**CLI FFOND**

**CLIFFORD CHANCE LLP**

**CHANCE**

EXECUTION VERSION

DATED 3 SEPTEMBER 2014

NEVIS MIDCO S.A R.L.  
AS PARENT  
ARRANGED BY  
PARLEX 6 LUX FINCO, S.A R.L

UP TO EUR72,000,000

REFINANCING FACILITIES AGREEMENT  
RELATING TO THE ACQUISITION OF THE NASSICA  
SHOPPING CENTRE, SPAIN AND THE VISTA  
ALEGRE RETAIL PARK, SPAIN

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**THIS AGREEMENT** is dated 3 September 2014 and made **between:**

1. **NEVIS MIDCO S.A R.L.,** a private limited liability company *(société a responsabilité limitée)* incorporated under the laws of Luxembourg with its registered office at 61, rue de Rollingergrund, L-2440 Luxembourg being registered with the Register of Commerce and Companies in Luxembourg under number B188.952 and with a share capital of EUR12,500 as the parent of the Obligors (the **"Parent");**
2. **NEVIS DUTCH HOLDCO B.V.,** a private company with limited liability *(besloten vennootschap met beperkte aansprakelijkheid)* incorporated under the laws of The Netherlands, having its seat *(zetel)* in Amsterdam and its address at De Boelelaan 7, 1083HJ Amsterdam, The Netherlands and with Chamber of Commerce registration number 61251623 **("Dutch Holdco");**
3. **PARLEX 6 LUX FINCO, S.A R.L.,** a private limited liability company *(société a  
   responsabilité limitée)* incorporated under the laws of Luxembourg with its registered office at 6, rue Eugene Ruppert, L-2453 Luxembourg being registered with the Register of Commerce and Companies in Luxembourg under number B 198762 and with a share capital of EUR12,500 as mandated lead arranger of this Facility (the **"Arranger");**
4. **THE PERSONS** listed in Part 1 of Schedule 1 *(Original Lenders and Property)* (the **"Original Lenders");**
5. **MOUNT STREET MORTGAGE SERVICING LIMITED** as agent of the other Finance Parties (the **"Agent");** and
6. **MOUNT STREET MORTGAGE SERVICING LIMITED** as security trustee for the Secured Parties (the **"Security Agent").**

**IT IS AGREED** as follows:

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**SECTION 1**

**INTERPRETATION**

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In each Finance Document: **"Account"** means:

1. the Capex Reserve Account;
2. each Deposit Account;
3. each Disposals Account;
4. each General Account;
5. each Rent Account;
6. each Cash Trap Account; and
7. each Service Charge Account. **"Account CS Date"** means 1 October 2014. **"Acquisition"** means, each of:
8. the acquisition of the Target Shares; and
9. the acquisition of the Nassica Land Plot,

in each case, in accordance with the relevant Acquisition Documents and the Tax Structure Report.

**"Acquisition Agreement"** means the promise of sale and purchase agreement dated 11 June 2014 relating to the Acquisition between the Vendor as seller, the Vendor Guarantor as guarantor and the Ultimate Parent as buyer (including each exhibit thereto) as amended by a variation agreement dated on or around the date of this Agreement between the same parties, in each case, in the form approved by the Agent in accordance with Clause 4.1 *(Initial Conditions Precedent)* as such form may be amended, varied or supplemented in accordance with Clause 22.12 *(Other Transaction Documents).*

**"Acquisition Costs"** means, in relation to an acquisition, the aggregate costs incurred by an Obligor in connection with such acquisition, including (without double-counting):

(a) any fees, costs and expenses, stamp registration and other Taxes (other than

VAT) incurred by any Obligor in connection with:

(i) the acquisition of the relevant asset; and/or

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(ii) the Finance Documents; and

|  |  |
| --- | --- |
|  | any amounts which are required to be applied by an Obligor in refinancing (or on-lending to a Target Company amounts for the purposes of refinancing) the existing financial indebtedness of a Target Company (including, without limitation, hedge termination costs, break costs and any other fees, costs and expenses in relation thereto); and/or |

1. any amount which is required to be paid by an Obligor to the Vendor or Neinver S.A. by way of purchase price in connection with an Acquisition.

**"Acquisition Documents"** means each of:

1. the Acquisition Agreement;
2. the Tax Indemnity Letter;
3. an assignment agreement relating to the contractual rights of the Ultimate Parent as buyer under the Acquisition Documents listed in paragraphs (a) and (b) above, entered into or to be entered into between the Ultimate Parent as assignor and Dutch Holdco as assignee in the form specified in clause 14.10 *(Assignment)* of the Acquisition Agreement;
4. a deed of sale and transfer of shares in the capital of the Nassica Holdco entered into or to be entered into between, amongst others, the Vendor, Dutch Holdco and the Nassica Holdco;
5. a deed of sale and transfer of shares in the capital of the Vista Alegre Holdco entered into or to be entered into between, amongst others, the Vendor, Dutch Holdco and the Vista Alegre Holdco;
6. an assignment notice and/or agreement in respect of IGL1 and/or IGL3 (each  
   as defined in the Acquisition Agreement) duly executed by, amongst others, the Vendor and the Nassica Propco (if any);
7. an assignment notice and/or agreement in respect of IGL2 and/or IGL4 (each  
   as defined in the Acquisition Agreement) duly executed by, amongst others, the Vendor and the Vista Alegre Propco (if any);
8. the escrow agreement dated 11 June 2014 and entered into by the Vendor, the Ultimate Parent and RBC Investors Services Bank, S.A. in connection with the Acquisition Agreement; and
9. the Nassica Land Plot Acquisition Document.

**"Additional Guarantor"** means a person which becomes an Additional Guarantor in accordance with Clause 27 *(Changes to the Obligors).*

**"Additional Obligor"** means a person which becomes a Borrower or an Additional Guarantor.

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**"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.

**"Agreement for Lease"** means an agreement to grant an Occupational Lease for all or part of a Property.

**"Allocated Loan Amount"** means, with respect to a Property or part of a Property, the amount set opposite that Property or part of a Property in Part 2 of Schedule 1 *(Original Lenders and Property).*

**"Approved Capex Project"** means the following Capex Projects:

1. works designed to improve the general appearance of the Nassica Property,  
   including works to the external areas, facade, pavements, signage, bill boards, toilets and person counting system;

|  |  |
| --- | --- |
|  | works required to improve each of the bowling unit and unit Amp13 at the Nassica Property; |

1. works designed to improve the vertical accessibility of the various parts of the Nassica Property, including the introduction of new escalators at the Property;
2. introduction of a new tenant into the existing unit of the Nassica Property which constitutes a bowling alley, including fit out of such unit, tenant incentives and related costs;
3. works required to divide and fit out unit M6 in order to lease a portion of that unit to Kiwoko as a new tenant under an Occupational Lease;
4. any other Capex Project which is identified as an "Approved Capex Project" in  
   the then current Business Plan; or
5. any other Capex Project which is designated as an "Approved Capex Project"  
   by the Agent (acting on the instructions of the Majority Lenders),

in each case, as described in the then current Business Plan.

**"Assignment Agreement"** means an agreement substantially in the form set out in Schedule 9 *(Form of Assignment Agreement)* or any other form agreed between the relevant assignor and assignee.

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

**"Availability Period"** means the period from and including the date of this Agreement to and including:

1. in relation to Facility A and Facility B, 12 September 2014; and
2. in relation to Facility C:

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1. if Facility A and Facility B have not been utilised, 12 September 2014;  
   and
2. if Facility A and Facility B have been utilised, the date falling sixty  
   (60) days after the first Utilisation Date (or, if such date is not a Business Day, the next Business Day in that calendar month (if there is one) or the preceding Business Day (if there is not),

**provided that** if the Acquisition Agreement:

1. is terminated by any party to it; or
2. expires (or ceases to be in effect),

in each case in accordance with its terms, the Availability Period shall end on the date of such termination or expiration or the date on which it ceases to be in effect.

**"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.

**"Borrower"** means a person which becomes a Borrower in accordance with Clause 27 *(Changes to the Obligors)* unless it has ceased to be a Borrower in accordance with Clause 27.2 *(Resignation of a Borrower).*

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

1. the interest (including the Margin on any portion of the Loans subject to a  
   Securitisation at such time but excluding Margin on any portion of the Loans not subject to a Securitisation at such time) 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:

1. 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 European 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.

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**"Business Day"** means a day (other than a Saturday or Sunday) on which banks are open for general business in Amsterdam, London, Luxembourg, Madrid, and New York and which is a TARGET Day.

**"Business Plan"** means the Initial Business Plan and each Updated Business Plan. **"Capex Project"** means:

1. effecting, carrying out or permitting any demolition, reconstruction,  
   redevelopment or rebuilding of or any structural alteration to a Property; or

|  |  |
| --- | --- |
|  | incurring capital expenditure in respect of works of alteration, addition, maintenance, repair, improvement, refurbishment and/or extension to a Property. |

**"Capex Reserve Account"** means the account designated as such and maintained by the Nassica Propco in accordance with Clause 17.1 *(Designation of Accounts)* and includes its interest in any replacement account or sub-account or sub-division of that account.

**"Carrefour Lease"** means the Occupational Lease dated 26 November 2007 (as amended) entered into by Centros Comerciales Carrefour, S.A. in respect of part of the Nassica Shopping Centre.

**"Cash Trap Amount"** has the meaning given to it in paragraph (d)(viii) of Clause 17.3 *(Rent Account).*

**"Cash Trap Account"** means each account designated as such and maintained by a Borrower in accordance with Clause 17.1 *(Designation of Accounts)* and includes its interest in any replacement account or sub-account or sub-division of that account.

**"Cash Trap Event"** means, on any Interest Payment Date:

1. the Loan to Value is greater than 80.00 per cent.;
2. the Debt Yield in respect of that Interest Payment Date is less than 8.75 per cent; or
3. the Obligors fail to provide a Compliance Certificate when due in accordance with Clause 20.2 *(Compliance Certificate).*

**"Cash Trap Expiry Event"** means, on any Interest Payment Date that no Cash Trap Event has occurred on that Interest Payment Date or on the immediately prior Interest Payment Date. For the purposes of determining whether a Cash Trap Event has occurred for the purposes of this defmition, the Loan to Value and the Debt Yield shall be calculated on the basis that the amounts standing to the credit of the Capex Reserve Account and each Cash Trap Account as at that the relevant date shall not be deducted from the aggregate sum of the Loans for the purposes of determining the Net Debt.

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**"Cash Trap Proceeds"** means any Cash Trap Amounts which are required to be withdrawn from a Cash Trap Account and applied in prepayment in accordance with paragraph (b) of Clause 17.6 *(Cash Trap Account).*

**"Centre of Main Interests"** means, with respect to any person, its "centre of main interests" (as that term is used in Article 3(1) of the Regulation).

**"Code"** means the US Internal Revenue Code of 1986.

**"Commitment"** means a Facility A Commitment, a Facility B Commitment or a Facility C Commitment.

**"Compensation Prepayment Proceeds"** means the proceeds of all compensation and damages for the compulsory purchase of, or any blight or disturbance affecting, any Property.

**"Completion Steps Paper"** means a completion steps paper prepared by Freshfields Bruckhaus Deringer LLP setting out the steps required to be completed in order to complete the Acquisition referred to in paragraph (a) of the definition of "Acquisition", the funding of that Acquisition and the repayment of the existing financial indebtedness of each Propco prior to the completion of that Acquisition in accordance with the Funds Flow Statement.

**"Compliance Certificate"** means a certificate substantially in the form set out in Schedule 13 *(Form of Compliance Certificate).*

**"Confidential Information"** means all information relating to any Obligor, the Ultimate Parent, the Group, the Finance Documents or the Facility of which a Finance Party becomes aware in its capacity as, or for the purpose of becoming, a Finance Party or which is received by a Finance Party in relation to, or for the purpose of becoming a Finance Party under, the Finance Documents or the Facility from either:

1. any member of the Group or any of its advisers; or
2. another Finance Party, if the information was obtained by that Finance Party directly or indirectly from any member of the Group or any of its advisers,

in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information but excludes information that:

1. is or becomes public information other than as a direct or indirect  
   result of any breach by that Finance Party of Clause 40 *(Confidentiality);* or
2. is identified in writing at the time of delivery as non-confidential by  
   any member of the Group or any of its advisers; or
3. is known by that Finance Party before the date the information is disclosed to it in accordance with paragraphs (a) or (b) above or is lawfully obtained by that Finance Party after that date, from a source which is, as far as that Finance Party is aware, unconnected with the

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Group and which, in either case, as far as that Finance Party is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality.

**"Confidentiality Undertaking"** means a confidentiality undertaking substantially in one of the forms recommended by the Loan Market Association, as selected by the relevant Finance Party or in any other form agreed between the Obligors' Agent (acting reasonably) and the Agent.

**"Conforama Lease"** means the Occupational Lease dated 13 May 2011 (as amended) entered into by Conforama España, S.A.U. in respect of part of the Nassica Shopping Centre.

**"Corporate Expenses"** means, in relation to each Obligor, all day-to-day corporate operating expenditure of those entities including, without limitation, audit and accountancy, legal, registration, trustee, manager, tax advisers and domiciliation fees and expenses and expenditure relating to payroll and related taxes, income tax, computer processing charges, operational equipment and other finance lease payments (but excluding, for the avoidance of doubt, any property or asset management fees (howsoever described)).

**"Debt Purchase Transaction"** means, in relation to a person, a transaction where such person:

1. purchases by way of assignment or transfer;
2. enters into any sub-participation in respect of or
3. enters into any other agreement or arrangement having an economic effect substantially similar to a sub-participation in respect of,

any Commitment or amount outstanding under this Agreement.

**"Debt Yield"** has the meaning given to it in Clause 21.1(b) *(Debt Yield).*

**"Default"** means an Event of Default or any event or circumstance specified in Clause 24 *(Events of Default)* which would (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 an Event of Default.

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

**"Deposit Account"** means the account designated as such and maintained by a Borrower under Clause 17.1 *(Designation of Accounts)* and includes any replacement account or sub-division or sub-account of that account.

**"Disposal Proceeds"** means the net disposal proceeds derived from the disposal or proposed disposal of a Property or the shares in any Obligor in accordance with paragraph (c) of Clause 22.4 *(Disposals)* provided, in the case of any such proceeds in respect of a proposed disposal, that such proceeds have been released to, or made available to, an Obligor.

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**"Disposals Account"** means the account designated as such and maintained by a Borrower under Clause 17.1 *(Designation of Accounts)* and includes any replacement or sub-division or sub-account of that account.

**"Disposed Properties"** means, each of:

(a) Megapark in San Sebastián de los Reyes, registered in the San Sebastian de los

Reyes Land Registry, plot number 42,085; and

Megapark in Palma de Mallorca, registered in the Palma de Mallorca n°2 Land Registry, plot number 39,895.

**"Disruption Event"** means either or both of:

(a) 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 Facility (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

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:

1. from performing its payment obligations under the Finance  
   Documents; or
2. 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.

**"Dutch Borrower"** means a Borrower incorporated or established under and in accordance with Dutch law.

**"Dutch Obligor"** means an Obligor incorporated or established under and in accordance with Dutch law.

**"Duty of Care Agreement"** means a duty of care agreement entered into or to be entered into by a Managing Agent, one or more Obligors and the Agent and/or the Security Agent in an agreed form.

**"Environment"** means humans, animals, plants and all other living organisms including the ecological systems of which they form part and the following media:

1. air (including, without limitation, air within natural or man-made structures,  
   whether above or below ground);

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|  | water (including, without limitation, territorial, coastal and inland waters, water under or within land and water in drains and sewers); and |

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(c) land (including, without limitation, land under water).

**"Environmental Claim"** means any claim, proceeding, formal notice or investigation by any person in respect of any Environmental Law.

**"Environmental Law"** means any applicable law or regulation in any Relevant Jurisdiction which relates to:

1. the pollution or protection of the Environment;
2. the conditions of the workplace; or
3. the generation, handling, storage, use, release or spillage of any substance (including, without limitation, any waste or any emission of greenhouse gases) which, alone or in combination with any other, is capable of causing harm to the Environment.

**"Environmental Permits"** means any permit and other Authorisation and the filing of any notification, report or assessment required under any Environmental Law for the operation of the business of any Obligor conducted on or from the properties owned or used by any Obligor.

**"Environmental Report"** means each of:

1. the Phase I Site Investigation and the Phase II Site Investigation each dated February 2014 and relating to the Vista Alegre Property prepared by ENVIRON Iberia, S.L.; and

|  |  |
| --- | --- |
|  | the Phase I Site Investigation dated February 2014 relating to the Nassica Shopping Centre prepared by ENVIRON Iberia, S.L, |

in each case, addressed to, and/or capable of being relied upon by, amongst others, the Finance Parties.

**"EURIBOR"** means, in relation to any Loan or Unpaid Sum on which interest for a given period is to accrue:

1. the applicable Screen Rate;
2. (if no Screen Rate is available for the Interest Period of that Loan or Unpaid Sum) the Interpolated Screen Rate for that Loan or Unpaid Sum; or
3. if:
4. no Screen Rate is available for the Interest Period of that Loan or  
   Unpaid Sum; and
5. it is not possible to calculate an Interpolated Screen Rate for that Loan  
   or Unpaid Sum,

the Reference Bank Rate,

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as of, in the case of paragraphs (a) and (c) above, the Specified Time on the Quotation Day for euro for a period equal in length to the Interest Period of that Loan or Unpaid Sum and, if any such rate is below zero, EURIBOR will be deemed to be zero.

**"Event of Default"** means any event or circumstance specified as such in Clause 24 *(Events of Default).*

**"Excluded Recovery Proceeds"** means any proceeds of a Recovery Claim which the Obligors' Agent notifies the Agent are, or are to be, applied:

(a) to satisfy (or reimburse an Obligor which has discharged) any liability, charge

or claim upon an Obligor by a person which is not an Obligor or an Affiliate of an Obligor; or

in the replacement, reinstatement and/or repair of assets of an Obligor which have been lost, destroyed or damaged,

in each case as a result of the events or circumstances giving rise to that Recovery Claim, if those proceeds are so applied or are contracted to be so applied as soon as possible (but in any event within 90 days, or such longer period as the Majority Lenders may agree) after receipt.

**"Existing Lender"** has the meaning given to that term in Clause 25 *(Changes to Finance Parties).*

**"Existing Management Agreement"** means each of:

(a) the management agreement dated 24 November 2003 between the Nassica

Propco and CBRE Real Estate, S.A. (formerly, CB Richard Ellis, S.A.); and

the management agreement dated 1st January 2012 between the Vista Alegre Propco and CBRE Gestión Inmobiliaria, S.L.; and

(c) the common areas management agreement dated 1st January 2012 between

Vista Alegre Propco and CBRE Gestión Inmobiliaria, S.L.

**"Facility"** means Facility A, Facility B or Facility C, in each case as the context requires and **"Facilities"** shall be used accordingly.

**"Facility A"** means the term loan facility made available under this Agreement as described in paragraph (a) of Clause 2.1 *(The Facility).*

**"Facility A Commitment"** means:

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

|  |  |
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|  | in relation to any other Lender, the amount of any Facility A Commitment transferred to it under this Agreement, |

(b)

(b)

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to the extent:

1. not cancelled, reduced or transferred by it under this Agreement; and
2. not deemed to be zero pursuant to Clause 26.2 *(Disenfranchisement on Debt Purchase Transactions).*

**"Facility A Loan"** means a loan made or to be made under Facility A or the principal amount outstanding for the time being of that loan.

**"Facility B"** means the term loan facility made available under this Agreement as described in paragraph (b) of Clause 2.1 *(The Facility).*

**"Facility B Commitment"** means:

(a) in relation to an Original Lender, the amount set opposite its name under the

heading "Facility B Commitment" in Part 1 of Schedule 1 *(Original Lenders and Property)* and the amount of any other Facility B Commitment transferred to it under this Agreement; and

in relation to any other Lender, the amount of any Facility B Commitment transferred to it under this Agreement,

to the extent:

1. not cancelled, reduced or transferred by it under this Agreement; and
2. not deemed to be zero pursuant to Clause 26.2 *(Disenfranchisement on Debt Purchase Transactions).*

**"Facility B Loan"** means a loan made or to be made under Facility B or the principal amount outstanding for the time being of that loan.

**"Facility C"** means the term loan facility made available under this Agreement as described in paragraph (c) of Clause 2.1 *(The Facility).*

**"Facility C Commitment"** means:

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

|  |  |
| --- | --- |
|  | in relation to any other Lender, the amount of any Facility C Commitment transferred to it under this Agreement, |

to the extent:

1. not cancelled, reduced or transferred by it under this Agreement; and
2. not deemed to be zero pursuant to Clause 26.2 *(Disenfranchisement on Debt Purchase Transactions).*

(b)

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**"Facility C Loan"** means a loan made or to be made under Facility C or the principal amount outstanding for the time being of that 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.

**"FATCA"** means:

1. sections 1471 to 1474 of the Code or any associated regulations;
2. any treaty, law or regulation of any other jurisdiction, or relating to an intergovernmental agreement between the US and any other jurisdiction, which (in either case) facilitates the implementation of any law or regulation referred to in paragraph (a) above; or
3. any agreement pursuant to the implementation of any treaty, law or regulation referred to in paragraphs (a) or (b) above with the US Internal Revenue Service, the US government or any governmental or taxation authority in any other jurisdiction.

**"FATCA Application Date"** means:

1. in relation to a "withholdable payment" described in section 1473(1)(A)(i) of the Code (which relates to payments of interest and certain other payments from sources within the US), 1 July 2014;

|  |  |
| --- | --- |
|  | in relation to a "withholdable payment" described in section 1473(1)(A)(ii) of the Code (which relates to "gross proceeds" from the disposition of property of a type that can produce interest from sources within the US), 1 January 2017; |

or

1. in relation to a "passthru payment" described in section 1471(d)(7) of the Code  
   not falling within paragraphs (a) or (b) above, 1 January 2017,

or, in each case, such other date from which such payment may become subject to a deduction or withholding required by FATCA as a result of any change in FATCA after the date of this Agreement.

**"FATCA Deduction"** means a deduction or withholding from a payment under a Finance Document required by FATCA.

**"FATCA Exempt Party"** means a Party that is entitled to receive payments free from any FATCA Deduction.

**"Fee Letter"** means any letter or letters between any of the Arranger, the Agent or the Security Agent and, the Obligors' Agent or the Borrowers setting out any of the fees referred to in Clause 11 *(Fees).*

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**"Finance Document"** means:

1. this Agreement;
2. any Security Document;
3. any Subordination Deed;
4. any Duty of Care Agreement;
5. any Fee Letter;
6. any Resignation Letter;
7. each Utilisation Request;
8. each Obligor Accession Letter;
9. each Obligor Accession Deed;
10. each Subordinated Creditor Accession Deed; or
11. any other document designated as such by the Agent and the Obligors' Agent. **"Finance Party"** means the Agent, the Security Agent, the Arranger or a Lender. **"Financial Indebtedness"** means any indebtedness for or in respect of:
12. moneys borrowed;
13. any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;
14. any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
15. the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with GAAP be treated as a finance or capital lease;
16. receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
17. any amount raised under any other transaction (including any forward sale or purchase agreement) of a type not referred to in any other paragraph of this definition having the commercial effect of a borrowing;
18. 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 any derivative transaction, only the marked to market value (or, if any actual amount is due as a result of the termination or closeout of that derivative transaction, that amount shall be taken into account);

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1. any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution;
2. any amount raised by the issue of redeemable shares;

0) any amount of any liability under an advance or deferred purchase agreement

if one of the primary reasons behind the entry into this agreement is to raise finance; 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 (j) above.

**"Funds Flow Statement"** a funds flow statement setting out:

(a) the funding and application of funds in relation to the Acquisition relating to

the Target Companies, the refinancing of the existing financial indebtedness owed by each Propco to the Vendor, Deutsche Pfandbriefbank AG-Sucursal en España and Deutsche Pfandbriefbank AG and payment of fees, costs and expenses and Taxes in connection with the same; and

the funding and application of funds in relation to the Acquisition relating to the Nassica Land Plot and payment of fees, costs and expenses and Taxes in connection with the same,

as delivered on or prior to the Utilisation Date pursuant to Clause 4.1 *(Initial conditions precedent).*

**"GAAP"** means, in relation to an Obligor, generally accepted accounting principles in the jurisdiction of incorporation of an Obligor including international accounting standards within the meaning of the IAS Regulation 1606/2002 **("IFRS")** to the extent applicable to the relevant financial statements.

**"General Account"** means:

1. each account designated as such and maintained by an Obligor under Clause 17.1 *(Designation of Accounts);*

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|  | each account designated as a "General Account (Current)" or a "General Account (Deposit)" and maintained by an Obligor under Clause 17.1 *(Designation of Accounts);* |

and, in each case, includes any replacement or sub-division or sub-account of that account.

**"Group"** means the Parent and its Subsidiaries for the time being.

**"Group Structure Chart"** means the group structure chart delivered pursuant to Schedule 2 *(Conditions Precedent and Conditions Subsequent)* showing (amongst other things) the ownership of the shares in each Transaction Obligor and the current name and registration number of each company and its jurisdiction of incorporation.

(b)

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**"Guarantor"** means an Original Guarantor or an Additional Guarantor unless, in each case, it has ceased to be a Guarantor in accordance with Clause 27.3 *(Resignation of a Guarantor).*

**"Hedge Counterparty"** means any bank or financial institution party to a Hedging Agreement.

**"Hedging Agreement"** means any master agreement, confirmation, transaction, schedule or other agreement entered into or to be entered into by a Borrower for the purpose of hedging interest payable under this Agreement.

**"Holding Company"** means, in relation to a person, any other person in respect of which it is a Subsidiary.

**"Initial Business Plan"** means the business plan delivered on or prior to the Utilisation Date pursuant to Clause 4.1 *(Initial conditions precedent)* in a form and substance satisfactory to the Agent (acting on the instructions of the Majority Lenders) and including a schedule of capital expenditure proposed to be incurred by the Obligors during the period to which that business plan relates together with cost estimates in respect of such capital expenditure.

**"Initial Valuation"** means the Valuation of each of the Properties supplied to the Agent as a condition precedent under this Agreement on or before the first Utilisation Date.

**"Insurances"** means any contract of insurance required under Clause 23.9 *(Insurance).*

**"Insurance Prepayment Proceeds"** means any proceeds of Insurances required to be paid into the Deposit Account in accordance with paragraph (i) of Clause 23.9 *(Insurance).*

**"Intellectual Property"** means:

1. any patents, trade marks, service marks, designs, business names, copyrights,  
   database rights, design rights, domain names, moral rights, inventions, confidential information, knowhow and other intellectual property rights and interests (which may on or after the date of this Agreement subsist), whether registered or unregistered; and

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|  | the benefit of all applications and rights to use such assets of each Obligor (which may on or after the date of this Agreement subsist), |

including all items described in paragraph (a) and (b) above which are referred to in the Legal Due Diligence Report.

**"Interest Payment Date"** means 20 February, 20 May, 20 August and 20 November in each year and the Repayment Date with the first Interest Payment Date being 20 November 2014. If, however, any such day is not a Business Day, the Interest Payment Date will instead be the next Business Day in that calendar month (if there is one) or the preceding Business Day (if there is not).

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**"Interest Period"** means, in relation to a Loan, each period determined in accordance with Clause 9 *(Interest Periods)* and, in relation to an Unpaid Sum, each period determined in accordance with Clause 8.4 *(Default interest).*

**"Interpolated Screen Rate"** means, in relation to EURIBOR for any Loan or Unpaid Sum, the rate (rounded to the same number of decimal places as the two relevant Screen Rates) which results from interpolating on a linear basis between:

(a) the applicable Screen Rate for the longest period (for which that Screen Rate

is available) which is less than the Interest Period of that Loan or Unpaid Sum; and

the applicable Screen Rate for the shortest period (for which that Screen Rate is available) which exceeds the Interest Period of that Loan or Unpaid Sum,

each as of the Specified Time on the Quotation Day for the currency of that Loan. **"Irrecoverable Expenses"** means:

(a) any costs and expenses incurred by a Borrower:

1. by way of rates and insurance premia for a Property;
2. in complying with applicable laws and regulations relating to any Property;
3. in respect of any repair of, maintenance of or similar obligation with respect to, or in provision of services to a tenant with respect to, a Property, in each case which an Obligor is obliged to carry out or provide in accordance with the terms of an Occupational Lease;

(i) which any Obligor is obliged to discharge in respect of any unlet part

of any Property or in respect of any shortfall in Tenant Contributions;

(b) empty business rates in respect of any unit at a Property which is vacant; and

(c) marketing fees in relation to the Property; and

(d) any sum representing any VAT chargeable in respect of any of the items listed

in paragraphs (a) to (c) above,

in each case, to the extent that those items are not funded by the tenants, by way of Tenant Contributions or otherwise, under the Lease Documents.

**"ISDA Master Agreement"** means a 1992 Master Agreement (Multi-currency — Cross Border) or a 2002 Master Agreement each as published by the International Swaps and Derivatives Association, Inc.

**"Lease Document"** means:

1. an Agreement for Lease;

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1. an Occupational Lease; or
2. any other document designated as such by the Agent and the Obligors' Agent.

**"Lease Prepayment Proceeds"** means any premium or other amount paid to an Obligor in respect of any agreement to amend, supplement, extend, waive, surrender or release a Lease Document.

**"Legal Due Diligence Report"** means the legal due diligence report dated 11 July 2014 and prepared by Freshfields Bruckhaus Deringer LLP in relation to *"Project Nevis"* and addressed to, and/or capable of being relied upon by, amongst others, the Finance Parties.

**"Legal Opinion"** means each of the legal opinions delivered in accordance with Clause 4.1 *(Initial conditions precedent)* and Schedule 2 *(Conditions Precedent and Conditions Subsequent)* or Schedule 3 *(Conditions Precedent — Nassica Land Plot).*

**"Legal Reservations"** means:

1. the principle that equitable remedies may be granted or refused at the discretion of a court;
2. the limitation of enforcement by laws relating to insolvency, reorganisation and other laws generally affecting the rights of creditors;
3. the time barring of claims under the Limitation Act 1980 and the Foreign Limitation Periods Act 1984;
4. the possibility that an undertaking to assume liability for or indemnify a person against non-payment of UK stamp duty may be void;
5. defences of set-off or counterclaim;
6. the limitation of the enforcement of the terms of leases of real property by laws of general application to those leases;
7. similar principles, rights, remedies and defences under the laws of any Relevant Jurisdiction;
8. any other matters which are set out as qualifications or reservations as to matters of law of general application in any Legal Opinions supplied to the Agent on or before the Utilisation Date;
9. any requirements for due presentation for registration of each Finance Document creating registrable security required in accordance with any applicable law;
10. any requirements for due registration of each Finance Document creating fixed security over a Property at any land registry; and
11. if so required to be admitted in evidence in a Spanish Court, any document not drafted in the Spanish language will need to be translated into Spanish.

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**"Lender"** means:

1. any Original Lender; or
2. any other person, bank, financial institution, trust, fund or other entity which has become a Party as a Lender in accordance with Clause 25 *(Changes to Finance Parties),*

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

**"Loan"** means a loan made or to be made under a Facility or the principal amount outstanding for the time being of that loan.

**"Loan to Value"** has the meaning given to it in paragraph (b) of Clause 21.2 *(Loan to value).*

**"Luxembourg"** means the Grand Duchy of Luxembourg.

**"Majority Lenders"** means a Lender or Lenders whose Commitments aggregate more than 66%% of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated more than 66%% of the Total Commitments immediately prior to the reduction).

**"Management Agreement"** means each management agreement between any Obligor and a Managing Agent in relation to a Property in form and substance satisfactory to the Agent (acting reasonably).

**"Managing Agent"** means each of:

1. CBRE Real Estate, S.A. (formerly, CB Richard Ellis, S.A.) and CBRE Gestión Inmobiliaria, S.L. each in their capacity as manager under an Existing Management Agreement; and

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|  | Neinver Asset Management España, S.L. or Neinver or any Subsidiary of Neinver; or |

1. any firm of chartered surveyors or similarly qualified firm of property  
   professionals appointed as a managing agent, property manager, property adviser or asset manager (howsoever described) by the Obligors in respect of any Property in accordance with Clause 23.8 *(Managing Agents).*

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

**"Material Adverse Effect"** means, in the opinion of the Agent (acting reasonably), a material adverse effect on:

(a) the consolidated business or financial condition of the Obligors (taken as a

whole);

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1. the ability of the Obligors (taken as a whole) to perform their payment  
   obligations under the Finance Documents or their ability to comply with their financial covenants under the Finance Documents; or
2. the validity or enforceability of, or the rights or remedies of any Finance Party  
   under any of, or the effectiveness or ranking of any Security granted or purported to be granted pursuant to any of, the Finance Documents.

**"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;

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|  | 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 |

1. 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.

**"Nassica Brand Costs"** means the annual royalty payable by the Nassica Propco to Teckel pursuant to the Nassica Licence Agreement.

**"Nassica Holdco"** means Pillar Netherlands B.V. (in the process of changing its name to Nevis Netherlands Getafe B.V.), a private company with limited liability *(besloten vennootschap met beperkte aansprakelijkheid)* incorporated under the laws of The Netherlands, having its seat *(zetel)* in Amsterdam and its address at Leidsekade 102 H, 1017 PP Amsterdam, the Netherlands and with Chamber of Commerce registration number 34177310.

**"Nassica Land Plot"** means plot 39,337 registered with the Land Registry of Getafe no. 1.

**"Nassica Land Plot Acquisition Document"** means the public deed of sale and purchase agreement relating to the Nassica Land Plot entered into or to be entered into between Neinver S.A. as seller and the Nassica Propco as buyer.

**"Nassica Licence Agreement"** means the trademark licence agreement dated 11 December 2013 entered into between the Nassica Propco and Teckel pursuant to which Teckel has granted to the Nassica Propco an indefinite right to use certain trademarks in relation to the "Nassica" name in connection with the Nassica Shopping Centre.

**"Nassica Pre-emption Beneficiary"** means the beneficiary of the Nassica Pre­emption Right, being Restaurantes McDonald's, S.A. as at the date of this Agreement.

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**"Nassica Pre-emption Plot"** means part of the Nassica Land Plot leased by the Nassica Pre-emption Beneficiary pursuant to a lease dated 18 January 2000 (as amended and complemented on 23 February 2000, 14 June 2000, 19 October 2000 and 14 October 2004).

**"Nassica Pre-emption Right"** means the pre-emption right applicable to the Nassica Pre-emption Plot in accordance with the Spanish Lease Urban Act.

**"Nassica Propco"** means Pillar Getafe, S.L. (in the process of changing its name to Nevis Getafe S.L.U.), a limited liability company *(sociedad de responsabilidad limitada)* incorporated under the laws of Spain with its registered office at calle Pinar, 7, Madrid, Spain and registered with the Commercial Registry of Madrid under Volume *(Tomo)* 17,686, Sheet *(Folio)* 39 and page *(Hoja)* M-304537 with tax identification number *(NIF)* is B83264267.

**"Nassica Property"** means each of the Nassica Shopping Centre and the Nassica Land Plot.

**"Nassica Retained Plot"** means that portion of the Nassica Land Plot excluding the Nassica Pre-emption Plot.

**"Nassica Shopping Centre"** means plot 39,335 registered with the Land Registry of Getafe no. 1.

**"Neinver"** means Neinver, S.A., a Spanish *Sociedad Anónima,* whose registered office is located at calle Francisca Delgado 11, 5th Floor, 28108, Alcobendas, Madrid, Spain, registered with the Commercial Registry of Madrid under Volume 5,720, Sheet 210, Section 8, Page M-93,606, and with tax identification number A-31038136.

**"Net Rental Income"** means Rental Income in respect of a Property after deducting (without double counting):

1. all Tenant Contributions in relation to that Property; and
2. any sum representing any VAT chargeable in respect of Rental Income.

**"New Lender"** has the meaning given to that term in Clause 25 *(Changes to Finance Parties).*

**"Obligor"** means a Borrower or a Guarantor.

**"Obligor Accession Deed"** has the meaning given to such term in the Subordination Deed.

**"Obligor Accession Letter"** means a document substantially in the form set out in Schedule 11 *(Form of Obligor Accession Letter).*

**"Obligors' Agent"** means the Parent appointed to act on behalf of each Obligor in relation to the Finance Documents pursuant to Clause 2.3 *(Obligors' Agent).*

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**"Occupational Lease"** means any lease or licence or other right of occupation or right to receive rent to which a Property may at any time be subject and includes any guarantee of a tenant's obligations under the same.

**"Original Financial Statements"** means:

(a) in relation to the Parent and the Dutch Holdco, a copy of the pro forma

balance sheet of that entity as at the first Utilisation Date (assuming that completion of the Acquisition has occurred);

(b) in relation to the Nassica Propco, its:

1. audited financial statements for the financial year ended 31 December  
   2013; and
2. unaudited quarterly management accounts in respect of the fmancial  
   quarter ending 31 March 2014.

(c) in relation to each Target Company (other than the Nassica Propco), its:

1. unaudited financial statements for the financial year ended 31  
   December 2013; and
2. unaudited quarterly management accounts in respect of the fmancial  
   quarter ending 31 March 2014.

**"Original Guarantor"** means each of the Parent and the Dutch Holdco. **"Original Obligor"** means each Original Guarantor.

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

**"Party"** means a party to this Agreement.

**"Perfection Requirements"** means the making of the appropriate registrations, payment of any applicable stamp duty, filings, notarisation and/or notifications of the Security Documents and/or the Security created thereunder.

**"Permitted Guarantee"** means:

1. any guarantee given by an Obligor incorporated under the laws of the Netherlands in respect of the financial obligations of its subsidiary in accordance with section 2:403 of the Dutch Civil Code and any residual liability with respect to such declaration arising under Section 2:404 of the Dutch Civil Code or, in each case, its equivalent in any other relevant jurisdiction;

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|  | any joint and several liability arising as a result of (the establishment) of a fiscal unity *scale eenheid)* between members of the Group incorporated in the Netherlands or its equivalent in any other relevant jurisdiction; or |

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(c) any guarantee given in respect of the netting or set-off arrangements permitted

pursuant to paragraph (c)(iv)of Clause 22.3 *(Negative Pledge).*

**"Permitted Payment"** means a payment by an Obligor to its Holding Company or a Subordinated Creditor out of moneys standing to the credit of a General Account (other than amounts which have been credited to a General Account in accordance with paragraph (d)(vi) of Clause 17.3 *(Rent Account)* or paragraph (c) of Clause 17.7 *(Capex Reserve Account))* in circumstances where no Default is continuing and no Default would result from the payment.

**"Prohibited Lender"** means each of the persons listed in Schedule 14 *(Prohibited Lenders).*

**"Project Monitor"** means:

(a) Arcadis EC Harris; or

(b) any other firm or company of chartered surveyors or quantity surveyors

appointed by the Agent (acting on the instructions of the Majority Lenders) after prior consultation with the Obligors' Agent,

in each case as appointed and instructed by the Agent to act as project monitor for the purposes of this Agreement.

**"Propco"** means each of the Nassica Propco and the Vista Alegre Propco. **"Property"** means:

1. any property listed in Part 2 of Schedule 1 *(Original Lenders and Property)* as further described in a Security Agreement; or

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| --- | --- |
|  | any other present or future freehold and leasehold property and any other interest in land or buildings and all rights relating thereto in which an Obligor has an interest from time to time. |

**"Property Overview Report"** means the property overview report dated on or around the first Utilisation Date relating to the content of the Legal Due Diligence Report in relation to the Properties only and prepared by Clifford Chance S.L.

**"Property Report"** means each of:

1. the Legal Due Diligence Report;
2. each Technical Due Diligence Report; and
3. each Environmental Report.

**"Qualifying Lender"** has the meaning given to it in Clause 12 *(Tax gross-up and indemnities).*

**"Quarterly Management Report"** means a quarterly management report in respect of the Properties and the business of each of the Obligors in the form delivered by the

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Obligors and approved by the Agent in accordance with Clause 4.1 *(Initial conditions precedent).*

**"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 European Interbank Market in which case the Quotation Day will be determined by the Agent in accordance with market practice in the European Interbank Market (and if quotations would normally be given by leading banks in the European Interbank Market on more than one day, the Quotation Day will be the last of those days).

**"Rating Agencies"** means Fitch Ratings Ltd. **("Fitch"),** Moody's Investors Services, Inc. **("Moody's"),** Standard & Poor's Credit Market Services Europe Limited, a division of The McGraw-Hill Companies Inc. **("S&P"),** DBRS Ratings Limited **("DBRS"),** A.M. Best Inc. **("AM Best")** or any other credit rating agency from time to time approved by the Agent, and in each case includes any successors to its respective rating business.

**"Receiver"** means a receiver or receiver and manager or administrative receiver of the whole or any part of the Security Assets.

**"Recovery Proceeds"** means the proceeds of a claim (a **"Recovery Claim")** against:

1. the Vendor, the Vendor Guarantor, the seller under the Nassica Land Plot  
   Acquisition Agreement (in its capacity as such) or, in each case, any of its Affiliates (or any employee, officer or adviser); or

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|  | the provider of a Report or the provider of any other due diligence report (in its capacity as provider of the same) in connection with the acquisition, development, financing or refinancing of the shares in any Obligor or any Property, |

except for Excluded Recovery Proceeds, and after deducting:

1. any reasonable expenses incurred by an Obligor to a person who is not  
   an Obligor or an Affiliate of an Obligor;
2. any Tax incurred and required to be paid by an Obligor (as reasonably  
   determined by that Obligor on the basis of existing rates and taking into account any available credit, deduction or allowance),

in each case in relation to that Recovery Claim.

**"Reference Bank Rate"** means the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Agent at its request by the Reference Banks as the rate at which the relevant Reference Bank could borrow funds in the European interbank market in the relevant currency and for the relevant period, were it to do so by asking for and then accepting interbank offers for deposits in reasonable market size in that currency and for that period.

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**"Reference Banks"** means Lloyds Bank plc, Barclays Bank PLC and HSBC Bank plc or such other banks as may be appointed by the Agent (acting on the instructions of the Majority Lenders) in consultation with the Obligors' Agent.

**"Regulation"** means The Council of the European Union regulation (EC) No 1346/2000 of 29 May 2000 on Insolvency Proceedings.

**"Related Equity Fund"** means each of BREP Europe W, BREP VII and any successor vehicle to either of such funds.

**"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.

**"Release Amount"** means, in respect of a disposal of a Property or of part of the Nassica Land Plot or of the shares of any Obligor which owns (directly or indirectly) a Property, an amount equal to the aggregate of:

(a) the Release Price relating to the relevant Property or part of the Nassica Land

Plot disposed of or owned (directly or indirectly) by the Obligor the shares of which were the subject of the disposal;

any amounts that will become due and payable pursuant to paragraph (b) of Clause 7.8 *(Restrictions)* in connection with the prepayment of the amount set out in paragraph (a) above in accordance with Clause 7.4 *(Application of mandatory prepayments).*

**"Release Price"** means:

(a) in respect of a disposal of the whole of:

1. the Vista Alegre Property; or
2. the Nassica Land Plot; or
3. the Nassica Pre-emption Plot (other than in the circumstances described in paragraph (b) below); or
4. the Nassica Retained Plot, the greater of:
5. 115 per cent. of the Allocated Loan Amount relating to that  
   Property; and
6. 70 per cent of the Disposal Proceeds received by an Obligor in  
   relation to that Property; and

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| (b) | in respect of a disposal of the Nassica Pre-emption Plot as a result of the exercise of the Nassica Pre-emption Right by the Nassica Pre-emption |

(b)

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Beneficiary, 100 per cent. of the Allocated Loan Amount relating to the Nassica Pre-emption Plot;

1. in respect of a disposal of the whole of the Nassica Shopping Centre, 100 per cent. of the Allocated Loan Amount relating to each Property;
2. in respect of a disposal of part of the Nassica Retained Plot in circumstances where the Nassica Propco will continue to own any portion of the Nassica Retained Plot, 100 per cent. of the Disposal Proceeds received by an Obligor in relation to that disposal;
3. in respect of a disposal of part of the Nassica Retained Plot in circumstances where the Nassica Propco will cease to continue to own a portion of the Nassica Retained Plot, an amount which when aggregated with any Disposal Proceeds previously received by an Obligor in connection with a disposal of part of the Nassica Retained Plot and applied in accordance with this Agreement is equal to the greater of:
4. 115 per cent. of the Allocated Loan Amount relating to the Nassica  
   Retained Plot; and
5. 70 per cent of the Disposal Proceeds received by an Obligor in relation  
   to the Nassica Retained Plot.

