

AMENDED TERMS AND CONDITIONS OF THE NOTES

Notes and any interest therein may only be offered, resold, transferred, assigned, pledged or otherwise disposed of in bona fide “offshore transactions” (as defined in, and in reliance on, Regulation S under the U.S. Securities Act of 1933, as amended (the “Securities Act”)) to persons outside the United States not known by the transferor to be U.S. persons (as defined in Regulation S under the Securities Act) by pre-arrangement or otherwise, provided that any Noteholder holding Notes on the Amendment Effective Date (an “Initial Noteholder”) may transfer the Notes (or any interest therein) to any other Initial Noteholder or to any of their respective Affiliates or Related Funds that is a qualified institutional buyer (as defined in Rule 144A under the Securities Act) and a qualified purchaser (as defined in Section 2(a)(51) of, and Rules 2a51-1, 2a51-2 and 2a51-3 under, the United States Investment Act of 1940).

§ 1 DEFINITIONS

In these Terms and Conditions, the following terms will have the following meaning:

~~“Acquired Warehouse Financial Indebtedness” has the meaning set out in § 8(e)(xii).~~ means Indebtedness of a Person or any of its subsidiaries existing at the time such Person becomes a subsidiary or is merged into or consolidated with any other Person or that is assumed in connection with the acquisition of assets from such Person and, in each case, not Incurred by such Person in connection with, or in anticipation or contemplation of, such Person becoming a subsidiary or such merger, consolidation or acquisition.

An “Acquisition of Control” will be deemed to have occurred if, after the ~~date of issue of the Notes, any person or partnership or persons (“Relevant Person(s)”) and/or any person or persons acting on behalf of any such Relevant Person(s)~~ Amendment Effective Date, (irrespective of whether the ~~management board (Vorstand)~~ Board of Directors of the Issuer or the supervisory board (*Aufsichtsrat*) of the Issuer has given its consent thereto), ~~acquire~~

- (a) any person or partnership or persons (“Relevant Person(s)”) and/or any person or persons acting on behalf of any such Relevant Person(s) acquire,
- (i) Control of the Issuer (unless the acquirer is a credit institution, financial service provider or agent that acquires the relevant Shares only temporarily in a transitory function in connection with the implementation of a capital measure or corporate action); or
- (ii) in one or a series of related transactions, all or substantially all of the assets of the Issuer and its Subsidiaries taken as a whole (other than by way of merger, consolidation or other business combination transaction or an acquisition by a Subsidiary of the Issuer), provided that sales of assets of the Issuer and its Subsidiaries (other than a sale of all or substantially all assets of the Issuer and its Subsidiaries taken as a whole in a single transaction) which comply with § 9(e) (Limitation on Sales of Assets) (including sub-paragraph (ii) thereof) shall not constitute or result in an acquisition of all or substantially all of the assets of the Issuer and its Subsidiaries by any person or partnership or persons for purposes of this sub-paragraph (a)(ii); or

~~“Acquisition of Control Record Date” means the Business Day fixed by the Issuer in accordance with § 5(e)(i) which will be not less than 40 nor more than 60 days after the notice of the Acquisition of Control.~~

- (b) a mandatory takeover offer for Shares is required to be made pursuant to applicable law; or
- (c) a voluntary or mandatory takeover offer for Shares is published.

“Additional Amounts” has the meaning set out in § ~~7~~ 8 (*Taxes*).

“Additional Guarantors” has the meaning set out in § 3(d).

“Additional PIK Amount” has the meaning set out in § 4(b)(iv).

~~“Affiliate” means, with respect to~~ any specified Person, means any other Person, directly or indirectly, controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, “control”~~;~~ when used with respect to any ~~specified~~ Person, means the power to direct ~~or cause the direction of~~ the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise;~~and the~~ The terms “controlling” and “controlled” have meanings correlative to the foregoing.

“Affiliate Transaction” has the meaning set out in § 9(f)(i).

“Agency Agreement” means the agency agreement in relation to the Notes between, among others, the Principal Paying Agent, the Issuer and any other parties named therein, as amended, restated or otherwise modified or varied from time to time.

“Agents” has the meaning set out in § 15(a).

“Amendment” has the meaning set out in § 9(d)(ii)(C).

“Amendment Effective Date” means the date on which the resolution of the noteholders’ meeting held on 21 June 2023 regarding, *inter alios*, the amendment of the Terms and Conditions is implemented in accordance with Section 21 SchVG (*vollzogen im Sinne des § 21 SchVG*).

“Asset Disposition” means any direct or indirect sale, lease (other than a lease entered into in the ordinary course of business), conveyance, transfer, assignment or any other disposition, or series of related sales, conveyances, transfers, assignments, leases (other than a lease of property entered into in the ordinary course of business) or other dispositions that form part of a common plan by the Issuer or any of its Subsidiaries, including any disposition by means of a merger, consolidation or similar transaction (each referred to for the purposes of this definition as a “disposition”), of any shares of Capital Stock of any Subsidiary (other than directors’ qualifying shares or shares required by applicable law to be held by a Person other than the Issuer or any of its Subsidiaries) or any other assets of the Issuer or any of its Subsidiaries, other than:

~~“Asset Sale” means:~~

- ~~(a) the sale, lease, conveyance or other disposition of any assets by the Issuer or any of its Subsidiaries; provided that the sale, lease, conveyance or other disposition of all or substantially all of the assets of the Issuer and its Subsidiaries taken as a whole will be governed by the provisions of the Terms and Conditions described under § 10 (Merger, Consolidation or Sale of Assets); and~~
- ~~(b) the issuance of Equity Interests by any Subsidiary or the sale by the Issuer or any of its Subsidiaries of Equity Interests in any Subsidiary of the Issuer (in each case, other than directors’ qualifying shares).~~

~~Notwithstanding the preceding, none of the following items will be deemed to be an Asset Sale:~~

- ~~(i) the lease or sublease of any real estate asset in the ordinary course of business;~~
- ~~(ii) any single transaction or series of related transactions that involves assets having a Fair Market Value of less than the greater of (A) EUR 30,000,000 and (B) 2.5 per cent. of Total Assets;~~
- ~~(iii) a transfer of assets or Equity Interests between or among the Issuer and any Subsidiary;~~
- ~~(iv) an issuance of Equity Interests~~ a disposition by a Subsidiary to the Issuer or ~~to another~~ by the Issuer or a Subsidiary to a Subsidiary;

- ~~(v) the sale, lease or other transfer of accounts receivable, inventory or other assets (other than real property) in the ordinary course of business and any sale or other disposition of damaged, worn-out or obsolete assets or assets that are no longer useful in the conduct of the business of the Issuer and its Subsidiaries;~~
- ~~(vi) licenses and sublicenses by the Issuer or any of its Subsidiaries in the ordinary course of business;~~
- (b) a disposition of cash or Cash Equivalents;
- (c) transactions constituting an Acquisition of Control;
- (d) the granting of Liens permitted by § 9(c) (Limitation on Liens);
- (e) dispositions of receivables in connection with the compromise, settlement or collection thereof or surrender or waiver of contract rights or settlement, release of contract, tort or other claim, in each case, in the ordinary course of business;
- ~~(vii) f) sales, transfers or other dispositions of ~~investments~~ Investments in joint ventures ~~or similar entities~~ to the extent required by, or made pursuant to, customary buy/sell arrangements between, the ~~parties to such~~ joint venture parties set forth in joint venture ~~arrangements~~ agreements and similar binding ~~arrangements~~ agreements; *provided that any cash or Cash Equivalents received in such sale, transfer or disposition is applied in accordance with § 9(e);*~~
- ~~(viii) the granting of Security Interests not prohibited by § 9 (Negative Pledge);~~
- (g) taking by eminent domain, condemnation or any similar action with respect to any property or other assets; provided that any cash or Cash Equivalents received in such action is applied in accordance with § 9(e);
- ~~(ix) the sale or other disposition of cash and Cash Equivalents~~ lease or sublease of any real estate asset in the ordinary course of business;
- (i) issuance of equity interests in Corestate Capital France HoldCo SAS or any of its subsidiaries in connection with equity incentive programs for employees and officers and directors;
- ~~(x) a Restricted Payment that does not violate § 12-9 (Restricted Payments);~~ b) a Permitted Investment or any transaction specifically excluded from the definition of “Restricted Payments”, or, solely for purposes of § 11(b) and (c), asset sales, the proceeds of which are used to make such Restricted Payment or such payment specifically excluded from the definition of “Restricted Payments”; and
- (k) any enforcement action taken in accordance with the Intercreditor Agreement.

“Average Life” means, as of the date of determination, with respect to any Indebtedness, the quotient obtained by dividing (i) the sum of the products of the numbers of years from the date of determination to the dates of each successive scheduled principal payment of such Indebtedness multiplied by the amount of such payment by (ii) the sum of all such payments.

“Board of Directors” means, with respect to the Issuer or a Subsidiary, as the case may be, the management board (or other body or individual (including a managing director) performing functions similar to any of those performed by a management board or any committee thereof duly authorized to act on behalf of such board (or other body)).

“Bridge Financing Notes” means collectively the EUR 10,000,000 senior secured notes issued by the Issuer in 2022 (ISIN: DE000A3LBTZ4) and the EUR 25,000,000 senior secured notes issued by the Issuer in 2023

(ISIN: DE000A3LE0W7) which will be repaid in full with the proceeds of the New Senior Secured Notes or exchanged into Super Senior Notes on or about the Amendment Effective Date.

- ~~(xi) the disposition of receivables in connection with the compromise, settlement or collection thereof in the ordinary course of business or in bankruptcy or similar proceedings and exclusive of factoring or similar arrangements;~~
- ~~(xii) the foreclosure, condemnation or any similar action with respect to any property or other assets or a surrender or waiver of contract rights or the settlement, release or surrender of contract, tort or other claims of any kind, and the unwinding of any Hedging Obligations; and~~
- ~~(xiii) the disposition of assets to a Person who is providing services (the provision of which have been or are to be outsourced by the Issuer or any Subsidiary to such Person) related to such assets.~~

~~“Asset Sale Offer” has the meaning set out in § 11(c).~~

~~“Benchmark Yield” has the meaning set out in § 5(b).~~

~~“Business Day” means each any day which is a day (other than a Saturday or a Sunday) on which (a)(i) the TransEuropean Automated Real time Gross Settlement Express Transfer System 2 (TARGET2) and (ii) the Clearing System settle payments, and (b) commercial banks and foreign exchange markets in Frankfurt am Main are open for business.~~
i) banks are open for general business in Frankfurt, Luxembourg and London, and (ii) Clearstream Banking AG or any successor clearing system as well as all relevant parts of the real time gross settlement system operated by the Eurosystem (T2) or any successor settlement system are operational to forward payments in euro.

~~“Calculation Agent” has the meaning set out in § 15(a).~~

~~“Call Redemption Date” means the date fixed for redemption in the Issuer’s notice in accordance with § 5(b), which must be a Business Day.~~

~~“Capital Capitalized Lease Obligation” means any lease of property for which amounts relating thereto representing the obligation to pay future rental payments that would be recognized as a liability on the Issuer’s consolidated balance sheet on the basis of IFRS. The amount of Indebtedness will be, at the time any determination is to be made, the amount of the liability in respect of a capital lease that would at that time be required to be capitalized on a balance sheet (excluding the footnotes thereto) prepared in accordance with IFRS as in effect on the Issue Date thereof is to be made as determined on the basis of IFRS 16 (Leases), and the stated maturity thereof shall will be the date of the last payment of rent or any other amount due under such lease prior to the first date upon which such lease may be prepaid by the lessee terminated without payment of a penalty.~~

~~“Capital Stock” of any Person means any and all shares of, interests, rights to purchase, warrants or options for, participations or other equivalents of or partnership or other interests in (however designated), equity of such Person, including any preference shares, (but excluding any debt securities convertible into such equity).~~

~~“Cash Equivalents” means:~~

- ~~(a) securities or other direct obligations, issued or directly and fully guaranteed or insured by the United States of America, Canadian, Japanese, Australian, Swiss, Norwegian or United Kingdom governments, the European Union or any Government or any agency or instrumentality of the United States or a member state of the European Union (other than Cyprus, Greece, Portugal or Spain) or, in each case, on 31 December 2003 or Switzerland or~~

- any agency or instrumentality thereof (*provided, however, that the full faith and credit of ~~such country or~~ the United States, such member state of the European Union or Switzerland is pledged in support thereof*); ~~having maturities of not more than two years~~ one year from the date of acquisition;
- (b) certificates of deposit, time deposits, ~~eurodollar~~ Eurodollar time deposits, overnight bank deposits or bankers' acceptances having maturities of not more than one year from the date of acquisition thereof issued by any ~~lender or by any~~ commercial bank or trust company ~~(i) whose commercial paper is rated at least "A-1" or the~~ *provided that such bank or trust company has capital, surplus and undivided profits aggregating in excess of EUR 250 million (or the foreign currency equivalent thereof as of the date of such investment) and whose long term debt is rated "Baa3" or higher by Moody's or "BBB-" or higher by S&P or at least "P-1" or the equivalent thereof by Moody's (or if at the time neither is issuing comparable ratings, then a comparable rating category of another internationally recognized rating organization) or (ii) (in the event that the bank or trust company does not have commercial paper which is rated) having combined capital and surplus in excess of EUR 250,000,000* agency;
 - (c) repurchase obligations with a term of not more than seven days for underlying securities of the types described in ~~clauses sub-paragraphs~~ (a) and (b) of this definition entered into with any bank meeting the qualifications specified in ~~clause sub-paragraph~~ (b) above of this definition;
 - (d) commercial paper rated at the time of acquisition thereof at least "A-2" or the equivalent thereof by S&P or "P-2" or the equivalent thereof by Moody's, or carrying an equivalent rating by ~~an~~ internationally recognized rating ~~organization~~ agency, if both of the two named rating agencies cease publishing ratings of investments ~~or, if no rating is available in respect of the commercial paper, the issuer of which has an equivalent rating in respect of its long term debt~~, and in any case maturing within one year after the date of acquisition thereof; and
 - (e) ~~indebtedness or preferred stock issued by Persons with a rating of "BBB-" or higher from S&P or "Baa3" or higher from Moody's (or, if at the time, neither is issuing comparable ratings, then a comparable rating of another recognized rating organization) with maturities of 12 months or less from the date of acquisition;~~
 - (f) ~~bills of exchange issued in the United States, Canada, the European Union or any member state of the European Union (other than Cyprus, Greece, Portugal or Spain), Switzerland, Norway or Japan eligible for rediscount at the relevant central bank and accepted by a bank (or any dematerialized equivalent); and~~
 - (g) interests in any investment company; or money market; ~~enhanced high yield fund or other investment funds~~ which invests ~~90~~ 95 per cent. or more of its assets in instruments of the type specified in ~~clauses sub-paragraphs~~ (a) through (g) above of this definition.

"Cashflow Forecast" has the meaning set out in § 9(g)(iii).

"Clearing System" means Clearstream Banking AG, Frankfurt am Main ("Clearstream Frankfurt") and any successor in such capacity.

"Co-Investment Entities" means (i) entities holding, directly or indirectly, any real estate assets to mitigate the applicability of German real estate transfer tax (or equivalent tax in any other jurisdiction) and (ii) funds established, organized or advised by the Issuer or any of its Subsidiaries; provided, in each case, that the direct Investment by the Issuer or its Subsidiaries in any such entity or fund does not exceed 10.1 per cent. of the relevant entity's or fund's Capital Stock or ownership interest.

"Collateral" has the meaning set forth in § 3(b).

"Condition Precedent" means collectively the occurrence of all of the following events within the relevant time periods set out under paragraphs (a) and (b) below:

- (a) the Lock-up Agreement has been entered into by all parties thereto and has become effective, in each case on or before 2 December 2022, 24:00hrs CET, which is evidenced to have occurred by receipt of a notice by the Principal Paying Agent on or before 5 December 2022, 24:00hrs CET signed by (i) an attorney of Milbank LLP acting on behalf of the majority of the holders of the Notes and the majority of the holders of the EUR 200,000,000 convertible notes 2017/2022 issued by the Issuer and (ii) a member of the Issuer's management board in the following form (the "**Lock-up Agreement Notice**"):

"To: [BNP Paribas Securities Services S.C. A., Zweigniederlassung Frankfurt] in its capacity as Principal Paying Agent

~~EUR 300,000,000 notes 2018/2023 issued by Corestate Capital Holding S.A. (ISIN DE000A19YDA9) (the "Notes")~~

~~We refer to the resolution of the holders of the Notes of 28 November 2022 pursuant to which an amendment of the terms and conditions of the Notes has been resolved upon (the "**Amendment Resolution**"). This is the notice referred to in paragraph (a) of the definition of "Condition Precedent" in the terms and conditions of the Notes as amended by the Amendment Resolution.~~

~~We hereby confirm that (i) the Lock-up Agreement (as defined in the terms and conditions of the Notes as amended by the Amendment Resolution) has been entered into by all parties thereto and has become effective, in each case on or before 2 December 2022, 24:00hrs CET, and (ii) with receipt of this notice by the Principal Paying Agent the event specified in paragraph (a) of the definition of "Condition Precedent" (as defined in the terms and conditions of the Notes as amended by the Amendment Resolution) has occurred.~~

[Signatures]";

and

- (b) the Principal Paying Agent has received a notice signed by each member of the Issuer's management board in the following form (the "**EGM Notice**") on or before 31 December 2022, 24:00hrs CET:

"To: [BNP Paribas Securities Services S.C. A., Zweigniederlassung Frankfurt] in its capacity as Principal Paying Agent

~~EUR 300,000,000 notes 2018/2023 issued by Corestate Capital Holding S.A. (ISIN DE000A19YDA9) (the "Notes")~~

~~We refer to the resolution of the holders of the Notes of 28 November 2022 pursuant to which an amendment of the terms and conditions of the Notes has been resolved upon (the "**Amendment Resolution**"). This is the notice referred to in paragraph (b) of the definition of "Condition Precedent" in the terms and conditions of the Notes as amended by the Amendment Resolution.~~

~~We hereby confirm that on or before 31 December 2022, 24:00hrs CET:~~

- ~~(i) the composition of the supervisory board of the Issuer consisting of three (3) members has changed as follows:~~

- a. ~~Not less than two (2) of the existing members of the supervisory board of the Issuer as of 21 November 2022 resigned with immediate effect on or after 24 November 2022;~~
 - b. ~~Not less than two (2) candidates nominated by the majority of the holders of the Notes and the majority of the holders of the EUR 200,000,000 convertible notes 2017/2022 issued by the Issuer have been appointed as members of the supervisory board of the Issuer on or after 24 November 2022; and~~
- (ii) ~~the management board of the Issuer has presented its board report on the proposal that the management board of the Issuer shall be authorised to increase the share capital of the Issuer beyond the limits currently imposed by the articles of association of the Issuer as well as on the corresponding withdrawal of pre-emption rights of existing shareholders;~~
- (iii) ~~an extraordinary general shareholders' meeting of the Issuer has resolved on the management board's proposal to be authorised to:~~
- a. ~~issue new shares from an increased authorised share capital in the total amount of fifteen million Euro (EUR 15,000,000), represented by a maximum of two hundred million (200,000,000) shares without nominal value in the Issuer, for a duration of 5 years following the date of the general meeting, to withdraw pre-emption rights of existing shareholders and to consequently amend the articles of association of the Issuer; and~~
 - b. ~~carry out a free allocation of existing shares, to issue shares free of charge to certain persons and to determine the terms and conditions of any such allocation.~~

We hereby also confirm that with receipt of this notice by the Principal Paying Agent the event specified in paragraph (b) of the definition of Condition Precent (as defined in the terms and conditions of the Notes as amended by the Amendment Resolution) has occurred.

[Signatures]“;

provided always that, if either (y) the Lock-up Agreement Notice has not been received by the Principal Paying Agent on or before 5 December 2022, 24:00hrs CET, or (z) the EGM Notice has not been received by the Principal Paying Agent on or before 31 December 2022, 24:00hrs CET, the occurrence of the Condition Precedent shall be excluded.

“**Consolidated EBITDA**” for any period means consolidated net profit (loss) of the Group for such period:

- (a) **plus** (to the extent deducted in calculating consolidated earnings for such period) any net expenses for paid or accrued interest, commission, fees, discounts and other finance payments incurred or payable ~~by any member of the Group;~~
- (b) **plus** (to the extent deducted in calculating consolidated earnings for such period) net expenses for income taxes, current and deferred;
- (c) **excluding** the amount of any earnings of ~~any member of the Group~~ which is attributable to the minority interest of any shareholder of or, ~~as the case may be,~~ partner in such member of the Group who is not a member of the Group;
- (d) **plus** (to the extent deducted in calculating consolidated earnings for such period) depreciation, amortization and other non-cash charges and expenses (including, without limitation, write-downs and impairment of property, plant, equipment, intangibles, goodwill and other long-lived assets and the impact of purchase accounting on ~~the Issuer and its Subsidiaries~~ for such period);

- (e) ~~plus (to the extent deducted in calculating consolidated earnings for such period) any fair value adjustments of investment properties;~~
- (f) ~~eliminating impairment charges of at equity investments;~~
- (g) ~~eliminating any unrealized exchange gains and losses from the marking to market of derivatives or primary financial instruments;~~
- (h) ~~plus (to the extent deducted in calculating consolidated earnings for such period) restructuring expenses according to IAS 37 and termination expenses according to IAS 19;~~
- (i) ~~plus (to the extent deducted in calculating consolidated earnings for such period) extraordinary, exceptional, unusual or non-recurring expenses, losses or charges, including, without limitation, expenses or charges related to the issuance of Capital Stock or indebtedness, any amendment, refinancing or early extinguishment of indebtedness, any acquisition, investment, disposition, recapitalization or listing (in each case whether or not successful), any reorganization, restructuring, redundancy or severance, or any expenses or charges of the types for which adjustments or add backs were made in calculating "Adjusted EBITDA" for any of the years ended December 31, 2017, 2016 or 2015, included in the Prospectus of the Issuer, dated on or about March 26, 2018, relating to the offering of the Notes (in each case determined in good faith by the Issuer); and~~
- (j) ~~eliminating extraordinary and non-recurring income.~~

~~Consolidated EBITDA shall be calculated in accordance with IFRS (except to the extent expressly provided otherwise by these Terms and Conditions) by reference to the Consolidated Financial Statements of the Issuer for the relevant period, consistent with the accounting principles applying to the financial statements of the Issuer by reference to which such calculations are made and without deducting or crediting any item more than once in any calculation.~~

~~"Consolidated Financial Statements" means, with respect to any Person, the consolidated financial statements and notes to those financial statements and the group management report of that Person and its subsidiaries prepared in accordance with IFRS as well as interim consolidated financial statements and quarterly statements (as of the relevant date).~~

~~"Consolidated Net Financial Indebtedness" means the net financial indebtedness of the Issuer and any of its Subsidiaries, on a consolidated basis determined in accordance with IFRS, as "long term financial liabilities to banks", "short term financial liabilities to banks", "other long term financial liabilities" and "other short term financial liabilities", less "cash and cash equivalents" (each as reflected on the balance sheet of the Consolidated Financial Statements of the Issuer), but excluding any lease, concession or license of property (or guarantee thereof) which would be considered an operating lease under IFRS as in effect on the Issue Date, or any prepayments of deposits received from clients or customers in the ordinary course of business or consistent with past practice.~~

~~"Consolidated Net Income~~Contingent Obligations~~" means, with respect to any specified Person for any period, the aggregate of the net income (loss) of such Person and its Subsidiaries for such period, on a consolidated basis, determined in accordance with IFRS and without any reduction in respect of preferred stock dividends; provided that: Person, any obligation of such Person guaranteeing in any manner, whether directly or indirectly, any lease in the ordinary course of business or consistent with past practice, dividend or other obligation that, in each case, does not constitute Indebtedness ("primary obligations") of any other Person (the "primary obligor"), including any obligation of such Person, whether or not contingent;~~

- (a) to purchase any such primary obligation or any property constituting direct or indirect security therefor;
- ~~(a) the net income (loss) of any Person that is not a Subsidiary or that is accounted for by the equity method of accounting will be included only to the extent of the amount of dividends or similar distributions paid in cash to the specified Person or a Subsidiary which is a Subsidiary of the Person;~~
- ~~(b) solely for the purpose of determining the amount available for Restricted Payments, any net income (loss) of any Subsidiary will be excluded if such Subsidiary is subject to restrictions, directly or indirectly, on the payment of dividends or the making of distributions by such Subsidiary, directly or indirectly, to the Issuer by operation of the terms of such Subsidiary's charter or any agreement, instrument, judgment, decree, order, statute or governmental rule or regulation applicable to such Subsidiary or its shareholders (other than (i) restrictions that have been waived or otherwise released, (ii) restrictions pursuant to this Terms and Conditions or (iii) contractual restrictions in effect on the Issue Date with respect to the Subsidiary and other restrictions with respect to such Subsidiary that, taken as a whole, are not materially less favorable to the Noteholders of the Notes than such restrictions in effect on the Issue Date, except that the Issuer's equity in the net income of any such Subsidiary for such period will be included in such Consolidated Net Income up to the aggregate amount of cash or Cash Equivalents actually distributed or that could have been distributed by such Subsidiary during such period to the Issuer or another Subsidiary as a dividend or other distribution (subject, in the case of a dividend to another Subsidiary, to the limitation contained in this clause);~~
- ~~(c) any net gain (or loss) realised upon the sale or other disposition of any asset or disposed operations of the Issuer or any Subsidiaries (including pursuant to any sale leaseback transaction) which is not sold or otherwise disposed of in the ordinary course of business (as determined in good faith by the Issuer) will be excluded;~~
- ~~(d) any one time non cash charges or any amortization or depreciation resulting from purchase accounting, in each case, in relation to any acquisition of, or merger or consolidation with, another Person or business or resulting from any reorganization or restructuring involving the Issuer or its Subsidiaries will be excluded;~~
- ~~(ea) the cumulative effect of a change in accounting principles will be excluded;~~to advance or supply funds;
- ~~(f) any extraordinary, exceptional or non-recurring gains or losses or any charges in respect of any restructuring, redundancy or severance (in each case as determined in good faith by the Issuer) will be excluded;~~
- ~~(g) any unrealised gains or losses in respect of Hedging Obligations or any ineffectiveness recognised in earnings related to qualifying hedge transactions or the fair value or changes therein recognised in earnings for derivatives that do not qualify as hedge transactions, in each case, in respect of Hedging Obligations will be excluded;~~
- ~~(h) any non cash compensation charge or expenses arising from any grant of stock, stock options or other equity based awards will be excluded;~~
- ~~(i) any goodwill or other intangible asset impairment charges will be excluded;~~for the purchase or payment of any such primary obligation; or
- (ii) to maintain the working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor; or

(iii) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation against loss in respect thereof.

- ~~(j) all deferred financing costs written off and premium paid in connection with any early extinguishment of Financial Indebtedness and any net gain or loss from any write off or forgiveness of Financial Indebtedness will be excluded; and~~
- ~~(k) all fair value adjustments on investment properties will be excluded.~~

“Consolidated Net Interest” for any period means:

- ~~(a) consolidated interest and similar expenses (including amortization of original issue discount) of the Group incurred on Financial Indebtedness (including, for the avoidance of doubt (and without double counting), the interest expense on Financial Indebtedness of another Person to the extent such interest is actually paid by a member of the Group under any guarantee or indemnity) (calculated on a consolidated basis), whether payable in cash or capitalised;~~
- ~~(b) plus the consolidated imputed interest from finance lease obligations of the Group in respect of that period;~~
- ~~(c) excluding (i) accretion or accrual of discounted liabilities other than Financial Indebtedness, (ii) any expense resulting from the discounting of any Financial Indebtedness in connection with purchase accounting in connection with any acquisition to the extent otherwise included in interest expense under IFRS, (iii) penalties and interest related to taxes, (iv) amortization or write off of deferred financing fees, debt issuance costs, terminated hedging obligations and other commissions, financing fees and expenses, (iv) any expensing of bridge, commitment or other financing fees and (v) any payments on any agreement that is classified as an “operating lease” under IFRS as in effect on the Issue Date; and~~
- ~~(d) minus consolidated interest and similar income of the Group for such period.~~

~~Consolidated Net Interest shall be calculated in accordance with IFRS (except to the extent expressly provided otherwise by these Terms and Conditions) by reference to the Consolidated Financial Statements of the Issuer for the relevant period, consistent with the accounting principles applying to the financial statements of the Issuer by reference to which such calculations are made and without deducting or crediting any item more than once in any calculation.~~

“Consolidated Net Leverage Ratio” means, as of any date of determination, the ratio of (a) Consolidated Net Financial Indebtedness as of such date to (b) Consolidated EBITDA for the Relevant Period, in each case calculated with such pro forma and other adjustments as are consistent with the pro forma provisions set forth in the definition of “Interest Coverage Ratio”.

“Control” means direct or indirect, legal and/or beneficial, ownership of Shares by a person acting alone or as part of a concert (within the meaning of the Luxembourg Takeover Law), carrying an aggregate 33¹/₃ per cent. or more of the voting rights for the Issuer (or instead a higher percentage that will, in future after a change in law, trigger an obligation to make a mandatory takeover offer).

“Credit Facility” means ~~one or more debt facilities, instruments or arrangements incurred (including revolving credit facilities, commercial paper facilities and overdraft facilities) or commercial paper facilities or indentures or trust deeds or note purchase agreements, in each case, with banks, other institutions, funds or investors, providing for revolving credit loans, term loans, performance guarantees, receivables financing (including through the sale of receivables to such institutions or to special purpose entities formed to borrow from such institutions against such receivables), letters of credit, bonds, notes debentures or other corporate debt instruments or other Indebtedness, in each case, as amended, restated, modified, renewed, refunded,~~

~~replaced, restructured, refinanced, repaid, increased or extended in whole or in part from time to time (and whether in whole or in part and whether or not with the original administrative agent and lenders or another administrative agent or agents or trustees or other banks or institutions and whether provided under one or more credit or other agreements, indentures, financing agreements or otherwise) and in each case including all agreements, instruments and documents executed and delivered pursuant to or in connection with the foregoing (including any notes and letters of credit issued pursuant thereto and any guarantee and collateral agreement, patent and trademark security agreement, mortgages or letter of credit applications and other guarantees, pledges, agreements, security agreements and collateral documents). Without limiting the generality of the foregoing, the term “Credit Facilities” shall include any agreement or instrument (a) changing the maturity of any indebtedness incurred thereunder or contemplated thereby, (b) adding Subsidiaries of the Issuer as additional borrowers, issuers or guarantors thereunder, (c) increasing the amount of indebtedness incurred thereunder or available to be borrowed thereunder or (d) otherwise altering the terms and conditions thereof.~~

~~“Currency Agreement” means, in respect of a Person, any spot or forward foreign exchange agreements and currency swap, currency option or other similar financial agreements or arrangements designed to protect such Person against or manage exposure to fluctuations in foreign currency exchange rates.~~

“Custodian” means any bank or other financial institution with which the Noteholder maintains a securities account in respect of any Notes and having an account maintained with the Clearing System and includes Clearstream Frankfurt.

