

Draft Dated: 27 November 2012
Draft #3

DATED 8 JULY 2011

ISA INVESTMENT STRATEGY ASSOCIATES INC.
AS BORROWER

THE PERSONS LISTED IN SCHEDULE 1
AS ORIGINAL JUNIOR CREDITORS

THE PERSONS LISTED IN SCHEDULE 2
AS ORIGINAL OBLIGORS

AND
NORDEA BANK AB (PUBL)
AS LENDER

SUBORDINATION AND OBLIGORS'
UNDERTAKING AGREEMENT

AS AMENDED AND RESTATED ON [•] 2012
RELATING TO EUR 75,000,000 AND USD 45,000,000
FACILITY AGREEMENT

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THIS AGREEMENT is dated 8 July as amended and restated on [•] and is made in Moscow **BETWEEN:**

- (1) **ISA INVESTMENT STRATEGY ASSOCIATES INC.**, a company incorporated under the laws of the British Virgin Islands, with registration number 1515442, with its registered address at Akara Bldg., 24 De Castro Street, Wickhams Cay I, Road Town, Tortola, British Virgin Islands (the "**Borrower**");
- (2) **THE PERSONS** listed in Schedule 1 (*Original Junior Creditors*) (each an "**Original Junior Creditor**");
- (3) **THE PERSONS** listed in Schedule 2 (*Original Obligors*) (each an "**Original Obligor**");
- (4) **THE PERSONS** listed in Schedule 3 (*Original Facility Guarantors*) (each an "**Original Facility Guarantor**"); and
- (5) **NORDEA BANK AB (PUBL)**, a company incorporated and existing in accordance with the laws of Sweden having its registered office at Smålandsgatan 17 SE-105 71 Stockholm, Sweden, registered under registration number 516406-0120 as the lender (the "**Lender**").

WHEREAS:

- (A) Pursuant to the Facility Agreement (as defined below), the Lender has agreed to make available to the Borrower loan facilities of EUR75,000,000 and USD45,000,000.
- (B) It is a condition precedent to those loan facilities being made available that the Parties enter into this Agreement.
- (C) This Agreement is executed as a deed notwithstanding that a party may execute it under hand.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

"Change of Control Prepayment Fee" means the Facility A Prepayment Fee or Facility B Prepayment Fee (as defined in the PCM Fee Letter) payable by the Borrower pursuant to clause 6.4 of the PCM Fee Letter.

"Facility Agreement" means the EUR 75,000,000 and USD 45,000,000 facility agreement dated 8 July 2011 between the Borrower, as borrower and the Lender, as lender as amended and restated on [•].

"Facility Guarantor" means:

- (a) for the purposes of Clause 8 (*Guarantee and Indemnity*), each Original Facility Guarantor and any person which at any time becomes a New Facility Guarantor; and

- (b) for all other purposes, each Original Facility Guarantor, any person which at any time becomes a New Facility Guarantor, Marisana, Nicolsco and any other person that executes a Standalone Facility Guarantee.

"Facility Guarantor Accession Letter" means a document substantially in the form set out in Schedule 6 (*Facility Guarantor Accession Letter*).

"Junior Creditor" means each of the Original Junior Creditors and any person which at any time becomes a New Junior Creditor.

"Junior Creditor Accession Letter" means a document substantially in the form set out in Schedule 4 (*Junior Creditor Accession Letter*).

"Junior Liabilities" means all present and future obligations and liabilities (whether actual or contingent, whether owed jointly, severally or in any other capacity whatsoever and whether originally incurred by the Obligors or by some other person) of each Obligor to the Junior Creditors (or any of them).

"Junior Party" means each of the Obligors and the Junior Creditors.

"Luxembourg Guarantor" means each Facility Guarantor incorporated under the laws of Luxembourg.

"New Facility Guarantor" means any person which at any time becomes a party to this Agreement in accordance with Clause 17.4 (*New Guarantors*).

"New Junior Creditor" means any person which at any time becomes a party to this Agreement in accordance with Clause 17.2 (*New Junior Creditors*).

"New Obligor" means any person which at any time becomes a party to this Agreement in accordance with Clause 17.3 (*New Obligors*).

"Obligor" means each of the Original Obligors and any person which at any time becomes a New Obligor.

"Obligor Accession Letter" means a document substantially in the form set out in Schedule 5 (*Obligor Accession Letter*).

"Obligors' Agent" means the Borrower, appointed to act on behalf of each Obligor in relation to the Finance Documents pursuant to Clause 17.5 (*Obligors' Agent*).

"Office Building 3 Security Documents" means each of:

- (a) the Flowermills Share Pledge;
- (b) the Fortune Finance Share Pledge; and
- (c) the Real Estate Finance Share Pledge.

"Permitted Payment" means any payment or receipt permitted by Clause 4.1 (*Permitted Payments*) so long as it is so permitted.

"Repeating Representations" means each of the representations set out in Clause 11.1 (*Status*) to Clause 11.8 (*Governing law and enforcement*), Clause 11.12.1 (*No misleading information*) but with respect to paragraphs (a) and (b) only, Clause 11.12.2 (*No misleading information*), Clause 11.12.3 (*No misleading information*) but with respect to paragraph (b) only, Clause 11.15 (*No immunity*), Clause 11.16 (*Private and commercial acts*) and Clause 11.27 (*Title to assets*).

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

"SOU Amendment and Restatement Agreement" means the amendment and restatement agreement dated [•] executed by, amongst others, the Borrower, each Obligor, each Junior Creditor, each Facility Guarantor and the Lender amending and restating this Agreement.

"Subordination Period" means the period beginning on the date of this Agreement and ending on the date on which the Lender is satisfied that the Senior Liabilities have irrevocably been paid or discharged in full.

1.2 Terms defined in other Finance Documents

Unless defined in this Agreement or the context otherwise requires, a term defined in the Facility Agreement has the same meaning in this Agreement or in any notice given under or in connection with this Agreement, as if:

- 1.2.1 any reference to the term "**Obligor**" or the "**Borrower**" appearing in any such definition were a reference to any Junior Party; and
- 1.2.2 all references in those defined terms to the Facility Agreement or a Finance Document were a reference to this Agreement or to that notice.

1.3 Construction

Clause 1.2 (*Construction*) and clause 1.3 (*Currency Symbols and Definitions*) of the Facility Agreement will apply as if incorporated in this Agreement or in any notice given under or in connection with this Agreement, as if all references in that Clause to the Facility Agreement were a reference to this Agreement or such notice.

1.4 Third party rights

- 1.4.1 Unless expressly provided to the contrary in this Agreement, a person who is not a Party (other than any Secured Party) has no rights or liabilities under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Agreement.
- 1.4.2 Notwithstanding any term of any Finance Document, the Parties may rescind, vary, waive, release, assign, novate or otherwise dispose of all or any of their respective rights or obligations under this Agreement without the consent of any person who is not a Party.

2. **SUBORDINATION**

Except as provided in this Agreement, the rights of the Junior Creditors in respect of the Junior Liabilities are subordinated to the Senior Liabilities and accordingly payment and receipt of any amount of the Junior Liabilities is not permitted until the end of the Subordination Period.

3. **SUBORDINATION UNDERTAKINGS**

3.1 **Payments**

No Obligor shall, without the prior written consent of the Lender except for any Permitted Payments:

- 3.1.1 make any payment (whether in respect of principal, interest or otherwise) on account of all or any of the Junior Liabilities (whether by way of cash, loan or otherwise);
- 3.1.2 redeem, purchase or otherwise acquire, or grant Security in respect of, all or any of the Junior Liabilities;
- 3.1.3 take, or permit to be taken, any action or step with a view to the winding-up, receivership or administration of an Obligor;
- 3.1.4 pay, repay or prepay any interest, default interest, fees or commissions (but without prejudice to the accrual thereof) on, or by reference to, all or any of the Junior Liabilities; or
- 3.1.5 take or omit to take any action or step whereby the subordination of all or any of the Junior Liabilities might be terminated, impaired or adversely affected.

3.2 **Receipts**

No Junior Creditor shall, without the prior written consent of the Lender:

- 3.2.1 except for Permitted Payments, receive any payment (whether in respect of principal, interest or otherwise) made by any Obligor of all or any of the Junior Liabilities (whether by way of cash, loan or otherwise);
- 3.2.2 assign, transfer or otherwise dispose of, or make demand for or accept Security in respect of, all or any of the Junior Liabilities or all or any rights which it may have against any Obligor in respect of all or any part of the Junior Liabilities;
- 3.2.3 take, or permit to be taken, any action or step to commence or continue any proceedings against any Obligor, or take any action in respect of, all or any of the Junior Liabilities (including, without limitation, the exercise of any right of set-off, counterclaim or lien);
- 3.2.4 take, or permit to be taken, any action or step with a view to the winding-up, receivership or administration of any Obligor; or
- 3.2.5 take or omit to take any action or step whereby the subordination of all or any of the Junior Liabilities might be terminated, impaired or adversely affected.

3.3 **Duration**

The undertakings given by each Junior Party in this Clause 3 (*Subordination Undertakings*) will remain in force until the end of the Subordination Period.

4. **PERMITTED PAYMENTS**

4.1 **Permitted payments**

Subject to Clause 13.9 (*Priority of cash movements*), so long as no Default is continuing or would occur as a result of any such payment or receipt and subject to Clause 6 (*Default and Insolvency*), each Obligor may make any payment and any Junior Creditor may receive and retain any amount which is paid to that Junior Creditor by way of:

4.1.1 loan, or the payment or the repayment of indebtedness owed (including interest), by an Obligor to that Junior Creditor pursuant to an Existing Intra-Group Loan Agreement; or

4.1.2 provided that the terms of Clause 14.15 (*Distributions*) are complied with, the payment of any dividend or other distribution under shares in an Obligor.

4.2 **Set-off**

A payment or receipt includes a payment or receipt by way of set-off.

5. **TURNOVER**

5.1 **Turnover by Junior Creditor**

If any Junior Creditor receives or recovers:

5.1.1 any payment in cash or in kind, or any distribution of, or on account of or for the purchase or other acquisition of, or otherwise in relation to, any of the Junior Liabilities;

5.1.2 any amount by way of set-off in respect of any of the Junior Liabilities owed to it which does not give effect to a payment permitted by this Agreement; or

5.1.3 the proceeds of any enforcement of any Security or guarantee for any of its Junior Liabilities,

in each case, in contravention of Clause 2 (*Subordination*) or Clause 3 (*Subordination Undertakings*), the Junior Creditor concerned shall:

- (a) in relation to receipts and recoveries described in Clauses 5.1.1 and 5.1.3 above, hold an amount of that receipt or recovery equal to the amount necessary to repay in full the Senior Liabilities (or if less, the amount actually received or recovered) on trust for the Lender and promptly pay that amount to the Lender for application in or towards payment of all the Senior Liabilities; and

- (b) in relation to recoveries described in 5.1.2 above, promptly pay an amount equal to that recovery to the Lender for application in or towards payment of all the Senior Liabilities.

5.2 Sums received by Obligors

If any of the Obligors receives or recovers any sum which, under the terms of any of the Finance Documents, should have been paid to the Lender, that Obligor will hold an amount of that receipt or recovery equal to the amount necessary to repay in full the Senior Liabilities (or if less, the amount actually received or recovered) and promptly pay that amount to the Lender for application in accordance with the terms of this Agreement.

5.3 Extent of turnover trust

The trusts referred to in this Clause 5 (*Turnover*) shall, in each case, extend only to the amount or value of any assets received by the relevant recipient as may be necessary to repay in full the Senior Liabilities.

5.4 Ineffective Trust

If, for any reason, any of the trusts expressed to be created in this Clause 5 (*Turnover*) or Clause 6.3 (*Insolvency Turnover*) shall fail or be unenforceable, the relevant Junior Creditor or Obligor will promptly pay an amount equal to that receipt or recovery to the Lender to be held on trust by the Lender for application in accordance with the terms of this Agreement.

6. DEFAULT AND INSOLVENCY

6.1 Exercise of Junior Creditor rights

In the event:

6.1.1 of any dissolution, winding up, liquidation or reorganisation of an Obligor; or

6.1.2 that any Event of Default is continuing,

the Lender may, and is hereby irrevocably authorised and empowered (in its own name or in the name of the Junior Creditors or otherwise) but will have no obligation to:

- (a) demand, sue for, collect and/or secure every payment or distribution of assets of any Obligor to which the Junior Creditors would be entitled in respect of the Junior Liabilities; and
- (b) file claims and proofs of claim in the name of the Junior Creditors in respect of the Junior Liabilities or take any other action as the Lender may deem necessary or advisable for the exercise or enforcement of any of the rights or interests of the Lender, and

each Obligor and Junior Creditor shall if requested by the Lender release and discharge any of the Junior Liabilities (and any other intercompany debt) that may be specified by the Lender.

6.2 **Insolvency event**

On a winding-up, administration, dissolution or any analogous procedure in any jurisdiction of any Obligor or of any Junior Creditor:

- 6.2.1 the claims of the Junior Creditors in respect of the Junior Liabilities will be postponed to the Senior Liabilities and no amount will be payable to the Junior Creditors in respect of the Junior Liabilities nor will any distribution of assets of any kind or character be made to the Junior Creditors in respect of the Junior Liabilities (whether in cash or in kind); and
- 6.2.2 any payment or distribution of assets of any Obligor of any kind or character to which any Junior Creditor would have been entitled but for the provisions of this Clause 6 (*Default and Insolvency*) will be paid by any Obligor, or other person making such payment or distribution, to the Lender to the extent necessary to repay all the Senior Liabilities in full.

6.3 **Insolvency turnover**

In the event of:

- 6.3.1 payment being made to, or Security being held by, or the benefit of any right of set-off or counterclaim being exercised by, any Junior Creditor in breach of this Clause 6 (*Default and Insolvency*); or
- 6.3.2 any payment or distribution being made to any Junior Creditor by any liquidator, administrator, receiver, receiver and manager or other similar officer or person,

the Junior Creditor concerned shall:

- (a) if the Junior Creditor concerned actually receives or recovers the amount discharged or purported to be discharged, hold the same upon trust for the Lender and will promptly pay the same to the Lender for application in or towards payment of all the Senior Liabilities; and
- (b) if any Junior Creditor does not, for any reason, actually receive or recover the amount discharged or purported to be discharged or that amount is discharged by way of set off (mandatory or otherwise), promptly pay an amount equal to that discharged, purported to be discharged or set off to the Lender to be held on trust by the Lender for application in or towards payment of all the Senior Liabilities.

6.4 **Permitted Enforcement**

Subject to this Clause 6 (*Default and Insolvency*), if any Obligor becomes Insolvent, any Junior Creditor may with the prior written consent of the Lender, exercise any right it may otherwise have against that Obligor to:

- 6.4.1 accelerate any of that Obligor's Junior Liabilities or declare them prematurely due and payable or payable on demand;
- 6.4.2 exercise any right of set off or take or receive any payment in respect of any Junior Liabilities of that Obligor; or

6.4.3 claim and prove in the liquidation of that Obligor for the Junior Liabilities owing to it.

7. PROVISIONS AS TO SUBORDINATION

7.1 Continuing agreement

This Agreement will apply in respect of the Senior Liabilities notwithstanding any intermediate payment in whole or in part of the Senior Liabilities.

7.2 Waiver

The subordination effected by, and the obligations of each Junior Party to the Lender under, this Agreement will not be affected by any act, omission, matter or thing which, but for this provision, would reduce, release, prejudice or otherwise exonerate all or any of the Junior Parties from their respective obligations under this Agreement or affect such obligations including, without limitation, and whether or not known by any Junior Party or any other person:

- 7.2.1 any Security or right of the Lender in respect of the Senior Liabilities;
- 7.2.2 the winding-up, dissolution, administration or reorganisation of any Junior Party or any other person or any change in its status, function, control or ownership;
- 7.2.3 any of the obligations of any Junior Party or any other person under any Finance Document or under any other security relating to any Finance Document being or becoming illegal, invalid, unenforceable or ineffective in any respect;
- 7.2.4 any time, waiver or other indulgence being granted or agreed to be granted to any Junior Party or any other person in respect of any of its obligations under any Finance Document or under any other security;
- 7.2.5 any amendment, novation, supplement, extension (whether of maturity or otherwise), restatement (in each case however fundamental and of whatsoever nature and whether or not more onerous) or replacement of any Finance Document or any other document or security including, without limitation, any change in the purpose of, any extension of or any variation or increase in any facility or amount made available under any facility or the addition of any new facility under any Finance Document or other document or any variation, waiver or release of, any obligation of any Junior Creditor or any other person under any Finance Document or under any other security;
- 7.2.6 any failure to take, or fully to take, any security contemplated by any Finance Document or otherwise agreed to be taken in respect of any Junior Creditor's obligations under any Finance Document;
- 7.2.7 any failure to realise or fully to realise the value of, or any release, discharge, exchange or substitution of, any security taken in respect of any Junior Creditor's obligations under any Finance Document.

7.3 **Consent to Finance Documents**

Each Junior Creditor irrevocably consents to the terms of each Finance Document and to any amendment or waiver made to any Finance Document pursuant to clause 34 (*Amendments and waivers*) of the Facility Agreement.

8. **GUARANTEE AND INDEMNITY**

8.1 **Guarantee and indemnity**

Each Facility Guarantor, in consideration of, amongst other things, the Lender agreeing to enter into the Finance Documents, irrevocably and unconditionally:

- 8.1.1 guarantees to the Lender punctual performance by each other Obligor of all that Obligor's obligations under the Finance Documents;
- 8.1.2 undertakes with the Lender that whenever another Obligor does not pay any amount when due under or in connection with any Finance Document, that Facility Guarantor shall immediately on demand pay that amount as if it were the principal obligor; and
- 8.1.3 agrees with the Lender that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal it will, as an independent and primary obligation, indemnify the Lender immediately on demand against any cost, loss or liability it incurs as a result of any other Obligor not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under any Finance Document on the date when it would have been due. The amount payable by a Facility Guarantor under this indemnity will not exceed the amount it would have had to pay under this Clause 8 (*Guarantee and Indemnity*) if the amount claimed had been recoverable on the basis of a guarantee.

8.2 **Continuing guarantee**

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

8.3 **Reinstatement**

If any discharge, release or arrangement (whether in respect of the obligations of any Obligor or any security for those obligations or otherwise) is made by the Lender in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then:

- 8.3.1 the liability of each Obligor under this Clause 8 (*Guarantee and Indemnity*) will continue or be reinstated as if the discharge, release or arrangement had not occurred; and
- 8.3.2 the Lender shall be entitled to recover the value or amount of that security or payment from each Obligor, as if the payment, discharge, avoidance or reduction had not occurred.

8.4 **Waiver of defences**

The obligations of each Facility Guarantor under this Clause 8 (*Guarantee and Indemnity*) will not be affected by an act, omission, matter or thing which, but for this Clause 8 (*Guarantee and Indemnity*), would reduce, release or prejudice any of its obligations under this Clause 8 (*Guarantee and Indemnity*) (without limitation and whether or not known to it) including:

- 8.4.1 any time, waiver or consent granted to, or composition with, any Obligor or other person;
- 8.4.2 the release of any other Obligor or any other person under the terms of any composition or arrangement with any creditor of any Obligor;
- 8.4.3 the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any Obligor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- 8.4.4 any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of an Obligor or any other person;
- 8.4.5 any amendment, novation, supplement, extension (whether of maturity or otherwise), restatement (in each case however fundamental and of whatsoever nature and whether or not more onerous) or replacement of a Finance Document or any other document or security (including, without limitation, any change in the purpose of, any extension of, or any variation or increase in any facility or amount made available under any facility or the addition of any new facility under any Finance Document or other documents);
- 8.4.6 any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security; or
- 8.4.7 any insolvency or similar proceedings.

8.5 **Guarantor intent**

Without prejudice to the generality of Clause 8.4 (*Waiver of defences*), each Facility Guarantor expressly confirms that it intends that this guarantee and indemnity shall extend from time to time to any (however fundamental and of whatsoever nature and whether or not more onerous) variation, increase, extension or addition of or to any of the Finance Documents and/or any facility or amount made available under any of the Finance Documents for the purposes of or in connection with any of the following: carrying out restructurings; refinancing existing facilities; refinancing any other indebtedness; making facilities available to new borrowers; any other variation or extension of the purposes for which any such facility or amount might be made available from time to time; and any fees, costs and/or expenses associated with any of the foregoing.

8.6 **Immediate recourse**

- 8.6.1 Each Facility Guarantor waives any right it may have of first requiring the Lender (any trustee or agent on its behalf) to proceed against or enforce any other rights or

security or claim payment from any person before claiming from that Facility Guarantor under this Clause 8 (*Guarantee and Indemnity*).

- 8.6.2 To the extent that the waiver in Clause 8.6.1 above does not breach any mandatory provision of law, such waiver applies irrespective of any law or any provision of a Finance Document to the contrary.
- 8.6.3 Each Facility Guarantor acknowledges the right of the Lender pursuant to clause 23.25 (*Acceleration*) of the Facility Agreement to accelerate the payment of any sum that may become due under any guarantee or indemnity contained in this Clause 8 (*Guarantee and Indemnity*).

8.7 Appropriations

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

- 8.7.1 refrain from applying or enforcing any other moneys, security or rights held or received by the Lender (any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and no Facility Guarantor shall be entitled to the benefit of the same; and
- 8.7.2 hold in an interest-bearing suspense account any moneys received from any Facility Guarantor or on account of any Facility Guarantor's liability under this Clause 8 (*Guarantee and Indemnity*).

provided that notwithstanding the foregoing, the Lender shall be obliged to apply such monies towards discharge of the Secured Obligations on the earlier of:

- (a) the date on which such monies are sufficient to satisfy the Secured Obligations in full and any money so applied could not be the subject of any clawback or similar circumstance; and
- (b) the date on which Transaction Security has been enforced in full and any other remedies in all Relevant Jurisdictions that the Lender may have under or in connection with the Finance Documents have been exhausted.

8.8 Deferral of Facility Guarantors' rights

- 8.8.1 Until all amounts which may be or become payable by the Obligor under or in connection with the Finance Documents have been irrevocably paid in full and unless the Lender otherwise directs, no Facility Guarantor will exercise any rights which it may have by reason of performance by it of its obligations under the Finance Documents or by reason of any amount being payable or liability arising, under this Clause 8 (*Guarantee and Indemnity*):
 - (a) to be indemnified by an Obligor;
 - (b) to claim any contribution from any other guarantor of any Obligor's obligations under the Finance Documents;

- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Lender under the Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, the Finance Documents by the Lender;
- (d) to bring legal or other proceedings for an order requiring any Obligor to make any payment, or perform any obligation, in respect of which such Obligor has given a guarantee, undertaking or indemnity under this Clause 8 (*Guarantee and Indemnity*);
- (e) to exercise any right of set-off against any Obligor; or
- (f) to claim or prove as a creditor of any Obligor in competition with the Lender.

