

[...] and [...]

**STANDARD LOAN FACILITY AGREEMENT  
INVESTMENT PORTFOLIO LOAN SPV - FLOATING  
(Euribor)**

**STAND: 07.11.2016**

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**LOAN AGREEMENT**

(- hereinafter referred to as the "**Agreement**" -)

between

[...]

Local Court of [...] [...]

[...]

[...]

[...]

(- hereinafter referred to as the "**Borrower**" -)

and

[...]

Local Court of [...] HR [...]

[...]

[...]

[...]

(- hereinafter referred to as the "**Bank**" -)

[...] and [...]

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[...] and [...]

## **1. PREAMBLE**

### **1.1. Borrower**

The *Borrower* is a company in the legal form of [...] - under [...] law - registered with the commercial register of the local court (*Amtsgericht*) of [...] under HR [...].

### **1.2. Collateral Asset**

[...]

### **1.3. Total Costs**

[...]

### **1.4. Financing Structure**

[...]

### **1.5. Corporate Structure**

The corporate structure of the *Group* is as follows: [...]).

The aforementioned companies are hereinafter referred to as *Group Companies* and, together with the *Borrower*, as *Group*.

### **1.6. Finance Documents**

This *Agreement*, the *Security Agreements* and the *Hedging Agreement* shall hereinafter be referred to as the *Finance Documents*.

[...] and [...]

## 2. DEFINITIONS

In this *Agreement* the following terms are defined on the pages indicated:

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[...] and [...]

### 3. LOAN FACILITY

Subject to the terms and conditions of this *Agreement*, the *Bank* grants to the *Borrower* a loan facility in the total amount of

€ [...]  
([...] Euros)

(hereinafter referred to as the “*Loan Facility*”).

### 4. PURPOSE

- a) The *Loan Facility* is provided and for the sole purpose of [...].
- b) The *Borrower* has to provide appropriate proof of its use of funds at any time when so requested by the *Bank* without undue delay. The *Bank* is not obliged to monitor and verify the utilization of the *Loan Facility*.

### 5. TERM

The term of the *Loan Facility* shall expire on [...]. The date of expiry is referred to as the “*Final Repayment Date*”.

### 6. AVAILABILITY

- a) The *Loan Facility* may be drawn down until and including [...] (the “*Availability Period*”) provided that the *Conditions Precedent* have been satisfied in full. The “*Commitment Date*” is the date of signing of this *Agreement*.
- b) Any amounts not drawn by the end of the *Availability Period* shall be automatically cancelled. For these amounts, the *Borrower* shall pay a cancellation fee in accordance with Section 21.2. (“*Compensation for Non-Acceptance, Prepayment Costs*”).

### 7. EQUITY CONTRIBUTION

Prior to the first *Drawdown Request* the *Borrower* shall contribute equity in form of [...] in a total amount of [...] (the “*Contributed Equity*”). He shall provide evidence that the Contributed Equity has been made available before draw down.

[...] and [...]

## 8. UTILIZATION

- a) Subject to the terms of this *Agreement* the *Loan Facility* may be drawn in up to [...] *Advances* (each an “**Advance**”). The *Loan Facility* will be paid to (project account; “Surplus Account” or an account kept at [third bank]) in accordance with Section 18.2 (“*Accounts*”).
- b) Each *Advance* shall require an irrevocable drawdown request signed by the *Borrower* in accordance with ANNEX “DRAWDOWN REQUEST” (a “**Drawdown Request**”).
- c) A *Drawdown Request* may only be filed by the *Borrower* once the *Bank* has confirmed the satisfaction of the *Conditions Precedent* (“**Conditions Precedent**”).
- d) A disbursement will occur on the date specified by the *Borrower* in accordance with the limitations specified above (a “**Drawdown Date**”), provided that a *Drawdown Request* has been received by the *Bank* at the latest at 10:30 a.m. 5 (five) *Business Days* prior to the requested *Drawdown Date*. A “**Business Day**” shall be regarded any day on which banks in [...] are open for ordinary business and payments denominated in Euros can be settled in TARGET2 (“Trans-European Automated Real-Time Gross Settlement Transfer 2”).
- e) The *Bank* may offset its due claims against the *Borrower's* drawdown claims on each *Drawdown Date*. These due claims particularly include interest payment claims arisen from earlier *Advances* as at the respective *Drawdown Date*.
- f) The aggregate of all drawings made by the *Borrower* at any time under the *Loan Facility* and not yet repaid or prepaid shall be referred to as the “**Outstanding Amount**”.

## 9. INTEREST

### 9.1. Interest Periods

- a) The time period for which a fixed interest rate is agreed upon with regard to the *Facility* is hereinafter referred to as the “**Interest Period**”.
- b) The first *Interest Period* shall begin on the respective *Drawdown Date* (inclusive) and shall end at the end of the day before the following *Interest Payment Date*. If an amount is drawn by way of transfer to a third party (e.g. to a credit institution to be redeemed or to a notary), the respective amount shall be regarded to be drawn down as of the day the debit is booked. Each subsequent *Interest Period* shall begin on the following *Interest Payment Date* (inclusive) and end (with the exception of the last interest period) on the next following *Interest Payment Date* (exclusive), i.e. each subsequent *Interest Period* follows automatically the last expired *Interest Period*. The last interest period shall end on the *Final Repayment Date* (inclusive).

### 9.2. Interest Rate

- a) The *Borrower* will pay a fixed, nominal interest rate for each *Interest Period*. This “**Interest Rate**” is the sum of the *EURIBOR* for the applicable *Interest Period* (the “**Interest Basis**”) and the *Margin* and is expressed as an annual interest rate.
- b) “**Margin**” means [...] bps p.a. (...) basis points per annum).
- c) *optional: stipulation allowing the bank to adjust the margin in case the loan is not eligible for Pfandbrief Pool Cover within 3 months of first draw down (the definition of this*

[...] and [...]

*optional stipulation is subject to the bank's policy).*

- d) **“EURIBOR”** means the EURIBOR percentage rate per annum, applicable for the respective *Interest Period* as determined by the Banking Federation of the European Union which appears on Reuter's page “EURIBOR 01” or if such page is replaced or service ceases to be available, such other page or service as may replace such page or which is agreed upon by the *Bank* and the *Borrower*. If there is no publication, or an obviously deficient publication, in the REUTERS system, then the *Bank* shall use another comparable source of information for calculating the *Interest Rate* (in particular the Bloomberg page "GPGX 5098"). If no such page or service is available, then the *Bank* shall determine the *Interest Rate* according to § 315 BGB ("**BGB**" means *Bürgerliches Gesetzbuch* - the German Civil Code), at its own equitable discretion, with corresponding application of the criteria established above.

If the published *EURIBOR* falls below zero, the *EURIBOR* will be deemed to be zero.

- e) For the first and last interest period the *Interest Basis* shall be - as the case may be - determined via interpolation.
- f) In case of a deficient publication, the *Bank* is entitled and/or obliged to make a subsequent *Interest Rate*-adjustment.

### 9.3. Interest Payment Date

- a) Interest shall be payable quarterly in arrears on [...] of each calendar year (each of such dates referred to as an **“Interest Payment Date”**) until and including the *Final Repayment Date*.
- b) If an *Interest Payment Date* falls on a day which is not a *Business Day*, such *Interest Payment Date* will be on the next following *Business Day* in that calendar month (if there is one) or on the first preceding *Business Day* (if there is not).

### 9.4. Calculation of Interest

- a) Interest shall accrue on the *Outstanding Amount* at the *Interest Rate* during each *Interest Period*.
- b) Interest shall be calculated according to the “EURIBOR 360 Method”, i.e. interest shall accrue on the basis of the actual number of days elapsed in any *Interest Period* and on the basis of a 360- (three hundred and sixty) day year (actual/360).

### 9.5. Limitation of Interest Exposure

- a) Prior to the first drawdown the *Borrower* is obliged to enter – at his own expenses - into a **“Hedging Agreement”** for 100 % (one hundred percent) of the *Loan Facility* which limits the interest exposure (excluding the *Margin*) for the *Loan Facility* at max. [...] % p. a. ( [...] percent per annum) until the *Final Repayment Date* (inclusive).

#### **ALTERNATIVE: TRIGGER RATE**

The *Borrower* is obliged to enter into a *Hedging Agreement* according to the following measure:

- If the interest rate published on “...” – if applicable, calculated through interpolation – for the time period up to the *Final Repayment Date* exceeds the amount of [...] % p. a. ( [...] percent per annum) - the **“Trigger Rate”** -, then the *Borrower* is obliged to immediately enter into a *Hedging Agreement* satisfactory to the *Bank*.

[...] and [...]

- b) The following are to be considered as a *Hedging Agreement* satisfactory to the *Bank*: Hedging arrangements (such as interest rate swap, cap or collar agreement or other financial derivatives) on the basis of the ISDA ("International Swaps and Derivatives Association") master agreement or the German Framework Agreement (*Deutscher Rahmenvertrag – "DRV"*).
- c) The *Hedging Agreement* to be stipulated shall be maintained until the *Final Repayment Date*.
- d) The *Hedging Agreement* shall be concluded between the *Borrower* and the *Bank* or with another bank or financial institution, provided this other bank or financial institution has a rating (shortterm/longterm) of at least two of the following: "F1/A" by Fitch, "P-1/A2" by Moody's and/or "A-1/A2" by Standard & Poor's (but if concluded with such other bank or financial institution without the provision of any collateral affecting the *Collateral Asset* or assets of the *Borrower*). In case of a downgrading the *Hedging Agreement* has to provide that the *Borrower* is entitled to terminate or transfer the *Hedging Agreement* and/or that the hedging counterparty is obliged to provide sufficient additional security.
- e) In the event of a (partial) prepayment of any *Outstanding Amount* – besides the *Regular Amortization* – before the end of the term of the *Hedging Agreement*, there has to be a corresponding (partial) termination of the respective *Hedging Agreement* to the extent it entails a potential risk for the *Bank*. The *Hedging Agreement* has also to be terminated to the extent the *Loan Facility* is entirely or partially not drawn. The *Hedging Agreement* with the *Bank* may however be maintained in principle if sufficient security - acceptable to the *Bank* - with respect to any potential risk of the *Bank* is provided. The *Borrower* is obliged to settle a potential negative market value at his own expense.
- f) All rights and claims under such *Hedging Agreement* have to be pledged to the *Bank*.

## 10. DEFAULT INTEREST / LUMP-SUM COMPENSATION

### 10.1. Timeliness of Payments

The day of receipt of the respective monies on the respective bank account (and not the day on which the payment is made / transferred) shall be decisive for punctual payment.

### 10.2. Occurrence of Payment Default

The *Borrower* shall be in "*Payment Default*", even without prior notice, if it fails to pay or makes incomplete payment of any amount payable under the *Finance Documents* on its due date.

### 10.3. Default Interest

- a) If the *Borrower* is in *Payment Default*, the *Bank* may charge "*Default Interest*" on the overdue amount calculated on the legal interest rate on arrears, amounting to 5 (five) percentage points above the basis interest rate on an annual basis announced by Deutsche Bundesbank for the duration of the arrears.
- b) If the *Borrower* completely or partially fails to pay the *Default Interest*, the *Bank* may, after giving prior notice to the *Borrower*, charge further *Default Interest* on the overdue *Default Interest*, as further damage compensation, calculated on the legal interest rate on arrears (5 (five) percentage points above the base interest rate on an annual basis announced by Deutsche Bundesbank); further *Default Interest* on such overdue *Default Interest* may only be charged 3

[...] and [...]