“Day Count Fraction” means, in respect of the calculation of an amount of interest or Additional PIK Amounts on any Note for any period of time (from and including the first day of such period to but excluding the last day of such period) (the “Interest Calculation Period”):

- (a) if the Interest Calculation Period is equal to or shorter than the Determination Period during which it falls, the number of days in the Interest Calculation Period divided by the product of (i) the number of days in such Determination Period and (ii) the number of Determination Periods normally ending in any year; and
- (b) if the Interest Calculation Period is longer than one Determination Period, the sum of:
 - (i) the number of days in such Interest Calculation Period falling in the Determination Period in which the Interest Calculation Period begins divided by the product of (A_x) the number of days in such Determination Period and (B_y) the number of Determination Periods normally ending in any year; and
 - (ii) the number of days in such Interest Calculation Period falling in the next Determination Period divided by the product of (A_x) the number of days in such Determination Period and (B_y) the number of Determination Periods normally ending in any year.

~~“Designated Non-Cash Consideration” means the Fair Market Value of non-cash consideration received by the Issuer or one of its Subsidiaries in connection with an Asset Sale that is so designated as “Designated Non-Cash Consideration” pursuant to an Officers’ Certificate, setting forth the basis of such valuation, less the amount of cash or Cash Equivalents received in connection with a subsequent sale of such Designated Non-Cash Consideration.~~

“Default” means any event which is, or after notice or passage of time or both would be, an Event of Default.

“Determination Date” means each ~~15 April~~30 June and ~~15 October~~31 December.

“Determination Period” means each period from and including a Determination Date in any year to but excluding the next Determination Date.

~~“Equity Interests” means Capital Stock and all warrants, options or other rights to acquire Capital Stock (but excluding any debt security that is convertible into, or~~ **Disqualified Stock” means, with respect to any Person, any Capital Stock of such Person which by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable) or upon the happening of any event:**

- (a) matures or is mandatory redeemable pursuant to a sinking fund obligation or otherwise;
- (b) is convertible or exchangeable for; Indebtedness or Disqualified Stock (excluding Capital Stock); which is convertible or exchangeable solely at the option of the Issuer or a Subsidiary); or

~~“Equity Offering” means a sale for cash after the Issue Date of Capital Stock of the Issuer.~~

- (c) is redeemable at the option of the holder of the Capital Stock in whole or in part,

in each case on or prior to the date that is 91 days after the earlier of the date (i) of the stated maturity of the Notes or (ii) on which there are no Notes outstanding, provided, however, that only the portion of Capital Stock which so matures or is mandatorily redeemable, is so convertible or exchangeable or is so redeemable at the option of the holder thereof prior to such date shall be deemed to be Disqualified Stock; provided further, however, that any Capital Stock that would constitute Disqualified Stock solely because the holders thereof have the right to require the Issuer to repurchase such Capital Stock upon the occurrence of a change of control or asset disposition (each defined in a substantially identical manner to the corresponding definitions in the Terms and Conditions) shall not constitute Disqualified Stock if the terms of such Capital Stock (and all such securities into which it is convertible or for which it is ratable or exchangeable) provide that the Issuer may not repurchase or redeem any such Capital Stock (and all such securities into which it is convertible or for which it is ratable or exchangeable) pursuant to such provision prior to compliance by the Issuer with the provisions as set forth under § 5(d) (Mandatory Redemption in Case of an Acquisition of Control) and § 9(c) (Limitation on Sales of Assets) and such repurchase or redemption complies with § 9(b) (Limitation on Restricted Payments).

“Escrowed Proceeds” means the proceeds from the offering of any debt securities or other Indebtedness paid into escrow accounts with an independent escrow agent on the date of the applicable offering or Incurrence pursuant to escrow arrangements that permit the release of amounts on deposit in such escrow accounts upon satisfaction of certain conditions or the occurrence of certain events. The term “Escrowed Proceeds” shall include any interest earned on the amounts held in escrow.

“Euro Equivalent” means, with respect to any monetary amount in a currency other than euro, at any time for the of determination thereof, the amount of euro obtained by converting such foreign-currency other than euro involved in such computation into euro at the spot rate for the purchase of euro with the applicable foreign-currency other than euro as published in The the Financial Times in the “Currency Rates and Financial Data” section (or, if The the Financial Times is no longer published, or if such information is no longer available in The the Financial Times, such source as may be selected in good faith by the Issuer) on the date that is two Business Days prior to of such determination. Except as expressly provided otherwise, whenever it is necessary to determine whether the Issuer or any of its Subsidiaries has complied with any covenant or other provision in the Terms and Conditions or if there has occurred an Event of Default and an amount is expressed in a currency other than the euro, such amount will be treated as the Euro Equivalent determined as of the date such amount is initially determined in such non-euro currency.

“Event of Default” has the meaning set out in § 1410(a).

~~“Excess Proceeds” has the meaning set out in § 11(e).~~

“Excess Cash” means the aggregate amount by which the Free Liquidity of the Issuer and its Subsidiaries exceeds EUR 25 million on a Relevant Date.

“Existing Indebtedness” means all Indebtedness of the Issuer and its Subsidiaries outstanding on the Amendment Effective Date after giving effect to the use of proceeds of the Super Senior Notes; for the avoidance of doubt, “Existing Indebtedness” does not include the Bridge Financing Notes.

“Fair Market Value” means the value that would be paid by a willing buyer to an unaffiliated willing seller in an arm’s length transaction ~~not involving distress~~ of either party, determined in good faith by the ~~Issuer’s chief executive officer, chief principal~~ financial officer ~~or a responsible accounting or financial~~ and the principal executive officer of the Issuer or the Board of Directors of the Issuer.

“FATCA Withholding” has the meaning set out in § 78 (Taxes).

“Free Liquidity” means the aggregate amount of cash and cash equivalent investments held by any member of the Group plus the commitments at the Relevant Date available to the Issuer and its Subsidiaries under any working capital financing arrangements less any Trapped Cash (without double counting).

“Full Cash Interest Amount” has the meaning set out in § 4(b)(i).

“Gießen Property” means the shopping center “Galerie Neustädter Tor”, the related car park and related properties.

“Global Note” has the meaning set out in § 2(b).

“Group” means the Issuer and all of its direct or indirect Subsidiaries from time to time.

“Guarantee” means any obligation, contingent or otherwise, of any Person directly or indirectly guaranteeing any Indebtedness of any other Person, including any such obligation, direct or indirect, contingent or otherwise, of such Person:

- (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness of such other Person (whether arising by virtue of partnership arrangements, or by agreement to keep-well, to purchase assets, goods, securities or services, to take-or-pay, or to maintain financial statement conditions or otherwise); or
- (b) entered into for purposes of assuring in any other manner the obligee of such Indebtedness of the payment thereof or to protect the obligee against loss in respect thereof (in whole or in part);

provided, however, that the term “Guarantee” shall not include endorsements for collection or deposit in the ordinary course of business. The term “Guarantee” used as a verb has a corresponding meaning.

“Guarantors” means the Original Guarantors and the Additional Guarantors.

“Hedging Obligations” means, with respect to any specified Person, the obligations of such Person under:

- (a) interest rate swap agreements (whether from fixed to floating or from floating to fixed), interest rate cap agreements and interest rate collar agreements;
- (b) other agreements or arrangements designed to manage interest rates or interest rate risk; and
- (c) other agreements or arrangements designed to protect such Person against fluctuations in currency exchange rates, or commodity prices.

“IFRS” means the International Financial Reporting Standards as issued by the International Standards Board and as adopted by the European Union and in effect on the Amendment Effective Date, or with respect to § 9(g) (Reports), as in effect from time to time.

“Incur” means issue, create, assume, Guarantee, incur or otherwise become liable for (contingently or otherwise); provided, however, that any Indebtedness or Capital Stock of a Person existing at the time such Person becomes a Subsidiary (whether by merger, consolidation, acquisition or otherwise) shall be deemed to

be Incurred by such Subsidiary at the time it becomes a Subsidiary; and further *provided* that for purposes of paragraph (i) of § 9(a) (*Limitation on Indebtedness*) the obligation to pay the deferred and unpaid purchase price of property is considered Incurred on the date of signing the related purchase agreement if the delivery and taking title of such property under such purchase agreement is not subject to any conditions within the control of the purchaser and such delivery and taking title of such property will be completed less than six months after the signing of the related purchase agreement. The terms “Incurred”, “Incurrence” and “Incurring” have meanings correlative to the foregoing.

“Indebtedness”

“Financial Indebtedness” (a) means, with respect to any Person, on any date of determination (without duplication) ~~any indebtedness for or in respect of:~~

- (a) the principal of indebtedness ~~of such Person~~ for borrowed money ~~borrowed~~;
- (b) the principal of obligations ~~of such Person~~ evidenced by bonds, debentures, notes, ~~commercial papers or any~~ or other similar ~~instrument~~ instruments;
- (c) iii) all reimbursement obligations in respect of letters of credit, bankers’ acceptances or other similar instruments (except to the extent such reimbursement ~~obligations relate to trade payables and such obligations are~~ obligation relates to a trade payable or other obligation not constituting Indebtedness and such obligation is satisfied within 30 days of ~~incurrence~~), ~~but only to the extent that the underlying obligation in respect of which the instrument was issued would be treated as Financial Indebtedness~~ Incurrence);
- (d) the principal component of all obligations to pay the deferred and unpaid purchase price of property (except trade payables or similar obligations to trade creditors accrued in the ordinary course of business), where the deferred payment is arranged primarily as a means of raising finance, which purchase price is due more than six months after the date of placing such property in service or taking delivery and title thereto;
- (e) ~~representing Capital Lease Obligations;~~
- (f) ~~representing the balance deferred and unpaid of the purchase price of any property or services (except trade payables or similar obligations, including accrued expenses owed, to a trade creditor) due more than one year after such property is acquired or such services are completed;~~
- (g) ~~representing any Hedging Capitalized Lease Obligations in respect of interest rate or currency hedging; and~~
- (h) the amount of any liability of such Person in respect of any guarantee or indemnity given by that Person for any Financial Indebtedness of another Person described in paragraphs (a) to (g) above,
 - (i) the principal component or liquidation preference of all obligations of such Person with respect to the redemption, repayment or other repurchases of any Disqualified Stock or, with respect to any Subsidiary, preferred stock (but excluding any accrued dividends);
 - (ii) the principal component of Indebtedness of other Persons to the extent Guaranteed by the Issuer or a Subsidiary;
 - (iii) the principal component of all Indebtedness of other Persons secured by a Lien on any asset of the Issuer or any Subsidiary, whether or not such Indebtedness is assumed by the Issuer or any Subsidiary; provided, however, that the amount of such Indebtedness will be

the lesser of (a) the Fair Market Value of such assets at such date of determination and (b) the amount of such Indebtedness of such other Person; and

- (ix) to the extent not otherwise included in this definition, net obligations of such Person under Hedging Obligations (the amount of any such obligations to be equal at any time to the termination value of such agreement or arrangement giving rise to such obligation that would be payable by such Person at such time),

~~in each such case only~~ if and to the extent ~~the relevant amount or obligation is recorded as “indebtedness” on any of the preceding items (other than letters of credit and Hedging Obligations) would appear as a liability upon~~ a balance sheet (excluding the footnotes thereto) of ~~such~~the specified Person prepared in accordance with IFRS; ~~provided that in no event shall any of the following constitute Financial Indebtedness:~~

- (b) Notwithstanding the other provisions of this definition, in no event shall the following constitute Indebtedness:

- (i) ~~obligations under any cash management facilities, other than to the extent a net obligation for borrowed money is owed to any third party (other than the Issuer or a Subsidiary) thereunder~~Subordinated Shareholder Debt;
- (ii) ~~any lease, concession or license of property (or guarantee thereof) which would be considered an operating lease under IFRS as in effect on the Issue Date, or any prepayments of deposits received from clients or customers in the ordinary course of business or consistent with past practice;~~
- (iii) in connection with the purchase by the Issuer or any Subsidiary of any business, any post-closing payment adjustments to which the seller may become entitled to the extent such payment is determined by a final closing balance sheet or such payment depends on the performance of such business after the closing; *provided*, however, that, at the time of closing, the amount of any such payment is not determinable and, to the extent such payment thereafter becomes fixed and determined, the amount is paid ~~in a timely manner~~within 30 days thereafter;
- (iii) Liabilities in respect of obligations (other than in connection with the borrowing of money) related to standby letters of credit, performance guarantees, warranty guarantees, advanced payment guarantees, bid guarantees or bonds or surety bonds provided by or at the request of the Issuer or any Subsidiary in the ordinary course of business (whether or not secured) to the extent such letters of credit, guarantees or bonds are not drawn upon or, if and to the extent drawn upon, are honored in accordance with their terms and if, to be reimbursed, are reimbursed no later than 30 days following receipt by such Person of a demand for reimbursement following payment on the letter of credit, guarantee or bond; *provided that if such amounts are not reimbursed on or prior to 30 days following receipt by such Person of a demand for reimbursement, then such amounts due shall become Indebtedness Incurred on the date of the expiry of such 30-day period;*
- (iv) ~~deposits collected from tenants in connection with lease agreements; and~~Contingent Obligations in the ordinary course of business; or
- (v) for the avoidance of doubt, any obligations in respect of workers' compensation claims, early retirement or termination obligations, pension fund obligations or contributions or similar claims, obligations or contributions or social security or wage ~~taxes~~Taxes.

~~“Global Note” has the meaning set out in § 2(b).~~

A ~~“Gross-up Event”~~ will occur if, as a result of any change in, or amendment or clarification to, the laws, regulations or other rules of the Issuer’s country of domicile for tax purposes, any of its political subdivisions or any authority or any other agency of or in such country having power to tax (including in case any such change, amendment or clarification has retroactive effect), or as a result of any change in, or amendment or clarification to, the interpretation or application, or as a result of any interpretation or application made for the first time, of any such laws, regulations or other rules by any legislative body, court or authority (including the enactment of any legislation and the publication of any decision of any court or authority), which change or amendment or clarification becomes effective on or after the date of issue of the Notes, the Issuer has or will become obliged to pay Additional Amounts pursuant to ~~§ 7 (Taxes)~~ on the Notes, and that obligation cannot be avoided by the Issuer taking such measures it (acting in good faith) deems reasonable and appropriate.

~~“Group”~~ means the Issuer and all of its direct or indirect Subsidiaries that are presently or in the future consolidated by it.

~~“Hedging Obligations”~~ means, with respect to any specified Person, the obligations of such Person under:

- (a) ~~interest rate swap agreements, (whether from fixed to floating or from floating to fixed), interest rate cap agreements and interest rate collar agreements;~~
- (b) ~~other agreements or arrangements designed to manage interest rates or interest rate risk; and~~
- (c) ~~other agreements or arrangements designed to protect such Person against fluctuations in currency exchange rates, or commodity prices.~~

~~“HL Group Acquisition”~~ means the acquisition by the Group of Hannover Leasing GmbH & Co. KG and its subsidiaries (the ~~“HL Group”~~) on July 5, 2017 (the ~~“HL Acquisition Date”~~).

~~“IFRS”~~ means the International Financial Reporting Standards as published by the International Accounting Standards Board, as in effect from time to time.

~~“incur”~~ means, with respect to any Financial Indebtedness or other obligation of any Person, to create, assume, guarantee or otherwise become liable in respect of such Financial Indebtedness or other obligation, and ~~“incurrence”~~ and ~~“incurred”~~ have the meanings correlative to the foregoing.

~~“Initial Security Interest”~~ has the meaning set out in § 9.

~~“Interest Coverage Ratio”~~ means, as of any date of determination, the ratio of (a) the aggregate amount of Consolidated EBITDA in the Relevant Period to (b) the aggregate amount of Consolidated Net Interest in the Relevant Period.

- (a) ~~In the event that the Issuer or any of its Subsidiaries incurs, repays, repurchases, redeems, reprices, exchanges or otherwise discharges any Financial Indebtedness (other than ordinary working capital borrowings) subsequent to the commencement of the Relevant Period and on or prior to the date on which the event for which the calculation of the Interest Coverage Ratio is made (the “Calculation Date”), then the Interest Coverage Ratio will be calculated giving pro forma effect (as determined in good faith by an officer of the Issuer responsible for accounting or financial reporting), to such incurrence, repayment, repurchase, redemption, repricing, exchange or other discharge of Financial Indebtedness and the use of the proceeds therefrom, as if the same had occurred at the beginning of the Relevant Period; provided, however, that the pro forma calculation of Consolidated Net Interest shall not give effect to (x) any Financial Indebtedness incurred on the Calculation Date pursuant to one or more of the clauses under § 8(c) (other than for the purposes of the calculation of the Interest Coverage Ratio under clause (xi) thereunder) or (y) the discharge on the Calculation Date of any Financial Indebtedness to the extent that such~~

- discharge results from the proceeds of Financial Indebtedness incurred pursuant to one or more of the clauses under § 8(c).
- (b) In addition, for purposes of calculating the Interest Coverage Ratio:
- (i) ~~acquisitions or investments that have been made by the Issuer or any of its Subsidiaries, including through mergers or consolidations, or by any Person or any of its subsidiaries acquired by the Issuer or any of its Subsidiaries, including increases in ownership of Subsidiaries, during the Relevant Period or subsequent to such Relevant Period and on or prior to the Calculation Date, or that are to be made on the Calculation Date, will be given pro forma effect (as determined in good faith by an officer of the Issuer responsible for accounting or financial reporting), as if they had occurred on the first day of the Relevant Period;~~
 - (ii) ~~the Consolidated EBITDA attributable to discontinued operations, as determined in accordance with IFRS, and operations, businesses or group of assets constituting a business or operating unit (and ownership interests therein) disposed of prior to the Calculation Date, will be excluded;~~
 - (iii) ~~the Consolidated Net Interest attributable to discontinued operations, as determined in accordance with IFRS, and operations, businesses or group of assets constituting a business or operating unit (and ownership interests therein) disposed of prior to the Calculation Date, will be excluded, but only to the extent that the obligations giving rise to such Consolidated Net Interest will not be obligations of the Issuer or any of its Subsidiaries following the Calculation Date;~~
 - (iv) ~~any Person that is a Subsidiary of the Issuer on the Calculation Date will be deemed to have been a Subsidiary of the Issuer at all times during the Relevant Period;~~
 - (v) ~~any Person that is not a Subsidiary of the Issuer on the Calculation Date will be deemed not to have been a Subsidiary of the Issuer at any time during such Relevant Period; and~~
 - (vi) ~~if any Financial Indebtedness bears a floating rate of interest and is being given pro forma effect, the interest expense on such Financial Indebtedness will be calculated as if the rate in effect on the Calculation Date had been the applicable rate for the entire period (taking into account any Hedging Obligation applicable to such Financial Indebtedness if such Hedging Obligation has a remaining term as at the Calculation Date in excess of 12 months, or, if shorter, at least equal to the remaining term of such Financial Indebtedness).~~
- (c) Notwithstanding the foregoing, with respect to any Relevant Period beginning prior to the HL Acquisition Date, the preceding two paragraphs (a) and (b) shall not apply to the HL Group Acquisition (and no pro forma effect shall be given thereunder to the HL Group Acquisition or to the incurrence of Financial Indebtedness of HL Group existing at the time of the HL Group Acquisition); provided that for purposes of calculating the Interest Coverage Ratio for any such Relevant Period *pro forma* effect shall be given to the HL Group Acquisition as follows:
- (i) ~~for the purpose of calculating Consolidated EBITDA, the actual amount of EBITDA of the HL Group for the period (the “Actual HL Period”) from the HL Acquisition Date until the last day of such Relevant Period shall be annualized (for the purpose of calculating the EBITDA of the HL Group, the definition “Consolidated EBITDA” shall apply *mutatis mutandis*); and~~
 - (ii) ~~for the purpose of calculating Consolidated Net Interest, the actual amount of net interest of the HL Group for the Actual HL Period shall be annualized (for the purpose of~~

calculating the net interest of the HL Group, the definition of “Consolidated Net Interest” shall apply *mutatis mutandis*);

~~provided, for~~ For the avoidance of doubt, ~~that for purposes of calculating annualized net interest of the HL Group, interest expenses on Financial obligations in respect of unpaid portions of subscribed Capital Stock in Co-Investment Entities shall not constitute “Indebtedness of the HL Group shall only be included, if and”~~ to the extent ~~such Financial Indebtedness remains outstanding on the relevant Calculation Date~~ there is no liability of, or recourse to, any member of the Group other than the member of the Group subscribing or holding such subscribed Capital Stock.

“Independent Financial Advisor” means an investment banking or accounting firm of international standing or any third-party appraiser of international standing; provided, however, that such firm or appraiser is not an Affiliate of the Issuer.

- (d) ~~For the purpose of calculating pro forma effects hereunder, pro forma effect may be given to anticipated acquisitions where the Financial Indebtedness to be incurred is to finance such acquisitions, in whole or in part, which have not yet occurred, but which have become subject to a definitive purchase agreement or contract.~~

~~“Interest Payment Date”~~ means ~~15 April and 15 October in each year, commencing on 15 October 2018 (long first interest period).~~

~~“Investment Grade Rating”, with respect to the Notes, shall mean that the Notes (x) if the Notes have only one rating, one of the following, and (y) if the Notes have more than one rating, at least two of the following: (a) a rating of “BBB ” or higher from Standard & Poor’s; (b) a rating of “Baa3” or higher from Moody’s; and (c) a rating of “BBB ” or higher from Fitch.~~

~~“Investment Grade Status Commencement Date~~Initial Agreement” has the meaning set out in § ~~89(d)(ii)(C).~~

“Initial Default” has the meaning set out in § 10

~~“Investment Grade Status End Date~~Initial Lien” has the meaning set out in § ~~89(d).~~

“Intercreditor Agreement” means the intercreditor agreement as set forth in Annex 2 (*Intercreditor Agreement*) entered into on or prior to the Amendment Effective Date between the Issuer, the Guarantors, the Noteholders’ Representative, the Security Trustee and the other parties named therein, as further amended, restated, replaced or otherwise modified or varied from time to time.

“Interest Payment Date” means 31 June and 31 December in each year.

“Investment” in any Person means any direct or indirect advance, loan or other extensions of credit (including by way of Guarantee or similar arrangement) or capital contribution to (by means of any transfer of cash or other property to others or any payment for property or services for the account or use of others), or any purchase or acquisition of Capital Stock, Indebtedness or other similar instruments issued by such Person and all other items that are or would be classified as investments on a balance sheet prepared in accordance with IFRS.

If the Issuer or any Subsidiary sells or otherwise disposes of any Voting Stock of any direct or indirect Subsidiary such that, after giving effect to any such sale or disposition, such Person is no longer a Subsidiary, the Issuer will be deemed to have made an Investment on the date of any such sale or disposition equal to the Fair Market Value of the Issuer’s Investments in such Subsidiary that were not sold or disposed of.

The amount of any Investment outstanding at any time shall be the original cost of such Investment, reduced by any dividend, distribution, interest payment, return of capital, repayment or other amount or value received in respect of such Investment.

“Issue Date” means 29 March 2018.

“Issuer” means Corestate Capital Holding S.A.

~~“Lock-up Agreement” means one or more agreements entered into between the Issuer, shareholders of the Issuer holding not less than 30% of the share capital of the Issuer, Noteholders holding not less than 50% of the aggregate outstanding principal amount of the Notes and holders of the EUR 200,000,000 convertible notes 2017/2022 issued by the Issuer (“2022 Convertible Notes”) holding not less than 50% of the aggregate outstanding principal amount of the 2022 Convertible Notes, (whereas Notes and 2022 Convertible Notes, respectively, in relation to which the voting rights are suspended pursuant to section 6 of the German Bond Act (Schuldverschreibungsgesetz) are to be disregarded for the purposes of determining the relevant aggregate outstanding nominal amount of the Notes and the 2022 Convertible Notes, respectively) in relation to the restructuring of the Notes and the 2022 Convertible Notes.~~

“Lien” means any mortgage, pledge, encumbrance, easement, deposit arrangement, security interest, lien or charge of any other kind of security right in rem (dingliche Sicherheiten) (including with respect to any Capitalized Lease Obligation, conditional sales, or other title retention agreement having substantially the same economic effect as any of the foregoing), whether or not filed, recorded or otherwise perfected under applicable law.

~~“Make-Whole Redemption~~Majority PIK Interest Amount” has the meaning set out in § ~~54~~4(b)(iii).

“Majority PIK Interest Payment” has the meaning set out in § 4(b)(iii).

“Management Advances” means loans or advances made to, or ~~guarantees~~Guarantees with respect to loans or advances made to, directors, officers ~~or~~; employees or consultants of the Issuer or any Subsidiary:

- (a) (i) in respect of travel, entertainment or moving related expenses incurred~~in~~Incurred in the ordinary course of business or (ii) for purposes of funding any such person’s purchase of Capital Stock or Subordinated Shareholder Debt (or similar obligations) of the Issuer or its Subsidiaries with (in the case of this sub-clause (ii)) the approval of the Board of Directors of the Issuer;
- (b) in respect of moving related expenses ~~incurred~~Incurred in connection with any closing or consolidation of any facility or office; or
- (c) not exceeding EUR ~~2,000,000~~1 million in the aggregate outstanding at any time.

~~“Market Capitalization” means an amount equal to (a) the total number of issued and outstanding shares of common stock or common equity interests of the Issuer on the date of declaration of the relevant dividend multiplied by (b) the arithmetic mean of the closing prices per share of such common stock or common equity interests for the 30 consecutive trading days immediately preceding the date of declaration of such dividend.~~

“Material Subsidiary” means any of the Guarantors and any other Subsidiary of the Issuer (a) that has total assets as shown in the latest audited non-consolidated annual accounts (or, if such Subsidiary itself prepares consolidated annual accounts, whose consolidated total assets as shown in the latest audited consolidated annual accounts) of such Subsidiary and used for the purpose of preparing the latest audited consolidated annual accounts of the Issuer, of at least 5 per cent. of the total assets as shown in the latest audited consolidated annual accounts of the Issuer and its consolidated subsidiaries or (b) that contributes 5 per cent. or more of the annual revenue of the Group on a consolidated basis (measured on the basis of the aforementioned annual accounts).

“Maturity Date” means 31 ~~July 2023~~ December 2026.

“Net Proceeds” means the aggregate ~~cash proceeds received by the Issuer or any of its Subsidiaries in respect of any Asset Sale (including, without limitation, any cash received upon the sale or other disposition of any non-cash consideration or cash equivalents substantially concurrently received in any Asset Sale), net of (a) the direct costs relating to such Asset Sale, including, without limitation, legal, accounting and investment banking fees, and sales commissions, and any relocation expenses incurred as a result of the Asset Sale, (b) taxes paid or payable as a result of the Asset Sale, (c) all distributions and other payments required to be made to minority interest holders (other than the Issuer or any of its Subsidiaries) in Subsidiaries or joint ventures as a result of such Asset Sale, and (d) any reserve for adjustment or indemnification obligations in respect of the sale price of such asset or assets established in accordance with IFRS.~~

“Minimum Redemption Amount” means, with respect to any calendar year, an amount equal to (i) 10 per cent. of the aggregate principal amount of the Notes outstanding as of the Amendment Effective Date, being EUR 64,816,710.00, less (ii) any amounts applied to any mandatory redemption of the Notes from Relevant Proceeds in accordance with the Relevant Proceeds Waterfall and any optional redemption of Notes made by the Issuer in such calendar year (or to be made on the respective Minimum Redemption Date).

“Minimum Redemption Date” means 31 December of each year, beginning with 31 December 2024.

“Minority PIK Interest Amount” has the meaning set out in § 4(b)(ii).

“Minority PIK Interest Payment” has the meaning set out in § 4(b)(ii).

“Moody’s” means Moody’s Investors Service Inc.

“Net Cash Proceeds” means, with respect to any issuance or sale of Capital Stock or Indebtedness, the cash proceeds of such issuance or sale net of attorneys’ fees, accountants’ fees, underwriters’ or placement agents’ fees, listing fees, discounts or commissions and brokerage, consultant and other fees and charges actually incurred in connection with such issuance or sale and net of taxes paid or payable as a result of such issuance or sale (after taking into account any available tax credit or deductions and any tax sharing arrangements).

“Noteholder” means the holder of a proportional co-ownership interest or similar right in the Global Note.

“Noteholders’ Representative” has the meaning set out in § 19(e).

“Notes” and **“Note”** has the meaning set out in § 2(a).

“Notes Offer Note Guarantees” has the meaning set out in § ~~11~~3(b)(i)d).

“Officer” means, with respect to any Person, (i) any managing director, director or member of the management board or senior executive (x) of such Person or (y) if such Person is owned or managed by a single entity, of such entity, or (ii) any other individual designated as an “Officer” for the purposes of the Terms and Conditions by the Board of Directors of such Person.

“Notice of Early Redemption” has the meaning set out in § 5(b).

“Obligations” means ~~any principal, interest, penalties, fees, indemnifications, reimbursements, damages and other liabilities payable under the documentation governing any Financial Indebtedness.~~

“Officers’ Officer’s Request Certificate” means, with respect to any Person, a certificate signed by an officer of the Issuer/Officer of such Person.

“Opinion of Counsel” means a written opinion from legal counsel reasonably satisfactory to the intended recipient under the Terms and Conditions. The counsel may be an employee of or counsel to the Issuer.

“Original Guarantors” means:

- (a) [HFS Helvetic Financial Services AG;](#)
- (b) [CORESTATE CAPITAL AG;](#)
- (c) [Corestate Capital Group GmbH;](#)
- (d) [HL Investment Beteiligungs GmbH;](#)
- (e) [HANNOVER LEASING Belgien Beteiligungs GmbH & Co. KG;](#)
- (f) [Delta Vermietungsgesellschaft mbH;](#)
- (g) [Corestate Capital Advisors GmbH;](#)
- (h) [Tempelhof Twins HoldCo S.à r.l.;](#)
- (i) [HANNOVER LEASING Private Invest Beteiligungs GmbH;](#)
- (j) [HANNOVER LEASING Beteiligungs GmbH & Co. KG;](#)
- (k) [ORION Verwaltungsgesellschaft mbH & Co. Beteiligungs KG;](#)
- (l) [CRM Students Ltd;](#)
- (m) [Bego PropCo I.S.L.;](#)
- (n) [Corestate Capital Services GmbH;](#)
- (o) [Kera Verwaltungsgesellschaft mbH;](#)
- (p) [Thorfin Invest S.L. \(in future Gabriela PropCo S.L.\);](#)
- (q) [Plutos HoldCo S.à r.l.;](#)
- (r) [Echo HoldCo S.à r.l.;](#)
- (s) [Corestate Capital France HoldCo SAS;](#)
- (t) [Gabriela HoldCo S.à r.l.;](#)
- (u) [Bego HoldCo S.à r.l.; and](#)
- (v) [Ginova AIF S.à r.l.](#)

“**Paying Agents**” has the meaning set out in § 15(a).