8.8.2 If a Facility Guarantor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all the Secured Obligations to be repaid in full on trust for the Lender and shall promptly pay or transfer the same to the Lender or as the Lender may direct for application in accordance with Clause 21 (*Payment mechanics*) and clause 28 (*Payment mechanics*) of the Facility Agreement.

8.9 **Additional security**

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

8.10 **Further assurance**

Each Facility Guarantor agrees that it shall promptly, at the direction of the Lender (acting reasonably), execute and deliver at its own expense any document (executed as a deed or under hand as the Lender may direct in writing) and do any act or thing in order to confirm or establish the validity and enforceability of the guarantee and indemnity intended to be created by it under this Clause 8 (*Guarantee and Indemnity*).

8.11 **Luxembourg Guarantor Limitation**

8.11.1 For the avoidance of doubt, the guarantee created by any Luxembourg Guarantor shall not trigger any payment which, if made, would amount to prohibited financial assistance as provided in article 49-6 of the Luxembourg law of 10 August 1915 concerning commercial companies as amended.

8.11.2 Notwithstanding any other provisions in this Clause 8, the maximum liability of a Luxembourg Guarantor under this Agreement shall be limited so that the maximum amount payable hereunder by the relevant Luxembourg Guarantor for the obligations of any Obligor which is not a direct or indirect Subsidiary of such Luxembourg Guarantor shall at no time exceed the Maximum Amount.

8.11.3 In this Clause, "**Maximum Amount**" with respect to a Luxembourg Guarantor means the sum of:

- (a) an amount equal to the aggregate (without duplication) of any intercompany loans or other forms of financing made to the Luxembourg Guarantor or

any of its Subsidiaries (which are its Subsidiaries on the date of this Agreement or, if later, on the date on which it become a Subsidiary of that Luxembourg Guarantor) by other members of the Group which have been funded by using the facilities under the Facility Agreement;

- (b) plus an amount equal to 90% of the greater of:
 - (i) the sum of:
 - (A) the Luxembourg Guarantor's *capitaux propres* (as referred to in article 34 of the Luxembourg law of 19 December 2002 on the commercial register and annual accounts (the "**2002 Law**")); and
 - (B) any amount owed by the Luxembourg Guarantor to any member of the Group as reflected in the Luxembourg Guarantor's most recent annual financial statements approved by the competent body of the Luxembourg Guarantor (as audited by its external auditor (*réviseur d'entreprises*), if required by law) as at the time a demand for payment from such Luxembourg Guarantor pursuant to the Agreement is made less an amount equal to the amount found in (a) above; and
 - (ii) the sum of:
 - (A) the Company's *capitaux propres* (as referred to in article 34 of the 2002 Law); and
 - (B) any amount owed by the Luxembourg Guarantor to any member of the Group as reflected in its filed annual financial statements as at the date of this Agreement less an amount equal to the amount found in (a) above.

9. TAX GROSS-UP AND INDEMNITIES

9.1 Tax Definitions

9.1.1 In this Agreement:

"FATCA Payment" means either:

- (a) the increase in a payment made by an Obligor to a Finance Party under Clause 9.7 (*FATCA Deduction and gross-up by Obligor*) or sub-Clause 9.8.2 of Clause 9.8 (*FATCA Deduction by the Lender*); or
- (b) a payment under sub-Clause 9.8.2 of Clause 9.8 (*FATCA Deduction by the Lender*).

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

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

"Tax Payment" means either the increase in a payment made by an Obligor to the Lender under Clause 9.2 (*Tax gross-up*) or a payment under Clause 9.3 (*Tax indemnity*).

- 9.1.2 Unless a contrary indication appears, in this Clause 9 (*Tax gross-up and indemnities*) a reference to "determines" or "determined" means, in the absence of manifest error or fraudulent conduct, a determination made in the absolute discretion of the person making the determination.

9.2 Tax gross-up

- 9.2.1 Each Obligor shall make all payments to be made by it without any Tax Deduction, unless a Tax Deduction is required by law.
- 9.2.2 Each Obligor shall, promptly upon becoming aware that it must or will have to make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction), notify the Lender accordingly. Similarly, the Lender shall notify the Borrower on becoming so aware in respect of a payment payable to the Lender.
- 9.2.3 If a Tax Deduction is required by law to be made by an Obligor, the amount of the payment due from that Obligor shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.
- 9.2.4 If an Obligor is required to make a Tax Deduction, such Obligor shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.
- 9.2.5 Each Obligor making that Tax Deduction shall provide the Borrower with a valid original certificate of deduction of tax or other evidence reasonably satisfactory to the Lender that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority for the Borrower to include in the Quarterly Management Report provided to the Lender following any such Tax Deduction.
- 9.2.6 The Lender and each Obligor shall co-operate in completing any procedural formalities necessary for the relevant Obligor to obtain authorisation to make that payment without a Tax Deduction.

9.3 Tax indemnity

- 9.3.1 Each Obligor shall (within ten Business Days of written demand by the Lender) pay to the Lender an amount equal to the loss, liability or cost which the Lender determines (acting reasonably) will be or has been (directly or indirectly) suffered for or on account of Tax by the Lender in respect of a Finance Document. Following the Borrower's reasonable request, the Lender shall, at the expense of the Borrower, produce reasonable evidence in support of such determination available to the Lender.
- 9.3.2 Clause 9.3.1 above shall not apply:

- (a) with respect to any Tax assessed on the Lender:
 - (i) under the law of the jurisdiction in which the Lender is incorporated or, if different, the jurisdiction (or jurisdictions) in which the Lender is treated as resident for tax purposes; or
 - (ii) under the law of the jurisdiction in which the Lender's Facility Office is located in respect of amounts received or receivable in that jurisdiction,

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

- (b) to the extent a loss, liability or cost is compensated for by an increased payment under Clause 9.2 (*Tax gross-up*), Clause 9.7 (*FATCA Deduction and gross-up by the Borrower*) or sub-Clause 9.8.2 of Clause 9.8 (*FATCA Deduction by the Lender*); or
- (c) is compensated for by a payment under sub-Clause 9.8.2 of Clause 9.8 (*FATCA Deduction by the Lender*).

9.3.3 The Lender making, or intending to make a claim under Clause 9.3.1 above shall promptly notify the Borrower of the event which will give, or has given, rise to the claim.

9.4 **Tax Credit**

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

9.4.1 a Tax Credit is attributable either to an increased payment of which that Tax Payment forms part, or to that Tax Payment; and

9.4.2 it has obtained, utilised and retained that Tax Credit,

the Lender shall pay an amount to the Obligor which the Lender determines will leave it (after that payment) in the same after-Tax position as it would have been in had the Tax Payment not been required to be made by the Obligor.

9.5 **Tax Credit and FATCA**

If an Obligor makes a FATCA Payment and the Lender determines that:

9.5.1 a Tax Credit is attributable to an increased payment of which that FATCA Payment forms part, to that FATCA Payment or to a FATCA Deduction in consequence of which that FATCA Payment was required; and

9.5.2 the Lender has obtained, utilised and retained that Tax Credit,

the Lender shall pay an amount to the Obligor which the Lender determines will leave it (after that payment) in the same after-Tax position as it would have been in had the FATCA Payment not been required to be made by the Obligor.

9.6 Value added tax

- 9.6.1 All amounts set out in, or expressed in a Finance Document to be payable by any Party to the Lender which (in whole or in part) constitute the consideration for a supply or supplies for VAT purposes shall be deemed to be exclusive of any VAT which is chargeable on such supply or supplies, and accordingly, subject to Clause 9.6.2 below, if VAT is or becomes chargeable on any supply made by the Lender to any Party under a Finance Document, that Party shall pay to the Lender (in addition to and at the same time as paying any other consideration for such supply) an amount equal to the amount of such VAT (and the Lender shall promptly provide an appropriate VAT invoice to that Party).
- 9.6.2 Where a Finance Document requires any Party to reimburse or indemnify the Lender for any cost or expense, that Party shall reimburse or indemnify (as the case may be) the Lender for the full amount of such cost or expense including such part thereof as represents VAT, save to the extent that the Lender reasonably determines that either it or any member of a group of which it is a member for VAT purposes is entitled to credit or repayment in respect of such VAT from the relevant tax authority.

9.7 FATCA Deduction and gross-up by Obligor

- 9.7.1 If an Obligor is required to make a FATCA Deduction, that Obligor shall make that FATCA Deduction and any payment required in connection with that FATCA Deduction within the time allowed and in the minimum amount required by FATCA.
- 9.7.2 If a FATCA Deduction is required to be made by an Obligor, the amount of the payment due from that Obligor shall be increased to an amount which (after making any FATCA Deduction) leaves an amount equal to the payment which would have been due if no FATCA Deduction had been required.
- 9.7.3 Each Obligor shall promptly upon becoming aware that such Obligor must make a FATCA Deduction (or that there is any change in the rate or the basis of a FATCA Deduction) notify the Lender accordingly.
- 9.7.4 Within thirty days of making either a FATCA Deduction or any payment required in connection with that FATCA Deduction, the Obligor making that FATCA Deduction shall deliver to the Lender evidence reasonably satisfactory to the Lender that the FATCA Deduction has been made or (as applicable) any appropriate payment paid to the relevant governmental or taxation authority.

9.8 FATCA Deduction by the Lender

- 9.8.1 The Lender may make any FATCA Deduction it is required by FATCA to make, and any payment required in connection with that FATCA Deduction, and the Lender shall not be required to increase any payment in respect of which it makes such a FATCA Deduction. If the Lender becomes aware that it must make a FATCA Deduction in respect of a payment to another Party (or that there is any change in the rate or the basis of such FATCA Deduction) the Lender shall notify that Party.

9.8.2 Each Obligor shall (within three Business Days of demand by the Lender) pay to the Lender an amount equal to the loss, liability or cost¹ which the Lender determines (acting reasonably)² will be or has been (directly or indirectly) suffered by the Lender as a result of it making a FATCA Deduction in respect of a payment due to it under a Finance Document.

9.8.3 If the Lender makes, or intends to make, a claim under sub-Clause 9.8.2 above, the Lender shall promptly notify the applicable Obligor of the FATCA Deduction which will give, or has given, rise to the claim.

10. MITIGATION BY THE LENDER

10.1.1 The Lender shall, in consultation with the Borrower, take all reasonable steps to mitigate any circumstances which arise and which would result in any amount becoming payable under or pursuant to, or cancelled pursuant to Clause 9 (*Tax gross-up and indemnities*), including (but not limited to) transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.

10.1.2 Clause 10.1.1 above does not in any way limit the obligations of any Obligor under the Finance Documents.

10.1.3 The Lender is not obliged to take any steps under Clause 10.1.1 above if, in the opinion of the Lender (acting reasonably), to do so might be prejudicial to it or its interests.

11. REPRESENTATIONS

(a) Each Obligor makes the representations and warranties set out in this Clause 11 (*Representations*); and

(b) Each Junior Creditor makes the representations and warranties set out in Clauses 11.1 (*Status*) to 11.8 (*Governing law and enforcement*),

to the Lender and acknowledges that the Lender has entered into this Agreement and the other Finance Documents in reliance on those representations and warranties, as well as in reliance on the representations and warranties made by the other Parties in the other Finance Documents.

11.1 Status

11.1.1 It is a limited liability company, duly incorporated and validly existing under the laws of its jurisdiction of incorporation.

11.1.2 It has the power to own its assets and carry on its business as it is being conducted.

11.1.3 It is not a FATCA FFI or a US Tax Obligor.

¹ CC: Note to W&C - mitigation of these costs is covered in the Mitigation by the Lender clause

² CC: Note to W&C – as it is uncertain at this time what such costs or liabilities will be and how they will be incurred, we cannot accept a qualifier on the costs but since the Lender has to act reasonably in its determination this should provide you with the necessary comfort.

11.2 Centre of Main Interests and establishment

- 11.2.1 Its "centre of main interests" (as that term is used in Article 3(1) of The Council of the European Union No 1346/2000) on Insolvency Proceedings (the "**Regulation**") is in its jurisdiction of incorporation.
- 11.2.2 Other than in the case of Marisana and Flowermills and then only to the extent that each of Marisana and Flowermills has established a registered branch in the Russian Federation, it has no "establishment" (as that term is used in Article 2(h) of the Regulation) in any jurisdiction other than in its jurisdiction of incorporation.
- 11.2.3 It has not registered one or more "establishments" (as that term is defined in Part 2 of The Overseas Companies Regulations 2009 of the United Kingdom) with the Registrar of Companies or, if it has so registered, it has provided to the Lender sufficient details to enable an accurate search against it to be undertaken by the Lender with the Registrar of Companies.
- 11.2.4 Its central management, decision making, the places of residence of its directors, administration and the place at which meetings of its board of directors are held, are at all times situated in its jurisdiction of incorporation.
- 11.2.5 Each of Twinhope and Real Estate Finance is in full compliance with the amended Luxembourg law dated 31 May 1999 on the domiciliation of companies (and the relevant regulations).

11.3 Binding obligations

Subject to the Legal Reservations and the completion of any Perfection Requirements to be performed after the execution of the relevant Security Document within any applicable time limits, the obligations expressed to be assumed by it:

- 11.3.1 in each Transaction Document to which it is a party, are legal, valid, binding and enforceable obligations; and
- 11.3.2 in each Security Document to which it is a party, validly creates a first ranking Security of the type described over the assets to which it is expressed to apply, in the relevant Security Document other than each Office Building 3 Security Document, each of which validly creates Security that ranks subsequent to the Security granted pursuant to the Fortune Finance Finance Documents.

11.4 Non-conflict with other obligations

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

- (a) any law or regulation applicable to it;
- (b) its constitutional documents; or
- (c) any agreement or instrument binding upon it or any of its assets other than:
 - (i) in the case of Marisana or Flowermills only; and

- (ii) in relation to an agreement or instrument other than a Transaction Document to which Marisana or Flowermills is a party,

where such conflict does not have or is not reasonably likely to have a Material Adverse Effect.

11.5 Consents Obtained

It has obtained all consents necessary to ensure that no other party to any agreement or arrangement entered into by it becomes entitled to terminate, rescind, accelerate any obligation under or receive material damages or any other material payment under that agreement or arrangement as a consequence of it entering into any Finance Document to which it is a party.

11.6 Power and authority

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

11.7 Validity and admissibility in evidence

Save as provided in the Legal Reservations and the completion of any Perfection Requirements to be performed after the execution of the relevant Security Document within any applicable time limits, all Authorisations required:

- 11.7.1 to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Transaction Documents to which it is a party; and
- 11.7.2 to make the Transaction Documents to which it is a party admissible in evidence in each Relevant Jurisdiction (other than the Russian legal requirement to provide a duly certified translation of the Finance Documents executed in the English language) and in the jurisdiction the law of which is expressed to be the governing law of such Transaction Document,

have been obtained or effected and are in full force and effect.

11.8 Governing law and enforcement

Subject to the Legal Reservations:

- 11.8.1 the choice of governing law of each of the Finance Documents will be recognised and enforced in each Relevant Jurisdiction;
- 11.8.2 any judgment obtained in relation to a Finance Document in the jurisdiction of the governing law of that Finance Document will be recognised and enforced in each Relevant Jurisdiction, except that foreign judgments may not be able to be enforced in Russia in the absence of a relevant treaty between Russia and the jurisdiction in which such judgment was rendered; and
- 11.8.3 any arbitral award obtained in any Relevant Jurisdiction in relation to a Transaction Document to which it is a party shall be recognised and enforced in each Relevant Jurisdiction, subject to compliance with any applicable procedural requirements.

11.9 Deduction of Tax

It is not required under the law of any Relevant Jurisdiction or elsewhere to make any deduction or withholding for or on account of Tax from any payment it may make under any Finance Documents, except

- 11.9.1 where required by the Luxembourg law of 21 June 2005, as amended, implementing the EU Savings Directive (Council Directive 2003/48/EC or any amendment thereof) and several agreements entered into between Luxembourg and some EU dependent and associated territories or by the Luxembourg law of 23 December 2005, as amended; and
- 11.9.2 with respect to Flowermills and Marisana, subject to the receipt of the appropriate tax residency certificate required under the relevant double taxation treaty.

11.10 No filing or stamp taxes

- 11.10.1 Other than as provided in the Legal Reservations,³ it is not necessary that the Finance Documents be filed, recorded or enrolled with any court or other authority in any Relevant Jurisdiction or that any stamp duty, stamp duty land tax, registration or similar Tax be paid on or in relation to the Transaction Documents or the transactions contemplated by the Transaction Documents, save that:
 - (a) Russian 'state duties' may be payable in relation to the enforcement of any Security created pursuant to the Finance Documents;
 - (b) the opening of Loan Passports may be required in respect of the Twinhope-Marisana Intra-Group Loan Agreement and any other Existing Intra-Group Loan Agreements entered into by Marisana;
 - (c) in the case where any Finance Documents are to be presented, directly or by way of reference, in court proceedings in a Luxembourg court or any other official authority in Luxembourg, registration may be required by such court or authority and registration duties at a fixed rate of EUR 12 (as at the date of this Agreement) or an ad valorem rate, depending on the nature of the registered document, will in such event become due and payable;
 - (d) the Office Building 1 Mortgage and the Mortgage Amendment Agreement must be registered with the Land Registry (and registration fees paid in this respect);
 - (e) each Security Document entered into by Marisana and Nicolsco must be lodged with the Cypriot Registrar of Companies and (along with the each Security Document in respect of the Shares in Marisana and Nicolsco) may be subject to Cypriot stamp tax;
 - (f) any Lease for the term of one year or longer must be registered in the Land Registry (and registration fees paid in this respect); and

³ CC: note to W&C – the previous deletion was made as it was covered above in deduction of tax and is not applicable here on advice of Luxembourg counsel

- (g) the Land Lease Agreement must be registered in the Land Registry (and registration fees paid in this respect).

11.10.2 No notice under Article 36 Tax Collection Act (*Invorderingswet 1990*) of The Netherlands has been given by any Obligor.

11.11 **No default**

11.11.1 No Event of Default is continuing or might reasonably be expected to result from the making of any Utilisation.

11.11.2 No other event or circumstance is outstanding which constitutes a default under any Transaction Document or any other agreement or instrument which is binding on it or to which its assets are subject which would reasonably be expected to result in a Material Adverse Effect.

11.12 **No misleading information**

11.12.1 Any factual written information (other than information provided in the documents clearly marked as drafts or information identified as being preliminary or unconfirmed) provided by or on behalf of an Obligor:

- (a) to the Lender in relation to the Transaction Documents;
- (b) to the Valuer for the purposes of the most recent Valuation;
- (c) to any report provider in connection with the preparation of any Legal Due Diligence Report,

is, in each case, true, complete and accurate in all material respects as at the date it was given and is not misleading in any material respect.

11.12.2 Any opinions, forecasts and projections made by or on behalf of the Obligors and provided to the Lender have been prepared as at their date, on the basis of recent historical information, and on assumptions believed by the relevant Obligor to be fair and reasonable in all material respects.

11.12.3 No Obligor has knowingly withheld any information which if disclosed may reasonably be expected materially and adversely to affect:

- (a) the decision of the Lender considering whether or not to provide finance to the Borrower; or
- (b) the value of the Property given in the most recent Valuation.

11.12.4 Nothing has occurred since the date any information referred to in Clause 11.12.1 was provided which renders that information untrue or misleading in any material respect.

11.13 **Financial statements**

11.13.1 In respect of the Borrower, Stella and Marisana:

- (a) its Original Financial Statements were prepared in accordance with clause 18.2 (*Requirements as to financial statements*) of the Facility Agreement;
- (b) its Original Financial Statements fairly represent its financial condition and operations during the relevant financial year; and
- (c) there has been no material adverse change in its business or financial condition since the date of its Original Financial Statements.

11.13.2 Neither Twinhope nor Real Estate Finance is required pursuant to Article 35 and 69 of the 2002 Law to appoint an approved auditor (*réviseur d'entreprises agréé*).

11.14 **Pari passu ranking**

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

11.15 **No immunity**

In any proceedings taken in any Relevant Jurisdiction in relation to the Transaction Documents to which it is a party, it will not be entitled to claim for itself or any of its assets immunity from suit, execution, attachment or other legal process.

11.16 **Private and commercial acts**

Its execution of the Transaction Documents to which it is a party constitutes, and its execution of its rights and performance of its obligations thereunder will constitute, private and commercial acts done and performed for private and commercial purposes.

11.17 **No adverse consequences**

The Lender will not become or be deemed to have become resident, domiciled, engaged in carrying on of business or subject to Taxes in any Relevant Jurisdiction by reason only of the negotiation, preparation, execution, delivery, performance or enforcement of or receipt of any payment under a Finance Document.

11.18 **Solvency**

11.18.1 It is not Insolvent.

11.18.2 It has no reason to believe that it is likely, in the reasonably foreseeable future, to become Insolvent.

11.19 **No Insolvency Proceedings**

11.19.1 It has neither taken nor intends to take any corporate action in relation to, or otherwise to commence, Insolvency Proceedings in respect of itself or any other Obligor.

11.19.2 No other steps have been taken or legal proceedings started or (to the best of its knowledge and belief) threatened in relation to Insolvency Proceedings in respect of itself or any other Obligor.

11.19.3 It has no reason to believe that Insolvency Proceedings are reasonably likely, in the reasonably foreseeable future, to be commenced in respect of itself or any other Obligor.

11.20 No creditors' process

11.20.1 No process, order or enforcement has occurred which could give rise to a Default under clause 23.8 (*Creditors' process*) of the Facility Agreement.

11.20.2 It has no knowledge of any reason that any such process or enforcement is reasonably likely to be commenced or an order to be issued in the reasonably foreseeable future in respect of it or any of its assets.

11.21 No proceedings pending or threatened

No litigation, arbitration or administrative proceeding of or before any court, arbitral body or agency (to the best of its knowledge and belief) is in progress, has been completed or has been started or threatened against it (or against its directors) which:

11.21.1 may reasonably be expected to restrain its entry into, the exercise of its rights under, or the performance, enforcement of or compliance with any of its obligations under, the Transaction Documents to which it is a party; or

11.21.2 if adversely determined, would reasonably be expected to have a Material Adverse Effect.