**"Relevant Jurisdiction"** means, in relation to an Obligor:

1. its jurisdiction of incorporation or formation;
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; and
4. the jurisdiction whose laws govern the perfection of any of the Security Documents entered into by it.

**"Rent Account"** means each account designated as such and maintained by a Borrower under Clause 17.1 *(Designation of Accounts)* and includes any replacement or sub-division or sub-account of that Account.

**"Rental Income"** means the aggregate of all amounts paid or payable to or for the account of any Obligor in connection with the letting, licence or grant of other rights of use or occupation of all or any part of any Property, including (without double counting) each of the following amounts:

1. rent, licence fees and equivalent amounts paid or payable;
2. any sum received or receivable from any deposit (other than tenants statutory deposits *Lanza legal)* held as security for performance of a tenant's obligations);
3. a sum equal to any apportionment of rent allowed in favour of any Obligor;

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1. any other moneys paid or payable in respect of occupation and/or usage of that  
   Property and any fixture and fitting on that Property including any fixture or fitting on that Property for display or advertisement, on licence or otherwise;
2. any sum paid or payable under any policy of insurance in respect of loss of  
   rent or interest on rent;
3. any sum paid or payable, or the value of any consideration given, for the grant,  
   surrender, amendment, supplement, waiver, extension or release of any Lease Document;
4. any sum paid or payable in respect of a breach of covenant or dilapidations  
   under any Lease Document and for expenses incurred in relation to any such breach;
5. any sum paid or payable by or distribution received or receivable from any  
   guarantor of any occupational tenant under any Lease Document, in respect of any other item falling within this defmition;

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| (i) | any Tenant Contributions;  any contribution to a sinking fund paid by an occupational tenant under an Occupational Lease; |

(k) any interest paid or payable on, and any damages, compensation or settlement

paid or payable in respect of, any sum referred to above less any related fees and expenses incurred (which have not been reimbursed by another person) by any Obligor; and

(1) any amount in respect of or which represents VAT payable in respect of any

item specified in this definition.

**"Repayment Date"** means the first Interest Payment Date falling after the fifth anniversary of the Utilisation Date.

**"Repeating Representations"** means, each of the representations set out in Clause 19.1 *(Status)* to 19.6 *(Governing law and enforcement)* and Clause 19.9 *(VAT)* to 19.24 *(Ownership)* and paragraph (b) of Clause 19.28 *(Sanctions)* other than Clause 19.11 *(Information),* Clause 19.14 *(No proceedings pending or threatened),* Clause 19.17 *(Information for Due Diligence Reports)* and Clause 19.21 *(Centre of main interests and establishments).*

**"Report"** means each of:

1. each Valuation;
2. each Technical Due Diligence Report;
3. each Environmental Report;
4. the Tax and Financial Due Diligence Report;

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1. the Legal Due Diligence Report;
2. the Tax Structure Report; and
3. the Property Overview Report.

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

**"Requisite Rating"** means the rating of long term unsecured debt instruments in issue by a person (which are neither subordinated nor guaranteed) which meet the following requirements:

1. in relation to a bank at which an Account is held, at least two of the following ratings: A- (or better) by S&P, A- (or better) by Fitch and A2 (or better) by Moody's;

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|  | in relation to any insurance company or underwriter, at least two of the following ratings or a fmancial strength ratings: A- (or better) by Fitch, A3 (or better) by Moody's, A- (or better) by S & P and A- (or better) by AM Best; |

and

1. in relation to a Hedge Counterparty at least two of the following ratings: A- by  
   S&P, A3 by Moody's and A- by Fitch,

or, in each case, any other rating which is agreed to by the Agent (acting on the instructions of the Majority Lenders) in writing.

**"Resignation Letter"** means a letter substantially in the form set out in Schedule 10 *(Form of Resignation Letter).*

**"RPE Fees"** means the fees, capped at EUR60,000 per annum, payable by an Obligor to Retail Partners Europe pursuant to an agreement to be entered into between that Obligor and Retail Partners Europe whereby Retail Partners Europe provide asset management and advisory services.

**"Sanctions"** means:

1. United Nations sanctions imposed pursuant to any United Nations Security  
   Council Resolution;
2. U.S. sanctions administered by the Office of Foreign Assets Control of the  
   U.S. Department of the Treasury or any other U.S. Government authority or department;
3. EU restrictive measures implemented pursuant to any EU Council or  
   Commission Regulation or Decision adopted pursuant to a Common Position in furtherance of the EU's Common Foreign and Security Policy; and
4. UK sanctions adopted by the Terrorist-Asset Freezing etc Act 2010 or other  
   legislation and statutory instruments enacted pursuant to the United Nations

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Act 1946 or the European Communities Act 1972 or enacted by or pursuant to other laws.

**"Screen Rate"** means the euro interbank offered rate administered by the Banking Federation of the European Union (or any other person which takes over the administration of that rate) for the relevant period displayed on page EURIBOR01 of the Reuters screen (or any replacement Reuters page which displays that rate), or on the appropriate page of such other information service which publishes that rate from time to time in place of Reuters. If such page or service ceases to be available, the Agent may specify another page or service displaying the relevant rate after consultation with the Obligors' Agent.

**"Secured Liabilities"** means all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally or in any other capacity whatsoever and whether originally incurred by an Obligor or another Transaction Obligor or by some other person) of each Transaction Obligor to any Secured Party under each Finance Document.

**"Secured Party"** means a Finance Party, a Receiver or any Delegate.

**"Securitisation"** means any securitisation or transaction of broadly equivalent economic effect relating to, or using as a reference, the whole or part of the Loans (whether alone or in conjunction with other loans) through the issue of notes on the capital markets.

**"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.

**"Security Agreement"** means a Security over the assets of an Obligor entered or to be entered into by that Obligor in favour of the Security Agent in an agreed form.

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

**"Security Document"** means:

1. the documents set out in Schedule 6 *(Initial Security Documents);*
2. the documents set out in Schedule *7 (Nassica Land Plot Security Documents);*
3. any other document evidencing or creating Security over any asset, or supplemental to any Security Document, securing any obligation of any Obligor to a Secured Party under the Finance Documents; or
4. any other document designated as such by the Obligors' Agent and either the Agent or the Security Agent.

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**"Security Property"** means:

1. the Transaction Security expressed to be granted in favour of the Security  
   Agent as trustee for the Secured Parties and all proceeds of that Transaction Security;

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|  | all obligations expressed to be undertaken by a Transaction Obligor to pay amounts in respect of the Secured Liabilities to the Security Agent as trustee for the Secured Parties and secured by the Transaction Security together with all representations and warranties expressed to be given by a Transaction Obligor or any other person in favour of the Security Agent as trustee for the Secured Parties; and |

1. any other amounts or property, whether rights, entitlements, chooses in action or otherwise, actual or contingent, which the Security Agent is required by the terms of the Finance Documents to hold as trustee on trust for the Secured Parties.

**"Service Charge Account"** means the account designated as such and maintained by a Borrower in accordance with Clause 17.1 *(Designation of Accounts)* and includes its interest in any replacement account or sub-account or sub-division of that account.

**"Servicer"** means any servicer or special servicer appointed by a Lender, the Agent or the Security Agent in connection with any Securitisation.

**"Spanish Security Documents"** means the Security Documents subject to Spanish Law included in Schedule 6 *(Initial Security Documents)* and Schedule *7 (Nassica Land Plot Security Documents)* to this Agreement, and any of them will be referred to as "Spanish Security Document"

**"Specified Time"** means a time determined in accordance with Schedule 12 *(Timetable)* or such other period as the Lenders may agree.

**"Sponsor"** means Kohlberg Kravis Roberts & Co L.P.

**"Sponsor Affiliate"** means Kohlberg Kravis Roberts & Co LLP and Neinver, S.A., each of their respective Affiliates, any trust of which either of them or any of their respective Affiliates is a trustee, any partnership of which either of them or any of its Affiliates is a partner and any trust, fund or other entity which is managed by, or is under the control of, either of them or any of their respective Affiliates.

**"Subordinated Creditor"** means:

1. an Obligor;
2. the Ultimate Parent; or
3. any other person who becomes a Subordinated Creditor in accordance with this Agreement.

**"Subordinated Creditor Accession Deed"** has the meaning given to such term in the Subordination Deed.

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**"Subordinated Creditor's Security Agreement"** means a Security over Subordinated Debt entered into or to be entered into by a Subordinated Creditor in favour of the Security Agent in an agreed form.

**"Subordinated Debt",** in relation to a Subordinated Creditor, has the meaning given to the term "Junior Liabilities" in the Subordination Deed entered into by that Subordinated Creditor.

**"Subordination Deed"** means a subordination deed entered into or to be entered into by a Subordinated Creditor, an Obligor and the Agent and/or the Security Agent in an agreed form.

**"Subsidiary"** means any person (referred to as the **"first person")** in respect of which another person (referred to as the **"second person"):**

1. holds a majority of the voting rights in that first person or has the right under  
   the constitution of the first person to direct the overall policy of the first person or alter the terms of its constitution; or

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|  | is a member of that first person and has the right to appoint or remove a majority of its board of directors or equivalent administration, management or supervisory body; or |

1. has the right to exercise a dominant influence (which must include the right to give directions with respect to operating and financial policies of the first person which its directors are obliged to comply with whether or not for its benefit) over the first person by virtue of provisions contained in the articles (or equivalent) of the first person or by virtue of a control contract which is in writing and is authorised by the articles (or equivalent) of the first person and is permitted by the law under which such first person is established; or
2. is a member of that first person and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in the first person or the rights under its constitution to direct the overall policy of the first person or alter the terms of its constitution; or
3. has the power to exercise, or actually exercises dominant influence or control over the first person; or
4. together with the first person are managed on a unified basis,

and for the purposes of this definition, a person shall be treated as a member of another person if any of that person's Subsidiaries is a member of that other person or, if any shares in that other person are held by a person acting on behalf of it or any of its Subsidiaries. A subsidiary undertaking shall include any person the shares or ownership interests in which are subject to Security and where the legal title to the shares or ownership interests so secured are registered in the name of the secured party or its nominee pursuant to such Security.

**"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.

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**"Target Company"** means each of the Nassica Propco, the Nassica Holdco, the Vista Alegre Propco and the Vista Alegre Holdco.

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

**"Target Shares"** means the shares representing the entire issued share capital of the Nassica Holdco and the Vista Alegre Holdco.

**"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 and Financial Due Diligence Report"** means the tax and financial due diligence report dated 4 July 2014 and titled *"Project Nevis — Final Due Diligence Report"* relating to the Target Companies and prepared by Deloitte LLP addressed to, and/or capable of being relied upon by, amongst others, the Finance Parties.

**"Tax Indemnity Letter"** means the letter dated 11 June 2014 entered into by the Vendor, the Vendor Guarantor and the Ultimate Parent pursuant to which the Vendor agreed to provide certain indemnities in favour of the Ultimate Parent.

**"Tax Structure Report"** means the tax structuring report dated on or around the date of this Agreement relating to the acquisition of the Target Shares and prepared by Deloitte LLP and addressed to, and/or capable of being relied upon by, amongst others, the Finance Parties.

**"Technical Due Diligence Report"** means each of:

1. the technical due diligence report dated 17 February 2014 relating to the Vista  
   Alegre Property prepared by Technical Advisory Services S.L.; and

|  |  |
| --- | --- |
|  | the technical due diligence report dated 17 February 2014 relating to the Nassica Shopping Centre prepared by Technical Advisory Services S.L., |

in each case, addressed to, and/or capable of being relied upon by, amongst others, the Finance Parties.

**"Teckel"** means Teckel Gestora, S.L.

**"Tenant Contributions"** means any amount paid or payable to an Obligor by any tenant under a Lease Document or any other occupier of a Property, by way of:

(a) contribution to:

1. insurance premia;
2. a service or other charge in respect of an Obligor's costs in connection with any management, repair, maintenance or similar obligation or in providing services to a tenant of, or with respect to, a Property;
3. a reserve or sinking fund; or

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(iv) any expenses incurred in respect of a breach of covenant where such contribution is to be applied in remedying such breach or discharging such expenses; and

(b) VAT.

**"Total Commitments"** means the aggregate of the Total Facility A Commitments, the Total Facility B Commitments and the Total Facility C Commitments.

**"Total Facility A Commitments"** means the aggregate of the Facility A Commitments being EUR59,660,000 at the date of this Agreement.

**"Total Facility B Commitments"** means the aggregate of the Facility B Commitments being EUR8,675,000 at the date of this Agreement.

**"Total Facility C Commitments"** means the aggregate of the Facility C Commitments being EUR3,665,000 at the date of this Agreement.

**"Transaction Document"** means:

1. a Finance Document;
2. a Lease Document;
3. a document appointing a Managing Agent;
4. the Acquisition Documents; or
5. any other document designated as such by the Agent and the Obligors' Agent. **"Transaction Obligor"** means:
6. an Obligor; or
7. the Ultimate Parent; or
8. a Subordinated Creditor.

**"Transaction Security"** means the Security created or evidenced or expressed to be created or evidenced under the Security Documents.

**"Transfer Certificate"** means a certificate substantially in the form set out in Schedule 8 *(Form of Transfer Certificate)* or any other form agreed between the Agent and the Obligors' Agent.

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

1. the proposed Transfer Date specified in the relevant Assignment Agreement or Transfer Certificate; and

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|  | the date on which the Agent executes the relevant Assignment Agreement or Transfer Certificate. |

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**"Treaty Lender"** has the meaning given to it in Clause 12.1 *(Tax Definitions).*

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

**"Updated Business Plan"** means each business plan incorporating a capex plan that is delivered to and approved by the Agent (acting on the instructions of the Majority Lenders) in accordance with Clause 20.5 *(Business Plan).*

**"Ultimate Parent"** means Nevis JV S.á r.l., a private limited liability company *(société a responsabilité limitée)* incorporated under the laws of Luxembourg with its registered office at 61, rue de Rollingergrund, L-2440 Luxembourg, Grand Duchy of Luxembourg being registered with the Register of Commerce and Companies in Luxembourg under number B 184.370 and with a share capital of EUR12,500.

**"US"** means the United States of America. **"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 Schedule 5 *(Utilisation Request).*

**"Valuation"** means a valuation of the Obligor's interests in the Properties by the Valuer, supplied at the request of, in form and substance satisfactory to, the Agent, addressed to, and/or capable of being relied upon by, the Finance Parties and prepared on the basis of the market value as that term is defined in the then current Statements of Asset Valuation Practice and Guidance Notes issued by the Royal Institution of Chartered Surveyors or its successors.

**"Valuer"** means:

(a) JLL or any one of Aguirre Newman, Catella, CBRE, Colliers, Cushman &

Wakefield, DTZ, Knight Frank and Savills or any of their respective successors; or

if two or fewer of the firms listed in paragraph (a) above are available (and are not conflicted) to provide the relevant Valuation, any other recognised independent real estate expert operating in Spain and appointed by the Agent, prior to the occurrence of an Event of Default only, with the prior consent of the Obligors' Agent (acting reasonably).

**"VAT"** means:

1. any tax imposed in compliance with the Council Directive of 28 November  
   2006 on the common system of value added tax (EC Directive 2006/112); and

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|  | any other tax of a similar nature, whether imposed in a member state of the European Union in substitution for, or levied in addition to, such tax referred to in paragraph (a) above, or imposed elsewhere. |

(b)

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**"Vendor"** means Pillarlux Holdings 3, Sá r.l., a private limited liability company *(société á responsabilité limitée)* incorporated under the laws of Luxembourg with its registered office at 46A, Avenue J.F. Kennedy, L-1855 Luxembourg, Grand Duchy of Luxembourg being registered with the Register of Commerce and Companies in Luxembourg under number B121.698 and with a share capital of EUR12,500.

**"Vendor Guarantor"** means Pillarlux Holdings Sá r.l., a private limited liability company *(société á responsabilité limitée)* incorporated under the laws of Luxembourg with its registered office at 46A, Avenue J.F. Kennedy, L-1855 Luxembourg, Grand Duchy of Luxembourg being registered with the Register of Commerce and Companies in Luxembourg under number B88.589 and with a share capital of EUR865,350.

**"Vista Alegre Holdco"** means Pillar Netherlands 2 B.V. (in the process of changing its name to Nevis Netherlands Zamora B.V.), a private company with limited liability *(besloten vennootschap met beperkte aansprakelijkheid)* incorporated under the laws of The Netherlands, having its seat *(zetel)* in Amsterdam and its address at Leidsekade 102 H, 1017 PP Amsterdam, the Netherlands and with Chamber of Commerce registration number 34190908.

**"Vista Alegre Propco"** means Pillar Valencia, S.L. (in the process of changing its name to Nevis Zamora S.L.U.), a limited liability company *(sociedad de responsabilidad limitada)* incorporated under the laws of Spain with its registered office at Pinar, 7, Madrid, Spain and registered with the Commercial Registry of Madrid under Volume *(Tomo)* 18812, Sheet *(Folio)* 175 and page *(Hoja)* M-328020 tax identification number *(NIF)* is B63026207.

**"Vista Alegre Property"** means plot 69626 registered with the Land Registry of Zamora 1.

1.2 **Construction**

(a) Unless a contrary indication appears, a reference in a Finance Document to:

(i) the **"Agent",** the **"Arranger",** any **"Finance Party",** any **"Hedge**

**Counterparty",** any **"Lender",** any **"Obligor",** any **"Party",** any **"Secured Party",** the **"Security Agent"** or any **"Transaction Obligor"** or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Finance Documents and:

1. in the case of the Agent, any person for the time being  
   appointed as Agent in accordance with this Agreement; and
2. 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;

(ii) a document in **"agreed form"** is a document which is previously

agreed in writing by or on behalf of the Obligors' Agent and the Agent or, if not so agreed, is in the form specified by the Agent;

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(b)

1. **"assets"** includes present and future properties, revenues and rights of  
   every description;
2. a **"disposal"** includes a sale, transfer, assignment, grant, lease, licence,  
   declaration of trust, participation or other transfer of economic ownership, compulsory acquisition, compulsory sale or other disposal or agreement for the disposal of, or the grant or creation of any interest derived from, any asset, undertaking or business (whether by a voluntary or involuntary single transaction or series of transactions) and **"dispose"** will be construed accordingly;
3. a **"Finance Document"** or **"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;
4. a **"group of Lenders"** includes all the Lenders;
5. **"guarantee"** means (other than in Clause 18 *(Guarantee and indemnity))* 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. **"land registry"** means in respect of any property, any land registry or  
   any other equivalent registry anywhere in the world exercising a registration function in respect of that property;
8. a **"person"** includes any individual, firm, company, corporation,  
   unincorporated corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality) or two or more of the foregoing;
9. a **"regulation"** includes any regulation, rule, official directive, request  
   or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
10. a provision of law is a reference to that provision as amended or re­enacted; and
11. a time of day is a reference to London time.

Section, Clause and Schedule headings are for ease of reference only.

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1. 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.
2. A Default (other than an Event of Default) is **"continuing"** if it has not been  
   remedied or waived and an Event of Default is **"continuing"** if it has not been waived.

1.3 **Currency symbols and definitions**

**"EUR"** and **"euro"** denote the single currency of the Participating Member States.

1.4 **Third party rights**

1. Unless expressly provided to the contrary in this Agreement 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 to enjoy the benefit of any term of this Agreement.

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|  | Notwithstanding any term of this Agreement the consent of any person who is not a Party is not required to rescind or vary this Agreement at any time. |

1. Any Receiver, Delegate or any person described in paragraph (b) of Clause 28.10 *(Exclusion of liability)* may, subject to this Clause 1.4 and the Third Parties Act, rely on any Clause of this Agreement which expressly confers rights on it.

1.5 **Luxembourg terms**

In each Finance Document, where it relates to a person incorporated or formed or having its Centre of Main Interests in Luxembourg, a reference to:

1. a **"winding up", "administration"** or **"dissolution"** includes, without limitation, bankruptcy *(faillite),* insolvency, voluntary or judicial liquidation, composition with creditors *(concordat préventif de faillite),* moratorium or reprieve from payment *(sursis de paiement),* controlled management *(gestion contrólée),* fraudulent conveyance *(actio pauliana),* general settlement with creditors, reorganisation or any other similar proceedings affecting the rights of creditors generally under Luxembourg law, and shall be construed so as to include any equivalent or analogous liquidation or reorganisation proceedings;
2. an **"agent"** includes, without limitation, a *"mandataire";*
3. a **"receiver", "administrative receiver", "administrator", "trustee", "custodian", "sequestrator", "conservator"** or the like includes, without limitation, a *juge délégué, commissaire, juge-commissaire, liquidateur, mandataire ad-hoc, receiver, administrateur, trustee, custodian, sequester* or *curateur* or any other person performing the same function of each of the foregoing;

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1. a "matured **obligation"** includes, without limitation, any *exigible, certaine*and *liquide obligation;*
2. **"Security",** a **"security interest"** or a **"lien"** includes, without limitation, any  
   *hypotheque, nantissement, privilege, accord de transfert de propriété á titre de garantie, droit de retention, gage, gage sur fonds de commerce* or any type of security in rem *(sIlreté réelle)* whatsoever whether granted or arising by operation of law;
3. **"creditors' process"** includes an executory attachment *(saisie exécutoire)* or a  
   conservatory attachment *(saisie conservatoire);*
4. A **"guarantee"** includes any *guarantie* which is independent from the debt to  
   which it relates and excludes any suretyship *(cautionnement)* within the meaning of Articles 2011 et seq. of the Luxembourg Civil Code;
5. a person being **"unable to pay its debts"** includes, without limitation, that  
   person being in a state of cessation of payments *(cessation de paiments);* and
6. **"by-laws"** or **"constitutional documents"** includes its up-to-date (restated)  
   articles of association *(statuts coordonnés).*

1.6 **Dutch terms**

In each Finance Document, where it relates to a person incorporated or formed in The Netherlands or an applicable term specified below, a reference to:

(a) a **"necessary action to authorise",** where applicable, includes without

limitation:

1. any action required to comply with the Dutch Works Council Act *(Wet  
   op de ondernemingsraden);* and
2. obtaining positive or neutral advice *(advies)* from the competent works  
   council(s) without conditions which cannot, in the opinion of the Lenders, reasonably be expected to be satisfied;

|  |  |
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| (b) | a **"winding-up", "administration"** or **"dissolution"** includes a Dutch entity being: |

1. declared bankrupt *(failliet verklaard);*
2. dissolved *(ontbonden);*
3. a **"moratorium"** includes *surseance van betaling* and granted a moratorium includes *surseance verleend;*
4. a **"liquidator"** includes a *curator;*
5. an **"administrator"** includes a *bewindvoerder;*

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a **"receiver"** or an **"administrative receiver"** does not include a *curator* or *bewindvoerder;*

an **"attachment"** includes a *beslag;*

**"Security"** includes any mortgage *(hypotheek),* pledge *(pandrecht),* retention of title arrangement *(eigendomsvoorbehoud),* privilege *(voorrecht),* right of retention *(recht van retentie),* right to reclaim goods *(recht van reclame),* and, in general, any right in rem *(beperkt recht),* created for the purpose of granting security *(goederenrechtelijk zekerheidsrecht);*

**"The Netherlands"** means the European part of the Netherlands and Dutch means in or of The Netherlands;

where it relates to a Dutch Obligor, **"unlawful financial assistance"** means

any act contemplated by section 2:98(c) of the Dutch Civil Code;

any **"step"** or **"procedure"** taken in connection with insolvency proceedings includes a Dutch entity having filed a notice under Section 36 of the Tax Collection Act of the Netherlands *(Invorderingswet 1990);*

(1) a **"trustee in bankruptcy"** includes a *curator;* and

(m) where it relates to a Dutch Obligor, a **"subsidiary"** includes a *dochtermaatschappij* as defined in of the Dutch Civil Code.

1.7 **Spanish terms**

In each Finance Document, where it relates to a person incorporated or formed or having its Centre of Main Interests in Spain, a reference to:

1. a **"winding up", "administration"** or **"dissolution"** includes, without limitation, bankruptcy *(concurso),* insolvency, voluntary or judicial liquidation, composition with creditors *(convenio de acreedores),* general settlement with creditors, reorganisation or any other similar proceedings affecting the rights of creditors generally under Spanish law, and shall be construed so as to include any equivalent or analogous liquidation or reorganisation proceedings;
2. a **"receiver", "administrative receiver", "administrator"** or the like includes, without limitation, a *administrador concursal* or any other person performing the same function of each of the foregoing;
3. a **"matured obligation"** includes, without limitation, any *obligación líquida, vencida y exigible;* and
4. **"Security"** or a **"security interest"** includes, without limitation, any *hipoteca, prenda, garantía pignoraticia, afianzamiento, aval y/o cession de derehos* whatsoever whether granted or arising by operation of law.

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**SECTION 2**

**THE FACILITY**

2. **THE FACILITY**

2.1 **The Facility**

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

(a) following its accession as a Borrower, the Nassica Propco a euro term loan

facility in an aggregate amount equal to the Total Facility A Commitments;

following its accession as a Borrower, the Vista Alegre Propco a euro term loan facility in an aggregate amount equal to the Total Facility B Commitments; and

(c) following its accession as a Borrower, the Nassica Propco a euro term loan  
facility in an aggregate amount equal to the Total Facility C Commitments.

2.2 **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.

|  |  |
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|  | 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 an Obligor shall be a separate and independent debt. |

1. A Finance Party may not, except as otherwise stated in the Finance  
   Documents, separately enforce its rights under the Finance Documents.

2.3 **Obligors' Agent**

(a) Each Obligor (other than the Obligors' Agent) by its execution of this

Agreement irrevocably appoints the Obligors' Agent to act on its behalf as its agent in relation to the Finance Documents and irrevocably authorises and instructs:

(i) the Obligors' Agent on its behalf to:

1. supply all information concerning itself contemplated by this  
   Agreement to the Finance Parties;
2. give all notices and instructions (including, in the case of a  
   Borrower, Utilisation Requests);
3. make such agreements and to effect the relevant amendments, supplements and variations capable of being given, made or

(b)

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effected by any Obligor notwithstanding that they may affect the Obligor, without further reference to or the consent of that Obligor;

1. sign, despatch and receive as its agent (without prior  
   consultation or agreement) all documents and notices to be signed, despatched or received by that Obligor;
2. sign or agree any amendment or waiver in relation to any  
   Finance Document on behalf of that Obligor;
3. take as its agent any other action necessary or desirable under  
   or in connection with the Finance Documents; and

(ii) each Finance Party to give any notice, demand or other communication

to that Obligor pursuant to the Finance Documents to the Obligors' Agent,

and in each case the Obligor shall be bound as though the Obligor itself had given the notices and instructions (including, without limitation, any Utilisation Requests) or executed or made the agreements or effected the amendments, supplements or variations, or received the relevant notice, demand or other communication.

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|  | Every act, omission, agreement, undertaking, settlement, waiver, amendment, supplement, variation, notice or other communication given or made by the Obligors' Agent or given to the Obligors' Agent under any Finance Document on behalf of another Obligor or in connection with any Finance Document (whether or not known to any other Obligor and whether occurring before or after such other Obligor became an Obligor under any Finance Document) shall be binding for all purposes on that Obligor as if that Obligor had expressly made, given or concurred with it. In the event of any conflict between any notices or other communications of the Obligors' Agent and any other Obligor, those of the Obligors' Agent shall prevail. |

1. The respective liabilities of each of the Obligors (other than the Obligors'  
   Agent) under the Finance Documents shall not be in any way affected by:
2. any act done or any irregularity (or purported irregularity) in any act  
   done by or any failure (or purported failure) by the Obligors' Agent;
3. the Obligors' Agent acting (or purporting to act) in any respect outside  
   any authority conferred upon it by any Obligor; or
4. the failure (or purported failure) by, or inability (or purported inability)  
   of, the Obligors' Agent to inform any Obligor of receipt by it or any notification under the Finance Documents.

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**3. PURPOSE**

**3.1 Purpose**

(a) Following its accession as a Borrower, the Nassica Propco shall apply all

amounts borrowed by it under the Facility A towards:

1. payment of any fees, costs and expenses, stamp registration and other  
   Taxes (other than VAT) incurred by any Obligor in connection with the Finance Documents;
2. in the amount of EUR3,000,000, funding the Capex Reserve Account  
   for application in payment of capital expenditure in connection with the Properties; and
3. refinancing the existing financial indebtedness of the Nassica Propco owed to the Vendor, Deutsche Pfandbriefbank AG-Sucursal en España and Deutsche Pfandbriefbank AG (including, without limitation, hedge termination costs, break costs and any other fees, costs and expenses in relation thereto),

in each case, as set out in the Funds Flow Statement approved by the Agent in accordance with Clause 4.1 *(Initial conditions precedent)* and not otherwise.

(b) Following its accession as a Borrower, the Vista Alegre Propco shall apply all

amounts borrowed by it under the Facility B towards:

1. payment of any fees, costs and expenses, stamp registration and other  
   Taxes (other than VAT) incurred by any Obligor in connection with the Finance Documents; and
2. refinancing the existing financial indebtedness of the Vista Alegre  
   Propco owed to the Vendor, Deutsche Pfandbriefbank AG-Sucursal en España and Deutsche Pfandbriefbank AG (including, without limitation, hedge termination costs, break costs and any other fees, costs and expenses in relation thereto),

as set out in the Funds Flow Statement approved by the Agent in accordance with Clause 4.1 *(Initial conditions precedent)* and not otherwise.

(c) Following its accession as a Borrower, the Nassica Propco shall apply all

amounts borrowed by it under the Facility C towards:

(i) payment of any fees, costs and expenses, stamp registration and other

Taxes (other than VAT) incurred by any Obligor in connection with:

1. the acquisition of the Nassica Land Plot; and/or
2. the Finance Documents; and

(ii) funding the purchase price for the acquisition of the Nassica Land Plot

in accordance with Nassica Land Plot Acquisition Document,

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as set out in the Funds Flow Statement approved by the Agent in accordance

with Clause 4.1 *(Initial conditions precedent)* and not otherwise.

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) The Lenders will only be obliged to comply with Clause 5.4 *(Lenders'*

*participation)* in relation to any Utilisation if on or before the Utilisation Date for that Utilisation the Agent has received confirmation from all the Lenders that:

1. in relation to a Loan under Facility A or Facility B, all of the  
   applicable documents and other evidence listed in Part 1 *(Conditions Precedent)* of Schedule 2 *(Conditions Precedent and Conditions Subsequent);* and
2. in relation to a Loan under Facility C, all applicable items listed in  
   Schedule 3 *(Conditions precedent — Nassica Land Plot),*

have been received by the Lenders, in each case, in form and substance satisfactory to the Lenders unless waived by the Lenders on such terms as the Lenders consider fit. The Agent shall notify the Obligors' Agent promptly upon receiving confirmation from the Lenders that they are so satisfied.

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| (b) | Other than to the extent that the Majority Lenders notify the Agent in writing to the contrary before the Agent gives the notification described in paragraph (a) above, the Lenders authorise (but do not require) the Agent to give that notification. The Agent shall not be liable for any damages, costs or losses whatsoever as a result of giving any such notification. |

1. The Agent may refuse to accept a Utilisation Request if the Agent believes that the notification described in paragraph (a) above will not be capable of being given on or before the Utilisation Date.

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;
2. each of the representations set out in Clause 19 *(Representations)* required to be made on the date of the Utilisation Request or Utilisation Date (as applicable) in accordance with Clause 19.29 *(Times for making representations)* are true in all material respects;

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1. on the basis of information available on the proposed Utilisation Date, Debt Yield as at the first Interest Payment Date after the proposed Utilisation Date will be at least 8.75 per cent.; and
2. immediately following the making of the Loan the Loan to Value will not exceed 75.00 per cent.

4.3 **Maximum number of Loans**

No Borrower (nor the Obligors' Agent on behalf of a Borrower) may deliver a Utilisation Request if as a result of the proposed Utilisation more than:

1. one Facility A Loan;
2. one Facility B Loan; and
3. one Facility C Loan, would be outstanding. 4.4 **Minimum number of Loans**

No Borrower (nor the Obligors' Agent on behalf of a Borrower) may deliver a Utilisation Request in respect of:

1. Facility A or Facility B unless a Utilisation Request is delivered in respect of Facility A and Facility B at the same time proposing the Utilisation of each such Facility on the same date; and

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|  | Facility C unless a Utilisation in respect of each of Facility A and Facility B has been, or will be, made prior to or on the same date as the proposed Utilisation Date in respect of Facility C. |

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**SECTION 3  
UTILISATION**

5. **UTILISATION**

5.1 **Delivery of a Utilisation Request**

A Borrower may utilise the 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. it identifies the Borrower;
3. the proposed Utilisation Date is a Business Day within the Availability Period; and
4. the currency and amount of the Utilisation comply with Clause 5.3 *(Currency and amount),*

(b) The Utilisation Date for each Loan under Facility A and Facility B must be the

same.

(c) Multiple Utilisations may be requested in a Utilisation Request where the

proposed Utilisation Date is the same.

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 an amount which is not more than the lower of:
3. the Available Facility under the relevant Facility under which such Loan is to be utilised;
4. in relation to a Utilisation of:
5. Facility A or Facility B, (when aggregated with each Utilisation  
   proposed to be made under Facility A and Facility B) 75 per cent. of the Acquisition Costs to be paid by the Obligors concerned in connection with the purchase of the Target Companies;
6. Facility A, 75 per cent. of the Acquisition Costs to be paid by  
   the Obligors concerned in connection with the purchase of the Nassica Holdco;

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1. Facility B, 75 per cent. of the Acquisition Costs to be paid by  
   the Obligors concerned in connection with the purchase of the Vista Alegre Holdco; and
2. Facility C, 75 per cent. of the Acquisition Costs to be paid by  
   the Obligors concerned in connection with the purchase of the Nassica Land Plot.

5.4 **Lenders' participation**

1. If the conditions set out in this Agreement have been met, each Lender shall  
   make its participation in each Loan available by the Utilisation Date through its Facility Office.

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|  | 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. |

1. The Agent shall notify each Lender of the amount of each Loan and the  
   amount of its participation in that Loan by the Specified Time.

5.5 **Cancellation of Commitment**

The Commitments relating to a Facility which, at that time, are unutilised shall be immediately cancelled at the end of the Availability Period relating to that Facility.

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**SECTION 4**

**REPAYMENT, PREPAYMENT AND CANCELLATION**

1. **REPAYMENT**

6.1 **Repayment of Loans**

On the Repayment Date, each Borrower shall repay the Loans in full and pay and discharge all Secured Liabilities in full.

6.2 **Reborrowing**

No Borrower may reborrow any part of the Facility which is repaid.

1. **PREPAYMENT AND CANCELLATION**

7.1 **Illegality**

If, in any applicable jurisdiction, it becomes unlawful for any Lender to perform any of its obligations as contemplated by this Agreement or to fund or maintain its participation in any Loan or becomes unlawful for any Affiliate of a Lender for that Lender to do so:

1. that Lender shall promptly notify the Agent upon becoming aware of that  
   event;

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|  | upon the Agent notifying the Obligors' Agent, the Commitment of that Lender will be immediately cancelled; and |

1. each Borrower shall repay that Lender's participation in the Loans made to that Borrower on the last day of the Interest Period for each Loan occurring after the Agent has notified the Obligors' Agent 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) and that Lender's Commitment shall be cancelled in the amount of the participation repaid.

7.2 **Change of control**

(a) If

1. the Sponsor ceases to control the Ultimate Parent;
2. the Parent ceases to be controlled by the Ultimate Parent;
3. Dutch Holdco ceases to be controlled by the Parent;
4. other than as a result of a disposal permitted by the terms of this Agreement, the Nassica Holdco or the Vista Alegre Holdco ceases to be controlled by Dutch Holdco;

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(b)

1. other than as a result of a disposal permitted by the terms of this Agreement, the Nassica Propco ceases to be controlled by the Nassica Holdco; or
2. other than as a result of a disposal permitted by the terms of this Agreement, the Vista Alegre Propco ceases to be controlled by the Vista Alegre Holdco,

then:

1. the Obligors' Agent shall promptly notify the Agent upon becoming aware of that event; and
2. a Lender shall not be obliged to fund a Utilisation; and
3. the Total Commitments shall be automatically cancelled and all outstanding Loans, together with accrued interest, and all other amounts accrued under the Finance Documents shall become immediately due and payable.

For the purpose of paragraph (a) above, **"control"** means (whether directly or indirectly):

(i) 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 the relevant Obligor or the Ultimate Parent (as applicable); or
2. appoint or remove all, or the majority, of the directors or other equivalent officers of the relevant Obligor or the Ultimate Parent (as applicable); or
3. give directions with respect to the operating and financial policies of the relevant Obligor or the Ultimate Parent (as applicable) with which the directors or other equivalent officers of the relevant Obligor or the Ultimate Parent (as applicable) are obliged to comply; or

(ii) the holding of:

1. in the case of the Ultimate Parent, (legally or beneficially) more than one half of the issued share capital of, and the intercompany debt made to, the Ultimate Parent; and
2. in the case of any Obligor, (legally or beneficially) all of the issued share capital of that Obligor,

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(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).

7.3 **Mandatory prepayment**

Each Borrower must apply the following amounts in prepayment of the Loans, and payment of prepayment fees and other amounts referred to in paragraph (b) of Clause 7.8 *(Restrictions)* at the time and in the order of application contemplated by Clause 7.4 *(Application of mandatory prepayments):*

1. the amount of Cash Trap Proceeds;
2. the amount of Disposal Proceeds;
3. the amount of Lease Prepayment Proceeds;
4. the amount of Insurance Prepayment Proceeds; and
5. the amount of Compensation Prepayment Proceeds. 7.4 **Application of mandatory prepayments**

(a) An amount referred to in paragraph (a) of Clause 7.3 *(Mandatory prepayment)*

shall be applied on the date provided for in accordance with paragraph (b) of Clause 17.6 *(Cash Trap Account):*

(i) **first,** pro rata:

1. in or towards prepayment of such Loans of any Borrower as the Agent may select (acting on the instructions of the Majority Lenders (acting in their sole discretion)); and
2. in or towards payment of any other amount that is or will  
   become due and payable under paragraph (b) of Clause 7.8 *(Restrictions)* as a result of such prepayments; and

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

relevant Borrower from whose Cash Trap Account such Cash Trap Proceeds were withdrawn.

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| (b) | An amount referred to in paragraph (b) of Clause 7.3 *(Mandatory prepayment)* shall be applied on the date provided for in accordance with paragraph (c) of Clause 17.5 *(Disposals Account)* or paragraph (d) of Clause 22.4 *(Disposals),* as applicable, as follows: |

**(i) first:**

(A) in an amount equal to the Release Price of the Property the subject of, or owned by the Obligor the shares of which were the subject of, the relevant disposal:

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1. **first,** in or towards prepayment of:

(x) in the case of Disposal Proceeds relating to the  
Vista Alegre Property (or the shares of an Obligor which directly or indirectly owns the Vista Alegre Property (other than in the circumstances specified in paragraph (z) below)), the Loan made under Facility B;

(Y) in the case of Disposal Proceeds relating to all or

part of the Nassica Land Plot, the Loan made under Facility C and, thereafter, the Loan made under Facility A; and

(z) in the case of Disposal Proceeds relating to the

Nassica Shopping Centre (or the shares of an Obligor which directly or indirectly owns the Nassica Shopping Centre), the Loan made under Facility A and, thereafter, the Loan made under Facility C; and

1. **secondly,** after prepayment of those Loans, in or  
   towards prepayment of the other Loans pro rata; and

(B) in or towards payment of prepayment fees and any other amount that is or will become due and payable under paragraph (b) of Clause 7.8 *(Restrictions)* as a result of those prepayments and, in the case of Disposal Proceeds relating to the Nassica Shopping Centre (or the shares of an Obligor which directly or indirectly owns the Nassica Shopping Centre), all other Secured Liabilities; and

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

relevant Obligor.

(c) An amount referred to in paragraphs (c) to (e) of Clause 7.3 *(Mandatory  
prepayment)* shall be applied on the date provided for in accordance with paragraph (c) of Clause 17.4 *(Deposit Account)* as follows:

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| (i) | in or towards :   1. **first,** prepayment of the Loans made to the relevant Borrower referred to in paragraph (d) below pro rata; 2. **secondly,** after prepayment of those Loans, prepayment of the other Loans pro rata; and |

(ii) in or towards payment of prepayment fees and any other amount that is

or will become due and payable in accordance with paragraph (b) of

Clause 7.8 *(Restrictions)* as a result of those prepayments.

(d) For the purposes of paragraph (c)(i)(A) above, the relevant Borrower is:

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1. insofar as the relevant amount to be applied in prepayment is derived from or relates to a Borrower or the assets of or shares in a Borrower, that Borrower; and
2. otherwise, such Borrower or Borrowers as the Majority Lenders elect.

7.5 **Mandatory cancellation: Nassica Pre-emption Plot**

If, prior to the Utilisation of Facility C, the Nassica Pre-emption Right has been exercised by the Nassica Pre-emption Beneficiary:

1. the Obligors' Agent shall promptly notify the Agent upon becoming aware of that event; and
2. an amount of EUR1,165,000 of the Commitments made available under Facility C shall be immediately cancelled. Any cancellation under this Clause 7.5 shall reduce the Commitments of the Lenders rateably.

7.6 **Voluntary prepayment of Loans**

1. A Borrower to which a Loan has been made may, if it gives the Agent not less than 5 Business Days' (or such shorter period as the Majority Lenders may agree) prior notice, prepay on the next Interest Payment Date the whole or any part of any Loan (but, if in part, being an amount that reduces the amount of that Loan by a minimum amount of EUR 1,000,000).
2. A Loan may only be prepaid after the last day of the Availability Period (or, if earlier, the day on which the Available Facility is zero).

7.7 **Right of repayment and cancellation in relation to a single Lender**

(a) If

1. any sum payable to any Lender by an Obligor is required to be increased under paragraph (c) of Clause 12.2 *(Tax gross-up);* or
2. any Lender claims indemnification under Clause 12.3 *(Tax indemnity)* or Clause 13.1 *(Increased costs),*

the Obligors' Agent may, whilst the circumstance giving rise to the requirement for that increase 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 Loans or give the Agent notice of its intention to replace that Lender in accordance with paragraph (c) below.

(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.

(c) On the last day of each Interest Period which ends after the Obligors' Agent

has given notice of cancellation under paragraph (a) above (or, if earlier, the

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date specified by the Obligors' Agent in that notice), each Borrower to which a Loan has been made shall repay that Lender's participation in that Loan.

7.8 **Restrictions**

1. Any notice of cancellation or prepayment given by any Party under this Clause  
   *7 (Prepayment and cancellation)* 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.

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|  | Any prepayment under this Agreement shall be made together with (without double counting): |

1. accrued interest (including Margin) on the amount prepaid (which  
   shall, if the Facility has, on or before that date, been the subject of a Securitisation be calculated up to the next Interest Payment Date);
2. any applicable Break Costs;
3. any prepayment fees payable in accordance with Clause 11.4 *(Prepayment fee);* and
4. any other Secured Liabilities which become due and payable as a result of the prepayment.
5. No Borrower may reborrow all or any part of the Facility which is prepaid.
6. 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.
7. No amount of the Total Commitments cancelled under this Agreement may be subsequently reinstated.
8. If the Agent receives a notice under this Clause 7 it shall promptly forward a copy of that notice to either the Obligors' Agent or the affected Lenders, as appropriate.
9. If all or part of any Lender's participation in a Loan is repaid or prepaid, an amount of that Lender's Commitment (equal to the amount of the Loan which is repaid or prepaid) will be deemed to be cancelled on the date of repayment or prepayment.
10. Any prepayment of a Loan (other than a prepayment to a single Lender pursuant to Clause 7.1 *(Illegality)* or Clause *7.7 (Right of repayment and cancellation in relation to a single Lender))* shall be applied *pro rata* to each Lender's participation in that Loan.