(three) months after the last notice.

- c) The *Bank* is entitled to claim indemnification caused by delay in an amount exceeding the legal interest rate on arrears. The *Borrower* is entitled to prove lesser damage.

## 11. REPAYMENTS / VOLUNTARY PREPAYMENTS / PARTIAL PREPAYMENTS

### 11.1. Repayments

- a) The *Loan Facility* has to be repaid in equal installments of [...] % p. a. ([...] percent per annum) of the total of all *Allocated Loan Amounts* of all *Collateral Assets* which have been financed (straight-line repayment) (the “**Regular Amortization Payments**”). The *Regular Amortization Payments* shall commence with the first *Interest Payment Date* following full disbursement of the *Loan Facility*, however, in case of partial disbursement, no later than [...]. The following *Regular Amortization Payments* are due for payment on the respective *Interest Payment Dates* – in addition to the respective interest payments.
- b) No repayments are allowed during the term of an *Interest Period*.
- c) The *Borrower* is not entitled to reborrow any or all part of the *Loan Facility* which is repaid.

### 11.2. Voluntary Prepayments / Partial Prepayments

#### 11.2.1. Voluntary Prepayments

- a) The *Borrower* is entitled to prepay voluntarily the *Loan Facility* in whole or in part at any *Interest Payment Date*.
- b) In case of partial prepayment of the *Loan Facility*, the prepaid amount must be at least € [...] ([...] Euros) or a multiple thereof.

#### 11.2.2. Partial Prepayments in Case of Disposal of Collateral Assets and Warranty Claims

The *Borrower* is obliged to prepay the *Loan Facility* under the following conditions, without a termination of the *Loan Facility* being necessary:

##### a) Disposal of Collateral Asset

- (aa) The *Borrower* and the *Bank* have allocated a nominal loan amount of the *Loan Facility* to each *Collateral Asset* as specified in ANNEX “**COLLATERAL**”, hereinafter referred to as the “**Allocated Loan Amount**”. For the avoidance of doubt: This paragraph does not establish partial loans.
- (bb) In case of the disposal of a *Collateral Asset*, the *Outstanding Amount* must be prepaid in an amount (the “**Release Price**”) corresponding to the *Allocated Loan Amount* plus a “**Release Premium**” of [...] % on such *Allocated Loan Amount*.
- (cc) The *Bank* shall release any encumbrance and other security interest over such *Collateral Asset*, as the case may be subject to escrow restrictions, if and to the extent (i) the *Release Price* has been paid; (ii) there is no *Payment Default* under the *Finance Documents* and (iii) no *Cash Sweep* has occurred according to Section 19 (“*Cash Sweep*”) and is maintained and (iv) the *Financial Covenants* according to Section 17 (“*Financial*”).

[...] and [...]

*Covenants*”) are maintained.

- (dd) Each *Collateral Asset* may only be sold in whole, i.e. the sale of a part of a *Collateral Asset* is not allowed.
- (ee) The *Borrower* shall instruct the respective buyer of a *Collateral Asset* to effect payments of the purchase price to the *Escrow Account* only. If the respective purchase price is lower than the *Release Price*, the *Borrower* is obliged to deposit the difference between the purchase price and the *Release Price* to the *Escrow Account* on the due date of the purchase price. The *Release Price* and any other outstanding payments under the *Finance Documents* shall be blocked on the *Escrow Account* until the next *Interest Payment Date*. Any part of the purchase price exceeding the *Release Price* shall be released to the *Borrower* with the *Bank*'s prior consent if and to the extent the exceeding part has been deposited on the *Escrow Account*. The *Bank* is obliged to grant its approval to the release after the respective purchase price has been deposited, if and to the extent that (i) no *Payment Default* is occurring and (ii) no *Cash Sweep* has occurred and is continuing and (iii) the *Financial Covenants* are met.
- (ff) The *Bank* shall transfer monies from the *Escrow Account* into the respective credit account in the amount (i) of the *Release Price*; and (ii) of any other outstanding payments under the *Finance Documents* at the *Interest Payment Date* following the payment of the purchase price. Following the transfer, the *Bank* shall, upon request, inform the *Borrower* on the *Outstanding Amount*.

**b) Asset related Warranty Claims and Damage Compensation**

- (aa) If the *Borrower* - in relation to any *Collateral Asset* - is entitled to warranty claims, damage compensation or other payment claims with respect to any *Collateral Asset*, and such claims exceed an amount of € [...] ( [...] Euros) per individual case against a third party (such as the seller), the *Loan Facility* shall be repaid in the corresponding amount resulting from these claims at the first *Interest Payment Date* after payment by the respective debtor, such an amount hereinafter being referred to as “*Compensation Amount*”.
- (bb) If the owner of a *Collateral Asset* – in case it is not identical with the *Borrower* – is entitled to warranty claims, damage compensation or other payment claims with respect to such *Collateral Asset*, and such claims exceed an amount of € [...] ( [...] Euros) against a third party, the *Borrower* shall prepay the *Loan Facility* in the *Compensation Amount* at the first *Interest Payment Date* after payment by the respective debtor, unless a security is provided to the *Bank* by way of a corresponding deposit in the *Escrow Account*.
- (cc) If any insurance amount is paid according to the insurance requirements for restoring the insured *Collateral Asset*, no *Compensation Amount* has to be prepaid according to Paragraph aa) and Paragraph bb) above provided that (i) the *Borrower* demonstrates his binding decision to restore the *Collateral Asset* within a period of 3 (three) months after the occurrence of the respective damage event and (ii) the appropriate utilization of the insurance amount is immediately evidenced in the course of the restoring.
- (dd) The *Borrower* shall immediately inform the *Bank* as soon as the *Borrower* becomes aware of circumstances that could trigger a partial prepayment under this Section 11.2.2 b) (“*Asset related Warranty Claims and Damage Compensation*”).
- (ee) The *Borrower* shall instruct the third party debtors that any amounts which have to be used for a partial prepayment under this Section 11.2.2 b) (“*Asset related Warranty Claims and Damage Compensation*”) have to be paid into the *Escrow Account*. The *Bank* is entitled to transfer such monies standing to the credit of the *Escrow Account* into the

[...] and [...]

respective credit account on the due date according to paragraph aa) and paragraph bb) above for partial prepayment under this Section 11.2.2 b) ("*Asset related Warranty Claims and Damage Compensation*").

### 11.2.3. General Rules for Voluntary and Partial Prepayments

- a) Each prepayment pursuant to this Section 11.2 ("*Prepayments*") must be communicated to the *Bank* in written form not less than 10 (ten) *Business Days* in advance and has to be made including (i) any and all accrued and unpaid interest on the amounts repaid or prepaid, plus (ii) additional commissions, fees and expenses. The *Borrower* is not entitled to reborrow any or all part of the *Loan Facility* which is prepaid.
- b) Any legal right of the *Borrower* to a prepayment of the *Loan Facility* according to Section 490 Par. 2 BGB remains unaffected.
- c) If, due to a repayment or prepayment, a *Financial Covenant* and/or an *Undertaking* are violated or a potential *Event of Default* occurs the *Bank* may require additional prepayments necessary to remedy the violation and/or the potential *Event of Default*.

## 12. FEES AND COSTS

### 12.1. Single and non-refundable Fee

The bank gets a fee in the amount of [...] Euro. This fee is due and payable with conclusion of this contract. It is non-refundable.

### 12.2. Administration Fee

For the ongoing management and supervision of this complex financing, the *Borrower* shall pay the amount of € [...] ([...] Euros) to the *Bank* on each *Interest Payment Date*.

### 12.3. Commitment Fee

- a) The *Borrower* shall pay a commitment fee of [...] % p. m. ([...] percent per month) on the undrawn and uncanceled amount of the *Loan Facility* to the *Bank*.
- b) The commitment fee shall accrue from and including the *Commitment Date*. The commitment fee is due and payable upon the first *Drawdown Date*, as well as on each *Interest Payment Date* and shall be calculated in accordance with Section 9.4 ("*Calculation of Interest*").
- c) After the expiration of the *Availability Period*, Section 21.2 ("*Compensation for Non-Acceptance, Prepayment Costs*") applies instead of this Section.

### 12.4. Other Expenses

[...]

[...] and [...]

### 13. COLLATERAL

- a) The *Borrower* shall provide the *Bank* with the collateral described in ANNEX "COLLATERAL" in separate "*Security Agreements*".
- b) If the collateral is not provided by the *Borrower*, but by a third party – hereinafter referred to as the "*Third-Party Guarantor*" – the *Borrower* is obliged to ensure that such collateral is immediately and effectively provided by such *Third-Party Guarantor*; and that each *Third-Party Guarantor* not being a *Group Company* makes the *Representations and Warranties* according to Section 15 ("*Representations and Warranties*") to the *Bank*.
- c) The *Borrower* and the *Bank* shall conclude appropriate agreements on the intended purpose of the collateral for the collateral provided. If the collateral is provided by a *Third-Party Guarantor*, the *Borrower* shall ensure that such provider enters into an appropriate agreement with the *Bank* on the intended purpose of the collateral. Unless otherwise agreed, the collateral provided serves to secure any of the *Bank's* current and future contractual and statutory claims to which it is entitled arising out of or in connection with this *Agreement*; the collateral in particular serves to secure all current and future claims arising from a *Hedging Agreement* concluded with the *Bank*, as well as the repayment claims following a successful termination of this *Agreement* or in case a contractual stipulation is void.
- d) The *Bank* may choose among the collateral at its own equitable discretion. The *Bank* will respect the legitimate interests of the *Borrower* and *Third-Party Guarantors* when choosing and enforcing the collateral.
- e) The *Borrower* shall bear the necessary notary and land register costs for providing the collateral and their later release. All further claims for reimbursement of expenses incurred by the *Bank* shall be subject to statutory law, unless otherwise stipulated. \_

### 14. CONDITIONS PRECEDENT

- a) The obligation of the *Bank* to disburse *Advances* under the *Loan Facility* is subject to the conditions precedent listed in ANNEX "CONDITIONS PRECEDENT" (the "*Conditions Precedent*").
- b) If reference is made to documents or evidence, such documents and/or evidence shall be presented to the *Bank* satisfactory in both form and content. Unless agreed otherwise, the documents listed have to be presented to the *Bank* as originals.
- c) The valid conclusion of this *Agreement* is not subject to the satisfaction of the *Conditions Precedent*.

### 15. REPRESENTATIONS AND WARRANTIES

The *Borrower* makes the following "*Representations*" as of the *Commitment Date*:

#### 15.1. Incorporation

The *Borrower* is a duly incorporated company and validly existing; the corporate structure is accurately described in the preamble of this *Agreement*.

[...] and [...]