11.22 Environmental compliance

Marisana has:

11.22.1 performed and complied in all material respects with all Environmental Laws and Environmental Permits and with all other material covenants, conditions, restrictions or agreements directly or indirectly concerned with any contamination, pollution or waste or the release or discharge of any Hazardous Substance in connection with the Property or the Land Plot, and no action has been taken by Marisana so as to cause non-compliance with any of the foregoing; and

11.22.2 made reasonable efforts to ensure that no Hazardous Substances have been used in connection with the Property or the Land Plot.

11.23 Environmental Claims

No Environmental Claim has been commenced or (to the best of its knowledge and belief) is threatened against it which has or is reasonably likely to have a Material Adverse Effect.

11.24 No other business

11.24.1 It has not traded or carried on any business since its formation other than activities consistent with the Finance Documents and:

(a) in the case of Marisana only, conducting the business of acquiring, managing, letting and owning the Property; and

- (b) in the case of Flowermills only, conducting the business of acquiring, managing, letting and owning the "Property" as defined in the Fortune Finance Facility Agreement.

11.24.2 It has not nor has it ever had any employees (other than directors), except:

- (a) in the case of Marisana only, which has not more than 10 employees; and
- (b) in the case of Flowermills only, which has not more than 10 employees.

11.24.3 It does not own directly or indirectly, legally or beneficially, any investments in any unlimited company, partnership or other entity with unlimited liability.

11.24.4 It does not have any liabilities (whether actual or contingent) other than under the Transaction Documents or arising as a result of its ownership and/or occupation of the Property, other than:

- (a) under the Transaction Documents;
- (b) until the expiry of the Fortune Finance Effective Period, pursuant to any Fortune Finance Finance Document; and
- (c) those incurred in the ordinary course of trading to its ordinary trade creditors as permitted by the Finance Documents.

11.25 **Taxation**

11.25.1 It has duly and punctually paid and discharged all Taxes imposed upon it or its assets within the time period allowed without incurring interest or penalties except to the extent being contested in good faith and in respect of which adequate reserves have been made, provided that such non-payment:

- (a) does not have or is not reasonably likely to have a Material Adverse Effect; or
- (b) has not resulted or is not immediately likely to result in the operation through the Control Accounts being suspended, frozen or otherwise adversely affected.

11.25.2 It is not materially overdue in the filing of any Tax returns.

11.25.3 No claims are being or, to the best of its knowledge and belief, are reasonably likely to be asserted against it with respect to Taxes.

11.25.4 No tenant under any Occupational Lease is required under any law to make any deduction or withholding for or on account of Tax from any Rental Income unless such tenant is required pursuant to the terms of its Occupational Lease to increase the amount of its payments under the Occupational Lease to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required and is complying with such requirement.

11.26 **Compliance with laws**

It is conducting its business and operations in compliance with all laws, regulations and Authorisations (including Transaction Authorisations) applicable to it, except where failure to comply:

11.26.1 will not result in the revocation of any Transaction Authorisation or other material Authorisation;

11.26.2 does not and will not impair its ability to perform its obligations under the Transaction Documents to which it is a party; or

11.26.3 does not have and is not reasonably be likely to have a Material Adverse Effect.

11.27 **Title to assets**

It is the legal and beneficial owner of, and has good, valid and marketable title (which, in the jurisdictions where such concept can apply, was acquired and is held with full title guarantee) to, each of its assets which are expressed to be the subject of the Transaction Security (except, with respect to Marisana, to the rights under any Occupational Lease which have expired in accordance with the terms of such Occupational Lease).

11.28 **Legal Due Diligence**

Each Legal Due Diligence Report delivered to the Lender pursuant to Schedule 2 (*Conditions Precedent*) of the Facility Agreement remains true and accurate in all material respects on the basis of the facts and circumstances existing on the date of such Legal Due Diligence Report.

11.29 **No Material Contracts**

It has not entered into any material agreements or arrangements (other than any Transaction Document to which it is a party) except as permitted under Clause 14.11 (*Material Contracts*).

11.30 **Security**

11.30.1 No Security exists over all or any of its present or future assets except as permitted under Clause 14.3 (*Negative pledge*).

11.30.2 Subject to:

- (a) the Legal Reservations; and
- (b) the completion of any Perfection Requirements to be performed after the execution of the relevant Security Document within any applicable time limits or periods (subject to the Lender supplying to it (at the Borrower's expense) such documents and information as the Lender may be required to provide by applicable laws or requested by the relevant registrar, registration authority, public notary or similar body effecting such registration, notarisation, recording or similar action to complete any Perfection Requirements),

the Transaction Security to which it is a party has or will have first ranking priority and is not subject to any prior ranking or pari passu ranking Security except:

- (i) as permitted under Clause 14.3 (*Negative pledge*);
- (ii) in the case of the Fortune Finance Share Pledge, the Flowermills Share Pledge and the Real Estate Finance Share Pledge, where such Security has second ranking priority.

11.30.3 All of its Shares which are expressed to be subject to the Transaction Security are fully paid and are not subject to any option to purchase or similar rights.

11.30.4 Its constitutional documents do not restrict or inhibit any transfer of those Shares on creation or on enforcement of the Transaction Security over such Shares other than, in the case of Flowermills only, as mandatorily required under Dutch law.

11.31 Existing Financial Indebtedness

Except as otherwise agreed in writing with the Lender, it is not a party to any Financial Indebtedness other than pursuant to:

11.31.1 until the expiry of the Fortune Finance Effective Period, any Fortune Finance Finance Document to which it is a party;

11.31.2 the Existing Intra-Group Loan Agreements to which it is a party;

11.31.3 the Finance Documents to which it is a party; and

11.31.4 any other agreement permitted under Clause 14.6 (*Financial Indebtedness*) to which it is a party.

11.32 Property

In the case Marisana only and to the best of its knowledge and belief, having made due enquiry:

11.32.1 it has the benefit of all necessary Authorisations required under all applicable law for its ownership or lease of the Property and they are in full force and effect;

11.32.2 no breach of any law or regulation is subsisting which would be reasonably likely to materially adversely affect the value of the Property or the amount of Rental Income;

11.32.3 there is no covenant, easement, agreement, reservation, restriction, condition or other matter which materially adversely affects the Property or the Land Plot;

11.32.4 the Property is not subject to any overriding interest or an unregistered interest which overrides first registration or registered encumbrances;

11.32.5 no facility necessary for the enjoyment and use of the Property or the Land Plot is in use by Marisana on terms entitling any person to terminate or curtail its use (other than any contract for the supply of utilities where the supplier can terminate its obligations for non-payment by Marisana for services delivered to it or the Property

or for other events which are generally applicable to all its customers of a similar class and generally included in such contracts) which has or is reasonably likely to have a Material Adverse Effect;

11.32.6 the Property and the Land Plot are free and clear of material damage and structural defects which could reasonably be expected to have a Material Adverse Effect on the value of the Property; and

11.32.7 neither the Property nor the Land Plot is subject to or at risk of flooding or subsidence which would reasonably be expected to have a Material Adverse Effect.

11.33 **No other Subsidiaries**

It does not have any Subsidiary other than as disclosed by the Borrower to the Lender in writing (in form and substance satisfactory to the Lender) prior to the first Utilisation Date in respect of Facility A.

11.34 **Ownership of Obligors**

Its ownership and any trust or nominee agreement or relationship established over the ownership, direct or indirect, of it is as disclosed by the Borrower to the Lender in writing (in form and substance satisfactory to the Lender) prior to the first Utilisation Date in respect of Facility A.

11.35 **Ownership of Land and Buildings**

11.35.1 Marisana is the sole legal owner of Office Building 1.

11.35.2 The sole lessee of the Land Plot is Marisana.

11.35.3 The Property is not subject to any Security save for the Transaction Security, except as permitted under Clause 14.3 (*Negative pledge*).

11.36 **Repetition**

11.36.1 The representations set out in Clauses 11.1 (*Status*) to 11.35 (*Ownership of land and Buildings*) are made by each Obligor:

- (a) on the date of this Agreement;
- (b) on the date of each Utilisation Request; and
- (c) on each Utilisation Date,

by reference to the facts and circumstances then existing.

11.36.2 The representations set out in Clauses 11.1 (*Status*) to 11.8 (*Governing law and enforcement*) are made by each Junior Creditor:

- (a) on the date of this Agreement;
- (b) on the date of each Utilisation Request;
- (c) on each Utilisation Date; and

(d) on the first day of each Interest Period,
by reference to the facts and circumstances then existing.

11.36.3 The Repeating Representations are made and shall thereafter be deemed to be repeated on the first day of each Interest Period by each Obligor by reference to the facts and circumstances then existing.

12. INFORMATION UNDERTAKINGS

The undertakings in this Clause 12 remain in force from the date of this Agreement for so long as any amount of the Secured Obligations is outstanding or any Commitment is in force.

12.1 Financial statements

12.1.1 As soon as the same become available, but in any event within 270 days after the end of each of its financial years:

- (a) each of the Borrower and Marisana shall supply to the Lender its annual audited financial statements for that financial year; and
- (b) Stella shall supply to the Lender its annual audited consolidated financial statements for that financial year.

12.1.2 As soon as the same become available, but in any event within 90 days after the end of each of its financial years, the Borrower shall supply to the Lender its annual unaudited financial statements for that financial year.

12.1.3 As soon as the same become available, but in any event within 120 days after the end of each of its financial years, Marisana shall supply to the Lender its annual unaudited financial statements for that financial year.

12.1.4 As soon as the same become available, but in any event within 90 days after the end of each financial half-year, the Borrower shall supply to the Lender its unaudited financial statements for that financial half-year.

12.1.5 As soon as the same become available, but in any event within 90 days after the end of each financial half-year, Marisana shall supply to the Lender its unaudited financial statements for that financial half-year.

12.2 Requirements as to financial statements

Each Obligor shall procure and ensure that each set of financial statements delivered by it pursuant to Clause 12.1 (*Financial statements*) shall be:

12.2.1 a copy (certified as a true and complete copy by an Authorised Signatory of such Obligor) of such financial statements certified by a director or the managing director of the relevant Obligor and its chief financial officer (howsoever described) (if any) as fairly representing its financial condition as at the date as at which those financial statements were drawn up;

12.2.2 in the case of any audited financial statements:

- (a) prepared in accordance with IFRS; and
- (b) audited by an Approved Auditor;

12.2.3 in the case of any unaudited financial statements:

- (a) prepared in accordance with IFRS; and
- (b) consisting of a balance sheet and income statement only; and

12.2.4 audited where required by any law applicable to such Obligor (and any such auditing shall be undertaken by an Approved Auditor).

12.3 **Property information**

Marisana shall, and each Obligor shall procure and ensure that Marisana shall, supply to the Lender:

12.3.1 promptly, upon request and to the extent available to it, any other information in respect of the Property, the Land Plot or any occupational tenant of any part of the Property or Land Plot and any guarantor or surety of any such occupational tenant, insurances and such other information as the Lender may reasonably request; and

12.3.2 not more than 10 Business Days:

- (a) upon its entry into such, a copy of each Occupational Lease and each amendment, waiver, release or consent to any assignment, sub-letting, under-letting or alterations in respect of any Occupational Lease; and
- (b) upon the entry by a tenant into such, a copy of each agreement pursuant to which a tenant under an Occupational Lease sublets the whole or any part of its interest in an Occupational Lease,

(other than in respect of any Existing Lease where the tenant is under no obligation to provide a copy of any sublease to Marisana and any Immaterial Lease where any such matters shall be reported in the next Quarterly Management Report to be delivered under clause 18.3.1 (*Property Information*) of the Facility Agreement).

12.4 **Information: miscellaneous**

Each Obligor (except as specified in relation to a particular Obligor below) shall supply to the Lender:

12.4.1 all documents dispatched by it to its shareholders (or any class of them) or its creditors generally at the same time as they are dispatched;

12.4.2 promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings which are current, threatened (in a credible manner) or pending against it (or against any of its directors), and which:

- (a) if adversely determined, would reasonably be expected to have a Material Adverse Effect; or

- (b) could reasonably be expected to restrain its entry into, the exercise of its material rights under, or the performance, enforcement of or compliance with any of its material obligations under, the Transaction Documents (other than Immaterial Leases);
- 12.4.3 promptly, such further information regarding (i) its financial condition, business and operations and (ii) the assets which are the subject of the Transaction Security to which it is a party and compliance with the terms of the Security Documents to which it is a party, as the Lender may reasonably request.
- 12.4.4 in the case of Marisana only, promptly upon receipt, a certified copy of any valuations relating to the Property;
- 12.4.5 promptly, details of any filing, recording or enrolling of any Finance Document with any court or other authority in any Relevant Jurisdiction;
- 12.4.6 in the case of Marisana only, promptly following, but in any event within ten Business Days of, the date upon which any amount of ground rent or any other amount due and owing under the Land Lease Agreement is required to be paid, evidence that such amount has been paid in full, on time and otherwise in accordance with the terms of the Land Lease Agreement;
- 12.4.7 in the case of Marisana only, promptly upon becoming aware of them, the details of any material breach of any material Environmental Law, material Environmental Permits and all other material covenants, conditions, restrictions or agreements directly or indirectly concerned with any contamination, pollution or waste or the release or discharge of any Hazardous Substance in connection with the Property or the Land Plot (and the steps, if any, being taken to remedy such breaches);
- 12.4.8 in the case of Marisana only, promptly any correspondence with any insurance company, insurance broker and insurance underwriter which relates to a material issue in relation to the Property, the Land Plot, any Insurance Policy or any material claims or potential material claims;
- 12.4.9 promptly such further information as may be required by applicable banking supervisory laws and regulations and/or in line with standard banking practice in relation to, or in connection with, the Transaction Documents, Facility, any Obligor, the Group, the Property or the Land Plot; and
- 12.4.10 promptly details of any other issues, matters, acts or things which have or are reasonably likely to have a Material Adverse Effect.

12.5 Taxes

Each Obligor (except as specified in relation to a particular Obligor below) shall supply to the Lender with each Quarterly Management Report the details of:

- 12.5.1 any deduction or withholding for or on account of Tax from any payment it may make under any Transaction Documents under the law of any Relevant Jurisdiction;
- 12.5.2 any deduction or withholding for or on account of Tax from any payment it may make or receive under any Existing Intra-Group Loan Agreement under any law or regulation;

- 12.5.3 in the case of Marisana only, any deduction or withholding for or on account of Tax under any law from any Rental Income made by any tenant under any Occupational Lease or by Marisana or the Managing Agent, as the case may be (excluding if such deduction or withholding is for regular profit tax payments calculated by reference to net income received by Marisana or the Managing Agent or VAT payments); and
- 12.5.4 any stamp duty, stamp duty land tax, registration or similar tax to be paid on or in relation to the Finance Documents or the transactions contemplated by the Finance Documents.

12.6 **Notification of default**

Each Obligor shall notify the Lender of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence (unless that Obligor is aware that a notification has already been provided by another Obligor).

12.7 **"Know your customer" checks**

If:

- 12.7.1 the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the date of this Agreement;
- 12.7.2 any change in the status of an Obligor or the composition of the shareholders of an Obligor after the date of this Agreement; or
- 12.7.3 a proposed assignment or transfer by the Lender of any of its rights and obligations under this Agreement or proposed entry into any participation arrangement by the Lender,

obliges the Lender (or, in the case of Clause 12.7.3 above, any prospective new Lender or participant) to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not already available to it, each Obligor shall promptly upon the request of the Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Lender (for itself or, in the case of the event described in Clause 12.7.3 above, on behalf of any prospective new Lender or participant) in order for the Lender or, in the case of the event described in Clause 12.7.3 above, any prospective new Lender or participant to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to the Lender, the prospective Lender or participant pursuant to the transactions contemplated in the Finance Documents.

12.8 **FATCA information**

- 12.8.1 Subject to sub-Clause 12.8.3 below, each Party shall, within ten Business Days of a reasonable request by another Party:
 - (a) confirm to that other Party whether it is:
 - (i) a FATCA Exempt Party; or
 - (ii) not a FATCA Exempt Party; and

- (b) supply to that other Party such forms, documentation and other information relating to its status under FATCA (including its applicable passthru percentage or other information required under the Treasury Regulations or other official guidance including intergovernmental agreements) as that other Party reasonably requests for the purposes of that other Party's compliance with FATCA.

12.8.2 If a Party confirms to another Party pursuant to sub-Clause 12.8.1 above that it is a FATCA Exempt Party and it subsequently becomes aware that it is not, or has ceased to be a FATCA Exempt Party, that Party shall notify that other Party reasonably promptly.

12.8.3 Sub-Clause 12.8.1 above shall not oblige the Lender to do anything which would or might in its reasonable opinion constitute a breach of:

- (a) any law or regulation;
- (b) any policy of the Lender;
- (c) any fiduciary duty; or
- (d) any duty of confidentiality.

12.8.4 If a Party fails to confirm its status or to supply forms, documentation or other information requested in accordance with sub-Clause 12.8.1 above (including, for the avoidance of doubt, where sub-Clause 12.8.3 above applies), then:

- (a) if that Party failed to confirm whether it is (and/or remains) a FATCA Exempt Party then such Party shall be treated for the purposes of the Finance Documents as if it is not a FATCA Exempt Party; and
- (b) if that Party failed to confirm its applicable passthru percentage then such Party shall be treated for the purposes of the Finance Documents (and payments made thereunder) as if its applicable passthru percentage is 100%,

until (in each case) such time as the Party in question provides the requested confirmation, forms, documentation or other information.

13. CONTROL ACCOUNTS

The undertakings in this Clause 13 remain in force from the date of this Agreement for so long as any amount of the Secured Obligations is outstanding or any Commitment is in force.

13.1 Designation of Control Accounts

13.1.1 Each of:

- (a) the Borrower, Stella, Nicolsco and Twinhope shall open and maintain;
- (b) if Winhope Finance opens any bank account, it shall open and maintain such account,

in its name with the designated branch of a Foreign Account Bank a current account denominated in euros, designated "Operational Account".

- 13.1.2 The Borrower shall open and maintain in its name with the designated branch of a Foreign Account Bank a current account denominated in dollars, designated "Operational Account".
- 13.1.3 Stella shall open and maintain in its name with the designated branch of a Foreign Account Bank a current account denominated in USD, designated "Operational Account".
- 13.1.4 Marisana shall open and maintain in its name with:
 - (a) the designated branch of the Russian Account Bank a current account denominated in euros, a euro transit account for the conversion of roubles to euros and a current account denominated in roubles, each designated "Operational Account"; and
 - (b) on and from the date falling 3 months after the Amendment and Restatement Date, the designated branch of OJSC Nordea Bank a current account denominated in dollars and a dollars transit account for the conversion of roubles to dollars, each designated "Operational Account".
- 13.1.5 No Obligor shall maintain any other account with any bank or financial institution (including any account for the purpose of a term deposit) without the prior written consent of the Lender other than a Control Account subject to Transaction Security.

13.2 Account Banks

- 13.2.1 Each of the Borrower, Stella, Nicolsco, Twinhope and, on and from the date on which Winhope Finance opens any bank account, Winhope Finance shall procure that, where the Foreign Account Bank is Credit Suisse, the Foreign Account Bank shall initially operate out of its designated branch in Geneva.
- 13.2.2 Marisana shall procure that the Russian Account Bank and any Alternative Russian Account Bank shall initially operate out of its designated branch in Moscow, Russia.
- 13.2.3 If an Account Bank ceases to have a Requisite Rating, upon the written request of the Lender, each Obligor that has any account with such Account Bank shall:
 - (a) procure, that all Control Accounts that are held with such Account Bank shall be moved to such other financial institution with a Requisite Rating as agreed upon between the Lender and the relevant Obligor (provided that if no bank with a Requisite Rating operates in the relevant jurisdiction, it will be with a bank with the next highest rating operating in that jurisdiction or which is approved in writing by the Lender); and
 - (b) do all such things as the Lender reasonably requests in order to facilitate any such change of the relevant Account Bank (including, without limitation, the execution of bank mandate forms or bank account agreements, the transfer of balances and Loan Passports, and the issue of revised payment instructions in relation to any tenant or guarantor under any Occupational Lease).

13.3 Payments into Control Accounts

13.3.1 The Borrower shall ensure that:

- (a) all payments it receives pursuant to any Existing Intra-Group Loan Agreement to which it is a party;
 - (b) any Facility B Loan; and
 - (c) all other payments it receives from any source,
- are promptly paid directly into a Control Account.

13.3.2 Each of Stella, Nicolsco, Twinhope and Winhope Finance shall ensure that:

- (a) all payments it receives pursuant to any Existing Intra-Group Loan Agreement to which it is a party;
 - (b) all amounts it receives as a borrower under any Existing Intra-Group Loan Agreement to which it is a party;
 - (c) any other payments it receives from any source,
- are promptly paid directly into a Control Account.

13.3.3 Marisana shall ensure that:

- (a) all amounts it receives as a borrower under any Existing Intra-Group Loan Agreement ;
- (b) all its Rental Income (including any VAT thereon);
- (c) any proceeds of an Insurance Policy it receives;
- (d) any proceeds of a claim against any professional or other adviser it receives;
- (e) all Service Charge Proceeds; and
- (f) any other payments it receives from any source,

are promptly paid directly into its Russian Control Account held with the Russian Account Bank.

13.3.4 Provided that no Default is continuing, following the receipt of funds into its Russian Control Account held with the Russian Account Bank pursuant to Clause 13.3.3 above, Marisana may transfer any such funds to any Russian Control Account held with an Alternative Russian Account Bank provided that an Account Amendment Agreement in respect of such Russian Control Account has been duly executed by all parties (including the Lender) which Account Amendment Agreement shall be promptly executed by all parties thereto (including the Lender) once in a form agreed to by all parties thereto (including the Lender).

13.3.5 Notwithstanding Clause 13.3.3(b) above, if Marisana has notified the tenants under the Occupational Leases in writing that all payments are to be made into the Russian

Control Account held with the Russian Account Bank and any such tenant makes their payments into another Control Account, Marisana shall:

- (a) promptly, but in any event within 3 Business Days, transfer such amounts into the Russian Control Account held with the Russian Account Bank; and
- (b) promptly use its best efforts to ensure that such tenant makes all subsequent payments into the Russian Control Account held with the Russian Account Bank.