~~“**Permitted Business**” means (a) any businesses in activities engaged in by the Issuer or any of its Subsidiaries on the Issue Date or (b) any businesses that are related, complementary, incidental, ancillary or similar to the foregoing or are reasonable extensions or developments of any thereof in the European Union, the United Kingdom, Switzerland, Norway, Canada or any state of the United States.~~

[“**Payment Default**” has the meaning set out in § 10\(a\)\(v\)\(A\).](#)

[“**Permitted Acquisition**” means:](#)

- (a) [any acquisition of a Related Business, located within an EU member state, the United Kingdom and/or Switzerland, made after any and all obligations under the Super Senior Notes have been satisfied and discharged in full, and](#)
- (b) [any acquisition of real estate or special purpose vehicles organized and existing for the sole purpose of holding real estate \(and activities ancillary and related thereto\), provided that such real estate is located within an EU member state, the United Kingdom and/or Switzerland,](#)

provided that, in each case of sub-paragraph (a) and (b), the aggregate gross consideration for all Permitted Acquisitions made pursuant to the relevant sub-paragraph in reliance on sub-paragraphs (b) and (m) of the definition of “Permitted Investment” does not exceed EUR 10 million.

“Permitted Collateral Liens” means:

- (a) Liens on the Collateral to secure the Indebtedness under the Secured Notes, including interest paid from time to time by increasing the principal amount of the Secured Notes (and any guarantees guaranteeing such Secured Notes, including the Note Guarantees) and any Refinancing Indebtedness in respect thereof, provided that Indebtedness under the New Senior Secured Notes, and any Refinancing Indebtedness in respect thereof, may be granted the benefit of priority rights on the proceeds of the enforcement on the Collateral; and provided further that each of the parties to the instruments governing such Collateral and such Indebtedness under the Secured Notes, and any Refinancing Indebtedness in respect thereof, will have entered into, and/or be bound by, the Intercreditor Agreement; and
- (b) Liens described in sub-paragraphs (b) (to the extent not incurred as a result of a default) and (f) of the definition of “Permitted Liens” and that, in each case, would not materially interfere with the ability of the Security Trustee to enforce any Lien over the Collateral.

“Permitted Debt” has the meaning set out in § 89(ea)(ii).

~~“Permitted Refinancing Indebtedness” means any Financial Indebtedness that refinances any Financial Indebtedness in compliance with these Terms and Conditions, provided, however, that:~~

- ~~(a) such Permitted Refinancing Indebtedness has a stated maturity that is either (i) no earlier than the stated maturity of the Financial Indebtedness being refinanced or (ii) after the final maturity date of the Notes;~~
- ~~(b) such Permitted Refinancing Indebtedness has a Weighted Average Life to Maturity at the time such Permitted Refinancing Indebtedness is incurred that is equal to or greater than the Weighted Average Life to Maturity of the Financial Indebtedness being refinanced;~~
- ~~(c) such Permitted Refinancing Indebtedness has an aggregate principal amount (or if issued with an original issue discount, an aggregate issue price) that is equal to or less than the aggregate principal amount (or if incurred with original issue discount, the aggregate accreted value) then outstanding or committed (plus all accrued interest on the Financial Indebtedness being refinanced and fees and expenses, including any premiums incurred in connection with such refinancing) under the Financial Indebtedness being refinanced; and~~
- ~~(d) if the Financial Indebtedness being refinanced is expressly subordinated in right of payment to the Notes, such Permitted Refinancing Indebtedness is subordinated to the Notes on terms at least as favorable to the holders of the Notes as those contained in the documentation governing the Financial Indebtedness being refinanced;~~

~~provided that if such refinancing in full or in part of the Financial Indebtedness is initially funded from sources other than Permitted Refinancing Indebtedness, the Permitted Refinancing Indebtedness is raised within 12 months of such refinancing and is identified in good faith by the Issuer as being a replacement of such Financial Indebtedness.~~

“Permitted Security Interests” means Investment means any Investment by the Issuer or any Subsidiary:

- ~~(a) Security Interests in favor of~~in the Issuer or any Subsidiary;

- (b) ~~Security Interests on property (including Capital Stock) of a Person existing at the time such Person becomes a Subsidiary (or at the time the Issuer or any of its Subsidiaries acquires such property) or is merged with or into or consolidated with the Issuer or any Subsidiary; provided that (i) such Security Interests were not incurred in contemplation of such Person becoming a Subsidiary or such merger or consolidation and do not extend to any assets other than those of the Person that~~ in a Person, if as a result of such Investment, such other Person becomes a Subsidiary or is merged or consolidated with or into, or consolidated with transfers or conveys all or substantially all its assets to, the Issuer or ~~any~~ Subsidiary ~~or that are otherwise acquired and (ii) such Security Interests are securing Financial Indebtedness permitted pursuant to § 8 (Limitations on the Incurrence of Financial Indebtedness); provided, however, that such Investment constitutes or is part of a Permitted Acquisition;~~
- (c) in existence on the Amendment Effective Date or made pursuant to legally binding commitments in existence on, the Amendment Effective Date, and any extension, modification or renewal of any such Investments, but only to the extent not involving additional Investments;
- (d) in the Secured Notes;
- (e) in Guarantees of Indebtedness permitted to be Incurred by § 9(a) (Limitation on Indebtedness) and (other than with respect to Indebtedness) guarantees, keepwells and similar arrangements in the ordinary course of business;
- (f) in cash and Cash Equivalents;
- (g) Investments as a result of or retained in connection with an asset disposition permitted under, or made in compliance with, § 9(e) (Limitation on Sale of Assets) to the extent such Investments are non-cash proceeds or deemed cash proceeds under § 9(e) (Limitation on Sale of Assets);
- (h) any acquisition of assets or Capital Stock solely in exchange for the issuance of Capital Stock (other than Disqualified Stock) of the Issuer or Subordinated Shareholder Debt;
- (i) Management Advances;
- (j) when taken together with all other Investments made pursuant to this sub-paragraph (j) and then outstanding, in an aggregate amount at the time of such Investment not to exceed EUR 10 million; provided that if an Investment is made pursuant to this sub-paragraph (j) in a Person that is not a Subsidiary and such Person subsequently becomes a Subsidiary, such Investment shall thereafter be deemed to have been made pursuant to sub-paragraph (a) or sub-paragraph (b) of the definition of “Permitted Investment” and not this sub-paragraph;
- (k) in connection with any customary cash management or cash pooling arrangements entered into in the ordinary course of business (as determined in good faith by the Board of Directors or an Officer of the Issuer);
- (l) in Co-Investment Entities not exceeding EUR 5 million in any calendar year; provided that to the extent the purchase or subscription price for the subscription of equity interests in Co-Investment Entities is deferred, the subscription of such equity interests shall not constitute an “Investment” unless, until and only to the extent that the purchase or subscription price is actually paid (as long as there is no liability of or recourse to, any member of the Group other than the member of the Group making the Investment);

- (m) in joint ventures or any other minority participations or shares in a Related Business located in an EU member state, the United Kingdom and/or Switzerland; provided, however, that such Investment is part of a Permitted Acquisition;
- (n) in LAUREA Verwaltungsgesellschaft mbH after such entity ceases to be a Subsidiary of the Issuer;
- (o) acquired after the Issue Date as a result of the acquisition by the Issuer or any Subsidiary of another Person, including by way of a merger, amalgamation or consolidation with or into the Issuer or any of its Subsidiaries in a transaction that is not prohibited by the Terms and Conditions to the extent that such Investments were not made in contemplation of such acquisition, merger, amalgamation or consolidation and were in existence on the date of such acquisition, merger, amalgamation or consolidation;
- (p) lease, utilities and similar deposits made in the ordinary course of business; and
- (q) in receivables owing to the Issuer or any Subsidiary created in the ordinary course of business.

“Permitted Liens” means:

- (ea) ~~Security Interests~~ Liens to secure the performance of statutory obligations, trade contracts, insurance, surety or appeal bonds, workers²-compensation obligations, leases (including, without limitation, statutory and common law landlord’s liens), performance bonds, surety and appeal bonds or other obligations of a like nature (other than for the payment of Indebtedness) incurred in the ordinary course of business (including ~~Security Interests~~ Liens to secure letters of credit issued to assure payment of such obligations); Liens under workmen’s compensation laws, unemployment insurance laws, under social security laws or similar legislation, or insurance-related obligations, or in connection with bids, tenders, completion guarantees, contracts (other than for the payment of Indebtedness), warranty obligations or leases to which the Issuer or a Subsidiary is a party, or to secure public or statutory obligations of the Issuer or a Subsidiary or deposits of cash or Cash Equivalents to secure surety, judgment, performance or appeal bonds (or other similar bonds, instruments or obligations), in each case, to which the Issuer or any of its Subsidiaries is a party;
- (eb) ~~Security Interests existing on the Issue Date~~ Liens imposed by mandatory law;
- (ec) ~~Security Interests~~ Liens for taxes, assessments or other governmental charges ~~or claims that (i) are~~ not yet due ~~and/or payable~~ ~~or (ii) are being contested in good faith by appropriate proceedings;~~
- (d) Liens (i) in favor of issuers of surety or performance bonds or letters of credit or bankers’ acceptances issued pursuant to the request of and for the account of the Issuer or a Subsidiary in the ordinary course of its business; provided, however, that such letters of credit do not constitute Indebtedness or (ii) to secure Indebtedness permitted to be incurred under sub-clause (iv) of § 9(a)(ii)(H);
- (e) judgment Liens not giving rise to an Event of Default so long as any appropriate legal proceedings which may have been duly initiated for the review of such judgment have not been finally terminated or the period within which such proceedings may be initiated has not expired;
- (f) ~~Security Interests imposed by law, such as carriers’, warehousemen’s, landlord’s and mechanics’ Security Interests, in each case, incurred in the ordinary course of business;~~
- (g) ~~Security Interests created for the benefit of (or to secure) the Notes;~~

- (h) ~~Security Interests to secure any Permitted Refinancing Indebtedness permitted to be incurred under these Terms and Conditions; provided, however, that the new Security Interest is limited to all or part of the same property and assets that secured or, under the written agreements pursuant to which the original Security Interest arose, could secure the original Security Interest (plus improvements and accessions to such property or proceeds or distributions thereof);~~
- (i) ~~Security Interests on insurance policies and proceeds thereof, or other deposits, to secure insurance premium financings;~~
- (j) ~~bankers' Security Interests, rights of setoff or similar rights and remedies as to deposit accounts, Security Interests arising out of judgments or awards not constituting an Event of Default and notices of *lis pendens* and associated rights related to litigation being contested in good faith by appropriate proceedings and for which adequate reserves have been made;~~
- (k) ~~Security Interests on cash and Cash Equivalents or other property arising in connection with the defeasance, discharge or redemption of Financial Indebtedness;~~
- (l) ~~Security Interests on specific items of inventory or other goods (and the proceeds thereof) of any Person securing such Person's obligations in respect of bankers' acceptances issued or created in the ordinary course of business for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods;~~
- (mf) ~~Security Interests~~ Liens arising solely by virtue of banks' or financial institutions' standard business terms and conditions;
- (n) ~~leases (including operating leases), licenses, subleases and sublicenses of assets in the ordinary course of business;~~
- (g) Liens existing on the Amendment Effective Date (other than in respect of the Secured Notes and the Note Guarantees);
- (h) Liens on property or shares of stock of a Person at the time such Person becomes a Subsidiary; provided, however, that such Liens are not created, Incurred or assumed in connection with, or in contemplation of, such other Person becoming a Subsidiary; provided further, however, that any such Lien may not extend to any other property owned by the Issuer or any Subsidiary;
- (i) Liens on property at the time the Issuer or a Subsidiary acquired the property, including any acquisition by means of a merger or consolidation with or into the Issuer or any Subsidiary; provided, however, that such Liens are not created, Incurred or assumed in connection with, or in contemplation of, such acquisition; provided further, however, that such Liens may not extend to any other property owned by the Issuer or any Subsidiary;
- (ej) ~~Security Interests~~ Liens arising ~~out of~~ in connection with conditional sale, ~~title or~~ retention, ~~consignment~~ of title arrangements (*Eigentumsvorbehalt*) or similar arrangements ~~for the sale of assets~~ entered into in the ordinary course of business;
- (k) Liens securing Refinancing Indebtedness Incurred to refinance Indebtedness that was previously so secured, provided, however, that any such Lien is limited to all or part of the same collateral that secured the Indebtedness being refinanced and shall rank the same priority as the Indebtedness being refinanced and provided further that the aggregate principal amount of such Refinancing Indebtedness does not exceed the refinanced Indebtedness;
- (l) Liens in favor of the Issuer or any Guarantor or, as long as such Lien does not secure any obligation of the Issuer or a Guarantor, any Subsidiary that is not a Guarantor;

- (m) Liens created for the benefit of (or to secure) the Secured Notes (or any Note Guarantee);
- (n) Liens on Capital Stock or other securities or assets of any Subsidiary that secure Indebtedness of such Subsidiary;
- (o) Liens on assets of the Issuer and its Subsidiaries with respect to obligations not to exceed EUR 3 million at any time outstanding;
- (p) Liens granted in connection with any customary cash management or cash pooling entered or netting or setting-off arrangements into in the ordinary course of business (as determined in good faith by the Issuer's Board of Directors);
- (q) survey exceptions, encumbrances, easements or reservations of, or rights of others for, licenses, rights-of-way, sewers, electric lines, telegraph and telephone lines and other similar purposes, or zoning or other restrictions as to the use of real property or Liens incidental to the conduct of the business of such Person or to the ownership of its properties which were not Incurred in connection with Indebtedness and which do not in the aggregate materially adversely affect the value of said properties or materially impair their use in the operation of the business of such Person;
- (~~p~~) (i) mortgages, liens, security interests, restrictions, encumbrances or any other matters of record that have been placed by any government, statutory or regulatory authority, developer, landlord or other third party on property over which the Issuer or any Subsidiary has easement rights or on any ~~real~~leased property ~~leased by the Issuer or any Subsidiary~~ and subordination or similar ~~agreements~~arrangements relating thereto ~~and~~; (ii) any condemnation or eminent domain proceedings ~~or compulsory purchase order~~ affecting any real property; ~~and (iii) for the avoidance of doubt, leases or subleases of any real estate asset in the ordinary course of business;~~
- (~~q~~) ~~Security Interests on property or assets under construction (and related rights) in favor of a contractor or developer or arising from progress or partial payments by a third party relating to such property or assets;~~
- (~~r~~) ~~Security Interests securing or arising by reason of any netting or set-off arrangement entered into in the ordinary course of banking or other trading activities;~~
- (~~s~~) ~~pledges of goods, the related documents of title and/or other related documents arising or created in the ordinary course of the Issuer or any Subsidiary's business or operations as Security Interests only for Financial Indebtedness to a bank or financial institution directly relating to the goods or documents on or over which the pledge exists;~~
- (~~t~~) ~~Security Interests over cash paid into an escrow account pursuant to any purchase price retention arrangement as part of any disposal by the Issuer or a Subsidiary on condition that the cash paid into such escrow account in relation to a disposal does not represent more than 15 per cent. of the net proceeds of such disposal;~~
- (~~u~~) ~~limited recourse Security Interests in respect of the ownership interests in, or assets owned by, any joint ventures which are not Subsidiaries securing obligations of such joint ventures;~~
- (~~v~~) ~~Security Interests created on any asset of the Issuer or a Subsidiary established to hold assets of any stock option plan or any other management or employee benefit or incentive plan or unit trust of the Issuer or a Subsidiary securing any loan to finance the acquisition of such assets;~~
- (~~w~~) ~~Security Interests on escrowed proceeds~~Liens on Escrowed Proceeds for the benefit of the related holders of debt securities or other ~~Financial~~ Indebtedness (or the underwriters or arrangers thereof) or on cash set aside at the time of the incurrence of any ~~Financial~~ Indebtedness or

- government securities purchased with such cash, in either case to the extent such cash or government securities prefund the payment of interest on such ~~Financial~~ Indebtedness and are held in an escrow account or similar arrangement to be applied for such purpose;
- ~~(x) Security Interests pursuant to (i) Section 8a of the German Partial Retirement Act (Altersteilzeitgesetz); (ii) Section 7d of the German Social Law Act No. 4 (Sozialgesetzbuch II); or (iii) Section 1136 (alone or in conjunction with Section 1192(1)) of the German Civil Code (Bürgerliches Gesetzbuch);~~
 - ~~(y) Security Interests created or subsisting by virtue of hereditary building rights (Erbbaurechte);~~
 - ~~(z) Security Interest securing Acquired Warehouse Financial Indebtedness or Warehouse Acquisition Additional Financial Indebtedness;~~
 - ~~(aa) Security Interests securing Financial Indebtedness of the Issuer and its Subsidiaries that does not exceed EUR 10,000,000 at any one time outstanding;~~
 - ~~(bbt) Security Interests on Liens on assets or property or assets of a Subsidiary of the Issuer that is not a Guarantor securing Financial Indebtedness of any Subsidiary of the Issuer that is not a Guarantor; and~~
 - ~~(cc) Security Interests securing Financial Indebtedness permitted by § 8(e)(iv), covering only the assets acquired, improved, constructed or leased with the proceeds of such Financial Indebtedness, and any improvements or accessions to such assets; and~~
 - ~~(dd) Security Interests securing Hedging Obligations permitted to be incurred under § 8 (Limitations on the Incurrence of Financial Indebtedness).~~
 - (u) Liens on the Gießen Property to secure Indebtedness of Ginova HoldCo S.à. r.l. and/or Ginova PropCo S.à. r.l. Incurred pursuant to § 9(a)(ii)(L).

“Permitted Payments” has the meaning set out in § 9(b)(ii).

“Permitted Reorganization” means any amalgamation, demerger, merger, voluntary liquidation, consolidation, reorganization, winding up, corporate reconstruction or sale or transfer of assets involving the Issuer or any Subsidiary (a “Reorganization”) that is made on a solvent basis; provided always that (i) any payments or assets distributed in connection with such Reorganization remain within the Issuer and the Subsidiaries; (ii) if any Collateral is released in connection with such Reorganization in accordance with the security release provisions of the Terms and Conditions, Liens must be granted prior to (or to the extent not possible, promptly following) completion of such Reorganization such that the assets pledged as Collateral following the Reorganization are equivalent to the pre-existing Collateral; and (iii) if any Note Guarantees are released in connection with such Reorganization in accordance with the Guarantee release provisions of the Terms and Conditions, Note Guarantees must be provided prior to (or to the extent not possible, promptly following) completion of such Reorganization such that the Note Guarantees in place following the Reorganization are equivalent to the pre-existing Note Guarantees, and provided further that none of (ii) or (iii) shall result in any restart of any hardening period.

“Person” means any individual, corporation, partnership, joint venture, association, ~~joint-stock~~joint-stock company, trust, unincorporated organization, limited liability company ~~or~~, government (or any agency or political subdivision thereof) ~~or~~ any other entity.

~~“Present Value” has the meaning set out in § 5(b).~~

~~“Principal Amount” has the meaning set out in § 2(a).~~

“Principal Paying Agent” has the meaning set out in § 15(a).

“Qualified Majority” has the meaning set out in § 919(b).

“Refinance” means refinance, refund, exchange, replace, renew, repay, modify, restate, defer, substitute, amend, extend, supplement, reissue, resell, extend or increase (including pursuant to any defeasance or discharge mechanism) and the terms “refinances”, “refinanced” and “refinancing” as used for any purpose in the Terms and Conditions shall have a correlative meaning.

“Refinancing Agreement” has the meaning set out in § 9(d)(ii)(C).

“Refinancing Indebtedness” means Indebtedness that refinances any Indebtedness Incurred or existing as permitted under and in compliance with the Terms and Conditions; provided, however, that:

- (a) the Refinancing Indebtedness has a Stated Maturity no earlier than the Stated Maturity of the Indebtedness being refinanced;
- (b) the Refinancing Indebtedness has an Average Life at the time such Refinancing Indebtedness is Incurred that is equal to or greater than the Average Life of the Indebtedness being refinanced;
- (c) such Refinancing Indebtedness has an aggregate principal amount (or, if issued with original issue discount, an aggregate issue price) that is equal to or less than the aggregate principal amount (or, if issued with original issue discount, the aggregate accreted value) then outstanding of the Indebtedness being refinanced (plus all accrued interest and the amount of all fees and expenses, including any premiums incurred in connection with such refinancing);
- (d) if the Indebtedness being refinanced is subordinated in right of payment to the Notes or any Note Guarantee, such Refinancing Indebtedness is subordinated in right of payment to the Notes or such Note Guarantee, as the case may be, on terms at least as favorable to the Noteholders as those contained in the documentation governing the Indebtedness being refinanced; and
- (e) if the Indebtedness being refinanced is Indebtedness of the Issuer or a Guarantor, the Refinancing Indebtedness may not be Indebtedness of or Guaranteed by a Subsidiary that is not a Guarantor;

provided that in each case the net proceeds from the Incurrence of any Refinancing Indebtedness (or, in case of an exchange of Indebtedness, the principal amount of the Indebtedness being refinanced by the Refinancing Indebtedness) shall not be lower than 95 per cent. of the principal amount of such Refinancing Indebtedness.

“Reinstated 2022 Notes” means the notes issued by the Issuer in an original aggregate principal amount of EUR 200,000,000 (ISIN: DE000A19SPK4) which has been written down to EUR 40,683,288.31 in aggregate principal amount as of the Amendment Effective Date, and any interest or other amounts paid from time to time thereon in accordance with the terms and conditions governing such notes by increasing their principal amount.

“Reinstated Senior Notes” means the Notes and the Reinstated 2022 Notes.

“Related Business” means any of the businesses engaged in by the Issuer and its Subsidiaries on Amendment Effective Date, and any services, activities or businesses incidental or directly related or similar thereto, or any line of business or business activity that is a reasonable extension, development, application or expansion thereof or ancillary thereto (including by way of geography or product or service line).

“Related Fund” means (i) in relation to an investment manager, adviser or sub-adviser of any fund, the funds managed, advised or sub-advised by it, and (ii) in relation to any fund (the “First Fund”), (x) a fund which is managed or advised by the same investment manager or investment adviser as the First Fund or (y) if a fund is managed by a different investment manager or investment adviser as the First Fund, a fund whose investment manager or investment adviser is an Affiliate of the investment manager or investment adviser of the First Fund.

“Related Person” means, in respect of any Person:

- (a) any controlling equity holder, majority (or more) owned subsidiary or partner or member of such Person;
- (b) in the case of an individual, any spouse, family member or relative of such individual, any trust or partnership for the benefit of one or more of such individual and any such spouse, family member or relative, or the estate, executor, administrator, committee or beneficiaries of any thereof;
- (c) any trust, corporation, partnership or other Person for which one or more Related Persons of any thereof constitute the beneficiaries, stockholders, partners or owners thereof, or Persons beneficially holding in the aggregate a majority (or more) controlling interest therein; or
- (d) any investment fund or vehicle managed, sponsored or advised by such Person or any successor thereto, or by any Affiliate of such Person or any such successor.

“Relevant Date” means, with respect to an Interest Payment Date, the 30th day preceding such Interest Payment Date.

“Relevant Period” means, with respect to any Interest Payment Date, the period beginning on (and excluding) the Relevant Date in respect of the immediately preceding Interest Payment Date (or, in case of the first Interest Payment Date, 31 July 2023) and ending on (and including) the Relevant Date in respect of such Interest Payment Date.

“Relevant Proceeds” means, with respect to any Interest Payment Date, the sum of (without double counting):

- (a) any cash proceeds received by the Issuer or any of its Subsidiaries during the Relevant Period (including any cash payments received by way of deferred payment of principal pursuant to a note or instalment receivable or otherwise and net proceeds from the sale or other disposition of any securities received as consideration, but only as and when received, but excluding any other consideration received in the form of assumption by the acquiring person of Indebtedness or other obligations relating to the properties or assets that are the subject of such Asset Disposition or received in any other non-cash form) resulting from an Asset Disposition; less
- (b) any expenses reasonably incurred in connection with such Asset Disposition; less
- (c) any taxes paid or payable (including taxes reasonably estimated to be actually payable) or accrued as liability in connection with such Asset Disposition or in connection with any upstream payments of any such proceeds from any Subsidiary to the Issuer; less
- (d) all payments required to be made to minority interest holders in subsidiaries or joint ventures as a result of such Asset Disposition; less
- (e) all payments required to be made
 - (i) on any Indebtedness (other than the Notes, the Super Senior Notes and the Reinstated 2022 Notes) which is secured by any asset subject to such Asset Disposition in accordance with the terms of the Lien on such asset or such Indebtedness (or which must be repaid by the terms of such lien or such Indebtedness in order to obtain a necessary consent to such Asset Disposition), and
 - (ii) pursuant to applicable law out of the proceeds such Asset Disposition;
- (f) the portion of the proceeds from such Asset Disposition constituting Trapped Cash; and

(g) in the case of the Interest Payment Dates falling on or before 31 December 2024 only, an amount equal to the amount by which the Free Liquidity of the Issuer and its Subsidiaries on the Relevant Date is less than EUR 25 million; plus

(h) Excess Cash (but excluding any Unapplied Relevant Proceeds); plus

(i) any Unapplied Relevant Proceeds (as defined in § 6(b) (Payments from Relevant Proceeds)).

“Relevant Proceeds Waterfall” has the meaning set out in § 6(a).

~~“Redemption Calculation~~Reporting Date” has the meaning set out in § ~~519~~(b)(vii).

“Restricted Investment” means any Investment other than a Permitted Investment.

~~“Redemption Date” means the date fixed for redemption in the Issuer’s notice in accordance with § 5(b) or § 5(e), which must be a Business Day.~~

~~“Relevant Period” means, as of any date of determination, the most recent four consecutive fiscal quarters ending prior to such date of determination for which internal Consolidated Financial Statements of the Issuer are available.~~

~~“Restricted Payments~~Payment” means ~~any of the following:~~

- (a) ~~to declare or pay the declaration or payment of~~ any dividend ~~on or make~~ any distribution (whether made in cash, securities or other property, ~~but excluding dividends or distributions made in the form of Equity Interests of the Issuer~~) with respect to any of the Capital Stock ~~of~~ by the Issuer or any Subsidiary on or in respect of its ~~Subsidiaries~~Capital Stock (including, ~~without limitation,~~ any payment in connection with any merger, ~~or~~ consolidation, ~~amalgamation or other combination~~ involving the Issuer or any ~~Subsidiary of the Issuer~~) ~~(of its Subsidiaries)~~ other than ~~to the Issuer or any wholly owned Subsidiary of the Issuer~~;
 - (i) dividends or distributions payable solely in Capital Stock of the Issuer (other than Disqualified Stock) or in options, warrants or other rights to purchase such Capital Stock of the Issuer and dividends or distributions payable solely in Subordinated Shareholder Debt; and
 - (ii) dividends or distributions payable to the Issuer or a Subsidiary and, if the Subsidiary paying such dividends or distributions is not a Wholly Owned Subsidiary, to its other holders of common Capital Stock on no more than a pro rata basis;
- (b) ~~to the purchase, redeem or otherwise acquire or retire~~ redemption or other acquisition for value of any Capital Stock (including, ~~without limitation,~~ any payment in connection with any merger, ~~or~~ consolidation, ~~amalgamation or other combination~~), ~~directly or indirectly, any shares of the Issuer’s Capital Stock or any Capital Stock of~~ involving the Issuer or any of its Subsidiaries) of the Issuer or any direct or indirect parent ~~company~~ of the Issuer held by Persons other than the Issuer or a Subsidiary (other than in exchange for Capital Stock of the Issuer or ~~any options, warrants or other rights to acquire such shares of Capital~~ (other than Disqualified Stock; or));
- (c) ~~to make any principal payment on, or~~ the purchase, repurchase, ~~redeem, defease or otherwise acquire or retire~~ redemption, defeasance or other acquisition for value, prior to ~~any scheduled principal payment, sinking fund payment or stated maturity, any Subordinated Debt (other than scheduled maturity or scheduled repayment of any Indebtedness of the Issuer or any Guarantor that is contractually subordinated to the Notes or to any Note Guarantee~~

~~(excluding any intercompany Financial Indebtedness between or among the Issuer and any of its Subsidiaries or among Subsidiaries of the Issuer). Guarantor), other than the purchase, repurchase, redemption, defeasance or other acquisition of any Indebtedness of the Issuer or any Guarantor that is contractually subordinated to the Notes or to any Note Guarantee purchased in anticipation of satisfying a sinking fund obligation, principal instalment or final maturity, in each case due within one year of the date of such purchase, repurchase, redemption, defeasance, other acquisition or scheduled repayment;~~

~~If any Restricted Payment described above is not made in cash, the amount of the proposed Restricted Payment will be the fair market value of the asset to be transferred as at the date of transfer.~~

- ~~(d) any payment on or with respect to, or purchase, redeem, defease or otherwise acquire or retire for value any Subordinated Shareholder Debt; or~~
- ~~(e) the making of any Restricted Investment in any Person.~~

~~The amount of all Restricted Payments (other than cash) shall be the Fair Market Value on the date of such Restricted Payment of the asset(s) or securities proposed to be paid, transferred or issued by the Issuer or such Subsidiary, as the case may be, pursuant to such Restricted Payment. The determination of the Fair Market Value shall be determined conclusively by the Board of Directors of the Issuer acting in good faith.~~

~~“S&P” means Standard & Poor’s Ratings Group, Inc.~~

~~“SchVG” has the meaning set out in § 19(a).~~

~~“Security Interest” means a mortgage, land charge, charge, pledge, lien, assignment or transfer of title for security purposes, retention of title arrangement or other in rem security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.~~

~~“Secured Notes” means the Notes, the Reinstated 2022 Notes and the Super Senior Notes.~~

~~“Security Documents” means any agreement or document that provides for a Lien over any Collateral for the benefit of the Noteholders in each case as amended or supplemented from time to time.~~

~~“Security Trustee” means Global Loan Agency Services GmbH, as security trustee pursuant to the Intercreditor Agreement or any successor or replacement security trustee acting in such capacity.~~

~~“Shares” means the dematerialised ordinary share of the Issuer.~~

~~“Subordinated Debt” means Financial Indebtedness of the Issuer that is subordinated in right of payment to the Notes.~~

~~“Stated Maturity” means, with respect to any security, the date specified in such security as the fixed date on which the payment of principal of such security is due and payable, including pursuant to any mandatory redemption provision, but shall not include any contingent obligations to repay, redeem or repurchase any such principal prior to the date originally scheduled for the payment thereof.~~

~~“Subordinated Indebtedness” means, with respect to any person, any Indebtedness (whether outstanding on the Amendment Effective Date or thereafter Incurred) which is expressly subordinated in right of payment to the Notes pursuant to a written agreement.~~

~~“Subordinated Shareholder Debt” means any Indebtedness provided to the Issuer held by any shareholder in exchange for or pursuant to any security, instrument or agreement other than Capital Stock, together with any such security, instrument or agreement and any other security or instrument other than Capital Stock issued in payment of any obligation under any Subordinated Shareholder Debt; provided that such Subordinated Shareholder Debt;~~

- (a) does not (including upon the happening of any event) mature or require any amortization or other payment of principal prior to the first anniversary of the maturity of the Notes (other than through conversion or exchange of any such security or instrument for Capital Stock of the Issuer (other than Disqualified Stock) or for any other security or instrument meeting the requirements of this definition);
- (b) does not (including upon the happening of any event) require the payment of cash interest prior to the first anniversary of the final maturity of the Notes;
- (c) does not (including upon the happening of any event) provide for the acceleration of its maturity nor confers any right (including upon the happening of any event) to declare a default or event of default or take any enforcement action, in each case, prior to the first anniversary of the final maturity of the Notes;
- (d) is not secured by a Lien on any assets of the Issuer or a Subsidiary and is not Guaranteed by any Subsidiary of the Issuer;
- (e) is subordinated in right of payment to the prior payment in full in cash of the Notes in the event of any default, bankruptcy, reorganization, liquidation, winding up or other disposition of assets of the Issuer;
- (f) does not (including upon the happening of an event) constitute Voting Stock; and
- (g) is not (including upon the happening of any event) mandatorily convertible or exchangeable, or convertible or exchangeable at the option of the holder, in whole or in part, prior to the date on which the Notes mature other than into or for Capital Stock (other than Disqualified Stock) of the Issuer;

provided, however, that any event or circumstance that results in such Indebtedness ceasing to qualify as a Subordinated Shareholder Debt, such Indebtedness shall constitute an Incurrence of such Indebtedness by the Issuer which Incurrence will only be permitted to the extent permitted under the provision set forth under § 9(a) (Limitation on Indebtedness), and any and all Restricted Payments made through the use of the net proceeds from the Incurrence of such Indebtedness since the date of the original issuance of such Subordinated Shareholder Debt shall constitute new Restricted Payments that are deemed to have been made after the date of the original issuance of such Subordinated Shareholder Debt.