### 15.2. Validity of Finance Documents

- a) The *Borrower* has the power and capacity to enter into and perform, and has taken all necessary action to authorize its entry into and performance of the *Finance Documents* and any other agreement related to this borrowing to which it is or will be a party and the transactions contemplated by those agreements.
- b) The *Borrower* has not placed or agreed upon any collateral in favor of third parties, with the exception of the collateral provided / to be provided by the *Borrower* for the *Bank*, in accordance with ANNEX "COLLATERAL".
- c) The *Borrower* represents that the collateral provided / to be provided in accordance with ANNEX "COLLATERAL" is / will be validly provided and retain their priority status with regard to all other collateral provided.

### 15.3. No Breach of Duty

The entry into the *Finance Documents* is in compliance with the constitutions (*Satzungen*) and/or the articles of association (*Gesellschaftsvertrag*) of the *Borrower* and the *Group Companies* and such entry does not violate any legal, court-imposed or official prohibitions or restrictions. Upon conclusion of the aforementioned agreements, neither the *Borrower* nor the *Group Companies* are in violation of any binding contracts with third parties, nor do they establish any duty to provide collateral with regard to any other party, nor do they provide an occasion to third parties to terminate agreements concluded by them.

### 15.4. No Event of Default

There is no *Event of Default* outstanding and no circumstances are present that may have a *Material Adverse Effect*. An effect shall be regarded to be materially adverse if (i) the ability of the *Borrower* to conduct its business as contemplated in this *Agreement* and to comply with its material obligations under the *Finance Documents* (including, but not limited to, the *Financial Covenants* according to Section 17 ("*Financial Covenants*")) or (ii) the financial situation of the *Borrower* and/or the *Group* or (iii) the validity or enforceability of any *Finance Document* may be materially adversely impaired (a "*Material Adverse Effect*").

### 15.5. Insolvency

No reasons for insolvency, incapacity to pay, threatened incapacity to pay or over-indebtedness are present either with the *Borrower* or a *Group Company*, as per Sections 17 through 19 of the German Insolvency Code (*Insolvenzordnung*) or similar rules in other jurisdictions.

### 15.6. Information

All documents made available and information provided by the *Borrower* or a *Group Company* (also within the course of a due diligence) are based on actual information carefully examined for its correctness and completeness. The documents handed over and information provided include all material information relevant to the credit decision account. In particular, this applies to all documents with regard to the current tenant / lease agreements.

### 15.7. Financial Statements

The annual financial statements of the *Borrower* and/or of the *Group* and/or the *Group Companies*, as well as the budget and multiple year plans have been prepared properly, carefully and correctly.

[...] and [...]

#### **15.8. Tax Liabilities**

No claims or tax investigations by any tax or social security authority are being conducted against the *Borrower* or a *Group Company*, which are likely to have a *Material Adverse Effect*, and/or there are adequate reserves for such circumstances. The *Borrower* and the *Group Companies* are not in delay in the submission of tax and other submitted statements.

The *Borrower* has complied with all material matters and rules of taxation in all jurisdictions applicable to him; furthermore he has paid all taxes and fees due and no material tax claims have been imposed on him. All claims owed by him under this agreement may be paid free of tax and fee deductions; no tax or fee withdrawal apply to the *Borrower*.

#### **15.9. Subsidies**

Neither the *Borrower* nor a *Group Company* have received any subsidies from any government, state or other public authority or agency in violation of national or European Union law.

#### **15.10. Transactions among Group Companies**

The delivery and market relationships among the *Group Companies* are under conditions customary to the market (Arm's Length Principle).

#### **15.11. Legal Disputes**

No litigation, arbitration or administrative proceedings or investigations of, or before, any court, arbitral body or agency concerning an amount of more than € [...] ([...] Euros) are current, pending or threatened against the *Borrower* or any *Group Companies*.

#### **15.12. Pari Passu**

The *Borrower's* payment obligations arising from the *Finance Documents* have at least the same priority as the claims of all of its other unsecured and unsubordinated debt, with the exception of liabilities that have priority under compulsory law.

#### **15.13. Environment**

The *Borrower* and the *Group Companies* have adhered to all regulations and administrative acts concerning environmental and health protection and workplace safety.

#### **15.14. Insurance Protection**

All operationally essential assets of the *Group Companies* are insured against damage and loss to the degree necessary and customary to the market (as demanded in Section 18.1 ("*Insurance*")). No terms and conditions prohibit the assignment of insurance claims opposing to clause 36.5 ("*Assignment of Rights and Claims under Insurance Policies*"). All insurance rates are fully paid. The insurance contracts are in effect and to the *Group Companies'* and the *Borrower's* best knowledge no cancellation is looming. The *Bank* has to be provided with proof of insurance coverage upon written request.

[...] and [...]

### 15.15. No Negative Development

Since the date of the last audited group financial statement no circumstances have arisen that may have a *Material Adverse Effect*.

### 15.16. Collateral Assets

- a) The *Borrower* is (i) the registered owner of the *Collateral Assets* and his title is, except for already existing non value reducing encumbrances in section II and already existing land charges in section III of the land register (that have to be redeemed at the latest with the disbursement of the *Loan Facility* and have to be cleared within 15 (fifteen) days in the respective land registers), in no way limited, and it is the sole legal and economic holder of all rights and claims arising out of or in connection with all lease agreements concluded with respect to the *Collateral Assets*, or (ii) there are effectively registered priority notices of conveyances in the respective land registers in favour of the *Borrower* and it will become the legal and economic proprietor of the *Collateral Assets* in consequence of the transcription in the respective land registers and will also be the holder of all rights and claims arising out of or in connection with all lease agreements concluded with respect to the *Collateral Assets* and his property of the *Collateral Assets* will not be limited in any way (except for the already existing non value reducing encumbrances in section II). All parts of the existing and future lease agreements concluded with respect to the *Collateral Assets* are effective and legally valid, and the *Borrower* fulfills all incumbent responsibilities in connection with the all lease agreements concluded with respect to the *Collateral Assets* (apart from issues, which were explicitly disclosed in writing before the closing of this *Agreement* by reference to this Section 15.16 to the *Bank*).
- b) There are no damages to the *Collateral Assets* which could have an impact on the use or on the value of the *Collateral Assets*. The *Collateral Assets* are (i) in good condition (apart from issues explicitly disclosed in writing before the closing of this *Agreement* by reference to this Section 15.16 to the *Bank*) and (ii) has no structural defects, flood or surface subsidence damages.
- c) The *Borrower* has not granted any rights to be registered or any encumbrances or charges in relation to the *Collateral Assets* (as the case may be according to Annex “Collateral”) which are not (yet) registered in the land registry and which are not admissible according to this agreement. In particular no encumbrances in section II of the land registry which rank prior to the charges listed in Annex “Collateral” have been granted and not been registered in the land registry.
- d) The *Borrower* has obtained all licenses and permissions necessary to run his business and to operate the *Collateral Assets*.

### 15.17. Borrower

- a) The *Borrower* has no employees.
- b) The *Borrower* is not a part of a tax group (*Organschaft*) in terms of the German Codes on Trade Income Tax (*Gewerbesteuer*gesetz), Corporate Income Tax (*Körperschaftssteuer*gesetz) or Value Added Tax (*Umsatzsteuer*gesetz).
- c) The *Borrower* is not a party to a controlling and profit transfer agreement.
- d) The *Borrower* is a real estate holding with the sole purpose of holding title of the *Collateral Assets*. The *Borrower* has not entered into any commitments and will not enter into any

[...] and [...]

commitments besides (a) commitments which are (i) directly in connection with this *Agreement* and with the corresponding *Security Agreements* and (ii) the property and the management of the *Collateral Asset* and, (b) which, if necessary, were explicitly disclosed in writing before the closing of this *Agreement* by reference to this Section 15.17.

### 15.18. Repetition

The *Borrower* will repeat all *Representations and Warranties* before each *Advance* to the *Bank*

## 16. INFORMATION UNDERTAKINGS OF THE BORROWER

### 16.1. Disclosure of the Borrower's Economic Circumstances

According to German banking supervisory law the *Bank* is obliged to monitor the current credit risk. Therefore, the *Borrower* shall provide all information necessary for assessing the economic circumstances of the *Borrower* and any *Third-Party Guarantor* that provides personal collateral (such as guarantees), as well as to all risk-relevant circumstances with regard to the *Collateral Assets*. The *Borrower* shall also disclose all information of considerable significance to the assessment of the asset and debt structure, as well as to the assessment of the current and planned profitability and liquidity of the *Borrower*, and the profitability and creditworthiness with regard to the *Collateral Assets*.

The *Borrower* has to - without being requested - provide the *Bank* with the following documents and information during the agreed time periods:

- a) (*Property Report*) A *Property Report* regarding the *Collateral Assets* has to be submitted within 6 (six) weeks after the end of each calendar quarter. A "***Property Report***" shall include information on (i) up-to-date tenancy schedules containing names of tenants, let area, rent/lease amounts and terms, (ii) the current development of the operating and administrative expenses; (iii) any outstanding rent/lease payments, including the reasons for any arrears in payment; (iv) claimed or announced offset against rent/lease amounts and/or claimed or announced rent/lease reductions, including the reasons for the (announced) offset and/or rent/lease reduction; (v) unused and/or vacant spaces and rooms; (vi) repair or maintenance work to be performed and (vii) other events or circumstances with regard to the *Collateral Assets* that could considerably and detrimentally impact the value of the *Collateral Assets*.
- b) (*Amendments to Rental, Insurance and Property Management Contracts*) Immediate information on any intended amendment to rental, insurance or property management contracts.
- c) (*Disposal of Collateral Asset*) Immediate information on any intended disposal of a *Collateral Asset*.
- d) (*Annual Financial Statements*) No later than 150 (one hundred and fifty) calendar days after the end of a financial year the (audited, if an audit opinion is legally required or is voluntarily prepared) annual financial statements (plus a profit- and audit report) of the *Borrower* – and the general partner of the *Borrower*, if any - and a cash flow statement of the *Borrower* for the financial year concerned. If the preparation of the audited annual financial statement is delayed, the documents have to be submitted preliminary in their temporary form.
- e) (*Business Plan*) No later than one quarter before the end of each financial year a business plan / cash flow statement for the following financial year.
- f) (*Amendments to the Constitutions / Articles of Association*) Immediate information on any intended amendment to the by-laws or the articles of association of the *Borrower* or a change

[...] and [...]

in the legal form of the *Borrower*.