13.4 **Loan passports**

13.4.1 Marisana will open and maintain with the Russian Account Bank loan passports in accordance with the Currency Law in relation to the Intra-Group Loans made to it (if necessary).

13.4.2 Upon the occurrence of any Default, Marisana shall open and maintain with the Russian Account Bank and each Alternative Russian Account Bank, if any, Loan Passports to the extent required under the Currency Law in relation to the Marisana Standalone Facility Guarantee unless such Account Bank:

- (a) refuses to open such a Loan Passport; and
- (b) permits the payment under the Marisana Standalone Facility Guarantee to be made without such.

13.5 **Foreign Control Accounts — withdrawals**

13.5.1 Each of the Borrower, Stella, Nicolsco, Twinhope and Winhope Finance shall each have signing rights on each of its Foreign Control Accounts provided that the Lender shall have sole signing rights if an Event of Default has occurred and is continuing and the Lender gives notice in accordance with Clause 13.5.3 below.

13.5.2 Unless:

- (a) an Event of Default has occurred and is continuing; and
- (b) the Lender has given written notice to the Borrower of its intention to exercise its rights under this Clause,

each of the Borrower, Stella, Nicolsco, Twinhope and Winhope Finance may each make withdrawals from each of its Foreign Control Accounts to be applied in or towards any purpose consistent with the Finance Documents.

13.5.3 If:

- (a) an Event of Default has occurred and is continuing;
- (b) the Lender has given written notice to the Borrower of its intention to exercise its rights under this Clause; and
- (c) not prohibited by applicable law or regulation,

the Lender may give notice to the Foreign Account Bank that no amount may be withdrawn from a Foreign Control Account without its prior written consent.

13.5.4 If:

- (a) an Event of Default has occurred and is continuing; and
- (b) the Lender has given written notice to the Borrower of its intention to exercise its rights under this Clause,

the Lender may (and is irrevocably authorised by each of the Borrower, Stella, Nicolsco, Twinhope and Winhope Finance to) operate each Control Account of each of the Borrower, Stella, Nicolsco, Twinhope and Winhope Finance and withdraw from, and apply amounts standing to the credit of, each of its Foreign Control Accounts in or towards any purpose for which moneys in any Foreign Control Account may be applied.

13.6 Russian Control Accounts — withdrawals

13.6.1 Subject to the terms of any relevant Account Amendment Agreement, and unless the Lender consents otherwise (in its sole discretion), Marisana shall have sole signing rights on each of its Russian Control Accounts provided that the Lender, if permitted by applicable law or regulation, shall have sole signing rights if:

- (a) an Event of Default has occurred and is continuing; and
- (b) the Lender has given written notice to the Borrower of its intention to exercise its rights under this Clause.

13.6.2 Unless:

- (a) an Event of Default has occurred and is continuing; and
- (b) the Lender has given written notice to the Borrower of its intention to exercise its rights under this Clause,

Marisana may make withdrawals from each of its Russian Control Accounts to be applied in or towards any purpose consistent with the Finance Documents.

13.6.3 If:

- (a) an Event of Default has occurred and is continuing;
- (b) the Lender has given written notice to the Borrower of its intention to exercise its rights under this Clause; and
- (c) not prohibited by applicable law or regulation,

the Lender may give notice to the Russian Account Bank and/or each Alternative Russian Account Bank, if any, that no amount may be withdrawn from the Russian Control Account of Marisana without its prior written consent, whereupon Marisana will not make any withdrawals from such account without the prior written consent of the Lender.

13.6.4 If:

- (a) an Event of Default has occurred and is continuing; and
- (b) the Lender has given written notice to the Borrower of its intention to exercise its rights under this Clause,

the Lender may (and Marisana authorises the Lender to (and shall not revoke any such authorisation to)) operate the Russian Control Accounts of Marisana and withdraw from, and apply amounts standing to the credit of, such Russian Control Accounts in or towards any purpose for which moneys in any Russian Control Account may be applied.

13.7 Russian Control Accounts — direct debit rights

13.7.1 Without prejudice and in addition to any other rights that the Lender may have under any Finance Document, Marisana grants (and shall not revoke), in accordance with Article 847 of the Civil Code, the Lender the right to debit each of the Russian Control Accounts without the further consent, instruction or confirmation of Marisana, in the manner and in accordance with the procedure set out in this Clause and each Account Amendment Agreement to which it is a party.

13.7.2 The Lender shall have the right under this Clause and Article 854 of the Civil Code to instruct the Russian Account Bank and/or each Alternative Russian Account Bank, if any, to debit the Russian Control Accounts of Marisana by submitting Payment Orders (as this term is defined in the Account Amendment Agreement to which Marisana and the Russian Account Bank or the Alternative Russian Account Bank, as the case may be, is a party) to such Russian Account Bank or Alternative Russian Account Bank, as the case may be.

13.7.3 Each Payment Order (as this term is defined in the Account Amendment Agreement to which Marisana and the Russian Account Bank or the Alternative Russian Account Bank, as the case may be, is a party) submitted to the Russian Account Bank and/or each Alternative Russian Account Bank, if any, shall indicate the amounts to be debited from the relevant Russian Control Account of Marisana and transferred to the Lender (or to such other person as may be indicated by the Lender in that Payment Document).

13.7.4 The Lender shall have the right to instruct the Russian Account Bank and/or each Alternative Russian Account Bank, if any, to debit the Russian Control Accounts of Marisana in accordance with this Clause and the relevant Account Amendment Agreement in relation to all payments due from Marisana under the Marisana Standalone Facility Guarantee), including without limitation amounts of principal, interest, fees, penalties and other payments which Marisana is obliged to pay thereunder.

13.8 Control Accounts — withdrawals, instructions and mandates

13.8.1 Any euro payment to be made by Marisana from a rouble Russian Control Account may first be converted to euros and transferred to the euro Russian Control Account.

- 13.8.2 Notwithstanding any other provisions of this Clause 13 (*Control Accounts*), no withdrawal may be made by any Obligor from a Control Account if:
- (a) a Default would occur as a result of that withdrawal; or
 - (b) any amount so withdrawn is to be applied or transferred to an entity that is Insolvent; or
 - (c) both:
 - (i) an Event of Default has occurred and is continuing; and
 - (ii) the Lender has given written notice to the Borrower that no withdrawal may be made by any Obligor from a Control Account,except with the prior written consent of the Lender or to pay the Secured Obligations in accordance with the Finance Documents.
- 13.8.3 If on any Interest Payment Date the Borrower has failed to pay an amount then due and the Lender has notified the Borrower that it has failed to pay such amount, then the monies standing to the credit of each Control Account may be applied by the Lender in or towards payment of such amount:
- (a) on the sixth Business Day following such notice if, no later than one hour before the close of business for the Account Bank where such Control Account is held on the first Business Day following such notice, the Borrower has demonstrated to the satisfaction of the Lender that such non-payment was due to:
 - (i) an administrative or technical error in the transmission of funds; or
 - (ii) a Disruption Event; or
 - (b) at any time following such notice if the circumstances referred in to (a) above have occurred twice before in the same calendar year; or
 - (c) otherwise, no earlier than one hour before the close of business for the Account Bank where such Control Account is held on the first Business Day following such notice.
- 13.8.4 Each Obligor shall pay to its respective Account Bank such reasonable transaction charges and other fees (in each case, consistent with that Account Bank's usual practice in relation to similar accounts for customers of similar status to that of the relevant Obligor) as it may from time to time agree with the Account Bank. No other charges or fees shall be payable to an Account Bank (in its capacity as such) in respect of the Control Accounts.
- 13.8.5 This Clause 13 (*Control Accounts*) does not limit or affect any Obligor's obligations to pay the Secured Obligations or to make voluntary or mandatory payments under the Finance Documents.
- 13.8.6 The Lender shall not be responsible to the Obligors for the non-payment of any of the Secured Obligations which could be paid out of moneys standing to the credit

of any Control Account nor shall the Lender be liable for any withdrawal from a Control Account wrongly made (except for gross negligence, fraud or wilful misconduct by the Lender).

- 13.8.7 No Obligor shall give or revoke, or permit to be given or revoked, an instruction to an Account Bank without the express written consent of the Lender unless such instruction or revocation is in compliance with the terms of the Finance Documents and in particular, this Clause 13 (*Control Accounts*). In case of an inconsistency between this Clause 13 (*Control Accounts*) and another Finance Document, this Clause 13 (*Control Accounts*) shall prevail.
- 13.8.8 No Obligor shall alter or permit to be altered any bank mandate or other agreement relating to the operation of any Control Account without the express written consent of the Lender unless such alteration is required to be made in accordance with the law applicable to such Control Account.
- 13.8.9 Marisana shall not perform any currency exchange transactions with any bank or other institution other than the Russian Account Bank unless:
- (a) if Marisana is selling dollars for roubles, the bid exchange rate of the Russian Account Bank is 0.2 roubles per dollar less than the dollar to rouble exchange rate of the Moscow Interbank Currency Exchange;
 - (b) if Marisana is selling euros for roubles, the bid exchange rate of the Russian Account Bank is 0.2 roubles per euro less than the euro to rouble exchange rate of the Moscow Interbank Currency Exchange;
 - (c) if Marisana is buying dollars with roubles, the offered exchange rate of the Russian Account Bank is 0.2 roubles greater than the rouble to dollar exchange rate of the Moscow Interbank Currency Exchange;
 - (d) if Marisana is buying euros with roubles, the offered exchange rate of the Russian Account Bank is 0.2 roubles greater than the rouble to euro exchange rate of the Moscow Interbank Currency Exchange;
 - (e) if Marisana is selling euros for dollars, the bid exchange rate of the Russian Account Bank is 0.4% less than the exchange rate for euros to dollars on the applicable Reuters screen;
 - (f) if Marisana is buying euros with dollars, the offered exchange rate of the Russian Account Bank is 0.4% greater than the exchange rate for euros to dollar on the applicable Reuters screen,

in each case where such exchange rate of the Moscow Interbank Currency Exchange or Reuters screen, as the case may be, is the exchange rate at the moment of the telephone call during which such exchange transaction is proposed by Marisana or at the time of the receipt of the request from Marisana if, with the prior consent of the Lender, it was made via another method other than a telephone call.

13.9 **Priority of cash movements**

Provided that the Obligor through which such payment is to be made is not, and is not likely in the reasonably foreseeable future to be, Insolvent:

13.9.1 the Obligors will use its commercially reasonable endeavours to move Net Rental Income of Marisana to the Borrower by way of Permitted Payments as soon as practicable following receipt and in as tax efficient a manner as possible; and

13.9.2 if:

- (a) an Event of Default has occurred and is continuing; and
- (b) the Lender has given written notice to the Borrower,

the Obligors shall use their best endeavours to move any and all amounts standing to the credit of any Russian Control Account of Marisana to the Borrower by way of Permitted Payments as quickly as possible.

13.10 **Bank Account Security**

13.10.1 Each Obligor shall:

- (a) within 30 days of such Obligor opening any account with any bank or financial institution, grant the Lender Security (in form and substance satisfactory to the Lender) in respect of any such bank account where such bank account is not already subject to Transaction Security; and
- (b) promptly following the granting of any Security noted in (a) above, deliver to the Lender a copy of any other Authorisation or other document (including any notices), opinion or assurance (in each case in form and substance satisfactory to the Lender) which the Lender considers to be necessary or desirable⁴ (acting reasonably) in connection with the entry into and performance of the transactions contemplated by any such Security or for the validity and enforceability of any document evidencing such Security (including, without limitation, evidence of registration of such Security in any applicable jurisdiction and legal opinions in respect of such document or the Obligor entering into such document).

13.10.2 Marisana shall:

- (a) on or before the date falling 3 months after the Amendment and Restatement Date, grant the Lender Security (in form and substance satisfactory to the Lender) in respect of its such bank accounts referred to in sub-paragraph (b) of Clause 13.1.4 above; and
- (b) promptly following the granting of any Security noted in (a) above, deliver to the Lender a copy of any other Authorisation or other document (including any notices), opinion or assurance (in each case in form and substance satisfactory to the Lender) which the Lender considers to be

⁴ CC: note to W&C – we have retained "desirable" as this was the agreed wording in the conditions precedent schedule in the original facility

necessary or desirable (acting reasonably) in connection with the entry into and performance of the transactions contemplated by any such Security or for the validity and enforceability of any document evidencing such Security (including, without limitation, evidence of registration of such Security in any applicable jurisdiction and legal opinions in respect of such document or Marisana).

14. GENERAL UNDERTAKINGS

The undertakings in this Clause 14 remain in force from the date of this Agreement for so long as any amount of the Secured Obligations is outstanding or any Commitment is in force.

14.1 Authorisations

14.1.1 Each Obligor shall promptly:

- (a) obtain, comply with and do all that is necessary to maintain in full force and effect; and
- (b) supply certified copies to the Lender of,

any Authorisation required under any law or regulation of any Relevant Jurisdiction to enable it to perform its obligations under the Transaction Documents to which it is a party and to ensure the legality, validity, enforceability or admissibility in evidence in each Relevant Jurisdiction of any Transaction Document, but, with respect to Transaction Documents other than Finance Documents, only where the failure to do so would result in a Default or has or be reasonably likely to have a Material Adverse Effect.

14.1.2 Without prejudice to Clause 4 (*Conditions of Utilisation*) of the Facility Agreement, any obligation of an Obligor under the Finance Documents to effect registration, notarisation, recording or similar action with respect to the Security Documents shall be subject to the Lender supplying to the relevant Obligor (at the expense of the Obligors) such documents and information as the Lender may be required by applicable laws in order for such Obligor to effect such registration, notarisation, recording or similar action.

14.2 Compliance with laws

14.2.1 Each Obligor shall comply in all material respects with all laws to which it or any of its assets are subject;

14.2.2 Each of Twinhope and Real Estate Finance shall:

- (a) be in full compliance with the amended Luxembourg law dated 31 May 1999 on the domiciliation of companies (and the relevant regulations); and
- (b) appoint and retain an approved auditor where required pursuant to article 35 and 69 of the 2002 Law.

14.3 Negative pledge

- 14.3.1 No Obligor shall create or permit to subsist any Security over the whole or any part of its assets.
- 14.3.2 No Obligor shall enter into any arrangement under which funds standing to the credit of any Control Account may be applied, set-off or debited directly by any third party without the consent of the Lender other than direct debit of fees by the Account Bank for the operation and maintenance (including without limitation the conversion fees and fees for the transfer of funds) of such Control Account (provided that such fees charged on the Control Account are no greater than the Account Bank's standard fees applicable to customers of similar status to that of the relevant Obligor) or as expressly permitted under the Account Pledge or Account Amendment Agreement, as the case may be.
- 14.3.3 Sub-clause 14.3.1 above does not apply to:
- (a) in relation to Marisana and Flowermills only, any lien arising by operation of law in the ordinary course of trading (including retention of title arrangements) and securing amounts not more than thirty days overdue;
 - (b) the Transaction Security;
 - (c) in relation to Marisana and Flowermills only, any easement permitted by Clause 15.17 (*Cross-easements*); and
 - (d) until the expiry of the Fortune Finance Effective Period:
 - (i) pursuant to any Fortune Finance Finance Documents; and
 - (ii) where expressly permitted in relation to such Obligor pursuant to clause 21.3.3 (*Negative Pledge*) of the Fortune Finance Facility Agreement and clause 14.3.3 (*Negative Pledge*) of the Fortune Finance Subordination and Obligors' Undertaking Agreement; and
 - (e) any other Security granted by an Obligor with the prior written consent of the Lender.

14.4 Disposals - General

- 14.4.1 Other than as permitted by Clause 14.5 (*Disposals - Property*), no Obligor shall enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary, to sell, lease, transfer or otherwise dispose of the whole or any part of its assets.
- 14.4.2 Sub-clause 14.4.1 above does not apply to any sale, lease, transfer or other disposal:
- (a) by Marisana of obsolete or surplus assets (other than shares, businesses, real property interests or immovable objects, intellectual property or any assets expressed to be the subject of any Transaction Security) which have outlasted their useful life or which are no longer required for the efficient operation of the business;

- (b) by any Obligor which is an expenditure of cash for:
 - (i) Operating Expenses; or
 - (ii) the payment of Taxes it owes to any Tax Authority;
- (c) by Marisana of assets (other than shares, businesses, real property interest or immovable objects, intellectual property or assets expressed to be the subject of any Transaction Security) in exchange for other assets comparable or superior as to type, value and quality;
- (d) by an Office Building 3 Obligor of the Shares it owns in any other Office Building 3 Obligor where the prior written consent of the Lender under and as defined in the Fortune Finance Facility Agreement to such sale or transfer has been obtained and a copy of such consent has been delivered to the Lender no less than 5 Business Days prior to any such sale or transfer;
- (e) by Flowermills of the Flowermills Property where the prior written consent of the Lender under and as defined in the Fortune Finance Facility Agreement to such sale or transfer has been obtained and a copy of such consent has been delivered to the Lender no less than 5 Business Days prior to any such sale or transfer;
- (f) by Marisana of assets not falling within sub-paragraphs (a) to (d) above (inclusive) (other than shares, businesses, real property interest or immovable objects, intellectual property or assets expressed to be the subject of any Transaction Security) the arm's length value of which, when aggregated with all other disposals made in reliance on this sub-paragraph the 12 month period ending on the date of such disposal, within does not exceed in aggregate EUR2,000,000 (or its equivalent in any other currency);
- (g) until the expiry of the Fortune Finance Effective Period, by Flowermills where expressly permitted pursuant to clause 21.4 (*Disposals – General*) of the Fortune Finance Facility Agreement and clause 14.4 (*Disposals – General*) of the Fortune Finance Subordination and Obligors' Undertaking Agreement; or
- (h) by any Obligor of assets not falling within sub-paragraphs (a) to (d) (inclusive) above made with the prior written consent of the Lender (not unreasonably withheld or delayed).

14.5 Disposals - Property

14.5.1 No Obligor shall enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary, to sell, lease, transfer or otherwise dispose of the whole or any part of the Property.

14.5.2 Clause 14.5.1 above does not apply:

- (a) in respect of Marisana, to any Existing Lease or any Occupational Lease entered into by it in accordance with this Agreement; and

- (b) to any other sale, lease, transfer or otherwise disposition made with the prior written consent of the Lender.

14.6 Financial Indebtedness

14.6.1 No Obligor shall, without the prior written consent of the Lender:

- (a) be a creditor in respect of any Financial Indebtedness;
- (b) incur or have outstanding any Financial Indebtedness to any person; or
- (c) pay or discharge (including, without limitation, by way of set-off or combination of accounts), or grant any guarantee, indemnity, bond, letter of credit or similar assurance against financial loss in support of, any indebtedness owed by it or any other person.

14.6.2 Clause 14.6.1 does not apply to any Financial Indebtedness owed by or to any Obligor:

- (a) where owed by it to the Lender, under or permitted by a Finance Document;
- (b) incurred under any Existing Intra-Group Loan Agreement to which it is a party;
- (c) where owed by it to the Lender (as defined in the Fortune Finance Facility Agreement), under a Fortune Finance Finance Document;
- (d) with the prior written consent of the Lender, pursuant to any fit-out loan in respect of premises for a tenant under an Occupational Lease;
- (e) under any Hedge Document entered into in accordance with Clause 14.11 (*Material Contracts*) or clause 21.12 (*Borrower Hedging Arrangements*) of the Facility Agreement;
- (f) until the expiry of the Fortune Finance Effective Period, where expressly permitted for such Obligor pursuant to clause 21.6 (*Financial Indebtedness*) of the Fortune Finance Facility Agreement, clause 21.12 (*Borrower Hedging Arrangements*) of the Fortune Finance Facility Agreement and clause 14.6 (*Financial Indebtedness*) of the Fortune Finance Subordination and Obligors' Undertaking Agreement; or
- (g) that arises as a normal trade credit in the ordinary course of any Obligor's trading and is not outstanding for more than 30 days.

14.7 Existing Intra-Group Loan Agreements

14.7.1 No Obligor shall, without the prior written consent of the Lender, be a party to any Financial Indebtedness with any other Obligor other than:

- (a) pursuant to each Existing Intra-Group Loan Agreement to which it is a party; and

- (b) until the expiry of the Fortune Finance Effective Period, pursuant to each Fortune Finance Existing Intra-Group Loan Agreement to which it is a party.

14.7.2 No Obligor shall, without the prior written consent of the Lender, amend, vary, novate, supplement, extend, replace or restate any Existing Intra-Group Loan Agreement, other than in relation to:

- (a) the rate of interest;
- (b) an extension or waiver of any amount of principal repayment provided that any such extension or waiver is for a period not exceeding six months from the original due date;
- (c) the currency of the loans provided thereunder; and/or
- (d) any other changes which, in the opinion of the Lender (acting reasonably) are solely for the correction of technical or typographical mistakes.

14.7.3 Stella shall not lend any amount to Dalsimer under the Stella-Dalsimer Intra-Group Loan Agreement other than amounts that it obtains pursuant to it being a borrower under the Borrower-Stella Intra-Group Loan Agreement.

14.8 **Acquisitions**

No Obligor shall acquire or allow to be transferred to it any assets other than those which are necessary for the performance of its obligations under the Transaction Documents other than:

- 14.8.1 in the case of Marisana and provided no Default is continuing or would result from such acquisition, assets (other than shares, businesses, real property interests or immovable objects) on arm's length commercial terms necessary and used for and directly related to the operation, maintenance or improvement of Office Building 1 and/or the Land Plot;
- 14.8.2 until the expiry of the Fortune Finance Effective Period, where expressly permitted for such Obligor under clause 21.8 (*Acquisitions*) of the Fortune Finance Facility Agreement and clause 14.8 (*Acquisitions*) of the Fortune Finance Subordination and Obligors' Undertaking Agreement; or
- 14.8.3 assets not falling within Clause 14.8.1 and Clause 14.8.2 above acquired with the prior written consent of the Lender.

14.9 **Mergers**

No Obligor shall enter into any amalgamation, demerger, merger, corporate reconstruction or Russian Corporate Reorganisation without the prior written consent of the Lender.