“Subsidiary” means ~~any Person that must be consolidated with,~~ with respect to the Issuer ~~for the purposes of preparing Consolidated Financial Statements of the Issuer.~~

- (a) any corporation, association or other business entity of which more than 50 per cent. of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency and after giving effect to any voting agreement or stockholders’ agreement that effectively transfers voting power) to vote in the election or appointment of directors or managers of the corporation, association or other business entity is at the time owned or controlled, directly or indirectly, by the Issuer or one or more of the other Subsidiaries of the Issuer (or a combination thereof); and
- (b) any partnership or limited liability company of which (i) more than 50 per cent. of the capital accounts, distribution rights, total equity and voting interests or general and limited partnership interests, as applicable, are owned or controlled, directly or indirectly, by the Issuer or one or more of the other Subsidiaries of the Issuer or a combination thereof, whether in the form of membership, general, special or limited partnership interests or otherwise, and (ii) the Issuer or any Subsidiary of the Issuer is a controlling general partner or otherwise controls such entity.

“Successor Company” has the meaning set out in § 9(h)(i)(A).

“Super Senior Notes” means EUR 37,000,000 in aggregate principal amount of senior secured notes issued by the Issuer on or about the Amendment Effective Date, and any interest or other amounts paid from time to time thereon in accordance with the terms and conditions governing such notes by increasing their outstanding principal amount.

“Taxes” has the meaning set out in § 78 (Taxes).

“Terms and Conditions” means these terms and conditions of the Notes.

~~“Total Assets” means, as of any date of determination, the total assets of the Issuer and its Subsidiaries on a consolidated basis in accordance with IFRS as shown on the most recent available consolidated balance sheet of the Issuer preceding such date.~~

“Trapped Cash” means the aggregate amount of cash and Cash Equivalents held by the Issuer or any of its Subsidiaries if and to the extent the treatment of such amounts as Free Liquidity or as Asset Disposition proceeds pursuant to sub-paragraph (a) of the definition of “Relevant Proceeds” and the corresponding application of such amounts as per the Relevant Proceeds Waterfall (including any upstreaming of cash or cash equivalents by any Subsidiary of the Issuer to the Issuer for application as per the Relevant Proceeds Waterfall), but for the application of sub-paragraph (f) of the definition of “Relevant Proceeds” would (i) violate any applicable financial assistance or corporate benefit laws, other mandatory laws of general application, any applicable regulatory requirements or any contractual obligations to which any Subsidiary of the Issuer is subject to and which have not been entered into in violation of § 9(d), (ii) result in personal liability of the directors or officers of the Issuer or any of its Subsidiaries or (iii) result in tax or other cost to the Issuer or any of its Subsidiaries in excess of 10 per cent. of the relevant Excess Cash that would otherwise have to be mandatorily repaid on the next following Interest Payment Date by the Issuer or, as applicable, such Subsidiary, but for the application of sub-paragraph (f) of the definition of “Relevant Proceeds”, provided always that the Issuer and its Subsidiaries shall use its best efforts to overcome any restrictions and/or minimize any costs of such prepayment or transfer.

“Trapped Cash Validation” has the meaning set out in § 9(p).

“Unapplied Relevant Proceeds” has the meaning set out in § 6(b).

“United States” means the United States of America (including the states thereof and the District of Columbia) and its possessions (including Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, Wake Island and Northern Mariana Islands).

“Voting Stock” of a corporation or company means all classes of Capital Stock of such corporation or company then outstanding and normally entitled to vote in the election of directors.

“Wholly Owned Subsidiary” means a Subsidiary, all of the Capital Stock of which (other than directors’ qualifying shares or shares required by any applicable law or regulation to be held by a Person other than the Issuer or another Wholly Owned Subsidiary) is owned by the Issuer or another Wholly Owned Subsidiary.

In addition, in these Terms and Conditions, where it relates to the Issuer or any member of the Group whose centre of main interests within the meaning of Regulation EU 2015/848 of the Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast) (the “Insolvency Regulation”) is in Luxembourg and/or whose place of the central administration (*siège de l’administration centrale*) within the meaning of the Luxembourg law of 10 August 1915 on commercial companies, as amended, is in Luxembourg, and unless the contrary intention appears, a reference to:

- (a) judicial proceedings to be adjudicated bankrupt or insolvent, insolvency proceedings, winding up, reorganisation, assignment or arrangement includes bankruptcy (*faillite*), insolvency, voluntary dissolution or liquidation (*dissolution ou liquidation volontaire*), court ordered liquidation (*liquidation judiciaire*) or reorganisation, composition with creditors (*concordat préventif de*

faillite), reprieve from payment (sursis de paiement), controlled management (gestion contrôlée), fraudulent conveyance (action pauliana), general settlement with creditors, reorganisation or similar laws affecting the rights of creditors generally;

- (b) a liquidator, receiver, an administrative receiver, administrator, compulsory manager includes a juge délégué commissaire, juge-commissaire, administrateur provisoire, liquidateur or a curateur;
- (c) a lien or security interest includes any hypothèque, nantissement, gage, privilège, sûreté réelle, droit de rétention, and any type of security in rem (sûreté réelle) or agreement or arrangement having a similar effect and any transfer of title by way of security;
- (d) a person being unable to pay its debts means that person being in a state of cessation of payments (cessation de paiements) and having lost its commercial creditworthiness (ébranlement de crédit);
- (e) a director, manager or officer includes a gérant and an administrateur or, in case of a partnership, the general partner (associé commandité) of such entity and any manager of such general partner.

~~“Warehouse Acquisition Additional Financial Indebtedness” has the meaning set out in § 8(c)(xii).~~

~~“Warehouse Asset Acquisition” means any acquisition of Warehouse Assets, including by way of the acquisition, directly or indirectly, of Capital Stock of any Person owning Warehouse Assets.~~

~~“Warehouse Asset” means any asset used or useful for a Permitted Business (including Capital Stock or other securities of any Person primarily engaged in a Permitted Business); provided such asset is acquired by the Issuer or any of its Subsidiaries with a view (at the time of such acquisition) to disposing of it within 15 months of acquisition.~~

~~“Weighted Average Life to Maturity” means, when applied to any Financial Indebtedness, at any date, the quotient obtained by dividing: (a) the sum of the products of the number of years from the date of determination to the date of each successive scheduled principal payment of such Financial Indebtedness, multiplied by the amount of such payment by (b) the sum of all such payments.~~

§ 2 FORM AND DENOMINATION

- (a) The ~~issue~~Notes were issued by the Issuer ~~of Notes~~on the Issue Date in the original aggregate principal amount of

EUR 300,000,000

(in words: Euro three-hundred million)

~~is~~ divided into notes in bearer form ~~with a principal amount~~in a denomination of EUR 100,000 ~~(the “Principal Amount”)~~ each (the “Notes” and each a “Note”), ~~which terms shall include any interest or other amounts paid from time to time thereon in accordance with the Terms and Conditions by increasing the principal amount thereof) and as of the Amendment Effective Date the aggregate principal amount of all Notes is EUR 64,816.710.00 and the principal amount of each individual Note is EUR 21,605.57.~~

- (b) The Notes are represented by a global Note (the “Global Note”) without interest coupons. The Global Note will be signed manually by one or more authorised signatories of the Issuer and will be authenticated by or on behalf of the Principal Paying Agent.

Definitive Notes and interest coupons will not be issued. The Noteholders will have no right to require the issue of definitive Notes or interest coupons.

The Global Note will be deposited with the Clearing System until the Issuer has satisfied and discharged all its obligations under the Notes. Copies of the Global Note are available for each Noteholder at the Principal Paying Agent.

- (c) The Noteholders will receive proportional co-ownership interests or similar rights in the Global Note, which are transferable in accordance with applicable law and the rules and regulations of the Clearing System.
- (d) Pursuant to the book-entry registration agreement between the Issuer and Clearstream Frankfurt, the Issuer has appointed Clearstream Frankfurt as its book-entry registrar in respect of the Notes and Clearstream Frankfurt has agreed to maintain a register showing the aggregate number of the Notes represented by the Global Note under the name of Clearstream Frankfurt, and Clearstream Frankfurt has agreed, as agent of the Issuer, to maintain records of the Notes credited to the accounts of the accountholders of Clearstream Frankfurt for the benefit of the holders of the co-ownership interests in the Notes represented by the Global Note, and the Issuer and Clearstream Frankfurt have agreed, for the benefit of the holders of co-ownership interests in the Notes, that the actual number of Notes from time to time will be evidenced by the records of Clearstream Frankfurt.

§ 3 **STATUS OF THE NOTES; COLLATERAL; NOTE GUARANTEES**

- (a) Status. The Notes constitute unsubordinated and ~~unsecured~~, in accordance with § 3(b) below, secured obligations of the Issuer ranking *pari passu* among themselves and, in the event of the dissolution, liquidation or insolvency of the Issuer or any proceeding to avoid insolvency of the Issuer, *pari passu* with all other present and future unsubordinated and ~~unsecured~~secured obligations of the Issuer, and save for such obligations which may be preferred by applicable law.
- (b) Collateral. On the Amendment Effective Date, the payment obligations of the Issuer under the Notes and the payment obligations of the Guarantors under the Note Guarantees will be secured by Liens over the collateral as set forth in Annex 1 hereto (the “Collateral”), in each case subject to and in accordance with the Intercreditor Agreement.

The Collateral shall be granted in favor of the Security Trustee for the benefit of the Noteholders and neither the Noteholders’ Representative nor any Noteholder may directly and independently enforce or otherwise realize (*verwerten*) the Collateral. The Collateral also secures the payment obligations of the Issuer under the Reinstated 2022 Notes, the Super Senior Notes and the payment obligations of the Guarantors under the Note Guarantees as set out in the Intercreditor Agreement. The rights and duties of the Security Trustee and the relationship of the holders of the Secured Notes, in each case represented by their respective noteholders’ representative, with regards to the Collateral are governed by the Intercreditor Agreement to which the Noteholders’ Representative is a party.

Any rights of the Noteholders under the Intercreditor Agreement are exercised by the Noteholders’ Representative with effect for and against all Noteholders.

The Collateral will be held, administered and enforced by the Security Trustee in accordance with the Intercreditor Agreement for the benefit of, *inter alios*, the holders of the Super Senior Notes, the holders of the Reinstated 2022 Notes and the Noteholders. Upon an enforcement of the Collateral in whole or in part, all net proceeds from such enforcement shall be applied in accordance with relevant provisions of the Intercreditor Agreement, which provides for a priority of the claims of the holders of the Super Senior Notes over the claims of the Noteholders and the holders of the Reinstated 2022 Notes with respect to such proceeds.

(c) *Release of Collateral.* Pursuant to the Terms and Conditions and in accordance with the terms of the Intercreditor Agreement, the Security Trustee shall be irrevocably authorized to release any Collateral (at the cost of the Issuer and without any consent, sanction, authority or further confirmation from any Noteholder) (i) in connection with any sale, assignment, transfer, conveyance or other disposition of such Collateral to a Person that is not (either before or after giving effect to such transaction) the Issuer or any of the Subsidiaries, if the sale, assignment, transfer, conveyance or other disposition does not violate § 9(e) (*Limitation on Sales of Assets*), (ii) in connection with a Permitted Reorganization, (iii) if the obligations under the Notes have been satisfied in full (including upon redemption in full) or (iv) in accordance with an enforcement action in accordance with the Intercreditor Agreement.

(d) *Note Guarantees.* With effect of and following the Amendment Effective Date, the Original Guarantors, jointly and severally, guarantee by way of an independent payment obligation (*selbständiges Zahlungsversprechen*) unconditionally and irrevocably, the full and punctual payment of all amounts payable under the Notes when due. The Issuer may from time to time be required to procure from certain of its Subsidiaries (each an “**Additional Guarantor**”) the issuance of additional guarantees pursuant to § 9(i) (*Future Guarantors*).

The relevant guarantees securing the Secured Notes (the “**Note Guarantees**”) constitute (or will constitute) direct and unsubordinated obligations of the Guarantors, ranking at least *pari passu* with all other present and future unsubordinated obligations of the Guarantors, unless such obligations are accorded priority under mandatory provisions of statutory law. The obligations under the Note Guarantees may be limited as necessary to recognize certain defenses generally available to guarantors (including those that relate to general statutory limitations, capital maintenance, corporate benefit, fraudulent preference, financial assistance or thin-capitalization rules or other similar laws or regulations (or analogous restrictions) of any applicable jurisdiction).

The Note Guarantees shall be granted solely to the Security Trustee pursuant to the Intercreditor Agreement and shall not create any direct claims of the Noteholders but shall be held, administered and enforced by the Security Trustee in accordance with the Intercreditor Agreement for the benefit of, *inter alios*, the holders of the Super Senior Notes, the holders of the Reinstated 2022 Notes and the Noteholders. The holders of the Super Senior Notes, the holders of the Reinstated 2022 Notes and the Noteholders will not be entitled pursuant to a contract for the benefit of third parties under Section 328 of the German Civil Code (*Bürgerliches Gesetzbuch*) in respect of any guarantees guaranteeing the Secured Notes. Upon enforcement of any of the Note Guarantees, all net proceeds from such enforcement shall be applied in accordance with the Intercreditor Agreement, which provides for a priority of the claims of the holders of the Super Senior Notes over the claims of the Noteholders and the holders of the Reinstated 2022 Notes with respect to such proceeds.

(e) *Release of Note Guarantees.* Pursuant to the Terms and Conditions and in accordance with the terms of the Intercreditor Agreement, the Security Trustee shall be irrevocably authorized to release any of the Note Guarantees (at the cost of the Issuer and without any consent, sanction, authority or further confirmation from any Noteholder) (i) in connection with any sale, assignment, transfer, conveyance or other disposition (including by way of merger or consolidation) of the Capital Stock of the relevant Guarantor (whether by direct sale or sale of a holding company) to a Person that is not the Issuer or any of the Subsidiaries that results in such Guarantor ceasing to be a Subsidiary of the Issuer, if the sale, assignment, transfer, conveyance or other disposition does not violate § 9(e) (*Limitation on Sales of Assets*), (ii) in connection with a Permitted Reorganization, (iii) if the obligations under the Notes have been satisfied in full or (iv) in accordance with an enforcement action pursuant to the Intercreditor Agreement.

§ 4

INTEREST

- (a) ~~The~~ From and including 31 July 2023 the Notes will bear interest on their ~~Principal Amount~~ principal amount (as such may be increased from time to time in accordance with sub-paragraph (b) below) at a rate of ~~3.50~~8.00 per cent. per annum ~~from and including 29 March 2018~~. Interest is payable semi-annually in ~~arrears~~ arrears on each Interest Payment Date, commencing on ~~15 October 2018 (long first interest period)~~ 31 December 2023.
- (b) Payment of Interest / PIK Toggle
- (i) Except as provided in sub-paragraphs (b)(ii) and (b)(iii) below, the full amount of interest on the Notes with respect to any Interest Payment Date (the “Full Cash Interest Amount”) shall be payable entirely in cash.
- (ii) With respect to any Interest Payment Date, the Issuer may, at its option, elect on or within ten (10) Business Days after the Relevant Date to pay up to 50 per cent. of the Full Cash Interest Amount (the “Minority PIK Interest Amount”) by increasing the principal amount of the outstanding Notes in an amount equal to the Minority PIK Interest Amount (the “Minority PIK Interest Payment”).
- (iii) With respect to any Interest Payment Date falling on or before 31 December 2024 and subject to sub-paragraph (iv) below, the Issuer may, at its option, elect on or within ten (10) Business Days after the Relevant Date to pay more than 50 per cent. of the Full Cash Interest Amount (the “Majority PIK Interest Amount”) by increasing the principal amount of the outstanding Notes in an amount equal to the Majority PIK Interest Amount (the “Majority PIK Interest Payment”), but only if and to the extent the Relevant Proceeds on the Relevant Date would not suffice to pay (x) such Majority PIK Interest Amount, (y) cash interest required to be paid under the Reinstated 2022 Notes pursuant to the terms thereof and (z) any amounts of interest and principal required to be paid under any outstanding Super Senior Notes pursuant to the terms thereof, in each case in cash pursuant to the Relevant Proceeds Waterfall on such Interest Payment Date.
- (iv) If the Issuer elects to make a Majority PIK Interest Payment with respect to any Interest Payment Date, the Issuer shall pay an additional amount on the Notes on such Interest Payment Date by further increasing the principal amount of the outstanding Notes by an amount (the “Additional PIK Amount”) equal to 1.00 per cent. per annum on the then outstanding principal amount of the Notes, calculated on the basis of the Day Count Fraction for the applicable Interest Calculation Period for such Interest Payment Date.
- (v) The Issuer may only elect to make a Minority PIK Interest Payment or a Majority PIK Interest Payment with respect to any Interest Payment Date, if the Issuer also elects to pay a corresponding proportion of the interest, which would otherwise be due in cash, on the corresponding interest payment date for the Reinstated 2022 by increasing the then outstanding principal amount of the Reinstated 2022 Notes.
- (vi) Within ten (10) Business Days after the Relevant Date, the Issuer shall give notice to the Noteholders in accordance with § 16 (Notices) specifying (i) whether it elected to make a Minority PIK Interest Payment or a Majority PIK Interest Payment (if applicable), (ii) the Full Cash Interest Amount, the Minority PIK Interest Amount and/or the Majority PIK Interest Amount (as applicable) and (iii) the Additional PIK Amount (if any).

- (vii) Notwithstanding anything to the contrary, the payment of accrued interest in connection with any redemption or repurchase of the Notes in accordance with the Terms and Conditions will be made solely in cash at the interest rate set forth in § 4(a) above.
- (viii) If the Issuer pays a portion of the interest on the Notes in cash and a portion of the interest by increasing the principal amount of the outstanding Notes and/or is required to make a payment of an Additional PIK Amount, such payments shall be paid to the Noteholders on a *pro rata an pari passu* basis.
- (ix) In the case of a payment of interest by increasing the principal amount of the outstanding Notes or a payment of an Additional PIK Amount, such payment shall be reflected by use of a pool factor in compliance with the requirements and procedures of the Clearing System unless otherwise required by law or any applicable stock exchange rules or an increase in the aggregate principal amount of the Notes.
- (x) Any Minority PIK Interest Payment, Majority PIK Interest Payment and any further increase of the principal amount of the outstanding Notes by Additional PIK Amounts shall be made free and clear of, and without withholding or deduction for, any taxes, duties, assessments or governmental charges of whatever nature.
- (bc) If a Note is redeemed, such Note will cease to bear interest from the end of the day immediately preceding the due date for redemption.
- (e) ~~If the Issuer fails to redeem the Notes when due, interest will continue to accrue on the Principal Amount beyond the end of the day immediately preceding the due date for redemption until the end of the day immediately preceding the actual date of redemption of the Notes. In this case the applicable rate of interest will correspond to the statutory default rate of interest established by German law.~~
- (d) Any due and unpaid amount of principal shall, irrespective of any notice and for so long as any principal amounts payable under the Notes are not paid when due, bear additional default interest at a rate equal to 1.00 per cent. per annum from and including the relevant due date to but excluding the date of payment.
- (de) Where interest is to be calculated in respect of any period of time, the interest will be calculated on the basis of the Day Count Fraction.
- (e) ~~The interest originally payable on 15 April 2023, as well as any interest payable on a subsequent Interest Payment Date is payable on the Maturity Date.~~

§ 5 MATURITY, REDEMPTION AND PURCHASE

- (a) Redemption at Maturity
 - (a) To the extent that the Notes have not previously been redeemed in whole or in part, or repurchased and cancelled they will be redeemed at their ~~Principal Amount~~ outstanding principal amount plus accrued interest on the Maturity Date.
- (b) Early Redemption at the Option of the Issuer
 - (b) The Issuer may, at any time after the Super Senior Notes have been redeemed and/or cancelled in full, on giving not less than ~~30~~10 nor more than 60 days' prior notice to the Noteholders in accordance with § 16 (*Notices*), redeem ~~all, but not some only, of the outstanding Notes~~ the Notes in whole or in part on a *pro rata* basis at a redemption price equal to 100 per cent. of the

principal amount, together with interest accrued to (but excluding) the Call Redemption Date,
with effect from the Call Redemption Date.

~~Any such~~ Where such notice is given, the Issuer will redeem the Notes on the Redemption Date at their ~~Make-Whole Redemption Amount plus accrued interest to but excluding the Redemption Date.~~

The notice of early redemption (~~the "Notice of Early Redemption"~~) ~~is~~ shall be irrevocable and must ~~state~~ specify the Call Redemption Date ~~and the Make-Whole Redemption Amount calculated by the Calculation Agent.~~

(c) Mandatory Redemption in case of an Early Redemption, Mandatory Redemption or Repurchase of the Reinstated 2022 Notes

If any principal amount of the Reinstated 2022 Notes is redeemed or repurchased by the Issuer, the Issuer shall redeem the principal amount of the Notes pro rata and on a pari passu basis, at a redemption price equal to 100 per cent. of the principal amount, together with interest accrued to (but excluding) the date of actual redemption no later than the date when the Reinstated 2022 Notes are redeemed, provided that no such mandatory redemption shall be made before the Super Senior Notes have been redeemed and/or cancelled in full.

The ~~"Make-Whole Redemption Amount"~~ per Note shall be the higher of:

- (i) the Principal Amount; or
- (ii) the Present Value.

The ~~"Present Value"~~ will be the sum, rounded to 2 decimal places with EUR 0.005 being rounded upwards, of

- (i) the Principal Amount to be redeemed which would otherwise become due on the Maturity Date discounted from the Maturity Date to the Redemption Date ~~on the basis of the Benchmark Yield plus 0.50 per cent;~~ and
- (ii) each remaining interest payment which would otherwise become due on each Interest Payment Date falling after the Redemption Date to and including the Maturity Date (excluding any interest accrued to but excluding the Redemption Date), each discounted from its scheduled Interest Payment Date to the Redemption Date on the basis of the Benchmark Yield plus 0.50 per cent.

The ~~Calculation Agent will calculate the Present Value by applying the Day-Count-Fraction set out in subparagraph (d) of § 4 (Interest).~~

The ~~"Benchmark Yield"~~ means the yield determined by the Calculation Agent at or around noon (Frankfurt time) on the Redemption Calculation Date of the "Bundesobligation 0% due 14 April 2023" of the Federal Republic of Germany (ISIN DE0001141778). If such yield is not available at that time on such date the Benchmark Yield shall be the yield of a substitute benchmark security chosen by the Calculation Agent in its reasonable discretion, which has a maturity comparable to the remaining term of the Note to the Maturity Date, that would be used at the time of selection and in accordance with customary financial practice, in pricing new issues of corporate debt securities of comparable maturity to the Maturity Date.

~~"Redemption Calculation Date"~~ means the tenth day prior to ~~the day on which the~~ Notice of Early Redemption is deemed to have become effective pursuant to § 16 (*Notices*), or in case such tenth day is not a Business Day, the immediately preceding Business Day.

- (e) ~~The Issuer may, on giving not less than 30 nor more than 60 days' prior notice to the Noteholders in accordance with § 16 (Notices), redeem all, but not some only, of the outstanding Notes with effect from the Redemption Date if at any time:~~
- ~~(i) a Gross-up Event occurs; or~~
 - ~~(ii) the aggregate principal amount of the Notes outstanding and held by persons other than the Issuer and its Subsidiaries is equal to or less than 15 per cent. of the aggregate principal amount of the Notes originally issued (including any Notes additionally issued in accordance with § 17 (Issue of Additional Notes)).~~

~~Where such notice is given, the Issuer will redeem the Notes on the Redemption Date at their Principal Amount plus accrued interest to but excluding the Redemption Date.~~

~~The notice of early redemption is irrevocable and must state the Redemption Date and the facts which establish the right of the Issuer to redeem the Notes.~~

~~In the event of the occurrence of a Gross-up Event, no such notice of redemption may be given earlier than 90 days prior to the earliest date on which the Issuer would be for the first time obliged to pay the Additional Amounts pursuant to § 7 (Taxes).~~

- (d) Mandatory Redemption in Case of an Acquisition of Control.

Upon occurrence of an Acquisition of Control, the Notes shall be redeemed in whole but not in part at a redemption price equal to 100 per cent. of the principal amount, together with interest accrued to (but excluding) the actual date of redemption, provided that no such mandatory redemption shall be made before the Super Senior Notes have been redeemed and/or cancelled in full.

- ~~(i) If an Acquisition of Control occurs, the Issuer will, without undue delay after becoming aware thereof, fix the Acquisition of Control Record Date and give notice in accordance with § 16 (Notices) of the Acquisition of Control and occurrence of the Acquisition of Control Record Date.~~
- ~~(ii) If the Issuer gives notice in accordance with § 5(e)(i) of an Acquisition of Control, each Noteholder may at its option on giving not less than 10 days' notice prior to the Acquisition of Control Record Date declare all or some only of its Notes not previously redeemed due by giving notice in accordance with § 5(e)(iii), which notice will take effect on the Acquisition of Control Record Date.~~
- ~~(iii) Any notice declaring Notes due in accordance with this § 5(d) will be made by means of a declaration in text form in the German or English language to the Principal Paying Agent in accordance with the then applicable rules and procedures of the Clearing System together with evidence which may be in the form of a certificate of the Noteholder's Custodian certifying that such Noteholder, at the time of such notice, is the holder of the relevant Notes or in any other appropriate manner. The notice shall be irrevocable.~~

~~If a Noteholder gives notice in accordance with this § 5(d)(iii), the Issuer must redeem the Note(s) for which the put right is being exercised on the Acquisition of Control Record Date at 101 per cent. of their Principal Amount plus accrued interest to but excluding the Acquisition of Control Record Date.~~

- (e) Minimum Mandatory Redemption

On any Minimum Redemption Date falling on a date after the Super Senior Notes have been redeemed and/or cancelled in full, the Issuer shall apply any Minimum Redemption Amount to

redeem the Notes, in whole or in part on a *pro rata* and *pari passu* basis, together with interest accrued to (but excluding) the relevant Minimum Redemption Date.

(f) **Mandatory Redemption pursuant to the Relevant Proceeds Waterfall**

On any Interest Payment Date, the Issuer shall apply the Relevant Proceeds determined on the Relevant Date immediately preceding such Interest Payment Date to redeem the principal amounts outstanding under the Secured Notes subject to § 6(b) and in the order and priority set out in § 6 (*Payments from Relevant Proceeds*).

(g) **Partial Redemptions**

In the case of a partial redemption of the Notes, such partial redemption shall be reflected by use of a pool factor and in compliance with the requirements **and procedures of the Clearing System** unless otherwise required by law or any applicable stock exchange rules or a reduction in aggregate principal amount.

(eh) The Issuer and any of its **affiliates** **Subsidiaries** may, at any time **after the Super Senior Notes have been redeemed and/or cancelled in full**, purchase Notes, in the open market or otherwise, **as long as such redemption does not otherwise violate the terms and conditions of any Secured Notes**.

Any Notes purchased by the Issuer or any of its affiliates may be cancelled or held and resold.