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**SECTION 5**

**COSTS OF UTILISATION**

8. **INTEREST**

8.1 **Calculation of interest**

The rate of interest on each Loan for each Interest Period is the percentage rate per annum which is the aggregate of the applicable:

1. Margin; and
2. EURIBOR.

8.2 **Payment of interest**

Each Borrower shall pay accrued interest on each Loan made to it on the last day of each Interest Period.

8.3 **Hedging**

1. On or prior to the date falling five (5) Business Days after the Utilisation Date, the Borrowers shall enter into and shall thereafter maintain Hedging Agreements in accordance with this Clause.

(i) The aggregate notional amount of the transactions in respect of the

Hedging Agreements shall be at least 100 per cent. of:

1. in the case of the Nassica Borrower, the aggregate of the Total  
   Facility A Commitments and the Total Facility C Commitments; and
2. in the case of the Vista Alegre Borrower, the Total Facility B  
   Commitments.

(ii) Each Hedging Agreement (and each transaction under a Hedging

Agreement) shall:

1. be with a Hedge Counterparty that has a Requisite Rating at the time of entry into of those documents;
2. be by way of a prepaid interest rate cap with a weighted average strike rate that is at all times no greater than 3.00 per cent. per annum.;
3. be for a combined or composite term ending on the Repayment Date;
4. provide for payments to the Borrowers under such Hedge Documents to occur on the same dates as the Interest Payment

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Dates under this Agreement and in respect of the same periods as the Interest Periods under this Agreement;

1. provide for "EURIBOR" and "Business Days" to be determined on the same basis as in this Agreement;
2. not contain any restrictions on granting any Security over the  
   relevant Borrower's rights under such Hedging Agreement in favour of the Finance Parties and
3. be based on an ISDA Master Agreement and otherwise in form and substance satisfactory to the Agent (acting on the instructions of the Majority Lenders).

(iii) The rights of each Borrower under the Hedging Agreements shall be charged or assigned by way of security under a Security Agreement.

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|  | The Borrowers must comply with the terms of that Hedging Agreement. |

1. No Borrower may amend, supplement, extend or waive the terms of  
   any Hedging Agreement without the consent of the Agent (acting on the instructions of the Majority Lenders).
2. Paragraph (ii) above shall not apply to an amendment, supplement or waiver that is administrative and mechanical in nature and does not give rise to a conflict with any provision of this Agreement.

(d) No Borrower may terminate or close out any transactions in respect of any

Hedging Agreement (in whole or in part) except:

1. if an Illegality (as that term is defined in the applicable ISDA Master  
   Agreement) has occurred;
2. if all the Loans and other amounts outstanding under the Finance  
   Documents have been unconditionally and irrevocably paid and discharged in full; or
3. with the prior written consent of the Agent (acting on the instructions of the Majority Lenders).

(e) If at any time a Hedge Counterparty falls below the Requisite Rating, the

Borrowers will notify the Agent and procure that, within 30 days of that ratings downgrade, replacement Hedging Agreements are entered into by the Borrowers with a new Hedge Counterparty which has a Requisite Rating on terms satisfactory to the Agent (such terms being satisfactory provided that they meet each of the requirements set out in paragraph (b) above).

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8.4 **Default interest**

1. If an Event of Default is continuing, interest shall accrue on each Loan and on  
   any amount payable by an Obligor under a Finance Document which an Obligor has failed to pay from the date such Event of Default occurred up to the date on which no Event of Default is continuing at a rate which, subject to paragraph (c) below, is two per cent. per annum higher than the rate which would have been payable on that Loan or, in the case of an overdue amount, 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).

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|  | Any interest accruing under this Clause 8.4 shall be immediately payable by the Obligor on demand by the Agent. |

(c) 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:

1. 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
2. the rate of interest applying to the overdue amount during that first  
   Interest Period shall be two per cent. per annum higher than the rate which would have applied if the overdue amount had not become due.

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

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

8.5 **Notification of rates of interest**

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

9. **INTEREST PERIODS**

9.1 **Length of Interest Periods**

Each Interest Period for a Loan shall start on its Utilisation Date or (if already made) on the last day of its preceding Interest Period and end on the next Interest Payment Date.

9.2 **Changes to Interest Periods**

(a) The Agent (acting on the instructions of the Majority Lenders) and the

Obligors' Agent may enter into such other arrangements as they may agree for the determination and adjustment of Interest Periods and the consolidation or splitting of Loans.

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(b) If the Agent (acting on the instructions of the Majority Lenders) makes any

change to an Interest Period referred to in this Clause 9.2, it shall promptly notify the Obligors' Agent and the Lenders.

9.3 **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).

9.4 **Consolidation of Loans**

**If** two or more Interest Periods relate to Loans made to the same Borrower and end on the same date, those Loans will be consolidated into, and treated as, a single Loan on the last day of the Interest Period.

**10. CHANGES TO THE CALCULATION OF INTEREST 10.1 Absence of quotations**

Subject to Clause 10.2 *(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.

10.2 **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; and
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.

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

1. at or about noon on the Quotation Day for the relevant Interest Period  
   EURIBOR is to be determined by reference to the Reference Banks and none or only one of the Reference Banks supplies a rate to the Agent to determine EURIBOR for euro for the relevant Interest Period;

or

1. 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 per cent. of that Loan) that the cost to it or them of obtaining matching deposits in the European Interbank Market would be in excess of EURIBOR.

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10.3 **Alternative basis of interest or funding**

(a) If a Market Disruption Event occurs and the Agent or the Obligors' Agent so

requires, the Agent (acting on the instructions of the Majority Lenders) and the Obligors' Agent 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.

Any alternative basis agreed pursuant to paragraph (a) above shall, with the prior consent of all the Lenders and the Obligors' Agent, be binding on all Parties.

10.4 **Break Costs**

(a) 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.

Each Lender shall, together with its demand for its Break Costs, provide a certificate confirming the amount of its Break Costs for any Interest Period in which they accrue.

**11. FEES**

11.1 **Arrangement fee**

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

11.2 **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.

11.3 **Security Agent fee**

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

11.4 **Prepayment fee**

1. Subject to paragraphs (b)(v) and (c) below, the Borrowers must pay to the  
   Agent (for the account of each Lender) a prepayment fee on the date of any prepayment (for any reason, including any mandatory prepayment required pursuant to Clause *7 (Prepayment and cancellation)* and upon enforcement) of all or any part of a Loan.

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|  | The amount of the prepayment fee is: |

(i) if the prepayment occurs on or before the date falling 12 Months after

the first Utilisation Date, 6.00 per cent. of the amount prepaid;

(b)

(b)

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(ii) if the prepayment occurs after the date falling 12 Months after the first

Utilisation Date but on or before the date falling 18 Months after the first Utilisation Date, 3.00 per cent. of the amount prepaid;

(iii) if the prepayment occurs after the date falling 18 Months after the first

Utilisation Date but on or before the date falling 24 Months after the first Utilisation Date, 1.50 per cent. of the amount prepaid;

(iv) if the prepayment occurs after the date falling 24 Months after the first

Utilisation Date but on or before the date falling 36 Months after the first Utilisation Date:

1. 0.50 per cent. of the amount prepaid, in the event that such  
   prepayment is made from Disposal Proceeds; and
2. 1.00 per cent. of the amount prepaid, in any other  
   circumstances; and

(v) thereafter, no prepayment fee will be payable.

(c) No prepayment fee shall be payable under this Clause 11.4 if the prepayment

is made:

1. under Clauses 7.1 *(Illegality)* or *7.7 (Right of repayment and cancellation in relation to a single Lender);*
2. from Disposal Proceeds relating to a disposal of the Vista Alegre Property;
3. from Disposal Proceeds relating to a disposal of all or part of the Nassica Retained Plot;
4. from Disposal Proceeds relating to a disposal of the Nassica Pre­emption Plot as a result of the exercise by the Nassica Pre-emption Beneficiary of the Nassica Pre-emption Right;
5. from Insurance Prepayment Proceeds;
6. from Cash Trap Proceeds;
7. from Compensation Prepayment Proceeds; or
8. in accordance with Clause 21.4 *(Prepayment due to financial covenant breach).*

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**SECTION 6**

**ADDITIONAL PAYMENT OBLIGATIONS**

12. **TAX GROSS-UP AND INDEMNITIES** 12.1 **Tax Definitions**

(a) In this Agreement:

**"EU Lender"** means a Lender which is a resident for tax purposes in a member state of the European Union (other than Spain) not acting for the purposes of this Facility through a permanent establishment in Spain or being a permanent establishment of such European Union resident located in another member state of the European Union (other than Spain), provided it does not obtain the income through a territory considered to be a tax haven for Spanish tax purposes and that the income obtained is effectively connected to such European resident or European permanent establishment.

**"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) in respect of a Spanish Borrower, a Lender which is beneficially

entitled to payments to be made to that Lender in respect of an advance under a Finance Document and is:

(A) a Lender:

1. which is a Spanish credit entity or financial credit  
   establishment registered with the Bank of Spain to which the provisions set out in the first paragraph of section (c) of Article 59 of Spanish Royal Decree 1777/2004 of 30 July 2004 apply; or
2. which is a Spanish permanent establishment of a non‑  
   Spanish financial institution to which the provision set out in the second paragraph of Article 8.1 of Spanish Royal Decree 1776/2004 of 30 July 2004 apply, and provided that the income obtained is effectively connected to such Spanish permanent establishment; or

(B) an EU Lender; or

(C) a Treaty Lender; or

(ii) in respect of a Dutch Borrower, a Lender which is beneficially entitled

to payments made to that Lender in respect of an advance under a Finance Document and is:

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1. a Treaty Lender; or
2. otherwise entitled under Dutch domestic law (other than by reason of being a Treaty Lender) to receive interest free of any Tax Deduction imposed by The Netherlands.

**"Spanish Borrower"** means any Borrower which is incorporated or established in Spain.

**"Spanish Obligor"** means any Obligor which is incorporated or established in Spain.

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

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

**"Tax Payment"** means either the increase in a payment made by an Obligor to a Finance Party under Clause 12.2 *(Tax gross-up)* or a payment under Clause 12.3 *(Tax indemnity).*

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

1. is treated as a resident of a Treaty State for the purposes of the Treaty;  
   and
2. does not carry on a business in Spain or the Netherlands, as applicable, through a permanent establishment with which that Lender's participation in the Facility is effectively connected; and
3. fulfils any conditions which must be fulfilled under the relevant Treaty by residents of that state for such resident to obtain exemption from Tax imposed on interest under a Finance Document by the taxing state.

**"Treaty State"** means a jurisdiction having a double taxation agreement in force (a **"Treaty")** with Spain or the Netherlands, as applicable, which makes provision for full exemption from tax imposed by Spain or the Netherlands, as applicable, on payments under a Finance Document.

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|  | Unless a contrary indication appears, in this Clause 12 *(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. |

1. This Clause 12 *(Tax gross-up and indemnities)* shall not apply to any Hedging  
   Agreement.

12.2 **Tax gross-up**

(a) Each Obligor shall make all payments to be made by it without any Tax

Deduction, unless a Tax Deduction is required by law.

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(b) Each Obligor shall promptly upon becoming aware that an Obligor 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 promptly 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 Obligors' Agent and the relevant Obligor.

(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) A payment shall not be increased under paragraph (c) above by reason of a

Tax Deduction on account of Tax imposed by Spain or The Netherlands, 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 the Lender had been 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 published concession of any relevant taxing authority; or
2. the relevant Lender is a EU Lender or a Treaty Lender and the Obligor  
   making the payment is able to demonstrate that the payment could have been made to the Lender without the Tax Deduction had that Lender complied with its obligations under sub-clause 12.2(g) below; or
3. the relevant Lender is an EU Lender or a Treaty Lender and the Obligor making the payment is a Spanish Obligor, and:
4. the applicable regulations (or the interpretation, administration,  
   or application of any law, EU regulation or Treaty, or any published practice or published concession of any relevant taxing authority) require a certificate of tax residence (or the specific form required under the relevant Treaty) to be delivered to that Spanish Obligor in order for the payment to be made to that Lender without the Tax Deduction; and
5. the relevant EU Lender or a Treaty Lender has not complied with its obligations under sub-clause 12.2(h).

(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 30 days of making either a Tax Deduction or any payment required in

connection with that Tax Deduction, the Obligor making that Tax Deduction

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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) An EU Lender or a Treaty Lender (as applicable) and each Obligor which

makes a payment to which that EU Lender or Treaty Lender (as applicable) 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.

(h) Each EU Lender or Treaty Lender shall, as soon as reasonably practicable

after the date on which it becomes a Party, but before any payment of interest is due or made to that Party, whichever comes first, deliver to the Obligor a certificate of tax residence (or the specific form required under the relevant Treaty) duly issued by the competent Tax authorities of its country of residence evidencing such EU Lender or Treaty Lender as resident for Tax purposes in that country and, if a Treaty Lender, accrediting such Treaty Lender as resident in the relevant jurisdiction and declaring that it is entitled to the benefits of the relevant Treaty. Each such EU Lender or Treaty Lender shall be required to deliver a new certificate of residence each time the existing certificate expires in accordance with Royal Legislative Decree 5/2004, of 5 March 2004, which approved the Non-Resident Income Tax Law.

12.3 **Tax indemnity**

1. Each Obligor 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 (acting reasonably) 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, profit or gains received or receivable (but not any sum deemed to be received or receivable) by that Finance Party; or

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

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1. is compensated for by an increased payment under Clause 12.2 *(Tax gross-up);*
2. would have been compensated for by an increased payment under Clause 12.2 *(Tax gross-up)* but was not so compensated solely because one of the exclusions in paragraph (d) of Clause 12.2 *(Tax gross-up)* applied; or
3. relates to a FATCA Deduction required to be made by a Party.
4. 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 Obligors' Agent.
5. A Protected Party shall, on receiving a payment from an Obligor under this Clause 12.3 *(Tax indemnity),* notify the Agent.

12.4 **Tax Credit**

If an Obligor makes a Tax Payment and the relevant Finance Party determines (acting reasonably) that:

1. a Tax Credit is attributable to an increased payment of which that Tax Payment forms part, to that Tax Payment or to a Tax Deduction in consequence of which that Tax Payment was required; and
2. that Finance Party has obtained and utilised that Tax Credit,

the Finance Party shall pay an amount to the Obligor which that Finance Party determines (acting reasonably) 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.

12.5 **Lender status confirmation**

Each Lender which becomes a Party to this Agreement after the date of this Agreement shall indicate, in the Transfer Certificate or Assignment Agreement which it executes on becoming a Party, for the benefit of the Agent and without liability to any Obligor, which of the following categories it falls in:

1. not a Qualifying Lender;
2. a Qualifying Lender (other than a Treaty Lender); or
3. a Treaty Lender.

If a New Lender fails to indicate its status in accordance with this Clause 12.5 then such New Lender shall be treated for the purposes of this Agreement (including by each Obligor as if it is not a Qualifying Lender until such time as it notifies the Agent which category applies (and the Agent, upon receipt of such notification, shall inform the Obligors' Agent). For the avoidance of doubt, a Transfer Certificate or

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Assignment Agreement shall not be invalidated by any failure of a Lender to comply with this Clause 12.5.

12.6 **Stamp taxes**

1. Subject to paragraph (b) below, each Borrower shall pay and, within three  
   Business Days of demand, indemnify each Secured Party against any cost, loss or liability that Secured Party incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of, or in order to register or enforce, any Finance Document.

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|  | Other than in circumstances where an Obligor has requested the relevant action or circumstance referred to below in paragraph (i), (ii) or (iii), no Obligor shall be required to pay or indemnify any Secured Party for any cost, loss or liability that may arise or be incurred by such Secured Party (including any New Lender) in relation to any stamp duty or similar Tax (including any *Impuesto sobre Actos Jurídicos Documentados):* |

1. payable in respect of any syndication, securitisation, assignment,  
   novation or transfer under any Finance Document;
2. payable in respect of any Security Document granted pursuant to any  
   assignment, syndication, securitisation, novation or transfer under any Finance Document if such Security Document has already been granted and any costs, fees and charges payable in connection with that Security Document have already been paid; or
3. payable as a result of the voluntary registration of the Finance Documents by a Secured Party with the *Administration de l'Enregistrement et des Domaines* in Luxembourg or registration of the Finance Documents in Luxembourg when such registration is not required to maintain, preserve, establish or enforce the rights of that Secured Party under the Finance Document,

in each case, any such cost, loss or liability shall be borne solely by the Secured Parties.

12.7 **Value added tax**

(a) All amounts 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 any supply for VAT purposes are deemed to be exclusive of any VAT which is chargeable on that supply, and accordingly, subject to paragraph (b) below, if VAT is or becomes chargeable on any supply made by any Finance Party to any Party under a Finance Document, and that Finance Party is required to account to the relevant tax authority for the VAT, that Party must pay to that Finance Party (in addition to and at the same time as paying any other consideration for such supply) an amount equal to the amount of that VAT (and such Finance Party must promptly provide an appropriate VAT invoice to that Party).

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(b) If VAT is or becomes 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 other than the Recipient (the **"Relevant Party")** is required by the terms of any Finance Document to pay an amount equal to the consideration for that supply to the Supplier (rather than being required to reimburse or indemnify the Recipient in respect of that consideration):

1. (where the Supplier is the person required to account to the relevant tax  
   authority for the VAT) the Relevant Party must also pay to the Supplier (at the same time as paying that amount) an additional amount equal to the amount of the VAT. The Recipient must (where this paragraph (i) applies) promptly pay to the Relevant Party an amount equal to any credit or repayment the Recipient receives from the relevant tax authority which the Recipient reasonably determines relates to the VAT chargeable on that supply; and
2. (where the Recipient is the person required to account to the relevant  
   tax authority for the VAT) the Relevant Party must promptly, following demand from the Recipient, pay to the Recipient an amount equal to the VAT chargeable on that supply but only to the extent that the Recipient reasonably determines that it is not entitled to credit or repayment from the relevant tax authority in respect of that VAT.

(c) Where a Finance Document requires any Party to reimburse or indemnify a

Finance Party for any cost or expense, that Party shall reimburse or indemnify (as the case may be) such Finance Party for the full amount of such cost or expense, including such part thereof as represents VAT, save to the extent that such Finance Party reasonably determines that it is entitled to credit or repayment in respect of such VAT from the relevant tax authority.

(d) Any reference in this Clause 12.7 to any Party shall, at any time when such

Party is treated as:

1. a member of a VAT fiscal unity *(BTW fiscale eenheid),* include (where  
   appropriate and unless the context otherwise requires) a reference to the parent of such VAT fiscal unity at such time; and
2. a member of a group (including but not limited to any fiscal unities)  
   for VAT purposes, include (where appropriate and unless the context otherwise requires) a reference to the person who is treated as making the supply, or (as appropriate) receiving the supply under the applicable grouping rules.

(e) In relation to any supply made by a Finance Party to any Party under a

Finance Document, if reasonably requested by such Finance Party, that Party must promptly provide such Finance Party with details of that Party's VAT registration and such other information as is reasonably requested in connection with such Finance Party's VAT reporting requirements in relation to such supply.

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12.8 **FATCA Information**

(a) Subject to paragraph (c) below, each Party shall, within ten Business Days of a

reasonable request by another Party:

(i) confirm to that other Party whether it is:

1. a FATCA Exempt Party; or
2. not a FATCA Exempt Party;

(ii) supply to that other Party such forms, documentation and other

information relating to its status under FATCA as that other Party reasonably requests for the purposes of that other Party's compliance with FATCA;

(iii) supply to that other Party such forms, documentation and other information relating to its status as that other Party reasonably requests for the purposes of that other Party's compliance with any other law, regulation, or exchange of information regime.

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| (b) | If a Party confirms to another Party pursuant to paragraph (a)(i) above that it is a FATCA Exempt Party and it subsequently becomes aware that it is not or has ceased to be a FATCA Exempt Party, that Party shall notify that other Party reasonably promptly. |

(c) Paragraph (a) above shall not oblige any Finance Party to do anything, and

paragraph (a)(iii) above shall not oblige any other Party to do anything, which

would or might in its reasonable opinion constitute a breach of:

1. any law or regulation;
2. any fiduciary duty; or
3. any duty of confidentiality.

(d) If a Party fails to confirm whether or not it is a FATCA Exempt Party or to

supply forms, documentation or other information requested in accordance with paragraph (a)(i) or (ii) above (including, for the avoidance of doubt, where paragraph (c) above applies), then such Party shall be treated for the purposes of the Finance Documents (and payments under them) as if it is not a FATCA Exempt Party until such time as the Party in question provides the requested confirmation, forms, documentation or other information.

12.9 **FATCA Deduction**

(a) Each Party may make any FATCA Deduction it is required to make by

FATCA, and any payment required in connection with that FATCA Deduction, and no Party shall be required to increase any payment in respect of which it makes such a FATCA Deduction or otherwise compensate the recipient of the payment for that FATCA Deduction.

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(b) Each Party shall promptly, upon becoming aware that it must make a FATCA

Deduction (or that there is any change in the rate or the basis of such FATCA Deduction), notify the Party to whom it is making the payment and, in addition, shall notify the Obligors' Agent and the Agent, and the Agent shall notify the other Finance Parties.

13. **INCREASED COSTS** 13.1 **Increased costs**

(a) Subject to Clause 13.3 *(Exceptions),* each Borrower 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:

1. the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation after the date of this Agreement; or
2. compliance with any law or regulation made after the date of this Agreement; or
3. the implementation or application of, or compliance with, Basel III or CRD W or any law or regulation that implements or applies Basel III or CRD W.

(b) In this Agreement:

(i) **"Increased Costs"** means:

1. a reduction in the rate of return from the Facility or on a Finance Party's (or its Affiliate's) overall capital;
2. an additional or increased cost; or
3. 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.

(ii) **"Basel III"** means:

(A) the agreements on capital requirements, a leverage ratio and

liquidity standards contained in "Basel III: A global regulatory framework for more resilient banks and banking systems", "Basel III: International framework for liquidity risk measurement, standards and monitoring" and "Guidance for national authorities operating the countercyclical capital buffer" published by the Basel Committee on Banking Supervision on

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16 December 2010, each as amended, supplemented or restated; and

1. the rules for global systemically important banks contained in  
   "Global systemically important banks: assessment methodology and the additional loss absorbency requirement — Rules text" published by the Basel Committee on Banking Supervision in November 2011, as amended, supplemented or restated; and
2. any further guidance or standards published by the Basel  
   Committee on Banking Supervision relating to "Basel III"; and

(iii) **"CRD IV"** means:

1. Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms; and
2. Directive 2013/36/EU of the European Parliament and of the  
   Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC.

13.2 **Increased cost claims**

1. A Finance Party intending to make a claim pursuant to Clause 13.1 *(Increased  
   Costs)* shall notify the Agent of the event giving rise to the claim, following which the Agent shall promptly notify the Obligors' Agent.

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|  | Each Finance Party shall, as soon as practicable after a demand by the Agent, provide a certificate confirming the amount of its Increased Costs. |

13.3 **Exceptions**

(a) Clause 13.1 *(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 an Obligor;
2. attributable to a FATCA Deduction required to be made by a Party; or
3. compensated for by Clause 12.3 *(Tax indemnity)* (or would have been compensated for under Clause 12.3 *(Tax indemnity)* but was not so compensated solely because any of the exclusions in paragraph (b) of Clause 12.3 *(Tax indemnity)* applied);
4. attributable to the wilful breach by the relevant Finance Party or its Affiliates of any law or regulation;

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(v) attributable to the implementation or application of or compliance  
with:

1. the "International Convergence of Capital Measurement and Capital Standards, a Revised Framework" published by the Basel Committee on Banking Supervision in June 2004 in the form existing on the date of this Agreement (but excluding any amendments, supplements, restatements or modifications to such form) **("Basel II");**
2. Basel III in the form existing on the date of this Agreement (but  
   excluding any amendments, supplements, restatements or modifications to such form) **("Existing Basel III");**
3. CRD IV in the form existing on the date of this Agreement (but  
   excluding any amendments, supplements, restatements or modifications to such form) **("Existing CRD IV");**
4. any other law or regulation which implements Basel II,  
   Existing Basel III or Existing CRD W (whether such implementation, application or compliance is by a government, regulator, Finance Party or any of its Affiliates).

In this Clause 13.3, a reference to a **"Tax Deduction"** has the same meaning given to the term in Clause 12.1 *(Tax Definitions).*

14. **OTHER INDEMNITIES** 14.1 **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; or
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 Secured 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.

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| (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. |

(b)

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14.2 **Other indemnities**

(a) Each Obligor shall within three Business Days of demand, indemnify each

Secured Party against any cost, loss or liability incurred by that Secured 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 32 *(Sharing among the Finance Parties);*
3. funding, or making arrangements to fund, its participation in a Loan requested by a Borrower or the Obligors' Agent 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);
4. a Loan (or part of a Loan) not being prepaid in accordance with a notice of prepayment given by a Borrower or the Obligors' Agent;
5. any liability under Environmental Law relating (directly or indirectly) to any Property or any other asset owned by an Obligor; or
6. any litigation commenced by any person against a Finance Party or any Obligor or the Ultimate Parent in connection with any transaction contemplated by the Finance Documents.

14.3 **Obligors' Indemnity to the Agent**

Each Obligor jointly and severally shall promptly indemnify the Agent against:

(a) any cost, expense (including legal fees), 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. acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised; or
3. instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under the Finance Documents; and

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| (b) | 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 33.10 *(Disruption to Payment Systems etc.)* notwithstanding the Agent's negligence, gross negligence or any other category of liability whatsoever) but not including any |

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claim based on the fraud of the Agent in acting as Agent under the Finance Documents.

14.4 **Obligors' Indemnity to the Security Agent**

(a) Each Obligor jointly and severally shall promptly indemnify the Security

Agent and every Receiver and Delegate against any cost, loss or liability incurred by any of them as a result of:

1. any failure by any Borrower to comply with its obligations under  
   Clause 16 *(Costs and expenses);*
2. acting or relying on any notice, request or instruction which it  
   reasonably believes to be genuine, correct and appropriately authorised;
3. the taking, holding, protection or enforcement of the Transaction Security;
4. the exercise of any of the rights, powers, discretions, authorities and  
   remedies vested in the Security Agent and each Receiver and Delegate by the Finance Documents, the Transaction Security or by law;
5. any default by any Obligor or any other Transaction Obligor in the  
   performance of any of the obligations expressed to be assumed by it in any of the Finance Documents;
6. instructing lawyers, accountants, tax advisers, surveyors or other  
   professional advisers or experts as permitted under the Finance Documents; or
7. acting as Security Agent, Receiver or Delegate under the Finance Documents or which otherwise relates to any of the Security Property (otherwise, in each case, than by reason of the relevant Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct).

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| (b) | The Security Agent and every Receiver and Delegate may, in priority to any payment to the Secured Parties, indemnify itself out of the Security Assets in respect of, and pay and retain all sums necessary to give effect to the indemnity in this Clause 14.4 and shall have a lien on the Transaction Security and the proceeds of enforcement of the Transaction Security for all moneys payable to it. |

15. **MITIGATION BY THE LENDERS** 15.1 **Mitigation**

(a) Each Finance Party shall, in consultation with the Obligors' Agent, 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 7.1 *(Illegality),* Clause 12 *(Tax gross-up and*

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*indemnities),* Clause 13 *(Increased Costs)* including (but not limited to) transferring its rights and obligations under the Finance Documents to an Affiliate of that Finance Party or to another Facility Office.

Paragraph (a) above does not in any way limit the obligations of any Obligor under the Finance Documents but does not apply in respect of any part of any Loan which has been transferred as part of a Securitisation.

15.2 **Limitation of liability**

(a) Each Obligor 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 15.1 *(Mitigation).*

A Finance Party is not obliged to take any steps under Clause 15.1 *(Mitigation)* if, in the opinion of that Finance Party (acting reasonably), to do so might be prejudicial to it.

16. **COSTS AND EXPENSES** 16.1 **Transaction expenses**

Each Borrower shall promptly on demand pay each of the Agent, the Arranger and the Security Agent the amount of all costs and expenses (including but not limited to legal fees agreed with the Obligor's Agent in advance, land registry fees, mortgage registration fees and notarial fees) reasonably incurred by any of them (and by any Receiver or Delegate) in connection with the negotiation, preparation, printing, execution and perfection of:

1. this Agreement and any other documents referred to in this Agreement or in a  
   Security Document; and

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|  | any other Finance Documents executed after the date of this Agreement other than any Finance Document executed in respect of any syndication, securitisation, assignment, novation or transfer under any Finance Document. |

16.2 **Amendment costs**

If an Obligor requests an amendment, waiver or consent or an amendment is required pursuant to Clause 33.9 *(Change of currency),* each Borrower shall, within three Business Days of demand, reimburse each of the Agent and the Security Agent and the Finance Parties for the amount of all costs and expenses (including legal fees) reasonably incurred by the Agent or the Security Agent or the Finance Parties (and by any Receiver or Delegate) and agreed with the Obligor's Agent in advance in responding to, evaluating, negotiating or complying with that request or requirement.

16.3 **Valuations**

1. The Agent may request a Valuation at any time. The Agent shall notify the  
   Obligors' Agent in writing in the event that it has requested a Valuation.

Each Borrower shall promptly on demand pay to the Agent the costs of:

(b)

(b)

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1. the Initial Valuation;
2. a Valuation obtained by the Agent on an annual basis;
3. a Valuation obtained by the Agent in connection with the compulsory purchase of all or part of any Property; and
4. a Valuation obtained by the Agent at any time when a Default is continuing; and
5. a Valuation obtained by the Agent which indicates that a Default is continuing as a result of a failure by the Obligors to comply with their obligations under Clause 21.2 *(Loan to value).*
6. The Obligors' Agent must supply to the Agent a copy of any valuation of any Property an Obligor obtains, promptly upon obtaining it.
7. Any Valuation not referred to in paragraph (b) above will be at the cost of the Lenders.

16.4 **Enforcement and preservation costs**

Each Borrower shall, promptly on demand, pay to each Secured Party the amount of all costs and expenses (including legal fees) incurred by that Secured Party in connection with the enforcement of, or the preservation of any rights under, any Finance Document or the Transaction Security and with any proceedings instituted by or against the Security Agent or that Secured Party as a consequence of it entering into a Finance Document, taking or holding the Transaction Security, or enforcing those rights.

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**SECTION 7**

**BANK ACCOUNTS**

17. **BANK ACCOUNTS** 17.1 **Designation of Accounts**

(a) Each Propco must on or prior to the first Utilisation Date open and maintain in

its name the following bank accounts:

1. a rent account designated the **"Rent Account";**
2. a deposit account designated the **"Deposit Account";**
3. a current account designated the **"Service Charge Account";**
4. a deposit account designated the **"Disposals Account";** and
5. a deposit account designated the **"Cash Trap Account.**

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| (b) | The Nassica Propco must on or prior to the first Utilisation Date open and maintain in its name a deposit account designated the **"Capex Reserve Account".** |

(c) Each Obligor (other than Dutch Holdco, the Nassica Holdco and the Vista

Alegre Holdco) must on or prior to the first Utilisation Date open and maintain

in its name a current account designated the **"General Account".**

(d) Each of the Nassica Holdco and the Vista Alegre Holdco must on or prior to

the first Utilisation Date open and maintain in its name:

1. a current account designated the **"General Account (Current)";** and
2. a current account designated the **"General Account (Deposit)".**

(e) Dutch Holdco must on or prior to the Account CS Date open and maintain in

its name a current account designated the **"General Account".**

(f) No Borrower and no other Obligor may, without the prior consent of the

Agent (acting on the instructions of the Majority Lenders), maintain any other account with any bank or fmancial institution other than any rent deposit account which is required pursuant to the applicable regulations to be maintained by a Borrower for the benefit of any tenant in connection with any Occupational Lease.

17.2 **Account bank**

(a) Subject to paragraphs (b) and (c) below, each Account must be held at:

(i) in respect of the Accounts of each entity incorporated in Spain, Banco

Santander S.A. or any other bank or financial institution located in Spain which has a Requisite Rating;

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1. in respect of the Accounts of each entity incorporated in The  
   Netherlands, any bank or financial institution located in The Netherlands which has a Requisite Rating; and
2. in respect of the Accounts of each entity incorporated in Luxembourg, any bank or financial institution located in Luxembourg which has a Requisite Rating.

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| (b) | An Account must be replaced with an account at the same or another bank or financial institution at any time: |

1. if the Agent (acting on the instructions of the Majority Lenders) so  
   requires; or
2. the Obligors' Agent so requests and the Agent consents (acting  
   reasonably); or
3. (other than in the case of the Accounts held by each entity incorporated in Spain with Banco Santander S.A.) the bank or financial institution at which such Account is held ceases to have a Requisite Rating,

**provided that** such other financial institution shall have a Requisite Rating or shall otherwise be approved in writing by the Agent.

1. The replacement of an Account only becomes effective when the relevant  
   bank agrees with the Agent and the Obligors' Agent, in a manner satisfactory to the Agent (acting on the instructions of the Majority Lenders), to fulfil the role of the bank holding that Account and acknowledges that such Account shall be the subject of the Transaction Security and the relevant Obligor has provided Security, corporate authorisations and opinions in respect of any such transferred Account to the Agent which are equivalent to those provided in respect of the Account being replaced.
2. Each Propco agrees that it shall promptly, at the request of the Security Agent  
   (acting reasonably), and at its own expense:
3. provide all assistance which may be reasonably required by the  
   Security Agent or the bank or financial institution at which each Account located in Spain is held; and
4. execute and deliver any document (executed as a deed or under hand as  
   the Security Agent (acting reasonably) may direct in writing);
5. comply with any reasonable request from the Security Agent or any bank or fmancial institution at which each Account located in Spain is held for additional information or documentation,

in order for the signing authority of the Security Agent in respect of its relevant Accounts in accordance with the bank mandates referred to in paragraph 6 of Part 2 of Schedule 2 *(Conditions Precedent and Conditions Subsequent)* to be confirmed by the relevant bank or financial institution at which such Accounts are held.

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17.3 **Rent Account**

(a) The Security Agent has sole signing rights in relation to each Rent Account.

(b)

(i) Each Borrower must ensure that:

(A) all its Rental Income is;

1. any amounts payable to it under any Hedging Agreements are; and
2. all proceeds of any Insurances in respect of loss of rent relating  
   to its Property which are to be treated as Rental Income in accordance with paragraph (i)(iii) of Clause 23.9 *(Insurances)* are,

paid into its Rent Account.

(ii) Paragraph (i) above shall not apply to Lease Prepayment Proceeds.

(c) If any payment of any amount referred to in paragraph (b) above is paid into

an Account other than the Rent Account of the relevant Borrower, that payment must be paid immediately into the relevant Rent Account.

(d) Except as provided in Clause 33.5 *(Partial payments)* and paragraph (h)

below, on each Interest Payment Date, the Security Agent shall (and is irrevocably authorised by each Obligor to) withdraw from, and apply amounts standing to the credit of, the Rent Account of each Borrower, in the following order:

(i) **firstly,** payment into the Service Charge Account of the relevant

Borrower of:

1. any amounts standing to the credit of its Rent Account which constitute Tenant Contributions; and
2. the amount of any Irrecoverable Expenses which are due and payable but unpaid by that Borrower,

in each case, as certified by the Obligors' Agent in the Compliance Certificate delivered in respect of that Interest Payment Date in

accordance with paragraph (a) of Clause 20.2 *(Compliance  
Certificate);*

(ii) **secondly,** in or towards payment pro rata of any unpaid amounts owing

to the Agent, the Arranger or the Security Agent (including any due to any Receiver or Delegate) due but unpaid under the Finance Documents;

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**(iii) thirdly,** in or towards payment to the Agent for the Lenders of:

1. *firstly,* any accrued interest, fees and expenses due but unpaid by that Borrower under the Finance Documents; and
2. *secondly,* after the application of the funds standing to the credit of each Rent Account in accordance with paragraph (a) above, any accrued interest, fees and expenses due but unpaid by any other Obligor under the Finance Documents;

(iv) **fourthly,** in or towards payment to the Agent for the Lenders of:

1. *firstly,* any principal due but unpaid by that Borrower under the Finance Documents;
2. *secondly,* after the application of the funds standing to the credit of each Rent Account in accordance with paragraph (a) above, any principal due but unpaid by any other Obligor under the Finance Documents

**(v) fifthly,** in or towards payment:

1. *firstly,* pro rata of any other sum due but unpaid by that Borrower to the Finance Parties under the Finance Documents; and
2. *secondly,* after the application of the funds standing to the credit of each Rent Account in accordance with paragraph (a) above, pro rata of any other sum due but unpaid by any other Obligor to the Finance Parties under the Finance Documents;

**(vi) sixthly,** other than on the Repayment Date, payment into the General Account of that Borrower of an amount up to the lower of:

1. the balance of the Rent Account of that Borrower after the satisfaction of items set out in sub-paragraphs (i) to (v) above; and
2. the aggregate of:
3. Corporate Expenses;
4. asset management fees (other than management fees recoverable from Tenant Contributions);
5. RPE Fees in an aggregate amount not exceeding EUR60,000 per annum;
6. in the case of the Rent Account of the Nassica Propco only, the Nassica Brand Costs in an aggregate amount not exceeding EUR50,000 per annum; and

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(5) capital expenditure in respect of the maintenance of its

Property which is permitted to be carried out pursuant to Clause 23.4 *(Development and Alterations),*

due and payable by that Borrower and set out in respect of the the Interest Period ending on the relevant Interest Payment Date in the the then current Business Plan (or which have been otherwise approved by the Majority Lenders);

1. **seventhly,** payment of any remaining amounts into the Capex Reserve Account until such time as the amount which has been credited to the Capex Reserve Account in accordance with this paragraph (vii) is no less than EUR2,000,000;
2. **eighthly,** if:
3. a Cash Trap Event has occurred; and
4. following the occurrence of such Cash Trap Event, a Cash Trap  
   Expiry Event has not occurred,

any remaining amount in the Rent Account of a Borrower (each a **"Cash Trap Amount")** shall be paid into the Cash Trap Account of that Borrower;

1. **ninthly,** if an Event of Default is continuing, in or towards payment of all other Secured Liabilities provided that, to the extent that any Secured Liabilities have not at that time fallen due and payable, the Security Agent may hold such amount as it sees fit in an account opened in accordance with Clause 30.3 *(Investment of proceeds)* pending application towards payment of those Secured Liabilities as they fall due; and
2. **tenthly,** provided that no Event of Default is continuing, payment of  
   any surplus into the General Account of the relevant Borrower.

(e) For the period from the first Utilisation Date until the first Interest Payment

Date the Security Agent must withdraw from, and apply amounts standing to the credit of, the Rent Account of each Borrower to the Service Charge Account of the relevant Borrower in the amount of:

1. any Tenant Contributions received by that Borrower; and
2. any Irrecoverable Expenses which are due and payable and unpaid by  
   that Borrower or which will become due and payable by that Borrower prior to the first Interest Payment Date,

as certified by the Obligors' Agent to the Agent on or prior to the Utilisation Date.

(f) If at any time there are insufficient funds standing to the credit of the Service

Charge Account of a Borrower to discharge any costs or expenses in respect of

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which a Tenant Contribution has been made or which constitute Irrecoverable Expenses and which are due and payable prior to the next Interest Payment Date (a **"Service Charge Shortfall"),** the relevant Borrower may by no less than two Business Days' notice request that the Security Agent makes a withdrawal from the Rent Account of that Borrower in the amount certified by the Borrower to the Security Agent of such Service Charge Shortfall.

1. Following receipt by the Security Agent of a request in accordance with this paragraph (f) above the Security Agent shall withdraw the amount of the relevant Service Charge Shortfall from the amounts standing to the credit of the Rent Account of the relevant Borrower and shall credit such amount to the Service Charge Account of that Borrower for such purposes **provided that** it is satisfied that such amounts are due and payable prior to the next Interest Payment Date and there are insufficient funds in the Service Charge Account of that Borrower to meet such payments.
2. The Security Agent shall be obliged to make a withdrawal from the Rent Account in accordance with paragraphs (d) and (g) above only if:
3. no Event of Default is continuing; and

(ii) the Repeating Representations are correct and will be correct

immediately after the withdrawal.

17.4 **Deposit Account**

1. The Security Agent has sole signing rights in relation to each Deposit Account.
2. The Obligors must ensure that all Lease Prepayment Proceeds are  
   promptly upon receipt paid into its Deposit Account.
3. The Obligors must ensure that all Insurance Prepayment Proceeds are  
   promptly upon receipt paid into its Deposit Account.
4. The Obligors must ensure that all Compensation Prepayment Proceeds are promptly upon receipt paid into its Deposit Account.
5. Except as provided in Clause 33.5 *(Partial payments)* and paragraph (e)  
   below, on the next Interest Payment Date immediately following payment into that Account) the Agent shall (and is irrevocably authorised by each Obligor to) withdraw from, and apply amounts standing to the credit of the relevant Deposit Account in accordance paragraph (b)(i) to (iii) above in accordance with Clause 7.3 *(Mandatory prepayment).*
6. Any surplus remaining after the application in accordance with this Clause and  
   any other sums standing to the credit of the Deposit Account, shall be paid to the Rent Account and shall be applied on each Interest Payment Date in accordance with Clause 17.3 *(Rent Account).*

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(e) The Security Agent is obliged to make a withdrawal from the Deposit Account

in accordance with paragraphs (c) and/or (d) above only if:

1. no Event of Default is continuing; and
2. the Repeating Representations are correct and will be correct immediately after the withdrawal.

17.5 **Disposals Account**

1. The Security Agent has sole signing rights in relation to each Disposals Account.

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|  | The Obligors must ensure that the Disposal Proceeds of a Property or the shares in an Obligor are, unless immediately applied in accordance with Clause 7.3 *(Mandatory prepayment),* paid into the Disposals Account of the relevant Borrower in accordance with Clause 22.4 *(Disposals).* |

1. Except as provided in Clause 33.5 *(Partial payments)* and paragraph (e) below, on each Interest Payment Date and on the Repayment Date, the Security Agent shall (and is irrevocably authorised by each Obligor to) withdraw from, and apply amounts standing to the credit of, each Disposals Account in accordance with Clause 7.3 *(Mandatory prepayment).*
2. Any surplus remaining after the application in accordance with this Clause and any other sums standing to the credit of a Disposals Account, shall be paid to the Rent Account and shall be applied on that Interest Payment Date in accordance with Clause 17.3 *(Rent Account).*
3. The Security Agent is obliged to make a withdrawal from a Disposals Account in accordance with paragraph (c) above only if:
4. no Default is continuing; and
5. the Repeating Representations are correct and will be correct immediately after the withdrawal.

17.6 **Cash Trap Account**

1. The Security Agent has sole signing rights in relation to each Cash Trap Account.
2. Except as provided in Clause 33.5 *(Partial payments),* if:
3. on an Interest Payment Date a Cash Trap Event has occurred and a Cash Trap Event occurred on the immediately preceding Interest Payment Date and the Majority Lenders instruct the Agent to do so; or
4. the Repayment Date occurs,

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the Security Agent shall (and is irrevocably authorised by each Obligor to) withdraw from, and apply any amounts standing to the credit of, each Cash Trap Account, in accordance with Clause 7.3 *(Mandatory prepayment)* on:

1. in the case of paragraph (i) above, the relevant Interest Payment Date; or
2. in the case of paragraph (ii) above, the Repayment Date.
3. If on an Interest Payment Date a Cash Trap Expiry Event has occurred, the Security Agent shall (and is irrevocably authorised by each Obligor to) withdraw from, and apply amounts standing to the credit of, the Cash Trap Account of each Borrower into the General Account of that Borrower.
4. The Security Agent may (acting upon the instructions of the Majority Lenders) at any time withdraw from, and apply amounts standing to the credit of, the Cash Trap Account of each Borrower in or towards any purpose for which moneys in any Account may be applied.
5. The Security Agent is obliged to make a withdrawal from a Cash Trap Account in accordance with paragraph (c) above only if:
6. no Default is continuing; and
7. the Repeating Representations are correct and will be correct immediately after the withdrawal.

17.7 **Capex Reserve Account**

(a) The Security Agent has sole signing rights in relation to the Capex Reserve

Account.

(b) The Obligors must ensure that:

1. on or before the Utilisation Date, **EUR3,000,000 is credited to the Capex Reserve Account;**
2. **any amount received by an Obligor pursuant to clause 6.5** *(Payment Adjustment)* of the Acquisition Agreement are paid into the Capex Reserve Account; and
3. all Recovery Proceeds are promptly upon receipt paid into the Capex Reserve Account.