- g) (*Disputes*) Immediate information on any disputes (e.g. any litigation, arbitration or administrative proceedings which are current, credibly threatened or pending) concerning an amount of at least € [...] ([...] Euros) per individual case or/and any disputes exceeding an amount of € [...] ([...] Euros) in total per business year .
- h) (*Inspection of the Collateral Assets*) The *Borrower* shall allow any person which is authorized by the *Bank* in writing, irrespectively of being a *Bank* employee, to inspect any *Collateral Asset* during customary business hours, with timely prior notice.
- i) (*Other Specific Information*) Upon request by the *Bank*, specific information and documents on legal and actual circumstances with regard to the *Collateral Assets*, as well as on the financial situation of the *Borrower* and that of any tenants / lessees, if they are available and are reasonably needed by the *Bank*, so as to be able to verify observance of the conditions of the *Finance Documents* and recognize future risks early. If such information and documents are not available immediately, the *Borrower* shall upon request by the *Bank* take all reasonable measures to obtain them.
- j) (*Environmental*) An anticipated violation of environmental regulations or the occurrence of a problem with contaminated waste (e.g. contamination of a *Collateral Asset*) has to be notified to the *Bank* immediately.
- k) (*Minutes*) The *Borrower* will provide the *Bank* with appropriate minutes of the shareholder meetings of the *Borrower* as well as of resolutions without undue delay
- l) (*Other Occurrences*) Information on all other occurrences that may, in the reasonable assessment of the *Borrower*, be material to the risk assessment such as the expiration of insurance coverage.
- m) [●]

## 16.2. Financial Information on the Company Group

Until the complete repayment of the *Facility*, the *Borrower* has to inform the *Bank* regularly on the development of the economic situation of the *Group* and each individual *Group Company* and, without being requested, has to provide the *Bank* with the following documents and information within the agreed time period:

- a) (*Group Financial Statements*) Audited, unrestrictedly certified and consolidated group financial statements (in each case including appendices) of the *Group* with a group profit report, audit report and a cash flow statement.
- b) (*Individual Financial Statement*) Audited and unrestrictedly certified individual annual financial statements (including profit reports and appendices) of all *Group Companies*, in each case together with an audit report, no later than 150 (one hundred and fifty) days after the end of each financial year.
- c) (*Loan Termination by another Bank*) Immediate information if another lender terminates a loan with a *Group Company* or a leasing agreement or rent / purchase agreement is terminated.
- d) (*Changes within the Group*) Immediate information on all other occurrences and changes within the *Group* which, in the reasonable assessment of the *Borrower*, could be of importance. If the information is not to be provided by the *Borrower*, but by a *Group Company* instead, the *Borrower* has to ensure the provision of that relevant information.

## 16.3. Change in the Financial Statements

The *Borrower* shall allow the *Bank* to have an independent auditor prepare a conversion statement

[...] and [...]

with any change in its financial year or its balancing, approach and assessment method, including the exercise of the voting rights, in its annual financial statement and (have) the bank explain the economic effects of the new methods.

## 17. FINANCIAL COVENANTS

The *Borrower* has to comply with the following “*Financial Covenants*” throughout the term of the *Facility*:

### 17.1. Interest Service Coverage (ISC)

- a) The *Borrower* has to maintain an *ISC Ratio* of at least [...] % ( [...] percent) throughout the term of the *Facility* that is calculated by the *Bank* as follows:

The “*ISC Ratio*” shall be calculated as the ratio between

aa) the *Projected Net Operating Income* and

bb) the *Projected Interest Service*

during the current *Calculation Period*.

- b) The *Bank* will calculate the *ISC Ratio* for the first time before the first drawdown and then on each *Interest Payment Date* (these dates hereinafter referred to as a “*Calculation Date*”) on the basis of the latest *Property Report*, unless more recent information is available. *Calculation Period* is the period of 12 (twelve) months after the respective *Calculation Date*.

- c) The *Projected Net Operating Income* shall be

- the *Borrower's* total net rental income from the *Collateral Assets* (excluding tenants’ payments for operating expenses) resulting from the relevant tenants’ contractual payment obligations in the *Letting Situation* during the relevant *Calculation Period*, as determined in accordance with Sub-Paragraph d) of this Section

less (-)

- any non-recoverable operating expenses, capital expenditures or other non-recoverable expenditures in respect of the *Collateral Assets*, as well as any other expenditures by the *Borrower* which are not to be borne by the tenants (e.g. the *Borrower's* general taxation or other charge or withholding of a similar nature), as determined in accordance with Sub-Paragraph d) of this Section during the *Calculation Period* concerned.

- d) In particular, when calculating the *Projected Net Operating Income*, the “*Letting Situation*” during the relevant *Calculation Period* shall be determined as follows:

aa) If any rental space in the *Collateral Assets* is not leased on the relevant *Calculation Date* and to the extent there is no a lease agreement with rental payments starting within the *Calculation Period*, it is assumed that no rental payments are to be expected during the *Calculation Period*.

bb) If during the *Calculation Period*

(i) a lease agreement expires or

(ii) the termination of a lease agreement is legally possible and was already threatened

and there is no subsequent lease agreement available, then it is assumed that there will be no rental payments from the expiry or termination date until the end of the *Calculation*

[...] and [...]

*Period.*

- cc) The assumed receivables on the basis of a lease agreement include both the base rental amount as well as, if applicable, any rental amount dependent on turnover. Any turnover-dependent rental to be paid during the *Calculation Period* is calculated on the assumption that the turnover for the *Calculation Period* will be equivalent to the turnover achieved during the 12-month period ending one month before the relevant *Calculation Date*.
- dd) The percentage of all rent shortfalls during the *Calculation Period* is assumed to be equivalent to the percentage of all rent shortfalls on the *Calculation Date*, provided the reason for the shortfall continues to exist.
- ee) For the calculation of the operating expenses not to be borne by the tenants, capital expenditures or any other expenditures not to be paid by the tenants for the *Collateral Assets*, a minimum amount of a monthly € [...]/m<sup>2</sup> (EUR [...]) per square meter of rentable space plus any planned other expenditures is assumed. If the actually proven capital expenditures not to be borne by the tenants / lessees or any other expenditure not to be paid by the tenants for the *Collateral Asset* are higher or lower, then they shall be calculated on the basis of the expenses / expenditures actually paid within the previous *Calculation Period*.
- e) The “**Projected Interest Service**” shall be the aggregate of all interest payments falling due during the *Calculation Period* under the *Facility*, taking into account an existing limitation of the interest exposure as a result of a *Hedging Agreement*.

**17.2. Debt Service Coverage (DSC)**

- a) The *Borrower* has to maintain a *DSC Ratio* of at least [...] % ( [...] percent) throughout the term of the *Facility* that will be calculated by the *Bank* as follows:

The “**DSC Ratio**” is the ratio between (aa) the *Projected Net Operating Income* and (bb) the *Projected Debt Service*, in each case during the current *Calculation Period*.

- b) The calculation of the *DSC* by the *Bank* is made on each *Calculation Date*.
- c) The “**Projected Debt Service**” is the sum

- aa) of the *Projected Interest Service*

**plus (+)**

- bb) the sum of the *Regular Amortization Payments*

falling due within the *Calculation Period*.

**17.3. Loan to Value ("LTV")**

- a) The *Borrower* has to maintain a *LTV Ratio* of not more than [...] % ( [...] percent) throughout the term of the *Facility*, that is calculated by the *Bank* as follows:

The “**LTV Ratio**” is the ratio between aa) the *Outstanding Amount* and bb) the most recent net market value of the *Collateral Assets* in aggregate as determined by an independent external appraiser.

- b) The calculation of the *LTV Ratio* takes place on each *Calculation Date* and then after any new determination of the market value of the *Collateral Asset*.
- c) The market value of the *Collateral Asset* was first determined on [DD] [MM], [YYYY] by an external appraiser and set at € [...] ( [...] Euros).
- d) Henceforth, the *Bank* may determine the current market value of each and/or of all *Collateral*

[...] and [...]

*Assets* by an independent external appraiser upon the occurrence of an event which, in the reasonable opinion of the *Bank*, could influence the value of a *Collateral Asset*. The *Borrower* hereby instructs the *Bank* to engage a qualified appraiser. The appraisal may, at the choice of the *Bank*, be produced in accordance with the guidelines of “The European Group of Valuers' Associations” (TEGoVA), or the directives of the Royal Institution of Chartered Surveyors (RICS).

- e) The *Bank* will inform the *Borrower* about the result of each evaluation. This result will be binding to the parties.
- f) The costs of all (re)valuations shall be borne by the *Borrower*.

## Optional

### 17.4. Vacancy Rate

- a) The total rented area may not fall below a “*Vacancy Rate*” of [...] % ([...] percent) throughout the term of the *Facility*.
- b) Rented area is considered “*vacant*” if:
  - aa) no rental / lease agreement exists with ongoing payment of rent / lease for area in the *Collateral Asset*, or
  - bb) a rental / lease agreement has been terminated or will be terminated within the next 3 (three) months after the *Calculation Date*, provided that no new rental / lease agreement was concluded.
- c) The *Bank* calculates the *Vacancy Rate* prior to each drawdown, on each *Interest Payment Date* and in case of an important reason pursuant to Section 20.2 on the basis of the information to be provided by the *Borrower*, or due to any other information accessible to the *Bank*.

## Optional

### 17.5. Exit Yield

The *Borrower* has to maintain an *Exit Yield* of at least [...] % ([...] percent) throughout the term of the *Facility*, that is calculated by the *Bank* as follows:

The “*Exit Yield*” is the ratio between aa) the *Projected Net Operating Income* and bb) the *Outstanding Amount* on the *Calculation Date*.

The calculation of the *Exit Yield* by the *Bank* is made on every *Calculation Date*.

## 18. UNDERTAKINGS

The “*Undertakings*” contained in this Section 18 have to be respected by the *Borrower* and remain in force from the *Commitment Date* until the total discharge of all the *Borrower's* liabilities under the *Finance Documents*.

### 18.1. Insurance

#### 18.1.1 Obligations of the *Borrower*

The *Borrower*

[...] and [...]

- a) has to maintain the following insurance covers with (an) insurance company(-ies) with a rating of at least (i) 'A' from Fitch Ratings Ltd., (ii) 'A2' from Moody's Investor Services Ltd., (iii) 'A' from Standard and Poor's Rating Services, or (iv) an equal rating from another reputable rating agency:
  - aa) "All-risk" insurance (covering, inter alia, fire, inundation, storm, or other natural disasters, terrorism and vandalism, in each case covering an amount up to the restoration costs. Insurance for terrorism may be waived for a specific *Collateral Asset* after consultation with the *Bank*, if, due to the location and situation of the respective *Collateral Asset*, a terrorist attack seems unlikely and such waiver is not likely to have a negative implication in case of a securitization.
  - bb) Liability insurance in an appropriate amount for damages arising in connection with the ownership and operation of the *Collateral Assets*;
  - cc) Business interruption insurance against loss of rental income for a period of at least 3 (three) years as a consequence of damages to the *Collateral Assets*;
- b) may not agree to a material change or amendment of the terms and conditions of any insurance agreement which could result in an increase of the premium or in a restriction of insurance coverage;
- c) has to duly pay or procure the payment of the insurance premiums and give evidence of such payment to the *Bank* upon demand;
- d) has to deliver to the *Bank* copies of all material correspondence with the insurance companies without undue delay;
- e) has to procure that the following requirements with regard to the insurance contract(s) are met:
  - aa) payments under the insurance may only be made and proceeds of the insurance may only be used with the prior consent of the *Bank*;
  - bb) insurance cover will also remain in place if the insurance or the insured terminates the insurance contract or the insurance contract ends differently;
  - cc) in case the insurer terminates the insurance contract the insurer will give the *Bank* at least 30 calendar days prior notice. The same applies if the terms and conditions of the insurance are amended or the insured breaches any obligations under the insurance contract.