§ 6 PAYMENTS FROM RELEVANT PROCEEDS

(a) **Relevant Proceeds Waterfall**

Subject to § 6(b) below, on any Interest Payment Date, the Issuer shall apply the Relevant Proceeds determined on the Relevant Date immediately preceding such Interest Payment Date in the following order and priority (the “**Relevant Proceeds Waterfall**”):

(i) **first, interest payment on the Super Senior Notes (*pro rata* and *pari passu* among the Super Senior Notes);**

(ii) **second, mandatory redemption of principal amounts outstanding under the Super Senior Notes in whole or in part on a *pro rata* and *pari passu* basis at a redemption price equal to 100 per cent. of the principal amount, together with interest accrued to (but excluding) the relevant Interest Payment Date;**

(iii) **third, interest payment on the Reinstated Senior Notes (*pro rata* and *pari passu* among the Reinstated Senior Notes); and**

(iv) **fourth, mandatory redemption of principal amounts outstanding under the Notes and the Reinstated 2022 Notes, respectively, in whole or in part on a *pro rata* and *pari passu* basis at a redemption price equal to 100 per cent. of the principal amount, together with interest accrued to (but excluding) the relevant Interest Payment Date.**

(b) **The Issuer shall not be required to make mandatory redemptions of principal amounts outstanding under any Reinstated Senior Notes from Relevant Proceeds in accordance with the Relevant Proceeds Waterfall on an Interest Payment Date unless the Relevant Proceeds on such Relevant Date available for redemptions of principal amounts outstanding under the Reinstated Senior Notes equal or exceed EUR 5,274,999.92.**

If the Relevant Proceeds available for redemptions of principal amounts outstanding under the Reinstated Senior Notes on any Relevant Date equal or exceed the applicable threshold amounts set out above, such Relevant Proceeds shall be applied in their entirety in redemptions of principal amounts under the Reinstated Senior Notes pursuant to the Relevant Proceeds Waterfall on the

immediately following Interest Payment Date. Any Relevant Proceeds that would have been required to be applied towards a redemption of Notes pursuant to the Relevant Proceeds Waterfall on an Interest Payment Date but are not so applied in reliance on this sub-paragraph (b) shall, until they are applied for a mandatory or voluntary redemption of Reinstated Senior Notes, constitute “Unapplied Relevant Proceeds”.

(c) Any Unapplied Relevant Proceeds shall be deposited in a separate account of the Issuer pledged for the benefit of the Security Trustee until application pursuant to the Relevant Proceeds Waterfall.

(d) On or immediately after any Relevant Date, the Issuer shall give notice to the Noteholders in accordance with § 16 (Notices) specifying (i) the Relevant Proceeds, (ii) the application of the Relevant Proceeds in accordance with the Relevant Proceeds Waterfall or § 6(b) (as applicable), and (iii) in case of a Relevant Date with respect to an Interest Payment Date falling on a Minimum Redemption Date, the Minimum Redemption Amount (if any) to be applied towards the mandatory redemption of any Secured Notes.

§ 7

PAYMENTS

- (a) All payments on the Notes will be made in Euro to the Principal Paying Agent for transfer to the Clearing System or to its order for credit to the accounts of the relevant account holders of the Clearing System outside the United States. Payments on the Notes made to the Clearing System or to its order will discharge the liability of the Issuer under the Notes to the extent of the sums so paid.
- (b) If the due date for payment of any amount in respect of the Notes is not a Business Day, then the Noteholder will not be entitled to payment until the next day which is a Business Day. In such case, the Noteholders will not be entitled to further interest or to any other compensation on account of such delay.

§ 7~~8~~

TAXES

All payments of principal and interest by the Issuer in respect of the Notes or by any of the Guarantors in respect of the Note Guarantees will be made free and clear of, and without withholding or deduction for, any taxes, duties, assessments or governmental charges of whatever nature (“**Taxes**”) imposed, levied, collected, withheld or assessed by the Issuer’s or any of the Guarantors’ country of domicile for tax purposes or any political subdivision or any authority or any agency of or in the Issuer’s or any of the Guarantors’ country of domicile for tax purposes that has power to tax, unless the Issuer is compelled by law to make such withholding or deduction. If the Issuer or any of the Guarantors is required to make such withholding or deduction, the Issuer or the relevant Guarantor(s) will pay such additional amounts (the “**Additional Amounts**”) to the Noteholders as the Noteholders would have received if no such withholding or deduction had been required, except that no such Additional Amounts will be payable for any such Taxes in respect of any Note or the Note Guarantees:

- (a) which are payable by any person acting as custodian bank or collecting agent on behalf of a Noteholder, or otherwise in any manner which does not constitute a deduction or withholding by the Issuer or any of the Guarantors from payments of principal or interest made by it; or
- (b) which are payable by reason of the Noteholder having, or having had, some personal or business connection with the Issuer’s or any of the Guarantors’ country of domicile for tax purposes and not merely by reason of the fact that payments in respect of the Notes or the Note Guarantees are, or for purposes of taxation are deemed to be, derived from sources in, or are secured in, the Issuer’s or any of the Guarantors’ country of domicile for tax purposes; or

- (c) which are deducted or withheld pursuant to (i) any European Union directive or regulation concerning the taxation of interest income, or (ii) any international treaty or understanding relating to such taxation and to which the Issuer's or any of the Guarantors' country of domicile for tax purposes or the European Union is a party, or (iii) any provision of law implementing, or complying with, or introduced to conform with, such directive, regulation, treaty or understanding; ~~or~~
- (d) which are payable by reason of a change in law that becomes effective more than 30 days after the relevant payment becomes due, or is duly provided for and notice thereof is published in accordance with § 16 (*Notices*), whichever occurs later; ~~or~~ or
- (e) which is levied under the Luxembourg Relibi law of 23 December 2005, as amended.

In any event, the Issuer ~~is~~ and the Guarantors are authorised to withhold or deduct from payments on the Notes or the Note Guarantees any withholding or deduction of any amounts required by the rules of U.S. Internal Revenue Code of 1986 Sections 1471 through 1474 (or any amended or successor provisions or any associated regulations or other official guidance), pursuant to any inter-governmental agreement or implementing legislation adopted by another jurisdiction in connection with these provisions, or pursuant to any agreement with the U.S. Internal Revenue Service (“**FATCA Withholding**”), and will have no obligation to indemnify any investor or pay additional amounts in relation to any FATCA Withholding deducted or withheld by the Issuer, any of the Guarantors, the relevant Paying Agent or any other party.

§ 82 **LIMITATIONS ON THE INCURRENCE OF FINANCIAL INDEBTEDNESS COVENANTS**

- (a) *Limitation on Indebtedness.*
 - (i) The Issuer shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, incur any Indebtedness (including Acquired Indebtedness).

~~The Issuer undertakes that, subject to the exceptions set out below under § 8(b) and (c), the Issuer will not, and will procure that none of its Subsidiaries will, after the Issue Date, incur any Financial Indebtedness.~~

(b) Ratio Debt

~~The provisions of § 8(a) will not limit the incurrence of Financial Indebtedness by the Issuer or its Subsidiaries if, on the date of the incurrence of such Financial Indebtedness:~~

- (i) ~~after giving effect to the incurrence of such Financial Indebtedness and the application of the net proceeds therefrom, on a pro forma basis, the Consolidated Net Leverage Ratio does not exceed 3.50 to 1.00; and~~
- (ii) ~~after giving effect to the incurrence of such Financial Indebtedness and the application of the net proceeds therefrom, on a pro forma basis, the Interest Coverage Ratio is at least 2.00 to 1.00;~~

~~provided that the Financial Indebtedness that may be incurred by Subsidiaries of the Issuer pursuant to this §8(b) at any time outstanding does not exceed the greater of (x) EUR 25,000,000 and (y) 2.0 per cent. of Total Assets.~~

(c) Permitted Debt

~~The provisions of § 8(a) will not limit the incurrence of Financial Indebtedness by the Issuer or its Subsidiaries of (and the Issuer and its Subsidiaries will at all times be permitted to incur) the following Financial Indebtedness (“**Permitted Debt**”):~~

- (i) ~~the incurrence by the Issuer or any Subsidiary of Financial Indebtedness under Credit Facilities in an aggregate principal amount at any one time outstanding under this § 8(e)(i) not to exceed the greater of (A) EUR 60,000,000 and (B) 4.0 per cent. of Total Assets, plus in the case of any refinancing of any Financial Indebtedness permitted under this § 8(e)(i) or any portion thereof, the aggregate amount of fees, underwriting discounts, premiums and other costs and expenses incurred in connection with such refinancing;~~
- (ii) ~~Financial Indebtedness outstanding on the Issue Date (other than Financial Indebtedness described in § 8(e)(iii)) after giving effect to the use of proceeds of the Notes;~~The foregoing § 9(a)(i) shall not prohibit the Incurrence of the following Indebtedness (“Permitted Debt”):
- (iii) ~~the incurrence by the Issuer of Financial Indebtedness represented by the Notes;~~
- (iv) ~~the incurrence by the Issuer or any Subsidiary of Financial Indebtedness representing Capital Lease Obligations, mortgage financings, purchase money obligations or other financings incurred for the purpose of financing all or any part of the purchase price, lease expense, rental payments or cost of design, construction, installation or improvement of property, plant or equipment or other assets (including Capital Stock) used in the business of the Issuer or any of its Subsidiaries, in an aggregate principal amount, including all Permitted Refinancing Indebtedness incurred or issued to renew, refund, refinance, replace, defease or discharge any Financial Indebtedness incurred pursuant to this § 8(e)(iv), not to exceed the greater of (A) EUR 30,000,000 and (B) 2.5 per cent. of Total Assets at any time outstanding;~~
- (v) ~~the incurrence by the Issuer or any Subsidiary of Permitted Refinancing Indebtedness in exchange for, or the net proceeds of which are used to renew, refund, refinance, replace, defease or discharge any Financial Indebtedness (other than intercompany Financial Indebtedness) incurred under § 8(b) or § 8(e)(ii) and (iii) or § 8(e)(v) or (xi);~~
- (viA) ~~the incurrence~~Indebtedness of the Issuer or any Subsidiary owing to and held by the Issuer or any Subsidiary ~~of intercompany Financial Indebtedness between or among the Issuer or any Subsidiary; provided, however,~~ that:
- (A1) if the Issuer or any Guarantor is the obligor on such ~~Financial Indebtedness~~ and the payee is not the Issuer or a Guarantor, such ~~Financial Indebtedness~~ must be unsecured and ~~(H) except in respect of the intercompany current liabilities incurred in the ordinary course of business in connection with the cash management operations positions of the Issuer and its Subsidiaries and (H) only,~~ to the extent legally permitted (the Issuer and its Subsidiaries having completed all procedures required in the reasonable judgment of directors ~~or~~ officers of the obligee or obligor to protect such Persons from any penalty or civil or criminal liability in connection with the subordination of such ~~Financial Indebtedness~~), expressly subordinated in right of payment to the prior payment in full in cash of all ~~Obligations then due~~ obligations with respect to the Notes, in the case of the Issuer; ~~and, or the relevant Note Guarantee, in the case of a Guarantor (for the avoidance of doubt, subordination pursuant to the terms of the Intercreditor Agreement shall satisfy any requirement that such Indebtedness is expressly subordinated to the Notes); and~~

~~(B2)~~ (x) any subsequent issuance or transfer of ~~Equity Interests~~Capital Stock that results in any such ~~Financial~~ Indebtedness being held by a Person other than the Issuer or a Subsidiary; and (y) any sale or other transfer of any such ~~Financial~~ Indebtedness to a Person that is ~~not either~~neither the Issuer ~~or~~nor a Subsidiary, ~~will~~shall be deemed, in each case, to constitute an ~~incurrence~~Incurrence of such ~~Financial~~ Indebtedness by the Issuer or such Subsidiary, as the case may be, that was not permitted by this ~~§ 8~~sub-paragraph (e)(viA);

~~(vii) the incurrence by the Issuer or any Subsidiary of Hedging Obligations for bona fide hedging purposes of the Issuer and its Subsidiaries not for speculative purposes (as determined in good faith by the Issuer or such Subsidiary, as the case may be);~~

(B) any Refinancing Indebtedness Incurred in respect of any Indebtedness Incurred pursuant to sub-paragraphs (C) or (D) of this § 9(a)(ii) or this sub-paragraph (B); provided, in each case, that the net proceeds from the Incurrence of any Refinancing Indebtedness shall be applied within 15 Business Days to repay the relevant Indebtedness Incurred pursuant to sub-paragraphs (C) or (D) of this § 9(a)(ii) or this sub-paragraph (B);

(C) Existing Indebtedness (other than the Secured Notes);

(D) Indebtedness Incurred by the Issuer and the Guarantors represented by (i) the Notes outstanding on the Amendment Effective Date (and any interest or other amounts paid from time to time on the Notes in accordance with the Terms and Conditions by increasing the principal amount of the Notes) and the Note Guarantees in respect of these Notes; (ii) the Super Senior Notes (and any interest or other amounts paid from time to time on the Super Senior Notes in accordance with their terms and conditions by increasing the principal amount of the Super Senior Notes); (iii) the Reinstated 2022 Notes (and any interest or other amounts paid from time to time on the Reinstated 2022 Notes in accordance with their terms and conditions by increasing the principal amount of the Reinstated 2022 Notes) and (iv) any interest or other amounts paid from time to time on any Refinancing Indebtedness Incurred in respect of any Indebtedness Incurred pursuant to sub-clauses (i) to (iii) of this sub-paragraph (D) by increasing the principal amount of such Refinancing Indebtedness;

(E) (i) without limiting § 9(i), Indebtedness Incurred under a Guarantee by any Guarantor of Indebtedness of the Issuer or any Subsidiary to the extent that the guaranteed Indebtedness was permitted to be Incurred by another provision of this § 9(a); provided, however, that if the Indebtedness being guaranteed is subordinated to or *pari passu* with the Notes or a Note Guarantee, then the Guarantee must be subordinated or *pari passu*, as applicable, to the same extent as the Indebtedness guaranteed; and (ii) without limiting § 9(c), Indebtedness arising by reason of any Lien granted by or applicable to such Person securing Indebtedness of the Issuer or any Subsidiary to the extent that the secured Indebtedness was permitted to be Incurred by another provision of this § 9(a);

~~(viii) the incurrence by the Issuer or any of its Subsidiaries of Financial~~

F) Indebtedness Incurred after the Amendment Effective Date in respect of workers' compensation claims, ~~self insurance~~early retirement obligations,

~~captive insurance companies, bankers' acceptances, performance and surety bonds~~ or social security or wage taxes in the ordinary course of business;

~~(ix) the incurrence by the Issuer or any of its Subsidiaries of Financial Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently drawn against insufficient funds, so long as such Financial Indebtedness is covered within 30 Business Days;~~

~~(x) Financial Indebtedness represented by guarantees of any Management Advances;~~

~~(xiG) (A) Financial Indebtedness (i) of any Person incurred and outstanding on the date on which such Person becomes a Subsidiary or is merged, consolidated, amalgamated or otherwise combined with (including pursuant to any acquisition of assets and assumption of related liabilities) the Issuer or any Subsidiary or (B) Financial Indebtedness incurred by the Issuer; (ii) Incurred to provide all or any portion of the funds used to consummate the transaction or series of related transactions pursuant to which such any Person became a Subsidiary or was otherwise acquired by the Issuer or any Subsidiary; provided, however, with respect to this § 8 (c)(xi), that, at the time of the acquisition or other transaction pursuant to which such Financial Indebtedness was incurred or deemed to be incurred, (I) the Issuer would have been able to incur at least EUR 1.00 of additional Financial Indebtedness pursuant to paragraph (b) above after giving effect to the incurrence of such Financial Indebtedness pursuant to this § 8(c)(xi) calculated on a pro forma basis or (II) the Interest Coverage Ratio would not be less and the Consolidated Net Leverage Ratio would not be greater than it was immediately prior to giving effect to in an aggregate amount not to exceed, (x) when taken together with the principal amount of all other Indebtedness Incurred pursuant to this § 9(a)(ii)(G)(x) and then outstanding, EUR 3 million; plus (y) any Indebtedness to the extent that such Indebtedness is discharged within three months of the completion of such acquisition or other transaction on a pro forma basis would otherwise constitute Permitted Debt;~~

~~(xii) Financial Indebtedness of any Person (A) outstanding on the date on which such Person becomes a Subsidiary or is merged, consolidated, amalgamated or otherwise combined with (including pursuant to any acquisition of assets and assumption of related liabilities) the Issuer or any Subsidiary in connection with a Warehouse Asset Acquisition (the "Acquired Warehouse Financial Indebtedness") or (B) incurred to provide all or any portion of the funds used to consummate a Warehouse Asset Acquisition (the "Warehouse Acquisition Additional Financial Indebtedness") and, in each case, Permitted Refinancing Indebtedness in respect thereof, provided that:~~

~~(I) any Financial Indebtedness incurred under this § 8(c)(xii) shall no longer be permitted under this § 8(c)(xii) if it remains outstanding longer than 15 months from the date on which the related Warehouse Asset Acquisition is consummated; and~~

~~(II) the aggregate principal amount of Financial Indebtedness incurred pursuant to this § 8(c)(xii) at any time outstanding does not exceed the greater of (x) EUR 150,000,000 and (y) 100 per cent. of Consolidated EBITDA for the Relevant Period;~~

~~(xiii) Financial Indebtedness arising from agreements of the Issuer or a Subsidiary providing for customary indemnification, obligations in respect of earnouts or other adjustments of purchase price or, in each case, similar obligations, in each case, incurred or assumed in connection with the acquisition or disposition of any business or assets or Person or any Equity Interests of a Subsidiary, provided that the maximum liability of the Issuer and its Subsidiaries in respect of all such Financial Indebtedness shall at no time exceed the gross proceeds, including the Fair Market Value of non-cash proceeds (measured at the time received and without giving effect to any subsequent changes in value), actually received by the Issuer and its Subsidiaries in connection with such disposition;~~

~~(xiv) Financial-H Indebtedness of the Issuer and/or its Subsidiaries in respect of (A*i*) letters of credit, surety, performance or appeal bonds, completion guarantees, judgment, advance payment, customs, VAT or other tax guarantees or similar instruments issued in the ordinary course of business of such Person and not in connection with the borrowing of money, including letters of credit or similar instruments in respect of self-insurance and workers' compensation obligations, (ii) the financing of insurance premiums in the ordinary course of business, (iii) the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business, and (iv) any customary treasury and cash management or cash pooling or netting or setting-off arrangements entered into in the ordinary course of business; provided, however, that, in relation to the foregoing sub-clauses (i) through (iv), upon the drawing (Inanspruchnahme) of such letters of credit or other instrument, such obligations are reimbursed within 30 Business Days following such drawing; (B) any customary cash management, cash pooling or netting or setting off arrangements with Affiliates; and (C) customer deposits and advance payments received in the ordinary course of business from customers for goods purchased in the ordinary course of business; (Inanspruchnahme);~~

~~(xv) the guarantee by the Issuer or any Subsidiary of Financial Indebtedness of the Issuer or any Subsidiary to the extent that the guaranteed Financial Indebtedness was permitted to be incurred under another provision of this § 8;~~

~~(xvi) Financial Indebtedness in an aggregate outstanding principal amount which, when taken together with any Permitted Refinancing Indebtedness in respect thereof and the principal amount of all other Financial Indebtedness incurred pursuant to this § 8(c)(xvi) and then outstanding, will not exceed 100 per cent. of the net cash proceeds received by the Issuer from the issuance or sale (other than to a Subsidiary) of its Capital Stock or otherwise contributed to the equity of the Issuer, in each case, subsequent to the Issue Date; provided, however, that (A) any such net cash proceeds that are so received or contributed shall be excluded for purposes of making Restricted Payments under § 12(b)(ii) or § 12(c)(iv) to the extent the Issuer and its Subsidiaries incur Financial Indebtedness in reliance thereon and (B) any net cash proceeds that are so received or contributed shall be excluded for purposes of incurring Financial Indebtedness pursuant to this § 8(c)(xvi) to the extent the Issuer or any of its Subsidiaries makes a Restricted Payment using such net cash proceeds under paragraph § 12(b)(ii)(B) in reliance thereon; and~~

(I) Indebtedness arising from agreements providing for customary guarantees, indemnification, obligations in respect of earn-outs or other adjustments of purchase price or, in each case, similar obligations, in each case, Incurred or assumed in connection with the acquisition or disposition of any

business or assets or Person or any Capital Stock of a Subsidiary (other than Guarantees of Indebtedness Incurred by any Person acquiring or disposing of such business or assets or such Subsidiary for the purpose of financing such acquisition or disposition); provided that the maximum liability of the Issuer and its Subsidiaries in respect of all such Indebtedness related to a disposition shall at no time exceed the gross proceeds, including the Fair Market Value of non-cash proceeds (measured at the time received and without giving effect to any subsequent changes in value), actually received by the Issuer and its Subsidiaries in connection with such disposition;

~~(xvii) the incurrence by~~ J) Indebtedness of the Issuer ~~or~~ and any Subsidiary ~~of Financial Indebtedness~~ in an aggregate principal amount at any time outstanding, including all ~~Financial~~ Indebtedness ~~incurred~~ to renew, refund, refinance, replace, defease or discharge any ~~Financial~~ Indebtedness ~~incurred pursuant to this § 8(c)(xvii), not to exceed the greater of (A) EUR 30,000,000 and (B) 2.5 per cent. of Total Assets. Incurred under this sub-~~ paragraph (J), shall not exceed EUR 5 million;

~~For purposes of determining compliance with this § 8, in the event that an item of Financial Indebtedness meets the criteria of more than one of the categories of Permitted Debt described in § 8(c)(i) through (xvii), or is entitled to be incurred pursuant to § 8(b), the Issuer, in its sole discretion, will be permitted to classify such item of Financial Indebtedness on the date of its incurrence and only be required to include the amount and type of such Financial Indebtedness in one of such clauses and will be permitted on the date of such incurrence to divide and classify an item of Financial Indebtedness in more than one of the types of Financial Indebtedness described in § 8(b) and this § 8(c), from time to time to reclassify all or a portion of such item of Financial Indebtedness, in any manner that complies with this § 8. The accrual of interest, the accretion or amortization of original issue discount, the payment of interest on any Financial Indebtedness in the form of additional Financial Indebtedness, will not be deemed to be an incurrence of Financial Indebtedness for the purposes of this § 8. For purposes of determining compliance with this § 8, with respect to Financial Indebtedness incurred under a Credit Facility, re-borrowings of amounts previously repaid pursuant to “cash sweep” or “clean down” provisions or any similar provisions under a Credit Facility that provide that Financial Indebtedness is deemed to be repaid periodically shall only be deemed for the purposes of this § 8 to have been incurred on the date such Financial Indebtedness was first incurred and not on the date of any subsequent re-borrowing thereof.~~

~~For purposes of determining compliance with, and the outstanding principal amount of any particular Financial Indebtedness incurred pursuant to, this § 8, in the case of any Permitted Refinancing Indebtedness, when measuring the outstanding amount of such Financial Indebtedness, such amount shall not include any amounts necessary to pay accrued and unpaid interest and any fees and expenses, including any premium and defeasance costs, indemnity fees, discounts, premiums and other costs and expenses incurred in connection with such refinancing. Notwithstanding anything in this § 8 to the contrary, in the case of any Financial Indebtedness incurred to refinance Financial Indebtedness initially incurred in reliance on a clause of this § 8(c) measured by reference to a percentage of Total Assets at the time of incurrence, if such refinancing would cause the percentage of Total Assets restriction to be exceeded if calculated based on the percentage of Total Assets on the date of such refinancing, such percentage of Total Assets restriction shall not be deemed to be exceeded so long as the principal amount of such Permitted Refinancing Indebtedness does not exceed the principal amount of such Financial Indebtedness being refinanced, and giving effect to the manner of measurement described in the immediately preceding sentence.~~

~~For purposes of determining compliance with any restriction on the incurrence of Financial Indebtedness in euro where Financial Indebtedness is denominated in a different currency, the amount of such Financial~~

~~Indebtedness will be the Euro Equivalent determined on the date of such determination; provided that if any such Financial Indebtedness denominated in a different currency is subject to a Currency Agreement (with respect to euro) covering principal amounts payable on such Financial Indebtedness, the amount of such Financial Indebtedness expressed in euro will be adjusted to take into account the effect of such agreement. The principal amount of any Permitted Refinancing Indebtedness incurred in the same currency as the Financial Indebtedness being refinanced will be the Euro Equivalent of the Financial Indebtedness refinanced determined on the date such Financial Indebtedness being refinanced was initially incurred, except to the extent that such Euro Equivalent was determined based on a Currency Agreement (with respect to euro), in which case the amount of such Permitted Refinancing Indebtedness will be adjusted to take into account the effect of such agreement. Notwithstanding any other provision of this § 8, for purposes of determining compliance with this § 8, increases in Financial Indebtedness solely due to fluctuations in the exchange rates of currencies or currency values will not be deemed to exceed the maximum amount that the Issuer or a Subsidiary may incur under this § 8.~~

(K) Indebtedness consisting of Capitalized Lease Obligations or Indebtedness otherwise Incurred to finance the lease or rental of property in an amount at any one time outstanding not to exceed EUR 10 million; and

(L) Indebtedness of Ginova HoldCo S.à r.l. and/or Ginova PropCo S.à r.l. with respect to the Gießen Property, provided that the net proceeds from the Incurrence of such Indebtedness, which shall be no lower than 95 per cent. of the principal amount thereof, are used within 15 Business Days to repay Indebtedness outstanding under the Secured Notes in accordance with the Relevant Proceeds Waterfall.

(iii) For purposes of determining compliance with this § 9(a):

(A) in the event that an item of Indebtedness meets the criteria of more than one of the types of Indebtedness described in the foregoing sub-paragraphs (A) through (L) of § 9(a)(ii), the Issuer, in its sole discretion, will be permitted to classify and may from time to time reclassify such item of Indebtedness in any manner that complies with this § 9(a) and include the amount and type of such Indebtedness in one or more of the foregoing sub-paragraphs (A) through (L) of § 9(a)(ii);

(B) the principal amount of any Disqualified Stock of the Issuer or a Guarantor, or preferred stock of a Subsidiary that is not a Guarantor, will be equal to the greater of the maximum mandatory redemption or repurchase price (not including, in either case, any redemption or repurchase premium) or the liquidation preference thereof;

(C) accrual of interest, accrual of dividends, the accretion of accreted value and the accretion or amortization of original issue discount will not be deemed to be an Incurrence of Indebtedness for purposes of this § 9(a); guarantees of, or obligations in respect of letters of credit, bankers' acceptances or other similar instruments relating to, or Liens securing, Indebtedness that is otherwise included in the determination of a particular amount of Permitted Debt shall not be included;

~~The~~(D) the amount of any ~~Financial~~ Indebtedness outstanding as of any date will be:

- (i) ~~the accreted value of the Indebtedness, in the case of any Financial Indebtedness issued with original issue discount, the amount of the liability in respect thereof determined in accordance with IFRS; and~~
- (ii) ~~the principal amount of the Financial Indebtedness, in the case of any other Financial Indebtedness;~~
- (iii) ~~in respect of Financial Indebtedness of another Person secured by a Security Interest on the assets of the specified Person, the lesser of:~~

(E) for purposes of determining compliance with any euro-denominated restriction on the Incurrence of Indebtedness, the Euro Equivalent of the principal amount of Indebtedness denominated in another currency will be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was Incurred, in the case of term Indebtedness, or first committed, in the case of Indebtedness Incurred under a revolving credit facility; provided that:

- (1) the Euro Equivalent of the principal amount of any such Indebtedness outstanding on the Amendment Effective Date will be calculated based on the relevant currency exchange rate in effect on the Amendment Effective Date; and
- (2) if for so long as any such Indebtedness is subject to an agreement intended to protect against fluctuations in currency exchange rates with respect to the currency in which such Indebtedness is denominated covering principal and interest on such Indebtedness, the amount of such Indebtedness, if denominated in euro, will be the amount of the principal payment required to be made under such currency agreement and, otherwise, the Euro Equivalent of such amount plus the Euro Equivalent of any premium which is at such time due and payable but is not covered by such currency agreement.

(F) Notwithstanding any other provision of this § 9(a), the maximum amount of Indebtedness that the Issuer or a Subsidiary may Incur pursuant to this § 9(a) shall not be deemed to be exceeded solely as a result of fluctuations in the exchange rate of currencies. The principal amount of any Indebtedness Incurred to refinance other Indebtedness, if Incurred in a different currency from the Indebtedness being refinanced, shall be calculated based on the currency exchange rate applicable to the currencies in which such refinancing Indebtedness is denominated that is in effect on the date of such refinancing.

(b) *Limitation on Restricted Payments.*

- (i) The Issuer shall not, and shall not permit any of its Subsidiaries to, make a Restricted Payment.
- (ii) The foregoing § 9(b)(i) shall not prohibit (collectively, “Permitted Payments”):

(A) the payment of any dividend within 60 days after the date of declaration thereof, if at such date of declaration such payment was permitted by the provisions of the preceding paragraph and such payment shall have been deemed to have been paid on such date of declaration;

- (B) the purchase or other acquisition of Capital Stock made by exchange for, or out of the proceeds of the substantially concurrent sale of, Capital Stock of the Issuer (other than Disqualified Stock and other than Capital Stock issued or sold to a Subsidiary or an employee stock ownership plan or similar trust to the extent such sale is financed with loans or Guaranteed by the Issuer or any Subsidiary unless such loans have been repaid with cash on or prior to the date of determination), Subordinated Shareholder Debt or a substantially concurrent contribution to the equity of the Issuer (other than by a Subsidiary of the Issuer);
- (C) the purchase, redemption, defeasance or other acquisition or retirement for value of any Subordinated Indebtedness for, or out of the Net Cash Proceeds of, the substantially concurrent sale of Capital Stock of the Issuer (other than Disqualified Stock and other than Capital Stock issued or sold to a Subsidiary or an employee stock ownership plan or similar trust to the extent such sale is financed with loans or Guaranteed by the Issuer or any Subsidiary unless such loans have been repaid with cash on or prior to the date of determination) or for, or out of the Net Cash Proceeds of, a substantially concurrent Incurrence (other than to a Subsidiary) of Refinancing Indebtedness or Subordinated Shareholder Debt;
- (D) the making of any Investment in exchange for, or out of or with the Net Cash Proceeds of the substantially concurrent sale or issuance (other than to a Subsidiary of the Issuer) of, Capital Stock of the Issuer (other than Disqualified Stock), Subordinated Shareholder Debt or from the substantially concurrent contribution of common equity capital to the Issuer;
- (E) the declaration and payment of regularly scheduled or accrued dividends to holders of any class or series of Disqualified Stock of the Issuer or any preferred stock of any Subsidiary issued on or after the Amendment Effective Date in accordance with § 9(a);
- (F) any purchase, repurchase, redemption, defeasance or other acquisition or retirement for value of Subordinated Indebtedness of the Issuer with the net cash proceeds from a concurrent incurrence of Refinancing Indebtedness;
- (G) payments of cash, dividends, distributions, advances or other Restricted Payments by the Issuer or any of its Subsidiaries to allow the payment of cash in lieu of the issuance of fractional shares upon
- (A1) the Fair Market Value of such assets at the date of determination exercise of options or warrants; and/or
- (B2) the amount of the Financial Indebtedness of the other conversion or exchange of Capital Stock of any such Person;
- (H) so long as no Default has occurred and is continuing (or would result therefrom), other Restricted Payments in an amount not to exceed EUR 4 million outstanding at any time.