(c) Except as provided in Clause 33.5 *(Partial payments)* and paragraph (f) below

and subject to paragraph (d) below, no more than once per calendar month and at the request of the Obligors' Agent by not less than 5 Business Days' written notice the Security Agent shall (and is irrevocably authorised by each Obligor to) withdraw from the funds standing to the credit of the Capex Reserve Account such amount as is required to pay contracted costs that are due and payable by a Borrower (or to reimburse payment of such contracted costs previously paid from monies in a General Account) for any Approved Capex

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Project in respect of a Borrower's Property and in respect of which monies have been deposited by any Obligor into the Capex Reserve Account and shall pay such amount:

1. into the relevant Borrower's General Account; or
2. if a Default is continuing or the relevant costs that are due and payable relate to a contract which may create an aggregate liability in respect of members of the Group in excess of EUR250,000, if the Agent so elects (acting on the instructions of the Majority Lenders (acting in their sole discretion)) directly to the relevant person to whom the relevant amounts are owed.

(d) The Security Agent shall not be required to make any withdrawal in

accordance with paragraph (c) above unless and until:

1. it has received invoices or other applicable evidence that it has  
   requested, in form and substance satisfactory to it indicating that the relevant contracted costs have been properly incurred and are due and payable for the relevant Approved Capex Project; and
2. the relevant costs are in accordance with the then current Business Plan (or have been otherwise approved by the Majority Lenders); and
3. if a Project Monitor has been appointed and the Agent (acting on the instructions of the Majority Lenders) so requires, the Project Monitor (acting in accordance with its appointment) has confirmed in writing to the Agent that it has received satisfactory evidence that the sums requested to be withdrawn are due and payable.

(e) The Obligors shall supply to the applicable Project Monitor promptly such

further information as is reasonably requested at any time by the Project Monitor (including copies of invoices) to verify the amount and due payment of contracted costs for any Approved Capex Project.

(f) The Security Agent is obliged to make a withdrawal from a Capex Reserve

Account in accordance with paragraph (c) above only if:

1. no Event of Default is continuing; and
2. the Repeating Representations are correct and will be correct immediately after the withdrawal.

(g) At any time when an Event of Default is continuing or the Repeating

Representations are not correct or if the Repayment Date occurs, the Security Agent may withdraw from, and apply amounts standing to the credit of, the Capex Reserve Account in or towards any purpose for which moneys in any Account may be applied.

17.8 **Service Charge Account**

(a) Each Borrower shall have sole signing rights on its Service Charge Account.

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(b) Each Borrower shall ensure that proceeds on deposit in its Service Charge

Account shall be applied properly in or towards paying or discharging:

1. fees and expenses (including any amount representing VAT chargeable in respect thereof) incurred by or on behalf of any Obligor in relation to the management, maintenance and repair obligations it has as landlord under any Occupational Lease of its Property or is otherwise required by law to carry out;
2. any VAT chargeable in respect of Rental Income;
3. insurance premiums and rates for insuring its Properties;
4. any costs and expenses incurred by a Borrower in complying with applicable laws and regulations relating to its Property;
5. any costs and expenses incurred by a Borrower in providing services to a tenant with respect to its Property which it is obliged to provide in accordance with the terms of an Occupational Lease;
6. any costs and expenses incurred by a Borrower which any Obligor is obliged to discharge in respect of any unlet part of its Property or in respect of any shortfall in Tenant Contributions;
7. empty business rates in respect of any unit at its Property which is vacant;
8. marketing fees in relation to its Property; and
9. any sum representing any VAT chargeable in respect of any of the items listed in paragraphs (iii) to (viii) above

17.9 **General Account**

1. Except as provided in paragraph (d) below, each Obligor has signing rights in relation to its General Account(s).

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|  | Each Obligor must ensure that any other amount received or receivable by it, other than any amount specifically required under this Agreement to be paid into any other Account, is paid into its General Account(s). |

1. Except as provided in paragraph (d) below and subject to any restriction in any Subordination Deed and the requirement that amounts paid into its General Account(s) for a particular purpose must be used for that purpose, each Obligor may withdraw any amount from its General Account(s) for any purpose consistent with the Finance Documents.
2. At any time when a Default is continuing or the Repeating Representations are not correct, the Security Agent may:

(i) operate the General Account;

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1. notify an Obligor that its rights to operate its General Account(s) are  
   suspended, such notice to take effect in accordance with its terms; and
2. withdraw from, and apply amounts standing to the credit of, any General Account(s) in or towards any purpose for which moneys in any Account may be applied.

17.10 **Determination of Default**

(a) The Agent (acting on the instructions of the Majority Lenders) shall make a

determination as to whether or not a Default is continuing for the purposes of any Finance Document as soon as reasonably practicable after being requested by the Obligors' Agent to make such a determination.

In determining whether a Default is continuing, the Agent may request and rely on a certificate issued by the Obligors' Agent as determinative, in the absence of express knowledge to the contrary, of the absence of any Default.

17.11 **Miscellaneous Accounts provisions**

1. The Obligors must ensure that no Account over which an Obligor has sole  
   signing rights goes into overdraft.

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|  | Any amount received or recovered by any Obligor otherwise than by credit to an Account must be held subject to the security created by the Finance Documents and immediately be paid to the relevant Account or to the Agent in the same funds as received or recovered. |

1. If any payment is made into an Account in relation to which the Security Agent has sole signing rights which should have been paid into another Account, then, unless a Default is continuing, the Security Agent must, at the request of the Obligors and on receipt of evidence satisfactory to the Security Agent that the payment should have been made to that other Account, pay that amount to that other Account.
2. The moneys standing to the credit of an Account may be applied by the Security Agent in payment of any amount due but unpaid to a Finance Party under the Finance Documents including the payment of (a) any unpaid costs, fees and expenses due to the Agent, Security Agent and the Arranger (including any due to any Receiver or Delegate) under the Finance Documents and (b) the Secured Liabilities.
3. No Finance Party is responsible or liable to any Obligor for:
4. any non-payment of any liability of any Obligor which could be paid out of moneys standing to the credit of an Account; or
5. any withdrawal wrongly made, if made in good faith.

(b)

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(f) The Obligors must, within five Business Days of any request by the Agent,

supply the Agent with the following information in relation to any payment received in an Account:

1. the date of payment or receipt;
2. the payer; and
3. the purpose of the payment or receipt.

(g) Each Account shall be denominated in euro.

(h) The Borrowers may pay to the account holding bank such reasonable

transaction charges and other fees (in each case, consistent with that bank's usual practice in relation to similar accounts) as the Obligors' Agent may from time to time agree with that bank. No other charges or fees shall be payable to the account holding bank (in its capacity as such) in respect of the Accounts.

(i) If an Obligor makes any payment into an Account which is not held in its

name or for its benefit, an intercompany loan shall arise owed by the Obligor into whose Account the payment was made to the Obligor making the payment.

0) To the extent that any payment is made from an Account by or on behalf of

any Obligor to or for the benefit of another Obligor, an intercompany loan shall arise owed by the Obligor for whose benefit the payment was made to the relevant Obligor who made the payment.

17.12 **Withdrawals**

1. Despite any other provision of this Clause 17 *(Bank Accounts),* no withdrawal may be made by any Borrower from an Account if a Default is continuing or would occur as a result of that withdrawal, except with the prior written consent of the Agent or to pay the Secured Liabilities in accordance with this Agreement.
2. This Clause 17 *(Bank Accounts)* does not limit or affect any Obligor's obligations to pay the Secured Liabilities or to make voluntary or mandatory payments under the Finance Documents.
3. The Finance Parties shall not be responsible to the Obligors for the non­payment of any of the Secured Liabilities which could be paid out of moneys standing to the credit of any Account nor shall the Finance Parties be liable for any withdrawal from an Account wrongly made (except for gross negligence, fraud or wilful misconduct by the Security Agent).

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**SECTION 8  
GUARANTEE**

18. **GUARANTEE AND INDEMNITY** 18.1 **Guarantee and indemnity**

Each Obligor, irrevocably and unconditionally, jointly and severally:

1. guarantees to each Finance Party punctual performance by each Obligor of all  
   that Obligor's obligations under the Finance Documents;

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|  | undertakes with each Finance Party that whenever another Obligor does not pay any amount when due under or in connection with any Finance Document, that Obligor shall immediately on demand by the Agent pay that amount as if it was the principal obligor; and |

1. agrees with each Finance Party that if any obligation guaranteed by it is or  
   becomes unenforceable, invalid or illegal it will, as an independent and primary obligation, indemnify that Finance Party immediately on demand against any cost, loss or liability it incurs as a result of an Obligor not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under any Finance Document on the date when it would have been due. The amount payable by an Obligor under this indemnity will not exceed the amount it would have had to pay under this Clause 18 if the amount claimed had been recoverable on the basis of a guarantee.

18.2 **Continuing guarantee**

This guarantee is a continuing guarantee and will extend to the ultimate balance of sums payable by any Obligor under the Finance Documents, regardless of any intermediate payment or discharge in whole or in part.

18.3 **Reinstatement**

If any discharge, release or arrangement (whether in respect of the obligations of any Obligor or any security for those obligations or otherwise) is made by a Finance Party in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then the liability of each Obligor under this Clause 18 will continue or be reinstated as if the discharge, release or arrangement had not occurred.

18.4 **Waiver of defences**

The obligations of each Obligor under this Clause 18 *(Guarantee and indemnity)* will not be affected by any act, omission, matter or thing which, but for this Clause, would reduce, release or prejudice any of its obligations under this Clause 18 *(Guarantee and indemnity)* (without limitation and whether or not known to it or any Finance Party) including:

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1. any time, waiver or consent granted to, or composition with, any Obligor or  
   other person;

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| --- | --- |
|  | the release of any other Obligor or any other person under the terms of any composition or arrangement with any creditor of any Obligor or any member of the Group; |

1. the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any Obligor or other person or any non-presentation or non­observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any Security;
2. any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of an Obligor or any other member of the Group or any other person;
3. any amendment, novation, supplement, extension (whether of maturity or otherwise) or restatement (in each case however fundamental and of whatsoever nature and whether or not more onerous) or replacement of any Finance Document or any other document or security (including, without limitation, any change in the purpose of, any extension of, or any variation or increase in any facility or amount made available under any facility or the addition of any new facility under any Finance Document or other document or security);
4. any unenforceability, illegality or invalidity of any obligation of any person  
   under any Finance Document or any other document or security; or
5. any insolvency or similar proceedings.  
   18.5 **Guarantor intent**

Without prejudice to the generality of Clause 18.4 *(Waiver of defences),* each Obligor expressly confirms that it intends that this guarantee and indemnity shall extend from time to time to any (however fundamental and of whatsoever nature and whether or not more onerous) variation, increase, extension or addition of or to any of the Finance Documents and/or any facility or amount made available under any of the Finance Documents for the purposes of or in connection with any of the following: acquisitions of any nature; increasing working capital; enabling distributions to be made; carrying out restructurings; refinancing existing facilities; refinancing any other indebtedness; making facilities available to new borrowers; any other variation or extension of the purposes for which any such facility or amount might be made available from time to time; and any fees, costs and/or expenses associated with any of the foregoing.

18.6 **Immediate recourse**

(a) Each Obligor waives any right it may have of first requiring any Finance Party

(or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from that

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Obligor under this Clause 18 *(Guarantee and indemnity).* This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

Each Obligor acknowledges the right of the Agent pursuant to Clause 24.16 *(Acceleration)* to accelerate the payment of any sum that may become due under any guarantee or indemnity contained in this Clause 18.

18.7 **Appropriations**

Until all amounts which may be or become payable by the Obligors under or in connection with the Finance Documents have been irrevocably paid in full, each Finance Party (or any trustee or agent on its behalf) may:

1. refrain from applying or enforcing any other moneys, security or rights held or  
   received by that Finance Party (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and no Obligor shall be entitled to the benefit of the same; and

|  |  |
| --- | --- |
|  | hold in an interest-bearing suspense account any moneys received from any Obligor or on account of any Obligor's liability under this Clause 18 *(Guarantee and indemnity).* |

18.8 **Deferral of Obligors' rights**

Until all amounts which may be or become payable by the Obligors under or in connection with the Finance Documents have been irrevocably paid in full and unless the Agent otherwise directs no Obligor will exercise any rights which it may have by reason of performance by it of its obligations under the Finance Documents or by reason of any amount being payable or liability arising, under this Clause 18:

1. to be indemnified by an Obligor;
2. to claim any contribution from any other guarantor of any Obligor's obligations under the Finance Documents;
3. to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Finance Parties under the Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, the Finance Documents by any Finance Party;
4. to bring legal or other proceedings for an order requiring any Obligor to make any payment, or perform any obligation, in respect of which any Obligor has given a guarantee, undertaking or indemnity under Clause 18 *(Guarantee and indemnity);*
5. to exercise any right of set-off against any Obligor; and/or
6. to claim or prove as a creditor of any Obligor in competition with any Finance Party.

(b)

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If an Obligor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all the Secured Liabilities to be repaid in full, on trust for the Finance Parties and shall promptly pay or transfer the same to the Agent or as the Agent may direct for application in accordance with Clause 33 *(Payment mechanics).*

18.9 **Release of Obligors' right of contribution**

If any Obligor **("Retiring Obligor")** ceases to be an Obligor in accordance with the terms of the Finance Documents for the purpose of any sale or other disposal of that

Retiring Obligor then on the date such Retiring Obligor ceases to be an Obligor:

1. that Retiring Obligor is released by each other Obligor from any liability  
   (whether past, present or future and whether actual or contingent) to make a contribution to any other Obligor arising by reason of the performance by any other Obligor of its obligations under the Finance Documents; and

|  |  |
| --- | --- |
|  | each other Obligor waives any rights it may have by reason of the performance of its obligations under the Finance Documents to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Finance Parties under any Finance Document or of any other security taken pursuant to, or in connection with, any Finance Document where such rights or security are granted by or in relation to the assets of the Retiring Obligor. |

18.10 **Additional security**

This guarantee is in addition to and is not in any way prejudiced by any other guarantee or security now or subsequently held by any Finance Party.

18.11 **Further assurance**

Each Obligor agrees that it shall promptly, at the direction of the Agent (acting reasonably), execute and deliver at its own expense any document (executed as a deed or under hand as the Agent (acting reasonably) may direct in writing) and do any act or thing in order to confirm or establish the validity and enforceability of the guarantee and indemnity intended to be created by it under this Clause 18 *(Guarantee and indemnity).*

18.12 **Guarantee Limitation: Spanish Guarantors**

In relation to any Guarantor incorporated in Spain (a **"Spanish Guarantor"),** when acting as a Guarantor and not as a Borrower, any guarantee, indemnity, obligation and liability granted or assumed pursuant to this Clause 18 shall not include and shall not extend to:

(a) any amounts in respect of any obligation incurred for the purpose of (i)

acquiring the shares of such Spanish Guarantor or the shares of its direct or indirect parent company (and, in the case of Spanish Guarantor incorporated as *"sociedad de responsabilidad limitada",* or the shares of any of its group companies), or (ii) reducing or discharging any existing liability incurred for the purpose of, or in connection with, such acquisition, to the extent that such

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(b)

guarantee, indemnity, obligation or liability would constitute unlawful financial assistance, within the meaning of Articles 143 and 150 of the Spanish Corporate Act, Royal Decree 1/2010, 2 July *(Ley de Sociedades de Capital)* (the **"Spanish Corporation Act");** and

any payments that may (i) cause the Spanish Guarantor to fall within any cause of compulsory dissolution or any event of insolvency; or (ii) result in civil or criminal liability for the directors or officers of the Spanish Guarantor; or (iii) would entail the breach of any corporate benefit, fraudulent preference, thin capitalisation rules or any law or regulation applicable to the Spanish Guarantor.

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**SECTION 9**

**REPRESENTATIONS, UNDERTAKINGS AND EVENTS OF DEFAULT**

19. **REPRESENTATIONS**

Each Obligor makes the representations and warranties set out in this Clause 19 *(Representations)* to each Finance Party at the times specified in Clause 19.29 *(Times for making representations)* below.

19.1 **Status**

1. It is a limited liability corporation, duly incorporated and validly existing under the laws of its jurisdiction of incorporation.
2. It has the power to own its assets and carry on its business as it is being conducted.

19.2 **Binding obligations**

The obligations expressed to be assumed by it in each Transaction Document to which it is a party, are subject to the Legal Reservations and in the case of the Security Documents, the Perfection Requirements, legal, valid, binding and enforceable obligations.

19.3 **Non-conflict with other obligations**

The entry into and performance by it of, and the transactions contemplated by, the Transaction Documents 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 of its assets or constitute a default or termination event (however described) under any such agreement or instrument.

19.4 **Power and authority**

1. 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 Transaction Documents to which it is or will be a party and the transactions contemplated by those Transaction Documents.

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|  | No limit on its powers will be exceeded as a result of the borrowing, grant of security or giving of guarantees or indemnities contemplated by the Transaction Documents to which it is a party. |

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19.5 **Validity and admissibility in evidence**

(a) Subject to the Legal Reservations, and with respect to the Security

Documents, the Perfection Requirements, all Authorisations required:

1. to enable it lawfully to enter into, exercise its rights and comply with  
   its obligations in the Transaction Documents to which it is or will be a party; and
2. to make the Transaction Documents to which it is a party admissible in  
   evidence in each Relevant Jurisdiction,

have been obtained or effected and are in full force and effect except any Authorisation referred to in paragraph (a) of Clause 19.8 *(No filing or stamp taxes),* which Authorisations will (other than in the case of the Authorisation referred to in paragraph (a)(i) of Clause 19.8 *(No filing or stamp taxes))* be obtained and effected (and in respect of which any related fees, duties, costs and expenses shall be paid) promptly within the maximum term legally permitted for such payments to be made.

All Authorisations necessary for the conduct of the business, trade and ordinary activities of the Obligors have been obtained or effected and are in full force and effect where failure to obtain or effect those Authorisations has or would reasonably be expected to have a Material Adverse Effect.

19.6 **Governing law and enforcement**

(a) Subject to the Legal Reservations, the choice of governing law of each of the

Finance Documents will be recognised and enforced in each Relevant Jurisdiction.

Any judgment obtained in England in relation to a Finance Document will, subject to the Legal Reservations, be recognised and enforced in each Relevant Jurisdiction.

19.7 **Deduction of Tax**

1. It is not required to make any Tax Deduction (as defined in Clause 12.1 *(Tax  
   Definitions))* from any payment it may make under any Finance Document to a Lender which is a Qualifying Lender.

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| --- | --- |
|  | No Rental Income payable to any Obligor is subject to a requirement to make a deduction or withholding for or on account of Tax from that Rental Income. |

19.8 **No filing or stamp taxes**

1. Under the law of each Relevant Jurisdiction, it is not necessary that the  
   Finance Documents be registered, filed, recorded, notarised or enrolled with any court or other authority in that jurisdiction or that any stamp duty, stamp duty land tax, registration, notarial or similar tax or fee be paid on or in relation to the Finance Documents or the transactions contemplated by the Finance Documents except:

(b)

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1. in the case of court proceedings in a Luxembourg court or presentation of the Finance Documents to an autorité constituée in Luxembourg, such court or autorité constituée may require registration of such Finance Documents, in which case such Finance Documents would be subject to registration duties at a fixed rate of EUR 12 or at an ad valorem rate depending on the nature of the registered document;
2. to the extent applicable, with respect to a Security Document governed by Dutch law creating an undisclosed right of pledge *(stil pandrecht),* registration of that Security Document with the Dutch tax authorities;
3. execution of each Security Document governed by Dutch law relating to the shares of a Dutch Obligor before a civil-law notary and registration of that agreement in its shareholders register *(aandeelhoudersregister);*
4. execution of the Spanish Security Documents as Spanish public documents *(documentos públicos)* before a Spanish notary;
5. payment of the notarial fees to the Spanish notary;
6. payment of the registration duties in connection with the registration of the mortgages over the Nassica Property and the Vista Alegre Property;
7. payment of the stamp duty *(Impuesto de Actos Jurídicos Documentados)* corresponding to the mortgages over the Nassica Property and the Vista Alegre Property to the Spanish Tax Authorities; and
8. registration of the mortgages over the Nassica Property and the Vista Alegre Property with the relevant land registries,

which registrations, filings, taxes and fees will (other than in respect of the matters described in paragraph (i) above) be made and paid promptly within the maximum term legally permitted for such payments to be made.

(b) Any disclosure required to be made by it to any relevant taxing authority in

relation to stamp duty land tax payable on any transactions contemplated by or being financed by the Transaction Documents has been made.

19.9 VAT

It is not a member of a value added tax group other than a group made up solely of Obligors.

19.10 **No default**

(a) No Event of Default is continuing or would reasonably be expected to result

from the making of any Utilisation or the entry into, or performance of, or any transaction contemplated by, any Transaction Document.

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(b) 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 a termination event (however described) under any Transaction Document or any other agreement or instrument which is binding on it or to which any of its assets are subject which has, or is reasonably likely to have a Material Adverse Effect.

19.11 **Information**

1. All written information supplied by it or on its behalf to any Finance Party in  
   connection with the Transaction Documents was true and accurate in all material respects as at the date it was provided or as at any date at which it was stated to be given.
2. Any financial projections contained in the information referred to in paragraph  
   (a) above have been prepared as at their date, on the basis of recent historical information and on the basis of reasonable assumptions.
3. It has not omitted to supply any information which, if disclosed, would make  
   the information referred to in paragraph (a) above untrue or misleading in any material respect.
4. As at the first Utilisation Date, nothing has occurred since the date of the  
   information referred to in paragraph (a) which, if disclosed, would make that information untrue or misleading in any material respect.

19.12 **Financial statements**

1. Its Original Financial Statements were prepared in accordance with GAAP  
   consistently applied.

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|  | Its Original Financial Statements give a true and fair view of (if audited) and fairly represent (if unaudited) its financial condition as at the end of the relevant financial year and operations (consolidated in the case of a Guarantor) during the relevant financial year. |

1. There has been no material adverse change in its business or financial  
   condition (or in the business or consolidated financial condition of the Group, in the case of the Parent) since the most recent financial statements of the Obligors (including the Original Financial Statements) were delivered to the Agent in accordance with this Agreement.
2. Its most recent financial statements delivered pursuant to Clause 20.1  
   *(Financial statements):*
3. have been prepared in accordance with GAAP as applied to the  
   Original Financial Statements; and
4. give a true and fair view of (if audited) or fairly represent (if  
   unaudited) its financial condition and operations (consolidated in the case of the Parent) during the relevant financial year.

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(e) Since the date of the most recent financial statements delivered pursuant to

Clause 20.1 *(Financial statements)* there has been no material adverse change in its business, assets or financial condition (or the business or consolidated financial condition of the Group, in the case of the Parent.

19.13 **Pari passu ranking**

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

19.14 **No proceedings pending or threatened**

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

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|  | No judgment or order of a court, arbitral tribunal or other tribunal or any order or sanction of any governmental or other regulatory body which would reasonably be expected to have a Material Adverse Effect has (to the best of its knowledge and belief (having made due and careful enquiry)) been made against it or its assets. |

19.15 **Valuation**

1. All written information supplied by it or on its behalf to the Valuer for the purposes of each Valuation was true and accurate in all material respects as at its date or (if appropriate) as at the date (if any) at which it is stated to be given.
2. Any financial projections contained in the information referred to in paragraph (a) above have been prepared as at their date, on the basis of recent historical information and on the basis of reasonable assumptions.
3. It has not omitted to supply any information to the Valuer which, if disclosed, would adversely affect the Valuation as at its date.
4. As at the relevant Utilisation Date, nothing has occurred since the date the information referred to in paragraph (a) above was supplied which, if it had occurred prior to the Initial Valuation, would have materially and adversely affected the Initial Valuation.

19.16 **Title to Property and other assets**

(a) Each Obligor will, from:

(i) the first Utilisation Date:

(A) be the legal and beneficial owner of the Property that it is

named as owner of in Schedule 1 *(The Original Lenders and Property)* (other than the Nassica Land Plot); and

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(b)

(B) have good, valid and marketable title to that Property (other

than the Nassica Land Plot) and each of its other assets which are expressed to be the subject of the Transaction Security as at that Utilisation Date; and

(ii) from the Utilisation Date of Facility C and in the case of the Nassica

Propco only:

1. be the legal and beneficial owner of the Nassica Land Plot; and
2. have good, valid and marketable title to the Nassica Land Plot and each of its other assets which are expressed to be the subject of the Transaction Security as at that Utilisation Date,

in each case free from Security (other than that created by or pursuant to the Security Documents) and restrictions and onerous covenants (other than those set out in the Legal Due Diligence Report).

From the first Utilisation Date (in the case of the Nassica Shopping Centre and the Vista Alegre Property) and from the Utilisation Date relating to Facility C (in the case of the Nassica Land Plot) except as disclosed in a Property Report:

(i) no breach of any law, regulation or covenant is outstanding which

adversely affects or might reasonably be expected to materially and adversely affect the value, saleability or use of that Property or the amount of Net Rental Income;

(ii) there is no covenant, agreement, stipulation, reservation, restriction,

condition, interest, right, easement or other matter whatsoever adversely affecting that Property;

(iii) nothing has arisen or has been created or is outstanding which would be an overriding interest, or an unregistered interest which overrides first registration or a registered disposition, over that Property;

(iv) all facilities necessary for the enjoyment and use of that Property

(including those necessary for the carrying on of its business at that Property) are enjoyed by that Property;

(v) none of the facilities referred to in sub-paragraph (iv) above are

enjoyed on terms:

1. entitling any person to terminate or curtail its use of that Property; or
2. which conflict with or restrict its use of that Property;

(vi) no Obligor has received any notice of any adverse claim by any person in respect of the ownership of that Property or any interest in it which might reasonably be expected to be determined in favour of that

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person, nor has any acknowledgement been given to any such person in respect of that Property;

1. that Property is held by the relevant Obligor free from any lease or licence (other than those entered into in accordance with this Agreement);
2. each Obligor has the benefit of all necessary licences, consents and authorisations required under all applicable law in connection with its ownership of the Properties, and they are in full force and effect in each case, where failure to obtain or effect those licences, consents and authorisations has or would reasonably be expected to have a Material Adverse Effect;
3. each Property is free and clear of material damage and structural defects which might reasonably be expected to have a material adverse effect on the value of that Property; and
4. no Property is subject to or at risk of flooding or subsidence. 19.17 **Information for Due Diligence Reports**
5. The information supplied by it or on its behalf to (i) the lawyers who prepared the Legal Due Diligence Report for the purpose of that Legal Due Diligence Report and (ii) any report provider in connection with the preparation of any other report listed in Schedule 2 *(Conditions Precedent and Conditions Subsequent)* or Schedule 3 *(Conditions Precedent — Nassica Land Plot),* was true and accurate in all material respects as at the date of the Legal Due Diligence Report or such other report or (if appropriate) as at the date (if any) at which it is stated to be given.

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|  | The information referred to in paragraph (a) above was at the date it was expressed to be given complete and did not omit any information which, if disclosed would make that information untrue or misleading in any material respect. |

1. As at the first Utilisation Date (in the case of the Nassica Shopping Centre and  
   the Vista Alegre Property) and as at the Utilisation Date relating to Facility C (in the case of the Nassica Land Plot), nothing has occurred since the date of any information referred to in paragraph (a) above which, if disclosed, would make that information untrue or misleading in any material respect.

19.18 **Environmental compliance**

Each Obligor has performed and complied with all Environmental Law, Environmental Permits and all other material covenants, conditions, restrictions or agreements directly or indirectly concerned with any contamination, pollution or waste or the release or discharge of any emission or substance capable of causing harm to any living organism or the environment in connection with any Property, and no action has been taken by any Obligor so as to cause non-compliance with any of the foregoing. To the best of each Obligor's knowledge, no materials generally

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known to be hazardous to health or safety have been used in connection with any Property.

19.19 **Environmental Claims**

No Environmental Claim has been commenced or (to the best of any Obligor's knowledge and belief) is threatened against any Obligor.

19.20 **No other business**

(a) No Obligor has traded or carried on any business since the date of its

formation other than:

1. in the case of the Parent, the ownership of Dutch Holdco and the making of intercompany loans to the Obligors in accordance with the Finance Documents;
2. in the case of Dutch Holdco, the ownership of the Nassica Holdco and the Vista Alegre Holdco and the making of intercompany loans to the Obligors in accordance with the Finance Documents; and
3. in the case of the Propcos:
4. the ownership, acquisition, management and letting of its  
   interests in its Property and its other property assets as set out in the Legal Due Diligence Report;
5. prior to the Utilisation Date only, the ownership, acquisition,  
   management, letting and disposal of its interests in its Disposed Properties; and
6. related activities to the activities set out in paragraphs (A) and  
   (B) consistent with the Finance Documents.

(b) As at the date of this Agreement and save as disclosed in the Reports, it is not

party to any material agreement other than the Transaction Documents.

(c) As at the date of this Agreement no Obligor has any Subsidiaries other than

the Obligors as set out in the Group Structure Chart.

(d) No Obligor has or has ever had:

1. any employees; or
2. any obligation in respect of any retirement benefit or occupational pension scheme.

(e) No Obligor owns or has ever owned any property or interest in a property

other than:

(i) the Properties;

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1. as disclosed in the Legal Due Diligence Report; and
2. the Disposed Properties which the Obligors have ceased to own.
3. No Obligor owns directly or indirectly, legally or beneficially, any investments in any unlimited company, partnership or other entity with unlimited liability.
4. From the first Utilisation Date, no Obligor has any liabilities (whether actual or contingent) other than under the Transaction Documents or arising as a result of its ownership and/or occupation of the Properties.

19.21 **Centre of main interests and establishments**

For the purposes of the Regulation, its Centre of Main Interests is situated in its jurisdiction of incorporation and it has no "establishment" (as that term is used in Article 2(h) of the Regulations) in any other jurisdiction.

19.22 **Ranking of Security**

Subject to the Legal Reservations and the Perfection Requirements, the Security conferred by each Security Document constitutes a first priority Security interest of the type described, over the assets referred to, in that Security Document and those assets are not subject to any prior or pari passu ranking Security.

19.23 **Taxation**

1. It has duly and punctually paid and discharged all Taxes imposed upon it or its assets within the time period allowed without incurring interest or penalties (save to the extent that (i) payment is being contested in good faith, (ii) it has maintained adequate reserves for the payment of such Taxes and (iii) payment can be lawfully withheld).
2. It is not materially overdue in the filing of any Tax returns.
3. No claims are being or are reasonably likely to be asserted against it with respect to Taxes that would reasonably be expected to have a Material Adverse Effect.
4. No tenant under any Occupational Lease is required under any law to make any deduction or withholding for or on account of Tax from any Rental Income.
5. It is resident for Tax purposes only in the jurisdiction of its incorporation or establishment.

19.24 **Ownership**

(a) The entire issued share capital of the Ultimate Parent is (directly or indirectly)

legally and beneficially owned and controlled by the Sponsor and Neinver S.A.

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(b) The entire issued share capital of the Parent is legally and beneficially owned

and controlled by the Ultimate Parent.

(c) The entire issued share capital of the Dutch Holdco is legally and beneficially

owned and controlled by the Parent.

(d) On and from the Utilisation Date, the entire issued share capital of the Nassica

Holdco and the Vista Alegre Holdco is legally and beneficially owned and controlled by the Dutch Holdco.

(e) The entire issued share capital of the Nassica Propco is legally and

beneficially owned and controlled by the Nassica Holdco.

(f) The entire issued share capital of the Vista Alegre Propco is legally and

beneficially owned and controlled by the Vista Alegre Holdco.

(g) The shares in the capital of each Obligor are (or, on or prior to the first

Utilisation Date, will be):

1. (other than in the case of Dutch Holdco) fully paid; and
2. not subject to any option to purchase or similar rights.

(h) The shares in the capital of Dutch Holdco are (or, on or prior to the Account

CS Date, will be) fully paid.

(i) The constitutional documents of companies whose shares are subject to the

Transaction Security do not and could not restrict or inhibit any transfer of those shares (or the exercise of any voting rights relating to those shares) on creation or on enforcement of the Transaction Security.

(j) The Group Structure Chart delivered to the Agent pursuant to Schedule 2

*(Conditions Precedent and Conditions Subsequent)* is true, complete and accurate.

19.25 **Financial Indebtedness**

No Obligor has any Financial Indebtedness outstanding other than as permitted by this Agreement.

19.26 **Acquisition Documents**

1. The Acquisition Documents contain all the material terms of the Acquisitions.

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| --- | --- |
|  | There is no disclosure to the Acquisition Documents which has or would reasonably be expected to have a material adverse effect on any of the information, opinions, intentions, forecasts and projections contained or referred to in the information provided to the Arranger. |

1. To the best of its knowledge no representation or warranty given by any party  
   to an Acquisition Document is untrue or misleading in any material respect.

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19.27 **Intellectual Property**

Save as disclosed in the Legal Due Diligence Report, it:

(a) is the sole legal and beneficial owner of or has licensed to it on normal

commercial terms 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 and as contemplated in the Business Plan;

does not, in carrying on its businesses, infringe any Intellectual Property of any third party in any respect; and

(c) has taken all formal or procedural actions (including payment of fees) required  
to maintain any material Intellectual Property owned by it.

19.28 **Sanctions**

(a) Each member of the Group has conducted its businesses in compliance with

applicable anticorruption laws and has instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

Neither it nor any member of its Group nor, to the best of its knowledge, any director, officer, agent, employee or Affiliate of any member of the Group, is currently a designated target of, or is otherwise a subject of, Sanctions.

19.29 **Times for making representations**

(a) All the representations and warranties in this Clause 19 (other than Clause

19.12 *(Financial statements))* are made by:

1. each Original Obligor to each Finance Party on the date of this Agreement, on the date of each Utilisation Request and on the Utilisation Date; and
2. each Additional Obligor on the date of its accession as a Party.

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| (b) | The representations and warranties set out in Clause 19.11 *(Information)* shall be made on the date of delivery of any written information to a Finance Party in connection with the Transaction Documents with respect to that information only. |

(c) The Repeating Representations are deemed to be made by each Obligor by

reference to the facts and circumstances then existing on:

1. (except in the case of Clause 19.12 *(Financial statements),* the first day  
   of each Interest Period; and
2. in the case of Clause 19.12 *(Financial statements),* each date on which  
   an Obligor delivers, or, if earlier, is obliged to deliver, financial statements in accordance with Clause 20.1 *(Financial statements)* (except that those contained in paragraphs (a) to (c) of Clause 19.12

(b)

(b)

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*(Financial statements)* will cease to be so made once subsequent financial statements have been delivered under this Agreement).

20. **INFORMATION UNDERTAKINGS**

The undertakings in this Clause 20 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.

20.1 **Financial statements**

The Obligors' Agent shall supply to the Agent in sufficient copies for all the Lenders as soon as the same become available, but in any event within 120 days after the end of each of its financial years:

1. the audited financial statements of each Obligor for that financial year, if  
   prepared; and

|  |  |
| --- | --- |
|  | the unaudited financial statements of each Obligor for that financial year. |

20.2 **Compliance Certificate**

(a) The Obligors' Agent shall supply to the Agent with each Quarterly

Management Report delivered pursuant to Clause 20.4 *(Monitoring of Property),* a Compliance Certificate:

1. setting out (in reasonable detail) computations as to compliance with Clause 21 *(Financial covenants)* as at the Interest Payment Date immediately prior to which that quarterly report is required pursuant to this Agreement to be delivered (the "Relevant **Interest Payment Date");**
2. certifying:
3. the amounts standing to the credit of each Rent Account as at the Relevant Interest Payment Date which constitute Tenant Contributions; and
4. the amount of any Irrecoverable Expenses which are due and payable but unpaid by that Borrower as at the Relevant Interest Payment Date.

(b) Each Compliance Certificate shall:

1. be signed by two managers of the Obligors' Agent;
2. confirm that, so far as the Obligors' Agent is aware, no Default has occurred and is continuing or, if a Default has occurred and is continuing, what Default has occurred and the steps being taken to remedy that Default.

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20.3 **Requirements as to financial statements**

(a) Each set of financial statements delivered by the Obligors' Agent pursuant to

Clause 20.1 *(Financial statements)* shall be certified by a director of the relevant company as giving a true and fair view (if audited) or fairly representing (if unaudited) its financial condition as at the date as at which those financial statements were drawn up.

The Obligors' Agent shall procure that each set of financial statements of an Obligor delivered pursuant to Clause 20.1 *(Financial statements)* is prepared using GAAP, accounting practices and financial reference periods consistent with those applied in the preparation of the Original Financial Statements for that Obligor unless, in relation to any set of financial statements, it notifies the Agent that there has been a change in GAAP, the accounting practices or reference periods and its auditors (or, if appropriate, the auditors of the Obligor) deliver to the Agent:

1. a description of any change necessary for those financial statements to  
   reflect the GAAP, accounting practices and reference periods upon which that Obligor's Original Financial Statements were prepared; and
2. sufficient information, in form and substance as may be reasonably  
   required by the Agent (acting on the instructions of the Majority Lenders), to enable the Lenders to make an accurate comparison between the financial position indicated in those financial statements and that Obligor's Original Financial Statements.

(c) Any reference in this Agreement to those financial statements shall be

construed as a reference to those financial statements as adjusted to reflect the basis upon which the Original Financial Statements were prepared.

20.4 **Monitoring of Property**

On or before the date which is five Business Days before each Interest Payment Date, the Obligors' Agent must supply to the Agent a Quarterly Management Report, in respect of the financial quarterly period ending immediately prior to that Interest Payment Date.

20.5 **Business Plan**

1. The Obligors' Agent shall supply to the Agent for its approval as soon as the  
   same becomes available but in any event no later than 30 Business Days after 31 December in each year, a proposed updated business plan including a capex plan for the Group for that financial year in a form substantially the same as the Initial Business Plan together with a comparison to the previously approved Business Plan (each being a "Proposed **Business Plan").**

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|  | The Obligors shall promptly respond to any request for information in relation to any Proposed Business Plan that any Finance Party (through the Agent) may reasonably request. |

(b)

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1. Each Proposed Business Plan delivered under paragraph (a) above shall require the approval of the Agent (acting on the instructions of the Majority Lenders) prior to such Proposed Business Plan becoming a Business Plan.
2. Following delivery by the Obligors' Agent of a Proposed Business Plan in accordance with paragraph (a), the Agent shall supply (or make available) a copy of such Proposed Business Plan to each of the Lenders and shall request confirmation from each Lender within 15 Business Days of such request as to whether the Agent is instructed by that Lender to approve or disapprove such Proposed Business Plan.
3. If the Agent fails to approve or reject a Proposed Business Plan within 15 Business Days of the Obligors' Agent supplying that Proposed Business Plan to the Agent, the Obligor's Agent may request in writing (a "Further **Request")** confirmation from the Agent within 5 Business Days of receipt by the Agent of such Further Request of whether such Proposed Business Plan is approved or disapproved. Following receipt of a Further Request the Agent shall request confirmation from each Lender within 5 Business Days of receipt by the Agent of such Further Request as to whether the Agent is instructed by that Lender to approve or disapprove the relevant Proposed Business Plan.
4. If the Agent fails to approve or disapprove a Proposed Business Plan within 5  
   Business Days of receipt by the Agent of a Further Request in respect of that Proposed Business Plan then the Agent shall be deemed to have approved that Proposed Business Plan (acting on the instructions of the Majority Lenders).
5. Until such time as such Proposed Business Plan is approved or deemed to  
   have been approved in accordance with this Clause 20.5 *(Business Plan),* the then current Business Plan shall continue to apply for all purposes under this Agreement.
6. No Obligor shall make or permit any material change to the nature or scope of its business and activities as reflected in the then current Business Plan.

20.6 **Year end**

1. Each Obligor shall ensure that each of its financial years end on 31 December.
2. No Obligor shall change its financial year end. 20.7 **Information: miscellaneous** The Obligors' Agent shall supply to the Agent in sufficient copies for all the Lenders:
3. all documents dispatched by any Obligor to its shareholders (or any class of them) or its creditors generally at the same time as they are dispatched;

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|  | promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against any Obligor (or against its directors), and which, if adversely determined, would reasonably be expected have a Material Adverse Effect; |

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1. promptly upon becoming aware of them, the details of any judgment or order  
   of a court, arbitral tribunal or other tribunal or any order or sanction of any governmental or other regulatory body which is made against any Obligor (or against its directors), and which would reasonably be expected to have a Material Adverse Effect; and
2. promptly, such further information regarding (i) the financial condition,  
   business and operations of any Obligor and (ii) the assets which are the subject of the Transaction Security and compliance with the terms of the Security Documents, as any Finance Party (through the Agent) may reasonably request.

20.8 **Notification of default**

1. Each Obligor 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 that Obligor is aware that a notification has already been provided by another Obligor).

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|  | Promptly upon a request by the Agent, the Obligors' Agent shall supply to the Agent a certificate signed by two of its managers 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). |

20.9 "Know **your customer" checks**

(a) If

(i) 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 an Obligor or any change in the  
   composition of the shareholders of an 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, each Obligor 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

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under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

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.

21. **FINANCIAL COVENANTS** 21.1 **Debt Yield**

1. Each Obligor must ensure that Debt Yield for the Group is, at all times, at  
   least 7.50 per cent.

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| --- | --- |
|  | In paragraph (a) above **"Debt Yield"** means, as at any date, Annualised NOI divided by the Net Debt (expressed as a percentage). |

1. For the purposes of paragraph (b) above:

**"Annualised NOI"** means the NOI Pre-Rent Free in respect of the calculation period ending immediately prior to the relevant date, annualised on a straight line basis.

**"calculation period"** means a period of three months ending on the last day of a financial quarter of the Group;

**"Net Debt"** means, as at any date, the aggregate sum of the Loans, less the amounts standing to the credit of the Capex Reserve Account and each Cash Trap Account as at that date.

**"NOI Pre-Rent Free"** means, in respect of a calculation period, the aggregate Net Rental Income that was received on a regular periodical basis by the Obligors under the Lease Documents in respect of the Properties referred to in paragraph (a) of the definition of Property during the relevant calculation period.

1. In calculating NOI Pre-Rent Free:
2. Net Rental Income will be increased by the amount of any Rental Income which would be payable to an Obligor under a Lease Document but for the application of any Permitted Rent-Free Periods agreed in respect of the relevant Lease Documents;
3. Net Rental Income will be ignored:

(1) if paid by a tenant that is an Obligor or related to an

Obligor or any Affiliate of an Obligor; and

(b)

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(2) if not paid under an unconditional and binding Lease

Document;

1. Net Rental Income paid by a tenant that is more than two months in arrears on any of its rental payments will be ignored;
2. Net Rental Income paid under an Occupational Lease where one or more of the events, circumstances or actions set out in Clause 24.6 *(Insolvency)* to 24.8 *(Creditors' process)* inclusive has occurred in relation to the tenant under that Occupational Lease (assuming that any references in those Clauses to a Transaction Obligor is replaced with a reference to that tenant) will be ignored;
3. Net Rental Income will be reduced by the amount of any deduction or withholding for or on account of Tax from that Net Rental Income; and
4. Net Rental Income will be reduced by the amounts (together with any related VAT):
5. attributable to rates and insurance premia for that period;
6. in respect of costs and expenses incurred in complying with applicable laws and regulations relating to any Property;
7. incurred in respect of management (including property  
   management fees but excluding asset management fees), maintenance, repair or similar fees, costs and expenses in relation to any Property;
8. which any Obligor is obliged to discharge in respect of any unlet part of any Property or in respect of any shortfall in Tenant Contributions;
9. received from or representing the value of consideration  
   given for the grant, surrender or variation of any Lease;
10. paid for a breach of covenant or dilapidations under any Lease in relation to a Property and for expenses incurred in relation to any such breach;
11. representing interest, damages or compensation in  
    respect of any of the items in the definition of Net Rental Income;
12. relating to any extraordinary or non-recurring items;
13. of empty business rates in respect of any unit at a Property which is vacant;

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1. of marketing fees in relation to the Property; and
2. paid by a guarantor or other surety in respect of any of the items listed above,

to the extent that any of those items are not funded by the tenants, by way of Tenant Contributions or otherwise, under the Lease Documents.