14.10 **Conduct of business**

14.10.1 No Obligor shall trade or carry on any business, or incur any liabilities, other than:

- (a) in the case of the Borrower, pursuant to the transactions contemplated by the Transaction Documents to which it is a party and related activities

(including without limitation payment of any costs and expenses incurred in connection with the Finance Documents) which are not prohibited by the terms of the Finance Documents;

- (b) in the case of Marisana, the business of developing, managing, leasing, operating and owning the Property and related activities consistent with the Transaction Documents; and
- (c) in the case of each Obligor:
 - (i) pursuant to the transactions contemplated by the Transaction Documents to which it is a party (including, for the avoidance of doubt, incurring costs for bookkeeping and accounting, for the maintenance of corporate status, for the receipt of advice from outside advisors and similar costs in the ordinary course of ordinary business) and any activity contemplated under paragraph (f) of Clause 14.10.4;
 - (ii) until the expiry of the Fortune Finance Effective Period, to the extent permitted in respect of such Obligor pursuant to clause 21.10.2(b)(i) (*Conduct of business*) of the Fortune Finance Facility Agreement and clause 14.10.1(c)(i) (*Conduct of business*) of the Fortune Finance Subordination and Obligors' Undertaking Agreement.

14.10.2 No Obligor shall make or permit any material change to the nature or scope of their business or activities as of the date of this Agreement other than:

- (a) to the extent expressly permitted by the Transaction Documents; and
- (b) until the expiry of the Fortune Finance Effective Period, to the extent expressly permitted by the Fortune Finance Transaction Documents.

14.10.3 Each Obligor shall conduct its business in a reasonable and prudent manner and in accordance with its constitutional documents, the Transaction Documents and, until the expiry of the Fortune Finance Effective Period, to the extent expressly permitted by the Fortune Finance Transaction Documents.

14.10.4 Each Obligor shall:

- (a) maintain its accounts, books and records separately from any other person;
- (b) maintain separate accounts and financial statements;
- (c) not commingle its assets with those of any other person other than:
 - (i) in connection with any Occupational Lease, any fittings or fixtures installed by a tenant; or
 - (ii) in connection with any cross-easements permitted by Clause 15.17 (*Cross-easements*);
- (d) conduct its business in its own name;

- (e) only enter into transactions in accordance with the Transaction Documents, in good faith for its own benefit, on at least arms' length terms and for market value;
- (f) discharge all obligations and liabilities due and owing by it from its own funds provided that:
 - (i) each Obligor may discharge another Obligor's obligations and liabilities in relation to costs incurred in connection with auditing, accounting, tax advice, maintaining corporate status or corporate administration; and
 - (ii) each Obligor may discharge its own or another Obligor's obligations and liabilities in relation to reasonable costs incurred by such Obligor in connection with the management of such Obligor;
- (g) ensure that any costs in relation to any shared premises are fairly and reasonably allocated;
- (h) not acquire or allow to be transferred to it any obligations or securities of any of its shareholders;
- (i) use its own stationery, invoices and cheque books and not those of any other person;
- (j) hold itself out as a separate entity;
- (k) (other than in relation to Marisana and Flowermills) not have any employees (other than any director);
- (l) ensure that Marisana:
 - (i) has, in aggregate, no more than 10 employees;
 - (ii) provides, in aggregate, compensation to its employees in an amount no greater than EUR 1,000,000 per annum; and
 - (iii) does not have any employment contract with any employee where such employee is entitled to any amount upon termination, for any reason, in excess of the amount required by applicable law,
 other than with the consent of the Lender;
- (m) ensure that Flowermills:
 - (i) has, in aggregate, no more than 10 employees;
 - (ii) provides, in aggregate, compensation to its employees in an amount no greater than EUR 1,000,000 per annum; and
 - (iii) does not have any employment contract with any employee where such employee is entitled to any amount upon termination, for any reason, in excess of the amount required by applicable law,

other than with the consent of the Lender; and

- (n) correct any mistake of which it is aware in relation to its separate identity, in each case unless the prior written consent of the Lender (not to be unreasonably withheld (other than in relation to (l) or (m) above) or delayed if granted) is obtained.

14.11 Material Contracts

14.11.1 No Obligor shall enter into any agreements or arrangements under which any Obligor does or may incur liability to any person.

14.11.2 Clause 14.11.1 above does not apply to:

- (a) any agreement or arrangement entered into by an Obligor where such agreement or arrangement is specifically permitted under any Finance Document;
- (b) any Hedge Document entered into by the Property Owners in accordance with Clause 15.3 (*Occupational Leases*);
- (c) any Hedge Document entered into by any Obligor:
 - (i) with the prior written consent of the Lender; or
 - (ii) in accordance with clause 21.12 (*Borrower Hedging Arrangements*) of the Facility Agreement;
- (d) any Transaction Document (but excluding Leases where such Leases are not in compliance with Clause 15.3 (*Occupational Leases*));
- (e) in respect of Marisana and subject to Clause 15.8 (*Managing Agent*), any contract for Operating Expenses entered into with a reputable third-party service provider on at least arms' length commercial terms in respect of the Property;
- (f) until the expiry of the Fortune Finance Effective Period, any Fortune Finance Finance Document;
- (g) any agreement where the obligations or the potential liability thereunder is (in aggregate with all other arrangements with that person (or its Affiliates) less than EUR 1,000,000 (or its equivalent in any other currency) per annum;
- (h) until the expiry of the Fortune Finance Effective Period, to the extent permitted in respect of such Obligor pursuant to clause 21.11 (*Material contracts*) of the Fortune Finance Facility Agreement, clause 21.12 (*Borrower Hedging Arrangements*) of the Fortune Finance Facility Agreement and clause 14.11 (*Material contracts*) of the Fortune Finance Subordination and Obligors' Undertaking Agreement; and
- (i) any other agreements or arrangements entered into with the prior written consent of the Lender (not to be unreasonably withheld or delayed).

14.12 **Transaction documents**

14.12.1 Subject to Clause 14.12.2 below, no Obligor shall amend, vary, forego or waive any material provision, right or condition arising in or under the Transaction Documents (but not including the Finance Documents) or agree to do any of those things, without the prior written consent of the Lender.

14.12.2 Clause 14.12.1 above does not apply to:

- (a) any Qualifying Lease, provided that as a result of such change such Lease remains a Qualifying Lease; or
- (b) any Immaterial Lease, provided that as a result of such change such Lease remains an Immaterial Lease or becomes a Qualifying Lease.

14.12.3 Each Obligor shall exercise its rights and comply with its obligations under the Transaction Documents to which it is a party to the fullest extent possible.

14.13 **Centre of Main Interests**

Other than to the extent that each of Marisana and Flowermills has established a registered branch in the Russian Federation, each Obligor shall:

14.13.1 not permit its centre of main interests for the purposes of Council Regulation (EC) No 1346/2000 to be in any jurisdiction other than its jurisdiction of incorporation;

14.13.2 not permit to exist an establishment for the purposes of Council Regulation (EC) No 1346/2000 in any jurisdiction other than its jurisdiction of incorporation;

14.13.3 not register one or more "establishments" (as that term is defined in Part 2 of The Overseas Companies Regulations 2009 of the United Kingdom) with the Registrar of Companies; and

14.13.4 maintain its central management, decision making, the places of residence of its directors, administration and the place at which meetings of its board of directors are held, at all times in its jurisdiction of incorporation.

14.14 **Taxes**

Each Obligor shall:

14.14.1 maintain its tax residence solely in the place of its incorporation or domicile (other than Marisana and Flowermills which may have its tax residency in both its place of incorporation and the Russian Federation);

14.14.2 ensure that all Taxes payable by, or assessed upon, it are paid when due except to the extent that they are contested in good faith and by appropriate means and an adequate reserve has been set aside with respect to the unpaid Tax or where failure to pay does not and is not reasonable likely to:

- (a) have a Material Adverse Effect; or

- (b) result in or is not immediately likely to result in the operation through the Control Accounts being suspended, frozen or otherwise adversely affected,

provided that where the operation through the Control Accounts is, or is threatened by any party with such authority to be, suspended, frozen or otherwise adversely affected, the Obligor whose Control Account is so affected or threatened shall immediately take all action necessary to:

- (i) avoid the Control Account being suspended, frozen or otherwise adversely affected; or
- (ii) if the Control Account is suspended, frozen or otherwise adversely affected, to resolve this situation to the satisfaction of the Lender,

including, without limitation, through the payment of any such Taxes;

14.14.3 ensure that no Tax losses belonging to it or Tax reliefs available to it are surrendered, waived or otherwise disposed of except with the Lender's prior written consent (not to be unreasonably withheld or delayed); and

14.14.4 ensure that no latent capital gains Tax liability of any Obligor is triggered or realised, whether by reason of capital gains Tax degrouping or for any other reason, except with the Lender's prior written consent (not to be unreasonably withheld or delayed).

14.15 **Distributions**

For so long as:

14.15.1 no Default is continuing or would occur as a result of any such action; and

14.15.2 no financial covenant as set out in clause 20 (*Financial Covenants*) of the Facility Agreement has been breached, or would be breached as a result of any such action; and

14.15.3 the recipient of any proposed distribution is not, and is not likely in the reasonably foreseeable future to be, Insolvent,

any Obligor may declare or pay dividends or interest on unpaid dividends or distributions, fees or expenses in the nature of or intended to act as a distribution to any of its members to the extent not prohibited by this Agreement or the Facility Agreement.

14.16 **Share capital**

14.16.1 No Obligor shall:

- (a) redeem, repurchase, defease, retire or repay any of its share capital, or resolve to do so;
- (b) issue any Share to any person; or
- (c) subscribe for or otherwise acquire any Share which is only partly paid up or in respect of which the company which issued that Share has any call or lien,

except with the prior written consent of the Lender.

14.16.2 Each Obligor shall promptly pay all calls or other payments which may be or become due in respect of any Shares held by it.

14.17 **Syndication**

Each Obligor shall provide reasonable assistance to the Lender in the preparation of any information memorandum prepared in relation to this transaction and to the sub-participation of the Facility (including, without limitation, by making senior management available (at reasonable times and on reasonable notice) for the purpose of making presentations to, or meeting with, potential lending institutions) and will comply with all reasonable requests for information from potential syndicate members prior to completion of sub-participation.

14.18 **Pari passu ranking**

Each Obligor shall ensure that at all times the claims of the Lender against it under the Finance Documents rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by any laws of application to companies generally (and to the extent only of that mandatory preference).

14.19 **Prepayment fees**

Each Obligor hereby confirms and agrees that it, in the event that the Borrower fails to pay any Change of Control Prepayment Fee within 30 days of such fee being due and payable, shall pay all or any portion of any such Change of Control Prepayment Fee remaining outstanding to the Lender.⁵

14.20 **Application of FATCA**

Each Obligor shall procure that, unless otherwise agreed by the Lender, no Obligor shall become a FATCA FFI or a US Tax Obligor.

15. **PROPERTY UNDERTAKINGS**

The undertakings in this Clause 15 remain in force from the date of this Agreement for so long as any amount of the Secured Obligations is outstanding or any Commitment is in force.

15.1 **Planning**

Marisana shall, and each Obligor shall procure and ensure that Marisana shall:

15.1.1 comply with any conditions attached to any material planning permissions and comply with any agreement or undertaking under all applicable Russian legislation or any other similar legislation relating to or affecting Office Building 1 or the Land Plot;

⁵ CC: note to W&C – as the Obligors are not a party to the PCM Fee Letter, their obligation in this regard must be contained in this document

- 15.1.2 unless expressly permitted under this Agreement, not carry out any development on or of Office Building 1 or the Land Plot or make any material change in use of Office Building 1 or the Land Plot other than in accordance with the prior written consent of the Lender; and
- 15.1.3 unless the related development or construction is expressly permitted under this Agreement, not make any application for planning permission or implement any planning permission obtained or enter or agree to enter into any agreement or undertaking with respect to development or construction of Office Building 1 or the Land Plot under all applicable Russian legislation or any other similar legislation without the prior written consent of the Lender (not to be unreasonably withheld or delayed),

in any case other than any fit out of any premises the subject of an Occupational Lease in accordance with the terms of such Occupational Lease and each in accordance with applicable law.

15.2 **Title**

Marisana shall, and each Obligor shall procure and ensure that Marisana shall:

- 15.2.1 observe and perform all material restrictive and other covenants, stipulations and obligations now or at any time affecting the Property or the Land Plot insofar as the same are subsisting and are capable of being enforced against Marisana;
- 15.2.2 duly and diligently enforce all material restrictive or other covenants, stipulations and obligations benefiting the Property or the Land Plot and not waive, release or vary (or agree to do so) the material obligations of any other party thereto;
- 15.2.3 promptly take all such steps, including, without limitation:
 - (a) the execution, completion and delivery of documentation, returns, forms and certificates;
 - (b) the answering of any questions or correspondence from any Tax Authority in a Relevant Jurisdiction, the Land Registry or like authority;
 - (c) the payment of any fees, stamp tax, penalties and interest and the delivery of any stamp tax certificates received from any Tax Authority in a Relevant Jurisdiction to the Lender as soon as received by it,

as may be necessary or requested by the Lender acting reasonably to enable the Security expressed to be created by the Finance Documents to be validly registered at the Land Registry; and

- 15.2.4 except as permitted by this Agreement or the Facility Agreement, not, without the prior written consent of the Lender, consent to any third party claiming or exercising any right they may have to claim for or be granted any part of the Land Plot which is situated under any building owned by that third party and shall use its best endeavours to ensure that Marisana retains its interest in such portions of the Land Plot.

15.3 Occupational Leases

15.3.1 Marisana shall not without the prior written consent of the Lender (not to be unreasonably withheld or delayed) grant any new Occupational Lease other than:

- (a) a Qualifying Lease; or
- (b) an Immaterial Lease.

15.3.2 Other than in relation to:

- (a) any Immaterial Lease;
- (b) any amendment to any Qualifying Lease provided that the amendments do not result in the relevant Lease no longer being a Qualifying Lease;
- (c) in the case of paragraph (ii) below, any Qualifying Lease; and
- (d) actions required by any change to the law applicable as of the date of this Agreement,

Marisana shall not without the prior written consent of the Lender (not to be unreasonably withheld or delayed):

- (i) agree to any material amendment, waiver or release in respect of any Occupational Lease;
- (ii) grant any new contractual licence or right to occupy any part of Office Building 1 or the Land Plot after the date of this Agreement;
- (iii) waive, release, forfeit or exercise any right of re-entry or vary any obligation under, or the terms of, or exercise any option or power to break, determine or extend, any Occupational Lease other than:
 - (A) in respect of any Immaterial Lease, provided that such action is reported in the next Quarterly Management Report to be delivered by the Borrower pursuant to the Facility Agreement; and
 - (B) any Existing Lease to the extent that as of the date of this Agreement the same allows for any such rights to be exercised; or
- (iv) accept or permit the surrender of all or any part of any Occupational Lease (other than an Immaterial Lease).

15.3.3 Marisana shall:

- (a) diligently collect all Rental Income payable under each Occupational Lease;
- (b) to the extent commercially reasonable and practicable to do so, enforce the tenant's material obligations under each Occupational Lease (including the enforcement of any related guarantee or other Security); and

- (c) duly and diligently implement the material provisions of any Occupational Lease (including any provision for the review of the rents thereby reserved) but shall not agree to any downwards rent reviews in respect of any Occupational Lease (unless provided by the terms of such Occupational Lease) without the prior written consent of the Lender other than any Immaterial Lease.

15.3.4 Other than in respect of Existing Leases, Marisana shall not use any Rental Deposits or Advance Payments received by it for any purpose other than towards:

- (a) unpaid rental payments, unpaid Service Charge Proceeds and unpaid marketing costs; or
- (b) operational expenditures,

in relation to the Property, and otherwise in accordance with the Finance Documents.

15.3.5 Marisana shall:

- (a) use all commercially reasonable efforts to promptly obtain all necessary consents to pledge to the Lender any bank guarantee provided in connection with an Existing Lease pursuant to the Marisana Pledge of Lease Receivables (or pursuant to other such Security as the Lender may reasonably require); and
- (b) procure that any bank guarantee provided in connection with an Occupational Lease executed on or after the date of this Agreement is assignable to the Lender and is pledged to the Lender pursuant the Marisana Pledge of Lease Receivables (or pursuant to other such Security as the Lender may reasonably require) promptly but in any event within 30 days of the delivery of each Quarterly Management Report other than a non-assignable bank guarantee that is extended or rolled over either:
 - (i) in an extension to an Occupational Lease existing prior to the date of this Agreement; or
 - (ii) pursuant to an assignment of the premises let under an Occupational Lease existing prior to the date of this Agreement to an Affiliate of that first tenant.

15.3.6 Marisana shall register each Occupational Lease with a tenor equal to or exceeding twelve months in the Land Register within four months from signing thereof but in any event not later than the expiration of the respective short-term Occupational Lease (if any) and promptly provide the Lender with a copy of the registered long-term Occupational Lease.

15.3.7 Marisana shall ensure that at all times no less than sixty per cent of the Net Rentable Area of Office Building 1 that is subject to Occupational Leases is subject to long-term registered Occupational Leases which do not include any break options during the first five year period of such Occupational Lease (including for this purpose, the period of any short-term Occupational Lease for the same premises and the

same tenant that applied prior to the registration of the anticipated long-term Occupational Lease).

15.3.8 Marisana shall ensure that at all times each:

- (a) tenant under any Occupational Lease:
 - (i) is a reputable local or international company acceptable to the Lender;
 - (ii) other than under an Existing Lease, is not an Affiliate of any Obligor, unless consented to in writing by the Lender; and
 - (iii) is not a tenant that the Lender has previously rejected as a tenant unless consented to in writing by the Lender,

(the Lender shall confirm (acting reasonably) whether or not a proposed tenant is acceptable pursuant to (i) above within 10 Business Days of Marisana or the Borrower notifying the Lender of a proposed tenant);

- (b) Occupational Lease is denominated in euros or dollars (subject to the thresholds described in Clause 15.3.10 below) and, if not payable in euros or dollars, is payable in roubles at no less than:
 - (i) if denominated in euros, the Central Bank of Russia's euro/rouble exchange rate; or
 - (ii) if denominated in dollars, the Central Bank of Russia's dollar/rouble exchange rate,

in either case, on the applicable date of payment or invoice date;

- (c) long term Occupational Lease (when aggregated with the term of the short-term Occupational Lease for the same premises and with the same tenant where the term of such short-term lease does not run concurrently with the long term Occupational Lease) is for a minimum term of no less than five years;
- (d) long term Occupational Lease does not include:
 - (i) any break options during the first five year period (including for this purpose, the period of any short-term Occupational Lease for the same premises and the same tenant that applied prior to the registration of the anticipated long-term Occupational Lease);
 - (ii) any right, mechanism or other means by which the amount of rent or any monetary charges (other than in respect of Service Charge Expenses which can fluctuate depending on the amount expended provided that there is no change to the scope of coverage) can be decreased or reduced;
 - (iii) any right or option to surrender any part of or otherwise reduce the area of the premises leased by a tenant during the first five year

period (including for this purpose, the period of any short-term Occupational Lease for the same premises and the same tenant that applied prior to the registration of the anticipated long-term Occupational Lease);

- (iv) any right or other ability for a tenant to assign the whole or part of its interest under such Occupational Lease without the consent of Marisana (and Marisana shall not provide any consent to any such assignment that would be in breach of Clause 15.3.8(a) above in respect of such proposed new tenant);
- (v) any right or other ability for a tenant to sublet the whole or part of its interest under such Occupational Lease where:
 - (A) that original tenant does not remain fully liable for all obligations under such Occupational Lease notwithstanding that sublease; or
 - (B) that original tenant does not have an obligation to deliver to Marisana a copy of any signed sublease; or
 - (C) the subtenant does not waive its rights under Russian law to become the tenant under the applicable Occupational Lease with Marisana for any reason including where the Occupational Lease with the original tenant is terminated; or
- (vi) any restriction on the right of Marisana to assign its interest under such Occupational Lease; and
- (e) Occupational Lease:
 - (i) is on a triple net basis;
 - (ii) have rentals payments due either monthly or quarterly;
 - (iii) provides for annual indexation (other than in respect of the first year of such Occupational Lease);
 - (iv) includes a requirement for a security deposit in an amount not less than the equivalent of three month's rent (plus VAT) provided in cash or as a bank guarantee or as a parent company guarantee; and
 - (v) is otherwise in accordance with all laws applicable to such Occupational Lease in the Russian Federation and reasonable steps have been taken to obtain such documents as to the tenant's power and authority as may be necessary to ensure that such Occupational Lease may be registered with the Land Registry,

provided that paragraphs (a) to (e) above shall not apply with respect to any Existing Lease except to the extent that any such Existing Lease is amended after the date of this Agreement, in which case, any amendment that is made must to the extent applicable, comply with paragraphs (a) to (e) above.

15.3.9 Other than for the sole purpose of complying with Clause 15.3.10 below, Marisana shall not enter into, grant or otherwise consent to any waiver, consent, amendment or other arrangement in respect of:

- (a) any Occupational Lease for space equal to or greater than 1000sqm but less than 3500sqm that results in:
 - (i) the termination of such Occupational Lease prior to the end of the stipulated term;
 - (ii) any decrease in the amount of the rent or any other monetary charges payable by a tenant under such Occupational Lease;
 - (iii) any reduction to the term of such Occupational Lease;
 - (iv) any reduction to the area of the premises leased pursuant to such Occupational Lease;
 - (v) any change to the indexation clause in such Occupational Lease;
 - (vi) any change to the requirements to provide a security deposit, the amount of such security deposit or to the form of that security deposit pursuant to such Occupational Lease;
 - (vii) any right or other ability for a tenant to assign the whole or part of its interest under such Occupational Lease without the consent of Marisana;
 - (viii) any right or other ability for a tenant to sublet the whole or part of its interest under such Occupational Lease where:
 - (A) that original tenant does not remain fully liable for all obligations under such Occupational Lease notwithstanding that sublease; or
 - (B) that original tenant does not have an obligation to deliver to Marisana a copy of any signed sublease; or
 - (C) the subtenant does not waive its rights under Russian law to become the tenant under the applicable Occupational Lease with Marisana for any reason including where the Occupational Lease with the original tenant be terminated; or
 - (ix) such Occupational Lease not complying with any Occupational Lease Requirement; and
- (b) any Occupational Lease for space equal to or greater than 3500sqm without the prior written consent of the Lender.

15.3.10 The Property Owners shall ensure that at all times:

- (a) an amount of no greater than forty per cent. (40%); and

- (b) following the first anniversary of the Amendment and Restatement Date, an amount of no less than twenty per cent. (20%),

of Joint Occupational Lease Rent is payable under the relevant Joint Occupational Leases in dollars.

