaining the Majority Lenders, the Super Majority Lenders or whether any given percentage (including, for the avoidance of doubt, unanimity) of the Total Commitments has been obtained to approve any request for a consent, waiver, amendment or other vote under the Finance Documents, that Defaulting Lender's Commitments will be reduced by the amount of its Available Commitments.
2. For the purposes of this Clause 41.3, the Agent may assume that the following Lenders are Defaulting Lenders:
3. any Lender which has notified the Agent that it has become a Defaulting Lender;
4. any Lender in relation to which it is aware that any of the events or  
   circumstances referred to in paragraphs (a), (b) or (c) of the definition of "Defaulting Lender" has occurred,

unless it has received notice to the contrary from the Lender concerned (together with any supporting evidence reasonably requested by the Agent) or the Agent is otherwise aware that the Lender has ceased to be a Defaulting Lender.

41.4 Replacement of a Defaulting Lender

(a) A Borrower may, at any time a Lender has become and continues to be a

Defaulting Lender, by giving 10 Business Days' prior written notice to the Agent and such Lender:

1. replace such Lender by requiring such Lender to (and such Lender shall) transfer pursuant to Clause 28 *(Changes to the Lenders)* all (and not part only) of its rights and obligations under this Agreement;
2. require such Lender to (and such Lender shall) transfer pursuant to Clause 28 *(Changes to the Lenders)* all (and not part only) of the undrawn Revolving Commitment of the Lender; or
3. require such Lender to (and such Lender shall) transfer pursuant to Clause 28 *(Changes to the Lenders)* all (and not part only) of its rights and obligations in respect of the Revolving Facility,

to a Lender or other bank, financial institution, trust, fund or other entity (a "Replacement Lender") selected by that Borrower, and which (unless the Agent is an Impaired Agent) is acceptable to the Agent (acting reasonably), which confirms its willingness to assume and does assume all the obligations or all the relevant obligations of the transferring Lender (including the assumption of the transferring Lender's participations or unfunded participations (as the case may be) on the same basis as the transferring Lender) for a purchase price in cash payable at the time of transfer equal to the outstanding principal amount of such Lender's participation in the outstanding Utilisations and all accrued interest, Break Costs and other amounts payable in relation thereto under the Finance Documents.

(b) Any transfer of rights and obligations of a Defaulting Lender pursuant to this

Clause shall be subject to the following conditions:

1. a Borrower shall have no right to replace the Agent or Security Agent;
2. neither the Agent nor the Defaulting Lender shall have any obligation to a Borrower to find a Replacement Lender;
3. the transfer must take place no later than five Business Days after the notice referred to in paragraph (a) above; and
4. in no event shall the Defaulting Lender be required to pay or surrender to the Replacement Lender any of the fees received by the Defaulting Lender pursuant to the Finance Documents.

42. COUN'IERPARTS

Each Finance Document may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of the Finance Document.

1. GOVERNING LAW

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

1. ENFORCEMENT 44.1 Jurisdiction
2. The courts of England have exclusive jurisdiction to settle any dispute arising  
   out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or the consequences of its nullity or any non-contractual obligations arising out of or in connection with this Agreement) (a "Dispute").
3. The Parties agree that the courts of England are the most appropriate and  
   convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
4. This Clause 44.1 *(Jurisdiction)* is for the benefit of the Finance Parties only.  
   As a result, and notwithstanding paragraph (a) of this Clause 44.1 *(Jurisdiction),* any Finance Party may take proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Finance Parties may take concurrent proceedings in any number of jurisdictions.

44.2 Service of process

(a) Without prejudice to any other mode of service allowed under any relevant

law, each Obligor (other than an Obligor incorporated in England and Wales):

1. irrevocably appoints Law Debenture Corporate Services Limited  
   (company number 3388362), with address at Fifth Floor, 100 Wood Street, London, EC2V 7EX as their agent for service of process in relation to any proceedings before the English courts in connection with this Agreement; and
2. agrees that failure by Law Debenture Corporate Services Limited, as  
   the case may be, to notify the relevant Obligor of the process will not invalidate the proceedings concerned.

(b) If any person appointed as an agent for service of process is unable for any

reason to act as agent for service of process, the Borrowers must immediately (and in any event within five days of such event taking place) appoint another agent on terms acceptable to the Agent. Failing this, the Agent may appoint another agent for this purpose.

This Agreement has been entered into on the date stated at the beginning of this Agreement.

**SCHEDULE 1**

**THE ORIGINAL LENDERS**

**Name of Term Facility Convertible Facility**

**Original Lender Commitment (E) Commitment (E)**

|  |  |  |
| --- | --- | --- |
| Calyon, Sucursal en Espaila | 112,367,445.76 | 59,425,091.51 |
| CORAL Partners (Lux) |  |  |
| S.a.r.l. | 112,054,812.56 | 59,259,756.64 |
| Eurohypo AG, Sucursal en |  |  |
| Espana | 115,493,308.31 | 61,078,191.90 |
| The Royal Bank of Scotland plc. | 115,505,518.99 | 61,084,649.46 |
| Deutsche Postbank AG | 9,314,747.43 | 4,926,068.35 |
| ING Real Estate Finance SE, E.F.C, S.A. | 31,195,627.77 | 16,497,687.76 |
| Caja de Ahorros y Monte de |  |  |
| Piedad de Madrid | 13,972,121.15 | 7,389,102.53 |
| Caja de Ahorros de Valencia, Castellon y Alicante | 3,725,898.88 | 1,970,427.29 |
| Banco de Valencia, S.A. | 465,737.37 | 246,303.42 |
| Caixa d'Estalvis de Catalunya | 4,657,373.72 | 2,463,034.18 |
| Caja de Ahorros y Monte de |  |  |
| Piedad de Guipazkoa y San |  |  |
| Sebastian | 1,247,408.07 | 659,686.96 |

SCHEDULE 2

CONDITIONS PRECEDENT

1. Second Restructuring Agreement

1. The Second Restructuring Agreement executed by HoldCo and DevCo.
2. Evidence that all documents and other evidence set out in Schedule 3 *(Conditions to the Restructuring)* of the Second Restructuring Agreement have been received by the Agent in form and substance satisfactory.

2. Other

1. Evidence that the fees, costs and expenses then due from the Borrowers pursuant to Clause 14 *(Fees)* and Clause 19 *(Costs and expenses)* have been paid or will be paid by the first Utilisation Date.
2. The Fee Letters signed by the Borrowers.
3. A Utilisation Request signed by HoldCo for the Term Facility Loans and Convertible Facility Loans.
4. Evidence that any agent for service of process referred to in Clause 44.2 *(Service of Process)* of this Agreement has accepted its appointment in connection with this Agreement.
5. Such documentation and other evidence as is customary and has been reasonably requested by the Agent (for itself or on behalf of any Lender) prior to the date of this Agreement in order for the Agent or such lender to carry out and be satisfied with the results of all necessary "know your customer"/money laundering checks under applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.
6. Evidence that all documents and other evidence set out in Schedule 1 *(Conditions Precedent)* to the Second Restructured Amendment and Restatement Agreement has been received by the Agent under the Holdco Facilities Agreement in form and substance satisfactory.

SCHEDULE 3 REQUESTS

PART I

UTILISATION REQUEST

From: [Borrower]

To: The Royal Bank of Scotland plc  
Dated:

Dear Sirs

Inmobiliaria Colonial, S.A. and Colren, S.L. — €795,000,000 Facilities Agreement  
dated [•] (the "Agreement")

1. We refer to the Agreement. This is a Utilisation Request. Terms defined in the Agreement have the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request.
2. We wish to borrow a Loan on the following terms:

Proposed Utilisation Date: [•] (or, if that is not a Business Day, the next

Business Day)

Facility to be utilised: [Term Facility]/[Convertible Facility]'

Currency of Loan: Euro

Amount: [•] or, if less, the Available Facility

Interest Period: [•]

1. We confirm that each condition specified in Clause 4.2 *(Further conditions  
   precedent)* is satisfied on the date of this Utilisation Request.
2. The proceeds of this Loan should be credited to *[account].*
3. This Utilisation Request is irrevocable.  
   Yours faithfully

authorised signatory for [Borrower]

* delete as appropriate

PART II

SELECTION NOTICE

From: [Borrower]

To: The Royal Bank of Scotland plc  
Dated:

Dear Sirs

Inmobiliaria Colonial, S.A. and Colren, S.L. - €795,000,000 Facilities Agreement  
dated [•] (the "Agreement")

1. We refer to the Agreement. This is a Selection Notice. Terms defined in the Agreement have the same meaning in this Selection Notice unless given a different meaning in this Selection Notice.
2. We refer to the following [[Term][Convertible]Facility[PIK]][Profit Participative [Convertible Facility [(PIK)]][Term Facility (P1K)]] Loan[s] with an Interest Period ending on [•].
3. We request that the next Interest Period for the above [[Term][Convertible]Facility [PIK][Profit Participative [Convertible Facility [(PIK)]][Term Facility (PIR)]] Loan[s] is [•]].
4. This Selection Notice is irrevocable. Yours faithfully

authorised signatory for **[Borrower]**

SCHEDULE 4

MANDATORY COST FORMULAE

1. The Mandatory Cost is an addition to the interest rate to compensate Lenders for the  
   cost of compliance with (a) the requirements of the Bank of England and/or the Financial Services Authority (or, in either case, any other authority which replaces all or any of its functions) or (b) the requirements of the European Central Bank.
2. On the first day of each Interest Period (or as soon as possible thereafter) the Agent  
   shall calculate, as a percentage rate, a rate (the "Additional Cost Rate") for each Lender, in accordance with the paragraphs set out below. The Mandatory Cost will be calculated by the Agent as a weighted average of the Lenders' Additional Cost Rates (weighted in proportion to the percentage participation of each Lender in the relevant Loan) and will be expressed as a percentage rate per annum.
3. The Additional Cost Rate for any Lender lending from a Facility Office in a  
   Participating Member State will be the percentage notified by that Lender to the Agent. This percentage will be certified by that Lender in its notice to the Agent to be its reasonable determination of the cost (expressed as a percentage of that Lender's participation in all Loans made from that Facility Office) of complying with the minimum reserve requirements of the European Central Bank in respect of loans made from that Facility Office.
4. The Additional Cost Rate for any Lender lending from a Facility Office in the United  
   Kingdom will be calculated by the Agent as follows:

Ex 0.01

300

per cent. per annum.

E is designed to compensate Lenders for amounts payable under the Fees Rules

and is calculated by the Agent as being the average of the most recent rates of charge supplied by the Reference Banks to the Agent pursuant to paragraph 7 below and expressed in pounds per £1,000,000.

5. For the purposes of this Schedule:

1. "Fees Rules" means the rules on periodic fees contained in the FSA Fees  
   Manual or such other law or regulation as may be in force from time to time in respect of the payment of fees for the acceptance of deposits;
2. "Fee Tariffs" means the fee tariffs specified in the Fees Rules under the  
   activity group A.1 Deposit acceptors (ignoring any minimum fee or zero rated fee required pursuant to the Fees Rules but talcing into account any applicable discount rate); and
3. "Tariff Base" has the meaning given to it in, and will be calculated in  
   accordance with, the Fees Rules.

6. If requested by the Agent, each Reference Bank shall, as soon as practicable after

publication by the Financial Services Authority, supply to the Agent, the rate of charge payable by that Reference Bank to the Financial Services Authority pursuant

to the Fees Rules in respect of the relevant financial year of the Financial Services Authority (calculated for this purpose by that Reference Bank as being the average of the Fee Tariffs applicable to that Reference Bank for that financial year) and expressed in pounds per £1,000,000 of the Tariff Base of that Reference Bank.

7. Each Lender shall supply any information required by the Agent for the purpose of

calculating its Additional Cost Rate. In particular, but without limitation, each Lender shall supply the following information on or prior to the date on which it becomes a Lender:

1. the jurisdiction of its Facility Office; and
2. any other information that the Agent may reasonably require for such purpose.

Each Lender shall promptly notify the Agent of any change to the information provided by it pursuant to this paragraph.

8. The Agent shall have no liability to any person if such determination results in an

Additional Cost Rate which over or under compensates any Lender and shall be entitled to assume that the information provided by any Lender or Reference Bank pursuant to paragraphs 3, 7 and 8 above is true and correct in all respects.

9. The Agent shall distribute the additional amounts received as a result of the

Mandatory Cost to the Lenders on the basis of the Additional Cost Rate for each Lender based on the information provided by each Lender and each Reference Bank pursuant to paragraphs 3, 7 and 8 above.

10. Any determination by the Agent pursuant to this Schedule in relation to a formula, the

Mandatory Cost, an Additional Cost Rate or any amount payable to a Lender shall, in the absence of manifest error, be conclusive and binding on all Parties.

11. The Agent may from time to time, after consultation with the Borrowers and the

Lenders, determine and notify to all Parties any amendments which are required to be made to this Schedule in order to comply with any change in law, regulation or any requirements from time to time imposed by the Bank of England, the Financial Services Authority or the European Central Bank (or, in any case, any other authority which replaces all or any of its functions) and any such determination shall, in the absence of manifest error, be conclusive and binding on all Parties.

SCHEDULE 5

FORM OF TRANSFER CERTIFICATE

To: The Royal Bank of Scotland plc as Agent

From: *[The Existing Lender]* (the "Existing Lender") and *[The New Lender]* (the New Lender")

Dated:

Inmobiliaria Colonial, S.A. and Colren, S.L. —€795,000,000 Facilities Agreement  
dated [•] (the "Agreement")

1. We refer to the Agreement. This is a Transfer Certificate. Terms defined in the

Agreement have the same meaning in this Transfer Certificate unless given a different meaning in this Transfer Certificate.

2. We refer to Clause 28.5 *(Procedure for transfer):*

1. The Existing Lender and the New Lender agree to the Existing Lender transferring to the New Lender by novation all or part of the Existing Lender's Commitment, rights and obligations referred to in the Schedule in accordance with Clause 28.5 *(Procedure for transfer).*
2. The proposed Transfer Date is [•].
3. The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of Clause 37.2 *(Addresses)* are set out in the Schedule.

3. The New Lender expressly acknowledges the limitations on the Existing Lender's

obligations set out in paragraph (c) of Clause 28.4 *(Limitation of responsibility of Existing Lenders).*

4. This Agreement may be executed in any number of counterparts and this has the same

effect as if the signatures on the counterparts were on a single copy of this Agreement.

5. This Agreement and any non-contractual obligations arising out of or in connection

with it are governed by and construed in accordance with English law.

Note: The execution of this Transfer Certificate may not transfer a proportionate share of the Existing Lender's interest in the Transaction Security in all jurisdictions. It is the responsibility of the New Lender to ascertain whether any other documents or other formalities are required to perfect a transfer of such a share in the Existing Lender's Transaction Security in any jurisdiction and, if so, to arrange for execution of those documents and completion of those formalities.

THE SCHEDULE

Commitment/rights and obligations to be transferred

*[insert relevant details]*

*[Facility Office address, fax number and attention details for notices and account details for*

*payments,]*

[Existing Lender] [New Lender]

By: By:

This Transfer Certificate is accepted by the Agent and the Transfer Date is confirmed as M   
[Agent]

By:

SCHEDULE 6

FORM OF ASSIGNMENT AGREEMENT

To: The Royal Bank of Scotland plc as Agent and [•] as Borrower

From: [the *Existing Lender]* (the "Existing **Lender")** and [the *New Lender]* (the **"New Lender")**

Dated:

**Inmobiliaria Colonial, S.A. and Colren, Si. - €795,000,000 Facilities Agreement  
dated [•] (the "Agreement")**

**1.** We refer to the Facilities Agreement. This is an Assignment Agreement. This

agreement (the **"Agreement")** shall take effect as an Assignment Agreement for the purpose of the Facilities Agreement. Terms defined in the Facilities Agreement have the same meaning in this Agreement unless given a different meaning in this Agreement.

1. We refer to Clause 28.6 *(Procedure for assignment).*
2. The Existing Lender assigns absolutely to the New Lender all the rights of the Existing Lender under the Facilities Agreement, the other Finance Documents and in respect of the Transaction Security which correspond to that portion of the Existing Lender's Commitments and participations in Utilisations under the Facilities Agreement as specified in the Schedule.
3. The Existing Lender is released from all the obligations of the Existing Lender which correspond to that portion of the Existing Lender's Commitments and participations in Utilisations under the Facilities Agreement specified in the Schedule.
4. The New Lender becomes a Party as a Lender and is bound by obligations equivalent to those from which the Existing Lender is released under paragraph (c) above.

2. The proposed Transfer Date is [•].

3. On the Transfer Date, the New Lender becomes a Party to the Finance Documents as

a Lender.

4. The New Lender expressly acknowledges the limitations on the Existing Lender's

obligations set out in paragraph of Clause 28.4 *(Limitation of responsibility of Existing Lenders).*

5. The Facility Office and address, fax number and attention details for notices of the

New Lender for the purposes of Clause 37.2 *(Addresses)* are set out in the Schedule.

6. This Agreement acts as notice to the Agent (on behalf of each Finance Party) and to

the Borrowers of the assignment referred to herein.

[9/10]. This Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

[10/11]. This Agreement is governed by and construed in accordance with English law.

[11/12]. This Agreement has been [executed and delivered as a deed] [entered into] on the date stated at the beginning of this Agreement.

Note: The execution of this Assignment Agreement may not transfer a proportionate share of the Eiisting Lender's interest in the Transaction Security in all jurisdictions. It is the responsibility of the New Lender to ascertain whether any other documents or other formalities are required to perfect a transfer of such a share in the Existing Lender's Transaction Security in any jurisdiction and, if so, to arrange for execution of those documents and completion of those formalities.

THE SCHEDULE

Rights to be assigned and obligations to be released and undertaken

*[insert relevant details]*

*[Facility office address, fax number and attention details for notices and account details for*

*payments]*

[Existing Lender] [New Lender]

By: By:

This Assignment Agreement is accepted by the Agent and the Transfer Date is confirmed as N.

Signature of this Assignment Agreement by the Agent constitutes confirmation by the Agent of receipt of notice of the assignment referred to herein, which notice the Agent receives on behalf of each Finance Party.

[Agent]

By:

SCHEDULE 7 TIMETABLES

Loans in euro

Delivery of a duly completed Utilisation Request (Clause U-3

5.1 *(Delivery of a Utilisation Request)* or a Selection Notice 9.30am  
(Clause 12.1 *(Selection of Interest Periods))*

Agent notifies the Lenders of the Loan in accordance with U-3

Clause 5.4 *(Lenders' participation)* 3.00pm

EURIBOR is fixed Quotation Day as of 11:00 a.m.