(e) In paragraph (d) above "Permitted **Rent-Free Periods"** means any rent free

period applying under an Occupational Lease provided that:

1. such rent free period relates only to a period of six Months or less for  
   each five years of the term of the relevant Occupational Lease in respect of which no break option applies; and
2. in respect of any rent free period agreed in connection with the  
   removal of:
3. the lease break option exercisable on 26 November 2019 under the Carrefour Lease; or
4. the lease break option exercisable on 30 November 2018 under  
   the Conforama Lease;

such rent free period does not exceed twelve Months.

21.2 **Loan to value**

1. Each Obligor must ensure that the Loan to Value for the Group does not, at  
   any time, exceed 85 per cent.
2. In paragraph (a) above, **"Loan to Value"** means the Net Debt, as a percentage  
   of the aggregate market value of the Obligor's interests in the Properties referred to in paragraph (a) of the definition of Property taken as a whole at that time determined in accordance with the then most recent Valuation.

21.3 **Testing of financial covenants**

1. The financial covenants referred to in this Clause 21 *(Financial Covenants)*shall be tested by reference to the information contained in each of the financial statements, each Quarterly Management Report delivered pursuant to Clause 20.4 *(Monitoring of Property)* and each Compliance Certificate delivered pursuant to Clause 20.2 *(Compliance Certificate)* and by reference to each Valuation delivered pursuant to Clause 16.3 *(Valuations).*

|  |  |
| --- | --- |
|  | If the Agent disagrees with the Borrower's calculations (or determination of the Loan to Value or Debt Yield), the Agent shall consult with the Obligors' Agent with a view to agreeing those calculations (or the Loan to Value or Debt Yield) but in the absence of such agreement and in the absence of manifest error, the Agent's calculation of the Loan to Value and/or the Debt Yield shall prevail and be final. |

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1. The Agent may (but shall not be obliged to), upon notice to and at the cost of the Obligors, engage auditors or other professional advisers for the purposes of reviewing and verifying any financial information provided by an Obligor or any Compliance Certificate having reviewed such information in accordance with its usual internal procedures.
2. Each Obligor shall promptly provide to the Agent, such information as the Agent may request for the purposes of the calculation of the Loan to Value or the Debt Yield.

21.4 **Prepayment due to financial covenant breach**

(a) Subject to paragraph (b) below, if the requirement of Clause 21.1 *(Debt Yield)*

and/or Clause 21.2 *(Loan to value)* is not satisfied at any time, a pro rata amount of the Loans of the Borrowers which:

1. if applied in prepayment of the Loans; and
2. taking into account such prepayment in the calculation of the Debt Yield and the Loan to Value,

would enable the requirements of Clause 21.1 *(Debt Yield)* and Clause 21.2

*(Loan to value)* to be met, shall be immediately due and payable.

|  |  |
| --- | --- |
| (b) | If the requirement of Clause 21.1 *(Debt Yield)* or Clause 21.2 *(Loan to value)* is not satisfied at any time, the Borrowers shall within fifteen (15) Business Days of the earlier of: |

1. the date on which they become aware of such circumstance; and
2. the date on which they are notified by the Agent of such circumstance,

prepay the Loans in an amount sufficient (being no less than EUR1,000,000) to ensure that when taking into account such prepayment in the calculation of the Debt Yield and the Loan to Value the requirements of Clause *21.1(Debt Yield)* and Clause 21.2 *(Loan to value)* would be met.

1. Upon prepayment of the Loans in accordance with, and within the time period specified in, paragraph (b) above in an amount sufficient to ensure that when taking into account such prepayment in the calculation of the Debt Yield and the Loan to Value the requirements of Clause *21.1(Debt Yield)* and Clause 21.2 *(Loan to value)* would be met the financial covenant(s) under Clause *21.1(Debt Yield)* and Clause 21.2 *(Loan to value)* shall (without prejudice to any subsequent breach) be deemed to have been satisfied as at the relevant date for all purposes under the Finance Documents.
2. If the Borrowers fail to prepay the Loans in accordance with, and within the time period specified in, paragraph (b) above in an amount sufficient to ensure that when taking into account such prepayment in the calculation of the Debt Yield and the Loan to Value the requirements of Clause *21.1(Debt Yield)* and Clause 21.2 *(Loan to value)* would be met, an Event of Default shall occur.

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(e) The cure right specified in paragraph (b) above may not be exercised in

respect of more than two consecutive occasions on which an Obligor is required to deliver a Compliance Certificate pursuant to Clause 20.2 *(Compliance Certificate).*

22. **GENERAL UNDERTAKINGS**

The undertakings in this Clause 22 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.

22.1 **Authorisations**

Each Obligor 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 any Relevant Jurisdiction to:

1. enable it to perform its obligations under the Transaction Documents and, subject to the Legal Reservations, to ensure the legality, validity, enforceability or admissibility in evidence in each Relevant Jurisdiction of any Transaction Document; or
2. own its assets and carry on its business as it is being conducted. 22.2 **Compliance with laws**

Each Obligor shall comply in all respects with all laws to which it or any Property or any other asset which is the subject of the security created pursuant to the Security Documents may be subject, if failure so to comply has or is reasonably likely to have a Material Adverse Effect.

22.3 **Negative pledge**

In this Clause 22.3, **"Quasi-Security"** means an arrangement or transaction described in paragraph (b) below.

1. No Obligor shall create or permit to subsist any Security over any of its assets.
2. No Obligor shall:
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;
4. sell, transfer or otherwise dispose of any of its receivables on recourse terms;

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1. 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
2. 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) Paragraph (a) above does not apply to any Security or (as the case may be)

Quasi-Security, listed below:

1. the Transaction Security;
2. any lien arising by operation of law and in the ordinary course of trading;
3. any Security that is to be irrevocably discharged or released in full by an Obligor on or prior to the first Utilisation;
4. any netting or set-off arrangement entered into by any member of the Group in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances but only so long as (i) such arrangement does not permit credit balances of any Obligor to be netted or set off against debit balances of persons who are not Obligors and (ii) such arrangement does not give rise to other Security over the assets of the Obligors in support of liabilities of persons who are not Obligors (iii) such arrangement does not constitute any conditional positive pledge obligation included in the general terms and conditions of a bank at which an Account is held (including, in respect of a financial institution in the Netherlands the general banking terms and conditions *(algemene bankvoorwaarden));*
5. any right of set-off or any Security over an Account which a bank at which an Account is held benefits from under its general banking terms and conditions in respect of costs and fees charged in connection with the maintenance and administration of any Account held by any Obligor with that bank only and, in respect of a General Account held by a Dutch Obligor only, any right of set-off or any Security over such General Account; or
6. any other Security granted by an Obligor with the prior written consent of the Agent (acting on the instructions of the Majority Lenders).

22.4 **Disposals**

(a) No Obligor shall enter into a single transaction or a series of transactions

(whether related or not and whether voluntary or involuntary), to dispose of all or any part of its assets.

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(b) Paragraph (a) above does not apply to any disposal:

permitted under Clause 23.2 *(Occupational Leases);* by an Obligor of:

(A) the whole of its interest in:

1. the Nassica Shopping Centre;
2. the Vista Alegre Property;
3. the Nassica Land Plot;
4. the Nassica Pre-emption Plot; or
5. the Nassica Retained Plot; or

(B) any part of the Nassica Retained Plot; or

(C) all of its shares in an Obligor,

in each case, made in accordance with paragraph (c) below;

1. of cash by way of a payment out of an Account in accordance with this Agreement;
2. made in the ordinary course of trading of any asset not subject to fixed Security under the Transaction Security;
3. of obsolete assets which are no longer required for the efficient operation of its business;
4. of moveable assets (for the avoidance of doubt, excluding any Account, all or part of any Property, any Intellectual Property, any receivables owed to an Obligor, the rights or benefits of an Obligor under any contract (including the Acquisition Documents) or the shares of an Obligor) in exchange for or to be replaced by other moveable assets comparable or superior as to type, value and quality;
5. which is an expenditure of cash for purposes consistent with the Finance Documents; or
6. made with the prior written consent of the Agent (acting on the instructions of the Majority Lenders).

(c) An Obligor may dispose of:

(i) the whole of its interest in:

1. the Nassica Shopping Centre;
2. the Vista Alegre Property;

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1. the Nassica Land Plot;
2. the Nassica Pre-emption Plot; or
3. the Nassica Retained Plot; or
4. any part of the Nassica Retained Plot; or
5. all of its shares in an Obligor,

if:

1. it gives at least ten Business Days' prior notice of such disposal  
   specifying which Property or which part of its Property listed in paragraph (i) or (ii) above and/or which Obligor is to be disposed of, to whom and the consideration to be paid upon the disposal;
2. no Default is continuing or would result from that disposal;
3. that disposal is on arm's length terms to a third party for a cash  
   consideration; and
4. the net disposal proceeds are not less than:
5. the Release Amount of that Property or part of a  
   Property or in the case of the disposal of all of the shares in an Obligor which directly or indirectly owns the Vista Alegre Property (other than in the circumstances to which paragraph (B) below applies), the Release Amount of the Vista Alegre Property; and
6. in the case of a disposal of the Nassica Shopping Centre  
   or of an Obligor which directly or indirectly owns the Nassica Shopping Centre, all Secured Liabilities in respect of each Property and each Obligor.

(d) The Obligors must ensure that the Disposal Proceeds are immediately applied

either:

1. in accordance with Clause 7.3 *(Mandatory prepayment);* or
2. paid into the Disposals Account for application in accordance with  
   Clause 17.5 *(Disposals Account).*

(e) For the purposes of this Clause 22, **"net disposal proceeds"** means the gross

proceeds of any disposal permitted under paragraph (c) above less an amount determined by the Obligors' Agent and approved by the Agent (acting on the instructions of the Majority Lenders) as the reasonable costs, expenses and any Taxes associated with that disposal.

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(f) Upon payment of the Disposal Proceeds in accordance with paragraph (d)

above, the Agent and Security Agent, on behalf of the Finance Parties, at the request of the Obligors shall (and is irrevocably authorised by each Lender to):

1. release all interests in the relevant Property or part thereof and, if applicable, in the shares and assets of the Obligor which is the subject of the disposal, from the Security created under the Finance Documents;
2. in the case of a disposal of the Nassica Shopping Centre, release all interests in each Property and, if applicable, in the shares and assets of each Obligor from the Security created under the Finance Documents
3. execute any release of the Security or other claim over that Property or part thereof or over that Obligor, and
4. issue any certificate of non-crystallisation of floating charges that may be, in the reasonable opinion of the Agent, required.

(g) A Property disposed of or a Property owned by an Obligor, the shares of

which are disposed of, in accordance with paragraphs (c) and (d) above will cease to be a Property.

22.5 **Financial Indebtedness**

1. No Obligor may, without the prior written consent of the Agent (acting on the instructions of the Majority Lenders), incur or permit to be outstanding any Financial Indebtedness;
2. Paragraph (a) does not apply to:
3. any Financial Indebtedness incurred under or permitted by the Finance Documents;
4. any Financial Indebtedness repaid on or prior to the first Utilisation;
5. any Subordinated Debt provided that such debt is subject to a Subordinated Creditor's Security Agreement; or
6. that is unsecured and arises as a normal trade credit in the ordinary course of any Obligor's trading and is not outstanding for more than 30 days.

22.6 **Lending and guarantees**

(a) No Obligor may be the creditor in respect of any loan or any form of credit to

any person other than:

(i) another Obligor which is made by way of Subordinated Debt provided

that such debt is subject to a Subordinated Creditor's Security Agreement;

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(ii) the Ultimate Parent provided that:

1. the Obligors' Agent shall promptly notify the Agent upon any any Obligor becoming a creditor or making any form of credit available to the Ultimate Parent and shall provide a copy of the documentation reflecting such credit arrangements; and
2. any such credit may only be made by way of an intercompany loan which constitutes a Permitted Payment.

No Obligor may give or allow to be outstanding any guarantee or indemnity to or for the benefit of any person in respect of any obligation of any other person or enter into any document under which that Obligor assumes any liability of any other person other than:

1. any guarantee or indemnity given under the Finance Documents; or
2. any Permitted Guarantee. 22.7 **Merger**

(a) No Obligor shall enter into any amalgamation, demerger, merger or corporate

reconstruction.

Paragraph (a) above does not apply to the disposal of all of the shares in an Obligor in circumstances where such disposal is permitted pursuant to Clause 22.4 *(Disposals).*

22.8 **Conduct of business**

(a) No Obligor may trade or carry on any business or incur any liabilities other

than:

1. in the case of the Parent, the ownership of Dutch Holdco and the making of intercompany loans to the Obligors in accordance with the Finance Documents;
2. in the case of Dutch Holdco, the ownership of the Nassica Holdco and the Vista Alegre Holdco and the making of intercompany loans to the Obligors in accordance with the Finance Documents; and
3. in the case of the Propcos, the ownership, acquisition, management and letting of its interests in its Property and related activities consistent with the Finance Documents and the liabilities arising directly from that business.

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| (b) | No Obligor shall make or permit any material change to the nature or scope of the business or activities of the Obligors. |

(c) The Parent must not have any Subsidiary other than the Obligors. No other

Obligor may have a Subsidiary other than an Obligor.

(b)

(b)

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1. No Propco may have any Subsidiary.
2. Each Obligor shall take all reasonable steps to preserve and enforce its rights and pursue any claims and remedies arising in respect of the provider of the Legal Due Diligence Report or the provider of any other due diligence report in connection with the acquisition, fmancing or refmancing of any Property.

Each Obligor shall conduct its business in a reasonable and prudent manner and in accordance with its constitutional documents and the Finance Documents.

Each Obligor shall ensure that neither it nor any of its Subsidiaries is an employer of an occupational pension scheme.

Each Obligor will:

1. maintain its accounts, books and records separately from any other  
   person;
2. not commingle its assets with those of any other person;
3. only enter into transactions (whether with other Obligors or with any other affiliate or other person) on arm's length terms;
4. discharge all obligations and liabilities due and owing by it from its own funds; and
5. hold itself out as a separate entity. 22.9 **Acquisitions** No Obligor may make any acquisition or investment other than:
6. those which are necessary for the performance of its obligations;
7. the acquisitions to be made in accordance with the Acquisition Documents; or
8. otherwise permitted under the Finance Documents. 22.10 **Other agreements** No Obligor may enter into any material agreement other than:
9. the Transaction Documents;
10. any other agreement expressly allowed under any other term of this Agreement; and
11. any agreement consistent with its business as set out in Clause 22.8 *(Conduct of business).*

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22.11 **Material contracts**

No Obligor shall amend or alter the terms of any contract to which it is a party which creates liability in excess of EUR250,000 (excluding amounts in respect of capital expenditure), in each case, without the prior written consent of the Agent (acting reasonably).

22.12 **Other Transaction Documents**

(a) No Obligor shall amend, vary, forego or waive any material provision, right or

condition arising in or under the Transaction Documents (but not including the Finance Documents) or agree to do any of those things, without the prior written consent of the Agent (acting reasonably) other than in respect of:

1. a Lease Document in circumstances where such action is permitted in  
   accordance with Clause 23.2 *(Occupational Leases);* or
2. an appointment of any Managing Agent in circumstances where such  
   action is permitted in accordance with Clause 23.8 *(Managing Agents).*

(b) Each Obligor shall exercise its rights and comply with its material obligations

under the Transaction Documents referred to in paragraph (a) above to the fullest extent possible.

(c) If during the period between the signing of the Acquisition Agreement and the

closing of the Acquisition referred to under paragraph (a) of the definition of Acquisition, Dutch Holdco becomes entitled under the terms of any of the Acquisition Documents to choose not to complete such Acquisition, Dutch Holdco shall not elect to complete such Acquisition without the prior consent of the Agent (acting on the instructions of the Majority Lenders).

22.13 **Centre of main interests**

(a) No Obligor shall permit its Centre of Main Interests to be in any jurisdiction

other than its jurisdiction of incorporation.

No Obligor shall permit to exist an establishment for the purposes of the Regulation in any jurisdiction other than its jurisdiction of incorporation.

22.14 **Shares, dividends and share redemption**

1. No Obligor shall issue any further, or amend any rights attaching to its issued,  
   shares, stocks, debentures or other securities.

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|  | Paragraph (a) above does not apply to the issuance of equity interests in the form of shares if issued by an Obligor to its immediate Holding Company where, in each case the newly issued shares become subject to the Transaction Security on the same terms as the existing Transaction Security immediately upon their issuance (or, if such issuance occurs prior to the Utilisation Date, on the Utilisation Date) and promptly following the issuance of such shares all associated Perfection Requirements (if any) are met. |

(b)

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(c) Except as permitted under paragraph (d) below, no Obligor shall:

1. 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);
2. repay or distribute any dividend or share premium reserve;
3. pay any management, advisory or other fee to or to the order of any of its shareholders; or
4. redeem, repurchase, defease, retire or repay any of its share capital or resolve to do so.

(d) Paragraph (c) above does not apply to a Permitted Payment.

(e) No Obligor shall subscribe for or otherwise acquire any stock or share which

is only partly paid up or in respect of which the company which issued that stock or share has any call or lien.

(f) Each Obligor shall promptly pay all calls or other payments which may be or

become due in respect of any shares held by it and shall not appoint any third party nominee to exercise any members' rights or information rights in relation to any shares held by it.

22.15 **VAT**

No Obligor shall form or be a member of any VAT group for the purposes of Section 163 quinquies of the Value Added Tax Act 37/1992 of 28 December other than with another Obligor.

22.16 **Taxes**

(a) Each Obligor must pay all Taxes due and payable by it prior to the accrual of

any fine or penalty for late payment, unless (and only to the extent that):

1. payment of those Taxes is being contested in good faith;
2. adequate reserves are being maintained for those Taxes and the costs required to contest them; and
3. failure to pay those Taxes is not reasonably likely to have a Material Adverse Effect.

(b) Each Obligor must:

1. ensure that its residence for Tax purposes is in the jurisdiction of its incorporation;
2. ensure that no tax losses belonging to it or tax reliefs available to it are surrendered, waived or otherwise disposed of without the Agent's prior

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written consent (acting on the instructions of the Majority Lenders); and

(iii) ensure that no latent capital gains tax liability of any Obligor is

triggered or realised, whether by reason of capital gains tax degrouping or for any other reason.

22.17 **Ownership**

The Parent must ensure that at all times it legally and beneficially (directly or indirectly) owns and controls the entire share capital of each Obligor. Each Obligor must ensure that no shareholder shall transfer any direct or indirect equity interest in any Obligor unless each Finance Party has confirmed that it has complied with all relevant "know your customer" or similar procedures.

22.18 **Intellectual Property**

(a) Each Obligor shall:

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.

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| (b) | In the event that: |

1. any Finance Party exercises or has exercised any right it may have  
   under or in connection with a Finance Document to dispose of, or to instruct or require the disposal of, (whether as a result of the enforcement of Security or otherwise) a Property; and
2. that Finance Party requests the Propco which owns that Property to do  
   so in writing,

that Propco shall promptly take all action available to it to assign or transfer or procure the assignment or transfer of all of its Intellectual Property (including any licence arrangements relating to its Intellectual Property) and, for the avoidance of doubt, including any trademarks (general), trademarks (social

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networks) and any domain names, to the person who acquires the relevant Property.

22.19 **Conditions subsequent**

(a) On or prior to the date falling 5 Business Days from the first Utilisation Date

the Obligors shall provide the Agent with:

1. duly executed copies of Hedging Agreements reflecting the entry into  
   by the Obligors of hedging arrangements in accordance with Clause 8.3 *(Hedging);* and
2. notices of the Security created pursuant to the Security Agreements to  
   the counterparty to each Hedging Agreement duly executed by each relevant Obligor together with an acknowledgement from the relevant counterparty to a Hedging Agreement.

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| (b) | On or prior to the Account CS Date the Obligors shall provide the Agent with all the documents and evidence listed in Schedule 4 *(Conditions Subsequent - Accounts)* in form and substance satisfactory to the Agent (acting on the instructions of the Majority Lenders) (unless waived by the Agent (acting on the instructions of the Majority Lenders)). |

1. On or prior to the date falling 5 Business Days from the first Utilisation Date  
   the Obligors shall provide the Agent with a duly executed copy of a notice to the Regional Authorities of the Junta Castilla y León **("JCLRA")** notifying the JCLRA of the acquisition of the Vista Alegre Property by the Vista Alegre Propco.
2. On or prior to the date falling 5 Business Days from the first Utilisation Date  
   the Obligors shall provide the Agent with a duly executed termination agreement in relation to the agreement dated 31 January 2003 between Neinver and the Nassica Propco in relation to the conservation of the Nassica Shopping Centre.
3. On or before the first Utilisation Date the Obligors must ensure that they  
   provide the Agent with all the documents and other evidence listed in Part 2 of Schedule 2 *(Conditions Precedent and Conditions Subsequent)* in each case, in form and substance satisfactory to the Agent (acting on the instructions of the Majority Lenders) (unless waived by the Agent (acting on the instructions of the Majority Lenders)). The Agent shall, on the instructions of the Majority Lenders, notify the Obligors' Agent promptly in writing upon the Majority Lenders confirming to the Agent that they are so satisfied.
4. Within one Business Day of the Utilisation Date relating to Facility C the  
   Nassica Propco must ensure that they provide the Agent with a duly executed copy of a notice to the municipal tax authorities of Getafe notifying such authorities of the completion of the Acquisition of the Nassica Land Plot by the Nassica Propco.

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(g) Within ten Business Days of the first Utilisation, each of the Nassica Holdco

and the Vista Alegre Holdco must ensure that they provide the Agent with evidence, in form and substance satisfactory to the Agent (acting on the instructions of the Majority Lenders) (unless waived by the Agent (acting on the instructions of the Majority Lenders)), that the bank or financial institution at which their Accounts are held has amended the account mandate arrangements in respect of such Accounts to reflect the Acquisition.

(h) Within 15 Business Days of the first Utilisation, each Propco must ensure that

they provide the Agent with evidence, in form and substance satisfactory to the Agent (acting on the instructions of the Majority Lenders) (unless waived by the Agent (acting on the instructions of the Majority Lenders)), that the bank or financial institution at which their Accounts are held has confirmed that the Security Agent has signing authority in respect of its relevant Accounts in accordance with the bank mandates referred to in paragraph 6 of Part 2 of Schedule 2 *(Conditions Precedent and Conditions Subsequent)* **provided that** the Propcos shall not be deemed to have failed to comply with its obligation under this clause to the extent that such failure to comply is solely as a result of the failure by the Security Agent to promptly comply with any reasonable request from such bank or financial institution for additional information or documentation in connection with such bank mandates.

22.20 **Sanctions**

1. No Obligor shall (and the Parent shall ensure that no other member of the Group will) directly or (knowingly) indirectly use the proceeds of the Facilities for any purpose which would breach the Bribery Act 2010, the United States Foreign Corrupt Practices Act of 1977 or other similar legislation in other jurisdictions.
2. Each Obligor shall (and the Parent shall ensure that each other member of the Group will):

(i) conduct its businesses in compliance with applicable anti-corruption

laws; and

(ii) maintain policies and procedures designed to promote and achieve

compliance with such laws.

(c) No Obligor shall (and the Parent shall ensure that no other member of the

Group will) directly or (knowingly) indirectly use the proceeds of the Facilities hereunder (or lend, contribute or otherwise make available such proceeds to any person):

1. to fund or facilitate any activities or business of, with or, to the knowledge of that Obligor, related to (or otherwise make funds available to or for the benefit of) any person, who is a designated target of or who is otherwise the subject of Sanctions; or
2. in any manner or for any purpose:

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(A) that is prohibited by Sanctions:

1. applicable to any Party; or
2. under the law governing, any Transaction Document; or

(B) that would result in a violation of Sanctions by any Party.  
23. **PROPERTY UNDERTAKINGS**

The undertakings in this Clause 23 remain in force from the date of this Agreement for so long as any amount of the Secured Liabilities is outstanding or any Commitment is in force.

23.1 **Title**

1. Each Propco must exercise and enforce its rights and comply in all respects  
   with any covenant, stipulation or obligation (restrictive or otherwise) at any time affecting its Property insofar as the same are subsisting and are capable of being enforced.
2. No Propco may agree to any amendment, supplement, waiver, surrender or  
   release of any covenant, stipulation or obligation (restrictive or otherwise) at any time affecting any Property.
3. Each Obligor must promptly take all such steps (including, without limitation,  
   the completion and delivery of documentation, forms and certificates, the answering of any questions or correspondence from any relevant authority, the payment of any fees, stamp duty land tax, penalties and interest and the delivery of any stamp duty land tax certificates received from any tax authority to the Agent as soon as received by it), as may be necessary or desirable to enable the Security expressed to be created by the Security Documents to be validly registered, where appropriate, at any applicable land registry.

23.2 **Occupational Leases**

(a) No Propco shall, without the consent of the Agent (acting on the instructions

of the Majority Lenders):

1. enter into any Agreement for Lease;
2. other than under an Agreement for Lease, grant or agree to grant any  
   new Occupational Lease;
3. agree to any amendment, supplement, extension, waiver, surrender or release in respect of any Lease Document;
4. exercise any right to break, determine or extend, any Lease Document;
5. commence any forfeiture or irritancy proceedings in respect of any  
   Lease Document;

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1. grant any licence or right to use or occupy any part of a Property;
2. consent to any sublease or assignment of any tenant's interest under any Lease Document;
3. agree to any alterations or change of use under or (except where required to do so under the terms of the relevant Lease Document) rent review in respect of, any Lease Document; or
4. serve any notice on any former tenant under any Lease Document (or on any guarantor of that former tenant) which would entitle it to a new lease or tenancy.

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| (b) | Paragraph (a) does not apply to an agreement for the grant of, or the grant of, an Occupational Lease, entered into on arms length market terms, at a time when no Default is continuing, if both: |

1. the contracted annual rental income (ignoring any rent free periods) under the Occupational Lease to which such Lease Documents relate is less than EUR200,000; and
2. the aggregate net lettable area under the Occupational Lease to which such Lease Document relates is less than one thousand (1000) square metres.

(c) Each Propco must:

1. diligently collect or procure to be collected all Rental Income;
2. exercise its rights and comply with its obligations under each Lease Document; and
3. use its reasonable endeavours to ensure that each tenant complies with its obligations under each Lease Document (including the enforcement of any related guarantee),

in a proper and timely manner.

(d) Any Lease Prepayment Proceeds must be paid into the Deposit Account for

application in accordance with Clause 17.4 *(Deposit Account).*

(e) The Propcos must use their reasonable endeavours to find tenants for any

vacant lettable space in the Properties with a view to granting a Lease Document with respect to that space.

23.3 **Maintenance**

Each Propco must ensure that all buildings, plant, machinery, fixtures and fittings on its Property are in, and maintained in:

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|  | good and substantial repair and condition and, as appropriate, in good working order and when necessary replace the same by items of similar or better quality and value;  such repair, condition and order as to enable them to be let in accordance with all applicable laws and regulations, including any applicable laws and regulations relating to fire safety; for this purpose, a law or regulation will be regarded as applicable if it is either: |

1. in force; or
2. it is expected to come into force and a prudent property owner in the  
   same business as that Obligor would ensure that its buildings, plant, machinery, fixtures and fittings were in such condition, repair and order in anticipation of that law or regulation coming into force.

23.4 **Development and Alterations**

(a) No Propco may without the prior consent of the Agent (acting on the

instructions of the Majority Lenders):

1. make or allow to be made any application for planning permission in  
   respect of any part of its Property; or
2. carry out, or allow to be carried out, any demolition, construction, structural alterations or additions, development or other similar operations in respect of, or any material change in the use of, any part of its Property.

(b) Paragraph (a) above shall not apply to:

1. the maintenance of the buildings, plant, machinery, fixtures and fittings  
   in accordance with the Transaction Documents; or
2. the carrying out of non-structural improvements or alterations which  
   affect only the interior of any building on a Property; or
3. the carrying out of any Approved Capex Project, in the case of:
4. paragraphs (i) and (ii) above, provided that such maintenance,  
   improvements or alterations are in accordance with the Business Plan and are funded from amounts standing to the credit of the General Accounts or the proceeds of new equity contributions or Subordinated Debt made in favour of the Parent and onlent (directly or indirectly) to the relevant Propco by way of Subordinated Debt or contributed to the relevant Propco by way of equity; and
5. paragraph (iii) above, provided that such Approved Capex Project is funded from:

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1. amounts standing to the credit of the General Accounts  
   or the proceeds of new equity contributions or Subordinated Debt made in favour of the Parent and onlent (directly or indirectly) to the relevant Propco by way of Subordinated Debt or contributed to the relevant Propco by way of equity; or
2. amounts standing to the credit of the Capex Reserve  
   Account.

(c) Each Propco must comply in all respects with all planning laws, permissions,

agreements and conditions to which its Property may be subject.

23.5 **Project Monitor**

1. The Agent may (acting on the instructions of the Majority Lenders) at any  
   time appoint a Project Monitor for the purposes of reviewing Capex Projects at the Properties if the capital expenditure in respect of all Capex Projects over during any period of six months prior to the appointment of the Project Monitor exceeded EUR750,000.

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|  | The appointment of a Project Monitor in accordance with paragraph (a) above shall be at the cost of the Obligors provided that: |

1. in respect of the appointment of Arcadis EC Harris, such cost shall  
   require prior written approval from the Obligors' Agent; and
2. in respect of the appointment of any Project Monitor other than  
   Arcadis EC Harris, such cost shall require prior written approval from the Obligors' Agent solely to the extent that the proposed costs exceed the costs previously approved by the Obligors' Agent in respect of the appointment of another Project Monitor.
3. Each Obligor shall allow the Project Monitor reasonable access on reasonable  
   written notice to inspect any Property (provided that no Property shall be inspected by a Project Monitor more than once in any six Month period) and/or the implementation of, or completion of, any Approved Capex Project and shall provide such information in relation thereto (including copies of all documentation entered into by any member of the Group in relation to an Approved Capex Project) as the Project Monitor may reasonably request.
4. Any Project Monitor appointed by the Agent shall be required to report (such  
   report being a **"Capex Report")** on a quarterly basis in respect of each Approved Capex Project, such report to contain, amongst other things:
5. a general update in relation to the progress of any existing Approved  
   Capex Project;
6. a projected cost estimate in relation to any Approved Capex Project;  
   and

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1. an indication of the contracted costs of any Approved Capex Project; and
2. a comparison of the costs relating to each relevant Approved Capex Project against the budget set out in any prior Capex Reports and in the Business Plan.

23.6 **Notices**

(a) Each Propco must, within 14 days after the receipt by any Obligor of any

application, requirement, order or notice served or given by any public or local or any other authority or any landlord with respect to any Property (or any part of it):

1. deliver a copy to the Security Agent; and
2. inform the Security Agent of the steps taken or proposed to be taken to comply with the relevant requirement, order or notice.

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| (b) | If a Propco is obliged to comply with or respond to any such application, requirement, order or notice or the Agent (acting reasonably) considers that it will be prejudicial to any Finance Party for the Propcos to fail to comply with, or to fail to make objections or representations in respect of, any such requirement, order or notice, the Agent (acting on the instructions of the Majority Lenders) may, upon two Business Days written notice to the Obligors' Agent stating the action it intends to take (unless the Agent (acting on the instructions of the Majority Lenders) considers that it is not practicable to provide such notice), at the cost of the Obligors, take all reasonable steps (in the name of the Obligors or otherwise) to ensure compliance with, and/or to make such objections or representations in respect of, any such requirement, order or notice as the Agent (acting on the instructions of the Majority Lenders) considers expedient. |

23.7 **Power to remedy**

(a) If any Propco fails to perform or is considered by the Agent (acting on the

instructions of the Majority Lenders) to have failed to perform any obligations under the Finance Documents affecting its Property, each Propco must allow the Security Agent (without any obligation on the Security Agent to do so) or its agents and contractors:

1. to enter any part of its Property;
2. to comply with or object to any notice served on any Propco in respect of its Property; and
3. to take any action that the Security Agent (acting on the instructions of the Agent (acting on the instructions of the Majority Lenders)) may reasonably consider necessary or desirable to prevent or remedy any breach of any such term or to comply with or object to any such notice.

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1. Each Propco must immediately on request by the Security Agent pay the fees, costs and expenses of the Security Agent or its agents and contractors incurred in connection with any action taken by it under this Clause relating to a failure by an Obligor to perform its obligations under a Finance Document.
2. No Finance Party shall be liable as or obliged to account as mortgagee in possession as a result of any action taken under this Clause.

23.8 **Managing Agents**

(a) Subject to paragraph (d) below, no Obligor may:

1. appoint any Managing Agent;
2. amend, supplement, extend or waive the terms of appointment of any Managing Agent; or
3. terminate the appointment of any Managing Agent,

without the prior consent of, and on terms approved by, the Agent (acting on the instructions of the Majority Lenders) which terms shall provide that:

1. if a Default is continuing, the Obligor concerned may terminate  
   that Management Agreement; and
2. any Managing Agent must maintain professional indemnity insurance equal to at least EUR3,000,000.

(b) Each Obligor must ensure that each Managing Agent of any Property:

1. (other than any manager under an Existing Management Agreement) enters into a Duty of Care Agreement with the Security Agent in form and substance satisfactory to the Agent (acting on the instructions of the Majority Lenders);
2. (other than any manager under an Existing Management Agreement) acknowledges to the Security Agent that it has notice of the Security created by the Finance Documents; and
3. manages the Properties to a standard consistent with a prudent owner of properties similar to the Properties; and
4. shall not collect Net Rental Income into any of its own accounts (whether a client account, trust account or otherwise).

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(c) If a Managing Agent is in default of its obligations under its Management

Agreement the Obligor concerned shall promptly notify the Agent, and if, as a result of that default, an Obligor is entitled to terminate that Management Agreement, then, if the Agent (acting on the instructions of the Majority Lenders) so requires, that Obligor must promptly use all reasonable endeavours to:

1. terminate the Management Agreement; and
2. appoint a new Managing Agent in accordance with this Clause.

(d) Each Obligor may permit the Existing Management Agreements to terminate

in accordance with the terms of the documents delivered by the Obligors in accordance with paragraph 13 of Part 1 *(Conditions precedent)* of Schedule 2 *(Conditions Precedent and Conditions Subsequent).*

23.9 **Insurances**

(a) Each Propco must ensure that at all times from the first Utilisation Date

Insurances are maintained in full force and effect, which:

(i) insure each Propco in respect of its interests in each Property and the

plant and machinery on each Property (including trade and other fixtures and fixed plant and machinery forming part of the Property and improvements) for their full replacement value (being the total cost of entirely rebuilding, reinstating or replacing the relevant asset if it is completely destroyed, together with all related fees and demolition costs) and to:

1. provide cover against loss or damage by fire, storm, tempest,  
   flood, earthquake, lightning, explosion, impact, aircraft and other aerial devices and articles dropped from them, riot, civil commotion and malicious damage, bursting or overflowing of water tanks, apparatus or pipes and all other normally insurable risks of loss or damage;
2. provide cover for demolition and site clearance, shoring or  
   propping up, professional fees and value added tax together with adequate allowance for inflation;
3. provide cover against acts of terrorism, including any third  
   party liability arising from such acts;
4. provide cover for loss of rent or prospective rental income (in  
   respect of a period of not less than three years or, if longer, the minimum period required under the Lease Documents) including provision for any increases in rent during the period of insurance; and

(ii) include property owners' public liability and third party liability

insurance;

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1. insure such other risks as a prudent company in the same business as the Propcos would insure; and
2. in each case are in an amount, and in form, and with an insurance company or underwriters, in each case having a Requisite Rating, acceptable at all times to the Agent (acting on the instructions of the Majority Lenders).

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|  | Each Propco must procure that each of the Insurances is in the names of the Propcos concerned and that the Security Agent (as agent and trustee for the Finance Parties) is named as co-insured under each of the Insurances (other than public liability and third party liability insurances) but without liability on the part of the Security Agent or any other Finance Party for any premium in relation to those Insurances. |

1. Each Propco must procure that the Insurances comply with the following  
   requirements:

(i) each of the Insurances must contain:

1. a non-invalidation and non-vitiation clause under which the  
   Insurances will not be vitiated or avoided as against any insured party or mortgagee or security holder as a result of any circumstances beyond the control of that insured party or any misrepresentation, act, neglect, non-disclosure, or breach of any policy term or condition, on the part of any insured party or any agent of any insured party;
2. a waiver of the rights of subrogation of the insurer as against  
   each Propco, the Security Agent, the Finance Parties and the tenants of each Property; and
3. (except in respect of any Insurances specified in paragraph  
   (a)(ii) above) a loss payee clause with the Security Agent named as loss payee and on such terms as the Security Agent (acting on the instructions of the Agent (acting on the instructions of the Majority Lenders)) may reasonably require in respect of insurance claim payments otherwise payable to any Propco including a provision under which the proceeds of the insurance are payable directly to the Agent;

(ii) the insurers must give at least 30 days' notice to the Security Agent if

any insurer proposes to repudiate, rescind or cancel any Insurance, to treat it as avoided in whole or in part, to treat it as expired due to non­payment of premium or otherwise decline any valid claim under it by or on behalf of any insured party and must give the opportunity to rectify any such non-payment of premium within the notice period; and

(iii) (except in respect of any Insurances specified in paragraph (a)(ii)

above) each Propco must be free to assign all amounts payable to it

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under each of its Insurances and all its rights in connection with those amounts in favour of the Security Agent.

(d) Each Propco must use all reasonable endeavours to ensure that the Agent

receives copies of the Insurances, receipts for the payment of premiums for insurance and any information in connection with the insurances and claims under them which the Agent (acting on the instructions of the Majority Lenders) may reasonably require.

(e) Each Propco must promptly notify the Agent of:

1. the proposed terms of any future renewal of any of the Insurances;
2. any amendment, supplement, extension, termination, avoidance or cancellation of any of the Insurances made or, to its knowledge, threatened or pending;
3. any claim, and any actual or threatened refusal of any claim, under any of the Insurances; and
4. any event or circumstance which has led or may lead to a breach by any Propco of any term of this Clause.

(f) Each Propco must:

1. comply with the terms of the Insurances;
2. not do or permit anything to be done which may make void or voidable any of the Insurances; and
3. comply with all reasonable risk improvement requirements of its insurers.

(g) Each Propco must ensure that:

1. each premium for the Insurances is paid promptly and in any event prior to the commencement of the period of insurance for which that premium is payable; and
2. all other things necessary are done so as to keep each of the Insurances in force.

(h) If any Propco fails to comply with any term of this Clause, the Agent may

(without any obligation to do so), at the expense of the Obligors effect any insurance on behalf of the Agent or the Security Agent (and not in any way for the benefit of the Obligor concerned) and generally do such things and take such other action as the Agent may reasonably consider necessary or desirable to prevent or remedy any breach of this Clause.

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|  | Except as provided below, the proceeds of any Insurances must together with all proceeds of insurances paid directly to the Agent, if |

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the Agent so requires, be paid into the Deposit Account for application

in accordance with Clause 17.4 *(Deposit Account).*

1. To the extent required by the basis of settlement under any Insurances  
   or under any Lease Document, each Propco must apply moneys received under any Insurances in respect of a Property towards replacing, restoring or reinstating the relevant Property.
2. The proceeds of any loss of rent insurance will be treated as Rental Income and applied in such manner as the Agent (acting reasonably) requires to have effect as if it were Rental Income received over the period of the loss of rent.
3. Moneys received under liability policies held by a Propco which are required by that Propco to satisfy established liabilities of the Propco to third parties must be used to satisfy these liabilities.

23.10 **Pay rents and charges**

Each Obligor shall punctually pay (or cause to be paid) and indemnify the Agent on demand against all rents, Taxes, fees, renewal fees, charges, assessments, impositions and outgoings (whether imposed by deed or by statute or otherwise and whether in the nature of capital or revenue) which are at any time payable in respect of their Properties or any part thereof.

23.11 **Compulsory purchase**

1. Each Propco shall notify the Agent immediately if all or any part of a Property  
   is compulsorily purchased or the applicable governmental agency or authority makes an order for the compulsory purchase of the same.

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|  | On receipt of such notice from an Obligor, the Agent shall be entitled (but not obliged unless instructed to do so by the Majority Lenders) to request a revised Valuation of that Property (the cost of any such Valuation shall be borne by the Obligors) ignoring that part being compulsorily purchased, for the purposes of Clause 21.2 *(Loan to value).* |

23.12 **Environmental matters**

(a) Each Obligor must:

1. comply and ensure that any relevant third party complies with all  
   Environmental Law;
2. obtain, maintain and ensure compliance with all requisite Environmental Permits applicable to it or to a Property; and
3. implement procedures to monitor compliance with and to prevent liability under any Environmental Law applicable to it or a Property,

where failure to do so has or is reasonably likely to have a Material Adverse Effect or result in any liability for any Finance Party.

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(b) Each Obligor must, promptly upon becoming aware, notify the Agent of:

1. any Environmental Claim started, or to its knowledge, threatened;
2. any circumstances reasonably likely to result in an Environmental Claim; or
3. any suspension, revocation or notification of any Environmental Permit.

(c) Each Obligor must indemnify each Finance Party against any loss or liability

which:

1. that Finance Party incurs as a result of any actual or alleged breach of any Environmental Law by any person; and
2. would not have arisen if a Finance Document had not been entered into,

unless it is caused by that Finance Party's gross negligence or wilful misconduct.

24. **EVENTS OF DEFAULT**

(a) Each of the events or circumstances set out in this Clause 24 is an Event of

Default (save for Clause 24.16 *(Acceleration)).*

24.1 **Non-payment**

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

(a) its failure to pay is caused solely by:

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

in each case, payment is made within 3 Business Days of its due date; or

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| (b) | its failure to pay is caused solely by default on the part of the Security Agent in applying proceeds standing to the credit of an Account in paying any such amount as required by this Agreement. |

24.2 **Financial Covenants**

Any requirement of Clause 21.1 *(Debt Yield)* or 21.2 *(Loan to value)* is not satisfied and the Borrowers fail to prepay the Loans in accordance with, and within the time period specified in, paragraph (b) of Clause 21.4 *(Prepayment due to financial covenant breach).*

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24.3 **Other obligations**

(a) An Obligor does not comply with any term of:

1. Clause 8.3 *(Hedging);*
2. Clause 17 *(Bank Accounts)* (unless any failure by any Obligor to  
   perform or comply with that Clause is caused solely by the default on the part of the Security Agent in applying proceeds standing to the credit of an Account in accordance with this Agreement);
3. Clause 20.2 *(Compliance Certificate);*
4. Clause 20.8 *(Notification of default);*
5. Clause 21.3(d) *(Testing of financial covenants);*
6. Clause 22.3 *(Negative Pledge);*
7. Clause 22.4 *(Disposals);*
8. Clause 22.5 *(Financial Indebtedness);*
9. Clause 22.6 *(Lending and guarantees);*
10. Clause 22.7 *(Merger);*
11. Clause 22.9 *(Acquisitions);*
12. Clause 22.13 *(Centre of main interests);*
13. Clause 22.14 *(Shares, dividends and share redemption);*
14. Clause 22.18 *(Intellectual Property);*
15. Clause 22.19 *(Conditions subsequent);*
16. Clause 23.2 *(Occupational Leases);* or
17. Clause 23.8 *(Insurances).*

(b) A Transaction Obligor does not comply with any provision of the Finance

Documents (other than those referred to in paragraph (a) above or Clauses 24.1 *(Non-payment)* and 24.2 *(Financial Covenants)).*

(c) No Event of Default under paragraph (b) above will occur if the failure to

comply is capable of remedy in the opinion of the Agent (acting on the instructions of the Majority Lenders) and is remedied within fifteen Business Days of the earlier of (i) the Agent giving notice to the Obligors' Agent and (ii) any Transaction Obligor becoming aware of the failure to comply.

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24.4 **Misrepresentation**

(a) Any representation or statement made or deemed to be made by a Transaction

Obligor in the Finance Documents or any other document delivered by or on behalf of any Transaction Obligor 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.

No Event of Default under paragraph (a) above will occur if the circumstances giving rise to the misrepresentation or incorrect statement are capable of remedy and are remedied within seven Business Days of the earlier of (i) the Agent giving notice to the Obligors' Agent and (ii) any Transaction Obligor becoming aware of the failure to comply.