~~The Issuer will not incur any Financial Indebtedness (including Permitted Debt) that is contractually subordinated in right of payment to any other Financial Indebtedness of the Issuer unless such Financial Indebtedness is also contractually subordinated in right of payment to the Notes on substantially identical terms; provided, however, that no Financial Indebtedness will be deemed to be contractually subordinated in right of payment to any other Financial Indebtedness of the Issuer solely by virtue of being unsecured or by~~

virtue of being secured with different collateral or by virtue of being secured on a junior priority basis or by virtue of not being guaranteed by another Person or by virtue of the application of waterfall or other payment ordering provisions affecting different tranches of Financial Indebtedness.

(d) Suspension of Limitations upon Achievement of Investment Grade Status

~~If on any date following the Issue Date the Notes have achieved an Investment Grade Rating and no Event of Default has occurred and is continuing, then beginning on that day (the “Investment Grade Status Commencement Date”) and continuing until such time, if any, at which the Notes cease to have an Investment Grade Rating (the “Investment Grade Status End Date”), if any, the restrictions and limitations to incur Financial Indebtedness pursuant to § 8(a) shall be suspended (and the Issuer and its Subsidiaries shall have no obligation with respect thereto). Such restrictions and undertakings will again apply according to its terms from the Investment Grade Status End Date, if any; provided that any Financial Indebtedness incurred during the time between an Investment Grade Status Commencement Date and the related Investment Grade Status End Date will, as of the Investment Grade Status End Date, be classified as having been incurred pursuant to § 8(e)(ii).~~

§ 9 NEGATIVE PLEDGE

~~The Issuer will not, and will not cause or permit any of its Subsidiaries to, directly or indirectly, create, incur, assume or otherwise cause or suffer to exist or become effective any Security Interest of any kind securing Financial Indebtedness (such Security Interest, the “Initial Security Interest”) upon any of their property or assets, now owned or hereafter acquired, except (a) Permitted Security Interests or (b) Security Interests on property or assets that are not Permitted Security Interests if the Notes are secured equally and rateably with such Financial Indebtedness for so long as such Financial Indebtedness is so secured. The terms of any such Security Interest created for the benefit of the Noteholders pursuant to clause (b) of the preceding sentence shall provide that such Security Interest shall be automatically and unconditionally released and discharged (and where not automatically released and discharged, the Person having granted such security will be entitled to seek such Security Interest’s unconditional release and discharge) and shall authorize and instruct the security agent, trustee or similar agent holding such Security Interest for the benefit of the Noteholders to take all actions necessary or desirable to effect and evidence such release and discharge, upon any one or more of the following circumstances:~~

- ~~(i) the release and discharge of the Initial Security Interest to which it relates;~~
- ~~(ii) the sale, disposition or transfer of the assets which are subject to such Security Interest (including by way of merger, consolidation, amalgamation or combination) to a Person that is not (either before or after giving effect to such transaction), the Issuer or a Subsidiary of the Issuer, if such sale, disposition or transfer does not violate § 11 (Sale of Assets);~~
- ~~(iii) the sale, disposition or transfer of Capital Stock of the Subsidiary of the Issuer that has granted such Security Interest (or Capital Stock of a parent of the relevant Subsidiary of the Issuer (other than the Issuer)) to a Person that is not (either before or after giving effect to such transaction) the Issuer or a Subsidiary of the Issuer, if (i) after giving effect to such sale, disposition or transfer, such Person is no longer a Subsidiary of the Issuer; and (ii) the sale, disposition or transfer does not violate § 11 (Sale of Assets); and~~
- ~~(iv) full and final repayment of the Notes Limitation on Liens.~~

§ 10 MERGER, CONSOLIDATION OR SALE OF ASSETS

The Issuer shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, create, assume or permit to subsist any Lien upon any of its or any of its Subsidiaries’ present or future

property or assets, or assign or otherwise convey any right to receive income or profits therefrom, to secure any Indebtedness (including, in each case, any guarantees or indemnities in respect thereof) (such Lien, the “Initial Lien”) except (a) in the case of any property or asset that does not constitute Collateral, (i) Permitted Liens and (ii) Liens that are not Permitted Liens if, contemporaneously with the Incurrence of such Initial Lien, the Notes and the obligations under the Terms and Conditions (or a Note Guarantee in the case of Liens of a Guarantor) are directly secured equally and ratably with, or in the case of Liens with respect to Subordinated Indebtedness, with priority to, the Indebtedness secured by such Initial Lien for so long as such Indebtedness is so secured and (b) in the case of any property or asset constituting Collateral, Permitted Collateral Liens.

(d) *Limitation on Restrictions on Distributions from Subsidiaries.*

(i) The Issuer shall not, and shall not permit any Subsidiary to, create or otherwise cause or permit to exist or become effective any consensual encumbrance or consensual restriction on the ability of any Subsidiary to:

(A) pay dividends or make any other distributions on its Capital Stock or pay any Indebtedness or other obligations owed to the Issuer or any Subsidiary;

(B) make any loans or advances to the Issuer or any Subsidiary; or

(C) sell, transfer or lease any of its property or assets to the Issuer or any Subsidiary.

(ii) The foregoing § 9(d)(i) shall not prohibit:

(A) any encumbrance or restriction pursuant to the Terms and Conditions, the terms and conditions of the Reinstated 2022 Notes, the terms and conditions of the Super Senior Notes, the Security Documents or the Intercreditor Agreement or any other agreement in effect or entered into on the Amendment Effective Date;

(B) any encumbrance or restriction with respect to a Subsidiary pursuant to an agreement relating to any Capital Stock or Indebtedness Incurred by such Subsidiary on or prior to the date on which such Subsidiary was acquired by or merged, consolidated or otherwise combined with or into the Issuer or any Subsidiary, or on which such agreement or instrument is assumed by the Issuer or any Subsidiary in connection with an acquisition of assets (other than Capital Stock or Indebtedness Incurred as consideration in, or to provide all or any portion of the funds or credit support utilized to consummate the transaction or series of related transactions pursuant to which such Subsidiary became a Subsidiary of the Issuer or was acquired by the Issuer or in contemplation of the transaction) and outstanding on such date;

(C) any agreement or instrument (a “Refinancing Agreement”) effecting Refinancing Indebtedness or Disqualified Stock Incurred pursuant to, or that otherwise extends, renews, refunds, refinances or replaces, an agreement or instrument or obligation in effect or entered into on the Amendment Effective Date (an “Initial Agreement”) or contained in any amendment, supplement or other modification to an Initial Agreement (an “Amendment”); provided, however, that the encumbrances and restrictions contained in any such Refinancing Agreement or Amendment are not materially less favorable to the Noteholders taken as a whole than the encumbrances and restrictions contained in the Initial Agreement or Initial Agreements to which such Refinancing Agreement or Amendment relates (as

determined in good faith by the Board of Directors or an Officer of the Issuer) and either (x) the Issuer determines that such encumbrances and restrictions will not adversely affect the Issuer's ability to make principal and interest payments on the Notes as and when they come due or (y) such encumbrances and restrictions apply only during the continuance of a default in respect of a payment or financial maintenance covenant relating to such Indebtedness;

(D) any restriction with respect to a Subsidiary imposed pursuant to an agreement entered into for the sale or disposition of all or substantially all of the Capital Stock or assets of such Subsidiary pending the closing of such sale or disposition;

(E) in the case of sub-paragraph (C) of § 9(d)(i), any encumbrance or restriction:

(1) that restricts in a customary manner the assignment or transfer of any property or asset that is subject to a lease, license or similar contract, or the assignment or transfer of any such lease, license or other contract entered into in the ordinary course of business;

(2) contained in mortgages, pledges or other security agreements permitted under and in compliance with the Terms and Conditions to the extent such encumbrances or restrictions restrict the transfer of the property subject to such mortgages, pledges or other security agreements; or

(3) pursuant to customary provisions restricting dispositions of real property interests set forth in any reciprocal easement agreements of the Issuer or any Subsidiary;

(F) encumbrances or restrictions arising or existing by reason of applicable law (including, but not limited to, any capital maintenance or similar corporate law restrictions applicable to such Subsidiary the breach of which would, as determined in good faith by the Board of Directors of the Issuer or relevant Subsidiary, result in any civil or criminal liability of any directors or officers of the relevant Subsidiary) or any applicable rule, regulation or order or governmental license, permit or concession;

(G) Liens or other security interests permitted to be created, to be assumed or to subsist under the provisions of § 9(c) (Limitations on Liens) that limit the right of the debtor to dispose of the assets subject to such Lien or other security interest;

(H) customary provisions limiting the disposition or distribution of assets or property in joint venture agreements, asset sale agreements, sale-leaseback agreements, stock sale agreements and other similar agreements in the ordinary course of business (including agreements entered into in connection with a Restricted Investment), entered into with the approval of the Issuer's Board of Directors which limitation is applicable only to the assets or property that are the subject of such agreements;

(I) any encumbrance or restriction with respect to a Subsidiary (or any of its property or assets) imposed pursuant to an agreement entered into for the direct or indirect sale or disposition to a Person of all or substantially all the Capital Stock or assets of such Subsidiary (or the property or assets that are subject to such restriction) pending the closing of such sale or disposition;

(J) customary provisions in leases, licenses and other similar agreements and instruments entered into in the ordinary course of business;

(K) encumbrances or restrictions on the assets of or ownership interests in a joint venture, in each case contained in the terms of the agreement or agreements governing such joint venture; provided, however, that any such encumbrance or restriction (i) is customary in joint venture agreements, (ii) is not less favorable to the Issuer or any Subsidiary than to any other joint venturer and (iii) will not materially affect the Issuer's ability to make principal or interest payments on the Notes, as determined in good faith by the Board of Directors or an Officer of the Issuer, at the time of entering into such agreement or agreements (and at the time of any modification of the terms of any such encumbrance or restriction); and

(L) any encumbrance or restriction arising pursuant to an agreement or instrument relating to any Indebtedness Incurred by the Issuer or any Subsidiary permitted to be Incurred subsequent to the Amendment Effective Date pursuant to § 9(a) (Limitation on Indebtedness) if the encumbrances and restrictions contained in any such agreement or instrument taken as a whole are not materially less favorable to the Noteholders than (i) the encumbrances and restrictions contained in the Notes, the Intercreditor Agreement and the Security Documents, in each case, as in effect on the Amendment Effective Date or (ii) as is customary in comparable financings (as determined in good faith by the Board of Directors or an Officer of the Issuer) and where, in the case of this sub-clause (ii), the Issuer determines when such Indebtedness is Incurred that such encumbrances or restrictions will not adversely affect, in any material respect, the Issuer's ability to make principal or interest payments on the Notes as and when they come due.

~~(#c)~~ ***Restriction***Limitation on Sales of Assets.

~~The Issuer will not, directly or indirectly: (x) consolidate or merge with or into another Person (whether or not one of the Group or the Issuer (as applicable) is the surviving corporation), or (y) sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of the properties or assets of the Issuer and its Subsidiaries, taken as a whole in one or more related transactions, to another Person, unless:~~

- ~~(i) either: (A) the Issuer is the surviving corporation; or (B) the Person formed by or surviving any such consolidation or merger (if other than the Issuer) or to which such sale, assignment, transfer, conveyance, lease or other disposition has been made is an entity organized or existing under the laws of any member state of the European Union, the United Kingdom, Switzerland, Norway, Canada or any state of the United States;~~
- ~~(ii) the Person to which such sale, assignment, transfer, conveyance, lease or other disposition has been made assumes all the obligations of the Issuer under the Notes (whether by operation of law or by contract);~~
- ~~(iii) immediately after such transaction, no Event of Default has occurred and is continuing; and~~
- ~~(iv) (A) the Person (as applicable) formed by or surviving any such consolidation or merger (if other than the Issuer), or to which such sale, assignment, transfer, conveyance, lease or other disposition has been made would, on the date of such transaction after giving pro forma effect thereto, and any related financing transactions as if the same had occurred at the beginning of the Relevant Period, be permitted to incur at least EUR 1.00 of additional Financial Indebtedness pursuant to the Interest Coverage Ratio test in § 8(b)(ii) or (B) the~~

Interest Coverage Ratio would not be less than it was immediately prior to giving effect to such transaction.

(b) Applicability of Restriction

This “Merger, Consolidation or Sale of Assets” covenant will not apply to (i) any consolidation or merger of any Subsidiary of the Issuer into the Issuer, or (ii) any consolidation or merger among Subsidiaries, or (iii) any sale, assignment, transfer, conveyance, lease or other disposition of assets among the Issuer and its Subsidiaries. § 10(a)(iii) and (iv) shall not apply to any merger or consolidation of the Issuer with or into an Affiliate solely for the purpose of reincorporating the Issuer in another jurisdiction.

(c) Suspension of Limitations upon Achievement of Investment Grade Status

From the Investment Grade Status Commencement Date, if any, until the Investment Grade Status End Date, if any, the requirement to comply with § 10(a) shall be suspended (and the Issuer and its Subsidiaries shall have no obligation with respect thereto). Such requirement to comply with § 10(a) will again apply according to its terms from the Investment Grade Status End Date, if any.

§ 11 SALE OF ASSETS

(a) Restriction

(i) The Issuer ~~will~~shall not, and ~~will~~shall not ~~cause or~~ permit any of its Subsidiaries to, ~~directly or indirectly, consummate an Asset Sale~~make any Asset Disposition unless:

(iA) the Issuer (or ~~the~~such Subsidiary, ~~as the case may be~~) receives consideration (including by way of relief from, or by any other Person assuming responsibility for, any liabilities, contingent or otherwise) at the ~~time of the Asset Sale~~ at least equal to the Fair Market Value (such Fair Market Value to be determined at the time of contracting such Asset Sale) of the assets or Equity Interests issued or sold or otherwise disposed of; and on the date of contractually agreeing to such Asset Disposition, as determined in good faith by the Board of Directors of the Issuer (including as to the value of all non-cash consideration), of the shares and assets subject to such Asset Disposition; and

(iiB) in any such Asset Disposition, at least ~~75~~90 per cent. of the consideration ~~received in the Asset Sale by the Issuer or such Subsidiary~~ is in the form of cash ~~and/or~~ Cash Equivalents.

(C) For purposes of ~~this provision, each of~~ § 9(c)(i)(B), the following ~~will~~shall be deemed ~~to be~~ cash:

(A) ~~the assumption by the transferee of Financial Indebtedness or other liabilities, contingent or otherwise, of the Issuer or any of its Subsidiaries and the release of the Issuer or such Subsidiary from all liability on such Financial Indebtedness or other liability in connection with such Asset Sale;~~

(1) any liabilities, as shown on the Issuer’s most recent consolidated balance sheet (or, if Incurred since the date of the last balance sheet, that would be recorded on the next balance sheet), of the Issuer or any Subsidiary (other than contingent liabilities, Disqualified Stock and liabilities that are by their terms subordinated to the Notes or any Note Guarantee) that are assumed by the transferee of any such assets pursuant to any agreement that releases the Issuer or the relevant Subsidiary from or indemnifies

against further liability, excluding, however, any assumption of such liabilities owed to an Affiliate of the Issuer or any of its Subsidiaries;

(B2) any securities, notes or other obligations received by the Issuer or ~~any such a~~ Subsidiary from such transferee that are converted by the Issuer or ~~such the relevant~~ Subsidiary into cash or Cash Equivalents within ~~180~~90 days following the closing of the Asset ~~Sale~~Disposition, to the extent of the cash or Cash Equivalents received in that conversion; and

(C) ~~any Capital Stock or assets of the kind referred to in § 11(b)(iii) or (v);~~

(D3) ~~Financial~~any Indebtedness of any Subsidiary that is no longer a Subsidiary as a result of such Asset ~~Sale~~Disposition, to the extent that the Issuer and each other Subsidiary are released from any ~~guarantee~~Guarantee of such ~~Financial~~ Indebtedness in connection with such Asset ~~Sale~~Disposition;

(ii) Any Relevant Proceeds received from an Asset Disposition shall be applied by the Issuer in accordance with the Relevant Proceeds Waterfall as set forth in § 6 (Payments from Relevant Proceeds).

(f) Limitation on Affiliate Transactions.

(i) The Issuer shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, enter into any transaction or series of related transactions (including the rendering of services) with any Affiliate or Related Person of the Issuer (any such transaction or series of related transactions, an “Affiliate Transaction”) unless:

(A) the terms of such Affiliate Transaction are no less favorable to the Issuer or such Subsidiary, as the case may be, than those that could be obtained in a comparable transaction with a Person who is not an Affiliate or Related Person at the time of such transaction or the execution of the agreement providing for such transaction; and

(B) in the event such Affiliate Transaction involves aggregate consideration in excess of EUR 1 million, the Issuer or any of its Subsidiaries, as the case may be, delivers to the Noteholders’ Representative for delivery to the Noteholders in accordance with § 16 (Notices) a letter from an Independent Financial Advisor stating that such transaction is (i) fair to the Issuer or such Subsidiary from a financial point of view or (ii) on terms not less favorable than might have been obtained in a comparable transaction at such time on an arm’s length basis from a Person who is not an Affiliate or Related Person.

(ii) The foregoing § 9(f)(i) shall not apply to:

(A) any issuance or sale of Capital Stock, options, other equity-related interests or other securities, or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of, or entering into, or maintenance of, any employment, consulting, collective bargaining or benefit plan, program, agreement or arrangement, related trust or other similar agreement and other compensation arrangements, options, warrants or other rights to purchase Capital Stock of the Issuer, any Subsidiary or any parent of the Issuer, restricted stock plans, long-term incentive plans, stock appreciation rights plans, participation plans or similar employee benefits or consultants’ plans (including valuation, health, insurance,

deferred compensation, severance, retirement, savings or similar plans, programs or arrangements) or indemnities provided on behalf of officers, employees, directors or consultants approved by the Board of Directors of the Issuer, in each case in the ordinary course of business;

~~(E) consideration consisting of Financial Indebtedness of any Affiliate Transaction between the Issuer or any and a Subsidiary received from Persons who are not the Issuer or any Subsidiary that is cancelled or between Subsidiaries; and~~

(C) any Restricted Payment permitted to be made pursuant to § 9(b) (Limitation on Restricted Payments) and any Permitted Investment (other than Permitted Investments described in sub-paragraphs (b), (c) and (j) of the definition thereof);

~~(F) any Designated Non-Cash Consideration received by the Issuer or any of its Subsidiaries in such Asset Sales having an aggregate Fair Market Value, when taken together with all other Designated Non-Cash Consideration received pursuant to this § 11(a)(F) that is at that time outstanding, not to exceed the greater of EUR 30,000,000 and 2.5 per cent. of Total Assets, measured at the time of the receipt of such Designated Non-Cash Consideration (with the Fair Market Value of each item of Designated Non-Cash Consideration being measured at the time received and without giving effect to subsequent changes in value).~~

(b) Application of Net Proceeds

~~Within 365 days after the receipt of any Net Proceeds from an Asset Sale, the Issuer (or the applicable Subsidiary, as the case may be) may only apply such Net Proceeds (at the option of the Issuer or such Subsidiary):~~

- ~~(i) to repay, repurchase, prepay or redeem (A) Financial Indebtedness of (1) the Issuer that is secured by a Security Interest or (2) any Subsidiary of the Issuer; (B) the Notes pursuant to an offer to all holders of Notes at a purchase price equal to at least 100 per cent. of the principal amount, plus accrued and unpaid interest and additional amounts, if any, to the date of purchase (a “Notes Offer”) or pursuant to § 12 (Restricted Payments); or (C) *pari passu* Financial Indebtedness of the Issuer so long as the Issuer makes a Notes Offer on a *pro rata* basis;~~
- ~~(ii) in the case of a sale of Warehouse Assets, to repay, repurchase, prepay or redeem any Acquired Warehouse Financial Indebtedness or any Warehouse Acquisition Additional Financial Indebtedness;~~
- ~~(iii) to acquire all or substantially all of the assets of, or any Capital Stock of, another Permitted Business if, after giving effect to any such acquisition of Capital Stock, the Permitted Business is or becomes a Subsidiary;~~
- ~~(iv) to make a capital expenditure;~~
- ~~(v) to acquire other assets (other than Capital Stock) not classified as current assets under IFRS that are used in a Permitted Business or to make any other investment in any Permitted Business (including by acquiring Capital Stock of a Permitted Business);~~
- ~~(vi) to enter into a binding commitment to apply the Net Proceeds pursuant to § 11(b)(iii), (iv) or (v); provided that such commitment shall be treated as a permitted application of the~~

Net Proceeds from the date of such commitment until the earlier of (A) the date on which such acquisition or expenditure is consummated, and (B) the 180th day following the expiration of the aforementioned 365-day period, or any combination of the foregoing.

(c) Excess Proceeds

Any Net Proceeds from Asset Sales that are not applied or invested as provided in § 11(b) will constitute “**Excess Proceeds**”. When the aggregate amount of Excess Proceeds exceeds EUR 30,000,000, within 10 Business Days thereof, or at any earlier time at the Issuer’s election, the Issuer will make an offer (an “**Asset Sale Offer**”) to all holders of Notes, and may, to the extent the Issuer so elects, make an offer to holders of other Financial Indebtedness that is *pari passu* with the Notes to purchase, prepay or redeem with the proceeds of sales of assets the maximum principal amount of Notes and such other *pari passu* Financial Indebtedness (plus all accrued interest on the Financial Indebtedness and the amount of all fees and expenses, including premiums, incurred in connection therewith) that may be purchased, prepaid or redeemed out of the Excess Proceeds. The offer price for the Notes in any Asset Sale Offer will be equal (solely in the case of the Notes) **to 100 per cent. of the principal amount** and (solely in the case of any other *pari passu* Financial Indebtedness) **no greater than 100 per cent. of the principal amount, in each case, plus accrued and unpaid interest and additional amounts, if any, to the date of purchase, prepayment or redemption, subject to the rights of holders of Notes on the relevant record date to receive interest due on the relevant interest payment date, and will be payable in cash.** If any Excess Proceeds remain after consummation of an Asset Sale Offer, the Issuer and its Subsidiaries may use those Excess Proceeds for any purpose not otherwise prohibited by the Terms and Conditions.

(d) Suspension of Limitations upon Achievement of Investment Grade Status

From the Investment Grade Status Commencement Date, if any, until the Investment Grade Status End Date, if any, the restriction pursuant to this § 11 shall be suspended (and the Issuer and its Subsidiaries shall have no obligation with respect thereto). Such requirement and restriction will again apply according to its terms from the Investment Grade Status End Date, if any.

§ 12 RESTRICTED PAYMENTS

(a) Limitation

The Issuer undertakes that it will not, and will procure that none of its Subsidiaries will, directly or indirectly, make any Restricted Payment.

(b) Exceptions—Build-up Basket

Notwithstanding § 12(a), **the Issuer or any of its Subsidiaries** may make a Restricted Payment if:

- (i) no Event of Default has occurred and is continuing at the time of the Restricted Payment;
- (ii) the Issuer would, at the time of such Restricted Payment and giving pro forma effect thereto as if such Restricted Payment had been made at the beginning of the (d) Suspension of Limitations upon Achievement of Investment Grade Status (a) Limitation applicable Relevant Period, have been permitted to incur at least EUR 1.00 of additional Financial Indebtedness pursuant to the Interest Coverage Ratio test in § 8(b)(ii); and
- (iii) at the time of, and after giving pro forma effect to, such proposed Restricted Payment, the aggregate amount of all Restricted Payments declared or made after the Issue Date (including Restricted Payments made pursuant to § 12(c)(i) and (ii), but excluding all other Restricted Payments permitted by § 12(c), does not exceed the sum of:

- (A) ~~50 per cent. of the Consolidated Net Income of the Group on a cumulative basis during the period beginning on 1 January 2018 and ending on the last day of the Issuer's last fiscal quarter ending prior to the date of such proposed Restricted Payment for which internal Consolidated Financial Statements of the Issuer are available (or, if such Consolidated Net Income for such period is a deficit, less 100 per cent. of such deficit);~~
- (B) ~~100 per cent. of the aggregate net cash proceeds and the Fair Market Value of marketable securities or other property received by the Issuer since the Issue Date as a contribution to its common equity capital or from the issue or sale of Equity Interests of the Issuer or from the issue or sale of convertible or exchangeable debt securities of the Issuer, in each case that have been converted into or exchanged for Equity Interests of the Issuer (other than Equity Interests sold to a Subsidiary of the Issuer);~~

(c) *Exceptions—Permitted Payments*

The restriction in § 12(a) will not prohibit:

- (i) ~~Restricted Payments, provided that the total aggregate amount of all Restricted Payments made under this § 12(c)(i) does not exceed the greater of (A) EUR 30,000,000 and (B) 2.5 per cent. of Total Assets;~~
- (ii) ~~Restricted Payments if, at the time of, and after giving pro forma effect to, such proposed Restricted Payments, the Consolidated Net Leverage Ratio does not exceed the ratio of 3.00 to 1.00;~~
- (iii) ~~the payment of any dividend within 60 days after the date of its declaration if, at such date of its declaration, such payment would have complied with the provisions of these Terms and Conditions;~~
- (iv) ~~the making of any Restricted Payment in exchange for, or out of or with the net cash proceeds of the substantially concurrent sale or issuance (other than to a Subsidiary of the Issuer) of, Equity Interests of the Issuer or from the substantially concurrent contribution of common equity capital to the Issuer;~~
- (v) ~~the repurchase, redemption, defeasance or other acquisition or retirement for value of any Subordinated Debt (x) made by exchange for, or with the net cash proceeds from an incurrence of, Permitted Refinancing Indebtedness or (y) following the occurrence of an Acquisition of Control (or other similar event described therein as an “acquisition of control,” a “change of control” or any similar term) or an Asset Sale (or other similar event described therein as an “asset disposition” or “asset sale”) to the extent required by the agreements governing such Subordinated Debt at a purchase price not greater than 101 per cent. of the principal amount of such Subordinated Debt, but only if (and to the extent required) the Issuer shall have complied with the terms described under §12(d) (Acquisition of Control) or §11 (Sale of Assets), as the case may be, and, if required, redeemed or purchased all Notes with respect to which Noteholders have exercised their put right pursuant to §12(d)(ii) or tendered pursuant to an Asset Sale Offer, as the case may be, all the Notes required thereby, prior to repurchasing, redeeming, defeasing or otherwise acquiring or retiring such Subordinated Debt;~~
- (vi) ~~the repurchase, redemption or other acquisition or retirement for value of any Equity Interests of the Issuer or any Subsidiary held by any current or former officer, director, employee or consultant of the Issuer or any of its Subsidiaries pursuant to any equity~~

~~subscription agreement, stock option agreement, restricted stock grant, shareholders' agreement or similar agreement, provided that the aggregate price paid for all such repurchased, redeemed, acquired or retired Equity Interests may not exceed EUR 2,000,000 in any calendar year with unused amounts from such calendar year (but not including unused amounts from any prior calendar year) being available for use during the immediately succeeding calendar year, and provided, further, that such amount in any calendar year, may be increased by an amount not to exceed the cash proceeds from the sale of Equity Interests of the Issuer or a Subsidiary received by the Issuer or a Subsidiary during such calendar year;~~

~~(vii) the repurchase of Equity Interests deemed to occur upon the exercise of stock options to the extent such Equity Interests represent a portion of the exercise price of those stock options;~~

~~(viii) payments of cash, dividends, distributions, advances or other Restricted Payments by the Issuer or any of its Subsidiaries to allow the payment of cash in lieu of the issuance of fractional shares upon (A) the exercise of options or warrants or (B) the conversion or exchange of Capital Stock of any such Person;~~

~~(ix) advances or loans to (A) any future, present or former officer, director, employee or consultant of the Issuer or a Subsidiary to pay for the purchase or other acquisition for value of Equity Interests of the Issuer, or any obligation under a forward sale agreement, deferred purchase agreement or deferred payment arrangement pursuant to any management equity plan or stock option plan or any other management or employee benefit or incentive plan or other agreement or arrangement or (B) any management equity plan, employee benefit trust or stock option plan or any other management or employee benefit or incentive plan or unit trust or the trustees of any such plan or trust to pay for the purchase or other acquisition for value of Equity Interests of the Issuer, provided that the total aggregate amount of Restricted Payments made under this § 12(e)(ix) does not exceed EUR 2,000,000 in any calendar year with unused amounts from such calendar year (but not including unused amounts from any prior calendar year) being available for use during the immediately succeeding calendar year;~~

~~(✗D) the payment of any dividend (or, in the case of any partnership or limited liability reasonable fees and reimbursement of expenses to, and customary indemnities (including under customary insurance policies) and employee benefit and pension expenses provided on behalf of, directors, officers, consultants or employees of the Issuer, any similar distribution) by a Subsidiary to the holders of its Equity Interests (other than of the Issuer or any Subsidiary) then entitled to participate in such dividends on a pro rata basis or otherwise in compliance with the terms of the instruments governing such Equity Interests; parent of the Issuer (whether directly or indirectly and including through any Person owned or controlled by any of such directors, officers or employees);~~

~~(E) the Incurrence of Subordinated Shareholder Debt and any amendment, waiver or other transaction with respect to any Subordinated Shareholder Debt in compliance with the other provisions of the Terms and Conditions, the Intercreditor Agreement;~~

~~(F) any issuance of Capital Stock (other than Disqualified Stock) of the Issuer or options, warrants or other rights to acquire such Capital Stock or Subordinated Shareholder Debt to Affiliates or Related Persons of the Issuer;~~

(G) transactions (x) with the Issuer and its Subsidiaries and with Co-Investment Entities in the ordinary course of business, consistent with past practice and as otherwise permitted hereunder or (y) for which the Issuer shall have received a written opinion from an Independent Financial Advisor with experience appraising the terms and conditions of the type of transaction or series of related transactions for which an opinion is required, stating that such Affiliate Transaction is fair to the Issuer or such Subsidiary from a financial point of view; and

(H) any participation by an Affiliate or Related Person of the Issuer in a public tender or exchange offer for securities or debt instruments issued by the Issuer or any of its Subsidiaries that are conducted on arm's-length terms, in accordance with applicable laws, and provide for the same price or exchange ratio, as the case may be, to all holders accepting such tender or exchange offer;

(I) the performance of obligations of the Issuer or any of its Subsidiaries under the terms of any agreement or instrument in effect as of or on the Amendment Effective Date; and

(J) (x) transactions with customers, clients, suppliers or purchasers or sellers of goods or services or providers of employees or other labor, in each case in the ordinary course of business, or (y) any transaction in the ordinary course of business between the Issuer or any of its Subsidiaries and any Person that is an Affiliate or Related Person of the Issuer solely because a director of such Person is also a director of the Issuer or any direct or indirect parent of the Issuer or solely because the Issuer or a Subsidiary or any Affiliate or Related Person of the Issuer or a Subsidiary owns an equity interest in or otherwise controls such Affiliate or Related Person; provided that, in each case, (a) such transaction is otherwise in compliance with the terms of the Terms and Conditions and (b) is on terms at least as favorable as could have been obtained at such time from an unaffiliated Person, in the reasonable determination of the members of the Board of Directors or an Officer of the Issuer (provided such Officer has been delegated such power by the Board of Directors in the prior twelve months) (provided no member of the Board of Directors or Officer of the Issuer with an interest in such transaction may participate in such determination).