### 18.1.2. Rights of the Bank

The *Bank* shall have the right

- aa) to continue or to renew the insurance with another insurer in case of the insurance contract being rescinded; the *Borrower* shall reimburse the *Bank* for any and all costs associated therewith;
- bb) to carry out a real right registration (*Realrechtsanmeldung*) on the basis of the current template of the insurance industry, provided that the real property is situated in Germany and the insurance contract is governed by the German Insurance Act (*Versicherungsvertragsgesetz*); as further evidence the *Bank* shall be provided with the confirmation of insurance cover and a copy of the insurance policy.

## 18.2. Accounts

### 18.2.1. Permissible Accounts

- a) The *Borrower* may and has to maintain exclusively the following accounts:

[...] and [...]

- aa) a “**Rental Account**”, serving (i) for the collection of all rent / lease receivables from the *Collateral Assets*, including payments of ancillary costs from the tenants, as well as any other receivables and (ii) to settle all expenses and other payments in accordance with Section 18.2.2 (“*Cash Flow Waterfall*”).
  - bb) an “**Escrow Account**”, serving to establish a cash reserve and for the purposes agreed upon in this *Agreement* (see Section 11.2.2 and Section 19), and
  - cc) a “**Surplus Account**” for the free disposal of the *Borrower* in accordance with the stipulations in this *Agreement*.
- b) The *Rental Account* and the *Escrow Account* have to be held by a bank with a requisite shortterm rating of at least one of the following: “F1” by Fitch, “P-1” by Moody’s and/or “A-1+” by Standard & Poor’s. The *Rental Account* and the *Escrow Account* have to be pledged to the *Bank*.
  - c) The *Borrower* has to submit a confirmation of the account holding bank to the *Bank*, according to which this institution, with regard to the pledged account – for the duration of the pledge to the *Bank* – (i) waives any offset / retention rights (*Aufrechnungs-/Zurückbehaltungsrechte*) and (ii) a right of lien (e.g. according to its general terms of business) of the account holding bank is excluded and/or subordinated to the *Bank*’s right of lien. However, a right of lien of the account holding bank may be prior ranking to the extent it guarantees expenses and fees exclusively connected with the account holding as well as amounts not finally credited to the account (e.g. return debit notes).

### 18.2.2. Cash Flow Waterfall

- a) The *Borrower* undertakes to ensure that all rental income from the *Collateral Assets*, including payments of ancillary costs from the tenants, as well as any other receivables by the *Borrower* are exclusively paid into the *Rental Account*.
- b) Provided that the *Bank*’s pledge is not negatively affected, the *Borrower* may disburse the credit balance in the *Rental Account* in the following order (hereinafter: the “**Rental Income Waterfall**”):
  1. to settle the expenses necessary for the operation and maintenance of the *Collateral Assets* including taxes as well as any other public duties due with respect to the *Collateral Asset*, but excluding any capital expenditures (the “**Operating Expenses**”);
  2. to the *Bank* regarding any fees and remunerations due other than interest and principal, in as far as such amounts are not withheld from the drawdown amount;
  3. to the *Bank* regarding interest accrued under the *Facility* and payments under a *Hedging Agreement* (if any) excluding payments for the termination of a *Hedging Agreement*;
  4. to the *Bank* for *Regular Amortization Payments* due;
  5. to the *Bank* for breakage costs due in case of a termination of the *Hedging Agreement* (if any);
  6. to settle Capex due in accordance with the business plan (if any);
  7. to the *Escrow Account* in case of a *Cash Sweep* according to Section 19 (“*Cash Sweep*”);
  8. for the free disposal of the *Borrower* as long as a sufficient reserve for all payment obligations under this *Agreement* and in accordance with the business plan has been built and as long as Section 19 (“*Cash Sweep*”) is not applicable.

[...] and [...]

**18.2.3. Dispositions**

- a) Dispositions over amounts standing to the credit of the *Rental Account* may be made without the *Bank's* consent in accordance with the sequence of the *Rental Income Waterfall* set forth under Section 18.2.2 ("*Cash Flow Waterfall*") until revocation by the *Bank*. The *Bank* is entitled to a revocation if the *Borrower* violates any obligation arising out of or in connection with the *Finance Documents*.
- b) The *Borrower* may dispose of the amounts standing to the credit of the *Escrow Account* solely subject to prior approval of the *Bank*, unless the disbursement is used for payments in favour of the *Bank*

**18.2.4. Online Access / Account Abstracts / Direct Debit Authorization**

- a) In case the accounts listed under Section 18.2.1 ("*Permissible Accounts*") above are not held with the *Bank* the *Borrower* shall obtain – if technically feasible – an online access to these respective accounts in favor of the *Bank*. If this is not technically possible, the *Borrower* shall provide the *Bank* with monthly account extracts regarding these accounts.
- b) The *Bank* shall be authorized, without any further consent of, or notification to, the *Borrower*, to collect any payments due to be made by the *Borrower* under this *Agreement* from the *Rental Account* and the *Escrow Account*.

**18.3. Borrower's Company Purpose**

The *Borrower* has to be and has to remain a special purpose company with the sole purpose of holding, managing and operating the *Collateral Assets*.

**18.4. Measures Requiring Notice**

The economic reputation of the *Borrower* and of the shareholders and/or *Group* backing up the *Borrower* as well as the trust in the qualification of the *Borrower's* management are significant factors for the positive risk assessment of the overall financing project and are thus a significant precondition for granting the *Facility*. Since a change in any of the aforementioned factors may result in a significant worsening of the risk of the *Facility* or may establish a (partial) risk of a shortfall under the *Facility*, the execution of the following measures requires prior written notice to the *Bank*:

- a) capital increases and decreases, as well as increases and decreases in reserves by the *Borrower*;
- b) changes in the management of the *Borrower* or of a *Group Company*;
- c) discontinuation or sale of the entire or almost the entire business of *Group Companies* whose share in the *Group* exceeds [...] %;
- d) any change in the budget to be set up at the end of each financial year during an ongoing financial year, any overrun beyond the investment plan and any change that leads to an updating of the updated consolidated multiple-year planning, provided the economic implications of such a change/overran exceed an amount of € [...] (Euro) in the financial year;
- e) contracts with officers and shareholders, conclusion, amendment or cancellation of contracts with executives, members of a supervisory board, work councils or shareholders of a *Group Company*, if the total value of such contracts exceeds [...] (Euro [...]);
- f) loans to officers, shareholders, executives, members of a supervisory board or work councils of the *Borrower* or a *Group Company*;
- g) entering into financial obligations (including loan liabilities as well as the granting of

[...] and [...]

warranties and guarantees) vis-a-vis third parties outside normal business operations, whose total amount exceeds € [...] (Euro [...]) provided the *Borrower* is not obliged to this end under applicable law or administrative or court orders. The *Borrower* shall immediately inform the *Bank* on any corresponding administrative / court order and take legal action at the *Bank's* proper request. All costs and expenses arising in the course of or in accordance with such legal actions shall be borne by the *Borrower*.

Upon the written request by the *Bank*, the *Borrower* shall provide detailed information on any of the aforementioned measures, and/or shall see to it that the *Bank* is provided with detailed information.

### 18.5. Measures Requiring Approval

The following measures require the prior written consent of the *Bank*:

- a) change of control over the *Borrower*. “**Control**” means that any individual or group of individuals acting jointly holds, directly or indirectly, more than 50 % (fifty percent) of the shares in the *Borrower* (excluding shares in the company that do not grant voting rights or where the right to a profit or capital distribution is limited to a certain amount) and/or of the voting rights or has the possibility to appoint the majority of the members of the management / of the managing board and / or of the representatives of the shareholders in the supervisory board. Furthermore, a company shall be regarded as controlled directly or indirectly by an individual, if the company is considered in the consolidated annual accounts of that individual consistent with the generally accepted accounting principles of its country of establishment.

“**Acting together**” means when individual persons or legal entities coordinate their conduct with regard to the exercise of control or the exercise of voting rights or in any other manner on the basis of an agreement or on any other basis.

- b) conversions, mergers, splits and changes in status of the *Borrower*;
- c) acquisition of a participation in another company by the *Borrower*.

The *Bank* shall grant its consent if no deterioration of the credit risk is to be expected as a result of the prescribed measures in a sustainable way over the remaining term of the loan and if no negative implications are to be expected in respect of a securitization, the securitizability or a syndication of the loan or any notes emitted in the course of a securitization (in particular regarding a downgrading).

### 18.6. Management of the Collateral Asset

- a) At all times, the *Borrower* has to ensure that the services of a property manager (the “**Property Manager**”) or a new property manager are conducted properly at conditions customary to the market.
- b) The *Property Manager* shall have the necessary experience. The *Borrower* has to ensure that the *Property Manager* submits a written duty-of-care agreement to the *Bank*.
- c) The *Borrower* will provide the *Bank* without undue delay with an energy pass (*Energieausweis*) for each *Collateral Asset*, if and as soon as, during the term of the *Facility*, a legal obligation to issue such an energy pass is imposed.
- d) Any conclusion, material amendment, termination or replacement of a property management agreement concluded with the *Property Manager* or with a new property manager with regard

[...] and [...]

to the *Collateral Assets*, as well as any change of use of the *Collateral Asset* require the *Bank's* prior consent, such consent not to be unreasonably withheld.

- e) Optional: Maintenance Obligation and/or Investment Obligation

### 18.7. Subordinated Obligations

Any loans granted to the *Borrower* by third parties (this also includes direct and indirect shareholders of the *Borrower*) as well as comparable liabilities of the *Borrower* and interest payments thereon shall be subordinated to all receivables and all claims of the *Bank* under and in connection with the *Finance Documents*,

- to all present and future payments of insurance premiums with respect to the *Collateral Assets*,
- to all present and future payments of *Operating Expenses* with respect to the *Collateral Assets*, and
- to all present and future payments of taxes with respect to the *Collateral Assets* or the *Borrower*

pursuant to a subordination agreement (*Nachrangvereinbarung*) in form and substance satisfactory to the *Bank* providing that such facilities do not create over-indebtedness of the *Borrower*.

### 18.8. [Optional: Further Covenants]

- a) The [...] undertakes to grant to the *Borrower* [...] a shareholder loan in the amount of [...] in accordance with the agreement attached as Schedule [...].
- b) The *Borrower* will not make distributions or other payments to its shareholders until all claims of the *Bank* under this *Agreement* have been completely satisfied. Payments (i) in relation to salaries (incl. bonus), (ii) payments in line with the provisions of the 'declaration of non-termination of loans and subordination' in accordance with Section [... (".....")], (iii) distributions made to shareholders following an initial public offering if the shareholders have undertaken towards the *Bank* to use the distributions for the repayment of the loans and (iv) distributions to third party shareholders after an initial public offering are permitted.
- c) The *Borrower* will enter into futures or other derivatives only for the purpose of hedging positions deriving from the ordinary course of business. It will ensure - to the extent legally possible - that other *Group Companies* will also enter into such transactions only for said purpose. All futures and derivatives transactions of the *Borrower* and other *Group Companies* shall be entered into only with the *Bank*.
- d) The *Borrower* will keep all of its accounts with the *Bank*.
- e) The *Borrower* shall pay [at the end of each calendar month / at the end of each quarter] excess cash flow, i.e. a surplus, if any, from the rental income on the *Rental Account* after debt service and operating costs within the meaning of Section 11.1 ("*Repayment*") into the *Escrow Account* described in Section 11.2 ("*Prepayments*").
- f) If the *Borrower* is in breach of the financial covenant [...] at the time of [...] he shall be obliged to repay the *Loan Facility* no later than [...] in an amount sufficient in order for the financial covenant to be met on [...].
- g) The *Borrower* shall strictly comply with all environmental and other public law requirements applicable to the *Collateral Assets*, shall obtain all permits necessary for the construction or the

[...] and [...]

operation of the *Collateral Assets*, shall maintain the *Collateral Assets* in a status compliant with the status described in this *Agreement*, perform all necessary repairs and generally procure everything necessary to preserve the value of the *Collateral Assets*. The *Borrower* shall comply with all of its contractual obligations towards tenants and other counterparties and shall enforce all contractual rights it has against tenants and other counterparties.