24.5 **Cross-default**

(a) Any Financial Indebtedness of any Obligor is not paid when due nor within

any originally applicable grace period.

Any Financial Indebtedness of any Obligor 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).

1. Any commitment for any Financial Indebtedness of any Obligor is cancelled or suspended by a creditor of any Obligor as a result of an event of default (however described).
2. Any creditor of any Obligor becomes entitled to declare any Financial Indebtedness of any Obligor due and payable prior to its specified maturity as a result of an event of default (however described).

24.6 **Insolvency**

(a) A Transaction Obligor:

1. is unable or admits inability to pay its debts as they fall due;
2. is deemed to or is declared to, be unable to pay its debts under applicable law;
3. suspends or threatens to suspend making payments on any of its debts; or
4. by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors (excluding any Finance Party in its capacity as such) with a view to rescheduling any of its indebtedness.

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| (b) | In the event that a Transaction Obligor has a Centre of Main Interests or an establishment for the purposes of Council Regulation (EC) No 1346/2000 in any jurisdiction in which any of the proceedings described in Clause 24.7 *(Insolvency Proceedings)* may be commenced as a result of the value of the |

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assets of that Transaction Obligor being less than its liabilities, the value of the assets of any Transaction Obligor is less than its liabilities (taking into account contingent and prospective liabilities).

(c) A moratorium is declared in respect of any indebtedness of any Transaction  
Obligor. If a moratorium occurs, the ending of the moratorium will not remedy any Event of Default caused by that moratorium.

24.7 **Insolvency proceedings**

Any corporate action, legal proceedings or other procedure or step is taken in relation to:

1. 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 any Transaction Obligor; or

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|  | a composition, compromise, assignment or arrangement with any creditor of any Transaction Obligor; or |

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

Paragraph (a) above shall not apply to any winding-up petition which is satisfied is frivolous or vexatious and is discharged, stayed or dismissed within fourteen days of commencement.

24.8 **Creditors' process**

Any expropriation, attachment, sequestration, distress or execution or any analogous process in any Relevant Jurisdiction affects any asset or assets of a Transaction Obligor unless:

1. the aggregate value of the claims relating to the assets affected is less than EUR250,000 (or its equivalent in other currencies); and
2. in the case of:
3. a Dutch executory attachment *(executoriaal beslag),* such attachment  
   is discharged within 5 Business Days;
4. a Dutch conservatory attachment *(conservatoir beslag)* such attachment is discharged within 30 days; or
5. any other process, such process is discharged, stayed or dismissed  
   within 15 days of commencement.

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24.9 **Cessation of business**

A Transaction Obligor suspends or ceases, or threatens to suspend or cease, to carry on all or a material part of its business (except as a result of any disposal allowed under this Agreement).

24.10 **Unlawfulness and invalidity**

(a) It is or becomes unlawful for a Transaction Obligor to perform any of its

obligations under the Transaction Documents or any Transaction Security created or expressed to be created or evidenced by the Security Documents ceases to be effective or any subordination created under a Subordination Deed is or becomes unlawful.

Any obligation or obligations of any Transaction Obligor under any Finance Documents are not (subject to the Legal Reservations) or cease to be legal, valid, binding or enforceable and the cessation individually or cumulatively materially and adversely affects the interests of the Finance Parties under the Finance Documents.

24.11 **Repudiation and rescission of agreements**

A Transaction Obligor (or any other relevant party) rescinds or purports to rescind or repudiates or purports to repudiate a Finance Document or any of the Transaction Security or evidences an intention to rescind or repudiate a Finance Document or any Transaction Security.

24.12 **Compulsory purchase**

1. All or any part of any Property is compulsorily purchased or is the subject of  
   an order for its compulsory purchase or is otherwise nationalised or expropriated; and

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|  | in the opinion of the Majority Lenders, taking into account the amount and timing of any compensation payable, such compulsory purchase has or will have a Material Adverse Effect. |

24.13 **Major damage**

1. Any part of any Property is destroyed or damaged; and
2. in the opinion of the Majority Lenders, taking into account the amount and timing of receipt of the proceeds of insurance effected in accordance with the terms of this Agreement, the destruction or damage has or will have a Material Adverse Effect.

24.14 **Material adverse change**

Any event or circumstance occurs which in the opinion of the Majority Lenders has or is reasonably likely to have a Material Adverse Effect.

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24.15 **Litigation**

(a) Any litigation, arbitration or administrative proceedings of or before any court,

arbitral body or agency (including, without limitation any Environmental Claim or any claim in relation to Taxes) are commenced or threatened against any Obligor or its assets which would reasonably be expected to be adversely determined and, if adversely determined, would reasonably be expected to have a Material Adverse Effect.

Any judgment or order of a court, arbitral tribunal or other tribunal or any order or sanction of any governmental or other regulatory body is made against it or its assets which would reasonably be expected to have a Material Adverse Effect.

24.16 **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 Obligors' Agent:

1. cancel the Total Commitments whereupon they shall immediately be  
   cancelled;

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|  | 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, whereupon they shall become immediately due and payable; |

1. declare that all or part of the Loans be payable on demand, whereupon they  
   shall immediately become payable on demand by the Agent on the instructions of the Majority Lenders; and/or
2. exercise or direct the Security Agent to exercise any or all of its rights,  
   remedies, powers or discretions under the Finance Documents.

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**SECTION 10**

**CHANGES TO PARTIES**

25. **CHANGES TO FINANCE PARTIES**

25.1 **Assignments and transfers by the Lenders**

Subject to this Clause 25 and Clause 26 *(Restriction on Debt Purchase Transactions),* a Lender (the **"Existing Lender")** may:

1. assign any of its rights; or
2. transfer by novation, or otherwise dispose of, any of its rights and obligations,

under the Finance Documents (including any Security created under the Finance Documents) to any bank or financial institution or other person (other than any

Obligor or any Affiliate of any Obligor or an individual) (the **"New Lender").**

25.2 **Conditions of assignment or transfer**

(a) The consent of the Obligors' Agent is not required for an assignment or

transfer by an Existing Lender, unless the assignment or transfer is to:

1. a Prohibited Lender in circumstances where no Event of Default is  
   continuing; or
2. the Blackstone real estate equity business (excluding any part of the  
   Blackstone real estate debt strategies business) or any Related Equity Fund.

(b) An assignment or other disposal 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 or other disposal to a New Lender, the completion of which the Agent shall promptly notify to the Existing Lender and the New Lender.

(c) A Lender shall not assign or transfer any part of its Commitment in a Facility

or participation in a Loan unless it also assigns or transfers a pro rata part of each of its Commitments in the other Facilities or participation in the other Loans.

(d) A transfer will only be effective if the procedure set out in Clause 25.5

*(Procedure for transfer)* is complied with.

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(e) If

1. a Lender assigns, or transfers or otherwise disposes of 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, disposal or change occurs, an Obligor would be obliged to make a payment to the New Lender or Lender acting through its new Facility Office under Clause 12 *(Tax gross-up and indemnities)* or Clause 13 *(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, disposal or change had not occurred. This paragraph (e) shall not apply in respect of an assignment or transfer made in the ordinary course of the primary syndication of the Facility.

1. Each New Lender, by executing the relevant Transfer Certificate or Assignment Agreement 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 transfer or assignment becomes effective in accordance with this Agreement and that it is bound by that decision to the same extent as the Existing Lender would have been had it remained a Lender.
2. Nothing in any Finance Document shall be construed as prohibiting a Lender from creating Security over any or all of its rights under the Finance Documents (including any Security created under the Finance Documents) in favour of any person at any time.

25.3 **Assignment or transfer fee**

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 EUR1,500.

25.4 **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 any Obligor or the Ultimate Parent;
3. the performance and observance by any Obligor or the Ultimate Parent of its obligations under the Finance Documents or any other documents; or

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(iv) 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.

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 each Obligor 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 in connection with any Finance Document; and
2. will continue to make its own independent appraisal of the  
   creditworthiness of each Obligor and the Ultimate Parent 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 or disposed of under this Clause 25; or
2. support any losses directly or indirectly incurred by the New Lender by  
   reason of the non-performance by any Obligor of its obligations under the Finance Documents or otherwise.

25.5 **Procedure for transfer**

1. Subject to the conditions set out in Clause 25.2 *(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.

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|  | 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 that it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to the transfer to such New Lender. |

1. Subject to Clause 25.9 *(Pro rata interest settlement),* 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 each of the

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Obligors and the Existing Lender shall be released from further obligations towards one another under the Finance Documents and in respect to the Transaction Security and their respective rights against one another under the Finance Documents shall be cancelled (being the **"Discharged Rights and Obligations");**

1. each of the Obligors 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 that Obligor and the New Lender have assumed and/or acquired the same in place of that Obligor 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". 25.6 **Procedure for assignment**
4. Subject to the conditions set out in Clause 25.2 *(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.

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|  | The Agent shall only be obliged to execute an Assignment Agreement delivered to it by the Existing Lender and the New Lender once it is satisfied that it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to the assignment to such New Lender. |

1. Subject to Clause 25.9 *(Pro rata interest settlement),* on the Transfer Date:
2. the Existing Lender will assign absolutely to the New Lender the rights  
   under the Finance Documents expressed to be the subject of the assignment in the Assignment Agreement;
3. the Existing Lender will be released by each Obligor and the other  
   Finance Parties from the obligations owed by it (the **"Relevant Obligations")** and expressed to be the subject of the release in the Assignment Agreement; and

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(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 25.6 to  
assign their rights under the Finance Documents (but not, without the consent of the relevant Obligor or unless in accordance with Clause 25.5 *(Procedure for transfer),* to obtain a release by that Obligor from the obligations owed to that Obligor by the Lenders nor the assumption of equivalent obligations by a New Lender) **provided that** they comply with the conditions set out in Clause 25.2 *(Conditions of assignment or transfer).*

25.7 **Copy of Transfer Certificate, Assignment Agreement to Obligors' Agent**

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

25.8 **Security over Lenders' rights**

In addition to the other rights provided to Lenders under this Clause 25, each Lender may without consulting with or obtaining consent from any Obligor, at any time charge, assign or otherwise 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

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|  | 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:

1. 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
2. require any payments to be made by an Obligor other than or in excess  
   of, 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.

25.9 **Pro rata interest settlement**

(a) If the Agent has notified the Lenders that it is able to distribute interest

payments on a "pro rata basis" to Existing Lenders and New Lenders then (in respect of any transfer pursuant to Clause 25.5 *(Procedure for transfer)* or any assignment pursuant to Clause 25.6 *(Procedure for assignment)* the Transfer

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Date of which, in each case, is after the date of such notification and is not on the last day of an Interest Period):

1. any interest or fees in respect of the relevant participation which are  
   expressed to accrue by reference to the lapse of time shall continue to accrue in favour of the Existing Lender up to but excluding the Transfer Date **("Accrued Amounts")** and shall become due and payable to the Existing Lender (without further interest accruing on them) on the last day of the current Interest Period (or, if the Interest Period is longer than six Months, on the next of the dates which falls at six Monthly intervals after the first day of that Interest Period); and
2. the rights assigned or transferred by the Existing Lender will not  
   include the right to the Accrued Amounts, so that, for the avoidance of doubt:
3. when the Accrued Amounts become payable, those Accrued Amounts will be payable to the Existing Lender; and
4. the amount payable to the New Lender on that date will be the amount which would, but for the application of this Clause 25.9, have been payable to it on that date, but after deduction of the Accrued Amounts.

(b) In this Clause 25.9 references to "Interest Period" shall be construed to include

a reference to any other period for accrual of fees.

25.10 **Luxembourg Security Confirmation**

Each Finance Party and each Luxembourg Obligor hereby expressly accepts and confirms, for the purposes of article 1278 of the Luxembourg Civil Code, that notwithstanding any assignment, transfer and/or novation permitted under, and made in accordance with the provisions of this Agreement, any Transaction Security given in connection with this Agreement shall be preserved for the benefit of any New Lender.

25.11 **Spanish Mortgage Assignment**

To assign or transfer the mortgages over all or part of the Nassica Property and/or the Vista Alegre Property, the New Lender and the Existing Lender shall promptly execute a deed before a Spanish notary *(Notario)* documenting the assignment or transfer, notify it to the relevant Borrower and cause it to be entered into the relevant land registry or registries in accordance with articles 149 and 151 of the Mortgage Law dated 8 February 1946 *(Ley Hipotecaria).*

The above formal requirement will not be applicable in case of any sub-participation structure.

25.12 **Syndication and Securitisation**

(a) Subject to the provisions of this Clause 25 *(Changes to Finance Parties),* each

Obligor agrees that all or part of any Loan or Commitment, or any Lender's

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interest therein or under any Finance Document may be syndicated and/or securitised (whether alone or in conjunction with any other loan or loans).

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| (b) | Each Obligor shall provide reasonable assistance to the Arranger in the preparation of any information memorandum prepared in relation to this transaction and to the primary syndication of the Facility (including, without limitation, by making senior management available upon reasonable notice for the purpose of making presentations to, or meeting with, potential lending institutions) and will comply with all reasonable requests for information from potential syndicate members prior to completion of primary syndication. |

(c) In connection with the syndication and/or Securitisation of the Facility

(whether alone or in conjunction with other facilities), each Obligor agrees to:

1. co-operate with the Finance Parties to facilitate any Securitisation of  
   all or any part of this Facility or of any Loan, and the rating of any Lender's interest in any of the Finance Documents by internationally recognised ratings agencies nominated by the Finance Party concerned;
2. co-operate in the preparation of the related offering circular and to  
   provide such information as any Finance Party may reasonably require, including any information relating to the Properties and the Obligors generally which any Finance Party may reasonably consider necessary to include in that offering circular;
3. take responsibility in the offering circular for the information relating  
   to the Properties or the Obligors and, on the date of publication thereof, to give to the arranger and managers of that Securitisation, warranties concerning, amongst other things, the accuracy and completeness of that information together with a corresponding indemnity for breach of any of those warranties as is customary for such a transaction;
4. subject to the terms of the Occupational Leases, upon reasonable  
   notice provide such access to the Properties, tenant and financial information and to the management of the Obligors as the Agent or the Servicer may reasonably require; and
5. enter into any additional documents or any amendments to the Finance  
   Documents that the Agent (acting on the instructions of the Majority Lenders) may reasonably require (including any required to tranche, sub-divide or split the whole or part of a Loan into one or more separate tranches in any amounts, having the same or different interest rates and which may rank in priority on a pari passu basis or otherwise) provided that such additional documents or amendments shall not result, or have the effect, of reducing the principal amount of the Facility, increasing the Margin or imposing on any Obligor more onerous provisions under the Finance Documents than those to which it is subject as at the date of this Agreement.

(d) The Obligors shall within three Business Days of demand reimburse the

relevant Finance Parties for any reasonable costs, expenses, registration or

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other similar fees (including attorneys' fees but excluding any stamp duty or stamp duty land tax) reasonably incurred by any Finance Party as a direct

result of or in connection with any Securitisation or syndication.

26. **RESTRICTION ON DEBT PURCHASE TRANSACTIONS** 26.1 **Prohibition on Debt Purchase Transactions**

The Parent shall not, and shall procure that each other member of the Group shall not and that no Sponsor Affiliate (excluding for this purpose, any portfolio company of the Sponsor or of any Affiliate of the Sponsor) shall, enter into any Debt Purchase Transaction or beneficially own all or any part of the share capital of a company that is a Lender or a party to a Debt Purchase Transaction of the type referred to in paragraphs (b) or (c) of the defmition of Debt Purchase Transaction.

26.2 **Disenfranchisement on Debt Purchase Transactions**

(a) Without prejudice to Clause 26.1 and without limiting the Finance Parties'

rights in respect of any breach of Clause 26.1, if any Obligor or any member of the Group or any Sponsor Affiliate enters into a Debt Purchase Transaction, for so long as such Obligor, or member of the Group or Sponsor Affiliate:

1. beneficially owns a Commitment; or
2. has entered into a sub-participation agreement relating to a Commitment or other agreement or arrangement having a substantially similar economic effect and such agreement or arrangement has not been terminated,

in ascertaining:

1. the Majority Lenders; or
2. whether (1) any given percentage (including, for the avoidance of doubt, unanimity) of the Total Commitments; (2) or the agreement of any specified group of Lenders, has been obtained to approve any request for a consent, waiver, amendment or other vote under the Finance Documents,

such Commitment shall be deemed to be zero and such Obligor or member of the Group or Sponsor Affiliate or, in each case, the person with whom it has entered into such sub-participation, other agreement or arrangement shall be deemed not to be a Lender for the purposes of paragraphs (A) and (B) above (unless in the case of a person not being an Obligor, or member of the Group or a Sponsor Affiliate it is a Lender by virtue otherwise than by beneficially owning the relevant Commitment).

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| (b) | Each Obligor or member of the Group or Sponsor Affiliate that is a Lender agrees that: |

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1. in relation to any meeting or conference call to which all the Lenders  
   are invited to attend or participate, it shall not attend or participate in the same if so requested by the Agent (acting on the instructions of the Majority Lenders) or, unless the Agent (acting on the instructions of the Majority Lenders) otherwise agrees, be entitled to receive the agenda or any minutes of the same; and
2. in its capacity as Lender, unless the Agent otherwise agrees, it shall not  
   be entitled to receive any report or other document prepared at the behest of, or on the instructions of, the Agent or one or more of the Lenders.

(c) Any Obligor or member of the Group or Sponsor Affiliate which is or

becomes a Lender and which enters into a Debt Purchase Transaction as a purchaser or a participant shall, by 5.00 p.m. (London time) on the Business Day following the day on which it entered into that Debt Purchase Transaction, notify the Agent of the extent of the Commitment(s) or amount outstanding to which that Debt Purchase Transaction relates. The Agent shall, as soon as reasonably practicable following receipt of such notification, disclose such information to the Lenders.

27. **CHANGES TO THE OBLIGORS**

27.1 **Assignments and transfers by Obligors**

No Obligor may assign any of its rights or transfer any of its rights or obligations under the Finance Documents.

27.2 **Resignation of a Borrower**

(a) The Obligors' Agent may request that a Borrower ceases to be a Borrower by

delivering to the Agent a Resignation Letter.

(b) The Agent shall accept a Resignation Letter and notify the Obligors' Agent

and the Lenders of its acceptance if:

1. no Default is continuing or would result from the acceptance of the  
   Resignation Letter (and the Obligors' Agent has confirmed this is the case);
2. the Borrower is under no actual or contingent obligations as a  
   Borrower other than under Clause 18 *(Guarantee and indemnity))* under any Finance Document; and
3. either:
4. the Borrower has ceased to have an interest in any Property and all the Lenders have consented to the Obligors' Agent's request; or
5. the Obligors' Agent is disposing of its shares in the Borrower in  
   accordance with Clause 22.4 *(Disposals).*

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(c) On acceptance by the Agent of a Resignation Letter the relevant Borrower  
shall cease to be a Borrower and shall have no further rights or obligations under the Finance Documents.

27.3 **Resignation of a Guarantor**

(a) The Obligors' Agent may request that a Guarantor ceases to be a Guarantor by

delivering to the Agent a Resignation Letter.

The Agent shall accept a Resignation Letter and notify the Obligors' Agent and the Lenders of its acceptance if:

1. no Default is continuing or would result from the acceptance of the  
   Resignation Letter (and the Obligors' Agent has confirmed this is the case);
2. no payment is due from the Guarantor under any Finance Document  
   and, in the circumstances referred to in paragraph (iii)(B) below, no payment will become due from that Guarantor as a result of the disposal of the shares in that Guarantor in accordance with Clause 22.4 *(Disposals);* and
3. either:
4. all the Lenders have consented to the Obligors' Agent's request;  
   or
5. the Obligors' Agent is disposing of its shares in the Guarantor  
   in accordance with Clause 22.4 *(Disposals).*

(c) On acceptance by the Agent of a Resignation Letter the relevant Guarantor  
shall cease to be a Guarantor and shall have no further rights or obligations under the Finance Documents as a Guarantor.

27.4 **Release of security**

1. If an Obligor has ceased to be a Borrower or, as the case may be, a Guarantor  
   in a manner allowed by this Agreement and has no further rights or obligations under the Finance Documents, any security created by that Obligor over its assets under the Security Documents will be released.

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|  | If a disposal of any asset subject to security created by a Security Document is made in the following circumstances: |

1. the disposal is permitted by the terms of this Agreement;
2. all the Lenders agree to the disposal;
3. the disposal is being made at the request of the Security Agent in circumstances where any security created by the Security Documents has become enforceable; or

(b)

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(iv) the disposal is being effected by enforcement of a Security Document,

the Security Agent may release the asset(s) being disposed of (and, in the case of a disposal of shares in an Obligor which results in it or any of its Subsidiaries ceasing to be a member of the Group, all the assets of that Obligor) and those Subsidiaries from any security over those assets created by a Security Document. However, the proceeds of any disposal (or an amount corresponding to them) must be applied in accordance with the requirements of the Finance Documents (if any).

(c) If the Security Agent is satisfied that a release is allowed under this Clause, (at  
the request and expense of the Obligors' Agent) each Finance Party must enter into any document and do all such other things which are reasonably required to achieve that release. Each other Finance Party irrevocably authorises the Security Agent to enter into any such document. Any release will not affect the obligations of any other Obligor under the Finance Documents.

27.5 **Additional Subordinated Creditors**

(a) The Obligors' Agent may request that any Target Company becomes a

Subordinated Creditor, with the prior approval of the Agent, by delivering to the Agent:

1. a duly executed Subordination Deed;
2. a duly executed Subordinated Creditor's Security Agreement; and
3. such constitutional documents, corporate authorisations and other documents and matters as the Agent may reasonably require, in form and substance satisfactory to the Agent (acting on the instructions of the Majority Lenders), to verify that the person's obligations are legally binding, valid and enforceable and to satisfy any applicable legal and regulatory requirements.

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| (b) | A person referred to in paragraph (a) above will become a Subordinated Creditor on the date the Agent enters into the Subordination Deed and the Subordinated Creditor's Security Agreement delivered under paragraph (a) above. |

27.6 **Additional Obligors**

(a) Each Original Obligor shall procure that on the Utilisation Date:

1. each of the Nassica Propco and the Vista Alegre Propco become a  
   Borrower and an Additional Guarantor by delivering to the Agent an Obligor Accession Letter, duly executed by each of those companies;
2. nominate each of the Nassica Holdco and the Vista Alegre Holdco to  
   become an Additional Guarantor by delivering to the Agent an Obligor Accession Letter, duly executed by each of those companies; and

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(iii) each of the Nassica Propco, the Vista Alegre Propco, the Nassica Holdco, the Vista Alegre Holdco and each other Obligor complies ith the provisions of Clause 20.9 *("Know Your Customer" checks).*

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| (b) | The Agent shall (and is irrevocably authorised by the Lenders to) promptly execute an Obligor Accession Letter in respect of each of the accessions specified in paragraph (a) above if: |

1. at the same time as an Obligor Accession Letter is delivered to the  
   Agent, there is also delivered to the Agent such items listed in Schedule 2 *(Conditions Precedent and Conditions Subsequent)* as the Agent (acting on the instructions of the Majority Lenders) determines are required in relation to the Additional Obligor, in each case in form and substance satisfactory to the Agent (acting on the instructions of the Majority Lenders); and
2. no Default is continuing or would result from the Additional Obligor  
   acceding as a Party.
3. Each Party (other than the Additional Obligor concerned) irrevocably  
   authorises the Agent to execute any duly completed Obligor Accession Letter on its behalf.
4. An Obligor Accession Letter shall take effect on the date of execution of that  
   Obligor Accession Letter by the Agent or, if later, the date specified in that Obligor Accession Letter.
5. The execution of an Obligor Accession Letter by the Additional Obligor  
   concerned constitutes confirmation by it that it is a Borrower and/or a Guarantor, as the case may be, under this Agreement.
6. Delivery of an Obligor Accession Letter constitutes confirmation by the  
   relevant Additional Obligor that the representations stated to be made by that Additional Obligor in accordance with Clause 19.29 *(Times for making representations)* are true and correct in relation to it as at the date of delivery as if made by reference to the facts and circumstances then existing.
7. The Agent shall notify the Obligors' Agent promptly receiving confirmation  
   from the Majority Lenders that they have received (in form and substance satisfactory to them) all the documents and other evidence listed in Schedule 2 *(Conditions Precedent and Conditions Subsequent)* as required pursuant to Clause 27.6(ó)(i).
8. Other than to the extent that the Majority Lenders notify the Agent in writing  
   to the contrary before the Agent gives the notification described in paragraph (g) above, the Lenders authorise (but do not require) the Agent to give that notification. The Agent shall not be liable for any damages, costs or losses whatsoever as a result of giving any such notification.

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**SECTION 11**

**THE FINANCE PARTIES**

28. **ROLE OF THE AGENT AND THE ARRANGER** 28.1 **Appointment of the Agent**

(a) Each of the Arranger and the Lenders appoints the Agent to act as its agent

under and in connection with the Finance Documents.

Each of the Arranger and the Lenders authorises the Agent to perform the duties, obligations and responsibilities and 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.

28.2 **Instructions**

(a) The Agent shall:

(i) unless a contrary indication appears in a Finance Document, exercise

or refrain from exercising any right, power, authority or discretion vested in it as Agent in accordance with any instructions given to it by:

1. all Lenders if the relevant Finance Document stipulates the  
   matter is an all Lender decision; and
2. in all other cases, the Majority Lenders; and

(ii) not be liable for any act (or omission) if it acts (or refrains from acting)

in accordance with paragraph (i) above.

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| (b) | The Agent shall be entitled to request instructions, or clarification of any instruction, from the Majority Lenders (or, if the relevant Finance Document stipulates the matter is a decision for any other Lender or group of Lenders, from that Lender or group of Lenders) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion and the Agent may refrain from acting unless and until it receives those instructions or that clarification irrespective of whether such failure to act is in the best interests of the Lenders and, in such circumstances, the Agent shall not be liable for such failure to act. |

1. Save in the case of decisions stipulated to be a matter for any other Lender or  
   group of Lenders under the relevant Finance Document and unless a contrary indication appears in a Finance Document, any instructions given to the Agent by the Majority Lenders shall override any conflicting instructions given by any other Parties and will be binding on all Finance Parties save for the Security Agent.
2. The Agent may refrain from acting in accordance with any instructions of any  
   Lender or group of Lenders until it has received any indemnification and/or security that it may in its discretion require (which may be greater in extent

(b)

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than that contained in the Finance Documents and which may include payment in advance) for any cost, loss or liability which it may incur in complying with those instructions.

(e) In the absence of instructions, the Agent may act (or refrain from acting) as it

considers to be in the best interest of the Lenders.

(f) 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 (f) shall not apply to any legal or arbitration proceeding relating to the perfection, preservation or protection of rights under the Security Documents or enforcement of the Transaction Security or Security Documents.

(g) For the avoidance of doubt, in any circumstance where the Agent is obliged to

act reasonably under the terms of the Finance Documents:

1. the Lenders or the Majority Lenders (as applicable) shall be obliged to  
   act reasonably in giving instructions to the Agent (as applicable); and
2. the Agent may (unless a contrary indication appears in a Finance  
   Document) act or refrain from acting on those instructions in accordance with the provisions of this Clause 28.2,

and any reference to the Agent "acting reasonably" shall mean the Agent acting in accordance with the instructions of the Majority Lenders (acting reasonably) or, as applicable, the Lenders (acting reasonably).

(h) For the avoidance of doubt, in any circumstance where the Agent is obliged to

consult under the terms of the Finance Documents, the Lenders or the Majority Lenders (as applicable) shall be obliged to instruct the Agent to consult with the relevant Obligors in accordance with the terms of the relevant Finance Document and the Agent shall be obliged to carry out that consultation in accordance with the instructions it receives from the Majority Lenders or the Lenders (as applicable).

28.3 **Duties of the Agent**

1. The Agent's duties under the Finance Documents are solely mechanical and  
   administrative in nature.
2. Subject to paragraph (c) 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.
3. Without prejudice to Clause 25.7 *(Copy of Transfer Certificate, Assignment  
   Agreement to Obligors' Agent),* paragraph (b) above shall not apply to any Transfer Certificate or any Assignment Agreement.
4. The Agent is not obliged to review or check the adequacy, accuracy or  
   completeness of any document it forwards to another Party.

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1. 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.
2. 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 Arranger or the Security Agent) under this Agreement, it shall promptly notify the other Finance Parties.
3. The Agent shall provide to the Obligors' Agent, within five Business Days of a  
   request by the Obligors' Agent (but no more frequently than once per calendar month), a list (which may be in electronic form) setting out the names of the Lenders as at the date of that request, their respective Commitments, the address and fax number (and the department or officer, if any, for whose attention any communication is to be made) of each Lender for any communication to be made or document to be delivered under or in connection with the Finance Documents, the electronic mail address and/or any other information required to enable the sending and receipt of information by electronic mail or other electronic means to and by each Lender to whom any communication under or in connection with the Finance Documents may be made by that means and the account details of each Lender for any payment to be distributed by the Agent to that Lender under the Finance Documents.
4. The Agent shall promptly forward to the Security Agent a copy of all notices  
   issued pursuant to Clause 24.16 *(Acceleration).*
5. The Agent shall have only those duties, obligations and responsibilities  
   expressly specified in the Finance Documents to which it is expressed to be a party (and no others shall be implied).

28.4 **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.

28.5 **No fiduciary duties**

1. Nothing in any Finance Document constitutes the Agent or the Arranger as a  
   trustee or fiduciary of any other person.

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|  | Neither 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. |

28.6 **Business with the Obligors**

The Agent and the Arranger or any Affiliate thereof may accept deposits from, lend money to and generally engage in any kind of banking or other business with any Transaction Obligor or Affiliate of a Transaction Obligor.

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28.7 **Rights and discretions**

(a) The Agent may:

(i) rely on any representation, communication, notice or document

(including, without limitation, any notice given to the Agent pursuant to paragraph (c) of Clause 26.2 *(Disenfranchisement on Debt Purchase Transactions))* believed by it to be genuine, correct and appropriately authorised;

(ii) assume that:

1. any instructions received by it from the Majority Lenders, any  
   Lenders or any group of Lenders are duly given in accordance with the terms of the Finance Documents; and
2. unless it has received notice of revocation, that those  
   instructions have not been revoked; and

(iii) rely on a certificate from any person:

1. as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person or within the power of that person to verify; or
2. to the effect that such person approves of any particular  
   dealing, transaction, step, action or thing,

as sufficient evidence that that is the case and, in the case of paragraph (A) above, may assume the truth and accuracy of that certificate.

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| **(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 24.1 *(Non-payment));*
2. any right, power, authority or discretion vested in any Party or any  
   group of Lenders has not been exercised; and
3. any notice or request made by the a Borrower or the Obligors' Agent (other than a Utilisation Request) is made on behalf of and with the consent and knowledge of all the Obligors.
4. The Agent may engage and pay for the advice or services of any lawyers,  
   accountants, tax advisers, surveyors or other professional advisers or experts.
5. Without prejudice to the generality of paragraph (c) above or paragraph (e)  
   below, the Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the Agent (and so separate from any

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lawyers instructed by the Lenders) if the Agent in its reasonable opinion deems this to be desirable.

1. The Agent may rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts (whether obtained by the Agent or by any other Party) and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.
2. The Agent may act in relation to the Finance Documents through its officers, employees and agents and the Agent shall not:
3. be liable for any error of judgment made by any such person; or
4. be bound to supervise, or be in any way responsible for any loss incurred by reason of misconduct, omission or default on the part, of any such person,

unless such error or such loss was directly caused by the Agent's gross negligence or wilful misconduct.

Unless a Finance Document expressly provides otherwise, the Agent may disclose to any other Party any information it reasonably believes it has received as Agent under this Agreement.

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.

The Agent is not obliged to disclose to any Finance Party any details of the rate notified to the Agent by any Lender or the identity of any such Lender for the purpose of paragraph (a)(ii) of Clause 10.2 *(Market disruption).*

Notwithstanding any provision of any Finance Document to the contrary, the Agent is not obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.

28.8 **Responsibility for documentation**

Neither the Agent nor the Arranger is responsible or liable for:

(a) or is under an obligation to verify, the adequacy, accuracy or completeness of

any information (whether oral or written) provided by the Agent, the Arranger, any Transaction Obligor or any other person in or in connection with any Transaction or the Legal Due Diligence Report, or the transactions contemplated by the Transaction Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document; or

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1. the legality, validity, effectiveness, adequacy or enforceability of any Transaction Document or the Security Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document or the Security Property; or
2. any determination as to whether any information provided or to be provided to any Finance Party or Secured 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.

28.9 **No duty to monitor**

The Agent shall not be bound to enquire:

1. whether or not any Default has occurred;
2. as to the performance, default or any breach by any Party of its obligations under any Finance Document; or
3. whether any other event specified in any Finance Document has occurred. 28.10 **Exclusion of liability**

(a) Without limiting paragraph (b) below (and without prejudice to the provisions

of paragraph (e) of Clause 33.10 *(Disruption to payment systems etc.)* and any other provision of any Finance Document excluding or limiting the liability of the Agent), the Agent shall not be liable (including, without limitation, for negligence or any other category of liability whatsoever) for:

1. any damages, costs or losses to any person, any diminution in value, or  
   any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Transaction Document or the Security Property, unless directly caused by its gross negligence or wilful misconduct; or
2. exercising, or not exercising, any right, power, authority or discretion  
   given to it by, or in connection with, any Transaction Document, the Security Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Transaction Document or the Security Property;

or

1. any shortfall which arises on the enforcement or realisation of the Security Property; or
2. without prejudice to the generality of paragraphs (i) and (ii) above, any  
   damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of:

(A) any act, event or circumstance not reasonably within its control;

or

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(B) the general risks of investment in, or the holding of assets in,

any jurisdiction,

including (in each case and without limitation) such damages, costs, losses, diminution in value or liability arising as a result of: nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets (including any Disruption Event); breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action.

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| (b) | 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 Transaction 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. |

(c) 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.

(d) The Agent shall not be liable to any Party for any breach by any other Party of

any Transaction Document.

(e) Nothing in this Agreement shall oblige the Agent or the Arranger to carry out:

1. any "know your customer" or other checks in relation to any person;

or

1. any check to the extent to which any transaction contemplated by this  
   Agreement might be unlawful for any Lender,

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.

(f) Without prejudice to any provision of any Finance Document excluding or

limiting the Agent's liability, any liability of the Agent arising under or in connection with any Transaction Document or the Transaction Security shall be limited to the amount of actual loss which has been finally judicially determined to have been suffered (as determined by reference to the date of default of the Agent or, if later, the date on which the loss arises as a result of such default) but without reference to any special conditions or circumstances known to the Agent at any time which increase the amount of that loss. In no

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event shall the Agent be liable for any loss of profits, goodwill, reputation, business opportunity or anticipated saving, or for special, punitive, indirect or consequential damages, whether or not the Agent has been advised of the possibility of such loss or damages.

28.11 **Lenders' indemnity to the Agent**

(a) 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 33.10 *(Disruption to payment systems etc.)* notwithstanding the 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 an Obligor pursuant to a Finance Document).

Subject to paragraph (c) below, the Obligors' Agent shall immediately on demand reimburse any Lender for any payment that Lender makes to the Agent pursuant to paragraph (a) above.

(c) Paragraph (b) above shall not apply to the extent that the indemnity payment  
in respect of which the Lender claims reimbursement relates to a liability of the Agent to an Obligor.

28.12 **Resignation of the Agent**

1. The Agent may resign and appoint one of its Affiliates acting through an  
   office in the United Kingdom as successor by giving notice to the other Finance Parties and the Obligors' Agent.

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|  | Alternatively the Agent may resign by giving 30 days' notice to the other Finance Parties and the Obligors' Agent, in which case the Majority Lenders (after consultation with the Obligors' Agent) may appoint a successor Agent. |

1. 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 Obligors' Agent) may appoint a successor Agent (acting through an office in the United Kingdom).
2. 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.
3. The Agent's resignation notice shall only take effect upon the appointment of a  
   successor.

(b)

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1. Upon the appointment of a successor, the retiring Agent shall be discharged  
   from any further obligation in respect of the Finance Documents (other than its obligations under paragraph (d)) above but shall remain entitled to the benefit of Clause 14.3 *(Obligors' indemnity to the Agent)* and this Clause 28 (and any agency fees for the account of the retiring Agent shall cease to accrue from (and shall be payable on) that date. 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.
2. The Agent shall resign in accordance with paragraph (b) above (and, to the  
   extent applicable, shall use reasonable endeavours to appoint a successor Agent pursuant to paragraph (b) above) if on or after the date which is three months before the earliest FATCA Application Date relating to any payment to the Agent under the Finance Documents, either:
3. the Agent fails to respond to a request under Clause 12.8 *(FATCA  
   Information)* and a Lender reasonably believes that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;
4. the information supplied by the Agent pursuant to Clause 12.8 *(FATCA  
   Information)* indicates that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date; or
5. the Agent notifies the Obligors' Agent and the Lenders that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;

and (in each case) a Lender reasonably believes that a Party will be required to make a FATCA Deduction that would not be required if the Agent were a FATCA Exempt Party, and that Lender, by notice to the Agent, requires it to resign.

28.13 **Replacement of the Agent**

1. After consultation with the Obligors' Agent, the Majority Lenders may, by  
   giving 30 days' notice to the Agent replace the Agent by appointing a successor Agent (acting through an office in the United Kingdom).
2. The retiring Agent shall (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 (other than its obligations under paragraph (b) above) but shall remain entitled to the benefit of Clause 14.3 *(Obligors' indemnity to the Agent)* and this Clause 28 (and any agency fees for the

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account of the retiring Agent shall cease to accrue from (and shall be payable on) that date).

(d) 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.

28.14 **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, neither the Agent nor the Arranger is obliged to disclose to any other person (i) any confidential information or (ii) any other information if the disclosure would or might in its reasonable opinion constitute a breach of any law or regulation or a breach of a fiduciary duty.

28.15 **Relationship with the Finance Parties**

(a) Subject to Clause 25.9 *(Pro rata interest settlement),* 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 other Finance Party shall supply the Agent with any information that the

Agent may reasonably specify as being necessary to enable the Agent to perform its function as Agent.

(c) 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 35.5 *(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

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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 35.2 *(Addresses)* and paragraph (a)(ii) of Clause 35.5 *(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.

28.16 **Reliance and engagement letters**

Each Finance 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 the Reports or any other reports or letters provided in connection with the Finance Documents or the transactions contemplated in the Finance Documents and to bind it in respect of those Reports, 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.

28.17 **Credit appraisal by the Finance Parties**

Without affecting the responsibility of any Obligor for information supplied by it or on its behalf in connection with any Transaction Document, each Finance Party 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 Transaction Document including but not limited to:

1. the financial condition, creditworthiness, condition, affairs, status and nature  
   of each Transaction Obligor or the Group;

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|  | the legality, validity, effectiveness, adequacy or enforceability of any Transaction Document, the Security Property and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document or the Security Property; |

1. whether that Finance Party 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 Transaction Document, the Security Property, the transactions contemplated by the Transaction Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document or the Security Property;
2. the adequacy, accuracy or completeness of any information provided by the  
   Agent, any Party or by any other person under or in connection with any Transaction Document, the transactions contemplated by any Transaction Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document;

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(e) the right or title of any person in or to, or the value or sufficiency of any part

of the Security Assets, the priority of any of the Transaction Security or the existence of any Security affecting the Security Property;

28.18 Reference Banks

The Agent shall (if so instructed by the Majority Lenders and in consultation with the Obligors' Agent) replace a Reference Bank with another bank or financial institution.

28.19 **Agent's management time**

Any amount payable to the Agent under Clause 14.3 *(Obligors' Indemnity to the Agent),* Clause 16 *(Costs and expenses)* and Clause 28.11 *(Lenders' indemnity to the Agent)* shall include the cost of utilising the Agent's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Agent may notify to the Obligors' Agent and the Lenders, and is in addition to any fee paid or payable to the Agent under Clause 11 *(Fees).*

28.20 **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.

29. **THE SECURITY AGENT** 29.1 **Security Agent as trustee**

1. Save in respect of any Security Documents expressed to be governed by  
   Spanish law, the Security Agent declares that it holds the Security Property on trust for the Secured Parties on the terms contained in this Agreement.

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|  | Each of the Secured Parties authorises the Security Agent to perform the duties, obligations and responsibilities and 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. |

1. If there is any conflict between the provisions of this Clause 29 and any  
   Security Document with regard to any matters affecting the Security Agent, this Clause 29 will prevail.

29.2 **Parallel debt**

(a) Notwithstanding any other provision of this Agreement, each Obligor (other

than the Propcos) hereby irrevocably and unconditionally undertakes to pay to the Security Agent, as creditor in its own right and not as representative of the other Secured Parties, sums equal to and in the currency of each amount payable by such Obligor to Secured Parties under each of the Finance

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Documents as and when that amount falls due for payment under the relevant Finance Document or would have fallen due but for any discharge resulting from failure of another Secured Party to take appropriate steps, in insolvency proceedings affecting that Obligor, to preserve its entitlement to be paid that amount.

The Security Agent shall have its own independent right to demand payment of the amounts payable by each Obligor under this Clause 29.2, irrespective of any discharge of such Obligor's obligation to pay those amounts to the other Secured Parties resulting from failure by them to take appropriate steps, in insolvency proceedings affecting that Obligor, to preserve their entitlement to be paid those amounts.

(c) Any amount due and payable by an Obligor to the Security Agent under this

Clause 29.2 *(Parallel debt)* shall be decreased to the extent that the other Secured Parties have received (and are able to retain) payment in full of the corresponding amount under the other provisions of the Finance Documents and any amount due and payable by an Obligor to the other Finance Parties under those provisions shall be decreased to the extent that the Security Agent has received (and is able to retain) payment in full of the corresponding amount under this Clause 29.2.

29.3 **Enforcement through Security Agent only**

The Secured Parties shall not have any independent power to enforce or have recourse to, any of the Security Property or to exercise any right, power, authority or discretion arising under the Security Documents except through the Security Agent.

29.4 **Instructions**

(a) The Security Agent shall:

1. subject to paragraphs (c) and (e) below, exercise or refrain from  
   exercising any right, power, authority or discretion vested in it as Security Agent in accordance with any instructions given to it by the Agent (acting on behalf of the Majority Lenders or, as the case may be, all the Lenders); and
2. not be liable for any act (or omission) if it acts (or refrains from acting)  
   in accordance with paragraph (i) above.

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| (b) | The Security Agent shall be entitled to request instructions, or clarification of any instruction, from the Agent as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion and the Security Agent may refrain from acting unless and until it receives those instructions or that clarification. |

(c) Paragraph (a) above shall not apply:

(i) where a contrary indication appears in a Finance Document;

(b)

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1. where this Agreement requires the Security Agent to act in a specified  
   manner or to take a specified action;
2. in respect of any provision which protects the Security Agent's own position in its personal capacity as opposed to its role of Security Agent for the Secured Parties including, without limitation, Clause 29.7 *(No duty to account)* to Clause 29.12 *(Exclusion of liability),* Clause 29.15 *(Confidentiality)* to Clause 29.21 *(Custodians and nominees)* and Clause 29.24 *(Acceptance of title)* to Clause 29.28 *(Disapplication of Trustee Acts);*
3. in respect of the exercise of the Security Agent's discretion to exercise  
   a right, power or authority under any of:
4. Clause 30.1 *(Order of application);*
5. Clause 30.2 *(Prospective liabilities);* and
6. Clause 30.5 *(Permitted deductions).*
7. Save in the case of decisions stipulated to be a matter for any Lender or group  
   of Lenders under the relevant Finance Document and unless a contrary indication appears in a Finance Document, any instructions given to the Security Agent by the Agent shall override any conflicting instructions given by any other Parties and will be binding on all Finance Parties.
8. If giving effect to instructions given by the Agent (acting on the instructions of  
   the Majority Lenders) would (in the Security Agent's opinion) have an effect equivalent to an amendment or waiver which is subject to Clause 39 *(Amendments and waivers),* the Security Agent shall not act in accordance with those instructions unless consent to it so acting is obtained from each Party (other than the Security Agent) whose consent would have been required in respect of that amendment or waiver.

In exercising any discretion to exercise (or refrain from exercising) a right, power or authority under the Finance Documents where either:

1. it has not received any instructions as to the exercise of that discretion;

or

1. the exercise of that discretion is subject to paragraph (c)(iv) above,

the Security Agent shall do so having regard to the interests of all the Secured Parties and shall not incur any liability as a result of so refraining from acting.