Brussels time in respect of EURIBOR

"U" = date of utilisation or, if applicable, in the case of a Loan that has already been borrowed, the first day of the relevant Interest Period for that Loan

"U - X" = Business Days prior to date of utilisation

SCHEDULE 8

HOLDCO PROVISIONS

Capitalised terms used in this Schedule 8 and not otherwise defined in this Agreement have the meaning given to them in the HoldCo Facilities Agreement unless the contrary is indicated.

PART I

REPRESENTATIONS

None of the representations and warranties set out in this Part I shall apply to any Subsidiary of HoldCo except DevCo and "Group" refers to HoldCo, DevCo and Subsidiaries of DevCo (but excluding Entrenucleos SPV, Riofisa and any of their respective Subsidiaries).

1. Status

1. It and each of its Subsidiaries is a limited liability corporation, duly incorporated and validly existing under the law of its jurisdiction of incorporation or establishment.
2. It and each of its Subsidiaries has the power to own its assets and carry on its business as it is being conducted.

2. Binding obligations

Subject to the Legal Reservations and Perfection Requirements:

1. the obligations expressed to be assumed by it in each Transaction Document to which it is a party are legal, valid, binding and enforceable obligations; and
2. (without limiting the generality of paragraph (a) above), each Transaction Security Document to which it is a party creates the security interests which that Transaction Security Document purports to create and those security interests are valid and effective.

3. Non-conflict with other obligations

The entry into and performance by it of, and the transactions contemplated by, the Finance Documents to which it is a party and the granting of the Transaction Security do not and will not conflict with:

1. any law or regulation applicable to it;
2. its constitutional documents; or
3. any agreement or instrument binding upon it or any member of the Group or any of its or any member of the Group's assets or constitute a default or termination event (however described) under any such agreement or instrument

in each case to an extent which has or is reasonably likely to have a Material Adverse Effect.

4. Power and authority

It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, the Finance Documents to which it is or will be a party and the transactions contemplated by those Finance Documents.

5. Relationship between parties

It acts for its own account and is not acting as an agent for any other party.

6. Validity and admissibility in evidence

(a) All Authorisations required:

1. to enable it lawfully to enter into, exercise its rights and comply with  
   its obligations in the Finance Documents to which it is a party; and
2. to make the Finance Documents to which it is a party admissible in  
   evidence in its Relevant Jurisdictions,

have been obtained or effected and are in full force and effect except in respect of any Perfection Requirement which shall be promptly made after the execution of the relevant documents and in any event within applicable time limits.

(b) All Authorisations necessary for the conduct of the business, trade and

ordinary activities of members of the Group have been obtained or effected and are in full force and effect if failure to obtain or effect those Authorisations has or is reasonably likely to have a Material Adverse Effect.

7. Governing law and enforcement

1. Subject to the Legal Reservations, the choice of governing law of the Finance Documents will be recognised and enforced in its Relevant Jurisdictions.
2. Subject to the Legal Reservations, any judgment obtained in relation to a Finance Document in the jurisdiction of the governing law of that Finance Document will be recognised and enforced in its Relevant Jurisdictions.

8. Insolvency

No:

(a) corporate action, legal proceeding or other procedure or step described in sub‑

paragraph (b) of paragraph 6 *(Insolvency proceedings)* of Part IV *(Events of Default)* of this Schedule 8 (but subject to sub-paragraph (b) of paragraph 6 *(Insolvency proceedings)* of Part IV *(Events of Default)* of this Schedule 8); or

(b) creditors' process described in paragraph *7 (Creditors' process)* of Part IV

*(Events of Default)* of this Schedule 8,

has been taken or threatened (and which is continuing) in relation to a member of the Group and, except as regards any situation up to and including the Second Restructuring Date, and which is addressed by this Agreement and the Second Restructuring Agreement, and none of the circumstances described in paragraph *5 (Insolvency)* applies to a member of the Group.

9. **Deduction of Tax**

It is not required to make any deduction for or on account of Tax from any payment it may make under any Finance Document to any Qualifying Lender provided that such Qualifying Lender complies with the obligations under Clause 15.2 *(Tax gross-up).*

10. **No default**

1. No Event of Default and, on the date of this Agreement and on the basis of the  
   waiver granted by the Lenders pursuant to the Second Restructuring Agreement, no Default is continuing or is reasonably likely to result from the making of any Utilisation; and
2. No other event or circumstance is outstanding which constitutes (or, with the  
   expiry of a grace period, the giving of notice, the making of any determination or any combination of any of the foregoing, would constitute) a default or termination event (however described) in an amount greater than EUR 2,000,000 on an individual basis and EUR 5,000,000 taking HoldCo and its wholly owned Subsidiaries together, under any other agreement or instrument which is binding on it or any of its Subsidiaries or to which its (or any of its Subsidiaries') assets are subject which has or is reasonably likely to have a Material Adverse Effect.

**11. Taxation**

1. It is not (and none of its Subsidiaries is) materially overdue in the filing of any  
   Tax returns and it is not (and none of its Subsidiaries is) overdue in the payment of any amount in respect of Tax save (i) to the extent payment thereof is being disputed in good faith and adequate reserves are being maintained for this unpaid amount (if required in the opinion of HoldCo acting reasonably) or to the extent required by the Accounting Principles or (ii) as disclosed to the Agent prior to the Second Restructuring Date in connection with the Tax Arrangements.
2. No claims or investigations are being, or are reasonably likely to be, made or  
   conducted against it (or any of its Subsidiaries) with respect to Taxes which have or are reasonably likely to have a Material Adverse Effect.

**12. No misleading information**

Save as disclosed in writing to the Agent or the Arranger prior to the Second Restructuring Date any factual information relating to this Agreement, the Second Restructuring Agreement or otherwise provided in the context of the Second Restructuring delivered to any Finance Party on or prior to the Second Restructuring Date by or on behalf of HoldCo was, taken as a whole as at the Second Restructuring Date, true and accurate in all material respects and no information has been omitted or

withheld that results in such information being untrue or misleading in any material respect when so taken as a whole.

13. Original Financial Statements

(a) Its Original Financial Statements were prepared in accordance with the

Accounting Principles consistently applied.

(b) Its interim financial statements for the half year ended 30 June 2009 present

fairly in all material respects the financial position, financial performance and cash flows of (in the case of HoldCo) the Group and (in the case of any other Obligor) that Obligor during the relevant Financial Year.

(c) Except as disclosed by HoldCo to the Arrangers in discussion or otherwise or

insofar as the Arrangers are themselves otherwise aware on or prior to the Second Restructuring Date, there has been no material adverse change in the consolidated assets, business or financial condition of HoldCo since the date of its interim financial statements for the half-year ended 30 June 2009.

(d) Its most recent financial statements delivered pursuant to paragraph 1

*(Financial Statements)* of Part II *(Information Undertakings)* of this Schedule 8:

1. have been prepared in accordance with the Accounting Principles; and
2. give a true and fair view of (if audited) or fairly present (if unaudited)  
   in all material respects its consolidated financial condition as at the end of, and consolidated results of operations for, the period to which they relate.

(e) The budgets and forecast supplied under this Agreement were arrived at after

careful consideration and have been prepared in good faith on the basis of recent historical information and on assumptions which in the opinion of HoldCo were reasonable at the time they were made.

14. No proceedings pending or threatened

Other than any proceedings referred to in the Litigation Disclosure Letter, no litigation, arbitration or administrative proceedings or investigations of, or before, any court, arbitral body or agency which are reasonably likely to be adversely determined against HoldCo and, if so determined, might reasonably be expected to have a Material Adverse Effect have been started or threatened against it or any of its Subsidiaries.

15. No breach of laws

1. It has not (and none of its Subsidiaries has) breached any law or regulation  
   which breach has or is reasonably likely to have a Material Adverse Effect.
2. No labour disputes are current or threatened against any member of the Group  
   which have or are reasonably likely to have a Material Adverse Effect.

**16. Security and Financial Indebtedness**

1. No Security or Quasi-Security exists over all or any of the present or future assets of any Obligor other than as permitted by this Agreement.
2. HoldCo has not, and none of its wholly owned Subsidiaries has, any Financial Indebtedness outstanding other than as permitted by this Agreement.

17. **Ranking**

The Transaction Security to be granted by it has or will have first ranking priority and it is not subject to any prior ranking or pari passu ranking Security.

18. **Legal and beneficial ownership**

It and each of its wholly owned Subsidiaries is the sole legal and beneficial owner of the respective assets over which it purports to grant Security.

19. **Intellectual Property**

(a) It and each of its Subsidiaries that is a member of the Group:

is the sole legal and beneficial owner of or has licensed to it all the Intellectual Property which is material in the context of its business and which is required by it in order to carry on its business as it is being conducted;

(ii) does not, in carrying on its businesses, infringe any Intellectual

Property of any third party in any respect which has or is reasonably likely to have a Material Adverse Effect.

It is not aware of any adverse circumstances relating to the validity, subsistence or use of Intellectual Property by any member of the Group which could reasonably be expected to have a Material Adverse Effect.

20. **Centre of main interests**

It has its "centre of main interests" (as that term is used in Article 3(1) of The Council of the European Union Regulation No. 1346/2000 on Insolvency Proceedings (the "Regulation") in its jurisdiction of incorporation.

21. **Overseas Obligors**

It has not registered one or more "establishments" (as that term is defined in Part 1 of The Overseas Companies Regulations 2009) with the Registrar of Companies or, if it has so registered, it has provided to the Agent sufficient details to enable an accurate search against it to be undertaken by the Lenders at the Companies Registry.

PART II

INFORMATION UNDERTAKINGS

1. Financial statements

HoldCo shall supply to the Agent in sufficient copies for all the Lenders:

1. as soon as they are available, but in any event within 120 days after the end of  
   each of its Financial Years the audited consolidated financial statements for that Financial Year of HoldCo; and
2. the consolidated financial statements of HoldCo for each complete Financial  
   Quarter, as reported to the CNMV, as soon as they are available, but in any event within 45 days of the end of each Financial Quarter ending on 31 March or 30 September or within 60 days of the end of each Financial Quarter ending on 30 June or 31 December.

2. Requirements as to financial statements

1. HoldCo shall procure that each set of financial statements for a Financial Year  
   and for a Financial Quarter delivered pursuant to sub-paragraphs (a) and (b) of paragraph *1 (Financial Statements)* above and includes the same information as those submitted to the CNMV by HoldCo and such statements shall include at minimum, information of the same type and content as that currently provided by HoldCo to the CNMV. In addition HoldCo shall procure that each set of financial statements for a Financial Year shall be audited by the Auditors.
2. Each set of financial statements delivered pursuant to paragraph 1 *(Financial  
   statements)* above:
3. shall be certified by an authorised representative of the relevant  
   company as giving a true and fair view of (in the case of financial statements for any Financial Year delivered under sub-paragraph (a) of paragraph *1 (Financial Statements)* above), or fairly representing (in other cases), its financial condition and operations as at the date as at which those financial statements were drawn up and, in the case of financial statements for a Financial Year, shall be accompanied by any letter addressed to the management of the relevant company by the Auditors and accompanying those financial statements;
4. in the case of the financial statements of the Group for a Financial  
   Year delivered under sub-paragraph (a) of paragraph 1 *(Financial Statements)* above, shall be accompanied by a statement by a Certifying Officer comparing actual performance for the period to which the financial statements relate to the actual performance for the corresponding period in the preceding Financial Year of the Group; and
5. shall be prepared in accordance with the Accounting Principles, accounting practices and financial reference periods consistent with those applied in the preparation of HoldCo's Original Financial

Statements unless, in relation to any set of financial statements, HoldCo notifies the Agent that there has been a change in the Accounting Principles or the accounting practices and its Auditors deliver to the Agent;

1. a description of any change necessary for those financial statements to  
   reflect the Accounting Principles, or accounting practices upon which the Original Financial Statements of HoldCo were prepared; and
2. sufficient information, in form and substance as may be reasonably  
   required by the Agent, to enable the Lenders make an accurate comparison between the financial position indicated in those financial statements and the Original Financial Statements.

(c) Any reference in this Agreement to any financial statements shall be construed

as a reference to those financial statements as adjusted to reflect the basis upon which the Original Financial Statements of HoldCo were prepared.

3. Information: miscellaneous

HoldCo shall supply to the Agent (in sufficient copies for all the Lenders, if the Agent so requests) provided that none of the information set out below is already available on HoldCo's public website:

1. at the same time as they are dispatched, copies of all documents dispatched by HoldCo to its shareholders generally (or any class of them) or dispatched by HoldCo to its creditors generally (or any class of them);
2. (i) promptly on becoming aware of them after the Second Restructuring Date, the details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against any member of the Group, and which are in respect of an amount exceeding EUR 500,000 and/or are reasonably likely to have a Material Adverse Effect and (ii) on a monthly basis, the details of all such current, threatened or pending proceedings;
3. promptly on request, such further information regarding the financial condition, assets and operations of the Group and/or any member of the Group (including, without limitation, DevCo) (including any requested amplification or explanation of any item in the financial statements, budgets or other material provided by any Obligor under this Agreement, any changes to management of the Group and an up to date copy of its Shareholders' register (or equivalent in its jurisdiction of incorporation)) as any Finance Party through the Agent may reasonably request;
4. promptly, details of any Change of Control of HoldCo;
5. (for such time as the Restructuring Committee is required by paragraph 24 of Part III *(General Undertakings)* of Schedule 8 *(HoldCo Provisions)* to meet) on a monthly basis, a report prepared by the Restructuring Committee to include (i) the sale process for the Disposal Programme Assets, (ii) an update on the progress made by HoldCo in reaching an agreement with the relevant contract counterparty for a postponement of HoldCo's payment obligations in

respect of the Las Salinas Transaction and the El Prat Transaction, and (iii) any other material developments relating to HoldCo and/or any member of the Group (including, without limitation, DevCo, Entrenficleos SPV, Llacuna SPV, Riofisa and any of their respective Subsidiaries), and/or the financial condition, assets, operations or prospects of HoldCo and/or any member of the Group (including, without limitation, DevCo, Entrenucleos SPV, Llacuna SPV, Riofisa and any of their respective Subsidiaries) provided that, if the Majority Lenders through the Agent reasonably request, HoldCo shall procure the delivery of the above report at more frequent intervals;

(f) promptly on becoming aware of them, the details of any actions taken or

threatened to be taken which are set out in paragraph 6 *(Insolvency proceedings), 7 (Creditors' process)* or 9 *(Other enforcement action)* of Part IV *(Events of Default)* of this Schedule 8.

4. Notification of default

1. HoldCo shall notify the Agent of any Default (and the steps, if any, being  
   taken to remedy it) promptly upon becoming aware of its occurrence (unless HoldCo is aware that a notification has already been provided by another Obligor).
2. Promptly upon a request by the Agent (if the Agent has reasonable grounds for  
   believing that an Event of Default has occurred) HoldCo shall supply to the Agent a certificate signed by an authorised representative on its behalf certifying that no Event of Default is continuing (or if an Event of Default is continuing, specifying the Event of Default and the steps, if any, being taken to remedy it).

PART III

GENERAL UNDERTAKINGS

None of the undertakings in this Part HI shall apply to any Subsidiary of HoldCo except DevCo and "Group" refers to HoldCo, DevCo and Subsidiaries of DevCo (but excluding Entreancleos SPV, Riofisa and any of their respective Subsidiaries).

1. Authorisations

HoldCo shall promptly:

1. obtain, comply with and do all that is necessary to maintain in full force and effect; and
2. supply certified copies to the Agent of,

any Authorisation required under any law or regulation of a Relevant Jurisdiction to:

1. enable it to perform its obligations under the Finance Documents to which it is  
   a party;
2. (subject to the Legal Reservations and the Perfection Requirements) ensure the legality, validity, enforceability or admissibility in evidence of any Finance Document to which it is a party; and
3. enable it to own its assets and to carry on its business where failure to obtain or comply with those Authorisations is reasonably likely to have a Material Adverse Effect.

2. Compliance with laws

HoldCo shall (and shall ensure that each member of the Group will) comply in all respects with all laws (including, without limitation, Environmental Laws) to which it may be subject, if failure so to comply, has or is reasonably likely to have a Material Adverse Effect.

3. Taxation

(a) HoldCo shall (and shall ensure that each member of the Group will) pay and

discharge all Taxes imposed upon it or its assets within the time period allowed without incurring penalties unless and only to the extent that:

1. such payment is being contested in good faith; and
2. such payment can be lawfully withheld and failure to pay those Taxes  
   does not have or is not reasonably likely to have a Material Adverse Effect.

(b) No member of the Group may change its residence for Tax purposes.

4. Publicity

No Party shall (and HoldCo shall ensure that no other member of the Group shall) issue or allow to be issued on its behalf any press release or other publicity which refers to any Facility or any other Party or member of the Group unless:

1. the press release or other publicity (including without limitation marketing  
   brochures and press notices) is issued by the Arranger or HoldCo (and is agreed by HoldCo or the Arranger, as applicable) in the ordinary course of transactions of the nature of the Facility and includes such information (including without limitation, the amount of the Facility, the name of HoldCo, investors and shareholders, the date of the transaction, and application of the Facility funds) as the Arranger or HoldCo determine in their reasonable discretion is necessary for such purposes. HoldCo authorises the Arranger to communicate such information to global syndicated loans league tables (e.g. "dealogic") and to use the logos of HoldCo for such marketing materials; and
2. the publicity is required by law, regulation, the CNNIV, any stock exchange or  
   any court or tribunal. In that case the person subject to such requirement (or HoldCo if such person is not a Party) shall, to the extent possible in the circumstances, notify the Agent (if the person subject to such requirement is a member of the Group) or the Agent and HoldCo (if the person subject to such requirement is a Finance Party) as soon as practicable upon becoming aware of the requirement, and the Agent and HoldCo shall consult on the terms of the reference and shall have regard to any timely comments of the other.

5. Acquisitions, projects and investments

(a) Except as permitted under paragraph (b) below, HoldCo shall not (and shall

ensure that no wholly owned Subsidiary will) directly or via a Permitted Joint Venture:

1. acquire or invest in any asset or assets, a company or any shares or  
   securities or a business or undertaking (or, in each case, any interest in any of them) or incorporate any company;
2. enter into any new project commitments ("New Project Commitments"); or
3. commit any capital expenditure to any new construction project or commit further capital expenditure under any existing project (each a "Capex Commitment").