## 19. CASH SWEEP

- a) If the *Borrower* is in breach with any obligation arising from this *Agreement*, all amounts standing to the credit of the *Rental Account* – after deduction of any *Operating Expenses* and any amounts owed to the *Bank* under this *Agreement* - shall, on the request of the *Bank* and at each *Interest Payment Date*, be transferred from the *Rental Account* to the *Escrow Account* (the “*Cash Sweep*”).
- b) The *Cash Sweep* shall continue and be in force until and for so long as the *Bank* confirms to the *Borrower* that the contractual violation has been cured, remedied, eliminated and/or waived by the *Bank*.

For clarification: No monies standing to the credit of the *Rental Account* are subject to free disposal by the *Borrower* during a *Cash Sweep*; in particular, no distributions to the *Borrower's* shareholders are permissible during a *Cash Sweep*.

- c) Section 20.2 (“*Bank's Right of Termination*”) remains unaffected.

## 20. TERMINATION

### 20.1. Borrower's Right of Termination

Reference is made to Section 11.2.1 (“*Voluntary Prepayments*”). The *Borrower's* legal rights of termination remain unaffected.

### 20.2. Bank's Right of Termination

The *Bank* has the right to terminate the *Facility* in whole or in part in case an *Event of Default* occurs (“*aus wichtigem Grund*”), i.e. an important reason that makes the continuation of the *Facility* unacceptable to the *Bank*, taking the *Borrower's* justified interests into account. The following circumstances shall in particular but not limited to constitute an “*Event of Default*”:

- a) (*Default in Payment*) Any failure of the *Borrower* to make any payment due under this *Agreement*, where such failure (i) exceeds more than a quarter of the *Borrower's* payment obligations owed to the *Bank* in one year and (ii) continues 10 (ten) *Business Days* after the delivery of a written notice by the *Bank* of the failure to make such payment and drawing attention to the right of termination;
- b) (*Breach of Financial Covenants*) A *Financial Covenant* is breached and not rectified within 20 (twenty) *Business Days* after the delivery of a written notice by the *Bank* drawing attention to the right of termination;
- c) (*Impairment of Economic Circumstances*) A material impairment occurs in the *Borrower's* economic circumstances or threatens to occur and thus the repayment of the *Facility* or the satisfaction of any other liability towards the *Bank* is jeopardized – even when applying any

[...] and [...]

- existing collateral;
- d) (*Change of Control*) Any change in the *Control* of the *Borrower* (or any part thereof) occurs without the *Bank's* prior consent (for the meaning of "*Control*" see Section 18.5 ("*Measures Requiring Approval*");
  - e) (*Application of Insolvency*) If the *Borrower* becomes insolvent, i.e. is unable to meet its payment obligations or overindebted, or if an application for insolvency proceedings over the *Borrower* is filed, provided such application is not refused within 20 (twenty) *Business Days* after its submission;
  - f) (*Enforcement Measures*) The *Borrower* becomes subject to enforcement measures (*Zwangsvollstreckung*) exceeding an amount of EUR [...] per business year;
  - g) (*Exposure of Collateral*) Any collateral stipulated in this *Agreement* is not established or its validity is or becomes doubtful and such collateral has not been validly established within 20 (twenty) *Business Days* after the delivery of a written notice by the *Bank* drawing attention to the right of termination, or the application of any collateral is barred or jeopardized and at the time no replacement collateral of an equivalent value is provided within the aforementioned time period;
  - h) (*Impairment of Collateral*) The value of any collateral granted to the *Bank* decreases materially and such decrease jeopardizes the repayment of the *Facility* or the fulfilment of any other payment obligation vis-à-vis the *Bank*, without the *Borrower* having offered to the *Bank* other adequate additional security within 20 (twenty) *Business Days* after the delivery of a written notice by the *Bank* drawing attention to the right of termination;
  - i) (*Change of Business*) The *Borrower* extends its business operations contrary to this *Agreement* (see Section 18.3 ("*Borrower's Company Purpose*")) beyond the ownership, development, refurbishment, management and letting of the *Collateral Asset* and activities ancillary thereto or terminates its business operations;
  - j) (*Incorrect Information*) Any of the *Representations* pursuant to Section 15 ("*Representations*") or any of the information pursuant to Section 16 ("*Information*") or any other significant information that the *Borrower* has provided in order to obtain the *Facility* or to prove observance of its obligations arising from this *Agreement* is proven to be incorrect or incomplete and therefore misleading;
  - k) (*Breach of Legal Provisions and/or Administrative Orders*) The *Bank* in maintaining the *Facility* breaches legal provisions and/or official orders that are enacted after the conclusion of this *Agreement*;
  - l) (*Insurance Policies*) The *Borrower* fails to keep in effect the insurance policies that have to be maintained in accordance with Section 18.1 ("*Insurance*") or the insurance coverage is terminated otherwise;
  - m) (*Limitation of Interest Exposure*) The *Borrower* fails to satisfy its obligation to enter into a *Hedging Agreement* according to Section 9.5 ("*Limitation of Interest Exposure*") or a *Hedging Agreement* entered into in accordance with the agreement under Section 9.5 ("*Limitation of Interest Exposure*") expires;
  - n) (*Material Breach of Contract*) The non-fulfilment and continued non-fulfilment of any other obligation set forth in any *Finance Document* which – given the importance and duration of such violation – has to be regarded as being substantial, if such non-fulfilment is not cured within a period of 20 (twenty) *Business Days* after the delivery of a written notice by the *Bank* drawing attention to the right of termination;
  - o) (*Information acc. to Section 4 Money Laundering Act*) Any of the information according to Section 31 („*Information Required pursuant to Sect. 4 Money Laundering Act*“) is proven to be incorrect or incomplete or the *Borrower* has failed to update such information without

[...] and [...]

undue delay upon any change.

[ANMERKUNG: lit. p) aus der deutschen Fassung findet sich in der englischen Sprachfassung nicht]

### 20.3. Damage Compensation upon Termination

In case of termination pursuant to Section 20.2 (“*Bank’s Right of Termination*”) the *Bank* shall be entitled to claim damages from the *Borrower*. The damage claim shall be calculated in accordance with Section 21.2 (“*Compensation for Non-acceptance, Prepayment Costs*”).

## 21. INDEMNIFICATION, COMPENSATION FOR NON-ACCEPTANCE, PREPAYMENT COSTS AND PREPAYMENT FEE

### 21.1. Indemnification

The *Borrower* is obliged to indemnify the *Bank* against

- a) all expenses, claims, losses, expenditures (including reasonable legal expenses) or liabilities, inclusive of VAT, that arise for the *Bank* as a consequence of a contractual violation by the *Borrower*; and
- b) all expenses and losses that the *Bank* may have to bear as the result of claims, lawsuits or procedures against it in connection with this financing, to the extent such claims, lawsuits or procedures are based on misconduct on part of the *Borrower*,

unless such expenses, losses, expenditures or liabilities are attributed to negligence (*Fahrlässigkeit*), wilful misconduct (*vorsätzliches Fehlverhalten*) or bad faith (*Arglist*) on part of the *Bank*.

### 21.2. Compensation for Non-Acceptance, Prepayment Costs

- a) If the *Borrower*
  - completely or partially, seriously and finally refuses the acceptance (*Abnahme*) of the *Facility*, or
  - fails to fulfill completely the *Conditions Precedent* within the *Availability Period* and has not established them vis-a-vis the *Bank*, after the *Bank* has given the *Borrower* a grace period of 10 (ten) *Business Days*, or
  - prepays the *Loan Facility* partially or completely on another date than an *Interest Payment Date* and having a justified interest (*berechtigtes Interesse*) pursuant to Section 490 Par. 2 BGB, or
- b) if the *Bank*
  - terminates this *Agreement* in accordance with Section 20.2 (“*Bank’s Right of Termination*”),

the *Borrower* has to pay to the *Bank* the – discounted - difference between (i) the interest (inclusive *Margin*), which the *Borrower* should have actually paid proceeding in accordance with this *Agreement* until the earliest possible repayment date (i.e. until the next *Interest Payment Date*) and (ii) the amount which is the result of reinvesting the loan amounts having become available with matching maturities (*laufzeitkongruent*) at EONIA-Rate (Euro Over Night Index Average) determined by the European Central Bank pursuant to Reuters page “EONIA”.

[...] and [...]

The *Borrower* may prove that the damage suffered by the *Bank* is actually lower.

### **21.3. Prepayment Fee**

- a) If the *Borrower* completely or partially prepays the *Loan Facility* on a date other than an *Interest Payment Date* not having a justified interest (*berechtigtes Interesse*) pursuant to Section 490 Par. 2 BGB (in particular in case of a refinancing, there is no justified interest), the *Borrower* is obliged to pay to the *Bank* a prepayment fee on the prematurely repaid amount of the *Loan Facility* of [...] % p.a. ([...] percent per annum) – calculated for the time from the date of the premature repayment of the *Loan Facility* to the end of the current *Interest Period*.
- b) The *Bank* may require, instead of the prepayment fee, a payment of prepayment costs calculated in accordance with Section 21.2 (“*Compensation for Non-Acceptance, Prepayment Costs*”).

## **22. PAYMENTS BY THE BORROWER**

### **22.1. Account Relationship**

All payments by the *Borrower* to the *Bank* shall be effected into an account still to be designated by the *Bank*.

### **22.2. Payment Date**

- a) All amounts to be paid by the *Borrower* shall be credited to the aforementioned account on the respective due date without any reductions or deductions.
- b) If a payment falls due on a day that is not a *Business Day*, then the due date is postponed to the next *Business Day* in the same calendar month, and, respectively, to the immediately preceding *Business Day* in case that the next *Business Day* falls in the following month.

### **22.3. Exclusion of Set-off Rights and Retention Rights**

Any set-off or assertion of retention rights by the *Borrower* is excluded, unless such claim of the *Borrower* is acknowledged by the *Bank* or has been upheld in a final judgement (*anerkannt oder rechtskräftig festgestellt*).

## **23. ASSIGNMENTS AND RISK TRANSFERS BY THE BANK / EXEMPTION FROM BANKING SECRECY**

### **23.1. Risk Transfer / Securitization**

- a) The *Bank* is entitled to transfer the economic risk of the loan, in its entirety or in part, by way of syndication, securitization or in any other way to
  - another bank;
  - another financial institution;

[...] and [...]