15.3.11 If on any anniversary of the Amendment and Restatement Date, the Borrower has not complied with Clause 15.3.10 above, the Property Owners shall enter into Hedge Documents in respect of the foreign exchange risk in converting into dollars an amount equal to no less than 20 per cent. (20%) of Joint Occupational Lease Rent receivable in euros provided that in respect of any such Hedge Document:

- (a) it covers the foreign exchange risk for a period no shorter than from such anniversary of the Amendment and Restatement Date to the subsequent anniversary of the of the Amendment and Restatement Date;
- (b) the Property Owners shall give the Lender written notice of the proposed terms of any such Hedge Document (which notice the Lender shall provide to VTB);
- (c) if the Lender or VTB accepts to enter into a Hedge Document with the Property Owners (each such Lender or VTB, an "**Accepting Party**") on substantially the same terms as stipulated in such notice, the Property Owners may enter into such Hedge Document with each Accepting Party where such Accepting Party hedges a portion of the amount to be hedged:
 - (i) if both the Lender and VTB are each an Accepting Party, in proportion to the amount of its participation in the Consolidated Loans;
 - (ii) if either the Lender or VTB is not an Accepting Party, either:
 - (A) in proportion to the amount of its participation in the Consolidated Loans; or
 - (B) (at such Accepting Party's sole discretion), no less than in proportion to the amount of its participation in the Consolidated Loans and no greater than the full amount to be hedged; and
- (d) if the Lender and VTB have, within three Business Days of receipt of such notice, refused in writing to enter into a Hedge Document with the Property Owners on substantially the same terms as stipulated in such notice, the Property Owners may enter into a Hedge Document with a third party on the terms stipulated in such notice provided that no Security is granted by any Obligor in respect of such Hedge Document.

15.3.12 The Property Owners shall ensure that any Hedge Document entered into by it with a hedge provider that is neither the Lender nor a Participant shall not:

- (a) have the benefit of any Security other than:
 - (i) cash collateral; or

- (ii) Security granted by an entity that is not Dalsimer or any member of the Group;
- (b) grant or otherwise provide the provider of such Hedge Document with:
 - (i) any recourse to any Obligor other than to the extent of the cash collateral or Security noted in (a) above; and
 - (ii) any right or other ability to require that the amount and/or extent of the cash collateral and/or Security noted in (a) above that was provided as of the date of the execution of such Hedge Document be increased, supplemented or otherwise changed,

and the Property Owners shall ensure that the provider of the Security noted in (a) above has no recourse, could not have any recourse and has irrevocably waived all available or potentially available recourses to any Obligor in respect of any claims such provider of that Security may have arising out of or in connection such Security (including as the result of the performance of any obligation or the exercise of any rights by a third party) in each case, until such time as all Secured Obligations have been satisfied and discharged in full.

15.4 **Registration**

If Marisana obtains any new or replacement freehold or leasehold real property interest, Marisana shall mortgage such interest in favour of the Lender immediately following state registration of its interest in such freehold, leasehold or leased real property (but in any event not later than sixty Business Days following the delivery by the Lender to Marisana of all documents required from the Lender for the state registration of such mortgage) and provide the Lender with an extract from the Land Register evidencing registration of that mortgage over such interest within five Business Days from such registration.

15.5 **Environmental compliance**

15.5.1 Marisana shall comply in all material respects with all Environmental Laws applicable to Office Building 1 and the Land Plot and obtain and maintain any material Environmental Permits applicable to Office Building 1 and the Land Plot and take all reasonable steps in anticipation of known future changes to or obligations under the same.

15.5.2 Marisana shall promptly implement (and, in any event, within any time period stipulated in any environmental report provided pursuant to clause 22.7.2 (*Valuations*) of the Facility Agreement) all steps recommended to be implemented under any such environmental report and:

- (a) which are material to the value of the Property and/or the Land Plot; or
- (b) if not taken, can reasonably be expected to result in material liability,

and notify the Lender when all such steps have been implemented fully.

15.5.3 If:

- (a) any Environmental Claim has been commenced or (to the best of Marisana's knowledge and belief) is threatened (in a credible manner) against Marisana; or
- (b) there are any facts or circumstances which shall or are reasonably likely to result in any Environmental Claim being commenced or threatened (in a credible manner) against any Obligor,

Marisana shall procure and ensure that the Borrower shall inform the Lender:

- (i) in the case of any Environmental Claim which has been commenced against it, as soon as reasonably practicable after the Borrower has become aware that such Environmental Claims has commenced; and
- (ii) in the case of any Environmental Claim which has been threatened against it, in the next Quarterly Management Report following it becoming aware of such threat,

in each case, where such Environmental Claim, if adversely found against the Borrower or Marisana, is reasonably likely to have a Material Adverse Effect.

15.5.4 Marisana shall:

- (a) make all reasonable efforts to ensure that no Hazardous Substances have been or are used by Marisana in connection with Office Building 1 or the Land Plot other than to the extent permitted by applicable law; and
- (b) prohibit any tenant under the terms of each Occupational Lease from using Hazardous Substances by such tenant in connection with Office Building 1 or the Land Plot,

other than to the extent permitted by applicable law.

15.6 VAT election

No Obligor shall, without the prior written consent of the Lender (acting reasonably and without undue delay), exercise any option, election or discretion to transfer or otherwise dispose of all or part of any right to credit or repayment in respect of any VAT from the relevant Tax Authority anywhere in the world, **provided that** it may offset any input VAT received by it against any output VAT previously paid by it to the extent permitted by applicable law.

15.7 Insurance

15.7.1 Marisana shall, and each Obligor shall procure and ensure that Marisana shall, effect and maintain or ensure that there is effected and maintained at all times with an Approved Insurer:

- (a) insurance in respect of Office Building 1, trade and other fixtures and fixed plant and machinery forming part of Office Building 1 against loss or damage by acts of nature, fire, storm, tempest, flood, earthquake, lightning, explosion (including explosion of gas used for household purposes, of

steam boilers, gas storage tanks, gas pipelines, machinery, equipment and other similar apparatus), impact (including vehicular impact), aircraft (other than hostile aircraft) and other aerial devices and articles dropped from them, riot, civil commotion and malicious damage (including deliberate damage, accidental damage, hooliganism and vandalism), bursting or overflowing of water tanks, apparatus or pipes, sewage systems, heating systems, fire extinguishing systems, latent defects and such other risks and contingencies as are insured in accordance with sound commercial practice or which the Lender may direct from time to time in accordance with Clause 15.7.3 below in an amount no less than the greater of:

- (i) the replacement value of Office Building 1 in accordance with the then most recent Valuation; and
 - (ii) an amount equal to the outstanding principal amount of the Loans;
- (b) insurance against the loss of rental income or prospective rental income in respect of Qualifying Leases and Immaterial Leases in relation to Office Building 1 for a period of not less than one year and having regard to any scheduled increases in rental income in respect of such Occupational Leases; and
- (c) insurance against third party and public liability risks.

15.7.2 Marisana shall procure that at all times each Insurance Policy contains terms providing that it shall not be invalidated so far as the Lender is concerned for failure to pay any premium due without the relevant insurer first giving to the Lender not less than fourteen (14) days' written notice.

15.7.3 The Lender may request that Marisana provide it with details of any Insurance Policy to which it is a party (other than any Insurance Policies in relation to health insurance) and may, if it considers (acting reasonably) that the amount insured by, or the risks covered by, any such Insurance Policy are inadequate, require Marisana to increase the amount insured by, and/or amend the category of risks covered by, any such Insurance Policy to such extent and in such manner as the Lender may consider appropriate (acting reasonably) provided that notwithstanding the generality of the foregoing, the amount insured shall not exceed the greater of:

- (a) the replacement value of Office Building 1 in accordance with the then most recent Valuation; and
- (b) an amount equal to the outstanding principal amount of the Loans,

and Marisana shall, not less than twenty Business Days from the Lender's request, comply with such request (to the extent that such insurance is available).

15.7.4 Marisana shall, and each Obligor shall procure and ensure that Marisana shall:

- (a) use all reasonable endeavours to ensure that there has been given to the Lender such information in connection with, and copies of, the Insurance Policies as the Lender may at any time require;

- (b) notify the Lender of renewals made and material variations or cancellations of the Insurance Policies made or, to the knowledge of the Borrower or Marisana, threatened (in a credible manner and in writing) or pending;
- (c) not do or permit anything to be done which may make void or voidable any Insurance Policy (and for the avoidance of doubt, the expiry of an Insurance Policy at the agreed maturity date of that Insurance Policy and in accordance with the terms thereof, and the simultaneous commencement of a new Insurance Policy which is in accordance with the terms of this Agreement, shall not breach this Clause);
- (d) duly and punctually pay when due all premiums and other monies payable under all Insurance Policies and promptly, upon request by the Lender, produce to the Lender a copy or sufficient extract of each Insurance Policy together with the premium receipts or other evidence of the payment thereof; and
- (e) if:
 - (i) the Approved Insurer is Ingosstrakh Joint Stock Insurance Company Ltd. and its long term unsecured debt rating by S&P falls by more than 1 grade from the rate as at the date of this Agreement; or
 - (ii) the Approved Insurer is Closed Joint Stock Company "Chartis Insurance Company" and Chartis Europe S.A.'s beneficial interest in CJSC "Chartis Insurance Company" is 50 per cent or less; or
 - (iii) the Approved Insurer is any other any insurance company or underwriter and its long term unsecured debt rating by S&P falls by more than 1 grade from the rate as at the date that it provides any Insurance Policy pursuant to this Agreement,

then within 30 days of the Lender's reasonable request, Marisana shall:

- (A) replace such Approved Insurer with another Approved Insurer (the "**Replacement Approved Insurer**"); and
- (B) obtain Insurance Policies from the Replacement Approved Insurer that comply with this Clause 15.7 (*Insurance*); and

15.7.5 Marisana shall ensure that no person underwrites more than 20 per cent. of the risks in its capacity as a re-insurer related to any Insurance Policy unless that person is:

- (a) an Approved Re-insurer; or
- (b) another re-insurance company approved in writing by the Lender provided that such approval may be withdrawn at any time by the Lender on notice to the Borrower if such re-insurance company has a long term unsecured debt rating of less than BBB by S&P.

15.7.6 Marisana shall, and each Obligor shall procure and ensure that Marisana shall, at all times:

- (a) ensure that the Lender is appointed as:
 - (i) first rate loss payee in the Insurance Policy provided in Clause 15.7.1(a); and
 - (ii) (to the extent not prohibited by applicable law) co-insured in each Insurance Policy provided in Clause 15.7.1(b) and Clause 15.7.1(c);
- (b) ensure that each Insurance Policy (to the extent not prohibited by applicable law) contains a provision under which the proceeds of the insurance are payable directly to the Lender in the circumstance required in paragraph (e) below;
- (c) where an Insurance Policy does not name the Lender as an insured or beneficiary, procure that the relevant insurance office or underwriter undertakes to inform the Lender if:
 - (i) any claim is made under that Insurance Policy;
 - (ii) anything occurs which either invalidates or threatens to invalidate the validity of that Insurance Policy; or
 - (iii) that Insurance Policy lapses;
- (d) ensure that, if Marisana does not comply with its obligations in respect of any Insurance Policy, the Lender may (without any obligation to do so) effect or renew any Insurance Policy provided in Clause 15.7.1(a) and Clause 15.7.1(b) on its own behalf or on behalf of Marisana (but not in any way for the benefit of Marisana) and the monies expended by the Lender on so effecting or renewing any such insurance shall be reimbursed by the Borrower to the Lender on demand; and
- (e) ensure that all proceeds of insurance in relation to any Insurance Policy provided in Clause 15.7.1(a):
 - (i) which are less than EUR 1,000,000 (or their equivalent in any other currency) in aggregate in any financial year (such aggregation to occur until the relevant part of Office Building 1 (including trade, fixtures, fixed plant or machinery forming part of Office Building 1) is fully repaired or replaced), shall be paid to Marisana and are applied towards the repair and replacement of the relevant part of Office Building 1;
 - (ii) which are equal to or greater than EUR 1,000,000 but less than EUR 10,000,000 (or their equivalent in any other currency) in aggregate in any financial year (such aggregation to occur until the relevant part of Office Building 1 (including trade, fixtures, fixed plant or machinery forming part of Office Building 1) is fully repaired or replaced), shall be paid to the Lender and are applied towards the repair and replacement of the relevant part of Office Building 1; and
 - (iii) which are equal to or more than EUR 10,000,000 (or its equivalent in any other currency) in aggregate in any financial year (such

aggregation to occur until the relevant part of Office Building 1 (including trade, fixtures, fixed plant or machinery forming part of Office Building 1) is fully repaired or replaced), shall be paid to the Lender to be applied by the Lender, in the Lender's discretion:

- (A) in or towards prepayment or repayment of the Secured Obligations in the order set out in clause 28.4 (*Partial payments*) of the Facility Agreement; or
- (B) towards the repair or replacement of the applicable part of Office Building 1).

15.8 Managing Agent

- 15.8.1 Marisana may (but shall not be obliged to) appoint a person on arms' length commercial terms to act as Managing Agent to perform some or all of the duties connected with the management or operation of Office Building 1 by entering into a Management Agreement with that person provided that such person enters into a Duty of Care Agreement in form and substance satisfactory to the Lender simultaneously with its appointment under the relevant Management Agreement.
- 15.8.2 If the Managing Agent breaches a Management Agreement or the Duty of Care Agreement in any material respect:
 - (a) Marisana shall promptly notify the Lender of that breach; and
 - (b) if any such breach continues unremedied for 14 days following notice to that Managing Agent from Marisana or the Lender, then the Lender may require Marisana to appoint a new Managing Agent in relation to Office Building 1 on terms approved by the Lender (acting reasonably).
- 15.8.3 Marisana may not terminate the appointment of the Managing Agent without the prior written consent of the Lender (not to be unreasonably withheld or delayed).
- 15.8.4 Marisana shall, and each Obligor shall procure and ensure that Marisana shall, ensure that the terms of each Management Agreement shall provide that, if a Default is continuing, Marisana may terminate that Management Agreement.
- 15.8.5 Marisana shall, and each Obligor shall procure and ensure that Marisana shall, ensure that the Managing Agent manages Office Building 1 to a standard consistent with a prudent owner of properties similar to Office Building 1.
- 15.8.6 Marisana shall, and each Obligor shall procure and ensure that Marisana shall, ensure that no Managing Agent shall have the right or obligation to collect any Rental Income or Service Charge Proceeds into any bank account other than Marisana's Control Account.
- 15.8.7 No Obligor shall agree to any amendment, waiver or other change to any Management Agreement (including without limitation any changes to the fees payable under any Management Agreement) without the prior written consent of the Lender.

- 15.8.8 On an from the date of this Agreement, no Obligor shall enter into any Management Agreement unless the Managing Agent under such Management Agreement is an Obligor.
- 15.8.9 While any Default is continuing, no Obligor shall pay any fee under any Management Agreement other than:
- (a) if the Managing Agent is an Obligor; or
 - (b) with the prior written consent of the Lender.

15.9 Repair

Marisana shall, and each Obligor shall procure and ensure that Marisana shall:

- 15.9.1 repair and keep in good and substantial repair and condition Office Building 1 and any other machinery and equipment forming part of Office Building 1 and when necessary replace the same by items of similar or better quality and value;
- 15.9.2 promptly, after being required to do so by the Lender (acting reasonably), make good any want of repair in Office Building 1 and any other machinery and equipment forming part of Office Building 1;
- 15.9.3 promptly implement (and, in any event, within any time period stipulated in any such structural survey) all material steps recommended to be implemented under any structural survey requested in accordance with paragraph (b) of clause 22.7.2 (*Valuations*) of the Facility Agreement and notify the Lender when all such steps have been implemented fully; and
- 15.9.4 ensure that the Net Rentable Area is not reduced.

15.10 Alterations

Marisana shall not, and each Obligor shall procure and ensure that Marisana shall not, at any time, without the prior written consent of the Lender (not to be unreasonably withheld or delayed):

- 15.10.1 effect, carry out or permit any material demolition, reconstruction or rebuilding of or any material structural alteration to (other than, in each case, in order to effect any repair of damage to Office Building 1 with the proceeds of any Insurance Policy), or material change in the use of Office Building 1 or the Land Plot; or
- 15.10.2 sever, unfix or remove any of the material fixtures (except for the purpose and in the course of effecting necessary repairs thereto or of replacing the same with new or improved models or substitutes) thereon belonging to or in use by Marisana other than where to do so would not reasonably be expected to have a Material Adverse Effect.

15.11 Notices

- 15.11.1 Marisana shall, and each Obligor shall procure and ensure that Marisana shall, promptly give full particulars (and if requested, a copy of any written particulars received by the Borrower) to the Lender of any notice, order, directive, designation,

resolution or proposal which is material to the Property or the Land Plot or which relates directly to the immediate area in which Office Building 1 or the Land Plot is situated, received by it from any planning authority or other public body or authority under or by virtue of any statutory power or powers conferred by applicable law.

15.11.2 If:

- (a) failure to comply with any such notice or order would lead to a Default, Marisana shall, and each Obligor shall procure and ensure that Marisana shall, take all reasonable or expedient steps to ensure compliance with any such notice or order; and
- (b) compliance with any such notice or order would lead to a Default, Marisana shall, and each Obligor shall procure and ensure that Marisana shall, make such objection or objections or representations against or in respect of any proposal for such a notice or order.

15.12 Pay rents, charges and Taxes

Marisana shall, and each Obligor shall procure and ensure that Marisana shall, punctually pay or cause to be paid and indemnify the Lender on demand against all existing and future rents, Taxes, fees, renewal fees, charges, assessments, impositions and outgoings whatsoever whether imposed by deed or by statute or otherwise and whether in the nature of capital or revenue and even though of a wholly novel character which now or at any time during the continuance of the security constituted by or pursuant to this Agreement are payable in respect of the Property or any part thereof, except where:

15.12.1 such amounts are being contested in good faith and by appropriate means by Marisana;

15.12.2 Marisana has set aside an adequate reserve in respect of the unpaid amount (together with the amount any potential costs, claims, liabilities or penalties which may be awarded or arise as a result of non-payment or any actions taken to contest such amount); and

15.12.3 such withholding or non-payment does not:

- (a) have or is not reasonably likely to have a Material Adverse Effect; or
- (b) result in or is not immediately likely to result in the operation through the Control Accounts being suspended, frozen or otherwise adversely affected,

provided that where the operation through the Control Accounts is, or is threatened by any party with such authority to be, suspended, frozen or otherwise adversely affected, the Obligor whose Control Account is so affected or threatened shall immediately take all action necessary to:

- (i) avoid the Control Account being suspended, frozen or otherwise adversely affected; or
- (ii) if the Control Account is suspended, frozen or otherwise adversely affected, to resolve this situation to the satisfaction of the Lender,

including, without limitation, through the payment of any such Taxes.

15.13 **Entry and power to remedy breaches**

15.13.1 If, at any time, any Obligor fails to perform any obligation under this Clause 15 (*Property undertakings*):

- (a) after expiry of the grace period referred to in clause 23.3.2 (*Breach of other undertakings*) of the Facility Agreement and on written notice from the Lender; or
- (b) at any time, if:
 - (i) the failure to comply with such obligation has or could have a material impact on the use or value of any asset that is subject to Transaction Security; and
 - (ii) either:
 - (A) such Obligor is not (in the reasonable opinion of the Lender) taking any actions to remedy its failure to perform such obligation; or
 - (B) if such Obligor is at that time undertaking actions to remedy its failure to perform such obligation, such actions are, in the Lender's reasonable opinion, inadequate to remedy such failure to comply with such obligation,

it shall be lawful for the Lender (without any obligation to do so) to enter upon the Property and the Land Plot with or without agents appointed by it, architects, contractors, workmen and others as it may determine and execute such works and take such steps as may, in the reasonable opinion of the Lender, be required to remedy or rectify any such failure and do or take any action on or in relation to the Property or the Land Plot as may in the reasonable opinion of the Lender be required to remedy or rectify such failure.

15.13.2 The fees, costs and expenses incurred by the Lender for such works and taking such steps shall be reimbursed by the Borrower to the Lender on demand.

15.13.3 The exercise by the Lender of its powers under this Clause 15.13 (*Entry and power to remedy breaches*) shall not render the Lender liable to account as mortgagee in possession.

15.14 **Investment Contracts**

No Obligor shall enter into any investment contract, co-investment contract or similar arrangement, without the prior written consent of the Lender.

15.15 **Compulsory purchase**

Marisana shall, and each Obligor shall procure and ensure that Marisana shall, notify the Lender immediately if all or any part of the Property or the Land Plot is compulsorily

purchased or any applicable governmental agency or authority makes an order for the compulsory purchase of the same.

15.16 **Rental Income**

Unless otherwise agreed in writing by the Lender, Marisana shall, and each Obligor shall procure and ensure that Marisana shall, at all times ensure that all Rental Income in respect of the Property is paid directly by the tenant into Marisana's Control Account.

15.17 **Cross-easements**

15.17.1 No Obligor shall enter into any covenant, easement, agreement, reservation, restriction, condition or other matter that relates to, is in connection with or affects the Property or the Land Plot other than:

- (a) Leases entered into in accordance with Clause 15.3.1 (*Occupational Leases*);
- (b) with the prior written consent of the Lender (not to be unreasonably withheld or delayed); or
- (c) pursuant to the Complex Owners' Agreement.

15.17.2 Marisana shall not, without the prior written consent of the Lender amend, vary, novate, supplement, extend, replace or restate the Complex Owners' Agreement:

- (a) in any material respect; or
- (b) in any way that relates to the servitudes or use rights granted therein; or
- (c) pursuant to which, Marisana grants any covenant, easement, agreement, reservation, restriction, condition or other matter that relates to, is in connection with or affects the Property or the Land Plot,

except as required by applicable law and/or a final decision of a court of competent jurisdiction.