(b) Paragraph (a) above does not apply to any acquisitions, incorporations,

investments, New Project Commitments or Capex Commitments which are permitted under the HoldCo Facilities Agreement.

6. Joint ventures

1. Except as permitted under paragraph (b) below, HoldCo shall not (and shall ensure that no wholly owned Subsidiary will):

(i) enter into, invest in or acquire (or agree to acquire) any shares, stocks,

securities or other interest in any Joint Venture; or

ii) transfer any assets or lend to or guarantee or give an indemnity for or

give Security for the obligations of a Joint Venture or maintain the solvency of or provide worlcing capital to any Joint Venture (or agree to do any of the foregoing).

1. Paragraph (a) above does not apply to any Joint Venture which is permitted under the HoldCo Facilities Agreement.

7. Disposals

1. Except as permitted under paragraph (b) below, HoldCo shall not (and shall ensure that no wholly owned Subsidiary will) enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, transfer or otherwise dispose of any asset.
2. Paragraph (a) above does not apply to any sale, lease, transfer or other disposal which is permitted under the HoldCo Facilities Agreement.

8. Preservation of assets

HoldCo shall (and shall ensure that no wholly owned Subsidiary will) maintain in good working order and condition (ordinary wear and tear excepted) all of its assets necessary or desirable in the conduct of its business.

9. Negative pledge

In this paragraph 9, "Quasi-Security" means a transaction described in paragraph (b) below.

Except as permitted under paragraph (c) below:

1. HoldCo shall not create or permit to subsist any Security over any of its assets.
2. HoldCo shall not:
3. sell, transfer or otherwise dispose of any of its assets on terms whereby  
   they are or may be leased to or re-acquired by an Obligor or any other wholly owned Subsidiary;
4. sell, transfer or otherwise dispose of any of its receivables on recourse  
   terms;
5. enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or
6. enter into any other preferential arrangement having a similar effect,

in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.

(c) Paragraphs (a) and (b) above do not apply to any Transaction Security or any

Security or, (as the case may be) Quasi-Security, which is permitted under the HoldCo Facilities Agreement.

10. Pan passu ranking

HoldCo shall ensure that at all times any unsecured and unsubordinated claims of a Finance Party against it under the Finance Documents rank (except for in relation to the Profit Participative Loans) at least pari passu with the claims of all its other unsecured and unsubordinated creditors except those creditors whose claims are mandatorily preferred by laws of general application to companies. HoldCo shall not be in breach of its undertaking hereunder by reason of the application of the mandatory rules of subordination in the case of a Lender which is a specially related person *(persona especialmente relacionada).*

11. Merger

HoldCo shall not (and shall ensure that no member of the Group will) enter into any amalgamation, demerger, merger, consolidation or corporate reconstruction except for:

1. any of the foregoing (or a liquidation) being undertaken on a solvent basis in respect of any member of the Group (other than an Obligor) as long as any payments or assets distributed as a result of such reorganisation are distributed to other members of the Group at least in proportion to their shareholding in that member of the Group; or
2. any other transaction expressly contemplated by the Finance Documents.

12. Arm's length basis

1. Except as permitted by paragraph (b) below, HoldCo shall not (and shall ensure that no wholly owned Subsidiary will) enter into any transaction with any person except on arm's length terms and for full market value.
2. The payment of fees, costs and expenses payable under the Transaction Documents in the amounts set out in the Transaction Documents or agreed by the Agent shall not be a breach of this paragraph 12.

13. Loans or credit

1. Except as permitted under paragraph (b) below, HoldCo shall not (and shall ensure that no wholly owned Subsidiary will) be a creditor in respect of any Financial Indebtedness.
2. Paragraph (a) above does not apply to the Riofisa Inter-company Loan.

14. No Guarantees or indemnities

1. Except as permitted under paragraph (b) below, HoldCo shall not (and shall ensure that no wholly owned Subsidiary will) incur or allow to remain outstanding any guarantee in respect of any obligation of any person.
2. Paragraph (a) does not apply to a guarantee which is granted within the ordinary course of business of HoldCo or such Subsidiary or which is permitted under the HoldCo Facilities Agreement.

15. Dividends and share redemption

1. Except as permitted under paragraph (b) below, HoldCo shall not (and shall ensure that no wholly owned Subsidiary will):

(i) declare, make or pay any dividend, charge, fee or other distribution (or

interest on any unpaid dividend, charge, fee or other distribution) (whether in cash or in kind) on or in respect of its share capital (or any class of its share capital);

repay or distribute any dividend or share premium reserve;

pay or allow any member of the Group to pay any management, advisory or other fee to or to the order of any of the shareholders of HoldCo; or

(iv) redeem, repurchase, defease, retire or repay any of its share capital or

resolve to do so,

(each a "Shareholder Payment")

1. Paragraph (a) above does not apply to any Shareholder Payment permitted under the Holdco Facilities Agreement.

16. Cancellation of facilities

HoldCo shall not (and shall ensure that no wholly owned Subsidiary will) voluntarily cancel any Financial Indebtedness within paragraph (a) of the definition thereof which is available to it as at the Second Restructuring Date save as permitted under the HoldCo Facilities Agreement.

17. Payments

HoldCo shall not (and shall ensure that no wholly owned Subsidiary will) make any repayment or prepayment to any provider of any credit line or facility made available to HoldCo except as permitted under the HoldCo Facilities Agreement.

18. Financial Indebtedness

1. HoldCo shall not incur any additional Financial Indebtedness.
2. Paragraph (a) shall not apply to:
3. Financial Indebtedness arising under the Finance Documents or any  
   refinancing thereof, provided that the aggregate principal amount in respect of such Financial Indebtedness is not increased above the amount of the Facilities as at the Second Restructuring Date, except as contemplated by this Agreement; or
4. Financial Indebtedness arising under the HoldCo Finance Documents  
   or otherwise permitted by the HoldCo Facilities Agreement.

19. Insurance

1. HoldCo shall (and shall ensure that each wholly owned Subsidiary will) maintain insurances on and in relation to its business and assets against those risks and to the extent as is usual for companies carrying on the same or substantially similar business, provided that the Rental Assets are to be insured at full reinstatement value.
2. All insurances must be with reputable independent insurance companies or underwriters.

20. Access

If an Event of Default is continuing or the Agent has reasonable grounds to suspect that any financial statements or calculations provided by HoldCo are inaccurate or incomplete in any material respect, HoldCo shall (and shall ensure that each wholly owned Subsidiary will) (not more than once in every Financial Year unless the Agent has reasonable grounds to suspect that any financial statements or calculations provided by HoldCo are inaccurate or incomplete in any material respect) permit the Agent and/or the Security Agent and/or accountants or other professional advisers and contractors of the Agent or Security Agent free access at all reasonable times and on reasonable notice to the premises, assets, books, accounts and records of each member of the Group to the extent relevant to the circumstances giving rise to the Event of Default or establishing the accuracy of such financial statements. The cost and expense of any such access (including in respect of accountants and other professional advisors) shall be met by HoldCo unless, where the Agent suspected inaccuracy of financial statements or calculations, and such financial statements or calculations do not prove to be misleading or inaccurate in any material respect, in which case such costs and expenses shall be for the account of the Lenders.

21. Intellectual Property

HoldCo shall (and shall procure that each wholly owned Subsidiary will):

(a) preserve and maintain the subsistence and validity of the Intellectual Property

necessary for the business of the relevant Group member;

1. use reasonable endeavours to prevent any infringement in any material respect of the Intellectual Property;
2. make registrations and pay all registration fees and taxes necessary to maintain the Intellectual Property in full force and effect and record its interest in that Intellectual Property;
3. not use or permit the Intellectual Property to be used in a way or take any step or omit to take any step in respect of that Intellectual Property which may materially and adversely affect the existence or value of the Intellectual Property or imperil the right of any member of the Group to use such property; and
4. not discontinue the use of the Intellectual Property,  
   where failure to do so is reasonably likely to have a Material Adverse Effect.

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22. **Amendments**

1. HoldCo shall not (and shall ensure that no wholly owned Subsidiary will) amend, vary, novate, supplement, supersede, waive or terminate any term of:

(i) the First Restructuring Agreements with Bilateral Lenders (unless

pursuant to the Second Restructuring Agreements with Bilateral Lenders (or in contemplation thereof) or the Riofisa Restructuring Agreement) or the Second Restructuring Agreements with Bilateral Lenders;

any other Transaction Document or any other document delivered to the Agent as a conditions precedent to this Agreement except in writing in a way which could not be reasonably expected materially and adversely to affect the interests of the Lenders.

1. HoldCo shall promptly supply to the Agent a copy of any document relating to any of the matters referred to in paragraph (a) above.

23. **Financial assistance**

HoldCo shall (and shall procure each wholly owned Subsidiary will) comply in all respects with any applicable law or regulation in any Relevant Jurisdiction concerning financial assistance by a company for the acquisition of or subscription for shares or concerning the protection of shareholders' capital including in relation to the execution of the Transaction Security Documents and payment of amounts due under this Agreement.

24. **Restructuring Committee**

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(a) HoldCo shall maintain the Restructuring Committee and ensure that it is

properly resourced, appropriately staffed and meets regularly during the restructuring.

(b) HoldCo shall appoint a person as a Restructuring Committee observer (the

"Restructuring Committee Observer") for (and as nominated by) the Lenders and such person shall have the rights to attend but not vote at all

meetings of the Restructuring Committee. HoldCo shall give the  
Restructuring Committee Observer reasonable notice of the location and time of any meeting of the Restructuring Committee. Such Restructuring Committee Observer shall receive and retain such papers as the proposed chairman of the meeting considers appropriate.

25. Further assurance

(a) Subject to the Agreed Security Principles, HoldCo shall (and shall procure that

each wholly owned Subsidiary will) promptly do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Security Agent may reasonably specify (and in such form as the Security Agent may reasonably require in favour of the Security Agent or its nominee(s)):

1. to perfect the Security created or intended to be created under or  
   evidenced by the Transaction Security Documents (which may include the execution of a mortgage, charge, assignment or other Security over all or any of the assets which are, or are intended to be, the subject of the Transaction Security) or for the exercise of any rights powers and remedies of the Security Agent or the Finance Parties provided by or pursuant to the Finance Documents or by law;
2. to confer on the Security Agent or confer on the Finance Parties  
   Security over any of its property and assets located in any jurisdiction equivalent or similar to the Security intended, to be conferred by or pursuant to the Transaction Security Documents; and/or
3. to facilitate the realisation of the assets which are, or are intended to  
   be, the subject of the Transaction Security.

(b) HoldCo shall (and shall ensure that each wholly owned Subsidiary will) take

all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Security conferred or intended to be conferred on the Security Agent or the Finance Parties by or pursuant to the Finance Documents.

26. Other transactions

HoldCo shall use all reasonable efforts to procure that the relevant contract counterparty in each case will agree to a postponement of HoldCo's payment obligations in respect of the Las Salinas Transaction and the El Prat Transaction, and to procure an agreement with Monteverde with respect to the Monteverde Transaction.

27. ICPMG

HoldCo shall, by no later than the date falling 10 Business Days after the Second Restructuring Date, deliver to the Agent a copy of the executed KPMG Engagement Letter and procure that the first KPMG Report (relating to the Business Plan and Initial Liquidity Plans delivered as conditions precedent to the Second Restructuring Agreement) is delivered to the Agent.

PART IV

EVENTS OF DEFAULT

1. Non-payment

HoldCo does not pay on the due date any amount payable pursuant to a Finance Document at the place at and in the currency in which it is expressed to be payable unless:

(a) its failure to pay is caused by:

1. administrative or technical error; or
2. a Disruption Event; and

(b) payment is made within three Business Days of its due date.

2. Other obligations

1. Any requirement of paragraph 27 *(KPMG)* of Part HI *(General Undertakings)* of Schedule 8 *(HoldCo Provisions)* is not satisfied.
2. HoldCo does not comply with any provision of the Finance Documents (other than those referred to in paragraph *1 (Non-payment)* or in paragraph (a) above).

(b) No Event of Default under paragraph (b) above will occur if the failure to

comply is capable of remedy and is remedied within thirty days of the Agent giving notice to HoldCo becoming aware of the failure to comply.

3. Misrepresentation

Any representation or statement made or deemed to be made by HoldCo in the Finance Documents or any other document delivered by or on behalf of HoldCo under or in connection with any Finance Document is or proves to have been incorrect or misleading in any material respect when made or deemed to be made unless the circumstances giving rise to that incorrectness are capable of remedy and are remedied within thirty days of the Agent giving notice to HoldCo becoming aware thereof.

4. Cross default

1. Any Financial Indebtedness of HoldCo or DevCo is not paid when due nor within any originally applicable grace period.
2. Any Financial Indebtedness of HoldCo or DevCo is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described).
3. Any commitment for any Financial Indebtedness of HoldCo or DevCo is cancelled or suspended by a creditor of HoldCo or DevCo as a result of a non­payment event of default.
4. Any creditor of HoldCo or DevCo becomes entitled to declare any Financial Indebtedness of HoldCo or DevCo due and payable prior to its specified maturity as a result of an event of default (howsoever described).
5. No Event of Default will occur under this paragraph 5:

in respect of any Financial Indebtedness under the HoldCo Facilities;

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(ii) if the aggregate amount of Financial Indebtedness or commitment for

Financial Indebtedness falling within paragraphs (a) to (d) above is less than EUR 5,000,000 (or its equivalent in any other currency or currencies).

5. Insolvency

1. HoldCo or DevCo is unable or admits inability to pay its debts as they fall due or is deemed to or declared to be unable to pay its debts under applicable law, suspends or threatens to suspend making payments on any of its debts or is in is in suspension of payments *(suspension de pagos* or *cessation de payments)* or, (other than pursuant to this Agreement, the Second Restructuring Agreement or any Agreements with Bilateral Lenders) by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness.
2. The value of the assets of HoldCo or DevCo is less than its liabilities (taking  
   into account contingent and prospective liabilities).
3. A moratorium is declared in respect of any indebtedness of HoldCo or DevCo. If a moratorium occurs, the ending of the moratorium will not remedy any Event of Default caused by that moratorium.

6. Insolvency proceedings

(a) Any corporate action, legal proceedings or other procedure or step is taken in

relation to:

the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of HoldCo or DevCo;

1. a composition, compromise, assignment or arrangement with any  
   creditor of HoldCo or DevCo;
2. the appointment of a liquidator, receiver, administrative receiver,  
   administrator, compulsory manager or other similar officer in respect of HoldCo or DevCo or any of its assets; or
3. enforcement of any Security over any assets of HoldCo or DevCo, or any analogous procedure or step is taken in any jurisdiction.

(b) Paragraph (a) shall not apply to:

1. any winding-up petition which 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; or
2. the solvent liquidation or reorganisation of HoldCo or DevCo as long  
   as the surviving entity assumes all obligations under the Finance Documents of HoldCo or DevCo; and

(v) the arrangements entered into as at the Second Restructuring Date

pursuant to this Agreement and the Second Restructuring Agreement.

7. Creditors' process

1. Any expropriation, attachment, sequestration, distress or execution or any  
   analogous process in any jurisdiction affects any asset or assets of HoldCo or DevCo having a Material Adverse Effect and is not discharged within fifteen Business Days.
2. Paragraph (a) does not apply to:
3. the Tax Arrangements, as disclosed to the Agent prior to the Second  
   Restructuring Date; or
4. any proceedings or disputes commenced or threatened against HoldCo  
   by Monteverde after the First Restructuring Date in relation to the Monteverde Transaction unless:
5. final judgement thereof is adversely determined against  
   HoldCo; and
6. such adverse determination against HoldCo has a Material  
   Adverse Effect.

8. Other enforcement action

Any provider of Financial Indebtedness to HoldCo or DevCo (other than an Excluded Company) takes any of the following actions:

1. the making of any demand in relation to any guarantee, indemnity or other  
   assurance against loss in respect of any present and future liabilities and obligations at any time of HoldCo or DevCo to any Lender, both actual and contingent and whether incurred solely or Jointly or in any other capacity ("Liabilities") or exercising any right to require HoldCo to acquire any Liability (including exercising any put or call option against either of them for the redemption or purchase of any Liability);
2. the exercise of any right of set-off against HoldCo or DevCo in respect of any  
   Liabilities;
3. the suing for, commencing or joining of any legal or arbitration proceedings  
   against HoldCo or DevCo to recover any Liabilities;
4. any steps to enforce change of control provisions or other termination rights  
   (howsoever arising) against HoldCo or DevCo.

9. **Unlawfulness and invalidity**

Subject to the Legal Reservations and the Perfection Requirements:

1. it is or becomes unlawful for HoldCo or DevCo to perform any of its  
   obligations under the Finance Documents or any Transaction Security created or expressed to be created or evidenced by the Transaction Security Documents ceases to be effective;
2. any obligation or obligations of HoldCo or DevCo under any Finance  
   Documents are not or cease to be legal, valid, binding or enforceable and the cessation individually or cumulatively materially and adversely affects the interests of the Lenders under the Finance Documents; or
3. any Finance Document ceases to be in full force and effect or any Transaction  
   Security ceases to be legal, valid, binding, enforceable or effective or is alleged by a party to it (other than a Finance Party) to be ineffective.

10. **Cessation of business**

The Group (taken as a whole) suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a material part of its business (and **"Group"** refers to HoldCo, DevCo and Subsidiaries of DevCo (but excluding Entreniicleos SPV, Riofisa and any of their respective Subsidiaries)).

**11. Audit qualification**

The Auditors of HoldCo qualify the audited annual consolidated financial statements of HoldCo in any way which has or is reasonably likely to have a Material Adverse Effect.

12. **Expropriation**

The authority or ability of HoldCo or DevCo to conduct its business is limited or wholly or substantially curtailed by any seizure, expropriation, nationalisation, intervention, restriction or other action by or on behalf of any governmental, regulatory or other authority or other person in relation to HoldCo or DevCo or any of its assets to an extent that has or is reasonably likely to have a Material Adverse Effect.

13. **Repudiation and rescission of agreements**

HoldCo or DevCo rescinds or purports to rescind or repudiates or purports to repudiate a Finance Document or evidences an intention to rescind or repudiate a Finance Document in any manner which has material adverse effect on the interests of the Lenders under the Finance Documents taken as a whole.

14. Litigation

1. Any litigation, arbitration, administrative, governmental, regulatory or other  
   investigations, proceedings or disputes are commenced or threatened in relation to the Transaction Documents or the transactions contemplated in the Transaction Documents or against HoldCo or DevCo or its assets which is reasonably likely to be adversely determined against HoldCo or DevCo and if so determined might reasonably be expected to have a Material Adverse Effect.
2. Paragraph (a) above shall not apply to any proceedings cited in the Litigation  
   Disclosure Letter unless:
3. final judgement thereof is adversely determined against HoldCo or  
   DevCo; and
4. such adverse determination against HoldCo or DevCo has a Material  
   Adverse Effect.