(g) Reports. For so long as any Notes are outstanding,

~~(xi) the payment of dividends on the Capital Stock of the Issuer the calendar year ending 31 December 2018 in an aggregate amount not exceeding EUR 50,000,000; and~~

~~(xii) payments pursuant to any tax sharing agreement among the Issuer or any Subsidiary and any other Person with which the Issuer or any Subsidiary files or filed a consolidated tax return or with which the Issuer or any Subsidiary is or was part of a consolidated group for tax purposes, provided, however, that such payments shall not exceed the amount of tax that the Issuer or such Subsidiaries would owe on a stand-alone basis without taking into account such other Person.~~

~~The amount of all Restricted Payments (other than cash) will be the Fair Market Value on the date of the Restricted Payment of the asset(s) or securities proposed to be transferred or issued by the Issuer or such Subsidiary, as the case may be, pursuant to the Restricted Payment.~~

~~For the purpose of determining compliance with this § 12, in the event that a Restricted Payment (or portion thereof) meets the criteria of more than one of the categories of Restricted Payments described in § 12(c)(i) to~~

(xii) and/or is permitted pursuant to § 12(b), the Issuer will be entitled to classify such Restricted Payment (or portion thereof) on the date of its payment or later reclassify (based on circumstances existing on the date of such reclassification) such Restricted Payment (or portion thereof) ~~in any manner that complies with this § 12.~~

(d) Suspension of Limitations upon Achievement of Investment Grade Status

~~From the Investment Grade Status Commencement Date, if any, until the Investment Grade Status End Date, if any, the restriction pursuant to this § 12 shall be suspended (and the Issuer and its Subsidiaries shall have no obligation with respect thereto). Such requirement and restriction will again apply according to its terms from the Investment Grade Status End Date, if any, provided that, where such covenant applies again following an Investment Grade Status End Date, this § 12 will be interpreted as if it has been in effect since the Issue Date and prior to the Investment Grade Status Commencement Date (but not during the period from the Investment Grade Status Commencement Date until the Investment Grade Status End Date). Accordingly, Restricted Payments made during the period from the Investment Grade Status Commencement Date until the Investment Grade Status End Date will not reduce the amount available to be made as Restricted Payments under this § 12.~~

§ 13 REPORTS

For so long as any Notes are outstanding, the Issuer shall post on its website:

- (a) ~~within 120 days or, only in the case of the Company's fiscal year ending December 31, 2022, within 365 days, after the end of each of the Issuer's fiscal years~~following the end of each fiscal year of the Issuer, beginning with the fiscal year ending on 31 December 2023, and for the annual report of the Issuer for 2022, by 31 December 2023, annual reports containing the ~~audited Consolidated Financial Statements~~consolidated financial statements in accordance with IFRS ~~as adopted by the European Union and as in effect from time to time~~(which may be unaudited unless audited financial statements are available, provided that the Issuer shall use best efforts to have such financial statements audited by a recognized auditing firm), the management report in accordance with Article 68 of the Luxembourg law of 19 December 2002 on the register of commerce and companies, and the accounting and annual accounts of undertakings, as amended from time to time; ~~and~~
- (b) ~~ii) within 60 days after the end of each of the first three fiscal quarters in each fiscal year of the Issuer, beginning with the fiscal quarter ending 30 September 2023,~~ unaudited condensed consolidated quarterly financial statements in accordance with IFRS ~~as adopted by the European Union and as in effect from time to time~~ or a quarterly statement in accordance with the requirements of the Frankfurt Stock Exchange (*Frankfurter Wertpapierbörse*); ~~and~~

~~In respect of each of the reports under § 13(a) and (b), the financial statements or related management report should set forth the consolidated adjusted EBITDA and the consolidated net interest expenses of the Issuer for the period to which such report relates and the Issuer's consolidated net financial indebtedness as of the end of such period.~~

~~No later than 30 days after becoming aware of the occurrence of an Event of Default that is continuing, the Issuer shall notify the Noteholders thereof in accordance with § 16.~~

- (iii) within 60 days after the end of each fiscal quarter in each fiscal year of the Issuer, beginning with the fiscal quarter ending 30 September 2023 and ending with (and including) 31 December 2024, a 12-months rolling monthly cash-flow forecast (including an update

on the liquidity report and the liquidity planning and showing any amounts of Trapped Cash) (the “Cashflow Forecast”).

(h) Merger and Consolidation.

(i) The Issuer. The Issuer shall not, directly or indirectly, consolidate with or merge with or into another Person, or convey, transfer or lease all or substantially all of the properties and assets of the Issuer and its Subsidiaries taken as a whole, in one or more related transactions, to another Person:

(A) the resulting, surviving or transferee Person (the “Successor Company”) will be a Person organized and existing under the laws of any member state of the European Union as of 31 December 2003, the United Kingdom or Switzerland, and, in each case, the Successor Company (if not the Issuer) will expressly assume in appropriate documentation delivered to the Noteholders’ Representative for delivery to the Noteholders in accordance with the procedures set forth in § 16 (Notices) all of the obligations of the Issuer under the Notes, the Security Documents, the Intercreditor Agreement, the Agency Agreement and the Terms and Conditions;

(B) immediately after giving effect to such transaction (and treating any Indebtedness that becomes an obligation of the Successor Company or any Subsidiary of the Successor Company as a result of such transaction as having been Incurred by the Successor Company or such Subsidiary at the time of such transaction), no Default or Event of Default shall have occurred and be continuing;

(C) each Guarantor shall have delivered to the Noteholders’ Representative for delivery to the Noteholders in accordance with the procedures set forth in § 16 (Notices) a confirmation that its Note Guarantee shall apply to such Person’s obligations in respect of the Notes, the Terms and Conditions and the Agency Agreement;

(D) if any such transaction results in the Issuer or Successor Company being incorporated in a jurisdiction other than Luxembourg or Germany, the Board of Directors of the Issuer and the Successor Company will have adopted a resolution stating that the transaction effecting such a change in jurisdiction was not being entered into for a purpose which included subjecting the Issuer or the Successor Company, as the case may be, to more favorable bankruptcy, insolvency, laws relating to creditors rights or similar laws; and

(E) the Issuer shall deliver to the Noteholders’ Representative for delivery to the Noteholders in accordance with the procedures set forth in § 16 (Notices) an Officer’s Request Certificate and Opinion of Counsel, in each case, stating that such consolidation, merger, conveyance, transfer or lease and such assumption by the Successor Company comply with this § 9(h) and the Opinion of Counsel shall state in addition that (i) all of the obligations of the Issuer under the Notes, the Security Documents, the Intercreditor Agreement, the Agency Agreement and the Terms and Conditions have been validly assumed by Successor Company (if not the Issuer) and (ii) each of the Note Guarantees shall apply to such Person’s obligations in respect of the Notes and the Agency Agreement to the same or greater extent than they applied to the Notes and the Agency Agreement immediately prior to such transaction; provided that in giving an Opinion of Counsel, counsel may rely on an Officer’s Certificate as to any matters of fact. The

Noteholders' Representative shall be entitled to accept such Opinion of Counsel as sufficient evidence of compliance with this paragraph and shall not be obligated to independently investigate whether the requirements of this paragraph are otherwise met.

(ii) Guarantors. In addition, the Issuer shall not permit any Guarantor, directly or indirectly, to consolidate with or merge with or into another Person, or convey, transfer or lease all or substantially all of the properties and assets of such Guarantor and its Subsidiaries taken as a whole, in one or more related transactions, to another Person, other than in connection with a Permitted Reorganization, unless:

(A) either:

(1) the resulting, surviving or transferee Person will be a Person organized and existing under the laws of any member state of the European Union on 31 December 2003 or Switzerland, and, in each case, such Person (if not a Guarantor) will expressly assume in appropriate documentation delivered to the Noteholders' Representative for delivery to the Noteholders in accordance with the procedures set forth in § 16 (Notices) all of the obligations of such Guarantor under its Note Guarantee; or

(2) the transaction constitutes a sale or other disposition (including by way of consolidation or merger) of the Guarantor or the conveyance, transfer or lease of all or substantially all of the properties and assets of the Guarantor (in each case other than to the Issuer or a Subsidiary) otherwise permitted by the Terms and Conditions;

(B) immediately after giving effect to, and as a result of, such transaction no Default or Event of Default shall have occurred and be continuing; and

(C) the Issuer and such Guarantor shall deliver to the Noteholders' Representative for delivery to the Noteholders in accordance with the procedures set forth in § 16 (Notices) an Officer's Request Certificate and Opinion of Counsel, in each case, stating that such consolidation, merger, conveyance, transfer or lease and, in the case of sub-paragraph (A)(1) of this § 9(h)(ii) only, such assumption by the resulting, surviving or transferee Person comply with this § 9(h) and the Opinion of Counsel shall state in addition that (i) all of the obligations of such Guarantor under its Note Guarantee, the Terms and Conditions, the Intercreditor Agreement and the Agency Agreement have been validly assumed by surviving or transferee Person; provided that in giving an Opinion of Counsel, counsel may rely on an Officer's Certificate as to any matters of fact. The Noteholders' Representative shall be entitled to accept such Opinion of Counsel as sufficient evidence of compliance with this paragraph and shall not be obligated to independently investigate whether the requirements of this paragraph are otherwise met; or

(D) the transaction constitutes sale or other disposition (including by way of consolidation or merger) of a Guarantor or the sale or disposition of all or substantially all the assets of a Guarantor (in each case other than to the Issuer or a Subsidiary) permitted by § 9(e).

(iii) The successor to any Guarantor will succeed to, and be substituted for, such Guarantor under the applicable Note Guarantee.

- (iv) This § 9(h) will not apply to (a) any consolidation, merger or transfer of assets of any Subsidiary that is not a Guarantor with or into the Issuer or a Guarantor, (b) any consolidation, merger or transfer of assets among Guarantors, or (c) any consolidation, merger or transfer of assets among the Issuer and any Guarantor; provided that, sub-paragraphs (A) and (C) of § 9(h)(i) (*The Issuer*) will be complied with. Sub-paragraph (B) of § 9(h)(i) (*The Issuer*) and sub-paragraph (B) of § 9(h)(ii) (*Guarantors*) will not apply to any merger or consolidation of the Issuer or any Guarantors with or into an Affiliate solely for the purpose of reincorporating the Issuer or such Guarantor in another jurisdiction.
- (v) In no event shall any Asset Disposition that complies with § 9(e) (including § 9(e)(ii)) constitute a conveyance, transfer or lease of all or substantially all assets of the Issuer, a Guarantor or any of their Subsidiaries for purposes of this § 9(h).
- (i) *Future Guarantors.*
- (i) The Issuer shall cause each Subsidiary that is not a Guarantor and that, after the Amendment Effective Date, Guarantees Indebtedness of the Issuer or any Guarantor in an aggregate principal amount equal to or in excess of EUR 1 million, to execute and deliver concurrently to the Security Trustee a Note Guarantee pursuant to which such Subsidiary will Guarantee the payment of the Notes, which Note Guarantee will be senior to or *pari passu* with such Subsidiary's Guarantee of such other Indebtedness.
- (ii) Each Note Guarantee provided pursuant to § 9(i)(i) and each pledge of Collateral provided pursuant to § 9(i)(iv) will be limited as necessary to recognize certain defenses generally available to guarantors or security providers, as applicable (including those that relate to general statutory limitations, capital maintenance, corporate benefit, fraudulent preference, financial assistance or thin-capitalization rules or other similar laws or regulations (or analogous restrictions) or regulatory requirements of any applicable jurisdiction).
- (iii) Notwithstanding the foregoing, the Issuer shall not be obligated to cause such Subsidiary to Guarantee the Notes (or any holder of Capital Stock of such Subsidiary to pledge such Capital Stock pursuant to § 9(i)(iv)) to the extent that such Note Guarantee by such Subsidiary would reasonably be expected to give rise to or result in a violation of applicable law or regulatory requirements which, in any case, cannot be prevented or otherwise avoided through measures reasonably available to the Issuer or the Subsidiary (including "whitewash" or similar procedures) or any liability for the officers, directors or shareholders of such Subsidiary.
- (iv) Simultaneously with the execution of such Note Guarantee in accordance with § 9(i)(i), the Issuer will cause all of the Capital Stock in such Subsidiary owned by the Issuer and the Subsidiaries to be pledged to secure the Notes and the Note Guarantees.
- (v) A Note Guarantee provided pursuant to § 9(i)(i) and any Collateral pledged pursuant to § 9(i)(iv) shall be released at the option of the Issuer if at the date of such release there is no Indebtedness of such Guarantor outstanding which was Incurred after the Issue Date and which could not have been Incurred in compliance with the Indenture if such Guarantor had not been designated as a Guarantor.
- (j) *Limitation on Lines of Business.* The Issuer shall not, and shall not permit any Subsidiary to, engage in any business other than a Related Business, except as would not be material to the Issuer and its Subsidiaries taken as a whole.
- (k) *No Layering of Debt.* Neither the Issuer nor any Guarantor will incur any Indebtedness (including Permitted Debt) that is contractually subordinated in right of payment to any other Indebtedness

of the Issuer or such Guarantor unless such Indebtedness is also contractually subordinated in right of payment to the Notes and the applicable Guarantee on substantially identical terms; provided, however, that no Indebtedness will be deemed to be contractually subordinated in right of payment to any other Indebtedness of the Issuer or any Guarantor solely by virtue of being unsecured or by virtue of being secured with different collateral or by virtue of being secured on a junior priority basis or by virtue of the application of waterfall or other payment ordering provisions affecting different tranches of Indebtedness.

(l) Maintenance of Admission to Trading. The Issuer will use its commercially reasonable efforts to obtain and/or maintain the admission to trading of the Notes in the unregulated market (*Freiverkehr*) of the Frankfurt Stock Exchange or, at the Issuer's election, the regulated market of the Luxembourg Stock Exchange for so long as any Notes are outstanding; *provided* that if the Issuer is unable to obtain such admission to trading or if at any time the Issuer determines that it will not maintain such admission to trading or listing, it will use its commercially reasonable efforts to obtain and maintain an admission to trading or listing of the Notes on another recognized stock exchange (which may be another stock exchange that is not regulated by the European Union).

(m) Impairment of Security Interests.

(i) The Issuer will not, and will not cause or permit any of its Subsidiaries to, take or knowingly or negligently omit to take, any action which action or omission would have the result of materially impairing the security interest with respect to the Collateral (it being understood that the Incurrence of Liens on the Collateral permitted by the definition of "Permitted Collateral Liens" shall under no circumstances be deemed to materially impair the security interest with respect to the Collateral) for the benefit of the Noteholders' Representative and the Noteholders, and the Issuer will not, and will not cause or permit any of its Subsidiaries to, grant to any Person other than the Security Trustee, for the benefit of the Noteholders and the other beneficiaries described in the Security Documents and the Intercreditor Agreement, any interest whatsoever in any of the Collateral; provided that

(A) the Collateral may be discharged, transferred or released in accordance with the Terms and Conditions, the Intercreditor Agreement and the Security Documents; and

(B) the Issuer and its Subsidiaries may Incur Permitted Collateral Liens.

Except where permitted by the Terms and Conditions or the Intercreditor Agreement, no Security Document may be amended, extended, renewed, restated, supplemented or otherwise modified or released, unless contemporaneously with such amendment, extension, renewal, restatement, supplement or modification or release (to be followed by an immediate retaking of a Lien of at least equivalent ranking over the same assets), the Issuer delivers to the Security Trustee either:

(1) a solvency opinion from an accounting, appraisal or investment banking firm of national standing confirming the solvency of the Issuer and its Subsidiaries, taken as a whole, after giving effect to any transactions related to such amendment, extension, renewal, restatement, supplement, release, modification or replacement;

(2) a certificate from the chief executive officer, chief financial officer or the Board of Directors of the relevant Person, which confirms the solvency of the person granting security interest after giving effect to any transactions related to such

amendment, extension, renewal, restatement, supplement, modification or replacement; or

(3) an Opinion of Counsel (subject to customary exceptions and qualifications), confirming that, after giving effect to any transactions related to such amendment, extension, renewal, restatement, supplement, modification or release, the Lien or Liens securing the Notes created under the Security Documents so amended, extended, renewed, restated, supplemented, modified or released are valid and perfected Liens not otherwise subject to any limitation, imperfection or new hardening period, in equity or at law, and that such Lien or Liens were not otherwise subject to immediately prior to such amendment, extension, renewal, restatement, supplement, modification or release.

(ii) Notwithstanding § 9(m)(i) which shall not apply to the actions described in this § 9(m)(ii), at the direction of the Issuer and without the consent of any Noteholder or the Noteholders' Representative, the Security Trustee may from time to time enter into one or more amendments to the Security Documents to:

(A) cure any ambiguity, omission, defect or inconsistency therein;

(B) provide for Permitted Collateral Liens to the extent permitted by the Terms and Conditions;

(C) add to the Collateral;

(D) comply with the terms of the Intercreditor Agreement;

(E) evidence the succession of another Person to the Issuer and the assumption by such successor of the obligations the Terms and Conditions, the Notes and the Security Documents, in each case, in accordance with § 9(h) (Merger and Consolidation);

(F) provide for the release of property and assets constituting Collateral from the Lien of the Security Documents or the release of a Note Guarantee granted by a Guarantor, in each case, in accordance with (and if permitted by) the terms of the Terms and Conditions and the Intercreditor Agreement;

(G) conform the Security Documents to the Terms and Conditions;

(H) evidence and provide for the acceptance of the appointment of a successor Noteholders' Representative or Security Trustee; or

(I) make any other change thereto that does not adversely affect the rights of the Noteholders in any material respect.

(iii) In the event that the Issuer complies with this § 9(m), the Noteholders' Representative and the Security Trustee shall (subject to customary protections and indemnifications) consent to such amendment, extension, renewal, restatement, supplement, modification or replacement with no need for instructions from Noteholders. The Noteholders' Representative will only grant such consent after it has received an Officer's Request Certificate of the Issuer confirming that the Issuer complies with this § 9(m).

(n) Security. The Issuer shall, and shall procure that each Guarantor shall, at its own expense, execute and do all such acts and things and provide such assurances as the Security Trustee may reasonably require

- (i) for registering any Security Documents in any required register and for perfecting or protecting the security intended to be afforded by such Security Documents; and
 - (ii) if such Security Documents have become enforceable, for facilitating the realization of all or any part of the assets which are subject to such Security Documents and for facilitating the exercise of all powers, authorities and discretions vested in the Security Trustee or in any receiver of all or any part of those assets. The Issuer shall, and shall procure that each Guarantor shall, execute all transfers, conveyances, assignments and releases of that property whether to the Security Trustee or to its nominees and give all notices, orders and directions which the Security Trustee may reasonably request.
- (o) Cash-Pooling. The Issuer shall use best efforts to establish a cash pool for the Issuer and its Subsidiaries (other than any Subsidiaries which are, in the good faith determination of the Issuer, not able or permitted to participate in such cash pool as a result of restrictions under applicable law or regulatory requirements or if their inclusion in the cash pool would significantly impede or delay the establishment of a cash pool); provided that the Issuer shall in no event be required to establish such cash pool prior to the date that falls six months after the later of (i) the Amendment Effective Date, and (ii) the date of the audit of the Issuer's annual consolidated financial statements for the year ended 31 December 2022.
- (p) Trapped Cash. If the aggregate amount of Trapped Cash (i) on any Relevant Date for purposes of determining any Relevant Proceeds or (ii) as included in any Cashflow Forecast, equals or exceeds an amount of EUR 20 million, such amount shall as soon as reasonably practicable be validated and confirmed ("**Trapped Cash Validation**") by FTI-Andersch AG or any successor restructuring advisor of recognized standing, which confirmation shall be delivered to the Noteholders' Representative; provided that no Trapped Cash Validation shall be required pursuant to sub-paragraph (ii) above if a Cashflow Forecast relates to the end of a fiscal quarter that is an Interest Payment Date and the Issuer is required to deliver a Trapped Cash Validation with respect to the Relevant Date for such Interest Payment Date.
- (q) Amendments to Intercreditor Agreement. At the direction of the Issuer and without the consent of Noteholders, the Noteholders' Representative and the Security Trustee shall from time to time enter into one or more amendments to the Intercreditor Agreement to: (i) add Subsidiaries to the Intercreditor Agreement, (ii) further secure the Notes, (iii) implement any Permitted Collateral Liens, or (iv) amend the Intercreditor Agreement in accordance with the terms thereof.

§ 1410 TERMINATION RIGHTS OF THE NOTEHOLDERS IN CASE OF AN EVENT OF DEFAULT

- (a) Each ~~Noteholder will be entitled to declare all or some only of its Notes due and demand immediate redemption of such Notes at the Principal Amount plus accrued interest to but excluding the date of redemption as provided hereinafter, if any~~ of the following ~~events (each constitutes an "Event of Default")~~ occurs:
- (i) ~~the Issuer fails to pay principal (at maturity, upon redemption or otherwise) when due in respect of the Notes;~~
 - (i) default in any payment of interest or Additional Amounts, if any, on any Note when due and payable, continued for 30 days;
 - (ii) ~~the Issuer fails to pay interest, any Additional Amount or any other amount in respect of the Notes (other than principal (at maturity~~ default in the payment of principal of or premium, if any, on the Notes when due and payable at the Maturity Date,

upon redemption, upon required repurchase, upon acceleration or otherwise)) ~~within 30 days from the relevant due date; or~~

- ~~(iii) the Issuer fails to duly perform any other obligation arising from the Notes, and such default, except where such default is incapable of remedy, continues unremedied for more than 60 days after the Issuer (through the Principal Paying Agent) has received notice thereof from a Noteholder; or~~
- ~~(iv) (A) any present or future indebtedness of the Issuer or any Material Subsidiary for or in respect of monies borrowed or raised is declared to be, or otherwise becomes, due and payable prior to its stated maturity as a result of any actual or potential default (however described); or~~
 - ~~(B) any such indebtedness of the Issuer or any Material Subsidiary is not paid when due or within any applicable grace period, as the case may be; or~~
 - ~~(C) any security granted by the Issuer or any Material Subsidiary for any such indebtedness is declared enforceable upon the occurrence of an event entitling to enforcement; or raised unless, in each case, the aggregate amount of all such indebtedness is less than EUR 25,000,000 (or its equivalent in any other currency or currencies); or~~
- ~~(viii) failure by the Issuer or any Material Subsidiary suspends its payments or announces its inability to meet its financial obligations; or of the Guarantors to comply with any obligation set forth in § 9(h) (Merger and Consolidation) continued for 30 days;~~
- (iv) failure by the Issuer or any of the Guarantors to comply for 60 days after notice from the Noteholders' Representative (upon instruction by Noteholders of at least 25 per cent. in aggregate principal amount of the Notes then outstanding) with its other obligations contained in the Terms and Conditions;
- (v) default under any mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any Indebtedness for borrowed money by the Issuer or any of its Subsidiaries (or the payment of which is guaranteed by the Issuer or any of its Subsidiaries), other than Indebtedness owed to the Issuer or a Subsidiary, whether such Indebtedness or guarantee now exists, or is created after the date of the Terms and Conditions, which default:
 - (A) is caused by a failure to pay when due principal of, or interest or premium, if any, on such Indebtedness prior to the expiration of any applicable grace period provided for under the terms of such Indebtedness ("Payment Default"); or
 - (B) results in the acceleration of such Indebtedness prior to its maturity;and, in each case, the principal amount of any such Indebtedness, together with the principal amount of any other such Indebtedness under which there has been a Payment Default or the maturity of which has been so accelerated aggregates EUR 5 million or more;
- ~~(vi) a competent court opens insolvency proceedings against the Issuer or any a Guarantor, a Material Subsidiary which is not dismissed or stayed within 60 days after the commencement thereof, or the Issuer or any or a group of Subsidiaries that, taken together (as of the latest consolidated financial statements for the Issuer and its~~

Subsidiaries), would constitute a Material Subsidiary ~~institutes such a proceeding; or,~~
pursuant to or within the meaning of any applicable bankruptcy law:

(A) commences judicial proceedings to be adjudicated bankrupt or insolvent under applicable bankruptcy law or files for the commencement of any preliminary proceedings including preliminary protective proceedings (Schutzschirmverfahren);

(B) consents to the institution of bankruptcy or insolvency proceedings against it under applicable bankruptcy law, or preliminary proceedings including preliminary protective proceedings (Schutzschirmverfahren);

(C) consents to the appointment of a custodian (Sachwalter) or preliminary custodian (vorläufiger Sachwalter) of it or for all or substantially all of its property;
or

(D) admits in writing that it is unable to pay its debts as they become due (but only if and to the extent it is required to file for insolvency or bankruptcy proceedings as a result thereof);

~~(vii) the Issuer ceases all or substantially all of its business operations; or a court of competent jurisdiction enters an order or decree under any applicable bankruptcy law that:~~

~~(viii) the Issuer is wound up, unless this is effected in connection with a merger or another form of amalgamation with another company or in connection with a restructuring, and the other or the new company assumes all obligations of the Issuer arising under the Notes; or~~

~~(ix) any law, governmental order, decree or enactment will gain recognition in the Federal Republic of Germany whereby the Issuer is legally prevented from performing its obligations under the Notes and this situation is not cured within 90 days; or~~

~~(x) Termination of the Lock-up Agreement by one or more parties to the Lock-up Agreement.~~

~~The right to declare Notes due will terminate if the situation giving rise to it has been cured before such right is exercised.~~

~~(b) Any notice declaring Notes due in accordance with § 14(a) will be made by means of a declaration in text form in the German or English language to the Principal Paying Agent in accordance with the then applicable rules and procedures of the Clearing System together with evidence which may be in the form of a certificate of the Noteholder's Custodian certifying that such Noteholder, at the time of such notice, is the holder of the relevant Notes or in any other appropriate manner. The notice shall be irrevocable.~~

(A) is for relief against the Issuer, a Guarantor, a Material Subsidiary or a group of Subsidiaries that, taken together (as of the latest consolidated financial statements for the Issuer and its Subsidiaries), would constitute a Material Subsidiary, in a judicial proceeding (including any respective preliminary proceedings) in which the Issuer, a Guarantor, a Material Subsidiary or a group of Subsidiaries that, taken together, would constitute a Material Subsidiary, has been adjudicated bankrupt or insolvent under applicable bankruptcy law (or in respect of which any proceedings including preliminary proceedings or preliminary protective proceedings (Schutzschirmverfahren) have been commenced);

(B) appoints a custodian or preliminary custodian for the Issuer, a Guarantor, a Material Subsidiary or a group of Subsidiaries that, taken together (as of the latest

- consolidated financial statements for the Issuer and its Subsidiaries), would constitute a Material Subsidiary, or for all or substantially all of the property of the Issuer, a Guarantor, a Material Subsidiary or a group of Subsidiaries that, taken together, would constitute a Material Subsidiary; or
- (C) orders the liquidation of the Issuer, a Guarantor, a Material Subsidiary or a group of Subsidiaries that, taken together (as of the latest consolidated financial statements for the Issuer and its Subsidiaries), would constitute a Material Subsidiary and the order or decree remains unstayed and in effect for 60 consecutive days;
- (viii) failure by the Issuer or any Subsidiary to pay final judgments aggregating in excess of EUR 1 million (net of any amounts that are covered by insurance policies issued by reputable and creditworthy insurance companies), which judgments are not paid, discharged or stayed for a period of 60 days after the judgment exceeding such threshold becomes final;
- (ix) any Note Guarantee of any Guarantor ceases to be in full force and effect (except as contemplated by the terms of such Note Guarantee or the Terms and Conditions or as provided under applicable law) or is declared null and void in a judicial proceeding or the Issuer or any Guarantor denies or disaffirms in writing or in any pleading in any court its obligations under the Terms and Conditions or its Note Guarantee and any such Default continues for 60 days; or
- (x) with respect to any Collateral having a Fair Market Value in excess of EUR 1 million, individually or in the aggregate, (i) (x) the security interest under the Terms and Conditions or the Security Documents, at any time, ceases to be in full force and effect for any reason other than in accordance with the terms of the Security Documents and other than the satisfaction in full of all obligations under the Notes, or (y) any security interest created thereunder or under the Security Documents is declared invalid or unenforceable and such Default continues for 20 days after the Issuer becomes aware of the Default or (ii) the Issuer or any Guarantor asserts that any such security interest or Security Document is invalid or unenforceable prior to the time that the Collateral is to be released to the Issuer or the Guarantors; or.
- (xi) the occurrence of any effect, event, circumstance or change, or any facts or developments becoming evident, after the Amendment Effective Date as a consequence of which (individually or together and after taking into account all factors and circumstances) the successful sustainable restructuring (*Sanierung*) of the Company and the Group within a reasonable time frame pursuant to the requirements of the jurisprudence of the German Federal Supreme Court (*Bundesgerichtshof*) and the *IDW Standard: Anforderungen an Sanierungskonzepte* (IDW S6) promulgated by the German Institute for Public Accounts (*Institut der Wirtschaftsprüfer in Deutschland e.V.*) was not, or ceases to be, more likely than not; or
- (xii) Mr. Nedim Cen (or any successor as Chief Executive Director to whom the Noteholders' Representative (acting upon instruction of Noteholders of at least 50 per cent. in principal amount of all outstanding Notes) has given its prior written consent) ceasing to be a member of the Board of Directors of the Issuer as Chief Executive Officer or the chairperson of the supervisory board of the Issuer as of the Amendment Effective Date (or any successor to whom the Noteholders' Representative (acting upon instruction of Noteholders of at least 50 per cent. in principal amount of all outstanding Notes) ceasing