- a trust;
  - a fund; or
  - to another company that issues or acquires loans, securities or other financial assets or invests in such a company.
- b) The transfer of the loan risk may be made inter alia by means of credit derivatives, loan sub-participations or the transfer of loans together with the associated collateral (which in this context may also be assigned and pledged).

### **23.2. Assignment / Pledge for Refinancing Purposes**

Furthermore, the *Bank* is entitled to assign or pledge the loan receivables and all other of its rights and claims under this *Agreement* to any central bank or other company listed in Section 23.1 (“*Risk Transfer / Securitization*”) for refinancing purposes.

### **23.3. Tranching of the Facility, Amendments**

In case of a transfer of the loan risk (see Section 23.1 (“*Risk Transfer / Securitization*”)) to a third party and in case of an assignment / pledge for the purpose of refinancing (see Section 23.2 (“*Assignment / Pledge for Refinancing Purposes*”)), the *Bank* may split the *Loan Facility* into 2 (two) or more separate tranches and may amend, modify or prioritize such tranches.

### **23.4. Expenses**

If not agreed otherwise, all costs and expenses incurred in connection with the transfer of the loan risk and the assignment, pledge or securitization of the loan receivables shall be borne by the *Bank*.

### **23.5. Information Transfer**

- a) In context with any of the actions referred to under Section 23.1 (“*Risk Transfer / Securitization*”) and Section 23.2 (“*Assignment / Pledge for Refinancing*”) the *Bank* may disclose any information required for this purpose to the third party and to the re-financer, respectively, as well as to consultants mandated for the review of the impairment or the settlement of the transfer for technical, organizational or legal reasons, such as - for example - rating agencies / attorneys and auditors. The *Borrower* exempts the *Bank* insofar from banking secrecy.
- b) The *Bank* shall oblige the relevant recipient of the disclosed information on basis of a confidentiality agreement, to maintain secrecy on all customer-related data and assessments provided the recipient is not already legally or by mandatory professional / customary professional rules bound to secrecy or there is a statutory obligation to disclose the information. The disclosed information shall be used only to the extent necessary to implement the actions taken. The *Bank* shall oblige the recipient of the confidential information to enter into a corresponding confidentiality agreement in case of any further transfer of rights arising from this *Agreement* or any disclose of information to further recipients.

### **23.6. Contractual Amendments in case of Syndication obstacles**

Should one or more provisions of this *Agreement* because of their wording turn out to be an obstacle for the syndication of this *Loan Facility* by the *Bank*, the parties shall make joint effort to replace the wording in mutual agreement by such a wording acceptable for the syndication partners which come as close as possible to the initial wording.

[...] and [...]

## **24. ASSIGNMENTS AND TRANSFERS BY THE BORROWER**

The *Borrower* shall not in part or in its entirety assign or transfer its rights, claims and obligations arising under this *Agreement* without the *Bank's* prior written consent.

## **25. STATUTE OF LIMITATION**

All claims other than claims for damages arising out of this *Agreement* shall become time-barred after a period of 5 (five) years after their due date, in each case without taking into account any knowledge or gross negligent ignorance of the circumstances establishing the claims and of the person being obligated. Claims for damages arising out of or this *Agreement* shall become time-barred according to the statutory provisions.

## **26. PLACE OF JURISDICTION, PLACE OF PERFORMANCE, APPLICABLE LAW AND LANGUAGE OF CONTRACT**

- a) Exclusive place of jurisdiction for any disputes arising out of or in connection with this *Agreement* shall be the courts of the city of [...]. However, the *Bank* may also commence proceedings in other courts in the area of jurisdiction of which assets of the *Borrower* are located. Mandatory places of jurisdiction remain unaffected by this rule.
- b) The place of performance is [...].
- c) This *Agreement* is subject to and shall be interpreted in accordance with the laws of the Federal Republic of Germany.
- d) This *Agreement* is made in the English language. However, where a German translation of a word or phrase appears in the text of this *Agreement*, the German translation of such word or phrase shall prevail.

## **27. WRITTEN FORM**

Oral ancillary agreements (*mündliche Nebenabreden*) shall not form part of this *Agreement*. Any modifications of this *Agreement* shall be made in writing pursuant to sections 127 par. 1, 126 BGB or in electronic form pursuant to sections 127 par. 1, 126 a BGB. This applies also for the cancellation of the written form requirement.

## **28. COMMUNICATION AND SERVICE OF PROCESS**

### **28.1. Communication**

All communication pursuant to or in context with this *Agreement* shall be made in writing. To comply with this written form requirement, transmission via fax is sufficient. Communications made in e-form shall be considered equivalent, provided that the recipient confirms the receipt to the sender. The

[...] and [...]

parties' contact details for each and all communication and documentation in context with this *Agreement* are

- a) For the *Borrower*:  
 Address :  
 Fax :  
 E-Mail:  
 Attention:
- b) For the *Bank*:  
 Address :  
 Fax :  
 E-Mail:  
 Attention:

The parties shall notify any change of the address, fax number, e-mail, fon number or contact 5 (five) *Business Days* prior to the change becoming effective.

## 28.2. Service of Process

The *Borrower* hereby grants to

Mr. / Mrs. \_\_\_\_\_  
 Address \_\_\_\_\_

(the "**Process Agent**") comprehensive power for service of process (*Zustellungsvollmacht*), to receive any letters and/or services directed to him in context with this *Agreement*, the collateral given or potential disputes arising from this *Agreement* (section 171 ZPO).

The power for service of process may only be revoked if simultaneously with the revocation a new process agent resident in Germany is appointed and a corresponding power for service of process is granted.

## 29. SEVERABILITY CLAUSE

Should any provision of this *Agreement* in whole or in part be invalid or not practicable, the rest of this *Agreement* shall remain unaffected. The *Borrower* and the *Bank* shall replace the wholly or partially invalid or not practicable provision by a valid provision which comes as close as possible to the not practicable and invalid provision from an economic point of view. This shall apply mutatis mutandis if it should turn out later that there are gaps in the provisions of this *Agreement*.

## 30. VALUE-ADDED TAX (VAT)

The VAT identification number of the *Bank* reads:

[...]

According to Section 4 No. 8 a) of the German Sales Tax Act (*Umsatzsteuergesetz*), any sales arising from the granting and brokerage of loans are free of VAT.

[...] and [...]

### 31. INFORMATION REQUIRED PURSUANT TO SECT. 4 MONEY LAUNDERING ACT

The *Bank* is legally bound to identify and document in writing the below information. The *Borrower* is legally bound to provide the *Bank* with and to update these information (Section 4 par. 6 Money Laundering Act / “*GWG*”).

#### Information concerning the Beneficial Owner(s)

**Beneficial Owner** means the individual person who is the ultimate shareholder/owner of the *Borrower* or who is controlling the *Borrower* or on whose initiative the loan was taken up, respectively. In case the *Borrower* is a legal person ownership and/or control are assumed if an individual person is holding directly or indirectly more than 25 % (twenty-five percent) of the shares or is controlling more than 25 % (twenty-five percent) of the voting rights. If the *Borrower* is a company which is officially listed at a regulated market pursuant to Section 2 par. 5 German Securities Trading Act (*Wertpapierhandelsgesetz* - “*WpHG*”) within the EU the identification of the beneficial owner is not mandatory. The same applies with respect to listed companies from non-EEA states for which the requirements with respect to the transparency of voting rights are equivalent to the requirements under Community law; and further in other cases according to Section 5 par. 2 GwG.

#### 31.1. Acting on Instruction

The *Borrower* hereby declares:

- I am acting in my own economic interest and am not instructed by a third party. I am especially not acting as trustee for a third party.
- I am acting on instruction of the following individual or legal person. In case the *Borrower* is acting on instruction of a legal person further details with respect to ownership and controlling structure have to be recorded separately analogous to Section 31.2 (“*Further Details with respect to Ownership and Controlling Structure of Legal Persons as Borrower*”).

Name and address of the person / company on whose instruction the borrowing is made:

.....

Please select the applicable option. The *Bank* shall be informed immediately in writing about any change of the statements made in this section.

#### 31.2. Further Details with respect to Ownership and Controlling Structure of Legal Persons as Borrower

The *Borrower*

- is listed at a regulated market within the meaning of Section 2 par. 5 WpHG, or at a market in a non-EEA state, having equivalent requirements to Community law requirements with respect to the transparency of voting rights or equivalent international standards in place.

Trading Venue / Market Segment

Stock Exchange / Member Code

[...] and [...]

.....  
 .....

- is a public authority within the meaning of Section 5 par. 2 no. 4 GwG.
- is a credit institution or other entity within the meaning of Section 5 par. 2 no. 1 GwG.
- has no identifiable beneficial owner because the shareholding limits are not exceeded (i.e. not more than 25 % of the shares and/or voting rights) and other effective control cannot be recognized.
- is not subject to any of the aforementioned exemptions. Beneficial owner within the meaning of Section 1 par. 6 GwG is/are the following individual / legal persons:

Name and surname(s)	Participation rate or beneficiary rate shares / voting rights - direct / indirect -	Possible further identification details (e.g. address)

Further details with regard to the ownership and controlling structure of the *Borrower*:

- see Attachment

The *Bank* shall be informed immediately in writing about any change of the statements made in this section.

**OPTIONAL**

**32. ADDITIONAL CONDITIONS**

In addition to the contractual stipulations agreed to in this *Agreement*, the *Bank's* General Terms of Business as attached to this *Agreement* shall apply. In case of any conflict between the provisions of this *Agreement* and the *Bank's* General Terms of Business, the provisions of this *Agreement* shall prevail.

**33. OPTIONAL-“PUBLICATIONS”**

Any publication relating to this transaction shall be made by mutual agreement only.

[...] and [...]

### 34. SIGNATURES

,

.....

**[...] Bank**

( ) ( )

,

.....

**[...]**

( ) ( )

[...] and [...]

**35. ANNEX "DRAWDOWN REQUEST"**

[Borrower's letterhead]

Loan agreement as of \_\_\_\_\_ about a loan amount of € [...] (in words: Euro [...]).

Borrower: [...]

We, [...], hereby irrevocably instruct the [...] Bank, [...], to disburse an amount of € [...] (in words: Euro [...]) under the above mentioned loan agreement on \_\_\_\_ with value date on \_\_\_\_ less commissions and costs to be retained in accordance with the loan agreement.: We repeat all representations made under Section 15 of the loan agreement and confirm these representations being valid and true also on the date of the disbursement.

Purpose: \_\_\_\_\_  
\_\_\_\_\_

The disbursement shall be made to the following recipient (in case of several recipients please attach a schedule):

Account holder: \_\_\_\_\_

Account number: \_\_\_\_\_

Credit institution: \_\_\_\_\_

Banking Code: \_\_\_\_\_

\_\_\_\_\_, as of \_\_\_\_ 2016 \_\_\_\_\_

Borrower

[...] and [...]

## 36. ANNEX "COLLATERAL"

### 36.1. Land Charges

A comprehensive land charge (*Gesamtgrundschuld*) in the amount of € [...] ([...] Euro) plus [...] % ([...] percent) interest p.a. (the "**Land Charge**") has to be registered in favour of the *Bank* on basis of its template on the *Collateral Asset*, with submission by the relevant owner to the immediate foreclosure on the *Collateral Asset* in relation to the payment of a final partial amount of [...] % ([...] percent) of the *Land Charge* in accordance with Section 800 of the German Code of Civil Procedure (*Zivilprozessordnung* – "**ZPO**").