15. Second Restructuring Agreement and Second Restructuring Undertakings

1. Any party to the Second Restructuring Agreement or a Second Restructuring  
   Undertaking (other than a Finance Party or the Obligor) fails to comply with the provisions of, or does not perform its obligations under, the Second Restructuring Agreement or, as the case may be, that Second Restructuring Undertaking; or
2. A representation or warranty given by that party in the Second Restructuring  
   Agreement or, as the case may be, a Second Restructuring Undertaking, is incorrect in any material respect,

and, if the non-compliance or circumstances giving rise to the misrepresentation are capable of remedy, it is not remedied within 30 days of the earlier of the Agent giving notice to that party or that party becoming aware of the non-compliance or misrepresentation.

16. DevCo

The DevCo Asset Transfer Date has not occurred on or before the Second Restructuring Longstop Date.

17. Material adverse change

Any event or circumstance occurs which has or is reasonably likely to have a Material Adverse Effect.

C

C

SCHEDULE 9

FORM OF MORTGAGE

ESCRITURA DE CONSTITUCION DE HIPOTECA1NMOBILIARIA

Niunero [0]

En [0], a [0] de [0] de *N.*

Ante mi, [o], Notario del Ilustre Colegio de [0], con residencia en [0].

COMPARECEN:

De una parte,

[D/Dfla.] [o], mayor de edad, con domicilio profesional en [0] y con [DNI/Pasaporte] mimero

[6].

De otra parte,

[D/Dfia.] [0], mayor de edad, con domicilio profesional en [a] y con [DNI/Pasaporte] niunero

[01.

[D/Dfia.] [a], mayor de edad, con domicilio profesional en [a] y con [DNI/Pasaporte] ntimero

[o].

[D/Dfla.] [0], mayor de edad, con domicilio profesional en [e] y con [DNI/Pasaporte] nfunero

[a].

INTERVIENEN:

I. [D/Dfla.] [0], en nombre y representacion de COLREN, S.L., sociedad debidamente

constituida bajo la legislacion espafiola e inscrita en el Registro Mercantil de Barcelona, al Tomo [a], Folio [o], Hoja [a], con domicilio social en Avenida Diagonal

532, Barcelona y con NIF nitmero B-65020067. (el "Hipotecante").

Actua en virtud de [escritura de poder de fecha [a] de [a] de [0] otorgada ante el

Notario de [a], [D/DEta..] [a], con el numero [a] de su protocolo.

[D/Dria.] [•], en nombre y representacion de [LENDER], entidad debidamente constituida bajo la legislation [•] e inscrita en el Registro de [•] con el mimero [•], con domicilio social en [•] ("[Lender]").

Acts a en virtud de [escritura de poder de fecha [•] de [•] de [•] otorgada ante el Notario de [•], [D/Dfia.] [0], con el niunero [•] de su protocolo, que se encuentra debidamente apostillado conforme a la Convention de la Haya de 1961.

[D/Diia.] [•], en nombre y representacion de [LENDER], entidad debidamente constituida bajo la legislaciOn [•] e inscrita en el Registro de [•] con el namero [•], con domicilio social en [•] (" [Lender] ").

Actaa en virtud de [escritura de poder de fecha [•] de [•] de [•] otorgada ante el Notario de [•], [D/Dba.] [•], con el Inimero [•] de su protocolo.

[D/Diia.] [•], en nombre y representacion de [LENDER], entidad debidamente constituida bajo la legislation [•] e inscrita en el Registro de [•] con el mlmero [•], con domicilio social en [•] ("[Lender]").

Actua en virtud de [escritura de poder de fecha [•] de [•] de [•] otorgada ante el Notario de [0], [D/Dfial [•], con el niunero [•] de su protocolo.

En lo sucesivo, las entidades resefiadas anteriormente junto con sus legitimos cesionarios al amparo del Contrato de Financiacion Devco descrito en el Expositivo I siguiente seran denominados los "Acreedores Hipotecarios" y, cada uno de ellos, el o un "Acreedor Hipotecario".

Los comparecientes manifiestan que no ha variado la capacidad ni personalidad juridica de sus respectivas representadas, que sigue siendo plena, y que las facultades que ejercitan no les han sido revocadas, suspendidas ni limitadas en modo alguno.

Los comparecientes me han exhibido sus respectivos poderes de representacion y tienen, a mi juicio, seem intervienen, plena capacidad legal para otorgar esta escritura en la que se constituye una hipoteca inmobiliaria de maxim° ("la Escritura") y a tal efecto

EXPONENT

I. Que, con fecha [•], el Hipotecante e Inmobiliaria Colonial, S.A. celebraron con [•], un contrato de financiacion sujeto a derecho ingles por importe maxim° de [a] EUROS (EUR [•]), que fue otorgado con la intervention del Notario de Madrid D. [•], y en el

que [a] ostenta la condition de Agente (en adelante, el "Contrato de Financiaci6n Devco"). Se adjunta un resumen de los terminos esenciales del Contrato de

Financiacion Devco como Anexo [•].

II. El Hipotecante es el tmnico titular, propietario en pleno dominio de las siguientes

fincas:

1. Finca [a] en [a] (la "Finca 1") *Description:*

*Philo:*

*Cargas:*

*Arrendamientos:*

*Contribuciones e impuestos:*

*Estado ocupacional: Information registral: Identificacion catastral:*

1. Finca [a] en [a] (la "Finca 2") *Description:*

*Mulo:*

*Cargas:*

*Arrendamientos:*

*Contribuciones e impuestos:*

*Estado ocupacional: Information registral: Identification catastral:*

1. Finca [•] en [e] (la "Finca [.]") *Description:*

*Maio:*

*'Cargas:*

*Arrendamientos:*

*Contribuciones e impuestos: Estado ocupacional:*

*Informacion registral: Identificacion catastral:*

En adelante, la Finca 1, la Finca 2 y la Finca [•] se denominaran conjuntamente las "Fincas".

Yo, el Notario, doy fe de que la informaciOn sobre la descripcion, titulo y estado de cargas de cada una de las Fincas se corresponde en su totalidad con la informacion suministrada, mediante nota simple informativa, por el Registro de la Propiedad de [•] de fecha [o] de [•] de [0] a los efectos dispuestos en el articulo 175 del Reglamento Notarial y el articulo 354 (a) del Reglamento Hipotecario. Una fotocopia de dicha nota simple se adjunta a la presente escritura como Anexo

Que en el Contrato de FinanciaciOn Devco, el Hipotecante se comprometfa, a fin de garantizar las obligaciones de los obligados *(Obligors)* bajo el Contrato de Financiaci6n Devco, a la constituciOn de un derecho real de hipoteca sobre las Fincas a favor de los Acreedores Hipotecarios, en proporcion a la participacion que cada uno de ellos ostente en cada momento en el Contrato de Financiacion Devco. Dicho compromiso se lleva a efecto mediante el otorgamiento de la presente Escritura que se

rige por las siguientes

ESTIPULACIONES

1. CONSTITUCION, ACEPTACION Y DURACION DE LA HIPOTECA

1.1 El Hipotecante constituye en este acto un derecho real de hipoteca inmobiliaria de

primer rango en garantfa del Integro y puntual cumplimiento de todas las obligaciones asomidas por los obligados *(Obligors)* bajo el Contrato de Financiacion Devco, salvo por lo que se refiere a cualesquiera obligaciones bajo los Prestamos Participativos *(Profit Participating Loans,* tal y como dicho terrain se define en el Contrato de Financiaci6n Devco) incluidos en el Contrato de Financiacion Devco, las cuales estaran expresamente excluidas (en lo sucesivo, las "Obligaciones Garantizadas") sobre las Fincas (la "Hipoteca").

1.2 Los Acreedores Hipotecarios aceptan la Hipoteca y solicitan la inscripcion de la

misma a su favor como titulares registrales.

1.3 La constitucion de la Hipoteca se hace con independencia de la responsabilidad patrimonial ilimitada que, en virtud del articulo 1.911 del Codigo Civil, pesa sobre los obligados *(Obligors)* como consecuencia de las obligaciones asumidas en el Contrato de Financiacion Devco.

1.4 La Hipoteca permanecera en vigor hasta el 31 de diciembre de 2016.

1. DISTRIBUCION DE LA RESPONSABIL1DAD FHTOTECARIA

2.1 La Hipoteca garantiza el completo y puntual cumplimiento de las Obligaciones Garantizadas frente a los Acreedores Hipotecarios por todos los conceptos de principal, intereses ordinarios y de demora, comisiones, tributos y cualesquiera otros costes y

gastos hasta un importe maximo de [o]t euros ([e] euros) (el "Importe Maximo"), conforme a la siguiente distribucion:

1. Principal. Hasta un importe maxim° de [a] euros ([a] euros).
2. Intereses ordinarios: hasta un importe maxim° de [a] euros ([a] euros) sin que en ningdn caso pueda exceder de los intereses ordinarios devengados durante los altimos [a] aiios que se hallen pendientes de pago. Se pacta expresamente que el tope maxim° del tipo de interes en perjuicio de terceros, por razon del articulo 114 de la Ley Hipotecaria, sera el tipo de interes vigente en el Contrato de Financiaci6n Devco incrementado en un seis por ciento (6 %) anual.

Intereses de demora: hasta un importe maxim° de [a] euros ([o] euros) sin que en ningim caso pueda exceder de los intereses de demora devengados durante los altimos [a] atios que se hallen pendientes de pago. Se pacta expresamente que el tope maxim° del tipo de interes en perjuicio de terceros, por razon del articulo 114 de la Ley Hipotecaria, sera el veinte por ciento (20%) anual. La responsabilidad por intereses ordinarios e indemnizatorios, no excederk en total, los devengados durante los Altimos cinco (5) atios.

(d) Comisiones, costas y gastos: por comisiones, costas y cualesquiera gastos

ocasionados por la preparacion, otorgamiento, cumplimiento, extension, subrogacian, ejecuci6n del Contrato de Financiacion Devco y de la presente Hipoteca, incluyendo aquellos gastos que hubieran sido satisfechos por los Acreedores Hipotecarios de acuerdo con lo dispuesto en la Estipulacion 10 siguiente, un importe maxim° de [a] euros ([a] euros).

2.1.2 Cada una de las Fincas garantiza el Importe Maximo conforme a la distribucion establecida en la siguiente tabla:

|  |  |  |  |
| --- | --- | --- | --- |
| LIVII'OR I t, 5 | I INCA I | I INCA 2 | E ENCA ] |
| Principal: |  | |  |
| Intereses ordinaries: | E  I I I I I II | | .111111111 III |
| Intereses de demora: | IIIIIIIIIIIMIIIIMI | | |
| Comisiones, costes y gastos: | e I 111 111 I MI | | |
| TOTAL | 111111111.111111111111111111111111111 | | |

The maximum aggregate amount secured under the actual mortgages to be created as Security for the obligations of the Obligors in respect of the Facilities will be 135% of the value of each asset (as evidenced in the most recent Appraisal Valuation), limited to 120% of the outstanding and committed amounts under the Facilities from time to time.

2.2 La participacion de los Acreedores Hipotecarios en el principal del Contrato de

Financiacion Devco y, por lo tanto, en la presente Hipoteca, se distribuye conforme a los porcentajes establecidos en la siguiente tabla:

|  |
| --- |
| Afr) I LEORTE;: ORGE  [LENDER] [LENDER] [LENDER] |

**3. EXTENSION DE LA EILPOTECA**

3.1 La Hipoteca grava el derecho de propiedad del Hipotecante sobre cada una de las

Fincas con todos los derechos, facultades y potestades que en virtud de la propiedad de aquellas corresponden al Hipotecante.

3.2 La Hipoteca se extiende a todos los elementos que son mencionados en los articulos 109 y 110 de la Ley Hipotecaria (accesiones naturales, mejoras e importe de indemnizaciones), en el articulo 215 del Reglamento Hipotecario (exceso de cabida inscrito) y en el articulo 40 de la Ley del Contrato de Seguro.

En particular, se entienden hipotecadas juntamente con las Fincas, sin catheter exhaustivo, todas las mejoras, obras de todas eases, infraestructuras, urbanizaciones, construcciones, edificaciones e instalaciones actualmente existentes o que se lleven a cabo en las Fincas que puedan integrar el inmueble de acuerdo con el articulo 334 del C6digo Civil y que correspondan al Hipotecante, con independencia de que las mismas sean o no objeto de la correspondiente declaracion de obra nueva e inscripcion registral, con la limitacion del articulo 112 de la Ley Hipotecaria.

Las indemnizaciones que reciba el Hipotecante de conformidad con los articulos antes mencionados se aplicathn de conformidad con lo previsto en el Contrato de Financiacion Devco.

En caso de expropiaciOn forzosa total o parcial de las Fincas, el Hipotecante se obliga a facilitar que el Agente, a traves de sus apoderados o representantes legales, pueda personarse, junto con el, en los procedimientos expropiatorios, concurriendo a las negociaciones que en los mismos se mantengan, asi como a que el Agente tenga acceso a todos y cada uno de los documentos relativos a la expropiacion. En todo caso, en cualquier procedimiento de expropiaci6n, el Hipotecante se obliga a negociar de buena fe con la correspondiente administracion expropiante, de forma que, en ningim caso, se perjudiquen los derechos de los Acreedores Hipotecarios bajo las Obligaciones Garantizadas. Las indemnizaciones y compensaciones percibidas en el marco de cualquier proceso de expropiacion se aplicathn de conformidad con lo previsto en el Contrato de Financiacion Devco.

3.3 Por pacto expreso de las partes la Hipoteca tambien se extiende a:

3.3.1 Los objetos muebles que se hallen colocados permanentemente en la finca hipotecada presentes o futuros, bien para su adorno, comodidad o explotacion, o bien para el servicio de alguna industria.

3.3.2 Los frutos, cualquiera que sea la situation en que se encuentren.

3.3.3 Las rentas vencidas y no satisfechas al tiempo de exigirse el cumplimiento de la obligation garantizada que no se encuentren sujetas a cualquier derecho de prenda otorgado a favor de los Acreedores Hipotecarios de acuerdo con lo previsto en el Contrato de Financiacion Devco.

3.4 Los efectos y las obligaciones asumidas por el Hipotecante en virtud de la presente Hipoteca permaneceran plenamente validos y vigentes sin que se vean cancelados, suspendidos, extinguidos o de otra forma modificados por ninguna de las siguientes causas:

3.4.1 Cualquier renovation, prorroga, modificacion, cambio, suplemento, o novacion del Contrato de Financiacion Devco, o a la cesi6n o transmision parcial o total del mismo. A estos efectos, el Hipotecante acepta y consiente expresamente que cualquier novacion, modificacion, ampliacion o alteration de las Obligations Garantizadas en virtud de cualquier contrato en que se modifique el Contrato de Financiacion Devco quedard automaticamente cubierta y garantizada por la presente Hipoteca.

3.4.2 Cualquier renuncia, consentimiento, prorroga, action u omisiOn relativa al Contrato de Financiacion Devco, incluyendo a la presente Hipoteca.

3.4.3 El otorgamiento de garantias adicionales en favor de los Acreedores Hipotecarios, o de sus sucesores o cesionarios, la aceptacion de las mismas, o la cancelacion de cualquier garantia por los Acreedores Hipotecarios o sus sucesores o cesionarios.

Sin perjuicio de lo establecido anteriormente y de lo contemplado en la Estipulacion 13, el Hipotecante otorgard, si asi lo solicitan los Acreedores Hipotecarios a traves del Agente, todos aquellos documentos que se consideren necesarios o sean aconsejables para asegurar la plena efectividad y ejecutabilidad de la presente Hipoteca de acuerdo con lo anteriormente pactado.

4. OBLIGACIONES DEL BIPOTECANTE EN RELACION CON LAS FINCAS

Sin perjuicio del resto de las obligaciones asumidas por medio de la presente Escritura, el Hipotecante asume las obligaciones de:

4.1 Conservar las Fincas con la debida diligencia, realizando las reparations y adoptando las medidas de mantenimiento que sean necesarias para la conservation adecuada al use de las mismas. Ademas, debera notificar al Agente, con la mayor brevedad posible, todos los menoscabos que sufran dichas Fincas por cualquier causa o circunstancia que las Naga desmerecer de valor o que ponga en cuestion el derecho de propiedad del Hipotecante, o los derechos de los Acreedores Hipotecarios, o que los prive de efectividad.

En este sentido, el Hipotecante se compromete a facilitar el acceso a las Fincas a la persona que el Agente designe con el fin de que aquella compruebe el estado de conservacion y el destino dado a las mismas y, en su caso, realice valoraciones economicas de los bienes hipotecados.

No obstante lo dispuesto anteriormente, en el caso de que cualquiera de las Fincas se encontrase sujeta a un derecho de arrendamiento que impidiese al Hipotecante realizar dichas labores de conservacion, el Hipotecante debera realizar sus mejores esfuerzos con el objeto de eliminar la restricci6n que, en tal sentido, contuviese el contrato que instrumente el referido derecho de arrendamiento.

4.2 Concertar con entidades aseguradoras (conjuntamente, los "Aseguradores", cada uno, el o un "Asegurador") y mantener en vigor, en relacion con cada una de las Fincas, aquellas polizas de seguro que estuviesen previstas en el Contrato de Financiacion Devco con sujeci6n a los terminos previstos en el mismo (conjuntamente, las "Polizas").

Asimismo, el Hipotecante se compromete a pagar dichas Polizas puntualmente y a notificar al Asegurador o a los Aseguradores, segim proceda, de conformidad con el articulo 40 de la Ley del Contrato de Seguro, la constitucion de la Hipoteca dentro de los tres (3) dias siguientes a su inscripciOn o, si la fommlizacion de cualquier Poliza se llevara a cabo en un momento posterior, en el acto de dicha formalizacion. Por

el Hipotecante debera enviar al Agente copia de la confinnacion escrita de la recepcion de la notificacion por parte del Asegurador o de los Aseguradores, segi'm proceda.