15.18 **Land Lease Agreements**

Marisana shall, and each Obligor shall procure and ensure that Marisana (after it has become a party to the Land Lease Agreement) shall:

15.18.1 not agree to any amendment, waiver or release in respect of the Land Lease Agreement other than:

- (a) any agreed increases in rent payments (provided that the Borrower has notified the Lender prior to such increases); and
- (b) any statutory rent increases or amendments required to be made to the Land Lease Agreement by applicable law;

15.18.2 not consent to any assignment or underletting or alterations in respect of its interest under the Land Lease Agreement;

- 15.18.3 not, subject to Clause 15.18.1 above, waive, release, forfeit or exercise any right of re-entry or vary any obligation under, or the terms of, or exercise any option or power to break or determine the Land Lease Agreement;
- 15.18.4 observe and perform all covenants, stipulations and obligations on it under the Land Lease Agreement;
- 15.18.5 diligently enforce all covenants on the part of the Land Owner under the Land Lease Agreement;
- 15.18.6 not do or permit anything under the Land Lease Agreement whereby the Land Lease Agreement may be forfeited;
- 15.18.7 promptly notify the Lender of any matter or event under or by reason of which the Land Lease Agreement has or may become subject to determination or to the exercise of any right of re-entry or forfeiture and, if so requested by the Lender, to apply for relief against forfeiture; and
- 15.18.8 not accept or permit the surrender of all or any part of the Land Lease Agreement, unless the Lender has granted prior written consent to the contrary (which shall not be unreasonably withheld or delayed).

16. **CHANGES TO THE LENDER**

Each of Junior Parties and the Junior Creditors agree to and consent to any assignment of rights or transfer of rights and obligations by a Lender of its rights and/or obligations under any Finance Document (including any Security created under the Finance Documents) made in accordance with clause 24 (*Changes to Lender*) of the Facility Agreement.

17. **CHANGES TO THE OBLIGORS**

17.1 **Junior Parties and Junior Creditors**

No Obligor or Junior Creditor may assign or otherwise transfer its rights and obligations under this Agreement.

17.2 **New Junior Creditors**

17.2.1 If:

- (a) the Borrower incurs any obligation or liability to an Affiliate of a Junior Party which is not a Junior Creditor; or
- (b) an Affiliate of the Borrower or Obligor which is not a Junior Party incurs any obligation or liability to a Junior Creditor; or
- (c) any Affiliate of a Junior Party which is not a Junior Creditor intends to lend or provide any form of credit to the Borrower,

other than obligations or liabilities owed to an Affiliate related to bookkeeping and accounting, maintenance of corporate status, receipt of advice from outside advisors and obligations or liabilities in the ordinary course of ordinary business in

connection with auditing, accounting, tax advice or corporate administration, the Junior Parties will procure that the Affiliate concerned will, before such obligation or liability is incurred, become a New Junior Creditor or, as the case may be, New Obligor by delivering to the Lender a Junior Creditor Accession Letter, duly executed by that Affiliate.

- 17.2.2 If Dalsimer incurs any obligation or liability to any Junior Party (other than in respect of the payment of a dividend or other distribution provided that such dividend or other distribution is immediately paid once declared), the Junior Parties will procure that Dalsimer will, before such obligation or liability is incurred, become a New Junior Creditor by delivering to the Lender a Junior Creditor Accession Letter, duly executed by Dalsimer.
- 17.2.3 Provided that the obligation or liability referred to in Clause 17.2.1 above is permitted under the Finance Documents, the Lender shall be obligated to execute a Junior Creditor Accession Letter provided that:
- (a) at the same time as that Junior Creditor Accession Letter is delivered to the Lender, there is also delivered to the Lender all those other items listed in Part 1 of Schedule 7 (*Conditions Precedent*) relative to the relevant Affiliate, in each case in form and substance satisfactory to the Lender unless waived or deferred by the Lender on such terms as the Lender considers fit; and
 - (b) no Default has occurred and is continuing or would occur upon that Affiliate acceding as a party to this Agreement.
- 17.2.4 Each Junior Party (other than the Affiliate concerned) irrevocably authorises the Borrower to execute any duly completed Junior Creditor Accession Letter on its behalf unless the Lender requires such Party to execute such Junior Creditor Accession Letter itself.
- 17.2.5 A Junior Creditor Accession Letter will take effect on the date of execution of that Junior Creditor Accession Letter by the Lender or, if later, the date specified in that Junior Creditor Accession Letter.
- 17.2.6 The execution of a Junior Creditor Accession Letter by the Affiliate concerned constitutes confirmation by it that it is a New Junior Creditor or, as the case may be, New Obligor under this Agreement.

17.3 **New Obligors**

- 17.3.1 If any person which is not an Obligor is required to provide any guarantee or Security to the Lender, or otherwise become an Obligor (as defined in the Facility Agreement) in accordance with the Finance Documents, the Obligors will procure that the person concerned will, before such Security is provided or such person becomes an Obligor, become a New Obligor by delivering to the Lender an Obligor Accession Letter, duly executed by that person and the Borrower.
- 17.3.2 Provided that such accession is permitted by the Finance Documents, the Lender shall be obligated to execute an Obligor Accession Letter provided that:

- (a) at the same time as that Obligor Accession Letter is delivered to the Lender, there is also delivered to the Lender:
 - (i) a copy of any Authorisation or other documents, opinion or assurance which the Lender considers to be necessary or desirable (acting reasonably); and
 - (ii) all those items listed in Part 2 of Schedule 7 (*Conditions Precedent*), in respect of and as applicable to the relevant person seeking to become a New Obligor and in each case to the extent not already delivered to the Lender and in form and substance satisfactory to the Lender unless waived or deferred by the Lender on such terms as the Lender considers fit;
- (b) where the relevant person seeking to become a New Obligor would be a FATCA FFI or a US Tax Obligor if it became a New Obligor, the Lender provides its prior written consent; and
- (c) no Default has occurred and is continuing or would occur upon that person acceding as a party to this Agreement.

17.3.3 Each Party (other than the Lender, the Borrower and the person concerned) irrevocably authorises the Borrower to execute any duly completed Obligor Accession Letter on its behalf unless the Lender requires such Party to execute such Obligor Accession Letter itself.

17.3.4 An Obligor Accession Letter will take effect on the date of execution of that Obligor Accession Letter by the Lender or, if later, the date specified in that Obligor Accession Letter.

17.3.5 The execution of an Obligor Accession Letter by the person concerned constitutes confirmation by it that it is a New Obligor under this Agreement.

17.4 **New Guarantors**

17.4.1 If any person which is not an Obligor becomes an Obligor in accordance with Clause 17.3 (*New Obligors*) the Obligors will procure that the person concerned will either:

- (a) become a New Facility Guarantor by delivering to the Lender a Facility Guarantor Accession Letter, duly executed by that person; or
- (b) if required by the Lender, enter into a Standalone Facility Guarantee in form and substance satisfactory to the Lender.

17.4.2 The Lender may accept the accession of a New Facility Guarantor in its sole discretion by executing a Facility Guarantor Accession Letter or Standalone Facility Guarantee provided that:

- (a) at the same time as that Facility Guarantor Accession Letter or Standalone Facility Guarantee is delivered to the Lender, there are also delivered to the Lender:

- (i) a copy of any Authorisation or other documents, opinion or assurance which the Lender considers to be necessary or desirable (acting reasonably); and
- (ii) to the extent not provided pursuant to Clause 17.3.2(a)(ii) (*New Obligors*) should such New Facility Guarantor also be acceding as a New Obligor at the same time, all those items listed in Part 3 of Schedule 7 (*Conditions Precedent*),

in respect of and as applicable to the relevant person seeking to become a New Facility Guarantor and in each case to the extent not already delivered to the Lender and in form and substance satisfactory to the Lender; and

- (b) no Default has occurred and is continuing or would occur upon that person acceding as a party to this Agreement.

17.4.3 Each Party (other than the Lender, the Borrower and the person concerned) irrevocably authorises the Borrower to execute any duly completed Facility Guarantor Accession Letter or Standalone Facility Guarantee on its behalf (as applicable) unless the Lender requires such Party to execute such Facility Guarantor Accession Letter or Standalone Facility Guarantee itself.

17.4.4 A Facility Guarantor Accession Letter will take effect on its date of execution by the Lender or, if later, the date specified in that Facility Guarantor Accession Letter.

17.4.5 The execution of a Facility Guarantor Accession Letter by the person concerned constitutes confirmation by it that it is a New Facility Guarantor under this Agreement.

17.5 **Obligors' Agent**

17.5.1 Each Obligor (other than the Borrower) by its execution of or accession to this Agreement irrevocably appoints the Borrower to act on its behalf as its agent in relation to the Finance Documents and irrevocably authorises:

- (a) the Borrower on its behalf to supply all information concerning itself contemplated by this Agreement to the Lender and to give all notices and instructions, to make such agreements and to effect the relevant amendments, supplements and variations capable of being given, made or effected by any Obligor notwithstanding that they may affect the Obligor, without further reference to or the consent of that Obligor; and
- (b) the Lender to give any notice, demand or other communication to that Obligor pursuant to the Finance Documents to the Borrower,

and in each case the Obligor shall be bound as though the Obligor itself had given the notices and instructions or executed or made the agreements or effected the amendments, supplements or variations, or received the relevant notice, demand or other communication.

17.5.2 If under the laws of the relevant jurisdiction it is required that the Borrower acts under a power of attorney in order to perform actions listed in Clause 17.5.1 above, the relevant Obligor shall issue a power of attorney in the name of the Borrower in

the form required by applicable legislation. Such power of attorney should be in place with the Borrower at any time it performs any actions on behalf of the relevant Obligor and is not to be amended or revoked without the consent of the Lender. The Borrower must provide the Lender at its request with such power of attorney (in the form required by applicable legislation). If a power of attorney terminates, expires or becomes invalid, the relevant Obligor shall issue another power of attorney replacing the terminated, expired or invalid power of attorney.

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

18. RELEASE OF PARTIES AND SECURITY

18.1 Release of cross collateral

18.1.1 On the expiry of the Fortune Finance Effective Period:

- (a) the Office Building 3 Obligor and Upalis shall be released from their obligations under the Finance Documents (whether as Facility Guarantor, provider of Security, Junior Creditor or otherwise); and
- (b) the Security created pursuant to each of the Office Building 3 Security Documents shall terminate and be considered of no force and effect.

18.1.2 As soon as practically possible following the expiry of the Fortune Finance Effective Period and at the cost of the Borrower, the Lender, Upalis and each of the Office Building 3 Obligor:

- (a) shall execute whatever documentation is required in order to evidence the release of each of the Office Building 3 Obligor from their obligations under the Finance Documents (whether as Facility Guarantor, provider of Security, Junior Creditor or otherwise); and
- (b) the Lender shall execute whatever documentation is required in order to release and deregister the Office Building 3 Security Documents.

18.1.3 Any release of an Office Building 3 Obligor or Upalis shall be without prejudice to any unsatisfied rights or claims which the Lender may have against the applicable Office Building 3 Obligor or Upalis, as the case may be, as at the date of such release and nothing in this Clause shall release or discharge any Office Building 3 Obligor or Upalis from any such liabilities.

18.1.4 Following the date on which the Secured Obligations have been satisfied in full and any money applied towards such satisfaction could not be the subject of any

clawback or similar circumstance, the Lender shall, at the request and cost of the Junior Party, release and discharge the Security constituted by the Security Documents to which such Junior Party is a party and do all such further acts and things as are required in order to evidence such release and discharge without recourse to, or any representation or warranty by, the Lender.

18.2 **Compulsory resignation of FATCA FFIs and US Tax Obligors**

If so directed by the Lender, the Borrower shall procure that any Obligor which is a FATCA FFI or a US Tax Obligor shall resign as an Obligor and, if applicable, a Guarantor prior to the earliest FATCA Application Date relating to any payment by that Obligor (or any payment by the Lender which relates to a payment by that Obligor).

19. **CONDUCT OF BUSINESS BY THE LENDER**

No provision of this Agreement will:

- 19.1.1 interfere with the right of the Lender to arrange its affairs (tax or otherwise) in whatever manner it thinks fit;
- 19.1.2 except as expressly provided in Clauses 9.2.6 (*Tax Gross-up*), 9.4 (*Tax credit*) and 10 (*Mitigation by the Lender*), oblige the Lender to investigate or claim any credit, relief, remission or repayment available to it or the extent, order and manner of any claim; or
- 19.1.3 except as expressly provided in Clauses 9.2.6 (*Tax Gross-up*) and 9.3.3 (*Tax Indemnity*), oblige the Lender to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of Tax.

20. **FURTHER ASSURANCE AND INDEMNITY**

20.1 **Further Assurance**

Each Party agrees that it will promptly, at the direction of the Lender (acting reasonably), execute and deliver at its own expense any document (executed as a deed or under hand as the Lender may direct) and do any act or thing in order to confirm or establish the validity and enforceability of the subordination effected by, and the obligations of each Party to the Lender under, this Agreement.

20.2 **Junior Creditor Indemnity**

Each Junior Creditor irrevocably and unconditionally indemnifies the Lender immediately on demand against any cost, loss, claim, liability or expense suffered or incurred by the Lender (directly or indirectly) as a result of any breach by that Junior Creditor of any term of this Agreement or any failure or inability of that Junior Creditor to perform any obligation under this Agreement.

20.3 **Changes to the Calculation of Interest**

Each Obligor hereby consents to any alternative basis of interest or funding agreed between the Lender and the Borrower pursuant to clause 10.3.1 (*Alternative basis of interest or funding*) of the Facility Agreement and acknowledge that any such agreement shall be binding on it.

20.4 Elevation

20.4.1 If the terms of any participation agreement entered into pursuant to Clause [25.1] (*Participation Agreement*) of the Facility Agreement provide that while an Event of Default is continuing the Lender is to transfer its interests in the Security Documents to an agent to hold the interest of such Security Documents on behalf of the Lender and the Participants pursuant to a parallel debt structure or otherwise, each Obligor shall, while an Event of Default is continuing, agree to any amendments to the Finance Documents as may be required to effect such change in the holding of the Transaction Security.

20.4.2 Notwithstanding any term of any Finance Document, no Obligor shall be responsible for any costs and expenses (including legal costs) associated with any actions taken by any Secured Party, any Obligor or any Participant to effect any amendments required pursuant to Clause 20.4.1 above.

21. PAYMENT MECHANICS

21.1 Payments to the Lender

21.1.1 On each date on which an Obligor is required to make a payment to the Lender under a Finance Document, such Obligor shall make the same available to the Lender for value on the due date at the time and in such funds specified by the Lender as being customary at the time for settlement of transactions in the relevant currency in the place of payment.

21.1.2 Payment to the Lender shall be made to the account with such bank as it specifies.

21.2 Distributions to an Obligor

The Lender may (with the consent of the Obligor or in accordance with Clause 22 (*Set-off*)) apply any amount received by it for that Obligor in or towards payment (on the date and in the currency and funds of receipt) of any amount due from the Obligors under the Finance Documents or in or towards the purchase of any amount of any currency to be so applied.

21.3 Clawback

21.3.1 Where a sum is to be paid to the Lender under the Finance Documents for another Party, the Lender is not obliged to pay that sum to that other Party (or to enter into or perform any related exchange contract) until it has been able to establish to its satisfaction that it has actually received that sum.

21.3.2 If the Lender pays an amount to another Party and it proves to be the case that the Lender had not actually received that amount, then the Party to whom that amount (or the proceeds of any related exchange contract) was paid by the Lender shall on demand refund the same to the Lender together with interest on that amount from the date of payment to the date of receipt by the Lender, calculated by the Lender to reflect its cost of funds.

21.4 Partial payments

21.4.1 If the Lender receives a payment that is insufficient to discharge all the amounts then due and payable by an Obligor under the Finance Documents (or the provisions of this Clause are otherwise expressed to apply to such payment), the Lender shall apply that payment towards the obligations of that Obligor in the following order:

- (a) *first*, in or towards payment of any unpaid fees, costs and expenses of the Lender under those Finance Documents;
- (b) *second*, in or towards payment of all accrued interest due and payable to the Lender under the Finance Documents; and
- (c) *third*, in or towards payment of any principal due but unpaid under those Finance Documents; and
- (d) *fourth*, in or towards payment of any other sum due but unpaid under the Finance Documents.

21.4.2 The Lender may vary the order set out in Clause 21.4.1 above.

21.4.3 Clauses 21.4.1 and 21.4.2 above shall override any appropriation made by any Obligor.

21.5 Application of proceeds of Security

All moneys from time to time received or recovered by the Lender in connection with the realisation or enforcement of all or any part of the Transaction Security shall be applied at such times as the Lender sees fit, to the extent permitted by applicable law, in the following order of priority:

21.5.1 in discharging:

- (a) costs and expenses incurred by the Lender or any Delegate; and
- (b) costs and expenses incurred by any Receiver, the payment of its remuneration and the discharge of any liabilities incurred by any Receiver in, or incidental to, the exercise of any of its powers; and

21.5.2 towards the discharge of all sums due and payable by any Obligor under any of the Finance Documents in the order set out in Clause 21.4 (*Partial Payments*).

21.6 No set-off by Obligors

All payments to be made by an Obligor under the Finance Documents shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

21.7 Business Days

21.7.1 Save in relation to an Interest Payment Date, any payment which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).

21.7.2 During any extension of the due date for payment of any principal or an Unpaid Sum under this Agreement interest is payable on the principal or Unpaid Sum at the rate payable on the original due date.

21.8 **Currency of account**

21.8.1 Subject to Clauses 21.8.2 and 21.8.3 below:

- (a) prior to the Final Conversion Date:
 - (i) dollar is the currency of account and payment for any sum due from an Obligor in respect of any Facility B Loan and any Facility A USD Loan; and
 - (ii) euro is the currency of account and payment for any other sum due from an Obligor under any Finance Document; and
- (b) on and from the Final Conversion Date, dollar is the currency of account and payment for any other sum due from an Obligor under any Finance Document.

21.8.2 Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.

21.8.3 Any amount expressed to be payable in a currency other than euro or dollar shall be paid in that other currency.

21.9 **Change of currency**

21.9.1 Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:

- (a) any reference in the Finance Documents to, and any obligations arising under the Finance Documents in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the Lender (after consultation with the Borrower); and
- (b) any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the Lender (acting reasonably).

21.9.2 If a change in any currency of a country occurs, this Agreement shall, to the extent the Lender (acting reasonably and after consultation with the Borrower) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the European Interbank Market and otherwise to reflect the change in currency.

21.10 Investment of Proceeds

Prior to the application of:

21.10.1 the proceeds of the Transaction Security in accordance with Clause 21.5 (*Application of proceeds of Security*); or

21.10.2 any amounts drawn from a Control Account in accordance with the terms of this Agreement,

the Lender may, at its discretion, hold all or part of those proceeds in an interest bearing suspense or impersonal account(s) in the name of, or under the control of, the Lender with any financial institution (including itself) and for so long as the Lender thinks fit (the interest being credited to the relevant account) pending the application from time to time of those monies at the Lender's discretion in accordance with the provisions of this Clause 21 provided that notwithstanding the foregoing, the Lender shall be obliged to apply such monies towards discharge of the Secured Obligations on the earlier of:

- (a) the date on which such monies are sufficient to satisfy the Secured Obligations in full and any money so applied could not be the subject of any clawback or similar circumstance; and
- (b) the date on which Transaction Security has been enforced in full and any other remedies in all Relevant Jurisdictions that the Lender may have under or in connection with the Finance Documents have been exhausted

21.11 Currency Conversion

21.11.1 For the purpose of or pending the discharge of any of the Secured Obligations the Lender may convert any moneys received or recovered by the Lender from one currency to another, at the spot rate at which the Lender is able to purchase the currency in which the Secured Obligations are due with the amount received.

21.11.2 The obligations of any Obligor to pay in the due currency shall only be satisfied to the extent of the amount of the due currency purchased after deducting the costs of conversion.

22. SET-OFF

22.1.1 The Lender may, as long as any Event of Default is continuing, set off any matured obligation due from an Obligor under the Finance Documents (to the extent beneficially owned by the Lender) against any matured obligation owed by the Lender to that Obligor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Lender may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

22.1.2 The Lender shall notify the relevant Obligor of any such set-off or conversion.

23. NOTICES

23.1 Communications in writing

Any communication to be made under or in connection with the Finance Documents shall be made in writing and, unless otherwise stated, may be made by fax or letter.

23.2 **Addresses**

The address, fax number (and the department or officer, if any, for whose attention the communication is to be made) and the e-mail address, to the extent permitted to be used pursuant to Clause 23.6 (*Electronic communication*) of each Party for any communication or document to be made or delivered under or in connection with the Finance Documents is:

- 23.2.1 in the case where a person is a Party on the Amendment and Restatement Date, that identified with its name in the execution pages to the SOU Amendment and Restatement Agreement; and
- 23.2.2 in the case where a person becomes a Party after the day on which this Agreement is entered into, that notified in writing to the Lender on or prior to the date on which it becomes a Party,

or any substitute address, fax number, department or officer, or e-mail address as the Party may notify to the Lender (or the Lender may notify to the other Parties, if a change is made by the Lender) by not less than five Business Days' notice.

23.3 **Delivery**

23.3.1 Any communication or document made or delivered by one person to another under or in connection with the Finance Documents shall only be effective:

- (a) if by way of fax, when received in legible form; or
- (b) if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of its address details provided under Clause 23.2 (*Addresses*), if addressed to that department or officer.

23.3.2 Any communication or document to be made or delivered to the Lender shall be effective only when actually received by the Lender and then only if it is expressly marked for the attention of the department or officer identified with the Lender's signature below (or any substitute department or officer as the Lender shall specify for this purpose).

23.3.3 Any communication or document made or delivered to the Borrower in accordance with this Clause shall be deemed to have been made or delivered to each of the Junior Parties.

23.4 **Notification of address and fax number**

Promptly upon receipt of notification of an address and fax number or change of address or fax number pursuant to Clause 23.2 (*Addresses*) or changing its own address or fax number, the Lender shall notify the other Parties.

23.5 English language

- 23.5.1 Any notice given under or in connection with any Finance Document must be in English.
- 23.5.2 All other documents provided under or in connection with any Finance Document must be:
- (a) in English; or
 - (b) if not in English, and if so required by the Lender, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

23.6 Electronic communication

- 23.6.1 If a Junior Party and the Lender agree in writing that any specific communication to be made between such Junior Party and the Lender under or in connection with the Finance Documents may be made by electronic mail or other electronic means, then the Lender and such Junior Party:
- (a) agree that, unless and until notified to the contrary, this is to be an accepted form of communication for that specific communication;
 - (b) shall notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
 - (c) shall notify each other of any change to their address or any other such information supplied by them,

provided that the following communications may be made by electronic mail to the email addresses identified with its name in the execution pages to this Agreement unless and until notified to the contrary by the Lender:

- (i) any notices from the Lender pursuant to Clause 13 (*Control Accounts*);
 - (ii) copies of the Leases (unless physical copies are requested by the Lender or where evidence of registration is required); and
 - (iii) details to be provided pursuant to Clause 12.5 (*Taxes*).
- 23.6.2 Any electronic communication made between a Junior Party and the Lender will be effective only when actually received and opened in readable form other than any electronic communication from the Lender to a Junior Party pursuant to Clause 13.8.3 (*Control Accounts - withdrawals, instructions and mandates*) which will be effective when sent by the Lender.