The Security Agent may refrain from acting in accordance with any instructions of the Agent, the Majority Lenders or any other group of Lenders until it has received any indemnification and/or security that it may in its discretion require (which may be greater in extent than that contained in the Finance Documents and which may include payment in advance) for any cost, loss or liability (together with any applicable VAT) which it may incur in complying with those instructions.

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|  | Without prejudice to the provisions of the remainder of this Clause 29.4, in the absence of instructions, the Security Agent may act (or refrain from acting) as it considers in its discretion to be appropriate.  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 Security Property. |

0) For the avoidance of doubt, in any circumstance where the Security Agent is

obliged to act reasonably under the terms of the Finance Documents:

1. the Lenders or the Majority Lenders (as applicable) shall be obliged to  
   act reasonably in giving instructions to the Agent for the purpose of instructing the Security Agent; and
2. the Security Agent may (unless a contrary indication appears in a  
   Finance Document) act or refrain from acting on those instructions in accordance with the provisions of this Clause 29.4,

and any reference to the Security Agent "acting reasonably" shall mean the Security Agent acting in accordance with the instructions of:

1. the Agent (acting on the instructions of the Majority Lenders  
   (acting reasonably) or, as applicable, the Lenders (acting reasonably)); or
2. the Majority Lenders (acting reasonably) or, as applicable, the  
   Lenders (acting reasonably).

(k) For the avoidance of doubt, in any circumstance where the Security Agent is

obliged to consult under the terms of the Finance Documents, the Lenders or the Majority Lenders (as applicable) shall be obliged to instruct the Agent to instruct the Security Agent to consult with the relevant Obligors in accordance with the terms of the relevant Finance Document and the Security Agent shall be obliged to carry out that consultation in accordance with the instructions it receives from the Agent (acting on the instructions of the Majority Lenders) or the Majority Lenders or the Lenders (as applicable).

29.5 **Duties of the Security Agent**

1. The Security Agent's duties under the Finance Documents are solely  
   mechanical and administrative in nature.
2. The Security Agent shall promptly forward to the Agent a copy of any  
   document received by the Security Agent from any Transaction Obligor under any Finance Document.
3. The Security Agent is not obliged to review or check the adequacy, accuracy  
   or completeness of any document it forwards to another Party.

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1. If the Security Agent receives notice from a Party referring to any Finance  
   Document, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the Agent.
2. The Security Agent shall have only those duties, obligations and  
   responsibilities expressly specified in the Finance Documents to which it is expressed to be a party (and no others shall be implied).

29.6 **No fiduciary duties to the Obligors**

Nothing in this Agreement constitutes the Security Agent as an agent, trustee or fiduciary of any Transaction Obligor.

29.7 **No duty to account**

The Security Agent shall not 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.

29.8 **Business with the Obligors**

The Security Agent and any Affiliate thereof may accept deposits from, lend money to and generally engage in any kind of banking or other business with any Transaction Obligor or Affiliate of a Transaction Obligor.

29.9 **Rights and discretions**

(a) The Security Agent may:

(i) rely on any representation, communication, notice or document

believed by it to be genuine, correct and appropriately authorised;

(ii) assume that:

1. any instructions received by it from the Agent, any Lenders or  
   any group of Lenders are duly given in accordance with the terms of the Finance Documents;
2. unless it has received notice of revocation, that those  
   instructions have not been revoked; and
3. if it receives any instructions to act in relation to the Security  
   Property, that all applicable conditions under the Finance Documents for so acting have been satisfied; and

(iii) rely on a certificate from any person:

1. as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person or within the power of that person to verify; or
2. to the effect that such person approves of any particular  
   dealing, transaction, step, action or thing,

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as sufficient evidence that that is the case and, in the case of paragraph (A) above, may assume the truth and accuracy of that certificate.

(b) The Security Agent shall be entitled to carry out all dealings with the Lenders

through the Agent and may give to the Agent any notice or other

communication required to be given by the Security Agent to the Lenders.

(c) The Security Agent may assume (unless it has received notice to the contrary

in its capacity as Security Agent for the Secured Parties) that:

1. no Default has occurred;
2. any right, power, authority or discretion vested in any Party, any Lenders or any group of Lenders has not been exercised ; and
3. notice made by the Obligors' Agent is made on behalf of and with the consent and knowledge of all the Obligors.

(d) The Security Agent may engage and pay for the advice or services of any

lawyers, accountants, tax advisers, surveyors or other professional advisers or experts.

(e) Without prejudice to the generality of paragraph (d) above or paragraph (f)

below, the Security Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the Security Agent (and so separate from any lawyers instructed by any Finance Party) if the Security Agent in its reasonable opinion deems this to be desirable.

(f) The Security Agent may rely on the advice or services of any lawyers,

accountants, tax advisers, surveyors or other professional advisers or experts (whether obtained by the Security Agent or by any other Party) and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.

(g) The Security Agent, any Receiver and any Delegate may act in relation to the

Finance Documents and the Security Property through its officers, employees and agents and shall not:

1. be liable for any error of judgment made by any such person; or
2. be bound to supervise, or be in any way responsible for any loss incurred by reason of misconduct, omission or default on the part of any such person,

unless such error or such loss was directly caused by the Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct.

(h) Unless this Agreement expressly specifies otherwise, the Security Agent may

disclose to any other Party any information it reasonably believes it has received as security trustee under this Agreement.

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(i) Notwithstanding any other provision of any Finance Document to the

contrary, the Security Agent is not 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 any fiduciary duty or duty of confidentiality.

0) Notwithstanding any provision of any Finance Document to the contrary, the

Security Agent is not obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.

29.10 **Responsibility for documentation**

None of the Security Agent, any Receiver nor any Delegate is responsible or liable for:

1. or is under an obligation to verify, the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Agent, a Transaction Obligor or any other person in or in connection with any Finance Document or the Legal Due Diligence Report or the transactions contemplated in 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,
2. the legality, validity, effectiveness, adequacy or enforceability of any Finance Document, the Security Property 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 Security Property or
3. any determination as to whether any information provided or to be provided to any Secured 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

29.11 **No duty to monitor**

The Security Agent shall not be bound to enquire:

1. whether or not any Default has occurred;
2. as to the performance, default or any breach by any Party of its obligations under any Finance Document; or
3. whether any other event specified in any Finance Document has occurred. 29.12 **Exclusion of liability**

(a) Without limiting paragraph (b) below (and without prejudice to any other

provision of any Finance Document excluding or limiting the liability of the Security Agent, any Receiver or Delegate), none of the Security Agent, any

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Receiver nor any Delegate will be liable (including, without limitation, for negligence or any category of liability whatsoever) for:

1. any damages, costs or losses to any person, any diminution in value or  
   any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Finance Document or the Security Property unless directly caused by its gross negligence or wilful misconduct;
2. exercising or not exercising any right, power, authority or discretion  
   given to it by or in connection with any Finance Document, the Security Property 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 Security Property;
3. any shortfall which arises on the enforcement or realisation of the Transaction Security; or
4. without prejudice to the generality of paragraphs (i) to (iii) above, any  
   damages, costs, losses, any diminution in value or any liability whatsoever arising as a result of:
5. any act, event or circumstance not reasonably within its control;  
   or
6. the general risks of investment in, or the holding of assets in,  
   any jurisdiction,

including (in each case and without limitation) such damages, costs, losses, diminution in value or liability arising as a result of: nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions (including any Disruption Event) or the value of assets; breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action.

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|  | No Party (other than the Security Agent, that Receiver or that Delegate (as applicable)) may take any proceedings against any officer, employee or agent of the Security Agent, a Receiver or a Delegate in respect of any claim it might have against the Security Agent, a Receiver or a Delegate 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, a Receiver or a Delegate may rely on this Clause subject to Clause 1.4 *(Third party rights)* and the provisions of the Third Parties Act. |

1. The Security Agent shall not be liable to any Party for any breach by any other  
   Party of any Transaction Document.

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(d) Nothing in this Agreement shall oblige the Security Agent to carry out:

1. any "know your customer" or other checks in relation to any person; or
2. any check on the extent to which any transaction contemplated by this  
   Agreement might be unlawful for any Secured Party (other than the Security Agent),

on behalf of any Secured Party (other than the Security Agent) and each Secured Party (other than the Security Agent) confirms to the Security Agent 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 Security Agent.

(e) Without prejudice to any provision of any Finance Document excluding or

limiting the liability of the Security Agent, any Receiver or Delegate, any liability of the Security Agent, any Receiver or Delegate arising under or in connection with any Finance Document or the Transaction Security shall be limited to the amount of actual loss which has been finally judicially determined to have been suffered (as determined by reference to the date of default of the Security Agent, Receiver or Delegate (as the case may be) or, if later, the date on which the loss arises as a result of such default) but without reference to any special conditions or circumstances known to the Security Agent, Receiver or Delegate (as the case may be) at any time which increase the amount of that loss. In no event shall the Security Agent, any Receiver or Delegate be liable for any loss of profits, goodwill, reputation, business opportunity or anticipated saving, or for special, punitive, indirect or consequential damages, whether or not the Security Agent, Receiver or Delegate (as the case may be) has been advised of the possibility of such loss or damages.

29.13 **Lenders' indemnity to the Security Agent**

1. 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 and every Receiver and every Delegate, within three Business Days of demand, against any cost, loss or liability incurred by any of them (otherwise than by reason of the relevant Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct) in acting as Security Agent, Receiver or Delegate under, or exercising any authority conferred under, the Finance Documents (unless the relevant Security Agent, Receiver or Delegate has been reimbursed by an Obligor pursuant to a Finance Document).
2. Subject to paragraph (c) below, the Obligors' Agent shall immediately on demand reimburse any Lender for any payment that Lender makes to the Security Agent pursuant to paragraph (a) above.
3. Paragraph (b) above shall not apply to the extent that the indemnity payment in respect of which the Lender claims reimbursement relates to a liability of the Security Agent to an Obligor.

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29.14 **Resignation of the Security Agent**

(a) The Security Agent may resign and appoint one of its Affiliates as successor

by giving notice to the Obligors' Agent and to the Agent on behalf of the Lenders.

(b) Alternatively the Security Agent may resign by giving 30 days' notice to the

other Parties (or the Agent on behalf of the Lenders), in which case the Majority Lenders may appoint a successor Security Agent.

(c) If the Majority Lenders have not appointed a successor Security Agent in

accordance with paragraph (b) above within 20 days after notice of resignation was given, the retiring Security Agent (after consultation with the Agent (acting on the instructions of the Majority Lenders)) may appoint a successor Security Agent.

(d) The retiring Security Agent shall, at its own cost, make available to the

successor 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.

(e) The Security Agent's resignation notice shall only take effect upon:

1. the appointment of a successor; and
2. the transfer of all the Transaction Security to that successor.

(f) Upon the appointment of a successor, the retiring Security Agent shall be

discharged from any further obligation in respect of the Finance Documents (other than its obligations under paragraph (b) of Clause 29.25 *(Winding up of trust)* and paragraph (d) above) but shall remain entitled to the benefit of this Clause 29 and Clause 14.4 *(Obligors' Indemnity to the Security Agent)* (and any Security Agent fees for the account of the retiring Security Agent shall cease to accrue from (and shall be payable on) that date). Any successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if that successor had been an original Party.

(g) 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 but the cost referred to in paragraph (d) above shall be for the account of the Obligors' Agent.

29.15 **Confidentiality**

1. In acting as trustee for the Secured Parties, the Security Agent shall be regarded as acting through its trustee division which shall be treated as a separate entity from any of its other divisions or departments.

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|  | 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. |

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(c) Notwithstanding any other provision of any Finance Document to the  
contrary, the Security Agent is not obliged to disclose to any other person (i) any confidential information or (ii) any other information if the disclosure would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of any fiduciary duty.

29.16 **Information from the Lenders**

Each Lender shall supply the Security Agent with any information that the Security Agent may reasonably specify as being necessary or desirable to enable the Security Agent to perform its functions as Security Agent.

29.17 **Credit appraisal by the Secured Parties**

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 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, status and nature of each Transaction Obligor or each  
   member of the Group;

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|  | the legality, validity, effectiveness, adequacy or enforceability of any Finance Document, the Security Property 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 Security Property; |

1. whether that Secured Party 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 Security Property, 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 Security Property;
2. the adequacy, accuracy or completeness of any information provided by the  
   Security Agent, any Party or by any other person under or in connection with any Finance Document, the transactions contemplated by any Finance Document 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 right or title of any person in or to, or the value or sufficiency of any part  
   of the Security Assets, the priority of any of the Transaction Security or the existence of any Security affecting the Security Property.

29.18 **Security Agent's management time and additional remuneration**

(a) Any amount payable to the Security Agent under Clause 29.13 *(Lenders'*

*indemnity to the Security Agent),* Clause 16 *(Costs and Expenses)* or Clause 14.4 *(Obligors' Indemnity to the Security Agent)* shall include the cost of utilising the Security Agent's management time or other resources and will be

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calculated on the basis of such reasonable daily or hourly rates as the Security Agent may notify to the Obligors' Agent and the Lenders, and is in addition to any other fee paid or payable to the Security Agent.

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| (b) | Without prejudice to paragraph (a) above, in the event of: |

1. a Default; or
2. the Security Agent being requested by a Transaction Obligor or the Lenders to undertake duties which the Security Agent and the Obligors' Agent agree to be of an exceptional nature or outside the scope of the normal duties of the Security Agent under the Finance Documents; or
3. the Security Agent and the Obligors' Agent agreeing that it is otherwise appropriate in the circumstances,

the Obligors' Agent shall pay to the Security Agent any additional remuneration (together with any applicable VAT) that may be agreed between them or determined pursuant to paragraph (c) below.

(c) If the Security Agent and the Obligors' Agent fail to agree upon the nature of

the duties or upon the additional remuneration referred to in paragraph (b) above or whether additional remuneration is appropriate in the circumstances, any 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 the Obligors' Agent 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 the Obligors' Agent) and the determination of any investment bank shall be final and binding upon the Parties.

29.19 **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 Transaction Obligor to any of the Security Assets;
2. obtain any licence, consent or other authority for the execution, delivery, legality, validity, enforceability or admissibility in evidence of any Finance Document 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 law or regulation or to give notice to any person of the execution of any Finance Document or of the Transaction Security;
4. take, or to require any Transaction Obligor to take, any step to perfect its title to any of the Security Assets or to render the Transaction Security effective or to secure the creation of any ancillary Security under any law or regulation; or

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(e) require any further assurance in relation to any Security Document.

29.20 **Insurance by Security Agent**

(a) The Security Agent shall not be obliged:

1. to insure any of the Security Assets;
2. to require any other person to maintain any insurance; or
3. to verify any obligation to arrange or maintain insurance contained in any Finance Document,

and the Security Agent shall not be liable for any damages, costs or losses to any person as a result of the lack of, or inadequacy of, any such insurance.

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| (b) | Where the Security Agent is named on any insurance policy as an insured party, it shall not be liable for any damages, costs or losses to any person as a result of its failure to notify the insurers of any material fact relating to the risk assumed by such insurers or any other information of any kind, unless the Majority Lenders request it to do so in writing and the Security Agent fails to do so within fourteen days after receipt of that request. |

29.21 **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 asset 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.

29.22 **Delegation by the Security Agent**

(a) Each of the Security Agent, any Receiver and any Delegate may, at any time,

delegate by power of attorney or otherwise to any person for any period, all or any right, power, authority or discretion vested in it in its capacity as such.

That delegation may be made upon any terms and conditions (including the power to sub-delegate) and subject to any restrictions that the Security Agent, that Receiver or that Delegate (as the case may be) may, in its discretion, think fit in the interests of the Secured Parties.

(c) No Security Agent, Receiver or Delegate shall be bound to supervise, or be in

any way responsible for any damages, costs or losses incurred by reason of any misconduct, omission or default on the part of, any such delegate or sub-delegate.

(b)

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29.23 **Additional Security Agents**

(a) The Security Agent may at any time appoint (and subsequently remove) any

person to act as a separate trustee or as a co-trustee jointly with it:

1. if it considers that appointment to be in the interests of the Secured  
   Parties;
2. for the purposes of conforming to any legal requirement, restriction or  
   condition which the Security Agent deems to be relevant; or
3. for obtaining or enforcing any judgment in any jurisdiction,

and the Security Agent shall give prior notice to the Obligors' Agent and the Secured Parties of that appointment.

Any person so appointed shall have the rights, powers, authorities and discretions (not exceeding those given to the Security Agent under or in connection with the Finance Documents) and the duties, obligations and responsibilities that are given or imposed by the instrument of appointment.

(c) The remuneration that the Security Agent may pay to that person, and any

costs and expenses (together with any applicable VAT) 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.

29.24 **Acceptance of title**

The Security Agent shall be entitled to accept without enquiry, and shall not be obliged to investigate, any right and title that any Transaction Obligor may have to any of the Security Assets and shall not be liable for, or bound to require any Transaction Obligor to remedy, any defect in its right or title.

29.25 **Winding up of trust**

If the Security Agent, with the approval of the Agent, determines that:

1. all of the Secured Liabilities and all other obligations secured by the Security  
   Documents have been fully and finally discharged; and

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|  | no Secured Party 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; and

(b)

then:

(i)

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(ii) any Security Agent which has resigned pursuant to Clause 29.14

*(Resignation of the Security Agent)* shall release, without recourse or warranty, all of its rights under each Security Document.

29.26 **Releases**

(a) Upon a disposal of any of the Security Property or the resignation of an

Obligor in accordance with Clause 27 *(Changes to the Obligors):*

1. pursuant to the enforcement of the Transaction Security by a Receiver or the Security Agent;
2. if that disposal is permitted under the Finance Documents; or
3. if the Security Agent is instructed to release the Transaction Security granted by the resigning Obligor under the terms of Clause 27 *(Changes to the Obligors),*

the Security Agent shall (at the cost of the Obligors) release that property from the Transaction Security or the Transaction Security given by that Obligor 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 or Obligor and to issue any certificates of non-crystallisation of floating charges that may be required or desirable.

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| (b) | If and to the extent that the Security Agent is not entitled to do anything mentioned in paragraph (a) above, each Secured Party must (at the cost of the Obligors) enter into any document and do all such other things which are reasonably required to achieve that release in accordance with paragraph (a) above. |

29.27 **Powers supplemental to Trustee Acts**

1. The rights, powers, authorities and discretions given to the Security Agent under or in connection with the Finance Documents 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 law or regulation or otherwise.
2. The Security Agent shall:
3. not be under any obligation to hold any title deeds, Security  
   Documents or any other documents in connection with the assets charged by any Security Document or any other such Security in its own possession (including that it may allow any Obligor to retain them) or to take any steps to protect or preserve the same and it shall not be responsible for any loss incurred save by reason of its own gross negligence or wilful misconduct; and
4. without prejudice to paragraph (i) above, be at liberty to hold the  
   Finance Documents and any other documents relating thereto or to deposit them in any part of the world with any bank or company whose business includes undertaking the safe custody of documents or firm of

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lawyers considered by the Security Agent to be of good repute and the Security Agent shall not be responsible for or required to insure against any liability incurred in connection with any such holding or deposit and may pay all sums required to be paid on account of or in respect of any such deposit.

29.28 **Disapplication of Trustee Acts**

Section 1 of the Trustee Act 2000 shall not apply to the duties and powers of the Security Agent in relation to the trusts constituted by this Agreement, save to the extent required by law. Where there are any inconsistencies between the Trustee Act 1925 or the Trustee Act 2000 and the provisions of this Agreement, the provisions of this Agreement shall, to the extent permitted by law and regulation, 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.

29.29 **Appointment of a loan servicer**

1. Any Finance Party may appoint a Servicer to act on its behalf as its  
   representative in connection with the Finance Documents and to exercise the power and authority specifically given to it under or in connection with the Finance Documents.

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|  | The relevant Finance Party shall, or shall procure that, notice of the appointment of a Servicer is given to the Obligors' Agent. |

1. The Obligors shall be entitled to act on any instruction or notice issued by a  
   Servicer as if issued by the Finance Party on whose behalf that Servicer acts.

29.30 **Appropriation**

1. Each Party irrevocably waives any right to appropriate any payment to, or  
   other sum received, recovered or held by, the Security Agent in or towards payment of any particular part of the Secured Liabilities and agrees that the Security Agent shall have the exclusive right to apply such amounts in accordance with the terms of this Agreement.
2. Paragraph (a) above will override any application made or purported to be  
   made by any other person.

29.31 **Withholding liability**

The Security Agent shall have no responsibility whatsoever to any Finance Party as regards any deficiency which might arise because the Security Agent is subject to any

tax or withholding from any payment made by it under any Security Document.

29.32 **Unwinding**

Any appropriation or distribution which later transpires to have been or is agreed by the Security Agent to have been invalid or which has to be refunded shall be refunded and shall be deemed never to have been made.

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**SECTION 12**

**ADMINISTRATION**

30. **APPLICATION OF PROCEEDS** 30.1 **Order of application**

Subject to Clause 30.2 *(Prospective liabilities),* all amounts from time to time received or recovered by the Agent or the Security Agent pursuant to the terms of any Finance Document (including under Clause 29.2 *(Parallel Debt))* and/or or in connection with the realisation or enforcement of all or any part of the Transaction Security (for the purposes of this Clause 30, the **"Recoveries")** shall be held by the Security Agent on trust to apply them any time as the Security Agent (in its discretion) sees fit, to the extent permitted by applicable law (and subject to the provisions of this Clause 30 *(Application of proceeds),* in the following order:

1. in discharging any sums owing to the Security Agent, any Receiver or any  
   Delegate;

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|  | in payment of all costs and expenses incurred by the Agent or any Secured Party in connection with any realisation or enforcement of the Transaction Security taken in accordance with the terms of this Agreement; and |

1. in payment to the Agent, on behalf of the Finance Parties, for application in accordance with Clause 33.5 *(Partial payments).*

30.2 **Prospective liabilities**

Following acceleration and/or enforcement of any of the Transaction Security the Security Agent may (but is not obliged to), in its discretion, hold any amount of the Recoveries in an interest bearing suspense or impersonal account(s) in the name of the Security Agent with such financial institution (including itself) and for so long as the Security Agent shall think fit (the interest being credited to the relevant account) for later application under Clause 30.1 *(Order of application)* in respect of:

1. any sum to the Security Agent, any Receiver or any Delegate; and
2. any part of the Secured Liabilities,

that the Security Agent reasonably considers, in each case, might become due or owing at any time in the future.

30.3 **Investment of proceeds**

Prior to the application of the proceeds of the Recoveries in accordance with Clause 30.1 *(Order of Application),* the Security Agent may (but is not obliged to), in its discretion, hold all or part of those proceeds in an interest bearing suspense or impersonal account(s) in the name of, or under the control of, the Security Agent with such financial institution (including itself) and for so long as the Security Agent shall think fit (the interest being credited to the relevant account) pending the application from time to time of those moneys in the Security Agent's discretion in accordance with the provisions of this Clause 30.

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30.4 **Currency Conversion**

(a) For the purpose of or pending the discharge of any of the Secured Liabilities

the Security Agent may convert any moneys received or recovered by the Security Agent from one currency to another, at a market rate of exchange.

The obligations of any Transaction Obligor to pay in the due currency shall only be satisfied to the extent of the amount of the due currency purchased after deducting the costs of conversion.

30.5 **Permitted deductions**

The Security Agent shall be entitled in its discretion:

(a) to set aside by way of reserve amounts required to meet, and to make and pay,

any deductions and withholdings (on account of taxes or otherwise) which it is or may be required by any applicable law to make from any distribution or payment made by it under this Agreement; and

to pay all Taxes which may be assessed against it in respect of any of the Security Assets or as a consequence of performing its duties, or by virtue of its capacity as Security Agent under any of the Finance Documents or otherwise (other than in connection with its remuneration for performing its duties under this Agreement).

30.6 **Good discharge of Secured Liabilities**

1. Any payment to be made in respect of the Secured Liabilities by the Security  
   Agent may be made to the Agent on behalf of the Finance Parties and any payment made in that way shall be a good discharge to the extent of that payment, by the Security Agent.

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|  | The Security Agent is under no obligation to make the payments to the Agent under paragraph (a) above in the same currency as that in which the obligations and liabilities owing to the relevant Finance Party are denominated. |

30.7 **Application and consideration**

In consideration for the covenants given to the Security Agent by each Obligor in Clause 29.2 *(Parallel Debt),* the Security Agent agrees with each Obligor to apply all moneys from time to time paid by such Obligor to the Security Agent in accordance with the provisions of Clause 30.1 *(Order of application)*

31. **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;

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1. 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
2. oblige any Finance Party to disclose any information relating to its affairs (tax  
   or otherwise) or any computations in respect of Tax.

32. **SHARING AMONG THE FINANCE PARTIES** 32.1 **Payments to Finance Parties**

If a Finance Party (a "Recovering **Finance Party")** receives or recovers any amount from an Obligor or the Ultimate Parent other than in accordance with Clause 33 *(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;

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| --- | --- |
|  | 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 33 *(Payment mechanics),* without taking account of any Tax which would be imposed on the Agent in relation to the receipt, recovery or distribution; and |

1. 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 33.5 *(Partial payments).*

32.2 **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 33.5 *(Partial payments)* towards the obligations of that Obligor to the Sharing Finance Parties.

32.3 **Recovering Finance Party's rights**

On a distribution by the Agent under Clause 32.2 *(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 that Obligor.

32.4 **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:

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(a) 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

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 that Obligor.

32.5 **Exceptions: sharing**

(a) This Clause 32 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 or the Ultimate Parent.

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:

1. it notified that other Finance Party of the legal or arbitration  
   proceedings; and
2. 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.

33. **PAYMENT MECHANICS** 33.1 **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.

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|  | Payment shall be made to such account in such principal financial centre in a Participating Member State or London, with such bank as the Agent specifies. |

33.2 **Distributions by the Agent**

Each payment received by the Agent under the Finance Documents for another Party shall, subject to Clause 33.3 *(Distributions to an Obligor)* and Clause 33.4 *(Clawback),* 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 specified by that

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Party in a principal financial centre in a Participating Member State or London as specified by that party.

33.3 **Distributions to an Obligor**

The Agent may (with the consent of the Obligor or in accordance with Clause 34 *(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 the purchase of any amount of any currency to be so applied.

33.4 **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.

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|  | 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. |

33.5 **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:

1. **first,** in or towards payment pro rata of any fees, costs and expenses of,  
   and other unpaid amounts owing to, the Agent, the Security Agent, any Receiver or any Delegate under the Finance Documents;
2. **secondly,** in or towards payment pro rata of any accrued interest and  
   fees due but unpaid to the Lenders under this Agreement; and
3. **thirdly,** in or towards payment pro rata of any principal due but unpaid to the Lenders under this Agreement; and
4. **fourthly,** in or towards payment pro rata of any other sum due but unpaid under the Finance Documents.

(b) The Agent shall, if so directed by all the Lenders, vary the order set out in

paragraphs (a)(i) to (iv) above. Any such variation may include the re­ordering of obligations set out in any such paragraph.

(c) Paragraphs (a) and (b) above will override any appropriation made by any

Obligor.

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33.6 **No set-off by Obligors**

(a) All payments to be made by an Obligor under the Finance Documents shall be

calculated and be made without (and free and clear of any deduction for) set­off or counterclaim.

Paragraph (a) above shall not affect the operation of any payment or close-out netting in respect of any amounts owing under any Hedging Agreement.

33.7 **Business Days**

(a) Any payment under the Finance Documents 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).

During any extension of the due date for payment of any principal or an Unpaid Sum under this Agreement interest is payable on the principal or Unpaid Sum at the rate payable on the original due date.

33.8 **Currency of account**

(a) Subject to paragraphs (b) and (c) below, euro is the currency of account and

payment for any sum due from an Obligor under any Finance Document.

Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.

(c) Any amount expressed to be payable in a currency other than euro shall be

paid in that other currency.

33.9 **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 Obligors' Agent); 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).

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| (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 Obligors' Agent) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the European Interbank Market and otherwise to reflect the change in currency. |

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33.10 **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 the Obligors' Agent that a Disruption Event has occurred:

1. the Agent may, and shall if requested to do so by the Obligors' Agent, consult  
   with the Obligors' Agent with a view to agreeing with the Obligors' Agent such changes to the operation or administration of the Facility as the Agent may deem necessary in the circumstances;

|  |  |
| --- | --- |
|  | the Agent shall not be obliged to consult with the Obligors' Agent in relation to any changes mentioned in paragraph (a) above 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; |

1. 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;
2. any such changes agreed upon by the Agent and the Obligors' Agent 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 39 *(Amendments and Waivers);*
3. the Agent shall not be liable for any damages, costs or losses to any person,  
   any diminution in value or any liability whatsoever (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 33.10; and
4. the Agent shall notify the Finance Parties of all changes agreed pursuant to  
   paragraph (d) above.
5. **SET-OFF**

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.

1. **NOTICES**

35.1 **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.

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35.2 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:

(a) in the case of the Obligors' Agent that identified with its name in the execution

pages to this Agreement;

in the case of each Lender or each Hedge Counterparty or any other Obligor, that notified in writing to the Agent on or prior to the date on which it becomes a Party, and

(c) in the case of the Agent and the Security Agent, that identified with its name  
in the execution pages to this Agreement,

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.

35.3 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 35.2 *(Addresses),* if addressed to that department or officer.

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| (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's or the Security Agent's signature below (or any substitute department or officer as the Agent or Security Agent shall specify for this purpose). |

1. All notices from or to an Obligor shall be sent through the Agent.
2. Any communication or document made or delivered to the Obligors' Agent in accordance with this Clause will be deemed to have been made or delivered to each of the Obligors.
3. All notices to a Lender from the Security Agent shall be sent through the Agent.

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(f) Any communication or document which becomes effective, in accordance

with paragraphs (a) to (d) above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

35.4 **Notification of address and fax number**

Promptly upon changing its address or fax number, the Agent shall notify the other Parties.

35.5 **Electronic communication**

(a) Any communication to be made between any two Parties under or in

connection with the Finance Documents may be made by electronic mail or other electronic means to the extent that those two Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication and if those two Parties:

1. 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
2. notify each other of any change to their address or any other such information supplied by them by not less than five Business Days' notice.

(b) Any electronic communication made between those two Parties will be

effective only when actually received in readable form and in the case of any electronic communication made by a Party 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.

(c) Any electronic communication which becomes effective, in accordance with

paragraph (b) above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

35.6 **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.

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1. **CALCULATIONS AND CERTIFICATES** 36.1 **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.

36.2 **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.

36.3 **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 European Interbank Market differs, in accordance with that market practice.

36.4 **Spanish calculation**

For the purposes of Article 572.2 of the Spanish Civil Procedure Law *(Ley de Enjuiciamiento Civil),* the Parties expressly agree that the exact amount due at any time by the Borrowers to the Finance Parties will be the amount specified in a certificate issued by the Agent (and/or any other Finance Party) in accordance with this Clause 36 *(Calculations and Certificates)* as representative of the Finance Parties reflecting the balance of the accounts referred to in Clause 36.1 *(Accounts).*

1. **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 a Transaction Document shall operate as a waiver of any such right or remedy or constitute an election to affirm any Transaction Document. 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 each Transaction Document are cumulative and not exclusive of any rights or remedies provided by law.

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39. **AMENDMENTS AND WAIVERS** 39.1 **Required Consents**

1. Subject to Clause 39.2 *(All Lender matters)* and 39.3 *(Other exceptions),* any  
   term of the Finance Documents (other than any Fee Letter) may be amended or waived only with the consent of the Majority Lenders and the Obligors' Agent on behalf of the Obligors and any such amendment or waiver will be binding on all Parties.

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|  | The Agent may effect, on behalf of any Finance Party, any amendment or waiver permitted by this Clause 39. |

1. Without prejudice to the generality of paragraphs (c), (d) and (e) of Clause 28.7 *(Rights and discretion),* the Agent may engage, pay for and rely on the services of lawyers in determining the consent level required for and effecting any amendment, waiver or consent under any Finance Document.
2. Each Obligor agrees to any such amendment or waiver permitted by this Clause 39.1 which is agreed to by the Obligors' Agent; this includes any amendment or waiver which would, but for this paragraph (d), require the consent of all of the Obligors.

39.2 **All Lender matters**

An amendment, waiver or (in the case of a Transaction Security Document) a consent of or in relation to, any term of any Finance Document that has the effect of changing or which relates to:

1. the defmition of "Majority Lenders" in Clause 1.1 *(Definitions);*
2. an extension to the date of payment of any amount under the Finance Documents (other than under a Fee Letter);
3. a reduction in the Margin or a reduction in the amount of any payment of principal, interest, fees or commission payable;
4. a change in currency of payment of any amount under the Finance Documents;
5. an increase in any Commitment or the Total Commitments, an extension of any Availability Period or any requirement that a cancellation of Commitments reduces the Commitments rateably under the Facility;
6. a change to an Obligor other than in accordance with Clause 27 *(Changes to  
   the Obligors);*
7. any provision which expressly requires the consent of all the Lenders;
8. Clause 2.2 *(Finance Parties' rights and obligations),* Clause 7.2 *(Change of control),* Clause 7.3 *(Mandatory prepayment),* Clause 7.4 *(Application of mandatory prepayments),* Clause 7.8 *(Restrictions),* Clause 17 *(Bank*

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*Accounts),* Clause 25 *(Changes to Finance Parties),* this Clause 39, Clause 42 *(Governing Law)* or Clause 43.1 *(Jurisdiction);*

(i) (other than as expressly permitted by the provisions of any Finance

Document) the nature or scope of:

1. the guarantee and indemnity granted under Clause 18 *(Guarantee and indemnity);*
2. the Security Assets or the Transaction Security; or
3. the manner in which the proceeds of enforcement of the Transaction Security are distributed,

(except in the case of paragraphs (ii) and (iii) above, insofar as it relates to a sale or disposal of an asset which is the subject of the Transaction Security where such sale or disposal is expressly permitted under this Agreement or any other Finance Document); or

(j) the release of any guarantee or indemnity granted under Clause 18 *(Guarantee*

*and indemnity)* or of any Transaction Security unless permitted under this Agreement or any other Finance Document or relating to a sale or disposal of an asset which is the subject of the Transaction Security where such sale or disposal is expressly permitted under this Agreement or any other Finance Document,

shall not be made or given without the prior consent of all the Lenders. 39.3 **Other exceptions**

(a) An amendment or waiver which relates to the rights or obligations of the

Agent, the Security Agent or the Arranger (each in their capacity as such) may not be effected without the consent of the Agent, the Security Agent or, as the case may be, the Arranger.

The Obligors' Agent and the Agent or Security Agent, as applicable, may amend or waive a term of a Fee Letter to which they are party.

39.4 **Approvals by the Agent and Security Agent**

If a Securitisation has been (or is to be) effected, the Agent or the Security Agent or the Servicer may, without prejudice to the other powers and discretions granted to it by the Finance Documents:

1. consult with any rating agency that maintains (or is to maintain) a rating in connection with the Securitisation in relation to any consent or approval sought of it by the Obligors' Agent or any Obligor under any Finance Document; and/or

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|  | refuse or withhold any such consent or approval if the grant of the approval or consent would or could reasonably be expected to prejudice the rating (or |

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prospective rating) of any notes issued (or to be issued) in connection with the Securitisation,

and none of the Agent, the Servicer or the Security Agent shall be deemed to be acting unreasonably or in bad faith in so doing.

**40. CONFIDENTIALITY 40.1 Confidential Information**

Each Finance Party agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by Clause 40.2 *(Disclosure of Confidential Information).*

40.2 **Disclosure of Confidential Information** Any Finance Party may disclose:

1. to any of its Affiliates and Related Funds and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives such Confidential Information as that Finance Party shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this paragraph (a) is informed in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;
2. to any person:
3. to (or through) whom it assigns or transfers (or may potentially assign  
   or transfer) all or any of its rights and/or obligations under one or more Finance Documents or which succeeds (or which may potentially succeed) it as Agent or Security Agent and, in each case, to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
4. with (or through) whom it enters into (or may potentially enter into),  
   whether directly or indirectly, any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to, one or more Finance Documents and/or one or more Obligors and to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
5. appointed by any Finance Party or by a person to whom sub paragraph (b)(i) or (ii) above applies to receive communications, notices, information or documents delivered pursuant to the Finance Documents on its behalf (including, without limitation, any person appointed under paragraph (c) of Clause 28.15 *(Relationship with the Finance Parties));*

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1. who invests in or otherwise finances (or may potentially invest in or  
   otherwise finance), directly or indirectly, any transaction referred to in paragraph b(i) or (b)(ii) above;
2. to whom information is required or requested to be disclosed by any  
   court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation;
3. to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes;
4. to whom or for whose benefit that Finance Party charges, assigns or otherwise creates Security (or may do so) pursuant to Clause 25.8 *(Security over Lenders' rights);*
5. to be provided to, or included in any information or materials prepared for the primary purpose of disclosure to, any person who is an investor or potential investor in any securitisation of that Finance Party's rights or obligations under the Finance Documents;
6. to any person who is an agent or trustee of that Finance Party or in respect of a securitisation and any agent of or professional and financial advisor to, that person;
7. who is a Party, a member of the Group or any related entity of an  
   Obligor; or
8. with the consent of the Obligors' Agent,

in each case, such Confidential Information as that Finance Party shall consider appropriate;

1. to any person appointed by that Finance Party or by a person to whom  
   paragraph (b)(i) or (b)(ii) above applies to provide administration or settlement services in respect of one or more of the Finance Documents including without limitation, in relation to the trading of participations in respect of the Finance Documents, such Confidential Information as may be required to be disclosed to enable such service provider to provide any of the services referred to in this paragraph (c) if the service provider to whom the Confidential Information is to be given has entered into a confidentiality agreement substantially in the form of the Loan Market Association Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Obligors' Agent and the relevant Finance Party; and
2. to any rating agency (including its professional advisers) such Confidential  
   Information as may be required to be disclosed to enable such rating agency to carry out its normal rating activities in relation to the Finance Documents and/or the Obligors.

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40.3 **Related Equity Funds**

(a) Subject to paragraph (b) below, notwithstanding the above, each of the

Original Lender and the Arranger shall:

1. not knowingly disclose or share Confidential Information with their  
   Related Equity Funds; and
2. shall use commercially reasonable efforts to prevent disclosure of  
   Confidential Information to their Related Equity Funds.

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| --- | --- |
| (b) | Notwithstanding the foregoing, each Obligor understands, acknowledges and accepts that certain of the officers, directors, employees or Representatives of the Original Lender, the Arranger or either of their Affiliates are members of the credit committees of both: |

1. the Original Lender and/or the Arranger; and
2. the Original Lender's and/or the Arranger's Related Equity Funds, (such persons being "Relevant **Personnel")** and that:
3. the restrictions in this Clause 40 *(Confidentiality)* shall not  
   restrict the ordinary course meetings of such credit committees and the individuals comprising them; and
4. neither the Arranger not the Original Lender shall be  
   considered to have breached its obligations under this Clause 40 *(Confidentiality)* as a result of the disclosure of Confidential Information to such Relevant Personnel provided that such disclosure occurred solely as a result of the Relevant Personnel's membership of a credit committee of the Original Lender and/or the Arranger.

40.4 **Entire agreement**

This Clause 40 constitutes the entire agreement between the Parties in relation to the obligations of the Finance Parties under the Finance Documents regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.

40.5 **Inside information**

Each of the Finance Parties acknowledges that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and each of the Finance Parties undertakes not to use any Confidential Information for any unlawful purpose.

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40.6 **Notification of disclosure**

Each of the Finance Parties agrees (to the extent permitted by law and regulation) to inform the Obligors' Agent:

(a) of the circumstances of any disclosure of Confidential Information made

pursuant to paragraph (b)(v) of Clause 40.2 *(Disclosure of Confidential Information)* except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and

upon becoming aware that Confidential Information has been disclosed in breach of this Clause 40.

40.7 **Continuing obligations**

The obligations in this Clause 40 are continuing and, in particular, shall survive and remain binding on each Finance Party for a period of twelve months from the earlier of:

1. the date on which all amounts payable by the Obligors under or in connection  
   with the Finance Documents have been paid in full and all Commitments have been cancelled or otherwise cease to be available; and

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|  | the date on which such Finance Party otherwise ceases to be a Finance Party. |

41. **COUNTERPARTS**

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.

(b)

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**SECTION 13**

**GOVERNING LAW AND ENFORCEMENT**

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 43.1 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").**

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|  | The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party shall argue to the contrary. |

1. This Clause 43.1 is for the benefit of the Finance Parties only. As a result, and  
   notwithstanding paragraph (a) of this Clause 43.1, 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.

43.2 **Service of process**

Each Obligor agrees that the documents which start any proceedings in relation to any Finance Document, and any other documents required to be served in connection with those proceedings, may be served on it by being delivered to Kohlberg Kravis Roberts & Co Partners LLP at Stirling Square, 7 Carlton Gardens, London SW1Y 5AD, or to such other address in England and Wales as each such Obligor may specify by notice in writing to the Agent. Nothing in this paragraph shall affect the right of any Finance Party to serve process in any other manner permitted by law. This Clause applies to proceedings in England and proceedings elsewhere.

**This Agreement has been entered into on the date stated at the beginning of this Agreement.**

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**SCHEDULE 1**

**ORIGINAL LENDERS AND PROPERTY**

**Original Lenders**

Parlex 6 Lux Finco, S.á r.l., a private limited liability company *(société ei responsabilité limitée)* incorporated under the laws of Luxembourg with its registered office at 6, rue Eugene Ruppert, L-2453 Luxembourg being registered with the Register of Commerce and Companies in Luxembourg under number B 198762 and with a share capital of EUR12,500

All Original Lenders' Total Commitments:

**PART 1**

**ORIGINAL LENDERS**

**Facility A Facility B Facility C**

**Commitment (EUR) Commitment (EUR) Commitment (EUR)**

59,660,000 8,675,000 3,665,000

59,660,000 8,675,000 3,665,000

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**PART 2  
PROPERTY**

**Owner**

Nassica Propco Nassica Propco

Nassica Propco Nassica Propco Vista Alegre Propco

**Address of Property**Nassica Shopping Centre  
Nassica Land Plot

Nassica Retained Plot (being part of the  
Nassica Land Plot)

Nassica Pre-emption Plot (being part of  
the Nassica Land Plot)

Vista Alegre Property

**Allocated Loan Amount**

EUR59,660,000

If, the Nassica Pre­emption Right has not been exercised or the Agent has been provided with evidence that the

Nassica Pre-emption  
Beneficiary has waived the Nassica Pre-emption Right, EUR3,665,000, otherwise, EUR2,500,000

EUR2,500,000 EUR1,165,000

EUR8,675,000

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**SCHEDULE 2**

**CONDITIONS PRECEDENT AND CONDITIONS SUBSEQUENT**

**PART 1**

**CONDITIONS PRECEDENT**

1. **Group Structure Chart**

A Group Structure Chart certified by the Obligors' Agent as being true as at the date of this Agreement and as at the Utilisation Date.

1. **Transaction Obligors (Spain)**
2. A copy of the constitutional documents of each Transaction Obligor  
   incorporated in Spain.

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|  | A copy of a notarised resolution of the board of directors of each Transaction Obligor incorporated in Spain: |

1. approving the terms of, and the transactions contemplated by, the  
   Finance Documents to which it is a party and resolving that it execute, deliver and perform the Finance Documents to which it is a party;
2. authorising a specified person or persons to execute the Finance  
   Documents to which it is a party on its behalf; and
3. authorising a specified person or persons, on its behalf, to sign and/or  
   despatch all documents and notices (including, if relevant, any Utilisation Request) to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party and in the case of an Obligor other than the Obligors' Agent, authorising the Obligors' Agent to act as its agent in connection with the Finance Documents.
4. A copy of a resolution signed by all the holders of the issued shares in each  
   Transaction Obligor incorporated in Spain, approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party.
5. A certificate signed by a duly authorised representative of each Transaction  
   Obligor incorporated in Spain:
6. attaching a specimen of the signature of each person authorised by the  
   resolution referred to in paragraph (b) above;
7. confirming that borrowing or guaranteeing, as appropriate, or securing,  
   as appropriate, the Total Commitments would not cause any borrowing, guarantee, security or similar limit binding on it to be exceeded; and
8. certifying that each copy document relating to it specified in this  
   Schedule 2 *(Conditions Precedent and Conditions Subsequent)* is correct, complete and in full force and effect as at a date no earlier than the Utilisation Date.