4.3 Estar al corriente en el pago de toda clase de obligaciones, impuestos, contribuciones, arbitrios, gastos de comunidad, importe de las Polizas, honorarios o cualquier otro gasto o carga que graven las Fincas asi como los impuestos y tributos a que se refiere la Estipulacion 10 siguiente (los "Pagos"), entregando al Agente, a solicitud de este, los justificantes pertinentes. El Hipotecante autoriza por la presente al Agente para efectuar los Pagos por su cuenta cuando 61 no los realice. Si asi lo hiciere, siempre dentro de los limites de responsabilidad hipotecaria pactados para costes y gastos en perjuicio de terceros, el importe satisfecho y el interes, calculado al tipo de interes legal del dinero, que se devengue hasta la fecha del pago debera ser reembolsado inmediatamente por el Hipotecante al Agente.

En todo momento el Agente podra exigir al Hipotecante que le justifique documentalmente la satisfacci6n de los Pagos.

4.4 El Hipotecante se compromete a (i) obtener, cumplir con los terminos de, y a realizar todas las actuaciones que resulten necesarias para mantener en pleno vigor, y a entregar copias certificadas al Agente de, cualquier autorizaci6n, consentimiento, aprobacion, resolucion, licencia, exenciOn, depOsito, documento publico o inscripcion que resulten necesarias bajo cualquier ley aplicable a los efectos de permitirle mantener la titularidad sobre las Fincas y desarrollar su negocio, y (ii) cumplir con toda la legislacion que le sea aplicable, todo ello en los terminos previstos en la clausulas 26.1 y 26.2 del Contrato de Financiacion Devco (segan estas se transcriben en los apartados [.] y [0] de la secciOn [0]) (Obligaciones de los Obligados) del resumen del Contrato de Financiacion Devco que se acompafia como Anexo [0] a la presente escritura.

4.5 Salvo en lo permitido por el Contrato de Financiacion Devco, no enajenar, transmitir o disponer de las Fincas o cualquier derecho derivado de las mismas en modo alguno; ni constituir ningen tipo de carga, gravamen o cualquier otro derecho sobre las mismas a favor de terceros; ni ceder la posesion, el use o la explotacion de estas a favor de ningim tercero ya sea de forma total o parcial. Todo ello salvo en lo que expresamente se permita por el Contrato de Financiacion Devco. El consentimiento de los Acreedores Hipotecarios ha sido prestado sobre la base de que sobre las Fincas no existen otras cargas ni gravamens distintos a los mencionados en el Anexo [0].

4.5 Dejar constancia registral y/o especificar, a la mayor brevedad posible, mediante el otorgamiento de los correspondientes instrumentos notariales o utilizando cualquier otro medio idoneo a tal efecto, de las obras nuevas, construcciones, edificaciones e instalaciones efectuadas o situadas en las Fincas hipotecadas; el Hipotecante se obliga asimismo a completar o corregir cualquier discordancia del Registro de la Propiedad con la realidad fisica de las Fincas, otorgando a tal efecto y a su costa cuantos documentos resulten precisos.

5. OBLIGACIONES DEL HIPOTECANTE EN RELACION CON LA INSCRIPCION DE LA HIPOTECA

5.1 El Hipotecante se compromete a llevar a cabo sus mejores esfuerzos para obtener la inscripci6n de la Hipoteca en el Registro de la Propiedad en un plazo maximo de tres (3) meses a contar desde la fecha de otorgamiento de esta Escritura. Para ello debera.: (1) satisfacer los impuestos que se devenguen como consecuencia del otorgamiento de la presente Escritura en un plazo maxim° de cinco (5) dias habiles a contar desde dicho otorgamiento; (2) presentar copia autorizada de esta Escritura en el Registro competente dentro de los cinco (5) dias habiles siguientes a la fecha de su otorgamiento, asi como cuantos documentos resulten pertinentes o requeridos por dicho Registro con la mayor brevedad posible y, en cualquier caso, dentro de los quince (15) dias habiles siguientes a su requerimiento; (3) otorgar a su costa los documentos pfiblicos o privados o desarrollar las actuaciones necesarias, al objeto de subsanar los defectos que, en su caso, puedan derivarse de la calificacion del Registrador; y (4) mantener vigente en todo momento el asiento de presentaci6n practicado por el Registro de la Propiedad, y a estos efectos realizar en plazo todas las renovaciones de dicho asiento que fuesen necesarias hasta la consecuci6n de la inscripcion definitiva de la Hipoteca.

Por su parte, el Agente se compromete a realizar sus mejores esfuerzos para colaborar con el Hipotecante en el desarrollo de todas las actuaciones descritas encaminadas a lograr la inscripcion de la Hipoteca, y, siempre a costa de este, a otorgar cuantos documentos palicos o privados resultasen necesarios a tal efecto.

A estos efectos las partes solicitan en este acto al Notario que, inmediatamente tras su otorgamiento, remita por fax la Escritura para su inscripcion en los Registros de la Propiedad correspondientes a cada una de las Fincas, en virtud de lo previsto en el articulo 249.2 del Reglamento Notarial.

1. CAUSAS DE EJECUCION

6.1 Los Acreedores Hipotecarios tendran derecho a ejecutar la Hipoteca en cualquiera de los casos siguientes:

6.1.1 El incumplimiento de pago de cualquiera de las Obligaciones Garantizadas en la fecha en que tales Obligaciones Garantizadas sean debidas.

Las partes acuerdan expresamente que bastard la declaracion del Agente de que ha requerido el pago de cualesquiera cantidades debidas y que dicho requerimiento no ha sido atendido en el plazo antes indicado; para que la Hipoteca pueda ser ejecutada.

6.1.2 La falta de pago de cualquiera de los plazos a su vencimiento de las Obligaciones Garantizadas (lard derecho a la parte acreedora a exigir la devolucion del total adeudado con sus intereses y gastos conforme al articulo 693.2 de la Ley 1/2000, de 7 de enero, de Enjuiciamiento Civil.

6.1.3 El incumplimiento de cualquiera de las obligaciones contenidas en esta Escritura.

6.2 Las partes acuerdan que el Agente sera el encargado de llevar a cabo la ejecucion de la Hipoteca. A estos efectos, cada uno de los Acreedores Hipotecarios apodera al Agente para que, en nombre y representacion de todos y cada uno de ellos, ejerza todas las facultades de los Acreedores Hipotecarios previstas en esta Escritura asi como las que legaimente correspondan al acreedor hipotecario y, en particular, las necesarias para ejecutar la Hipoteca de las Fincas hipotecadas.

1. PROCEDIMIENTO DE EJECUCION HIPOTECARIA

7.1 Procedimiento judicial de ejecucion hipotecaria

En cualquiera de los supuestos mencionados en la Estipulacion 6.1 anterior, el Agente, actuando en nombre de los Acreedores Hipotecarios, pods proceder a la ejecucion de la Hipoteca por el procedimiento judicial de ejecucion hipotecaria previsto en el Titulo IV, Libro Tercero de la Ley de Enjuiciamiento Civil, con las particularidades contenidas en el Capitulo V de la misma (el "Procedimiento Judicial de Ejecuci6n Hipotecaria").

7.2 Procedimiento ejecutivo extrajudicial

Sin perjuicio del Procedimiento Judicial de Ejecucion Hipotecaria o de cualesquiera otros que puedan asistir a los Acreedores Hipotecarios contra el Hipotecante, las partes pactan expresamente que, en la medida en que sea legalmente posible, se podra proceder a la ejecuci6n de la Hipoteca conforme al procedimiento ejecutivo extrajudicial previsto en el articulo 129 de la Ley Hipotecaria y articulos 234 y siguientes del Reglamento Hipotecario (el "Procedimiento Ejecutivo Extrajudicial").

7.3 Liquidation de la deuda

A los efectos de lo previsto en los articulos 572 y 573 de la Ley de Enjuiciamiento Civil, asi como en el articulo 153 de la Ley Hipotecaria, las partes acuerdan que podra despacharse ejecucion contra el Hipotecante por la cantidad resultante de la liquidacion efectuada por el Agente, en la forma convenida por las partes en la clausula 38.4 del Contrato de FinanciaciOn Devco (segan esta se transcribe en la section [•], *(Calculos y Certificados)* del resumen del Contrato de Financiacion Devco que se acompafta como Anexo a la presente Escritura), previa notification al Hipotecante de la cantidad resultante de la liquidacion. El certificado expedido por el Agente en el que se indique el importe adeudado correspondiente a todos los conceptos (principal, intereses ordinarios y moratorios y cualquier otro importe vencido y exigible en virtud del Contrato de Financiacion Devco) constituira, salvo error manifiesto, un documento acreditativo suficiente, junto con el documento fehaciente que acredite que la liquidacion de la deuda ha sido practicada en Ia forma pactada en el Contrato de Financiacion Devco y que ha sido previamente notificada al Hipotecante. A todos los efectos las partes acuerdan que la cantidad que refleje la certification emitida por el Agente en que se recoja el importe de la liquidacion sera liquida y exigible.

7.4 Articulo 682 de la Ley de Enjuiciamiento Civil

Con objeto de Ilevar a cabo el Procedimiento Judicial de Ejecuci6n Hipotecaria, las partes pactan que el valor de las Fincas en primera subasta sera el establecido en Ia Estipulacion 7.6 siguiente y el domicilio del Hipotecante a efectos de requerimientos y notificaciones es el que se indica en la Estipulacion 12.2 siguiente.

7.5 Articulo 234 y siguientes del Reglamento Hipotecario

Con objeto de llevar a cabo el Procedimiento Ejecutivo Extrajudicial, en la medida en que ello sea legalmente posible, las partes pactan: (i) que el valor de las Fincas en primera subasta sera el establecido en el Estipulacion 7.6 siguiente; (ii) que el domicilio del Hipotecante a efectos de requerimientos y notificaciones es el que se indica en la Estipulacion 11.2 posterior; (iii) que la realization extrajudicial de la Hipoteca se llevara a cabo ante el notario del lugar donde radiquen cada una de las Fincas que design el Agente; y (iv) que el Agente queda apoderado expresamente por el Hipotecante, en virtud de esta Escritura, para que pueda, en su dia, otorgar la escritura de yenta de las Fincas hipotecadas.

7.6 Valor de las Fincas en primera subasta

Como tipo de salida en primera subasta en caso de Procedimiento Judicial de Ejecucion Hipotecaria o de Procedimiento Ejecutivo Extrajudicial, cada una de las Fincas se valora en este acto en2:

1. Finca 1: [•] euros ([•] euros);
2. Finca 2: [a] euros ([a] euros); y

2 Estos importes coincidiran con el importe maxim° garantizado por cada una de las Fincas

(c) Finca [•]: [s] euros ([•] euros).

7.7 La Hipoteca podra ejecutarse tanto para el cobro de la totalidad del principal e intereses y demas conceptos de las Obligaciones Garantizadas en caso de resolucion anticipada del Contrato de Financiacion Devco, entendiendose suscrito el convenio indicado en el articulo 693.2 de la Ley de Enjuiciamiento Civil, como para el cobro de alg6n o algunos plazos de principal o intereses de las Obligaciones Garantizadas, a eleccion del Agente en nombre y por cuenta de los Acreedores Hipotecarios.

1. EJERCICIO DE LOS DERECHOS DE LOS ACREEDORES HIPOTECARIOS

8.1 Los Acreedores Hipotecarios (actuando por medio del Agente, en su caso) pueden

ejercitar cualquiera de los derechos legales derivados de la Hipoteca, tanto por procedimientos de ejecucion como por procedimientos ordinarios. Cualquier accion emprendida no implicard una renuncia a la posibilidad de ejercitar cualquier otra accion que procediera.

8.2 Los Acreedores Hipotecarios (actuando por medio del Agente, en su caso) pueden, siempre y cuando ello fuera legalmente posible, solicitar la administracion, posesi6n y disfrute de las Fincas, en todo o en parte, conforme al articulo 690 de la Ley de Enjuiciamiento Civil. En este caso, las cantidades recibidas se aplicaran a los gastos de mantenimiento relacionados con las Fincas, y el saldo resultante al pago de las cantidades adeudadas bajo el Contrato de Financiacion Devco que se encuentren en ese momento vencidas y sean exigibles; si no hubiere cantidades vencidas y exigibles pendientes de pago, ingresard el saldo resultante, que quedard indisponible, en una cuenta corriente a nombre del Hipotecante que debera ser pignorada en garantia de las Obligaciones Garantizadas.

8.3 De acuerdo con el articulo 234 y concordantes del Reglament° Notarial, el Hipotecante autoriza expresamente por la presente al Agente para solicitar por si solo la expedicion de segundas y posteriores copias de la Escritura de constitucion de la presente Hipoteca, a los efectos del articulo 517 de la Ley de Enjuiciamiento Civil.

1. RENUNCIA, NULIDAD, ANULABILIDAD, ILEGALIDAD, EXTINCION Y CANCELACION

9.1 Renuncia

La renuncia hecha por el Agente o los Acreedores Hipotecarios a cualquiera de los derechos que resultan de esta Escritura debe ser expresa. En ningtin caso la falta de ejercicio de cualesquiera de sus derechos por el Agente podra ser interpretada como una renuncia a los mismos. Las renuncias afectaran anica y exclusivamente al supuesto especifico a que se refieran, sin que puedan interpretarse como una renuncia generica para casos iguales o similares, futuros o anteriores.

9.2 Nulidad, anulabilidad o ilegalidad

La nulidad, anulabilidad o ilegalidad de cualquier estipulacion de esta Escritura y/o del Contrato de Financiacion Devco no implicaran la nulidad o anulabilidad de las demas disposiciones contenidas en los mismos.

9.3 Extincion y cancelacion

Cumplidas integramente todas las Obligaciones Garantizadas o extinguidas estas integramente de otro modo, quedard automaticamente extinguida la Hipoteca. El Agente, actuando en nombre de los Acreedores Hipotecarios y a solicitud por escrito del Hipotecante, se compromete a otorgar el correspondiente documento public° de cancelacion en el plazo maximo de veinte (20) dias naturales a partir de la fecha en que tenga lugar tal requerimiento. A tal efecto, los Acreedores Hipotecarios apoderan al Agente por la presente para que otorgue dicho documento de cancelacion en su nombre.

1. COSTES, HONORARIOS, IMPUESTOS Y GASTOS

10.1 Seran de cuenta y cargo del Hipotecante cuantos gastos de actuaciones judiciales y extrajudiciales se Revert a cabo para hater efectivo el cumplimiento de las Obligaciones Garantizadas o para ejecutar esta Hipoteca, asi como los honorarios y derechos de Abogado y Procurador, aun cuando fuera potestativo valerse de sus servicios.

10.2 Seran igualmente de cuenta del Hipotecante todos los gastos de esta Escritura, los de primera copia para el Agente, y los de una copia autorizada para cada uno de los Acreedores Hipotecarios, asi como los que ocasionen su inscription en el Registro de la Propiedad competente, los de otorgamiento y cancelacion de hipoteca, el Impuesto

de Transmisiones Patrimoniales y Actos Juridicos Documentados y cualquier otra

contribution, impuesto, arbitrio, tasa o gasto que puedan pesar sobre el presente

contrato y sobre los pagos o reintegros derivados del mismo.

No obstante, en ningtin caso serail por cuenta del Hipotecante los costes, gastos e impuestos que puedan originarse o devengarse como consecuencia de la cesion total o

parcial de la position contractual de los Acreedores Hipotecarios en la Hipoteca.

10.3 En el caso de que el Hipotecante no pague los gastos previstos en esta Estipulacion, el Agente tendra derecho a pagarlos en nombre del Hipotecante y a reclamarle el pago posteriormente quedando igualmente cubierta esta obligaciOn por la Hipoteca.

10.4 Cualquier cantidad debida por el Hipotecante en virtud de los parrafos anteriores que no tenga una fecha de pago concreta debera abonarse dentro de los cinco (5) dias naturales siguientes a la reception por el Hipotecante del correspondiente requerimiento de pago.

1. COMUNICACIONES

11.1 Salvo disposition legal contraria o salvo indication en contrario en esta Hipoteca, cualquier notification, requerimiento, citation, emplazamiento y el resto de las comunicaciones derivadas de la presente Escritura se efectuaran por escrito firmado por persona con poder suficiente y enviado a la otra parte por correo certificado con aviso de recibo. No obstante, en caso de urgencia, podran hacerse las notifications aludidas por cualquier otro medio, sea telefOnico, telegrafico, por telefax u otro, pero, en ese caso, debera confirmarse por escrito enviado por correo con aviso de recibo dentro del plazo de los cinco (5) dias naturales siguientes.

|  |  |  |
| --- | --- | --- |
| 11.2 A los efectos de la presente Escritura las partes designan las siguientes direcciones  para notificaciones:  Para los Acreedores Hipotecarios y el Agente: [•] | | |
| Domicilio: | | [a] |
|  | | [a] |
|  | | [a] |
| Milner° de tfno: | | [a] / [a] |
| Namero de fax: | | [a] / [a] |
| Attn.: | | [a] / [a] |
| E-mail: | | [•] / [6] |
| Para el Hipotecante: | |  |
| [•] | |  |
| Domicilio: | | [•] |
|  | | [•] |
|  | | [•] |
| bhimero de tfno: | [a] / [•] | |
| Niimero de fax: | [a] / [•] | |
| Attn.: | [•] / [a] | |
| E-mail: | [a] / [•] | |

11.3 Las partes tambien deberan comunicar a la otras partes de esta Escritura cualquier cambio de nombre, destinatario, direccion, niunero de fax o direcciOn de correo electronico. Ademas, el cambio de domicilio debera ser notificado a los registros palicos correspondientes.

De acuerdo con el Articulo 683.1 (1°) de la Ley de Enjuiciamiento Civil, las notificaciones de cambios de domicilio a efectos de notificaciones deberan constar en la inscripcion de la Hipoteca mediante nota marginal.

12. CESION DE LA IIIPOTECA 12.1 Autorizaci6n del Hipotecante

El Hipotecante autoriza expresamente la cesion total o parcial de la posicion contractual de los Acreedores Hipotecarios en la Hipoteca en favor de las entidades a quienes cedan su posicion contractual en el Contrato de Financiacion Devco de conformidad con las previsions del mismo, comprometiendose a otorgar cualesquiera documentos publicos que pudieran ser requeridos o fuesen aconsejables para acreditar dichas cesiones. Los cesionarios se convertiran de este modo en Acreedores Hipotecarios a los efectos de la Hipoteca. El Hipotecante, de conformidad con lo dispuesto en el articulo 242 del Reglamento Hipotecario, renuncia expresamente a que le sean notificadas cualesquiera cesiones que pudieran realizarse en virtud de esta Estipulacion, sin perjuicio de lo previsto en el Contrato de Financiacion Devco.

La presente Hipoteca se establece en beneficio de los Acreedores Hipotecarios que sean parte en el Contrato de FinanciaciOn Devco en cada momento, en proporcion a su respectiva participacion en el mismo.