24. CALCULATIONS AND CERTIFICATES

24.1 Accounts

In any litigation or arbitration proceedings arising out of or in connection with a Finance Document, the entries made in the accounts maintained by the Lender are prima facie evidence of the matters to which they relate.

24.2 Certificates and determinations

Any certification or determination by the Lender of a rate or amount under any Finance Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

24.3 Documentation and evidence from Lender

Notwithstanding any provision of any Finance Document, where the Lender is required to provide any documentation or other evidence pursuant to any Finance Document, the Lender shall only be required to provide any such documentation or evidence where:

24.3.1 the Lender is not prohibited by applicable laws to disclose such documentation or evidence;

24.3.2 the Lender has such documentation or evidence available to it; and

24.3.3 such documentation or evidence is not commercially sensitive, subject to any obligation or duty of confidentiality or subject to a confidentiality agreement (other than where a confidentiality agreement was entered into by the Lender for the sole purpose of the confidentiality provisions of that agreement is to avoid having to disclose such documentation or evidence to the Borrower pursuant to any Finance Document).

25. PARTIAL INVALIDITY

If, at any time, any provision of the Finance Documents is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall in any way be affected or impaired.

26. REMEDIES AND WAIVERS

No failure to exercise, nor any delay in exercising, on the part of the Lender, any right or remedy under the Transaction Documents shall operate as a waiver of any such right or remedy or constitute an election to affirm any of the Transaction Documents. No election to affirm any of the Finance Documents on the part of the Lender shall be effective unless it is in writing. No single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

27. AMENDMENTS AND WAIVERS

Each of the Parties agree and consent that any term of:

27.1.1 the Finance Documents (other than any Fee Letter) may be amended or waived only with the consent of the Lender and the Borrower (on its own behalf and on behalf of each Obligor as Obligor's Agent); and

27.1.2 any Fee Letter may be amended or waived only with the consent of each of the parties to such document,

and any such amendment or waiver will be binding on all Parties to such Finance Document.

28. **CONFIDENTIALITY**

28.1 **Confidentiality**

28.1.1 Each Party agrees that the Transaction Documents and the terms contained therein, and all information provided to a Party thereunder or in connection therewith is confidential information, and that no Party may disclose such confidential information to any third party without the consent of the other Parties.

28.1.2 Notwithstanding Clause 28.1.1 above, any Party may disclose any information:

- (a) that is in or comes into the public domain (other than by reason of a breach by that Party of its confidentiality undertakings contained herein);
- (b) that is required by any applicable law or regulation or the rules of any stock exchange on which a Party's securities are, or are to be, listed;
- (c) to a Subsidiary or Holding Company (or a Subsidiary of a Holding Company) of a Party on a "need to know" basis, or a Representative of or financial or professional advisor of a Party that is subject to a duty of confidentiality in relation to such information; or
- (d) to an Obligor for the purposes of the Finance Documents to which it is a party.

28.1.3 Notwithstanding Clause 28.1.1 above, the Lender may disclose to any of its Affiliates and any other person:

- (a) to (or through) whom the Lender assigns or transfers or disposes of (or may potentially assign or transfer or dispose) all or any of its rights and obligations under the Finance Documents or any of the assets or rights the subject of any Transaction Security and to any of that person's Affiliates, Representatives and financial and professional advisers;
- (b) with (or through) whom the Lender enters into (or may potentially enter into) any sub-participation in relation to, or any other transaction under which payments are to be made by reference to, the Finance Documents or any Obligor and to any of that person's Affiliates, Representatives and financial and professional advisers;
- (c) which is Fitch, Moody's, S&P or other internationally recognised ratings agency; or

- (d) to whom, and to the extent that, information is required to be disclosed by any applicable law or regulation or the rules of any stock exchange on which the Lender's securities are, or are to be, listed; or
- (e) appointed by the Lender or by a person to whom paragraphs (a) or (b) applies to receive communications, notices, information or documents delivered pursuant to the Finance Documents on its behalf;
- (f) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in paragraphs (a) or (b) above;
- (g) to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation;
- (h) to whom or for whose benefit the Lender charges, assigns or otherwise creates Security (or may do so) pursuant to clause 24.3 (*Security over Lender's rights*) of the Facility Agreement;
- (i) to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes;
- (j) who is a Party; or
- (k) with the consent of the Borrower,

any information about any Obligor, the Finance Documents, the Property and the Land Plot as the Lender shall consider appropriate, provided that:

- (i) the identities of the ultimate beneficial owners of the Group may only be disclosed to the persons or in the circumstances referred to in paragraphs (a), (b), (d), (e) (but only for the purpose of complying with any anti-money laundering or "know-your-customer" requirements), (f), (g), (h), (i), (j) and (k) and the Lender shall inform the Borrower of any such disclosure:
 - (A) two Business Days prior to the making of that disclosure when possible; or
 - (B) promptly after such disclosure where prior disclosure was not possible,

unless the Lender is prohibited under applicable law from making such a disclosure to the Borrower or an Event of Default is continuing;

- (ii) in relation to paragraph (a), (b), (e) and (h) above, the person to whom the confidential information is to be given has entered into a Confidentiality Undertaking except that there shall be no requirement for a Confidentiality Undertaking if the recipient is a

professional adviser and is subject to professional obligations to maintain the confidentiality of the confidential information;

- (iii) in relation to paragraph (f) above, the person to whom the confidential information is to be given has entered into a Confidentiality Undertaking or is otherwise bound by requirements of confidentiality in relation to the confidential information they receive and is informed that some or all of such confidential information may be price-sensitive information; and
- (iv) in relation to paragraphs (c), (d), (g) and (i) above, the person to whom the confidential information is to be given is informed of its confidential nature and that some or all of such confidential information may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of the Lender, it is not practicable so to do in the circumstances.

28.2 **Marketing Materials**

Notwithstanding Clause 28.1.1 above, the Lender may refer to this Agreement, the name "Capital Partners" (including its logo), the Facility Amount, the date of this Agreement and a description of Office Building 1 (including reference to the name "Metropolis") for marketing purposes and in order to satisfy the requirements of any compilers of league tables.

28.3 **Entire agreement**

This Clause 28 (*Confidentiality*) constitutes the entire agreement between the Parties in relation to the obligations of the Lender under the Finance Documents regarding confidential information and supersedes any previous agreement, whether express or implied, regarding confidential information.

28.4 **Continuing obligations**

The obligations in this Clause 28 (*Confidentiality*) are continuing and, in particular, shall survive and remain binding on the Lender for a period of twelve months from the earlier of:

28.4.1 the date on which all amounts payable by the Obligors under or in connection with this Agreement have been paid in full and all Commitments have been cancelled or otherwise cease to be available; and

28.4.2 the date on which any Lender otherwise ceases to be the current Lender.

29. **COUNTERPARTS**

Each Finance Document may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of the Finance Documents.

30. **GOVERNING LAW**

30.1 **Contractual obligations**

This Agreement is governed by English law.

30.2 **Non-contractual obligations**

All non-contractual obligations arising out of or in connection with this Agreement are governed by English law.

31. **GOVERNING LANGUAGE**

Although this Agreement may be translated into Russian, the Russian version of this Agreement is for information purposes only. In the event of any discrepancies between the English and Russian versions of this Agreement or any dispute regarding the interpretation of any provision in the English or Russian versions of this Agreement, the English version of this Agreement shall prevail and questions of interpretation shall be addressed solely in the English language.

32. **ARBITRATION**

32.1 **Arbitration**

Any dispute arising out of or in connection with this Agreement (including a dispute regarding the existence, validity or termination of this Agreement) (a "**Dispute**") shall be referred to and finally resolved by arbitration under the Arbitration Rules (the "**Rules**") of the London Court of International Arbitration.

32.2 **Procedure for arbitration**

32.2.1 The arbitral tribunal shall consist of three arbitrators. The claimant(s), irrespective of number, shall nominate jointly one arbitrator; the respondent(s), irrespective of number, shall nominate jointly the second arbitrator; and a third arbitrator, who shall be a Queen's Counsel who in the view of the LCIA Court, has the relevant experience and standing and who shall serve as Chairman, shall be appointed by the LCIA Court (as defined in the Rules) within fifteen days of the appointment of the second arbitrator. Any provisions of the Rules relating to the nationality of an arbitrator shall, to that extent, not apply

32.2.2 In the event the claimant(s) or the respondent(s) shall fail to nominate an arbitrator within the time limits specified in the Rules, such arbitrator shall be appointed by the LCIA Court within fifteen days of such failure. In the event that both the claimant(s) and the respondent(s) fail to nominate an arbitrator within the time limits specified in the Rules, all three arbitrators shall be appointed by the LCIA Court within fifteen days of such failure who shall designate one of them as chairman.

32.2.3 If all the parties of arbitration so agree, there shall be a sole arbitrator appointed by the LCIA Court within fifteen days of such agreement. Any provisions of the Rules relating to the nationality of the sole arbitrator shall, to that extent, not apply

32.2.4 The seat of arbitration shall be London, England and the language of the arbitration shall be English.

32.3 **Recourse to courts**

The Parties exclude the jurisdiction of the courts under Sections 45 and 69 of the Arbitration Act 1996.

33. JURISDICTION

33.1 Lender's option

33.1.1 Notwithstanding Clause 32 (*Arbitration*), before an arbitrator has been appointed to determine a Dispute, the Lender may (in its sole discretion), by notice in writing to all other Parties require that all Disputes or a specific Dispute be heard by a court of law.

33.1.2 If the Lender gives such notice:

- (a) the Dispute to which that notice refers shall be determined in accordance with Clause 33.2 (*Jurisdiction of English courts*); and
- (b) the Parties waive application of Clause 32.3 (*Recourse to courts*) above in respect of such Dispute.

33.2 Jurisdiction of English courts

33.2.1 Subject to Clause 32 (*Arbitration*), the courts of England have non-exclusive jurisdiction to settle any Dispute.

33.2.2 The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party shall argue to the contrary.

33.2.3 This Clause 33.2 is for the benefit of the Lender only. As a result, the Lender shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Lender may take concurrent proceedings in any number of jurisdictions.

33.3 Service of process

Without prejudice to any other mode of service allowed under any relevant law, each Junior Party:

33.3.1 irrevocably appoints the Process Agent as its agent for service of process in relation to any proceedings before the English courts in connection with any Finance Document; and

33.3.2 agrees that failure by an agent for service of process to notify the Borrower of the process shall not invalidate the proceedings concerned.

33.4 Waiver of immunity

Each Junior Party waives generally all immunity it or its assets or revenues may otherwise have in any jurisdiction, including immunity in respect of:

33.4.1 the giving of any relief by way of injunction or order for specific performance or for the recovery of assets or revenues; and

33.4.2 the issue of any process against its assets or revenues for the enforcement of a judgment or, in an action in rem, for the arrest, detention or sale of any of its assets and revenues.

34. **PERPETUITY PERIOD**

The perpetuity period for the trusts in this Agreement is 80 years.

This Agreement has been entered into on the date stated at the beginning of this Agreement.

**SCHEDULE 1
ORIGINAL JUNIOR CREDITORS**

Original Junior Creditors	Registered no.	Jurisdiction
Flowermills Holding B.V.	34224859	The Netherlands
Fortune Finance Group Inc.	1406966	British Virgin Islands
ISA Investment Strategy Associates Inc.	1515442	British Virgin Islands
Marisana Enterprises Limited	248355	Republic of Cyprus
MOF Holding Cooperatief U.A.	34366874	The Netherlands
Nicolsco Consulting Limited	236933	Republic of Cyprus
Real Estate Finance S.A.	B 147683	Luxembourg
Sfer Estates Limited	1430291	British Virgin Islands
Stella Solaris Investments Ltd.	1515426	British Virgin Islands
Twinhope Finance S.A.	B 148955	Luxembourg
Upalis Holdings Ltd.	1568907	British Virgin Islands
Winhope Finance Ltd.	1552148	British Virgin Islands

**SCHEDULE 2
ORIGINAL OBLIGORS**

Original Obligors	Registered no.	Jurisdiction
Flowermills Holding B.V.	34224859	The Netherlands
Fortune Finance Group Inc.	1406966	British Virgin Islands
ISA Investment Strategy Associates Inc.	1515442	British Virgin Islands
Marisana Enterprises Limited	248355	Republic of Cyprus
MOF Holding Cooperatief U.A.	34366874	The Netherlands
Nicolsco Consulting Limited	236933	Republic of Cyprus
Real Estate Finance S.A.	B 147683	Luxembourg
Sfer Estates Limited	1430291	British Virgin Islands
Stella Solaris Investments Ltd.	1515426	British Virgin Islands
Twinhope Finance S.A.	B 148955	Luxembourg
Winhope Finance Ltd.	1552148	British Virgin Islands

**SCHEDULE 3
ORIGINAL FACILITY GUARANTORS**

Original Facility Guarantors	Registered no.	Jurisdiction
Flowermills Holding B.V.	34224859	The Netherlands
Fortune Finance Group Inc.	1406966	British Virgin Islands
ISA Investment Strategy Associates Inc.	1515442	British Virgin Islands
MOF Holding Cooperatief U.A.	34366874	The Netherlands
Real Estate Finance S.A.	B 147683	Luxembourg
Sfer Estates Limited	1430291	British Virgin Islands
Stella Solaris Investments Ltd.	1515426	British Virgin Islands
Twinhope Finance S.A.	B 148955	Luxembourg
Winhope Finance Ltd.	1552148	British Virgin Islands

**SCHEDULE 4
JUNIOR CREDITOR ACCESSION LETTER**

To: **NORDEA BANK AB (PUBL)** as Lender

From: [*New Junior Creditor*] and ISA Investment Strategy Associates Inc. as Borrower and Obligors' Agent

Dated: [•]

Dear Sirs

ISA Investment Strategy Associates Inc. — Subordination and Obligors' Undertaking Agreement dated 8 July 2011 as amended and restated on [•] (the "Agreement")

1. We refer to the Agreement. This is a Junior Creditor Accession Letter. Terms defined in the Agreement have the same meaning in this Junior Creditor Accession Letter unless given a different meaning in this Junior Creditor Accession Letter.
2. [*Name of New Junior Creditor*] (incorporated and registered in [•], at address [•] and with company number [•]) agrees to become a New Junior Creditor and to be bound by the terms of the Agreement as a Junior Creditor in accordance with Clause 17.2 (*New Junior Creditors*) of the Agreement.
3. [*New Junior Creditor's*] administrative details are as follows:

Address: [•]
[•]
[•]
Fax No: [•]

Attention: [•]
4. This Junior Creditor Accession Letter is governed by English law.

Yours faithfully

authorised signatory for
[NEW JUNIOR CREDITOR]
as a Junior Creditor

authorised signatory for
ISA Investment Strategy Associates Inc.
as Borrower and Obligors' Agent and
on behalf of all Parties (other than the
Lender)

This Junior Creditor Accession Letter is accepted by the Lender.

NORDEA BANK AB (PUBL)

By:

**SCHEDULE 5
OBLIGOR ACCESSION LETTER**

To: **NORDEA BANK AB (PUBL)** as Lender

From: [*New Obligor*] and ISA Investment Strategy Associates Inc. as Borrower and Obligors' Agent

Dated: [•]

Dear Sirs

ISA Investment Strategy Associates Inc. - Subordination and Obligors' Undertaking Agreement dated 8 July 2011 as amended and restated on [•] (the "Agreement")

1. We refer to the Agreement. This is an Obligor Accession Letter. Terms defined in the Agreement have the same meaning in this Obligor Accession Letter unless given a different meaning in this Obligor Accession Letter.
2. [*Name of New Obligor*] (incorporated and registered in [•], at address [•] and with company number [•]) agrees to become a New Obligor and to be bound by the terms of the Agreement as an Obligor in accordance with Clause 17.3 (*New Obligors*) of the Agreement.
3. For the purposes of the Finance Documents, the Borrower, [*Name of New Obligor*] and the Lender make the following designations:
 - (a) [*Name of New Obligor*] is designated as an Obligor.
 - (b) Each of the following documents is designated as a Debenture:
 - (i) [•].
 - (c) Each of the following documents is designated as a Mortgage:
 - (i) [•].
 - (d) Each of the following documents is designated as a Pledge of Lease Receivables:
 - (i) [•].
 - (e) Each of the following documents is designated as a Share Pledge:
 - (i) [•].
 - (f) Each of the following documents is designated as an Account Pledge:
 - (i) [•].

(g) Each of the following documents is designated as an Account Amendment Agreement:

(i) [•].

(h) Each of the following documents is designated as a Finance Document:

(i) [•].

(i) Each of the following documents is designated as a Transaction Document:

(i) [•].

4. [Name of New Obligor]'s administrative details are as follows:

5. Address: [•]

[•]

[•]

Fax No: [•]

Attention: [•]

6. This Obligor Accession Letter is governed by English law.

Yours faithfully

authorised signatory for
[NEW OBLIGOR]
as an Obligor

authorised signatory for
ISA Investment Strategy Associates Inc.
as Borrower and Obligors' Agent on behalf of
all Parties (other than the Lender)

This Obligor Accession Letter is accepted by the Lender.

NORDEA BANK AB (PUBL)

By:

**SCHEDULE 6
FACILITY GUARANTOR ACCESSION LETTER**

To: **NORDEA BANK AB (PUBL)** as Lender

From: [*New Facility Guarantor*] and ISA Investment Strategy Associates Inc. as Borrower and Obligors' Agent

Dated: [•]

Dear Sirs

ISA Investment Strategy Associates Inc. — Subordination and Obligors' Undertaking Agreement dated 8 July 2011 as amended and restated on [•] (the "Agreement")

1. We refer to the Agreement. This is a Facility Guarantor Accession Letter. Terms defined in the Agreement have the same meaning in this Facility Guarantor Accession Letter unless given a different meaning in this Facility Guarantor Accession Letter.
2. [*Name of New Facility Guarantor*] (incorporated and registered in [•], at address [•] and with company number [•]) agrees to become a New Facility Guarantor and to be bound by the terms of the Agreement as a New Facility Guarantor in accordance with Clause 17.4 (*New Facility Guarantors*) of the Agreement.
3. [*Name of New Facility Guarantor*]'s administrative details are as follows:

Address: [•]
 [•]
 [•]
Fax No: [•]

Attention: [•]
4. This Facility Guarantor Accession Letter is governed by English law.

Yours faithfully

authorised signatory for
[*NEW FACILITY GUARANTOR*]
as a New Facility Guarantor

authorised signatory for
ISA Investment Strategy Associates Inc.
as Borrower and as Obligors' Agent and on
behalf of all Parties (other than the Lender)

This Facility Guarantor Accession Letter is accepted by the Lender.

NORDEA BANK AB (PUBL)

By:

SCHEDULE 7
CONDITIONS PRECEDENT

PART 1
New Junior Creditors

1. **Accession Letter**

Two copies of a Junior Creditor Accession Letter duly executed by such New Junior Creditor.

2. **Opinion**

A legal opinion of the legal advisers to the Lender in England and in the place of incorporation of such New Junior Creditor in respect of the Junior Creditor Accession Letter.

3. **Process Agent**

Evidence that the Process Agent has accepted its appointment pursuant to Clause 33.3 (*Service of Process*).

4. **Know Your Customer**

All documents and evidence required by the Lender for the purposes of know your customer and anti-money laundering compliance.

5. **Miscellaneous**

A copy of any other Authorisation or other documents, opinion or assurance relating to such New Junior Creditor which the Lender considers to be necessary (acting reasonably, if it has notified the New Junior Creditor accordingly) in connection with the entry into and performance of the Junior Creditor Accession Letter or for the validity and enforceability of its obligations under the Junior Creditor Accession Letter.

PART 2

New Obligor

1. **Accession Letter**

Two copies of an Obligor Accession Letter duly executed by such New Obligor and the Borrower.

2. **Finance Documents**

(a) Each of the Finance Documents (as designated in the relevant New Obligor's Obligor Accession Letter) duly executed by each relevant Obligor and any other party to such Finance Documents.

(b) In relation to the Finance Documents designated in accordance with paragraph (a) above, to the satisfaction of the Lender, all due documentation required to be delivered and evidence of all due action required to be taken under each such Finance Documents.

3. **Financial Information**

A copy certified by an Authorised Signatory of the most recent audited annual financial statements of the relevant New Obligor.

4. **Opinion**

A legal opinion of the legal advisers to the Lender in England and in the place of incorporation of such New Obligor in respect of the Obligor Accession Letter and the Finance Documents.

5. **Process Agent**

Evidence that the Process Agent has accepted its appointment pursuant to Clause 33.3 (*Service of Process*).

6. **Know Your Customer**

All documents and evidence required by the Lender for the purposes of know your customer and anti-money laundering compliance.

7. **Miscellaneous**

A copy of any other Authorisation or other documents, opinion or assurance relating to such New Obligor which the Lender considers to be necessary (acting reasonably, and if it has notified the New Obligor accordingly) in connection with the entry into and performance of the Obligor Accession Letter or for the validity and enforceability of its obligations under the Obligor Accession Letter.

PART 3
New Guarantors

1. Facility Guarantor Accession Letter

Either:

- (a) copies of a Facility Guarantor Accession Letter duly executed by such New Facility Guarantor and the Borrower; or
- (b) if so required by the Lender, two copies of a Standalone Facility Guarantee duly executed by such New Facility Guarantor.

2. Opinion

A legal opinion of the legal advisers to the lender in England and in the place of incorporation of such New Facility Guarantor in respect of the Facility Guarantor Accession Letter.

3. Process Agent

Evidence that the Process Agent has accepted its appointment pursuant to Clause 33.3 (*Service of Process*).

4. Know Your Customer

All documents and evidence required by the Lender for the purposes of know your customer and anti-money laundering compliance.

5. Miscellaneous

A copy of any other Authorisation or other documents, opinion or assurance relating to such New Facility Guarantor which the Lender considers to be necessary (acting reasonably, and if it has notified the New Facility Guarantor accordingly) in connection with the entry into and performance of the Facility Guarantor Accession Letter or for the validity and enforceability of its obligations under the Facility Guarantor Accession Letter or Standalone Facility Guarantee.