- to be a member of the supervisory board of the Issuer as chairperson, in each case if the Noteholders' Representative (acting upon instruction of Noteholders of at least 50 per cent. in principal amount of all outstanding Notes) has elected that such event shall constitute an Event of Default within three (3) months from the date of such cessation, provided that such election right shall expire if (i) a replacement is appointed to the Board of Directors of the Issuer and/or supervisory board of the Issuer within three (3) months from the date of such cessation to whom the Noteholders' Representative (acting upon instruction of Noteholders of at least 50 per cent. in principal amount of all outstanding Notes) has given its prior written consent and (ii) such replacement enjoys the same power of representation and delegation of responsibilities as the replaced Chief Executive Officer or the chairperson of the supervisory board, as the case may be.
- (b) No Event of Default shall have occurred, and the Noteholders shall not be entitled to declare the Notes due:
- (i) pursuant to § 10(a)(v) above, if the termination right is or would have been triggered solely with respect to (x) any Indebtedness of Ginova HoldCo S.à r.l. and/or Ginova PropCo S.à r.l., (y) any security granted for such indebtedness of Ginova HoldCo S.à r.l. and/or Ginova PropCo S.à r.l. or (z) a guarantee assumed for such indebtedness of Ginova HoldCo S.à r.l. and/or Ginova PropCo S.à r.l.; and/or
- (ii) pursuant to § 10(vi), (vii) and (viii), if the termination right is or would have been triggered solely by the bankruptcy event or other relevant proceedings, events or measures referred to therein in relation to Ginova HoldCo S.à r.l. and/or Ginova PropCo S.à r.l..
- (c) ~~In the events specified in § 14(a)(iii) and (iv), any notice declaring Notes due shall, unless, at the time such notice is received, any of the events specified in § 14(a)(i) and (v) to (ix) entitling Noteholders to declare their Notes due has occurred, become effective only when the Principal Paying Agent has received such default notices from the Noteholders representing~~ If an Event of Default (other than an Event of Default pursuant to the foregoing sub-paragraphs (vi), (vii) or (xii) of § 10(a)) occurs and is continuing, the Noteholders' Representative upon instruction of Noteholders of at least 1025 per cent. of the aggregate in principal amount of all outstanding Notes by notice to the Issuer shall terminate the Notes then and declare the principal amount of and all accrued interest under all outstanding Notes to be due and payable immediately. § 10(g) shall apply.
- (d) ~~Termination notices received by the Principal Paying Agent after 4:00 p.m. (Frankfurt time) shall only become effective on the immediately succeeding Business Day.~~
- (d) In the event of a declaration of acceleration of the Notes because an Event of Default pursuant to sub-paragraph (v) of § 10(a) has occurred and is continuing, the declaration of acceleration of the Notes shall be automatically annulled if the relevant default triggering such Event of Default pursuant to sub-paragraph (v) of § 10(a) is remedied or cured by the Issuer or a Subsidiary or waived by the holders of the relevant Indebtedness, or the relevant Indebtedness that gave rise to such Event of Default has been discharged in full, within 20 days after the declaration of acceleration with respect thereto and if (i) the annulment of the acceleration of the Notes would not conflict with any judgment or decree of a court of competent jurisdiction and (ii) all existing Events of Default, except non-payment of principal, premium, or interest on the Notes that became due solely because of the acceleration of the Notes, have been cured or waived.
- (e) If an Event of Default with respect to the Issuer pursuant to the foregoing sub-paragraphs (vi) and (vii) of § 10(a) occurs and is continuing, the Notes will automatically be terminated and all

- payments under the Notes will become due and payable immediately without any declaration or other act on the part of the Noteholders' Representative or any Noteholders and, for the avoidance of doubt, irrespective of whether a declaration of acceleration of the Notes has been given to the Issuer pursuant to § 10(c) above. § 10(g) shall apply.
- (f) If an Event of Default with respect to the Issuer pursuant to the foregoing sub-paragraph (xii) of § 10(a) occurs and is continuing, each Noteholder shall be entitled to terminate the Notes held by it and all payments under such Notes will become due and payable immediately without any declaration or other act on the part of the Noteholders' Representative or any Noteholders and, for the avoidance of doubt, irrespective of whether a declaration of acceleration of the Notes has been given to the Issuer pursuant to § 10(c) above. § 10(g) shall apply.
- (g) The obligation of the Issuer to make payments under the Notes pursuant to § 10(c) and § 10(e) shall be suspended for the duration of any Consultation Period (as defined in the Intercreditor Agreement).
- (h) Subject to the Terms and Conditions and applicable law, the Noteholders may rescind any acceleration with respect to the Notes and its consequences within three months of the acceleration by simple majority vote of the Noteholders if such rescission would not conflict with any judgment or decree of a court of competent jurisdiction; provided, however, that the aggregate of such cast votes exceeds the number of votes having required the acceleration.
- (i) Notwithstanding anything to the contrary herein, (i) if a Default occurs for a failure to deliver a required certificate in connection with another default (an “**Initial Default**”), then at the time such Initial Default is cured, such Default for failure to report or deliver a required certificate in connection with the Initial Default will also be cured without any further action and (ii) any Default or Event of Default for the failure to comply with the time periods prescribed in § 9(g) (Reports), or otherwise to deliver any notice or certificate pursuant to any other provision of the Terms and Conditions shall be deemed to be cured upon delivery of any such report required by such covenant or notice or certificate, as applicable, even though such delivery is not within the prescribed period specified in the Terms and Conditions.
- (j) Except to enforce the right to receive payment of principal, premium, if any, or interest when due, no Noteholder may pursue any remedy with respect to the Terms and Conditions or the Notes unless:
- (i) such Noteholder has previously given the Noteholders' Representative notice that an Event of Default is continuing;
- (ii) Noteholders of at least 25 per cent. in principal amount of the outstanding Notes have requested the Noteholders' Representative to pursue the remedy;
- (iii) the Noteholders' Representative has not complied with such request within 60 days following the receipt of the request; and
- (iv) the Noteholders of a majority in principal amount of the outstanding Notes have not within such 60 day period given the Noteholders' Representative a direction that, in the opinion of the Noteholders' Representative, is inconsistent with such request.
- (k) Subject to the Terms and Conditions and applicable law, the Noteholders of a majority in aggregate principal amount of the outstanding Notes are given the right to direct the time, method and place of conducting any proceeding for any remedy available to the Noteholders' Representative or of exercising any trust or power conferred on the Noteholders' Representative.

- (l) The Issuer shall deliver to the Noteholders' Representative for delivery to the Noteholders in accordance with the procedures set forth in § 16 (Notices), within 120 days after the end of each fiscal year (and within 20 Business Days upon request at any time after the 120 days), an Officer's Request Certificate stating whether the signers thereof know of any Default that occurred during the previous year. The Issuer is also required to deliver to the Noteholders' Representative for delivery to the Noteholders in accordance with the procedures set forth in § 16 (Notices), after becoming aware of the occurrence thereof, written notice of any events of which it is aware which would constitute Defaults, their status and what action the Issuer is taking or proposes to take in respect thereof.
- (m) If an Event of Default occurs and is continuing, the Noteholders' Representative may, or subject to the provisions of the Intercreditor Agreement with respect to any Note Guarantee and, the Collateral, the Security Trustee, may
- (i) in its sole discretion, but shall not be required to, proceed to protect and enforce the rights of the Noteholders by such appropriate judicial proceedings as the Noteholders' Representative or the Security Trustee, as applicable, shall deem most effectual to protect and enforce any such rights, whether for the specific enforcement of any covenant or agreement in the Terms and Conditions or any Note Guarantee or in aid of the exercise of any power granted herein, or to enforce any other proper remedy, including making demand under one or more of the Note Guarantees on behalf of the Noteholders; and
- (ii) prosecute and enforce all rights of action and claims under the Terms and Conditions or any Note Guarantee without the possession of any of the Notes or the Global Note or the production thereof in any proceeding relating thereto, and to bring any such proceeding on behalf of the Noteholders.

§ 15 **PAYING AGENTS ~~AND CALCULATION AGENT~~**

- (a) BNP Paribas Securities Services S.C.A., Zweigniederlassung Frankfurt am Main will be the principal paying agent (the “**Principal Paying Agent**”, and together with any additional paying agent appointed by the Issuer in accordance with § 15(b), the “**Paying Agents**”).

The address of the specified offices of the Principal Paying Agent is:

BNP Paribas Securities Services S.C.A.
Zweigniederlassung Frankfurt
Europa-Allee 12
60327 Frankfurt am Main
Federal Republic of Germany

~~Conv-Ex Advisors Limited will be the calculation agent (the “**Calculation Agent**”, and together with the Principal Paying Agent and any Paying Agent, the “**Agents**”).~~

~~The address of the specified offices of the Calculation Agent is:~~

~~Conv-Ex Advisors Limited
30 Crown Place
London EC2A 4EB
United Kingdom~~

Each Agent shall be exempt from the restrictions set forth in Section 181 of the German Civil Code (*Bürgerliches Gesetzbuch*) and similar restrictions of other applicable laws.

In no event will the specified office of any Agent be within the United States.

- (b) The Issuer will procure that there will at all times be a principal paying agent ~~and a calculation agent~~. The Issuer is entitled to appoint other banks of international standing as Paying Agents ~~or another calculation agent~~. Furthermore, the Issuer is entitled to terminate the appointment of any Agent. In the event of such termination or such Agent being unable or unwilling to continue to act as Agent in the relevant capacity, the Issuer will appoint another bank of international standing as paying agent ~~or another calculation agent~~. Such appointment or termination will be published without undue delay in accordance with § 16 (*Notices*), or, should this not be possible, be published in another appropriate manner.
- (c) All determinations, calculations and adjustments made by any Agent will be made in conjunction with the Issuer and will, in the absence of manifest error, be conclusive in all respects and binding upon the Issuer and all Noteholders.
- (d) Each Agent may engage the advice or services of any lawyers or other experts whose advice or services it deems necessary, and may rely upon any advice so obtained. No Agent will incur any liability as against the Issuer or the Noteholders in respect of any action taken or not taken, or suffered to be taken or not taken, in accordance with such advice in good faith.
- (e) Each Agent acting in such capacity acts only as agent of, and upon request from, the Issuer. There is no agency or fiduciary relationship between any Agent and the Noteholders, and no Agent shall incur any liability as against the Noteholders or any other Agent.

§ 16

NOTICES

- ~~(a) All notices regarding the Notes will, subject to § 19(f), be published (so long as the Notes are listed on the regulated market of the Luxembourg Stock Exchange) on the website of the Luxembourg Stock Exchange on www.bourse.lu. Any notice so published will become effective for all purposes on the third day following the date of the first such publication.~~
- (a) The Issuer will, subject to § 19(g), publish all notices concerning the Notes on its homepage (www.corestate-capital.com). Any such notice will be deemed to have been given when so published by the Issuer.
- ~~(b) If the publication of notices pursuant to subparagraph (a) of this § 16 (*Notices*) is no longer required by the rules and regulations of the Luxembourg Stock Exchange, the Issuer may, in lieu of publication in the media set forth in subparagraph (a) of this § 16, deliver~~ Notes are listed on any stock exchange and the rules of that stock exchange so require, all notices concerning the Notes to the Clearing System for communication by the Clearing System to the Noteholders. Any notice so delivered will become effective for all purposes on the seventh day following the date of delivery. will be made, subject to § 19(g), in accordance with the rules of the stock exchange on which the Notes are listed.
- (c) In addition, the Issuer will deliver all notices concerning the Notes to the Clearing System for communication by the Clearing System to the Noteholders. Any such notice will be deemed to have been given on the third calendar day after the day on which the said notice was delivered to the Clearing System.
- (d) A notice effected in accordance with § 16(a) to (c) above will be deemed to be effected on the day on which the first such communication is, or is deemed to be, effective.
- (e) Subject to § 19(g), all notices regarding the Notes to be given by the Issuer to the Noteholders' Representative shall be made by way of email and shall be delivered to the following email

address: andreas.ziegenhagen@dentons.com. Any such notice will be deemed to have been given when sent to such email address.

- (f) Subject to § 19(g), all notices to be given by the Noteholders' Representative to the Noteholders shall be made by (i) email to the email address communicated by any relevant Noteholder to the Noteholders' Representative or (ii) through the Clearing System. Any such notice will be deemed to be given, in case of sub-clause (i), when sent to such email address or, in case of sub-clause (ii), on the third calendar day after the day on which the said notice was delivered to the Clearing System.

§ 17 ISSUE OF ADDITIONAL NOTES

The Issuer reserves the right from time to time, without the consent of the Noteholders, to issue additional Notes with identical terms (if applicable, save for, *inter alia*, the issue date, the interest commencement date and the first interest payment date), so that the same will be consolidated, form a single issue with and increase the aggregate principal amount of these Notes. The term “Notes” will, in the event of such increase, also comprise such additionally issued Notes.

§ 18 PRESENTATION PERIOD, PRESCRIPTION

The period for presentation of the Notes pursuant to Section 801(1) sentence 1 of the German Civil Code (*Bürgerliches Gesetzbuch*) is reduced to 10 years. The period of limitation for claims under the Notes presented during the period for presentation will be two years calculated from the expiration of the relevant presentation period.

§ 19 AMENDMENTS TO THE TERMS AND CONDITIONS BY RESOLUTION OF THE NOTEHOLDERS; NOTEHOLDERS' REPRESENTATIVE

- (a) The Issuer may agree with the Noteholders on amendments to the Terms and Conditions or [the Intercreditor Agreement, the Note Guarantees and the Security Documents which require such consent by the Noteholders or](#) on other matters by virtue of a majority resolution of the Noteholders pursuant to Section 5 *et seq.* of the German Act on Issues of Debt Securities (*Gesetz über Schuldverschreibungen aus Gesamtemissionen – “SchVG”*), as amended from time to time. In particular, the Noteholders may consent to amendments which materially change the substance of the Terms and Conditions, including such measures as provided for under Section 5(3) SchVG by resolutions passed by such majority of the votes of the Noteholders as stated under § 19(b). A duly passed majority resolution shall be binding equally upon all Noteholders.
- (b) Except as provided by the following sentence, and provided that the quorum requirements are being met, the Noteholders may pass resolutions by simple majority of the voting rights participating in the vote. Resolutions which materially change the substance of the Terms and Conditions, in particular in the cases of Section 5(3) numbers 1 through 9 SchVG, or relating to material other matters, may only be passed by a majority of at least 75 per cent. of the voting rights participating in the vote (a “**Qualified Majority**”).
- (c) The Noteholders can pass resolutions (i) in a meeting (*Gläubigerversammlung*) in accordance with Section 9 and Sections 5 *et seq.* SchVG, or (ii) by means of a vote without a meeting (*Abstimmung ohne Versammlung*) in accordance with Section 18 and Sections 5 *et seq.* SchVG.
- (i) Attendance at the Noteholders' meeting and exercise of voting rights is subject to the Noteholders' registration. The registration must be received at the address stated in the convening notice no later than the third day preceding the meeting. As part of the registration, Noteholders must provide evidence of their eligibility to participate in the vote by means of a special confirmation of the Custodian in accordance with § 20(d)(i)(A)

- and (B) in text form and by submission of a blocking instruction by the Custodian stating that the relevant Notes are not transferable from and including the day such registration has been sent until and including the stated end of the meeting.
- (ii) In the case of a vote without a meeting, Noteholders must, when casting their vote, provide evidence of their eligibility to participate in the vote without a meeting by means of a special confirmation of the Custodian in accordance with § 20(d)(i)(A) and (B) in text form and by submission of a blocking instruction by the Custodian stating that the relevant Notes are not transferable from and including the day such vote has been cast until and including the day the voting period ends.
- (d) If it is ascertained that no quorum exists for the meeting pursuant to § 19(c)(i) or the vote without a meeting pursuant to § 19(c)(ii), in the case of a meeting, the ~~chairman~~chairperson (*Vorsitzender*) may convene a second meeting in accordance with Section 15(3) sentence 2 SchVG, or, in the case of a vote without a meeting, the scrutineer (*Abstimmungsleiter*) may convene a second meeting within the meaning of Section 15(3) sentence 3 SchVG. Attendance at the second meeting and exercise of voting rights are subject to the Noteholders' registration. The provisions set out in § 19(c)(i) shall apply *mutatis mutandis* to Noteholders' registration for a second meeting.
- (e) The Noteholders may, by majority resolution, provide for the appointment or dismissal of a holders' representative (the "**Noteholders' Representative**"), the duties and responsibilities and the powers of such Noteholders' Representative, the transfer of the rights of the Noteholders to the Noteholders' Representative and a limitation of liability of the Noteholders' Representative. Appointment of a Noteholders' Representative may only be passed by a Qualified Majority if such Noteholders' Representative is to be authorised to consent, in accordance with § 19(b), to a material change in the substance of the Terms and Conditions or other material matters.
- (f) Noteholders Representative
- (i) The initial Noteholders' Representative and its initial specified office is:
- Dentons GmbH, Wirtschaftsprüfungsgesellschaft, Steuerberatungsgesellschaft
Markgrafenstraße 33, 10117 Berlin, Germany
- The Noteholders' Representative shall be a common noteholders' representative of the Noteholders within the meaning of the SchVG.
- (ii) The Noteholders' Representative is obliged, subject to the limitations set forth in this § 19(f), to perform such duties and only such duties as are specifically set forth in the Terms and Conditions, and such additional powers and duties as are granted to it by majority resolution passed pursuant to this § 19 (to the extent such additional powers and duties are expressly accepted by it by written notice to the Issuer). Whether or not an **Event of Default has occurred and is continuing**, the Noteholders' Representative shall:
- (A) execute, in its own name and acting in the interest of the Noteholders, the Intercreditor Agreement on or prior to the Amendment Effective Date;
- (B) perform the duties set forth in the Intercreditor Agreement;
- (C) solicit a vote of Noteholders without a meeting as soon as reasonably practicable upon (i) a request from the Security Trustee for a decision, instruction or consent of Noteholders required under the Intercreditor Agreement, (ii) the giving by the Noteholders' Representative of notice of its resignation for the purpose of the appointment of a successor Noteholders' Representative, (iii) to obtain, if deemed

necessary by the Noteholders' Representative, instructions from the Noteholders with respect to any action to be taken by the Noteholders' Representative, (iv) the delivery of an Initial Enforcement Notice (as defined in the Intercreditor Agreement) by any holders' representative for any other Secured Notes or the commencement of the Consultation Period (as defined in the Intercreditor Agreement), or (v) as required by law;

(D) in connection with any voting of Noteholders perform the duties of the chairperson or the scrutineer (*Abstimmungsleiter*) as set forth in the SchVG; and

(E) provide the Security Trustee with any decision, instruction or consent with respect to the Intercreditor Agreement based on a majority resolution of Noteholders passed in accordance with this § 19.

If an Event of Default has occurred and is continuing of which the Noteholders' Representative has been notified in writing by the Issuer, any Guarantor, any party to the Intercreditor Agreement or any Noteholder, the Noteholders' Representative shall exercise such of the rights and powers vested in it by the Terms and Conditions, subject to such rights or powers being qualified, limited or otherwise affected by the provisions of the Intercreditor Agreement, and use the same degree of diligence and care in its exercise as a prudent business manager (*ordentlicher und gewissenhafter Geschäftsleiter*) within the meaning of Section 7(3) sentence 1 SchVG would exercise or use under the circumstances; provided that the exercise of such rights and powers shall not be inconsistent with any majority resolution passed by the Noteholders in accordance with this § 19.

Furthermore, the Noteholders' Representative shall take any action under the Intercreditor Agreement only upon instruction by the Noteholders pursuant to the terms of the Terms and Conditions. If the Noteholders' Representative is requested by the Security Trustee or any Noteholder for a decision, instruction or consent to be made under the Intercreditor Agreement, it will take any such action only if being validly instructed by the Noteholders in accordance with the terms of the Terms and Conditions. Should it not be possible to obtain such instruction by the Noteholders in time or at all, the Noteholders' Representative shall not be required to take any such action under the Intercreditor Agreement.

No provision of the Terms and Conditions shall require the Noteholders' Representative to do anything which would be illegal or contrary to applicable law or regulation. Under no circumstances will the Noteholders' Representative be responsible or liable for (i) investigating or assessing the suitability, value, sufficiency, validity, binding nature, or enforceability of the Note Guarantee or any Collateral, (ii) making any inquiries as to the performance of the obligations of the Issuer, any Guarantor and/or any of the Subsidiaries, or (iii) monitoring the performance by the Security Trustee of its obligations or assessing the validity, sufficiency or adequacy of any instruction given to the Security Trustee by any other person, or (iv) the sufficiency, adequacy or correctness of any information or document delivered to it for on-delivery to the Noteholders in accordance with the Terms and Conditions.

The Noteholders' Representative shall be exempt from the restrictions set forth in Section 181 of the German Civil Code (*Bürgerliches Gesetzbuch*).

(iii) The Noteholders' Representative shall be liable for the proper performance of its duties towards the Noteholders who shall be joint and several creditors (*Gesamtgläubiger*); in the performance of its duties it shall act with the diligence and care of a prudent business

manager (*ordentlicher und gewissenhafter Geschäftsleiter*) within the meaning of Section 7(3) SchVG. The liability of the Noteholders' Representative is limited to wilful misconduct and gross negligence. The liability for gross negligence is limited to an amount of EUR 10,000,000.

(iv) Subject to § 19(f)(ii) and (iii) above:

(A) the Noteholders' Representative may rely, and shall be protected in acting or refraining from acting, upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document believed by it to be genuine and to have been signed or presented by the proper person;

(B) before the Noteholders' Representative acts or refrains from acting, it may require an officer's certificate of the Issuer or an opinion of legal counsel in form and substance reasonably satisfactory to the Noteholders' Representative. The Noteholders' Representative shall not be liable for any action it takes or omits to take in good faith in reliance on such officer's certificate of the Issuer or opinion of legal counsel;

(C) the Noteholders' Representative shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document, but the Noteholders' Representative, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Noteholders' Representative shall determine to make such further inquiry or investigation, it shall be entitled at reasonable times upon written request to examine the books, records and premises of the Issuer personally or by agent or attorney; and

(D) the Noteholders' Representative may request that the Issuer deliver an officer's certificate of the Issuer setting forth the names of the individuals and/or titles of officers authorized at such time to take specified actions pursuant to the Terms and Conditions.

(v) The Issuer shall pay to the Noteholders' Representative fees, costs, expenses and disbursements (including appropriate insurance cover and any costs for legal advice incurred) as separately agreed between the Issuer and the Noteholders' Representative.

(vi) The Noteholders' Representative may be removed from office at any time by majority resolution of the Noteholders in accordance with this § 19 without specifying any reasons.

The Noteholders' Representative may resign at any time by notifying the Issuer in which case the Issuer shall notify the Noteholders in accordance with the procedures set forth in § 16 (Notices). If the Noteholders' Representative resigns he shall call a vote without undue delay to elect a successor Noteholders' Representative. A resignation of the Noteholders' Representative shall become effective only upon the appointment, by majority resolution of the Noteholders in accordance with this § 19, of a successor Noteholders' Representative and the successor Noteholders' Representative's acceptance of such appointment.

A successor Noteholders' Representative shall deliver a written acceptance of its appointment to the Issuer and shall succeed the retiring Noteholders' Representative as a party to the Intercreditor Agreement. Thereupon the resignation or removal of the retiring

Noteholders' Representative shall become effective, and the successor Noteholders' Representative shall have all the rights, powers and duties of the Noteholders' Representative under the Terms and Conditions and any reference in the Terms and Conditions shall forthwith be references to such successor Noteholders' Representative. The retiring Noteholders' Representative shall promptly transfer all property held by it as Noteholders' Representative to the successor Noteholders' Representative.

(vii) Within sixty (60) days after each 1 June (a "Reporting Date"), beginning with the Reporting Date following the Amendment Effective Date, and for as long as any Notes remain outstanding, the Noteholders' Representative shall furnish to the Principal Paying Agent (who, at the Issuer's expense, will forward to the Noteholders) a report dated as of the relevant Reporting Date, briefly describing any activities relating to the Notes undertaken by the Noteholders' Representative during the twelve-months period ending on such Reporting Date and stating whether or not any of the circumstances described in Section 7(1) SchVG have arisen.

(fg) Any notices concerning this § 19 (unless expressly stated otherwise) shall be made exclusively pursuant to the provisions of the SchVG.

§ 20 FINAL CLAUSES

- (a) The form and content of the Notes and the rights of the Noteholders and the obligations of the Issuer will in all respects be governed by the laws of the Federal Republic of Germany. Articles ~~86~~470-3 to ~~94~~8470-19 of the Luxembourg law of 10 August 1915 on commercial companies, as amended, regarding the representation of Noteholders and meetings of Noteholders, do not apply to the Notes. To the fullest extent permitted by applicable law, no Noteholder may initiate any proceedings under Article ~~98~~470-21 of the Luxembourg act dated 10 August 1915 on commercial companies, as amended.
- (b) The place of performance is Frankfurt am Main, Federal Republic of Germany.
- (c) To the extent legally permitted, the courts of Frankfurt am Main, Federal Republic of Germany will have jurisdiction for any action or other legal proceedings arising out of or in connection with the Notes. This is subject to any exclusive court of venue for specific legal proceedings in connection with the SchVG.
- (d) Any Noteholder may, in any proceedings against the Issuer or to which the Noteholder and the Issuer are parties, protect and enforce, in its own name, its rights arising under its Notes on the basis of:
- (i) a certificate issued by its Custodian:
 - (EA) stating the full name and address of the Noteholder;
 - (DB) specifying the aggregate principal amount of Notes credited on the date of such statement to such Noteholder's securities account maintained with such Custodian; and
 - (EC) confirming that the Custodian has given a notice to the Clearing System and the Principal Paying Agent containing the information specified in § 20(d)(i)(A) and (B) and bearing acknowledgements of the Clearing System and the relevant account holder in the Clearing System; as well as
 - (ii) a copy of the Global Note, certified as being a true copy by a duly authorised officer of the Clearing System or the Principal Paying Agent.



Annex 1 Collateral

1. First ranking share pledge over 100 per cent. of the present and future shares in Corestate Capital Group GmbH;
2. first ranking share pledge over 100 per cent. of the present and future shares in Corestate Bank GmbH;
3. first ranking share pledge over 100 per cent. of the present and future shares in Corestate Capital Advisors GmbH;
4. first ranking interest pledge over 94.9 per cent. of the limited partners' interests in Hannover Leasing GmbH & Co. KG;
5. first ranking share pledge over 100 per cent. of the present and future shares in Hannover Leasing Verwaltungsgesellschaft mbH;
6. first ranking share pledge over 100 per cent. of the present and future shares in Corestate Capital AG;
7. first ranking share pledge over 100 per cent. of the present and future shares in HFS Helvetic Financial Services AG;
8. first ranking share pledge over 100 per cent. of the present and future shares in Corestate Capital Services GmbH;
9. first ranking share charge over 100 per cent. of the present and future shares in CRM Students Ltd.;
10. first ranking financial securities account pledge over 100 per cent. of the financial securities account (*compte titres*) on which the shares of Corestate Capital France HoldCo SAS have been deposited;
11. first ranking share pledge over 100 per cent. of the present and future shares in Gabriela HoldCo S.à r.l.;
12. first ranking share pledge over 100 per cent. of the present and future shares in Bego HoldCo S.à r.l.;
13. first ranking share pledge over 100 per cent. of the present and future shares in Ginova HoldCo S.à r.l. (formerly Ginova AIF S.à r.l.);
14. first ranking bank account pledge over all present and future bank accounts of the Issuer;
15. first ranking bank account pledge over all present and future bank accounts of Corestate Capital Group GmbH;
16. first ranking bank account pledge over all present and future bank accounts of Corestate Capital AG;
17. first ranking bank account pledge over all present and future bank accounts of HFS Helvetic Financial Services AG;
18. first ranking bank account pledge over all present and future bank accounts of CRM Students Ltd. (other than any accounts held for and on behalf of clients);
19. first ranking bank account pledge over all present and future bank accounts of STAM Europe SAS;
20. first ranking bank account pledge over all of Corestate Capital Advisors GmbH's present and future bank accounts (except for Spanish law governed bank accounts of Corestate Capital Advisors GmbH's Spanish branch with Banco de Sabadell, S.A. and Commerzbank AG);

21. first ranking bank account pledge over all of Corestate Capital Services GmbH's present and future bank accounts;
22. first ranking bank account pledge over all of Gabriela HoldCo S.à r.l.'s present and future bank accounts;
23. first ranking bank account pledge over all of Bego HoldCo S.à r.l.'s present and future bank accounts;
24. first ranking bank account pledge over all of Genova HoldCo S.à r.l.'s (formerly Genova AIF S.à r.l.) present and future bank accounts;
25. first ranking pledge over certain senior notes in a nominal amount of EUR 35,500,000 issued by RAW-Ost HC S.à r.l. (ISIN: DE000A3K0AQ5) which are held in custody in a depository account;
26. first ranking receivables pledge over all of the Issuer's present and future intra-group claims against Gabriela HoldCo S.à r.l., Bego HoldCo S.à r.l. and Genova HoldCo S.à r.l. (formerly Genova AIF S.à r.l.);
27. security assignment of all of the Issuer's, Corestate Capital Group GmbH's and HFS Helvetic Financial Services AG's present and future intra-group claims against any member of the Group (other than Gabriela HoldCo S.à r.l., Bego HoldCo S.à r.l. and Genova HoldCo S.à r.l. (formerly Genova AIF S.à r.l.));
28. security assignment of Corestate Capital Services GmbH's bridge loan receivables against Aggregate HH GmbH, AEIOU 102. GmbH, Real Estate Portfolio Consulting AG, Echo HoldCo S.à r.l., Echo HoldCo 2 AIF S.à r.l., North Gate Besitz GmbH, King AIF 2 S.à r.l., CC Gruppe AG, Gröner Group GmbH, Aggregate Deutschland S.A., IOI Beteiligungs GmbH and FOKUS 6. Vermögensverwaltungs GmbH;
29. first ranking pledge over shares held by HFS Helvetic Financial Services AG in the special investment funds (*Spezial-Sondervermögen*) STRATOS Immobilienanleihenfonds II, STRATOS Immobilienanleihenfonds IV and STRATOS Immobilienanleihenfonds V; and
30. security assignment of HFS Helvetic Financial Services AG's claims relating to success/performance fees owing to HFS Helvetic Financial Services AG in connection with advisory/consulting services on behalf of and/or for the benefit of HANSAINVEST Hanseatische Investment-Gesellschaft mbH with respect to the special investment funds (*Spezial-Sondervermögen*) STRATOS Immobilienanleihenfonds II and STRATOS Immobilienanleihenfonds IV.



Annex 2
Intercreditor Agreement

(final form to be inserted)

Summary report:	
Litera Compare for Word 11.3.0.46 Document comparison done on 02.06.2023 11:14:19	
Style name: Standard	
Intelligent Table Comparison: Active	
Original filename: ORIG SUNS.docx	
Modified filename: MOD SUINS.docx	
Changes:	
<u>Add</u>	1074
Delete	882
<u>Move From</u>	219
<u>Move To</u>	219
<u>Table Insert</u>	0
Table Delete	1
<u>Table moves to</u>	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	2395