1. PODERES

13.1 Las partes expresamente otorgan poderes tan amplios como en derecho sea necesario, a D. [a], con D.N.I./N.I.F. amen) [0], y/o D. [a], con D.N.I./N.I.F. mirnero [a] en nombre del Hipotecante; y a D. [a], con D.N.I./N.I.F. numero [0], y/o D. [a], con D.N.I./N.I.F. niunero [a], y/o D. [a], con D.N.I./N.I.F. admen) [a] y/o D. [a], con D.N.I./N.I.F. nfunero [a], en nombre de los Acreedores Hipotecarios, para que cualquiera de ellos, indistintamente, sin limitation alguna puedan en nombre y representation de su respectivo poderdante, otorgar cuantos documentos publicos o privados fuesen necesarios para formalizar, asi como rectificar, corregir, subsanar o clarificar la presente Escritura, con objeto de lograr la inscription de la misma en los Registros de la Propiedad correspondientes a cada una de las Fincas, segun corresponda. Dichos documentos pUblicos o privados deberan otorgarse dentro de los siete (7) dias siguientes a la fecha en la que cualquiera de las partes sea requerida por la otra para ello.

1. LEY APLICABLE Y JURISDICCION

14.1 La interpretation, cumplimiento y ejecucion de la presente Escritura se regird por la legislation espafiola.

14.2 Las partes se someten para cualesquiera desavenencias que pudieran derivarse de este contrato expresa e irrevocablemente a los Juzgados y Tribunales de N.

[Cierre notarial de la Escritura]

SCHEDULE **10**

**QUARTERLY** MANAGEMENT REPORT

Financial:

Balance sheet and profit and loss account

Debt: debt level, financial leverage (Loan-to-Value ratio (LTV)), hedging levels, average financial costs

**Land/Developments:**

List of the principal acquisition operations and asset sales

Commercial activities: deeds and commercial sales

List of works currently underway

List of reserved lands: m2, location, agreed sales and/or purchases

**Other information:**

Any other relevant information that may be of interest

SCHEDULE 11

FORM OF DEED OF RELEASE

POLIZA DE CANCELACION DE PRENDAS SOBRE ACCIONES DE RIOFISA

En Madrid, a [•] de [•] de [•].

Con la intervencion del Notario de Madrid D. [•].

REUNIDOS De una parte,

HE ROYAL BANK OF SCOTLAND, plc (en adelante, "RBS") entidad debidamente constituida y existente conforme a las leyes de Escocia con domicilio a estos efectos en 36 St. Andrew Square, Edimburgo EH2 2YB, Escocia (Reino Unido) e inscrita en el Registro Mercantil de Escocia con el mamero 90312. Interviene en su nombre y representacion [•], mayor de edad, con Documento Nacional de Identidad en vigor niimero [•], debidamente facultado a estos efectos en virtud de [•].

RBS interviene en esta poliza, ademas de en su propio nombre como prestamista *(Lender),* en beneficio del resto de entidades fmancieras que en cada momento ostenten la condici6n de prestamistas *(Lenders)* de conformidad con el Contrato de Financiacion Devco, tal y como se define en el Expositivo )0C111. (conjuntamente las "Fortes Garantizadas"), en su condici6n de Agente *(Agent)* y Agente de Garantias *(Security Agent)* de conformidad con y en virtud de su nombramiento como tal bajo la clausula [31] del Contrato de Financiacion Devco (en tal condiciOn, junto con cualquier entidad que le sustituya en tal condicion, el "Agente de Garantias").

De otra parte,

DEED OF RELEASE OF PLEDGES OVER RIOFISA SHARES

In Madrid, on [•] NH.

Attested to by Mr. [•], Notary of Madrid.

THE PARTIES On one hand,

THE ROYAL BANK OF SCOTLAND, plc (hereinafter, "RBS") a company duly incorporated and existing under the laws of Scotland, domiciled for these purposes at 36 St. Andrew Square, Edimburgo EH2 2YB, Scotland (United Kingdom) and registered with the Registry of Companies of Scotland with the number 90312, duly represented by [•], of legal age, with National Identity Card number [•] currently in force, duly empowered for these purposes by virtue of [•].

RBS enters into this deed not only in its own name as Lender, but also for and on behalf of the rest of financial entities that from time to time hold the status of Lenders pursuant to the terms of the Devco Facilities Agreement, as defined under Whereas XXIII below (jointly the "Secured Parties"), as Agent and Security Agent under and by virtue of its appointment under clause [31] of the Devco Facilities Agreement (in such capacity, together with its successors in such status, the "Security Agent").

On the other hand,

COLREN, S.L., (en adelante, el "Pignorante"), una sociedad debidamente constituida y existente conforme a las leyes de Espafta, con domicilio social en la Avenida Diagonal 532, Barcelona y Milner° de Identificacion Fiscal B­65020067. Interviene en su nombre y representacion [•], mayor de edad, con Documento Nacional de Identidad en vigor niimero [•], debidamente facultado a estos efectos en virtud de [•].

Y de otra parte,

RIOFISA, S.A., (en adelante, la "Sociedad"), una sociedad debidamente constituida y existente conforme a las leyes de Espana, con domicilio social en la Avenida Diagonal 532, Barcelona y Minter° de Identificacion Fiscal A­48070635. Interviene en su nombre y representaci6n N, mayor de edad, con Documento Nacional de Identidad en

vigor minter° debidamente facultado a  
estos efectos en virtud de [•].

EXPONEN

I. Que, el 12 de abril de 2007, Inmobiliaria Colonial, S.A. (en lo

sucesivo, "Colonial"), como  
acreditado, Dehesa de Valme, S.L., Urbaplan 2001, S.A. y Entrenncleos Desarrollo Inmobiliario, S.L., como garantes (en lo sucesivo, los "Garantes") y Goldman Sachs Credit Partners (Europe) Ltd ("GSCP", anteriormente denominada Portfolio Acquisition 1 Ltd, que cedi6 posteriormente su participacion a Goldman Sachs International Bank), RBS, Eurohypo AG, Sucursal en Esparta ("Eurohypo") y Calyon, Sucursal en Espaila ("Calyon") como acreditantes, suscribieron, entre otros, un contrato de fuaanciacion por importe de siete mil ciento setenta y siete millones trescientos setenta y un mil doscientos veinticinco con

veintitres euros (EUR

7.177.361.225,23) para las

COLREN, S.L., (hereinafter, the "Pledgor"), a company duly incorporated and existing under the laws of Spain, with registered offices at Avenida Diagonal 532, Barcelona and Tax Identity Number B-65020067, duly represented by [•], of legal age, with National Identity Card number [•] currently in force, duly empowered for these purposes by virtue of [•1.

And on the other hand,

RIOFISA, S.A., (hereinafter, the "Company"), a company duly incorporated and existing under the laws of Spain, with registered offices at Avenida Diagonal 532, Barcelona and Tax Identity Number A-48070635, duly represented by [•], of legal age, with National Identity Card number [•] currently in force, duly empowered for these purposes by virtue of [•].

WHEREAS

I. On April 12, 2007, Inmobiliaria Colonial, S.A. (hereinafter, "Colonial"), as borrower, Dehesa de Valme, S.L., Urbaplan 2001, S.A. and Entrenncleos Desarrollo Inmobiliario, S.L. as

guarantors (hereinafter, the  
"Guarantors") and Goldman Sachs Credit Partners (Europe) Ltd ("GSCP", formerly denominated Portfolio Acquisition 1 Ltd which subsequently transferred its participation to Goldman Sachs International Bank), RBS, Eurohypo AG, Sucursal en Espana ("Eurohypo") and Calyon, Sucursal en Espana ("Calyon"), as lenders, amongst others, entered into a facility agreement for an amount of seven thousand one hundred and seventy seven million three hundred and sixty one thousand two hundred and twenty point twenty three euros (EUR 7,177,361,225.23) for the purposes referred to in such facility agreement, governed by the laws of

finalidades que en dicho contrato se indican, sujeto a la legislation inglesa e intervenido por el Notario de Madrid D. Fernando Molina Stranz (en lo sucesivo, el "Contrato de Credit() Senior Original").

1. Que, en garantia del integro y puntual cumplimiento de todas las obligations asumidas por Colonial bajo el Contrato de Credit) Senior Original, y con la intervention del Notario de Madrid. Fernando Molina Stranz, con fecha 7 de agosto de 2007, Colonial constituyo, a favor de las entidades acreditantes bajo el Contrato de Credito Senior Original, un derecho real de prenda sobre cuarenta y cuatro millones ochocientas sesenta y cuatro mil

trescientas treinta y cinco  
(44.864.335) acciones ordinarias de la Sociedad, de la misma clase, representativas de un noventa y nueve coma cuarenta y uno por ciento (99,41%) de su capital social (las "Acciones"), en dicho moment() representadas mediante anotaciones en cuenta y admitidas a cotizacion oficial en las Bolsas de Madrid, Barcelona, Bilbao y Valencia (en lo sucesivo, la "Prenda Senior" y la poliza en virtud de la cual la misma the constituida, la "Poliza de Prenda Senior").

1. Que, con fecha 18 de septiembre de 2007, Colonial y las entidades acreditantes bajo el Contrato de Credito Senior Original que a esa fecha formaban parte del

correspondiente sindicato  
suscribieron un contrato de novacion y refundicion del Contrato de Credito Senior Original en virtud del cual se dio nueva redaction al Contrato de Credito Senior Original, el importe maxim° qued6 establecido en seis mil ciento ocho millones qninientos setenta y seis mil ciento cuarenta y dos euros con siete c6ntimos (EUR

England and attested by the Notary of Madrid Mr. Fernando Molina Stranz (hereinafter, the "Original Senior Facilities Agreement").

H. As security for the full and timely compliance with all obligations undertaken by Colonial under the Original Senior Facilities Agreement and with the intervention of Mr. Fernando Molina Stranz, Notary in Madrid, on 20 September 2007 Colonial granted in favour of the lenders under the Original Senior Facilities Agreement an in rem right of pledge over forty four million eight hundred and sixty four thousand three hundred and thirty five (44,864,335) shares of the Company, of the same class, representing ninety nine point forty one per cent (99.41%) of its share capital (the "Shares"), being at that point in time represented by means of book entries and listed in the Stock Exchanges of Madrid, Barcelona, Bilbao and Valencia (hereinafter, the "Senior Pledge" and the deed by virtue of which it was created, the "Deed of Senior Pledge").

III. On 18 September 2007, Colonial and the lenders under the Original Senior Facilities Agreement which belonged to the relevant syndicate at that point in time entered into an amendment and restatement agreement in respect of the Original Senior Facilities Agreement by virtue of which the Original Senior Facilities Agreement was restated, the maximum amount been established in six thousand one hundred and eight million five hundred and seventy six thousand one hundred and forty two euros and seven cents (EUR 6,108,576,142.07) and the Guarantors

6.108.576.142,07) y los Garantes dejaron de ser parte del mismo, sujeto a la legislacion inglesa e intervenido por el Notario de Madrid

D. Fernando Molina Stranz (en lo sucesivo, el "Primer Contrato de

Novacion del Credito Senior").

1. Que, con fecha 18 de septiembre de 2007, Colonial, como acreditada, y GSCP (que cedi6 posteriormente su posici6n contractual a GS European Investment Group II Ltd, "GSEIGII"), RBS, Eurohypo y

Calyon, como acreditantes,  
suscribieron, entre otros, un contrato de fmanciacion subordinada por importe de mil millones de euros (EUR 1.000.000.000) para las finalidades que en dicho contrato se indican, sujeto a la legislacion inglesa e intervenido por el Notario de Madrid D. Fernando Molina Stranz (en lo sucesivo, segan ha sido modificado conforme a la Carta de Modificacion que se define mas adelante, el "Contrato de Credit° Junior Original").

1. Que con fecha 18 de septiembre de 2007, el Agente de Garantias y Colonial, entre otros, celebraron un contrato denominado *Intercreditor Agreement* que regula las relaciones entre los distintos acreedores de Colonial (en lo sucesivo, el "Contrato entre Acreedores Original").
2. Que, con fecha 18 de septiembre de 2007, se modifico la Poliza de Prenda Senior mediante el otorgamiento de una poliza intervenida por el Notario de Madrid

D. Fernando Molina Stranz, a los efectos de que la Prenda Senior garantice las obligaciones de los obligados *(Obligors)* bajo el Contrato de Credit() Senior Original (segdn el mismo fue modificado conforme al Primer Contrato de Novacion del

ceased to be a party thereto, governed by the laws of England and attested by the Notary of Madrid Mr. Fernando Molina Stranz (hereinafter, the "First Senior Amendment Agreement").

1. On 18 September 2007, Colonial, as borrower, and GSCP (who subsequently transferred its contractual position to GS European Investment Group II Ltd, "GSEIGII"), RBS, Eurohypo and Calyon, as lenders, amongst others, entered into a junior facility agreement for an amount of one thousand million euros (EUR 1,000,000,000) for the purposes referred to in such facility agreement, governed by the laws of England and attested by the Notary of Madrid Mr. Fernando Molina Stranz (hereinafter, as amended pursuant to the Amendment Letter defined below, the

"Original Junior Facility  
Agreement").

C

1. That on 18 September 2007, the Security Agent and Colonial, among others, entered into an agreement referred to as the Intercreditor Agreement, which governs the relationships between Colonial 's various creditors (hereinafter, the "Original Intercreditor Agreement").
2. On 18 September 2007, the Deed of Senior Pledge was amended by virtue of the execution of a deed attested by the notary of Madrid Mr. Fernando Molina Stranz so that the Senior Pledge secures the obligations of the Obligors under the Original Senior Facilities Agreement (as amended in accordance with the First Senior Amendment Agreement), and, on the other hand, a first ranking pledge over the Shares concurrent with the Senior Pledge (hereinafter, the "Junior

Credit() Senior), y, a su vez, se constituyo a favor de las entidades acreditantes bajo el Contrato de Credit° Junior Original (a traves del Agente de Garantias), un derecho real de prenda sobre las Acciones de primer rango concurrente con la Prenda Senior (en lo sucesivo, la "Prenda Junior"), en garantia del cumplimiento de las obligations asumidas por los *Obligors* bajo el Contrato de Credit° Junior Original (en adelante, la "Primera Novacion de la Prenda Senior" o la "Poliza de Prenda Junior"), y se hizo entrega al Agente de Garantias de un certificado emitido en esa misma fecha por Banco Popular Espanol, S.A., en su condicion de entidad depositaria de las Acciones, acreditando la inscription en sus registros de los derechos reales de prenda constituidos sobre las mismas en virtud de la Poliza de Prenda Senior y la Poliza de Prenda Junior (el "Certificado de Prenda").

1. Con fecha 30 de noviembre de 2007, Caja de Ahorros de Valencia, Castellon y Alicante, Banco Popular Espanol, S.A., Banco de Valencia, S.A., ING Real Estate Finance SE E.F.C., S.A., Caixa d'Estalvis de Catalunya, Caja de Ahorros y Monte de Piedad de Madrid y Deutsche Postbank AG adquirieron la condicion de prestamistas *(Lenders)* bajo el Contrato de Credit() Senior Original (segtin el mismo fue modificado en virtud del Primer Contrato de Novacion del Credit() Senior) mediante la suscripcion de

los correspondientes *transfer*

*certificates* intervenidos por el  
Notario de Madrid Mr. Fernando Molina Stranz.

1. Que, con fecha 5 de junio de 2008, se otorgO una carta denominada *Amendment and Waiver Letter* (en adelante, la "Carta de

Pledge") was created in favour of the lenders under the Original Junior Facility Agreement (through the Security Agent) as security for the fulfilment of all the obligations of the Obligors under the Original Junior Facility Agreement (hereinafter, the "First Amendment of the Senior Pledge" or the "Deed of Junior Pledge"), and a certificate issued on that same date by Banco Popular Espanol, S.A., in its capacity as custodian of the Shares, and evidencing the registration in their records of the in rem rights of pledge created over the Shares by virtue of the Deed of Senior Pledge and the Deed of Junior Pledge, was delivered to the Security Agent (the "Pledge Certificate").

1. On 30 November 2007, Caja de Ahorros de Valencia, Castellon y Alicante, Banco Popular Espanol, S.A., Banco de Valencia, S.A., ING Real Estate Finance SE E.F.C., S.A., Caixa d'Estalvis de Catalunya, Caja de Ahorros y Monte de Piedad de Madrid and Deutsche Postbanlc AG became Lenders under the Original Senior Facilities Agreement (as amended in accordance with the First Senior Amendment Agreement) by means of the execution of the corresponding assignment agreements attested by the same Notary.
2. On 5 June 2008, an Amendment and Waiver Letter (hereinafter, the "Amendment Letter") was granted by virtue of which certain definitions

Modificacion") en virtud de la cual se modificaron algunas definiciones incluidas en el Contrato de Credit() Senior Original (segue el mismo fue modificado en virtud del Primer Contrato de Novacion del Credito Senior) y en el Contrato de Credito Junior Original.

IX. Que, como consecuencia de la exclusion de negociacion de las Acciones en las Bolsas de Valores de Madrid, Barcelona, Bilbao y Valencia y del Sistema de Interconexion Bursatil, asi como la reversion de las anotaciones en cuenta representativas de las Acciones y su transformacion en titulos nominativos, con fecha 13 de junio de 2008 se otorg6 una nueva poliza de novacion de la Poliza de Prenda Senior (segan la misma fue modificada y refimdida en virtud de la Primera Novacion de la Prenda Senior) intervenida por el Notario de Madrid D. Fernando Molina Stranz (la "Segunda Novacion de la Prenda Senior"), y conforme a los terminos de la cual el Agente de Garantias devolvi6 el Certificado de Prenda a Banco Popular Espafiol, S.A. y Colonial a su vez hizo entrega al Agente de Garantias de un titulo multiple representativo de las Acciones (en lo sucesivo, el "Titulo Multiple Existente"). Las partes hacen constar que en la actualidad, las Acciones se corresponden con las acciones de la Sociedad numeradas correlativamente del [.] al [..], de EUR [.] valor nominal cada una, representativas de un cien por cien (100%) del capital social de la Sociedad.

A efectos aclaratorios, las partes hacen constar que en virtud de la poliza de Segunda Novacion de la Prenda Senior, tambien se modifico la Poliza de Prenda Junior.

included in the Original Senior Facilities Agreement (as amended and restated pursuant to the First Senior Amendment Agreement) and in the Original Junior Facility Agreement were amended.