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3. **Transaction Obligors (The Netherlands)**

1. A copy of the articles of association *(statuten)* and deed of incorporation  
   *(oprichtingsakte)* of each Transaction Obligor incorporated in The Netherlands together with an extract *(uittreksel)* from the Dutch Commercial Register *(Handelsregister)* in respect of each such entity.

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|  | A copy of a resolution of the board of managing directors of each Transaction Obligor incorporated in The Netherlands: |

1. approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party and resolving that it execute, deliver and perform the Finance Documents to which it is a party;
2. authorising a specified person or persons to execute the Finance Documents to which it is a party on its behalf; and
3. authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices (including, if relevant, any Utilisation Request) to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party and in the case of an Obligor other than the Obligors' Agent, authorising the Obligors' Agent to act as its agent in connection with the Finance Documents.

(c) If applicable, a copy of the resolution of the board of supervisory directors of

each Transaction Obligor incorporated in The Netherlands approving the resolutions of the board of managing directors referred to under (b) above.

(d) If applicable, a copy of a resolution signed by all the holders of the issued

shares in each Transaction Obligor incorporated in The Netherlands, approving the terms of, and the transactions contemplated by, the Finance

Documents to which the relevant Transaction Obligor is a party.

(e) If applicable, confirmation from the relevant managing directors that it does

not have nor is it in the process of establishing a works' council *(ondernemingsraad)* as at the date of entering into the Finance Documents or if a member of the Group has a works' council *(ondernemingsraad)* or central or European works council with jurisdiction over the transactions contemplated by this Agreement or any Finance Document to which that Obligor is to become a party, a copy of:

1. the request for advice from each such works council; and
2. the applicable advice providing evidence necessary to authorise the relevant Obligors in respect of the Finance Documents (as the case may be) to which that Obligor is to become a party.

(f) A certificate signed by an authorised signatory of each Transaction Obligor

incorporated in The Netherlands:

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1. attaching a specimen of the signature of each person authorised by the  
   resolution referred to in paragraph (b) above;
2. confirming that borrowing or guaranteeing, as appropriate, or securing,  
   as appropriate, the Total Commitments would not cause any borrowing, guarantee, security or similar limit binding on it to be exceeded; and
3. certifying that each copy document relating to it specified in this  
   Schedule 2 *(Conditions Precedent and Conditions Subsequent)* is correct, complete and in full force and effect as at a date no earlier than the Utilisation Date.

(g) A copy of the shareholders' register of each Transaction Obligor incorporated

in the Netherlands.

4. **Transaction Obligors (Luxembourg)**

(a) A copy of the up to date articles of association of each Transaction Obligor

incorporated in Luxembourg.

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| (b) | A copy of a resolution of the board of managers of each Transaction Obligor incorporated in Luxembourg: |

1. approving the terms of, and the transactions contemplated by, the  
   Finance Documents to which it is a party and resolving that it execute, deliver and perform the Finance Documents to which it is a party;
2. authorising a specified person or persons to execute the Finance  
   Documents to which it is a party on its behalf; and
3. authorising a specified person or persons, on its behalf, to sign and/or  
   despatch all documents and notices (including, if relevant, any Utilisation Request) to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party and in the case of an Obligor other than the Obligors' Agent, authorising the Obligors' Agent to act as its agent in connection with the Finance Documents.

(c) A certificate signed by two managers of each Transaction Obligor

incorporated in Luxembourg:

1. attaching a specimen of the signature of each individual authorised by  
   the resolution referred to in paragraph (b) above;
2. confirming that borrowing or guaranteeing, as appropriate, or securing,  
   as appropriate, the Total Commitments would not cause any borrowing, guarantee, security or similar limit binding on the relevant Transaction Obligor to be exceeded;
3. certifying that each copy document relating to it specified in this  
   Schedule 2 *(Conditions Precedent and Conditions Subsequent) is*

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correct, complete and in full force and effect as at a date no earlier than the Utilisation Date;

1. certifying the solvency of that Transaction Obligor including  
   certifications that (i) the relevant entity is not subject to bankruptcy *(faillite),* controlled management *(gestion contrólée),* suspension of payments *(sursis de paiement),* arrangement with creditors *(concordat préventif de faillite)* and judicial liquidation *(liquidation judiciaire)* proceedings and, to the best of its knowledge, no petition for the opening of such proceedings has been presented, (ii) the place of the central administration *(siege de l'administration centrale)* and the centre of main interests of each Transaction Obligor incorporated in Luxembourg is located at its registered office *(siege statutaire)* in Luxembourg and that it has no establishment outside Luxembourg (such terms as defined respectively in the Council Regulation (EC) n°1346/2000 of May 29, 2000 on insolvency proceedings or domestic Luxembourg law), and (iii) the relevant entity is in compliance with the Luxembourg law dated 31 May 1999 on the domiciliation of companies, as amended (and the relevant regulations);
2. attaching an excerpt of the Luxembourg Trade and Companies  
   Register in respect of each of that Transaction Obligor dated no earlier than the Utilisation Date;
3. a certificate from the Luxembourg Trade and Companies Register in respect of each Transaction Obligor dated no earlier than the Utilisation Date stating that no judicial decision has been registered by application of article 13, items 2 to 11 and 13 and article 14 of the Luxembourg law dated 19 December 2002 relating to the register of commerce and companies as well as the accounting and the annual accounts of companies, as amended (the **"RCS Law"),** according to which the relevant company would be subject to one of the judicial proceedings referred to in these provisions of the RCS Law including in particular, bankruptcy *(faillite),* controlled management *(gestion contrólée),* suspension of payments *(sursis de paiement),* arrangement with creditors *(concordat préventif de la faillite)* and judicial liquidation *(liquidation judiciaire)* proceedings.

5. **Financial and other information**

1. The Original Financial Statements.
2. The Initial Business Plan.
3. Copies of each agreement or instrument to which an Obligor is a party (including IGL1, IGL2, IGL3 and IGL4 (each as defined in the Acquisition Agreement) to the extent that such loans have not been discharged in full on or prior to the Utilisation Date) evidencing Subordinated Debt consistent with the Funds Flow Statement.
4. The Funds Flow Statement.

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Satisfactory evidence that all amounts required to be funded by way of equity contribution or Subordinated Debt in order to allow completion of the Acquisition as set out in the Funds Flow Statement have been funded.

The Completion Steps Paper.

A certificate of the Obligors' Agent confirming the amounts which are required to be withdrawn from a Rent Account and credited to a Service Charge Account in accordance with paragraph (e) of Clause 17.3 (Rent Account).

(h) The agreed form of the Quarterly Management Report.

6. Reports

(a) The Initial Valuation.

(b) The Technical Due Diligence Report.

(c) The Environmental Report.

(d) The Tax and Financial Due Diligence Report.

(e) The Legal Due Diligence Report.

(f) The Tax Structure Report.

(g) The Property Overview Report.

Each duly addressed to the Finance Parties or together with a reliance letter in favour of the Finance Parties.

7. **Insurance**

1. Evidence (including, but not limited to, an insurance broker's letter) that the insurance cover in force in respect of each Property (other than the Nassica Land Plot) complies with the terms of this Agreement and that the necessary premia have been paid and confirming that the interest of the Finance Parties is stated as co-insured in accordance with the requirements of this Agreement.

|  |  |
| --- | --- |
|  | A copy of the latest insurance valuation in relation to each Property (other than the Nassica Land Plot). |

8. **Property**

1. Copies of all title documents relating to the relevant Obligor's interests in each relevant Property, if appropriate duly stamped for stamp duty purposes.
2. Copies of Lease Documents relating to the following tenants:

(i) in relation to the Nassica Shopping Centre:

(A) Centros Comerciales Carrefour, S.A.;

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1. Merkal Calzados, S.L.;
2. Conforama España, S.A.U.;
3. Multicines y Espectáculos Centro, S.L.; and
4. Toys "R" Us Iberia S.A.U.; and

(ii) in relation to the Vista Alegre Property:

1. Distribuciones Froiz, S.A.;
2. El Corte Inglés, S.A.;
3. Kiabi España KSCE, S.A.;
4. Sprinter Mega Centros del Deporte, S.L.; and
5. Aki Bricolage, S.A.
6. Confirmation from the Arranger that it has carried out a satisfactory inspection of each Property.
7. Evidence of payment of the annual property tax *(Impuesto sobre Bienes Inmuebles)* with respect to each Property for the past four years (plus the current year).

9. **Acquisition Documents**

1. A copy of each Acquisition Document (other than the Nassica Land Plot Acquisition Document).

|  |  |
| --- | --- |
|  | Evidence that all restructuring steps indicated in the Restructuring Plan (as defined in the Acquisition Agreement) have been carried out. |

(c) Evidence of the repayment, set-off and/or discharge of the Intragroup Loans

(as defined in the Acquisition Agreement) in accordance with clause 5.1(ii)(d) of the Acquisition Agreement.

(d) Evidence that the Vendor has complied with its obligations under:

1. clause 5.1(ii)(c) of the Acquisition Agreement;
2. clause 5.1(ii)(g) of the Acquisition Agreement;
3. clause 5.1(ii)(h) of the Acquisition Agreement; and
4. clause 5.2(vi) of the Acquisition Agreement.

(e) A copy of the transfer pricing report required to be delivered by the Vendor

under clause 5.1(ii)(i) of the Acquisition Agreement.

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(f) A copy of a duly executed subordination letter in the form attached as Annex

10 to the Acquisition Agreement.

1. **Finance Documents**

Each Finance Document (other than any Finance Document listed in Part 2 *(Conditions Subsequent)* of Schedule 6 *(Initial Security Documents)* or paragraph 3(b) of Part 2 *(Conditions Subsequent)* of this Schedule 2) duly executed by each Obligor, the Ultimate Parent, each Subordinated Creditor and each other person which is, or is expressed to be, a party to it.

1. **Security Requirements** *The Netherlands*
2. A power of attorney for the Security Agent and each relevant Obligor for the  
   purpose of notarising each share pledge agreement to be granted in respect of an Obligor incorporated in the Netherlands.
3. Notice to the bank holding each Account of a Dutch Obligor in respect of the  
   Security taken over that Account substantially in the form required by the relevant Security Agreement to which an Obligor is a party, duly executed by the relevant Obligor.
4. A notice to each counterparty under the relevant intercompany loan agreement  
   governed by Dutch law under each pledge over intercompany receivables substantially in the form required by the Security Documents.
5. An acknowledgement addressed to the Security Agent from each counterparty  
   to an intercompany loan agreement governed by Dutch law substantially in the form required by each Security Agreement.

*Luxembourg*

1. The register of shareholders of the Parent evidencing (i) the ownership of its  
   entire share capital by the Ultimate Parent and (ii) the recording of the Security Agent's security interest under the relevant Security Document.
2. Notice to the bank holding each Account of a Luxembourg Obligor in respect  
   of the Security taken over that Account substantially in the form required by the relevant Security Agreement to which an Obligor is a party, duly executed by the relevant Obligor.
3. An acknowledgement addressed to the Security Agent from each bank holding  
   an Account of a Luxembourg Obligor substantially in the form required by each Security Agreement.

*Spain*

1. A notice of the assignment of receivables under the Acquisition Documents  
   (other than the Nassica Land Plot Acquisition Document) from each Obligor which is a party to an Acquisition Document (other than the Nassica Land Plot

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Acquisition Document) to each counterparty to the Acquisition Documents (other than the Nassica Land Plot Acquisition Document) substantially in the form required by the Security Documents.

12. Accounts

1. Evidence of the establishment and maintenance of the Accounts by each Obligor (other than the General Account of Dutch Holdco).
2. Duly signed bank mandates for each Account located in Luxembourg.
3. Evidence that the amount of EUR3,000,000 has been (or will be upon first Utilisation) funded to the Capex Reserve Account in accordance with the Funds Flow Statement.

13. **Managing Agent**

Evidence that the Existing Management Agreements shall terminate on or before the date falling two Months after the Utilisation Date on the terms specified in clause 5.1(ii)(b) of the Acquisition Agreement.

14. **Other documents and evidence**

1. Evidence of the payment of all outstanding arrangement fees and outstanding fees of the legal advisors to the Arranger and the Valuer.

|  |  |
| --- | --- |
|  | Evidence that any other fees, costs and expenses then due from the Obligors pursuant to Clause 11 *(Fees)* and Clause 16 *(Costs and expenses)* have been paid or will be paid by the relevant Utilisation Date. |

1. Satisfactory completion by each Finance Party of relevant "Know your  
   Customer" checks.
2. Evidence that any Process Agent referred to in Clause 43.2 *(Service of  
   process),* if not an Obligor, has accepted its appointment.
3. Evidence that all Security (other than under a Security Document) affecting  
   the relevant Obligor's assets has been or will be discharged by the first Utilisation Date.
4. A report recoveries side letter between each addressee of a Report that is not  
   an Obligor or a Finance Party and the Agent or evidence that no Report is addressed to any person that is not an Obligor.
5. A Spanish law governed starting deed in relation to the escrow and release of  
   the Spanish law governed Finance Documents on the Utilisation Date.
6. A Dutch law governed notary letter in relation to the completion of the  
   Acquisition on the Utilisation Date.

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**PART 2**

**CONDITIONS SUBSEQUENT**

1. **Finance Documents**

Each of the Finance Documents listed in Part 2 *(Conditions Subsequent)* of Schedule 6 *(Initial Security Documents)* duly executed by each Obligor, the Ultimate Parent, each Subordinated Creditor and each other person which is, or is expressed to be, a party to it.

1. **Security Requirements** *Spain*
2. A notice to each occupational tenant of each Property, substantially in the  
   relevant form set out in the Security Agreement duly executed by each relevant Obligor.

|  |  |
| --- | --- |
|  | Notices of the Security created pursuant to the Security Agreements over the Insurance Policies to the relevant insurer duly executed by each relevant Obligor. |

(c) Notice to the bank holding each Account of a Spanish Obligor in respect of the

Security taken over that Account substantially in the form required by the relevant Security Agreement to which an Obligor is a party, duly executed by the relevant Obligor.

3. **Managing Agent**

1. A copy of the appointment of each Managing Agent.
2. A Duty of Care Agreement executed by each Managing Agent (other than any manager under an Existing Management Agreement), the Obligor concerned and the Security Agent.

**4. Legal opinions**

1. A legal opinion of Clifford Chance LLP, English legal advisers to the Arranger, substantially in the form distributed to the Original Lenders prior to the first Utilisation Date.
2. A legal opinion of Elvinger Hoss Prussen, Luxembourg legal advisers to the Arranger, substantially in the form distributed to the Original Lenders prior to the first Utilisation Date.
3. A legal opinion of Clifford Chance S.L., Spanish legal advisers to the Arranger, substantially in the form distributed to the Original Lenders prior to the first Utilisation Date.
4. A legal opinion of Clifford Chance LLP (The Netherlands), Dutch legal advisers to the Arranger, substantially in the form distributed to the Original Lenders prior to the first Utilisation Date.

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1. A legal opinion of Clifford Chance, Luxembourg legal advisers to the  
   Obligors in relation to the Finance Documents executed by each Transaction Obligor incorporated in Luxembourg, substantially in the form distributed to the Original Lenders prior to the first Utilisation Date.
2. A legal opinion of Freshfields Bruckhaus Deringer, Spanish legal advisers to  
   the Obligors in relation to the Finance Documents executed by each Transaction Obligor incorporated in Spain, substantially in the form distributed to the Original Lenders prior to the first Utilisation Date.
3. **Other documents and evidence**

Evidence that all Security (other than under a Security Document) affecting the relevant Obligor's assets has been discharged by the first Utilisation Date.

1. **Accounts**

Duly signed bank mandates for each Account located in Spain together with evidence of the transmission of such bank mandates to the bank or financial institution at which such Accounts are held.

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**SCHEDULE 3**

**CONDITIONS PRECEDENT — NASSICA LAND PLOT**

1. **Transaction Obligors (Spain)**

(a) A copy of the constitutional documents of the Nassica Propco or a certificate

or a certificate signed by two directors of the Nassica Propco certifying that the constitutional documents of the Nassica Propco previously delivered to the Agent for the purposes of this Agreement have not been amended and remain in full force and effect.

(b) A copy of a resolution of the board of directors of the Nassica Propco:

1. approving the terms of, and the transactions contemplated by, the  
   Finance Documents referred to in this Schedule 3 and resolving that it execute, deliver and perform such Finance Documents;
2. authorising a specified person or persons to execute the Finance  
   Documents referred to in this Schedule 3 on its behalf; and
3. authorising a specified person or persons, on its behalf, to sign and/or  
   despatch all documents and notices (including, if relevant, any Utilisation Request) to be signed and/or despatched by it under or in connection with the Finance Documents referred to in this Schedule 3.

(c) A copy of a resolution signed by all the holders of the issued shares in the

Nassica Propco, approving the terms of, and the transactions contemplated by, the Finance Documents referred to in this Schedule 3.

(d) A certificate signed by a duly authorised representative of the Nassica Propco:

1. attaching a specimen of the signature of each person authorised by the  
   resolution referred to in paragraph (b) above;
2. confirming that borrowing or guaranteeing, as appropriate, or securing,  
   as appropriate, the Total Commitments would not cause any borrowing, guarantee, security or similar limit binding on it to be exceeded;
3. certifying that each copy document relating to it specified in this  
   referred to in this Schedule 3 *(Conditions precedent — Nassica Land Plot)* is correct, complete and in full force and effect as at a date no earlier than the relevant Utilisation Date.

2. **Financial and other information**

1. Copies of each agreement or instrument evidencing Subordinated Debt  
   consistent with the Funds Flow Statement.

|  |  |
| --- | --- |
|  | Satisfactory evidence that all amounts required to be funded by way of equity contribution or Subordinated Debt in order to allow completion of the acquisition of the Nassica Land Plot as set out in the Funds Flow Statement have been funded. |

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3. **Insurance**

Evidence (including, but not limited to, an insurance broker's letter) that the insurance cover in force in respect of the Nassica Land Plot (being in respect of public liability only) complies with the terms of this Agreement and that the necessary premia have been paid.

**4. Property**

1. Copies of all Lease Documents relating to the Nassica Land Plot.
2. Confirmation from the Arranger that it has carried out a satisfactory inspection of the Nassica Land Plot.
3. Instructions from each Borrower directing each of the occupational tenants of the Nassica Land Plot to pay Rental Income to its Rent Account.
4. Evidence of payment of the annual property tax *(Impuesto sobre Bienes Inmuebles)* with respect to the Nassica Land Plot for the past four years (plus the current year).

5. **Acquisition Documents**

1. A copy of the Nassica Land Plot Acquisition Document.
2. A copy of an agreement pursuant to which the obligation of the Nassica Propco to pay a portion of the purchase price for the Nassica Land Plot will be transferred to the Ultimate Parent as described in the Tax Structure Paper.

6. **Finance Documents**

Each Finance Document required to be entered into in connection with the grant of security in relation to the Nassica Land Plot duly executed by the Nassica Propco and each other person which is, or is expressed to be, a party to it.

7. **Security Requirements**

*Spain*

1. A notice to each occupational tenant of the Nassica Land Plot, substantially in the relevant form set out in the Security Agreement duly executed by each relevant Obligor.

|  |  |
| --- | --- |
|  | A notice of the assignment of receivables under the Nassica Land Plot Acquisition Documents from each Obligor which is a party to a Nassica Land Plot Acquisition Document to each counterparty to a Nassica Land Plot Acquisition Document substantially in the form required by the Security Documents. |

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**Nassica Pre-emption Right** A copy of:

(a) a notice by burofax to the Nassica Pre-emption Beneficiary notifying the

Nassica Pre-emption Benficiary of the acquisition by the Nassica Propco of the Nassica Land Plot; or

evidence that the Nassica Pre-emption Beneficiary has provided a written waiver of its rights to exercise the Nassica Pre-emption Right.

8. **Legal opinions**

(a) A legal opinion of Clifford Chance S.L., Spanish legal advisers to the

Arranger, substantially in the form distributed to the Original Lenders prior to the Utilisation Date of Facility C.

A legal opinion of Freshfields Bruckhaus Deringer Spanish legal advisers to the Obligors in relation to the Finance Documents executed by each Transaction Obligor incorporated in Spain, substantially in the form distributed to the Original Lenders prior to the Utilisation Date of Facility C.

9. **Other documents and evidence**

1. Evidence of the payment of all outstanding fees of the legal advisors to the  
   Arranger.

|  |  |
| --- | --- |
|  | Evidence that any other fees, costs and expenses then due from the Obligors pursuant to Clause 11 *(Fees)* and Clause 16 *(Costs and expenses)* have been paid or will be paid by the relevant Utilisation Date. |

1. Evidence that all Security (other than under a Security Document) affecting  
   the Nassica Land Plot have been or will be discharged by the relevant Utilisation Date.

(b)

(b)

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**SCHEDULE 4**

**CONDITIONS SUBSEQUENT — ACCOUNTS**

1. **Security Requirements***The Netherlands*

Notice to the bank holding the General Account of Dutch Holdco in respect of the Security taken over that Account substantially in the form required by the relevant Security Agreement to which Dutch Holdco is a party, duly executed by Dutch Holdco.

1. **Accounts**
2. Evidence of the establishment and maintenance of its General Account by  
   Dutch Holdco.

Duly signed bank mandates for the General Account of Dutch Holdco.

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**SCHEDULE 5**

**UTILISATION REQUEST**

Dated: [ ]

To: [ ]

as the Agent

From: [Target Spain 1] AND [Enter Borrower Name]

Dear Sirs,

**[Target Spain 1]** AND [Enter **Borrower Name] - [ ] Facility 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) |
| Relevant Properties: |  |

Amount: [ ] or, if less, the Available

Facility

Payment instructions: [ ]

1. We confirm that each condition specified in Clause 4.2 *(Further conditions precedent)* of the Agreement is satisfied on the date of this Utilisation Request or will be satisfied on the proposed Utilisation Date.
2. The proceeds of this Loan should be credited to [ ] after deducting:
3. the amount of EUR3,000,000 which should be paid directly into the Capex  
   Reserve Account;

|  |  |
| --- | --- |
|  | the outstanding balance of all fees payable to the Finance Parties, being the sum of [ ]; |

1. the Agent's lawyers' fees and expenses or a reasonable estimate thereof, being the sum of [ ];
2. Valuer's, environmental and other due diligence fees and expenses or a reasonable estimate thereof, being the sum of [ ];
3. relevant land registry fees, being the sum of [ ];
4. relevant Companies Registry fees, being the sum of [ ]; and

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(g) [stamp duty and/or stamp duty land tax], being the sum of [ ].

5. The purpose of the Loan is [ ].

6. [We confirm that you may [disburse the Loan through [ ]' and] deduct from the

Loan (although the amount of the Loan will remain the amount requested above):

1. the outstanding balance of the arrangement fee being EUR[ ];
2. any commitment fee due and payable at the Utilisation Date;
3. [ ] fees;
4. The fees of the Valuer and [ ]
5. Land Registry fees; and
6. Stamp duty land tax.]

7. This Utilisation Request is irrevocable.  
Yours faithfully

authorised signatory for

**[TARGET SPAIN 1]** AND [Enter **BORROWER NAME]** as Borrowers

**WARNING NOTE: PLEASE SEEK DUTCH LEGAL ADVICE (I) UNTIL THE INTERPRETATION OF THE TERM "PUBLIC" (AS REFERRED TO IN ARTICLE 4.1(1) OF THE CAPITAL REQUIREMENTS REGULATION (EU/575/2013)) HAS BEEN PUBLISHED BY THE COMPETENT AUTHORITY, IF THE SHARE OF A LENDER IN ANY UTILISATION REQUESTED BY A DUTCH BORROWER IS LESS THAN EUR 100,000 (OR THE FOREIGN CURRENCY EQUIVALENT THEREOF) AND (H) AS SOON AS THE INTERPRETATION OF THE TERM "PUBLIC" HAS BEEN PUBLISHED BY THE COMPETENT AUTHORITY, IF THE LENDER IS CONSIDERED TO BE PART OF THE PUBLIC ON THE BASIS OF SUCH INTERPRETATION.**

1 If the Loan is to be disbursed through lawyers.

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**SCHEDULE 6**

**INITIAL SECURITY DOCUMENTS**

**PART 1**

**CONDITIONS PRECEDENT**

**Transaction Obligor Security Document Governing Law**

Ultimate Parent Pledge over the shares in the Luxembourg

Parent

Ultimate Parent Pledge over the receivables The Netherlands

owed to it by Dutch Holdco

Parent Account pledge in respect of its Luxembourg

General Account

Parent Notarial deed of pledge over the The Netherlands

shares owned by it in Dutch Holdco

Dutch Holdco Notarial deed of pledge over the The Netherlands

shares owned by it in the Nassica Holdco

Dutch Holdco Notarial deed of pledge over the The Netherlands

shares owned by it in the Vista Alegre Holdco

Dutch Holdco Pledge over the receivables Spain

owed to it under the Acquisition Documents

Dutch Holdco Account pledge in respect of its The Netherlands

General Account

Nassica Holdco Account pledge in respect of its The Netherlands

Accounts

Vista Alegre Holdco Account pledge in respect of its The Netherlands

Accounts

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**PART 2**

**CONDITIONS SUBSEQUENT**

Ultimate Parent Nassica Holdco

Vista Alegre Holdco

Nassica Propco

Nassica Propco

Nassica Propco Nassica Propco Nassica Propco Vista Alegre Propco Vista Alegre Propco

Vista Alegre Propco  
Vista Alegre Propco  
Vista Alegre Propco

Pledge over the receivables Spain owed to it by each Propco

Notarial deed of pledge over the Spain shares owned by it in the Nassica Propco

Notarial deed of pledge over the Spain shares owned by it in the Vista Alegre Propco

Notarial first-ranking Mortgage Spain over the Nassica Shopping Centre

Pledge over receivables owed to Spain it under each Occupational Lease

Account pledge in respect of its Spain Accounts

Security Agreement in respect England and Wales of its Hedging Agreements

Pledge in respect of receivables Spain under Insurance Policies

Notarial first-ranking Mortgage Spain over the Vista Alegre Property

Pledge over receivables owed to Spain it under each Occupational Lease

Account pledge in respect of its Spain Accounts

Security Agreement in respect England and Wales of its Hedging Agreements

Pledge in respect of receivables Spain under Insurance Policies

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**SCHEDULE 7**

**NASSICA LAND PLOT SECURITY DOCUMENTS**

Nassica Propco

Nassica Propco

Nassica Propco

Notarial first-ranking Mortgage Spain over the Nassica Land Plot

Pledge over receivables owed to Spain it under each Occupational Lease relating to the Nassica Land Plot

Pledge over receivables owed to Spain it under the Nassica Land Plot Acquisition Document

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**SCHEDULE 8**

**FORM OF TRANSFER CERTIFICATE**

To: [Mount Street] as Agent

From: *[The Existing Lender]* (the **"Existing Lender")** and *[The New Lender]* (the **"New**

**Lender")**

Dated: [ ]

Dear Sirs,

**[TARGET SPAIN** 1] [Enter **BORROWER NAME] - [ ] Facility Agreement dated**

**[ ] (the "Facility Agreement")**

1. We refer to the Facility Agreement. This is a Transfer Certificate for the purposes of

the Facility Agreement. Terms defined in the Facility Agreement have the same meaning in this Transfer Certificate unless given a different meaning in this Transfer Certificate.

2. We refer to Clause 25.5 *(Procedure for transfer)* of the Facility Agreement:

1. The Existing Lender and the New Lender agree to the Existing Lender transferring to the New Lender by novation and in accordance with Clause 25.5 *(Procedure for transfer)* of the Facility Agreement all or part of the Existing Lender's rights and obligations under the Agreement and the other Finance Documents which relate to that portion of the Existing Lender's Commitment and participation in Loans under the Agreement as specified in the Schedule.
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 35.2 *(Addresses)* of the Facility Agreement 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 25.4 *(Limitation of responsibility of Existing Lenders)* of the Facility Agreement.

4. The New Lender confirms, for the benefit of the Agent and without liability to any

Obligor, that it is:

1. [a Qualifying Lender (other than a Treaty Lender);]
2. [a Treaty Lender;]
3. [not a Qualifying Lender].\*

5. The New Lender confirms that it [is]/[is not] a member of the Group or a Sponsor

Affiliate.

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1. This Transfer Certificate 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 Transfer Certificate.
2. This Transfer Certificate and any non-contractual obligations arising out of or in  
   connection with it are governed by English law.
3. This Transfer Certificate has been entered into on the date stated at the beginning of  
   this Transfer Certificate.

**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.**

**Note — Lender Status Confirmation: If a New Lender fails to indicate its status in accordance with paragraph 4 then such New Lender shall be treated for the purposes of the Facility Agreement as if it is not a Qualifying Lender until such time as it notifies the Agent which category applies (and the Agent, upon receipt of such notification, shall inform the Obligors' Agent).**

|  |  |
| --- | --- |
| Yours faithfully,  [EXISTING LENDER] By: | [NEW LENDER] By: |

This Transfer Certificate is accepted for the purposes of the Facility Agreement by the Agent

and the Transfer Date is confirmed as [ ].

[Mount Street]

By:

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**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,]*

NOTES:

\* Delete as applicable. Each New Lender is required to confirm which of these three

categories it falls within.

**WARNING NOTE: PLEASE SEEK DUTCH LEGAL ADVICE (I) UNTIL THE INTERPRETATION OF THE TERM "PUBLIC" (AS REFERRED TO IN ARTICLE 4.1(1) OF THE CAPITAL REQUIREMENTS REGULATION (EU/575/2013)) HAS BEEN PUBLISHED BY THE COMPETENT AUTHORITY, IF THE SHARE OF A LENDER IN ANY UTILISATION REQUESTED BY A DUTCH BORROWER IS LESS THAN EUR 100,000 (OR THE FOREIGN CURRENCY EQUIVALENT THEREOF) AND (H) AS SOON AS THE INTERPRETATION OF THE TERM "PUBLIC" HAS BEEN PUBLISHED BY THE COMPETENT AUTHORITY, IF THE LENDER IS CONSIDERED TO BE PART OF THE PUBLIC ON THE BASIS OF SUCH INTERPRETATION.**

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**SCHEDULE 9**

**FORM OF ASSIGNMENT AGREEMENT**

To: [Mount Street] as Agent and [Mount Street] as Security Agent and [and [Enter

Parent Name]][[•]] as Obligors' Agent for and on behalf of each Obligor

From: *[the Existing Lender]* (the **"Existing Lender")** and *[the New Lender]* (the **"New Lender")**

Dated:

**[TARGET SPAIN 1]** [Enter **BORROWER NAME] - Facility Agreement  
dated [ ] (the "Facility Agreement")**

1. We refer to the Facility Agreement. This agreement is an Assignment Agreement.  
   Terms defined in the Facility Agreement have the same meaning in this Assignment Agreement unless given a different meaning in this Assignment Agreement.
2. We refer to Clause 25.6 *(Procedure for assignment)* of the Facility Agreement.
3. The Existing Lender assigns absolutely to the New Lender all the rights of the  
   Existing Lender under the Facility Agreement and the other Finance Documents which relate to that portion of the Existing Lender's Commitment and participations in Loans under the Facility Agreement as specified in the Schedule.

|  |  |
| --- | --- |
|  | The Existing Lender is released from all the obligations of the Existing Lender which correspond to that portion of the Existing Lender's Commitment and participations in Loans under the Facility Agreement specified in the Schedule. |

1. 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 (b) above.
2. The proposed Transfer Date is [ ].
3. On the Transfer Date the New Lender becomes Party to the Finance Documents as a Lender.
4. The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of Clause 35.2 *(Addresses)* are set out in the Schedule.
5. The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in paragraph (a) of Clause 25.4 *(Limitation of responsibility of Existing Lenders).*
6. The New Lender confirms, for the benefit of the Agent and without liability to any Obligor, that it is:

(a) [a Qualifying Lender (other than a Treaty Lender);]

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1. [a Treaty Lender;]
2. [not a Qualifying Lender].\*
3. The New Lender confirms that it [is]/[is not] a member of the Group or a Sponsor Affiliate.
4. This Assignment Agreement acts as notice to the Agent (on behalf of each Finance Party) and, upon delivery in accordance with Clause 25.7 *(Copy of Transfer Certificate or Assignment Agreement is Obligors' Agent)* to the Obligors' Agent (on behalf of each Obligor) of the assignment referred to in this Assignment Agreement.
5. This Assignment 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 Assignment Agreement.
6. This Assignment Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.
7. This Assignment Agreement has been entered into on the date stated at the beginning of this Assignment Agreement.

**Note: The execution of this Assignment Agreement may not transfer a proportionate share of the Existing Lender's interest in the 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 Security in any jurisdiction and, if so, to arrange for execution of those documents and completion of those formalities.**

**Note — Lender Status Confirmation: If a New Lender fails to indicate its status in accordance with paragraph 4 then such New Lender shall be treated for the purposes of the Facility Agreement as if it is not a Qualifying Lender until such time as it notifies the Agent which category applies (and the Agent, upon receipt of such notification, shall inform the Obligors' Agent).**

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**THE SCHEDULE**

**Commitment/rights and obligations to be transferred by assignment,  
release and accession**

*[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 [

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 other Finance Party.

[Agent]

By:

NOTES:

\* Each New Lender is required to confirm which of these three categories it falls

within.

**WARNING NOTE: PLEASE SEEK DUTCH LEGAL ADVICE (I) UNTIL THE INTERPRETATION OF THE TERM "PUBLIC" (AS REFERRED TO IN ARTICLE 4.1(1) OF THE CAPITAL REQUIREMENTS REGULATION (EU/575/2013)) HAS BEEN PUBLISHED BY THE COMPETENT AUTHORITY, IF THE SHARE OF A LENDER IN ANY UTILISATION REQUESTED BY A DUTCH BORROWER IS LESS THAN EUR 100,000 (OR THE FOREIGN CURRENCY EQUIVALENT THEREOF) AND (H) AS SOON AS THE INTERPRETATION OF THE TERM "PUBLIC" HAS BEEN PUBLISHED BY THE COMPETENT AUTHORITY, IF THE LENDER IS CONSIDERED TO BE PART OF THE PUBLIC ON THE BASIS OF SUCH INTERPRETATION.**

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**SCHEDULE 10**

**FORM OF RESIGNATION LETTER**

To: [ ] as Agent

From: *[resigning Obligor]* and *[Obligors' Agent]* Dated:

Dear Sirs

**[Obligors' Agent] — [ ] Facility Agreement**

**dated [ ] (the "Agreement")**

1. We refer to the Agreement. This is a Resignation Letter. Terms defined in the  
   Agreement have the same meaning in this Resignation Letter unless given a different meaning in this Resignation Letter.
2. Pursuant to [Clause 27.2 *(Resignation of a Borrower),* we request that *[resigning  
   Borrower]* be released from its obligations as a Borrower under the Agreement.
3. [Pursuant to Clause 27.3 *(Resignation of a Guarantor),* we request that *[resigning  
   Guarantor]* be released from its obligations as a Guarantor under this Agreement.]
4. We confirm that:

(a) no Default is continuing or would result from the acceptance of this request;

and

1. This Resignation Letter and any non-contractual obligations arising out of or in connection with it are governed by English law.

*[Obligors' Agent] [Borrower][ [Guarantor]]*

By: By:

Insert any other conditions required by the Facility Agreement.

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**SCHEDULE 11**

**FORM OF OBLIGOR ACCESSION LETTER**

To: [Enter Agent Name] as Agent

From: *[New Obligor]* [[Enter BORROWER NAME] [Enter Mark]]

Dated: [ ] Dear Sirs

[[Enter **BORROWER** NAME][Enter Mark]] - [ ] **Facility Agreement dated [ ]**

**(the "Facility Agreement")**

1. We refer to the Facility Agreement. This is an Obligor Accession Letter. Terms defined in the Facility Agreement have the same meaning in this Obligor Accession Letter.
2. The Additional Obligor (registered in [England and Wales] number [ ]) agrees to  
   become a [Borrower/Guarantor] and to be bound by the terms of the Agreement as a [Borrower/Guarantor] in accordance with Clause 27.6 *(Additional Obligors)* of the Agreement.
3. The Additional Obligor's administrative details are as follows:

Address: Fax No: Attention:

1. This Obligor Accession Letter [and any non-contractual obligations arising out of or in connection with it are governed by English law.
2. [This Obligor Accession Letter is entered into by deed.]

[authorised signatory for

[Enter BORROWER NAME] as a Borrower

By:

]

authorised signatory for *[ADDITIONAL OBLIGOR]* as [Borrower/Guarantor]

By:

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Accepted by the Agent

By:

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**SCHEDULE 12  
TIMETABLE**

Delivery of a duly completed Utilisation Request (Clause 5.1 *(Delivery of a Utilisation Request)*

Agent notifies the Lenders of the Loan in accordance with paragraph (c) of Clause 5.4 *(Lenders' participation)*

12 noon, two Business Days before Utilisation Date

4.00 p.m., two Business Days before Utilisation Date

EURIBOR is fixed Quotation Day 11:00 a.m. Brussels time

Disbursement of Loan proceeds Utilisation Date

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**SCHEDULE 13**

**FORM OF COMPLIANCE CERTIFICATE**

To: [ ] as Agent

From: *[Borrowers]* Dated:

Dear Sirs

**[Borrowers] — [ ] Facility Agreement  
dated [ ] (the "Agreement")**

**1.** We refer to the Agreement. This is a Compliance Certificate. Terms defined in the  
Agreement have the same meaning when used in this Compliance Certificate unless given a different meaning in this Compliance Certificate.

***Financial Covenants***

2. We confirm that as at *[insert relevant Interest Payment Date]:*

1. Loan to Value is [ ] per cent.; [and]
2. Debt Yield is [ ] per cent.

calculated on the basis that the amounts standing to the credit of the Capex Reserve Account and each Cash Trap Account as at that the relevant date **are** deducted from the aggregate sum of the Loans for the purposes of determining the Net Debt.

***Cash Trap Expiry Event***

3. We confirm that as at *[insert relevant Interest Payment Date]:*

1. Loan to Value is [ ] per cent.; [and]
2. Debt Yield is [ ] per cent.

calculated on the basis that the amounts standing to the credit of the Capex Reserve Account and each Cash Trap Account as at that the relevant date **are not** deducted from the aggregate sum of the Loans for the purposes of determining the Net Debt.

4. We set out below calculation establishing the figures in paragraphs 2 and 3:

[ ]

*[insert details of financial covenants and whether the are in compliance with those covenants.]*

***5. Rent Account amounts***

(a) The amounts standing to the credit of:

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1. the Rent Account of the Nassica Propco as at *[insert relevant Interest Payment  
   Date]* which constitute Tenant Contributions *is [insert EUR amount];*
2. the Rent Account of the Vista Alegre Propco as at *[insert relevant Interest  
   Payment Date]* which constitute Tenant Contributions *is [insert EUR amount];*
3. the amount of any Irrecoverable Expenses which are due and payable but  
   unpaid by the Nassica Propco as at *[insert relevant Interest Payment Date] is [insert EUR amount];* and
4. the amount of any Irrecoverable Expenses which are due and payable but  
   unpaid by the Vista Alegre Propco as at *[insert relevant Interest Payment Date] is [insert EUR amount].*

6. [We confirm that no Default is continuing.]\*

Signed:

Director Director

Of Of

*[Borrower] [Borrower]*

\* If this statement cannot be made, the certificate should identify any Default that is continuing and the steps, if any,

being taken to remedy it.

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**SCHEDULE 14**

**PROHIBITED LENDERS**

1. Loan Star Funds
2. Cerberus Capital Management L.P.
3. Oaktree Capital Management L.P
4. Fortress Investment Group LLC
5. Marathon Capital LLC
6. Apollo Global Management LLC

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SIGNATURES

Parent

NEWS MIDCO S.A R.L. Duly represented

Name: Stefan Lambert

Title: - Manager -

Address for notices:

Nevis Midco SA r.l.

61, rue de Rolligergrund L-2440 Luxembourg

+352-47 24 73 Board of managers

(for all Obligors)

Fax: Att:

with a copy to each of:

Address for notices: Nevis Getafe S.L.0

Francisca Delgado I I 5° planta

28108 Alcobendas Spain

(for all Obligors)

Fax: +34 91 490 23 01

Att: Guillaume Cassou

and

Address for notices: KKR & Co Partners LLP

Stirling Square

7 Carlton Garden London SW I Y 5AD

(for all Obligors)

Fax: +44 207 839 9801

Att: Guillaume Cassou

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K

By: **Hendrikus Zuidema**

Title: Authorised representative Arranger

PARLEX 6 LUX FINCO, S.A R.L. Duly represented by:

Name:

Title: Class B Manager

Address for notices: Parlex 6 Lux Finco, S.A R.L.

6, rue Eugene Ruppert, L — 2453 Luxembourg

Fax: +352 26 449 167

Att: Board of Managers

|  |  |
| --- | --- |
| with a copy to:  Address for notices: | Parlex 6 Lux Finco, S.A R.L. c/o Blackstone Mortgage Trust, Inc. 345 Park Avenue, 42nd floor New York, New York 10154 |

Att: Randall Rothschild and Tom Ruffing

with a copy to:

Address for notices: Parlex 6 Lux Finco, SA R.L.

c/o Blackstone Mortgage Trust, Inc. 40 Berkeley Square W1J 5AL

Att: Tim Williams

Dutch HoEdc

For a, d on behalf e f

NE t S DUTC HOLDCO B.V.

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Dutch Holdco

For and on behalf of

NEVIS DUTCH HOLDCO B.V.

'.

By:

Title: Authorised representative

Arranger

PARLEX 6 LUX FINCO, S.A R.L.

Duly represen by:

Name **Harald ThUl**

Title: Class B Manager

|  |  |  |
| --- | --- | --- |
| Address for notices: |  | Parlex 6 Lux Finco, S.A R.L.  6, rue Eugene Ruppert, L — 2453 Luxembourg |
|  | Fax: Att: | +352 26 449 167 Board of Managers |
| with a copy to: Address for notices: |  | Parlex 6 Lux Finco, S.A R.L. c/o Blackstone Mortgage Trust. Inc. 345 Park Avenue, 42nd floor New York, New York 10154 |

Att: Randall Rothschild and Tom Ruffing

with a copy to:

Address for notices: Parlex 6 Lux Finco. SA R.L.

c/o Blackstone Mortgage Trust, Inc. 40 Berkeley Square WI J 5AL

Att: Tim Williams

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Agent

For and on behalf of

MOUNT STREET MORTGAGE SERVICING LIMITED

By:

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| --- | --- |
| S |  |

|  |  |
| --- | --- |
| Address for notices: | Mount Street Mortgage Servicing Limited  First Floor  Connaught House  1-3 Mount Street  London WIK 3NB |

Fax: +44 (0) 203 004 1472

Alt: Mark Burt

Security Agent

For and on behalf of

MOUNT STREET MORTGAGE SERVICING LIMITED

By:

|  |  |
| --- | --- |
| S |  |

|  |  |  |
| --- | --- | --- |
| Address for notices: |  | Mount Street Mortgage Servicing Limited  First Floor  Connaught House  1-3 Mount Street  London WIK 3NB |
|  | Fax: Att: | +44 (0) 203 004 1472 Mark Burt |

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Lenders

PARLEX 6 LUX FINCO, SA ILL. Duly IreOreq nte by:

Name: **Harald Thul** Title: Class B Manager

|  |  |  |
| --- | --- | --- |
| Address for notices: |  | Parlex 6 Lux Finco, S.A R.L.  6, rue Eugene Ruppert, L — 2453 Luxembourg |
|  | Fax: Att: | ±352 26 449 167 Board of Managers |
| with a copy to: Address for notices: |  | Parlex 6 Lux Finco, S.A R.L. c/o Blackstone Mortgage Trust, Inc 345 Park Avenue, 42nd floor New York New York 10154 |

Att: Randall Rothschild and Tom Rolling

with a copy to:

Address for notices: Parlex 6 Lux Finco, S.A R.L.

c/o Blackstone Mortgage Trust, Inc. 40 Berkeley Square W IJ 5AL

Att: Tim Williams

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