The following rights or encumbrances may rank prior to the *Land Charge* in section II and III of the respective land register:

**Section II:** no rights reducing the value of the *Collateral Asset*;

**Section III:** none.

In addition, the *Borrower* shall assume personal liability in the amount of [...] % ([...] percent) of the *Land Charge* and submit in this context to the immediate foreclosure in his entire personal assets.

The owner shall provide a notarized power of attorney (*notariell beurkundete Vollmacht*) authorizing the *Bank* at its request to submit the respective owner of the *Collateral Asset* with respect to the declared to be non-enforceable parts of the *Land Charge* in the amount of [...] % ([...] percent) of the relevant *Land Charge* amount or partial amounts hereof, respectively, to the immediate foreclosure in accordance with Section 800 ZPO without the need for the separate consent of the respective owner and at its expense in justified cases.

In addition the *Borrower* shall provide a notarized power of attorney (*notariell beurkundete Vollmacht*) authorizing the *Bank* at its request the *Borrower* to assume personal liability in the amount of the declared to be non-enforceable parts of the *Land Charge* of [...] % ([...] percent) of the relevant *Land Charge* amount or partial amounts hereof, respectively, plus [...] % ([...] percent) interest p.a. and to submit in this context to the immediate foreclosure in his entire personal assets.

### 36.2 Assignment of Claims to Restitution (*Abtretung der Rückgewähransprüche*)

In case of present or future land charges ranking prior or pari passu to the *Land Charge* pursuant to Section 36.1 ("*Land Charges*") the *Borrower* shall assign the following claims to the *Bank*, also insofar such claims will be originated or regained in future only:

- a) the claims on re-assignment of prior ranking or pari passu ranking land charges and parts of land charges including interests and ancillary rights (*Rückgewähransprüche*) as well as claims on the issuance of (i) a deletion approval (*Löschungsbewilligung*), (ii) a waiver (*Verzichtserklärung*), (iii) a non-disbursement declaration (*Nichtvalutierungserklärung*) and (iv) the claims on payment of a surplus on the occurrence of an enforcement event (*Auszahlung des Übererlöses im Verwertungsfall*);
- b) in case of certified land charges the claim on delivery of the relevant land charge certificates (*Aushändigung der Grundschuldbriefe*) or on submission of the relevant land charge certificates to the respective land registers for the creation of partial land charge certificates (*Vorlegung der Grundschuldbriefe beim Grundbuchamt zur Bildung von Teilbriefen*);
- c) the claims on re-assignment of claims to restitution (*Rückübertragung der Rückgewähransprüche*) to the extent such claims being assigned otherwise.

[...] and [...]

The *Borrower* hereby authorizes the respective obligors of the assigned claims to restitution (*Rückgewähransprüche*) to provide the *Bank* with information about the content and scope of such claims, in particular about the amount of the receivables secured by the respective land charge. The *Bank* may request from the *Borrower* the issuance of any statements necessary for the fulfilment of the aforementioned assigned claims.

### **36.3. Assignment of Rights and Claims under Rental Agreements and Lease**

The *Borrower* shall assign all present and future rights and claims under existing or future *Rental Agreements* and *Leases* in connection with the *Collateral Asset* to the *Bank*. This assignment shall not be disclosed to the tenants/lessees for the time being. However, the *Bank* shall be authorized to disclose this assignment, if [...].

### **36.4. Pledge of Shares**

The shareholders of the *Borrower* shall pledge all shares in the *Borrower* to the *Bank*. This pledge has to be notified immediately to and confirmed by the company. The exercise of the voting rights remains with the shareholders of the *Borrower*.

### **36.5. Assignment of Rights and Claims under Insurance Policies**

The *Borrower* shall assign all present and future rights and claims under existing or future insurance policies for the *Collateral Assets* to the *Bank*. This assignment shall be disclosed immediately (e.g. registration of real property rights).

### **36.6. Pledge of Accounts**

The *Borrower* shall pledge immediately any credit balances in the *Rental Account* and the *Escrow Account* to be opened to the *Bank*. This pledge has to be notified to and confirmed by the account holding bank.

### **36.7. Assignment of Rights and Claims under Sales Contracts**

The *Borrower* shall assign all present and future rights and claims under existing or future sales contracts (in particular purchase price claims) in relation to the *Collateral Assets* against the relevant purchaser(s) to the *Bank*. Within the notarised sales contract the *Borrower* shall notify the purchaser of this assignment and shall instruct him irrevocably to pay the purchase price with debt discharging effect exclusively into the *Escrow Account*.

### **36.8. Pledge of Rights and Claims under Interest Rate Hedging Transactions**

The *Borrower* shall pledge, notify and reconfirm all present and future rights and claims under any *Hedging Agreement* to the *Bank*.

### **36.9. Assignment of Rights and Claims under Property Management Contracts**

The *Borrower* shall assign all present and future rights and claims under existing and future property management agreements to the *Bank*. The *Bank* is authorized to disclose such assignments at any time.

### **36.10. Additional Collateral**

[...] and [...]

### 37. ANNEX "CONDITIONS PRECEDENT"

The obligation of the *Bank* to disburse *Advances* is subject to the fulfilment of each and all of the respective *Conditions Precedent* listed subsequently.

#### I. Collateral

1. Certified copies of the land register excerpts (*Grundbuchauszüge*), providing evidence of registration of the land charges including submission to immediate foreclosure in the agreed ranking.
2. Certified original (*Urschrift*) registration approval (*Eintragungsbewilligung*) of the land charge creation documents (*Grundschuldbestellungsurkunden*) for the *Collateral Assets* and – if so requested or agreed - the certificate of the land charge (*Grundschuldbrief*).
3. Certified and enforceable copies of the notarized amendment deeds (*Nachtragsurkunden*) for the *Collateral Assets*, comprising the in rem submission by the relevant *Borrower* to the immediate foreclosure in the *Collateral Assets* in relation to the payment of a final partial *Land Charge* amount of [...] % ([...] percent) of the respective *Land Charge* amount in accordance with Section 800 of the German Code of Civil Procedure (*Zivilprozessordnung* – “**ZPO**”) and, in addition, the assumption of liability by the relevant *Borrower* personally in the amount of [...] % ([...] percent) of the respective *Land Charge* amount together with the personal submission to the immediate foreclosure.
4. All powers of attorney have been granted in accordance with ANNEX “**COLLATERAL**“, Section 36.1 (“*Land Charges*”).
5. Security purpose agreements (*Sicherungszweckerklärungen*) signed by the *Borrower* with regard to the *Land Charges*.
6. All collateral specified in ANNEX “**COLLATERAL**“, Section 36.2 (“*Assignment of Claims to Restitution (Abtretung der Rückgewähransprüche)*”) through 36.10 (“*Additional Collateral*”) being valid and all necessary and agreed, respectively, registrations, notices and disclosures / notifications, respectively, have been made.
7. Subordination Agreement(s) pursuant to Section 18.7 („*Subordinated Obligations*“) being available.

#### II. Borrower

8. Up to date, certified copy of the commercial register registration (*Handelsregistereintragung*) of the *Borrower* and, if applicable, its general partner.
9. Copies of the articles of association of the *Borrower* and its *general partner* (if applicable) including the list of shareholders.
10. Copies of the signed opening balance sheets of the *Borrower* and its *general partner* (if applicable).
11. *Business Plan* of the *Borrower* for the next 5 (five) years, setting out taxes, capital expenditures (including time table) and the time table and amount of any envisaged disposals of the *Collateral Assets*.
12. Specimen of the signature and proof of authorization (incl. copies of identity cards) of each individual signing the *Loan Agreement* or any *Security Agreement*.

[...] and [...]

### III. Collateral Assets

13. *Determination* of the market values and lending values of the *Collateral Assets*.
14. *Certified* copy/copies of the purchase agreement(s) for the *Collateral Assets* incl. *all material annexes*.
15. *Evidence* that the purchase price for the *Collateral Assets* is due.
16. *Evidence* that the *Collateral Assets* are free of legacies (*Altlasten*) or evidence that the purchase agreement contains adequate provisions for indemnification of any legacies, insofar as any legacy register (*Altlastenregister*) indicates that there is a potential risk of legacy.
17. *Copies* of the property management contract for the *Collateral Assets* and the *Duty of Care-letter*.
18. *Copies* of the commercial lease agreements with regard to an annual net rent of a minimum of € [...] ([...] Euros). All lease agreements have to comply with the written form requirements according to Section 550 BGB.
19. *Copies* of the tenancy schedules (confirmed by the *Borrower's* signature) regarding the *Collateral Assets* disclosing in particular the current annual net rent.
20. *Copies* of all existing insurance policies evidencing that the *Collateral Assets* are adequately insured in accordance with Section 18.1 ("*Insurance*"); alternatively, submission of all provisional insurance coverage confirmations (*vorläufige Deckungsbestätigungen*) with regard to the aforementioned insurances (in which case the insurance policies have to be submitted by [...] at the latest).
21. *Copies* of the official plans/cadastral maps showing the parcel numbers (*Flurnummern*) and the building structure regarding the *Collateral Assets*.
22. *Evidence* that no public encumbrances (*Baulasten*) exist with respect to the *Collateral Assets*. Unless the respective due diligence reports made available to the *Bank* provide unequivocal evidence on this, the *Borrower* has to submit the respective public encumbrances register (*Baulastenverzeichnis*), which shall not comprise any impairing registrations after review by the *Bank*.
23. *Building* specifications (*Baubeschreibungen*) as well as area calculations (*Flächenberechnungen*) and cubature calculations (*Kubaturberechnungen*) regarding the *Collateral Assets*.
24. *Construction* plans (*Baupläne*) and floor plans (*Grundrisse*) regarding the *Collateral Assets*.
25. *Submission* of a satisfactory technical and legal due diligence report regarding the *Collateral Assets*.
26. In case of heritable building rights (*Erbbaurechte*): *Copies* of the heritable building right agreements regarding the *Collateral Assets*. The aforementioned agreements shall not contain any provisions to the detriment of the *Bank*.
27. In case of heritable building rights (*Erbbaurechte*): *Certified* declarations of acquiescence (*Stillhalteerklärungen*) of the respective owner(s) of the *Collateral Assets* with regard to the respective ground rent plus certified declarations of consent of the respective owner(s) to the encumbrance and foreclosure of the heritable building right(s).

### IV. Other Drawdown Conditions

28. The *Financial Covenants* pursuant to Section 17 ("*Financial Covenants*") and all *Undertakings* pursuant to Section 18 ("*Undertakings*") are met and fulfilled.

[...] and [...]

29. *No Event of Default* or potential *Event of Default* pursuant to Section 20.2 (“*Bank’s Right of Termination*”) has occurred or has not been cured.
30. Evidence that an appropriate interest hedge pursuant to Section 9.5 (“*Limitation of Interest Exposure*”) is in place.
31. Evidence that the equity contribution pursuant to Section 7 („*Equity Contribution*“) has been paid (including evidence of source of funds).

**38. ENC.**