IX. As a consequence of the exclusion of the Shares from listing in the Madrid, Barcelona, Bilbao and Valencia Stock Exchanges and from the Stock Exchanges Interconnection System, and also as a result of the reversal of the book-entries representing the Shares and their conversion into registered shares, on 13 June 2008 a new deed of amendment of the Senior Deed of Pledge (as amended and restated in accordance with the First Amendment of the Senior Pledge) was granted and attested by the Notary of Madrid Mr. Fernando Molina Stranz (the "Second Amendment of the Senior Pledge"), and pursuant to the terms of which the Security Agent returned the Pledge Certificate to Banco Popular Espafiol, S.A. and Colonial delivered a share certificate representing the Shares to the Security Agent (hereinafter, the "Existing Share Certificate"). The parties hereto attest that so as to today's date, the Shares correspond to the shares of the Company numbered [•] to [•], both inclusive, of EUR [.] par value each, representing one hundred per cent (100%) of the Company's share capital.

For the sake of clarity, the parties hereto attest that the Deed of Junior Pledge was amended by virtue of the deed of Second Amendment of the Senior Pledge.

1. Que con fecha 14 de septiembre de 2008, Colonial y las entidades acreditantes que formaban parte de los correspondientes sindicatos a esa fecha, entre otros, firmaron un acuerdo para la reestructuracion de la deuda de Colonial y al amparo del cual se modificarian el Contrato de Crddito Senior Original y el Contrato de Credit° Junior Original segim se explica en los Expositivos siguientes (en lo sucesivo, el "Primer Contrato de Reestructuracion").
2. Que, el 14 de septiembre de 2008 Colonial y las entidades acreditantes que formaban parte del correspondiente sindicato a esa fecha, entre otros, suscribieron, al amparo del Primer Contrato de Reestructuracion, un contrato de novacion y refundicion del Contrato de Credit° Senior Original, sepia el mismo fue modificado en virtud del Primer Contrato de Novacion del Credit° Senior y la Carta de Modification, el cual fue intervenido por el Notario de Madrid D. Fernando Molina Stranz (en lo sucesivo, el "Segundo Contrato de Novacion del Credit° Senior").
3. Que, el 14 de septiembre de 2008, Colonial y las entidades acreditantes que formaban parte del correspondiente sindicato a esa fecha, entre otros, suscribieron, al amparo del Primer Contrato de Reestructuracion, un contrato de novacion y refundici6n del Contrato de Credit° Junior Original tal y como el mismo ha sido modificado y refundido en virtud de la Carta de Modification, el cual fue intervenido por el Notario de Madrid D. Fernando Molina Stranz (en lo sucesivo, el "Primer Contrato de Novacion del Credit() Junior").
4. Que, el 14 de septiembre de 2008,

X. On 14 September 2008, Colonial and the lenders which belonged to the relevant syndicates at that point in time, amongst others, entered into an agreement for the purpose of restructuring Colonial 's financial indebtedness, by virtue of which the Original Senior Facilities Agreement and the Original Junior Facility Agreement as described in the Whereas below were amended (hereinafter, the "First Restructuring Agreement").

XL On 14 September 2008, Colonial and the lenders which belonged to the relevant syndicate at that point in time, amongst others, entered into, in the framework of the First Restructuring Agreement, an amendment and restatement agreement in respect of the Original Senior Facilities Agreement, as amended pursuant to the First Senior Amendment Agreement and the Amendment Letter, which was attested by the Notary of Madrid Mr. Fernando Molina Stranz (hereinafter, the "Second Senior Amendment Agreement").

1. On 14 September 2008, Colonial and the lenders which belonged to the relevant syndicate at that point in time, amongst others, entered into, in the framework of the First Restructuring Agreement, an amendment and restatement agreement in respect of the Original Junior Facility Agreement as amended and restated by virtue of the Amendment Letter, which was attested by the Notary of Madrid Mr. Fernando Molina Stranz (hereinafter, the "First Junior Amendment Agreement").
2. On 14 September 2008, Colonial and

Colonial y el Agente de Garantias, the Security Agent granted a deed of

entre otros, otorgaron una poliza de ratificacion de la POliza de Prenda Senior (segan la misma fue modificada y refundida en virtud de la Primera Novacion de la Prenda Senior y la Segunda Novacion de la Prenda Senior) ante el Notario de Madrid D. Fernando Molina Stranz (en lo sucesivo, la "Primera Rafificacion de la Poliza de Prenda Senior").

A efectos aclaratorios, las partes hacen constar que en virtud de la pOliza de Primera RatificaciOn de la Poliza de Prenda Senior, tambidn se ratified la Poliza de Prenda Junior (segnn la misma fue modificada y refundida en virtud de la poliza de Segunda Novacion de la Prenda Senior).

1. Que con fecha 6 de octubre de 2008, el Agente de Garantias y Colonial, entre otros, suscribieron un contrato de novacion y refundicion del Contrato de entre Acreedores Original (en lo sucesivo, el "Contrato de Novacion del Contrato entre Acreedores").

En lo sucesivo, el Contrato entre Acreedores Original tal y como el mismo fue modificado por el Contrato de Novacion del Contrato entre Acreedores se denominara. el "Contrato entre Acreedores".

1. Que el 15 de octubre de 2008, Colonial y las entidades acreditantes que formaban parte del correspondiente sindicato a esa fecha, entre otros, suscribieron un nuevo contrato de novacion del Contrato de Credito Senior Original, tal y como el mismo ha sido modificado y refundido en virtud del Primer Contrato de Novacion del Credito Senior, la Carta de Modificacion y el Segundo Contrato de Novacion del Credito Senior, el

ratification of the Deed of Senior Pledge (as amended and restated in accordance with the First Amendment of the Senior Pledge and the Second Amendment of the Senior Pledge) before Notary of Madrid Mr. Fernando Molina Stranz (hereinafter, the "First Ratification of the Deed of Senior Pledge").

For the sake of clarity, the parties hereto attest that the Deed of Junior Pledge (as amended and restated in accordance with the deed of Second Amendment of the Senior Pledge) was ratified by virtue of the deed of First Ratification of the Deed of Senior Pledge.

1. That on 6 October 2008, the Security Agent and Colonial, among others, entered into an amendment and restatement agreement in respect of the Original Intercreditor Agreement

(hereinafter, the "Intercreditor  
Amendment Agreement").

Hereinafter the Original Intercreditor Agreement as amended and restated by

the Intercreditor Amendment  
Agreement will be referred to as the "Intercreditor Agreement".

1. On this same date, Colonial and the lenders which belonged to the relevant syndicate at that point in time, amongst others, entered into an amendment agreement in respect of the Original Senior Facilities Agreement, as amended and restated by virtue of the First Senior Amendment Agreement, the Amendment Letter and the Second Senior Amendment Agreement, which is governed by the laws of England and was attested by the Notary of Madrid Mr. Fernando Molina Stranz

cual esta sujeto a la legislation inglesa y fue intervenido por el Notario de Madrid D. Fernando Molina Stranz (en lo sucesivo, el "Tercer Contrato de Novacion del Credit() Senior").

1. Que, el 15 de octubre de 2008, Colonial y el Agente de Garantias, entre otros, otorgaron una poliza de ratificaci6n de la Poliza de Prenda Senior (segue la misma fue modificada y ratificada, segiin sea el caso, en virtud de la Primera Novacion de la Prenda Senior, la Segunda Novacion de la Prenda Senior y la Primera Ratificaci6n de la Poliza de Prenda Senior) ante el Notario de Madrid D. Fernando Molina Stranz (en lo sucesivo, la "Segunda Ratification de la Poliza de Prenda Senior").

A efectos aclaratorios, las partes hacen constar que en virtud de la poliza de Segunda Ratification de la Poliza de Prenda Senior, tambien se ratifico la Poliza de Prenda Junior (segue la misma the modificada y ratificada, segan sea el caso, en virtud de la poliza de Segunda Novacion de la Prenda Senior y la poliza de Primera Ratification de la Poliza de Prenda Senior).

1. Que el 15 de octubre de 2008, Colonial y las entidades acreditantes

que formaban parte del  
correspondiente sindicato a esa fecha, entre otros, suscribieron un nuevo contrato de novacion del Contrato de Credit° Junior Original, tal y como el mismo ha sido modificado y refundido en virtud de la Carta de Modification y el Primer Contrato de Novacion del Credit() Junior, el cual esta sujeto a la legislation inglesa y fue intervenido por el Notario de Madrid D. Fernando Molina Stranz (en lo sucesivo, el "Segundo Contrato de

(hereinafter, the "Third Senior Amendment Agreement").

1. On 15 October 2008, Colonial and the Security Agent granted a deed of ratification of the Deed of Senior Pledge (as amended and ratified, as applicable, in accordance with the First Amendment of the Senior Pledge, the Second Amendment of the Senior Pledge and the First Ratification of the Deed of Senior Pledge) before Notary of Madrid Mr. Fernando Molina Stranz (hereinafter, the "Second Ratification of the Deed of Senior Pledge").

For the sake of clarity, the parties hereto attest that the Deed of Junior Pledge (as amended and ratified, as applicable, in accordance with the deed of Second Amendment of the Senior Pledge and the deed of First Ratification of the Deed of Senior Pledge) was ratified by virtue of the deed of Second Ratification of the Deed of Senior Pledge.

1. On this same date, Colonial and the lenders which belonged to the relevant syndicate at that point in time, amongst others, entered into an amendment agreement in respect of the Original Junior Facility Agreement, as amended and restated by virtue of the Amendment Letter and the First Junior Amendment Agreement, which is governed by the laws of England and was attested by the Notary of Madrid Mr. Fernando Molina Stranz (hereinafter, the "Second Junior Amendment Agreement").

**Novacion del Credito Junior").**

En lo sucesivo, el Contrato de Credito Junior Original, tal y como el mismo fue modificado y refundido en virtud de la Carta de Modificacion, el Primer Contrato de Novacion del Credit() Junior y el Segundo Contrato de Novacion del Credito Junior se denominard el **"Contrato de Credito Junior Modificado".**

Hereinafter, the Original Junior Facility Agreement, as amended and restated by virtue of the Amendment Letter, the First Junior Amendment Agreement and the Second Junior Amendment Agreement, will be referred to as the

**"Amended Junior Facility  
Agreement".**

Que con fecha 30 de diciembre de 2008 se produjo la emisiOn por parte de Colonial de las Obligaciones Convertibles *(Convertible Notes,* segun este termino se definia en el Contrato de Credito Senior Original, segim el mismo fue modificado en virtud del Tercer Contrato de Novacion del Credito Senior, el Contrato de Credit() Junior Modificado y el Primer Contrato de Reestructuracion), y, por lo tanto, como consecuencia de la suscripcion de parte de las mismas por RBS, GSEIGII, Calyon y Eurohypo, y de conformidad con lo previsto en la Clausula 3.4 del Primer Contrato de Reestructuracion, se exting-uio en su totalidad la deuda bajo el Contrato de Credito Junior Modificado, por lo que automaticamente se cancelo la Prenda Junior constituida en garantia de dicha deuda (manteniendose en vigor a todos los efectos la Prenda Senior (segfm fue modificada de conformidad con los Expositivos anteriores) constituida en garantia de las obligaciones bajo el Contrato de Credito Senior Original, segfin el mismo fue modificado en virtud del Tercer Contrato de Novacion del Credito Senior). Adicionalmente, como consecuencia de la suscripcion de parte de las Obligaciones Convertibles por Banco Popular Espanol, S.A., se extinguio la totalidad de la deuda correspondiente a dicha entidad bajo el Contrato de

**XVIII.** On 30 December 2008, Colonial issued the Convertible Notes (as defined in the Original Senior Facilities Agreement, as amended by virtue of the Third Senior Amendment Agreement, the Amended Junior Facility Agreement and the First Restructuring Agreement), and, therefore, as a consequence of the subscription of part of the Convertible Notes by RBS, GSEIGII, Calyon and Eurohypo, and in accordance with Clause 3.4 of the First Restructuring Agreement, the debt under the Amended Junior Facility Agreement was extinguished in full, and thus the Junior Pledge created as security for such debt was automatically cancelled (although the Senior Pledge (as amended in accordance with the Whereas above) created as security for the obligations under the Original Senior Facilities Agreement, as amended by virtue of the Third Senior Amendment Agreement, will remain in full force an effect). In addition, as a consequence of the subscription of part of the Convertible Notes by Banco Popular Espanol, S.A., the debt under the Original Senior Facilities Agreement, as amended by virtue of the Third Senior Amendment Agreement, corresponding to that entity was extinguished.

Credit° Senior Original, segan el mismo fue modificado en virtud del Tercer Contrato de NovaciOn del Credit° Senior.

1. Que el [•] la Sociedad otorgo una escritura de cambio de domicilio social ante el notario de [o], D. [o], con el numero [•] de su protocolo, debidamente inscrita en el Registro Mercantil, en virtud de la cual la Sociedad traslado su domicilio social a Barcelona (el "Cambio de Domicilio Social").
2. Con fecha 4 de diciembre 2009, Goldman Sachs International Bank cedio integramente su participaci6n bajo el Contrato de Credit() Senior Original, segan fue modificado en virtud del Tercer Contrato de Novacion del Credit° Senior, a Coral Partners (Lux) S.a.r.l. mediante la suscripcion del correspondiente

*transfer certificate, y como*resultado, Coral Partners • (Lux) S.a.r.l. adquirio la condicion de prestamista *(Lender)* bajo el Contrato de Credit° Senior Original, segan fue modificado en virtud del Tercer Contrato de Novacion del Credit() Senior.

1. Que el [•] el Pignorante otorgo una escritura de ampliaciOn de capital social ante el notario de [•], D. [0], con el numero [•] de su protocolo, debidamente inscrita en el Registro Mercantil (la "Escritura de Titularidad"), cuyas participaciones sociales emitidas ban sido integramente suscritas por Colonial y cuyo contravalor es una aportacion no dineraria consistente en las Acciones, conforme a la cual el Pignorante ha pasado a ser el nuevo propietario de las Acciones. En adelante, la transtnision de las Acciones operada en virtud de la Escritura de Titularidad sera.
2. On [•], the Company granted a public deed of change of corporate address before the notary of [0] Mr. [o], with number [•] of his records, duly registered with the Mercantile Registry, by virtue of which the Company moved its corporate address to Barcelona (the "Change of Corporate Address").
3. On 4 December 2009, Goldman Sachs International Bank fully assigned its participation under the Original Senior Facilities Agreement, as amended by the Third Senior Amendment Agreement, to Coral Partners (Lux) S.a.r.l. by means of the execution of the corresponding transfer certificate and, as a result, Coral Partners (Lux) S.a.r.l. became Lender under the Original Senior Facilities Agreement, as amended by the Third Senior Amendment Agreement.
4. On [.], the Pledgor granted a public deed of share capital increase before the notary of [•] Mr. [•], with number [•] of his records, duly registered with the Mercantile Registry (the "Deed of

Ownership") which issued  
participations have been fully subscribed by Colonial and which counter value is the non-monetary contribution consisting on the Shares, according to which the Pledgor has become the owner of the Shares. Hereinafter, the transfer of the shares documented in the Deed of Ownership shall be referred to as the "Transfer".

denominada la "Transmision".

1. Que el [•], Colonial y las entidades acreditantes que forman parte del correspondiente sindicato, entre otros, firmaron un nuevo acuerdo para la reestructuracion de la deuda de Colonial, elevado a pliblico mediante escritura autorizada por el Notario de Madrid D. [•] (en lo sucesivo, el "Segundo Contrato de Reestructuracion"), y al amparo del cual se modifico el Contrato de Credito Senior Original, segan el mismo the modificado en virtud del Tercer Contrato de Novacion del Credito Senior, y se articule Ia regulacion de parte de la deuda bajo el mismo al amparo de un contrato separado, en los terminos sefialados en el Expositivos posteriores. Asimismo, de conformidad con los terminos del Segundo Contrato de Reestructuracion, se produjo Ia resolucion del Contrato entre Acreedores, extinguiendose por lo tanto cualesquiera derechos y obligaciones de las partes bajo el mismo.
2. Que el [.], Colonial y las entidades acreditantes que forman parte del correspondiente sindicato, entre otros, suscribieron, al amparo del

Segundo Contrato de  
Reestructuracion, un contrato de novacion y refundicion del Contrato de Credito Senior Original, segan el mismo fue modificado en virtud del Tercer Contrato de Novacion del Credito Senior, elevado a priblico mediante escritura autorizada por el Notario de Madrid D. [•] (en lo sucesivo, el "Nuevo Contrato de Novacion del Credito Senior"), y conforme a los terminos del cual se redistribuyeron los antiguos tramos A y B *(Facility A y Facility B)* del referido contrato, junto con los compromisos no dispuestos bajo el denominado tramo Revolving

3001. On [.], Colonial and the lenders which belong to the relevant syndicate, amongst others, entered into a new agreement for the purpose of restructuring Colonial's financial indebtedness, which was raised to the status of a public document before the Notary of Madrid Mr. [•] (hereinafter,

the "Second Restructuring  
Agreement"), by virtue of which the Original Senior Facilities Agreement, as amended by virtue of the Third Senior Amendment Agreement, was amended and which terms provided for the regulation of part of the indebtedness thereunder by virtue of a separate agreement, in accordance with the terms set out in the Whereas below. Likewise, in accordance with the terms of the Second Restructuring Agreement, the

Intercreditor Agreement was  
terminated, and all the rights and obligations corresponding to the parties thereunder extinguished.

XXIII. On [•], Colonial and the lenders which belong to the relevant syndicate, amongst others, have entered into, in the framework of the Second Restructuring Agreement, an amendment and restatement agreement in respect of the Original Senior Facilities Agreement, as amended pursuant to the Third Senior Amendment Agreement, which was raised to the status of a public document before the Notary of Madrid Mr. [•] (hereinafter, the "New Senior Amendment Agreement"), and pursuant to the terms of which the former Facility A, Facility and the undrawn commitments under the Revolving Facility were reallocated, and which were converted into (i) the new Facility A and Facility B under the Original Senior Facilities Agreement as amended and restated in accordance

*(Revolving Facility),* los cuales se transformaron en (i) los nuevos tramos A y B *(Facility A y Facility B)* bajo el Contrato de Credit° Senior Original modificado y refundido conforme a los terminos del Nuevo Contrato de Novacion del Credit° Senior; y (ii) los tramos A y B *(Facility A y Facility B)* bajo un nuevo contrato de financiacion otorgado en esa misma fecha entre el Pignorante, Colonial y el mismo sindicato de entidades acreditantes referido anteriormente, por importe de N, y que fue elevado a publico mediante escritura autorizada por el Notario de Madrid D. [•] (el

"Contrato de Financiacion  
Devco").

1. Que, entre los acuerdos alcanzados en el marco del Segundo Contrato de

Reestructuracion, Colonial, el  
Pignorante y las Partes Garantizadas acordaron que a partir de la fecha de otorgamiento del mismo, el derecho real de prenda creado en virtud de la Poliza de Prenda Senior, sepia fue modificada y ratificada de conformidad con los Expositivos

anteriores, garantizara  
exclusivamente las obligations bajo el Contrato de Financiacion Devco.

1. Como consecuencia del Cambio de Domicilio Social, la Transmision, el otorgamiento del Segundo Contrato de Reestructuracion, el Nuevo Contrato de Novacion del Credit() Senior y el Contrato de FinanciaciOn Devco, la extincion del Contrato de Credit° Junior Modificado y la resolution del Contrato entre Acreedores, las partes adaptaron los terminos de la Poliza de Prenda Senior, segim fue modificada y ratificada de conformidad con los Expositivos anteriores, y por ello, con fecha [•] otorgaron ono poliza

de novacion modificativa,  
subrogation y ratification de prenda,

with the terms of the New Senior Amendment Agreement; and (ii) Facility A and Facility B under a new facilities agreement entered into on that same date between the Pledgor, Colonial and the syndicate of lenders referred to above, for an amount of [•], and which was raised to public document status by means of a deed authorised by the Notary of Madrid Mr. [•] (the "Devco Facilities Agreement").

1. That, amongst the agreements reached within the framework of the Second Restructuring Agreement, Colonial, the Pledgor and the Secured Parties agreed that as from the execution date of the Second Restructuring Agreement, the in rem right of pledge created by virtue of the Senior Deed of Pledge, as amended and ratified in accordance with the Whereas above, secures exclusively the obligations under the Devco Facilities Agreement.
2. As a result of the Change of Corporate Address, the Transfer, the execution of the Second Restructuring Agreement, the New Senior Amendment Agreement and the Devco Facilities Agreement, the extinction of the Amended Junior Facility Agreement and the termination of the Intercreditor Agreement, the parties amended the terms of the Deed of Senior Pledge, as amended and ratified in accordance with the Whereas above, and executed a deed of amendment, subrogation and ratification of pledge dated [•] attested by the Notary of Madrid Mr. [•] (the "Deed of Amendment"), by virtue of which they agreed to amend and restate

intervenida por el Notario de Madrid

D. [•] (la "Poliza de Novacion"), en virtud de la cual acordaron modificar y refundir la Poliza de Prenda Senior. De conformidad con la Poliza de Novacion, se procedio a anular el Titulo Multiple Existente y a su sustitucion por un nuevo titulo multiple nominativo representativo de las Acciones, emitido por la Sociedad a favor del Pignorante con el correspondiente "endoso en garantia" (el "Nuevo Titulo Multiple")

En lo sucesivo, la Poliza de Prenda Senior (i) tal y como la misma ha sido modificada en virtud de la Primera Novacion de la Prenda Senior y la Segunda Novacion de la Prenda Senior, (ii) tal y como la misma ha sido ratificada por la Primera Ratificacion de la Poliza de Prenda Senior y la Segunda Ratificacion de la Poliza de Prenda

Senior y tal y como fue  
modificada y refundida en virtud de la Poliza de Novacion, se denorninara la "Poliza de Prenda".

1. Que de conformidad con lo previsto en la Clausula [8.2(d)] del Contrato de Financiacion Devco, el Pignorante ha notificado al Agente de Garantias su intencion de transmitir las Acciones pignoradas conforme a la Poliza de Prenda, y por lo tanto solicita la cancelacion de la prenda constituida en virtud de la misma.
2. Que en atencion a lo anterior, las partes han acordado formalizar esta poliza de cancelacion de prendas de conformidad con las siguientes

ESTIPULACIONES

the Deed of Senior Pledge. Pursuant to the Deed of Amendment, the Existing Share Certificate was cancelled and replaced by a new share certificate representative of the Shares issued by the Company in favor of the Pledgor with the corresponding "endorsement in guarantee" (the "New Share Certificate").

Hereinafter, the Deed of Senior Pledge (i) as amended in accordance with the First Amendment of the Senior Pledge and the Second Amendment of the Senior Pledge, (ii) as ratified pursuant to the First Ratification of the Deed of Senior Pledge and the Second Ratification of the Deed of Senior Pledge and (iii) as amended and restated pursuant to the Deed of Amendment will be referred to as the "Deed of Pledge".

1. In accordance with Clause [8.2(d)] of the Devco Facilities Agreement, the Pledgor has notified the Security Agent of its intention to transfer the Shares pledged under the Deed of Pledge, and therefore requests the release of the pledge created thereunder.
2. In light of the above, the parties have agreed to execute this deed of release of pledges in accordance with the following

CLAUSES

1. CANCELACION DE PRENDA i. RELEASE OF PLEDGE

1.1 De conformidad con lo previsto en la

Clausula [8.2(d)] del Contrato de Financiacion Devco, el Agente de Garantias, en su propio nombre y derecho y en beneficio del resto de prestamistas *(Lenders)* bajo el Contrato de Financiacion Devco, cancela y libera el derecho real de prenda constituido sobre las Acciones conforme a la Poliza de Prenda.

12 El Agente de Garantias entrega en

este acto al Pignorante el original del Nuevo Titulo Milltiple, requiriendo al Notario interviniente para que proceda a extender en dicho documento la correspondiente diligencia de cancelacion de la referida prenda.

1.3 La Sociedad, en este acto y a naves

de su representante debidamente apoderado, reconoce expresamente y se da por notificada de la cancelaciOn de la prenda sobre las Acciones, y el resto de partes le dan instrucciones expresas para que inscriba la cancelaci6n de la mencionada prenda en el Libro Registro de Acciones Nominativas de la Sociedad.

1. IMPUESTOS Y GASTOS

Todos los impuestos y gastos derivados de la presente poliza serail satisfechos por el Pignorante.

1. LEY APLICABLE JURISDICCION

3.1 Esta poliza se regird e interpretard

de conformidad con la Ley 5/2006, de 10 de mayo, del Libro Quinto del Codigo Civil de Cataluna, relativo a los derechos reales, las normas de derecho foral catalan y, supletoriamente, las normas de

1.1 In accordance with Clause [8.2(d)] of the Devco Facilities Agreement, the Security Agent, in its own name and behalf and in the name and behalf of the rest of the Lenders under the Devco Facilities, hereby cancels and releases the *in rem* right of pledge created over the Shares pursuant to the Deed of Pledge.

*12* The Security Agent delivers to the

Pledgor the original New Share Certificate, instructing the Notary to attest therein the release of the referred pledge.

1.3 The Company, through its duly

authorised representatives, hereby acknowledges and expressly recognises the cancellation of the pledge over the Shares, and the rest of the parties give express instructions to it for recording the release of the above mentioned pledge in the corresponding book-entries registry.

1. TAXES AND EXPENSES

All taxes and expenses arising from the execution of this deed shall be borne by the Pledgor.

1. APPLICABLE LAW AND JURISDICTION

3.1 This deed shall be governed and

construed in accordance with Law 5/2006 of 10 May, of the Fifth Book of the Catalonia Civil Code, relating to in rem security, the

Catalonian laws and,  
supplementary, the general laws of

derecho coman.

3.2 Las partes, con renuncia expresa a

cualquier otro fuero, se someten expresa e irrevocablemente al de los .Tuzgados y Tribunales de la

ciudad de Barcelona, para  
cualesquiera desavenencias que pudieran derivarse de la presente poliza.

4. COPIAS

Spain.

3.2 The parties, hereby waiving their

right to any other jurisdiction, hereby expressly and irrevocably submit themselves to the jurisdiction of the Courts and Tribunals of the city of Barcelona, for the resolution of any dispute that may arise in connection with this deed.

4. COPIES

Las partes solicitan al Notario The parties hereby request to the

interviniente la expedicion de las appearing Notary the issuance of the

siguientes copias de la presente poliza: following copies of this deed:

1. una copia con caracter de titulo (a) a copy with a nature of enforcement

ejecutivo para el Pignorante. title *(titulo ejecutivo)* to be delivered to

the Pledgor.

1. una copia simple para la Sociedad. (b) a simple copy to be delivered to the  
   Company.
2. una copia simple para RBS. (c) a simple copy to be delivered to RBS.

Las partes autorizan expresamente al The parties expressly authorise the

Agente de Garantfas para que solicite la Security Agent to ask for the issuance of

expedicion de copias adicionales con further copies with a nature of

carkter de titulo ejecutivo, si lo estimase enforcement title (titulo *ejecutivo)* if it

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conveniente. deems it appropriate.

*La presente poliza se formaliza con la intervencion del Notario que figura en el encabezamiento, a los efectos de lo previsto en el Articulo 1.216 del Codigo Civil, el Articulo 517 de la Ley de Enjuiciamiento Civil, y dem& legislacidn concordante.*

*Los otorgantes de la presente poliza manifiestan su conformidad y aprobacion al contenido de la misma tal y como aparece redactado, a doble columna, en idioma espariol e ingles, idioma que yo conozco extendida en seis hojas, la otorgan y firman, con mi intervencion.*

*Y yo el Notario, habiendo hecho las oportunas advertencias legales, DOY FE de la identidad de los otorgantes, de la legitimidad de sus firmas, de que a mi juicio tienen la capacidad y legitimacion necesarios para el otorgamiento de la presente poliza, de que el consentimiento ha sido libremente prestado, y de que el otorgamiento se adecua a la legalidad y a la voluntad debidamente informada de los otorgantes o intervinientes.*

THE ROYAL BANK OF SCOTLAND PLC P.P.

[4] [4]

COLREN, S.L. P.P.

[4]

RIOFISA, S.A. P.P.

[4]

Con mi intervencion

[4]

SCHEDULE 12

FORM OF COMPLIANCE CERTIFICATE

To: The Royal Bank of Scotland as Agent From: Cohen, S.L.

Dated:

Inmobiliaria Colonial S.A., and Colren, S.L. — €795,000,000 Facilities Agreement  
dated [•] (the "Facilities Agreement")

Dear Sirs

1. We refer to the Facilities Agreement. This is a Compliance Certificate. Terms  
   defined in the Facilities Agreement have the same meaning when used in this Compliance Certificate unless given a different meaning in this Compliance Certificate.
2. We confirm that:
3. as at the date [30 June/31 December][20•], GAV was [6], Riofisa NAV was [•] and Total Net Debt (excluding any amounts of Financial Indebtedness in respect of any Profit Participative (Convertible Facility PIK) Loans and Profit Participative (Term Facility PIK) Loans) was [•]. Therefore Net Loan to Value as at such Relevant Date was [•] and the percentage threshold contained in paragraph (a) of Clause 26.22 *(Loan to Value)* [has/has not] been exceeded;
4. as at the date [30 June/31 December][20•], GAV was [•], Riofisa NAV was [•] and  
   Total Net Debt was [•]. Therefore Net Loan to Value as at such date was [•] and the percentage threshold contained in paragraph (b)(i) of Clause 26.22 *(Loan to Value)* [has/has not] been exceeded; and
5. as at the date [30 June/31 December][20•], GAV was [.], Riofisa NAV was [•] and Total Net Debt (excluding any amounts of Financial Indebtedness in respect of any Profit Participative (Convertible Facility PIK) Loans and Profit Participative (Term Facility PIK) Loans) was [•]. Therefore Net Loan to Value as at such date was [•] and the percentage threshold contained in paragraph (b)(ii) of Clause 26.22 *(Loan to Value)* [has/has not] been exceeded; and

(c) Excess Cashflow for the financial half year of DevCo ending [30 June/31 December

[•] was [•]. Therefore the Excess Cashflow to be applied in prepayment pursuant to Clause 8.2 *(Proceeds and Excess Cashflow)* will be EUR [•].

Signed

Certifying Officer

SCHEDULE 13

FORM OF INCREASE CONFIRMATION

To: [•] as Agent, and [•] as Borrower and Inmobiliaria Colonial, S.A. as guarantor under

the HoldCo Warrants Guarantee

From: *[the Increase Lender]* (the "Increase Lender") Dated:

Inmobiliaria Colonial S.A., and Colren, S.L. — €795,000,000 Facilities Agreement  
dated [•] (the "Facilities Agreement")

1. We refer to the Facilities Agreement. This agreement (the "Agreement") shall take  
   effect as an Increase Confirmation for the purpose of the Facilities Agreement. Terms defined in the Facilities Agreement have the same meaning in this Agreement unless given a different meaning in this Agreement.
2. We refer to clause 2.7 *(Increase)* of the Facilities Agreement and clause 10.2 of the  
   HoldCo Warrants Guarantee.
3. The Increase Lender agrees to assume and will assume all of the obligations  
   corresponding to the Commitment specified in the Schedule (the "Relevant Commitment") as if it was an Original Lender under the Facilities Agreement.
4. The Increase Lender agrees to assume and will assume all of the obligations  
   corresponding to the Relevant Commitment arising under the HoldCo Warrants Guarantee.
5. The proposed date on which the increase in relation to the Increase Lender and the  
   Relevant Commitment is to take effect (the "Increase Date") is [•].
6. On the Increase Date, the Increase Lender becomes party to the relevant Finance  
   Documents as a Lender.
7. The Facility Office and address, fax number and attention details for notices to the  
   Increase Lender for the purposes of Clause 37.2 *(Addresses)* are set out in the Schedule.
8. The Increase Lender expressly acknowledges the limitations on the Lenders'  
   obligations referred to in paragraph (f) of Clause 2.5 *(Increase).*
9. This Agreement may be executed in any number of counterparts and this has the same  
   effect as if the signatures on the counterparts were on a single copy of this Agreement.
10. This Agreement and any non-contractual obligations arising out of or in connection  
    with it are governed by English law.
11. This Agreement has been entered into on the date stated at the beginning of this  
    Agreement.

Note: The execution of this Increase Confirmation may not be sufficient for the Increase Lender to obtain the benefit of the Transaction Security in all jurisdictions. It is the responsibility of the Increase Lender to ascertain whether any other documents or other formalities are required to obtain the benefit of the Transaction Security in any jurisdiction and, if so, to arrange for execution of those documents and completion of those formalities.

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THE SCHEDULE

Relevant Commitment/rights and obligations to be assumed by the Increase Lender  
*[insert relevant details]*

*[Facility Office address, fax number and attention details for notices and account details for*

*payments]*

[Increase Lender] By:

This Agreement is accepted as an Increase Confirmation for the purposes of the Facilities Agreement by the Agent and the Increase Date is confirmed as [•].

Agent By:

This Agreement is countersigned by Inmobiliaria Colonial, S.A. as guarantor under the HoldCo Warrants Guarantee in acknowledgement and agreement that its obligations under the HoldCo Warrants Guarantee extend, from the Increase Date, to the Increase Lender with respect to that part of the Relevant Commitment which is Convertible Facility Commitment.

INMOBILIARIA COLONIAL, S.A.

By:

SIGNATURES

TFIE BORROWERS

INMOBILIARIA COLONIAL, S.A.

By:

Address: Avenida Diagonal 532 08006 Barcelona Spain

Fax: +34 93 404 7975

Attention: Carmina Ganyet I Cirera and Angels Arderiu Ibars

COLREN, Si.

By:

Address: Avenida Diagonal 532 08006 Barcelona Spain

Fax: +34 93 404 7975

Attention: Carmina Ganyet I Cirera and Angels Arderiu lbars

THE ARRANGERS

CALYON, SUCURSAL EN ESPANA

By:

CORAL PARTNERS (LUX) S.A.R.L.

By:

EUROHYPO AG, SUCURSAL EN ESPARA

By:

THE ROYAL BANK OF SCOTLAND PLC

By:

THE AGENT

THE ROYAL BANK OF SCOTLAND PLC

By:

*Operational matters*

Address: RBS Global Banking & Markets

2" Floor, Bankside 3 90-100 Southwark Street

London SE1 OSW

Attention: Loans Administration / LAU  
Fax Number: +44(0) 20 7615 7673

*Non-operational matters*

Address: The Royal Bank of Scotland plc

Level 5

135 Bishopsgate London EC2M 3UR

|  |  |  |  |
| --- | --- | --- | --- |
| Attention: Steve Swann |  |  |  |
| Telephone Number: +44(0) | 20 | 7085 | 3808 |
| [Email: steve.swann@rbs.com](mailto:steve.swann@rbs.com) |  |  |  |
| Sarah Kushin |  |  |  |
| Telephone Number: +44(0) | 20 | 7085 | 3816 |

Email: [sarah.lcushinarbs.com](http://sarah.lcushinarbs.com)

THE SECURITY AGENT

THE ROYAL BANK OF SCOTLAND PLC

By:

Address: The Royal Bank of Scotland plc

Level 5

135 Bishopsgate London EC2M 3UR

Attention: Steve Swami

Telephone Number: +44(0) 20 7085 3808 Email: [steve.swannarbs.com](http://steve.swannarbs.com)

Sarah Kushin

Telephone Number: +44(0) 20 7085 3816 [Email: sarah.lcushin@rbs.com](mailto:sarah.lcushin@rbs.com)

THE ORIGINAL LENDERS

CALYON, SUCURSAL EN ESPASA

By: Address: Fax:

EUROHYPO AG, SUCURSAL EN ESPA5IA

By: Address: Fax:

CORAL PARTNERS (LUX) S.A.R.L

By:

Address: Fax:

THE ROYAL BANK OF SCOTLAND PLC.

By:

Address: Fax:

DEUTSCHE POSTBANK AG

By:

Address: Fax:

ING REAL ESTATE FINANCE SE, E.F.C, S.A.

By: Address: Fax:

CAJA DE AHORROS Y MONTE DE PIEDAD DE MADRID

By: *1.*

Address: Fax:

CAJA DE AHORROS DE VALENCIA, CASTELLON Y ALICANTE

By:

Address: Fax:

BANCO DE VALENCIA, S.A

By:

Address: Fax:

CADCA D'ESTALVIS DE CATALUNYA

By: Address: Fax:

CAJA DE AHORROS Y MONTE DE PIEDAD DE GUIPUZKOA Y SAN SEBASTIAN

By:

Address: Fax:

The parties execute a sole original copy of this Agreement and deliver it to the Notary of Madrid Mr. Fernando Molina Stranz for immediate notarisation by the granting by the parties and the Notary of the appropriate public deed of notarisation (escritura de elevacion a publico).

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